THE EPPO/OLAF II

Compendium of National Procedures

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

Pierre Hauck and Jan-Martin Schneider

Belgium

λογος

The EPPO/OLAF Compendium of National Procedures

Volume II – Belgium

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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 II – Belgium

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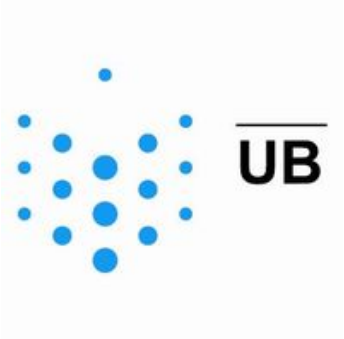

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Preface and Acknowledgements

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 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.

The editors would like to thank the European Commission for generously supporting the research underlying this work with funds from the EU's Hercule III programme, and they would like to thank the Justus Liebig University of Giessen for generously supporting the open access publication of this work with funds from its Open Access Publication Fund.

Our sincere thanks go to our team at the University of Giessen, in particular Nur Sena Karakocaoğlu and Alastair Laird, who have borne the main burden. Julian Doerk, Felina Frkic Wegener, Maike Kappes, Tom Löwer, Aleksandra Joachimiak and Sophie Meyer have greatly supported the project with a variety of research and formatting work. Corinna Haas and Vanessa Runge have accompanied the project from the beginning and have always backed us up with their sure eye for work-relevant aspects and processes, thus continuously supporting this ambitious project from start to finish.

The project was also successful because the third-party funding administration of the Justus Liebig University in the shape of Dr Christian Maarten Veldman, Anja Daßler and Jochen Stein took a lot of work off our shoulders.

Last but not least, our thanks go to the wonderful supervision and support of the publisher Volkhard Buchholtz and the production coordinators Katharina Kruse and Hannah Kropla from Logos Verlag in Berlin for everything it takes to bring a book to life.

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: This volume is structured into three main parts to provide a comprehensive overview of the legal framework regarding EPPO and OLAF investigations in Belgium. Part A serves as a general collection of materials, including compiled case law, sources of law, and relevant institutions, which will help navigate the subsequent sections.

Part B presents a compendium of national statutory law related to EPPO investigations, which is introduced by two national experts pointing at the relevance of the EPPO in Belgium, the problems, such as minimalistic implementation or minor language difficulaties. This section shows the legal information with the method of linking the references in the EPPO Regulation to national law, detailing how criminal investigations are initiated and conducted, and is navigable through the investigation-related Articles 26–33 of the EPPO Regulation.

Part C focuses on relevant law for OLAF investigations in Belgium, specifically addressing on-the-spot checks conducted by OLAF in collaboration with national partners. To enhance accessibility and understanding, the main body of the text is provided in English, while footnotes include the original legal texts in Dutch, French, or German.

Experts and authors: Prof. Dr. Frank Verbruggen, docta. Pieter van Rooij, Prof. Dr. *Pierre Hauck* LL.M. (Sussex). Compilation and research of the EPPO and OLAF Parts (B–C) by Prof. Dr. *Pierre Hauck* LL.M. (Sussex), *Jan-Martin Schneider* (Dipl.-Jur. MR; RA, University of Gießen)/*Alastair A. Laird* (RA, University of Gießen)/*Nur Sena Karakocaoğlu* (Dipl.-Jur. FFM.; RA, University of Gießen) with the help of the expert. Compilation and research of the OLAF-Part C arranged with the special help of Questionnaire experts/organizations (AFCOS, OAFCN) Belgian AFCOS (SPF Economie, *Direction Contrôles organisations du Marché UE et Lutte contre la fraude économique*) consulted and submitted research material: Public AFCOS Report, OLAF-Reports.

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Abbreviations

AA	L'Autorité d'audit
ACA	Administrative Cooperation Agreements
AFCOS	Anti-fraud coordination service
AFIS	OLAF Anti-fraud Information System
AFMPS	l'Agence fédérale des médicaments et des produits de santé
AFSCA	Agence Fédérale pour la Sécurité de la Chaîne Alimentaire
l'Agence FSE	Structural Funds Agency
AMIF	Asylum, Migration and Integration Fund (2021–2027)
AML	Anti-Money Laundering
AR	Arrete Royal (Royal Decree)
ASBL	association sans but lucratif
BMVI	Border Management and Visa Policy Instrument
CDBC	Central Office for Combating Corruption
CDGEFID	Central Office for combating organised economic and financial crime
CICF	La Commission interdépartementale pour la Coordination de la Lutte contre les Fraudes dans les secteurs économiques
CICSA	Interdepartmental Coordination Unit for Food Safety Control
COCOLAF	Advisory Committee for the Coordination of Fraud Prevention
CFI	Financial Information Processing Unit

CFR	Charter of Fundamental Rights
CC	Criminal Code
COIV	Central Confiscation and Confiscation Body
CPC	Criminal Procedure Code/Wetboek van Strafordering
DJSOC	Central Directorate for Combating Serious and Organised Crime
EAFRD (FEADER)	European agricultural fund for rural development
EAGF (FEAGA)	European agricultural guarantee fund
EAW	European Arrest Warrant
EC	European Communities
EC Euratom	European Communities, European Atomic Energy Community
ECHA	European Chemicals Agency
ECHR/ECtHR	European Court of Human Rights
ECJ /CJEU	European Court of Justice
ECJN	European Judicial Network against Cybercrime
ECON	European Parliament's Committee on Economic and Monetary Affairs
ECP	European Chief Prosecutor
EDF	European Development Fund
EDMS	Electronic Document Management System
EDO	European Data Officer
eDP	ePrivacy Directive
EDP	European Delegated Prosecutor
EEAS	European External Action Service

EEC	European Economic Community
EIO	European Investigation Order
EJN	European Judicial Network
EMFAF	European Maritime, Fisheries and Aquaculture Fund
EP	European Prosecutor
EPPO	European Public Prosecutor's Office
ERDF	European Regional Development Fund
ESF	European Social Fund
ESF+	European Social Fund Plus
EUACR	EU Anti-Corruption Report
EUCFR	Charter of Fundamental Rights of the European Union
EuCLR	European Criminal Law Review
EUROJUST	European Union Agency for Criminal Justice Cooperation
EUROPOL	European Police Office
FASFC	Federal Agency for the Safety of the Food Chain
FCCU	Federal Computer Crime Unit
FPS	Federal Public Service
GC (aka CFI ex-2009)	General Court of the EU / formerly Court of First Instance
Gw.	Grondewet
ICC	International Criminal Court
IRP	Internal Rules of Procedure
ISF	Internal Security Fund
LCU	local control unit
LGDA	General Law of 18 July 1977 on Customs and Excise

LLP	Limited Liability Partnership
OAFCN (-Member)	OLAF Anti-Fraud Communicators' Network
OI	Les organismes intermédiaires
OLAF	European Anti-fraud office
PFI / PIF	protection of the financial interests
R.B.D.I.	Revue Beige de Droit International/BelgianReview of International Law/BelgischTjidschrift voor Intertnationaal Recht
SPF	Service Public Fédéral
SPRB-GOB	Brussels Regional Public Service
SPW	Service Public de Wallonie
ss.	Sections
STI	Special Tax Inspectorate
TFEU	Treaty on the Functioning of the European Union
TEC	Treaty Establishing the European Community
UCLAF	Anti-Fraud Coordination Unit (task force)
VAT / TVA	Value Added Tax
VLAIO	Flanders Innovation & Entrepreneurship

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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.
Margin numbers (1, 2, 3…) in the General Margin enable citation.

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Pictures/Figures/Symbols Used:

= 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

= Case Studies (Overviews)

= Expert comment

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A. General Collection of Material for Part A and Part B

I. Collection of Cases for OLAF and EPPO concerning PIF Investigations

Nota bene: Belgium is **participating** in the **enhanced cooperation mechanism** and has therefore participated in the EPPO since 1 June 2021. The following presentation and analysis of provisions related to criminal procedure and the investigation of PIF offences in Belgium will be governed by more specific decisions in the future. At the moment of writing only the ECJ, but not the Belgian courts have decided on special questions of the EPPO Regulation (1.). The **national case law**, which existed before the EPPO came into force, applies nevertheless in certain situations. For OLAF-related case law (2.) the situation is different. OLAF exists for more than 20 years now and Belgian courts as well as the ECJ have often decided on matters of supranational law and national particularities. The collection is not exhaustive and only suggests reading on certain matters which are important for investigations.

1. EPPO Regulation Examples

Table 1: Decisions Concerning the Material Scope and Investigation Measures from National Case-Law

Articles referred to	**Judgement, ECLI etc.** A lot of decisions from 1994–2014 are listed here: https://hofvancassatie.be/pdf/Casslex_94_14_NL.pdf.	**Content and Keywords**
CJEU and national courts		
Art. 22–25, 26	Court of Cassation of Belgium, 26 February 2008, P.06.15 18.N. ECLI:BE:CASS:2008:ARR.20080226.5.	General Customs and Excise Act, Non-clearance or non-representation of customs or excise document, Article 257 § 1, Knowingly and voluntarily failing to fulfil the legal obligation imposed, Punishable nature.
Art. 22–25, 26	Court of Cassation of Belgium, Judgement 10 March 2021 – P.20.1295.F, ECLI: BE:CASS:2021:ARR.20210310.2F.1	Art. 496 CC, action committed abroad, connection to the Belgian territory.

Art. 22–25, 26	Court of Cassation of Belgium – 03 March 2020 – P.19.1021.N, ECLI:BE:CASS:2020:ARR.20200303.2N.2.	Completion of Art. 496 CC, crime of fraud requires the perpetrator to have the intention of fraudulently appropriating another person's property, offender has succeeded in having the matter handed over or delivered.
Art. 22–25, 26	Court of Cassation of Belgium – June 28, 2022 – P.22.0272.N, ECLI:BE:CASS:2022:ARR.20220628.2N.27.	This decision deails with the question what constiutes fraud, Art. 496 CC, co-perpetrator, Art. 66 CC.
Art. 22–25, 26	Cour de Cassation de Belgique, Judgement December 1 2004. No Role: P041305F. ECLI:BE:CASS:2004:ARR.20041201.10.	Denunciation by OLAF to national magistrates, investigating judge allows search and seizure of documents, journalist, accusations of breach of professional secrecy, appeal rejected.
Art. 22–25, 27	Arrêt de la Cour constitutionnelle du 16.01.2020 (n° 6/2020).	Art. 99bis Criminal Code, VAT Code, conviction by *Amtsgericht* Ulm in Germany, criminal judge.
Art. 22–25	Arrêt de la Cour constitutionnelle du 16.01.2020 (n° 8/2020).	New facts, customs penal procedure, Limburg Court of First Instance, infringement of Art. 10, 11 Belgian Constitution, convictions in other Member States.
Art. 27 non bis in idem	Antwerp Court of Appeal, Vonnis/Arrest of June 07, 2006, ECLI:BE:HBANT:2006:ARR.20060607.10.	Article 54 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985, professional failure to file a tax return ("*Steuerhehlerei*") in 38 cases, final judgment of the *Landgericht* Augsburg (Germany) dated 25 August 2005, in the present case: facts are not inextricably linked in time, place and subject matter with the facts for which the defendant has already been definitively convicted in Germany.
Art. 27 limitation periods (example)	Court of Cassation of Belgium - 17 November 2009, P.09.0915.N.ECLI:BE:CASS:2009:ARR.20091117.3	When a judgment by default has not been notified to anyone, the limitation period for public action is, at the expiry of the ordinary opposition period, suspended and replaced by the limitation period for the penalty.

Art. 27, 36, 42	Court of Cassation of Belgium – 30 May 2017 – P.16.0615.N, ECLI:BE:CASS:2017:ARR.20170530.4.	Limitation period for Art. 496 CC (fraud) starts from the day on which the delivery or submission of fraudulently requested property takes place.
Art. 29	Labour Court of Brussels – September 17, 2003 – 42790, ECLI:BE:CTBRL:2003:ARR.20030917.11.	Immunities from which international organisations may benefit do not imply immunity vis-à-vis local laws.
Art. 30 para 1 (d)	Court of Cassation of Belgium – 22 March 2022 – P.21.1502.N, ECLI:BE:CASS:2022:CONC.20220301.2N.8	Appellants claimed ownership of assets that had been confiscated during criminal proceedings against a third party, alleged to be the leader of a criminal organization involved in illegal activities, including diamond trafficking. They argued that the confiscation of their assets was unjust because they were not involved in the initial criminal proceedings where these assets were seized. The confiscation was based on Article 43quater, § 4 of the Belgian Penal Code. The court found that, despite this opportunity, the appellants failed to demonstrate sufficient evidence of their good faith.
Art. 30 ara 1 (e)	Court of Cassation of Belgium, 24 May 2011,P.11.0909.N.ECLI:BE:CASS:2011:ARR.20110524.10	Telecommunication tracking, rights of defence, Locating a mobile device.
ECtHR (relates to actions of national authorities)		
Art. 30 36, 42	ECtHR, *Stojkovic v France and Belgium*, App no 25303/08, 27 October 2011.	Art. 6 ECHR, letters rogatory.
Art. 30 36, 42.	ECtHR, *Van Rossem v Belgium*, App no 41872/84, 9 December 2004.	Art. 6 ECtHR, investigative measures.
Art. 33	Court of Cassation of Belgium, 29 July 2008, P.08.11 53.F. ECLI:BE:CASS:2008:ARR.20080729.5	The file made available to accused must be complete; telecommunication interception, Art. 88bis CPC, right to inspect the files, investigation court.

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

Articles	Judgement, ECLI, etc.	Content
CJEU and national courts		
Art. 1–4	ECJ, C-615/19 P, 25.2.2021, *John Dalli v European Commission*, ECLI:EU:C:2021: 133.	Allegedly illegal conduct of the European Commission and the European Anti-Fraud Office (OLAF), Procedural rules governing the OLAF investigation – Opening of an investigation – Right to be heard
Art. 3	Hof van Cassatie van België, Rolnummer: F.13.0034.N, Kamer 1N, eerste kamer EC LI:BE:CASS:2018:CONC.20180921.1.	Preferential origin, customs, ex-post-control, frozen shrimps, Philippines, recovery, Art. 220.2 Union Customs Code, OLAF report
Art. 3	Court of Cassation of Belgium, Conclusion of the Public Prosecution Service of April 12, 2019, ECLI:BE: CASS:2019:CONC.20190412.2, Roll number: F.17.0098.N.	Home use of textiles originating in Bangladesh, Certificates of origin (form A), preferential import duties, external investigations in third country, customs broker, customs law.
Art. 3 (right to be heard)	ECJ, C-650/19 P, Judgment of the Court of 28 October 2021.*Vialto Consulting Kft. v European Commission*. ECLI:EU:C:2021:879.	Influential decision for OLAF staff, external investigators as it deals with procedural safeguards in relation to OLAF's external investigations and the Commission's actions regarding the handling of EU funds under the Pre-Accession Assistance Instrument.Vialto Consulting, a Hungarian company, was part of a consortium managing an EU-funded project. Following an OLAF investigation into potential corruption and fraud, the Commission recommended that the national authorities managing the funds exclude Vialto from the contract. Affected parties must be always allowed to respond to allegations before actions are taken based on OLAF's reports.
Art. 3, 5, 7	GC, T-690/13, *In vivo OOO v European Commission.* Case, Order of the General Court (Eighth Chamber) of 22	Decisions concerns an action for failure to act, Rand the efusal of OLAF to open an external investigation. Position defined, Application for directions to be issued, No direct concern, Inadmissibility.

	June 2015, ECLI:EU: T:2015:519.	
Art. 3 external investigations	GC, T-48/16, *Sigma Orionis SA v European Commission*, Judgment of the General Court of 3 May 2018.	The decision concerns an arbitration clause, the seventh Framework Programme for research, technological development and demonstration activities (2007–2013) and 'Horizon 2020 as well as the Framework Programme for Research and Innovation'. It contains a suspension of payments and termination of grant contracts following a financial audit, an action seeking to obtain payment of the amounts owed by the Commission in the context of the implementation of the grant contracts and reasonings on non-contractual liability.
Art. 4 Internal Investigations	ECJ, C-591/19 P, *European Commission v Fernando De Esteban Alonso*, Judgment of the Court of 10 June 2021, ECLI:EU:C:2021:468	A decison, where the main issue was whether Alonso (EU official), should have been informed about his implication in the investigation before the Commission lodged its complaint. The appeal was dismissed. It was clarified that the Commission had a right to file a complaint with the national judicial authorities before the conclusion of OLAF's investigation hereby clarifiying that while OLAF is conducting its investigations, the concerned EU institutions are not restricted from acting on interim findings. OLAF's ability to collaborate with EU bodies and national judicial authorities to address potential fraud quickly is enhanced. It influences how OLAF's legal units and EDPs may handle situations where an ongoing investigation provides sufficient grounds to act but is not yet concluded.
Art. 7	ECJ, C-650/19 P, *Vialto Consulting Kft. v European Commission*, ECLI:EU:C:2021: 879.	Appeal, Investigation, On-the-spot checks, Regulation (Euratom, EC) No 2185/96, Article 7, Access to computer data, Digital forensic operation, Principle of legitimate expectations, right to be heard, non-material damage, Article 7(1) of Regulation (EC) No 2185/96, Principle of sound administration, Legitimate expectations, Proportionality, National pub-

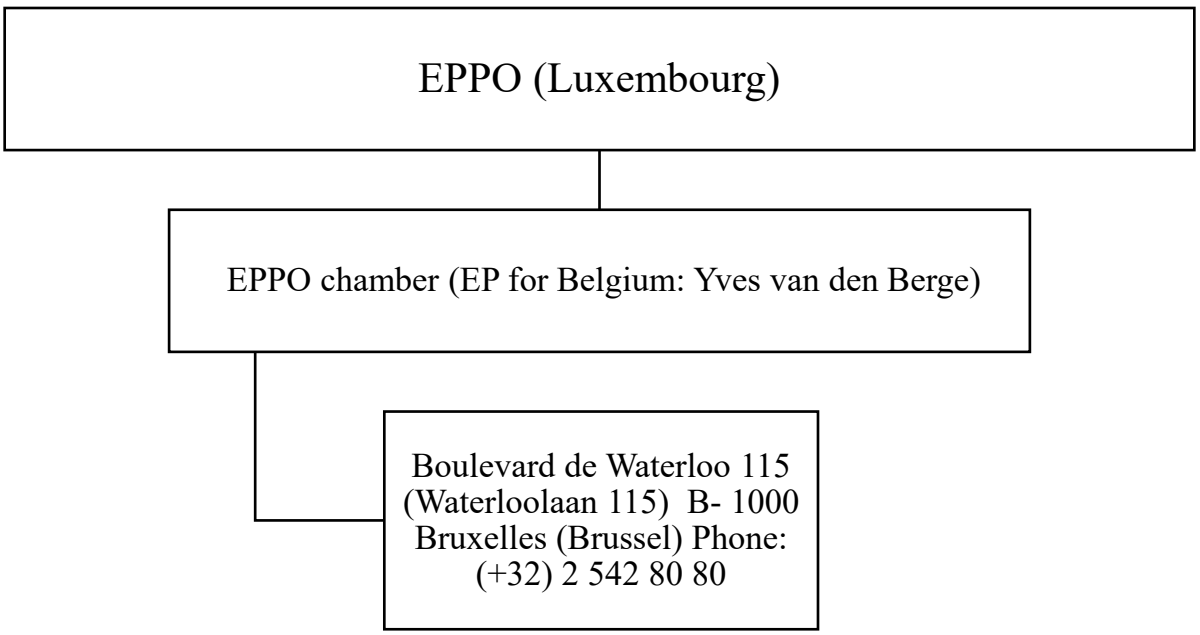
		lic procurement, Devolved management, Decision of a national authority, Non-material damage, sufficiently serious breach of a rule of law conferring rights on individuals.
Art. 9	ECJ, *Sistem ecologica production, trade and services d.o.o. Srbac v European Commission*, Judgment of the Court of 30 November 2023.	The decision resulted from an appeal against investigations by OLAF, which denied after a communication to national customs authorities and a report the access to the OLAF file based on the Regulation (EU, Euratom) No 883/2013 and Regulation (EC) No 1049/2001. The appellant brought an action for annulment, which was admissible and actions for damages because of the Unlawfulness of the conduct alleged. The case is important for the right to information.
Art. 10	GC, T-110/15, *International Management Group v European Commission*, Judgment of the General Court of 26 May 2016, ECLI:EU: T:2016:322	Access to documents, Regulation (EC) No 1049/2001, Documents relating to an OLAF investigation, Access refused, Exception concerning the protection of the purpose of inspections, investigations and audits, Obligation to carry out a specific and individual examination, Category of documents.
Art. 13, Art. 3	Court of Cassation of Belgium, Judgment of September 14, 2016, ECLI:BE:CASS: 2016:ARR.20160914.1, No Role: P.15.1357.F	This decision contains an investigation with joint Investigation teams and OLAF investigators. It refers to l'article 44, alinéa 3, du Code d'instruction criminelle, the presentation of an oath and the legal expert status.
Art. 9, 11	Court of Cassation of Belgium, No Rôle: P.18.1215.F, Audience: Chambre 2F – deuxième chambre No ECLI: ECLI:BE:CASS:2019:CONC.20190206.4.	Alleged infringement of Art. 6 ECHR, fair trial, OLAF did act conform to ECHR, summons, right to be heard, OLAF report, OLAF recommendation, Federal Public Prosecution Offices acts upon OLAF recommendation.
	Court of Cassation of Belgium, from 16 January 2014, ECLI:BE:CASS:2014:ARR.20140116.4.	This decision elates to a customs dispute involving two companies and a case, which dealt with customs debt regarding the import of frozen shrimp, allegedly originating from Malaysia, for which preferential tariff rates were applied. Upon investigation, including findings from OLAF it was revealed that the shrimp actually originated from China, thus

		invalidating the preferential tariffs. The interpretation and application of Article 217 and 221 of the Community Customs Code (Regulation No 2913/92) was needed, particularly regarding the correct procedure for registering customs debts and the subsequent communication to debtors. OLAF provided information indicating that the origin certificates presented for the shrimp imports were fraudulent, as the goods were from China, not Malaysia. The Court of Cassation overturned the lower court's decision, ruling that the Antwerp Court of Appeal had not properly addressed whether the customs authorities had validly communicated the customs debt. The case was referred back to the Court of Appeal. In detecting and preventing fraud against the EU's financial interests OLAF is essential, particularly in customs matters. OLAF's investigative findings were important in challenging the validity of the origin certificates and ensuring the correct application of customs tariffs.

III. Institutions

3. The EPPO in Belgium

1 *Table 2: The EPPO Regional Offices in Belgium*



2 Contact for Belgium - Zentrale Behörde or Service Public Fédéral Justice (Federale Overheidsdienst Justitie) Direction générale Législation, des Libertés et Droits fondamentaux (Directoraat-generaal Wetgeving, Fundamentele Rechten en Vrijheden) Boulevard de Waterloo 115 (Waterloolaan 115) B- 1000 BRUXELLES (BRUSSEL) BELGIQUE (België). All information are not exhaustive, stem from the EPPO's public information and should be cross-checked.

3 The **current EDPs**, which will decide on the first verifications or indications of a PIF offence, cooperate with other EDPs in the EPPO zone (*interlocuteurs*) and at the end e.g. draft a proposal to the chambers (*une proposition de poursuite*) e.g. a simpliefied procedure (plea bargaining), an indictement file, a dismissal or referral to a national authority or OLAF, are:

- Jennifer Vanderputten
- Pascale Vandeweyer
- Valérie Kochuyt
- Gilles de Halleux.

Foremost any public body or EU institution shall use the EPPO template to report or submit information about a crime, so-called **EPPO Crime Reports**.[1]

[1] You may as well address the secretariat of the Regional Office to get a template of EDPs (jennifer.vanderputten@ext.ec.europa.eu). See https://www.om-mp.be/fr/article/entretien-lequipe-du-parquet-europeen-belgique.

4. Organisation of the Criminal Justice System in Belgium

Table 3: National authorities involved in PIF investigations in Belgium **4**

Investigative and prosecuting authorities	Relevant administrative authorities
- State Counsel's Office or Prosecutor's Office (*Ministère public/Openbaar ministerie*) · Public prosecutor's office · Federal prosecutor's office (esp. organised crime and money laundering) "Complex phenomena and facts that cross district boundaries, such as human trafficking, terrorism, organised crime and money laundering, are dealt with by the federal prosecutor."[2] → crimes and misdemeanours against the security of the State; → threat of attack or theft of nuclear material; → organised people smuggling and trafficking; → illegal arms trade; → gangs and criminal organisations; → terrorism; → the related crimes; → crimes which significantly concern different jurisdictions or have an international dimension, in particular those of organised crime. · Labour Auditors · Public Prosecutor's Offices and Auditors General → Auditors general: civil and criminal duty → criminal duty = acts as public prosecutor's office for criminal court in cases that are	- **Customs authority** · **General Administration of Customs and Excise** - Federal Agency for the Safety of the Food Chain *AFSCA* · Directorate Health and Food Audits and Analysis of the DG Health and Food Safety (DG SANTE) - ***FPS Economie**, P.M.E., Classes moyennes et Energie* (*Direction C6 Fraude*) → *Direction Générale De L'inspection Économique:* · La Commission interdépartementale pour la Coordination de la Lutte contre les Fraudes dans les secteurs économiques (CICF) - E.g. Public Service of Wallonia Agriculture, Natural Resources and Environment (*Service Public de Wallonie SPW Agriculture, Ressources naturelles et Environnement*) · Paying body of Wallonia (*Organisme payeur de Wallonie*) · Audit Unit for EAGF+EAFRD (*Cellule Audit FEAGA/FEADER*) at the *SPW* → structural funds managers are in the regions - **FPS Finances** (VAT fraud) · Special Tax Inspectorate - Federal Public Service (FPS) Public Health, Food Chain Safety and Environment

[2] Official website of the Opernbaar Ministerie, see https://www.om-mp.be/nl/over-om/structuur. Accessed 4 June 2024.

punishable by the Social Criminal Code · Parquet at the Court of Cassation - Federal police · Central Office for combating organised economic and financial crime (CDGEFID) · **Central Office for Combating Corruption (CDBC) → also fraud in public procurement** → CDBC – Central Anti-Corruption Service (corruption in general, subsidy fraud and public procurement) → **CDGEFID – Central Office for Combating Organised Economic and Financial Delinquency** (= autonomous and supportive investigations in the following financial cases: fraud against the European Union, large-scale VAT carousels, complex financial files with an international dimension and stock exchange crimes)[3] → also support dept. for all ECOFIN investigations! With 16 tax specialists from the FPS Finance seconded to the CDGEFID Liaison officers have also been seconded to CFI (Financial Information Processing Unit) and COIV (Central Confiscation and Confiscation Body) · Central Directorate for Combating Serious and Organised Crime (DJSOC)	- Interdepartmental Coordination Unit for Food Safety Control (CICSA) - Inspection services of the FPS Finances, FPS Economy, FPS Public Health, Food Chain Safety and Environment, FAMHP, FPS Social Affairs etc.

[3] Official website of the Federale Politie, see https://www.politie.be/5998/nl/over-ons/federale-gerechtelijke-politie/centrale-directie-van-de-bestrijding-van-de-zware-en. Accessed 4 June 2024.

at the General Directorate for criminal police · General Directorate of the Administrative Police (railway police, aviation police, maritime police etc.) · Federal Computer Crime Unit (FCCU; computer crime, especially attacks on critical infrastructure) - Investigating judge (for coercive measures)[4] - For less drastic coercive measures, public prosecutor orders mini-investigation: investigating judge orders a specific measure but the investigation continues under the instruction of the public prosecutor (less intrusive measures = autopsy, telephone check)[5] - Central Body for Seizure and Confiscation[6] - General Administration of Customs and Excise - Federal Public Service Justice Directorate General for Legislation and Fundamental Freedoms and Rights Central Authority for International Cooperation in Criminal Matters /Service public fédéral Justice Direction générale de la législation et des Libertés et des Droits fondamentaux Autorité centrale de coopération internationale en matière pénale	

5. AFCOS – The Partner of OLAF in Belgium

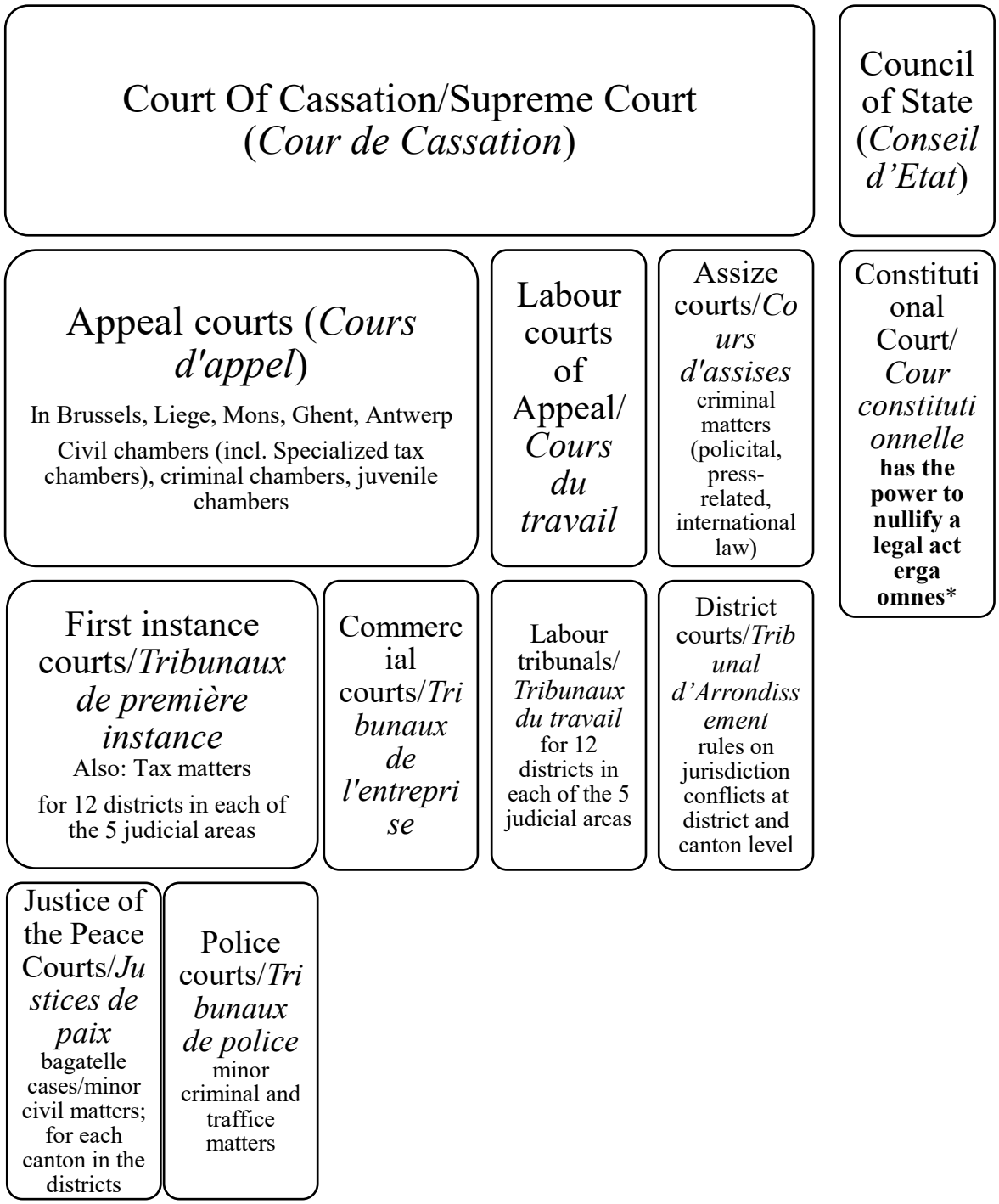
See → Art. 12a OLAF Regulation in Part C. **5**

[4] Official website of the Opernbaar Ministerie, see https://www.om-mp.be/nl/over-om/taken-opdrachten. Accessed 4 June 2024.
[5] Official website of the Opernbaar Ministerie, see https://www.om-mp.be/nl/over-om/taken-opdrachten. Accessed 4 June 2024.
[6] *L'Organe central pour la Saisie et la Confiscation.*

6. The Judicial and Administrative Order in Belgium

Figure 1: Visualisation of the judicial and administrative order in Belgium

The judicial and administrative order in Belgium has the following rough structure:[7]



[7] Official information on the e-justice webpage, see https://e-justice.europa.eu/16/EN/national_justice_systems?BELGIUM&member=1. Acessed 4 June 2024; Official webpage of the Belgian justice, see https://www.belgium.be/en/justice/organisation. Accessed 4 June 2024. *Information about the Cour contitutionelle has been taken from the official webpage, see https://www.const-court.be/de/court/presentation/jurisdiction. Accessed 4 June 2024.

IV. Sources of Law

The following pages present a list of the applicable sources of law[8] in EPPO investigations (Part B) and OLAF investigations (Part C): **6**

1. National Laws

a) EPPO & PIF-Investigation related Laws and administrative Documents

- **Law of 17 February 2021 (EPPO Adoption Law, see below)** **7**
- **Belgian Constitution** *(De gecoördineerde Grondwet)*
- **Criminal Procedure Code** *(Wetboek van Strafordering Belgie)*
  - Eerste Boek. (Art. 8 tot en met 136ter)
  - Boek II, Titel I. (Art. 137 tot en met 216septies)
  - Boek II, Titel II. (Art. 217 tot en met 406)
  - Boek II, Titel III. (art. 407 tot en met 447bis)
  - Boek II, Titel IV. (448 tot en met 524)
  - Boek II, Titels V EN VI. (Art. 525 tot en me t 588)
  - Boek II, Titel VII. (Art. 589 tot en met 644)
- **Judicial Code** (*Gerechtelijk Wetboek* or in French *10 Octobre 1967. - Code Judiciaire – Quatrième partie: De la Procedure Civile. (art. 664 à 1385octiesdecies))*
  - Algemene Beginselen (art. 1 tot 57)
  - Rechterlijke Organisatie (art. 58 tot 555ter)
  - Bevoegdheid (art. 556 tot 663)
  - Burgerlijke Rechtspleging (art. 664 tot 1385undecies)
  - Bewarend Beslag, Middelen Tot Tenuitvoerlegging En Collectieve Schuldenregeling (art. 1386 tot 1675/19)
  - Arbitrage (art. 1676 tot 1723)
  - Bemiddeling (art. 1724 tot 1737)
- **Criminal Code** *(Strafwetboek)*
- **Code of Economic Law** (*Code de Droit Économique***)**
- **Law on electronic communications** *(Loi relative aux communications électronique)*
- **Law of 10 February 1999 on the punishment of corruption** (*Wet van 10 februari 1999 betreffende de bestraffing van corruptie*)

[8] Most Belgian laws, decisions, case-law can be found via the Belgie Lex Portal, see https://www.belgielex.be/fr. New laws and consolidated legislation can be found here: http://www.ejustice.just.fgov.be/loi/loi.htm. Or see https://www.ejustice.just.fgov.be/eli/loi/1808/11/17/1808111701/justel#inhoud. Accessed 4 June 2024

- **Act of 5 May 2019** containing various provisions in criminal matters and on religious services, and amending the Act of 28 May 2002 the Social Criminal Code (BS 24 May 2019) (*5 MEI 2019 Wet houdende diverse bepalingen in strafzaken en inzake erediensten, en tot wijziging van de wet van 28 mei 2002 betreffende de euthanasie en van het Sociaal Strafwetboek*)
- **Law relating to preventive detention of JULY 20, 1990** (*Loi relative à la détention preventive*)

b) Most relevant national Laws concerning OLAF investigations

8

- General Law on Customs and Excise of 18 July 1977 (*Algemene Wet inzake douane en accijnzen*)
- Act adapting the General Law on Customs and Excise to the Union Customs Code and laying down various provisions *(Wet tot aanpassing van de algemene wet inzake douane en accijnzen aan het douanewetboek van de Unie en houdende diverse bepalingen)*
- Former Act of 28 March 1975 on trade in agricultural, horticultural and sea-fishery products amended by the law of 5 February 1999 (*Loi du 28 mars 1975 relative au commerce des produits agricoles, horticoles et de la pêche maritime, modifiée par la loi du 5 février 1999 (repealed by Flemish and Walloon region*))
- Former Law of 11 July 1969 on pesticides and raw materials for agriculture agriculture, horticulture, forestry and animal husbandry (*Loi du 11 juillet 1969 relative aux pesticides et aux matières premières pour l'agriculture, l'horticulture, la sylviculture et l'élevage (repealed by Flemish and Walloon region)*)
- Royal Decree of 22 February 2001 organising the controls carried out by the Federal Agency for the Safety of the Food Chain and amending various legal provisions legal provisions (*Arrêté Royal du 22 février 2001 organisant les contrôles effectués par l'Agence fédérale pour la Sécurité de la Chaîne alimentaire et modifiant diverses dispositions legales*)
- Law on the creation of the Federal Agency for the Safety of the Food Chain (*4 Februari 2000. Wet houdende oprichting van het Federaal Agentschap voor de Veiligheid van de Voedselketen*)

9 Obligation of Art. 117 EPPO Regulation National documents Status

Obtained by EPPO and published: Yes it was published and submitted by the Belgian Government[9].

[9] See Belgian Notification to the EPPO, see https://www.eppo.europa.eu/sites/default/files/2021-11/04-BE_0.pdf. Accessed 4 June 2024.

2. National Laws: 17 Fevrier 2021. Loi portant des dis-positions diverses en matière de justice

Synopsis 1: Belgium EPPO Adoption Law vs. Unofficial English Translation **10**

17 FEVRIER 2021. Loi portant des dispositions diverses en matière de justice	**17 FEBRUARY 2021. Act containing various provisions relating to justice**
PHILIPPE, Roi des Belges, A tous, présents et à venir, Salut. La Chambre des représentants a adopté et Nous sanctionnons ce qui suit:	PHILIPPE, King of the Belgians, To all, present and future, Hail. The House of Representatives has adopted and We sanction the following:
Chapitre 1er. Disposition générale Article 1er La présente loi règle une matière visée à l'article 74 de la Constitution.	**Chapter I. General provision** Article 1 This Act regulates a matter referred to in Article 74 of the Constitution.
Chapitre 2. Mise en oeuvre du Règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en oeuvre une coopération renforcée concernant la création du Parquet européen	**Chapter 2. Implementation of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation regarding the establishment of the European Public Prosecutor's Office**
Section 1re. Modifications du Code judiciaire Art. 2 Dans l'article 79 du Code judiciaire, remplacé par la loi du 18 juillet 1991 et modifié en dernier lieu par la loi du 25 avril 2014, un alinéa rédigé comme suit est inséré entre les alinéas 5 et 6: "Sur l'avis du procureur général du ressort de cour d'appel, le premier président désigne, dans le ressort des cours d'appel d'Anvers, de Mons et de Gand, parmi les juges d'instruction, un juge d'instruction, dans le ressort de la cour d'appel de Bruxelles, un juge d'instruction francophone et un juge d'instruction néerlandophone et, dans le ressort de la cour d'appel de Liège, un juge d'instruction et un juge	Section 1. Amendments to the Judicial Code Article 2 In Article 79 of the Judicial Code, replaced by the Act of 18 July 1991 and last amended by the Act of 25 April 2014, a paragraph worded as follows is inserted between paragraphs 5 and 6: "On the advice of the public prosecutor of the jurisdiction of the court of appeal, the first president appoints, within the jurisdiction of the courts of appeal of Antwerp, Mons and Ghent, from among the investigating judges, an investigating judge, within the jurisdiction of the court of appeal of Brussels, a French-speaking investigating judge and a Dutch-speaking investigating judge and, within the jurisdiction

d'instruction justifiant de la connaissance de la langue allemande. Ces juges d'instruction doivent disposer d'une expérience utile pour l'instruction des infractions pour lesquelles le Parquet européen est compétent. Cette désignation n'a aucune incidence sur leur statut, ni sur leur affectation. En vertu de cette désignation, ils traitent prioritairement les dossiers dont ils sont saisis par le procureur européen et les procureurs européens délégués désignés conformément à l'article 309/2."	of the court of appeal of Liège, an investigating judge and an investigating judge with proof of knowledge of the German language. These investigating magistrates must have experience relevant to the investigation of offences for which the European Public Prosecutor's Office is competent. This designation does not affect their status or their assignment. By virtue of this designation, they shall give priority to cases referred to them by the European Public Prosecutor and the Deputy European Public Prosecutors designated in accordance with Article 309/2."
Art. 3 Dans la partie II, livre Ier, titre II, du même Code, il est inséré un article 156/1, rédigé comme suit: "Art. 156/1. § 1er. Le procureur européen et les procureurs européens délégués désignés conformément à l'article 309/2 sont compétents sur l'ensemble du territoire du Royaume pour exercer l'action publique pour les infractions portant atteinte aux intérêts financiers de l'Union européenne conformément aux articles 4, 22 et 23 du Règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en oeuvre une coopération renforcée concernant la création du Parquet européen. § 2. Lorsqu'ils exercent leur compétence dans les cas et selon les modalités déterminées par la loi et le même Règlement (UE) 2017/1939, le procureur européen et les procureurs européens délégués exercent toutes les fonctions du ministère public dans les affaires pénales près les cours d'appel, les cours d'assises et les tribunaux de première instance.	Article 3 In Part II, Book I, Title II of the same Code, an Article 156/1 shall be inserted, worded as follows "Article 156/1. § 1. The European Public Prosecutor and the Deputy European Public Prosecutors appointed in accordance with Article 309/2 shall have jurisdiction throughout the territory of the Kingdom to prosecute offences affecting the financial interests of the European Union in accordance with Articles 4, 22 and 23 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation with regard to the establishment of the European Public Prosecutor's Office. § 2 When exercising their jurisdiction in the cases and according to the modalities determined by the law and the same Regulation (EU) 2017/1939, the European Public Prosecutor and the Deputy European Public Prosecutors shall exercise all the functions of the public prosecutor in criminal cases before the courts of appeal, the assize courts and the courts of first instance.

§ 3. Le procureur du Roi, le procureur général ou le procureur fédéral informe sans retard indu les procureurs européens délégués lorsqu'il est saisi d'une infraction visée au paragraphe 1er selon les modalités déterminées dans une circulaire du Collège des procureurs généraux.	§ 3 The Public Prosecutor, the Public Prosecutor General or the Federal Public Prosecutor shall inform the Deputy European Public Prosecutors without undue delay when an offence referred to in paragraph 1 is referred to him in accordance with the procedures laid down in a circular of the College of Public Prosecutors.
§ 4. Dans les cas visés au paragraphe 3, les procureurs européens délégués décident s'ils exercent l'action publique eux-mêmes. Conformément à l'article 25, paragraphe 6, du même Règlement (UE) 2017/1939 et sans préjudice des autres dispositions de ce règlement, si le procureur du Roi, le procureur général ou le procureur fédéral souhaite contester la décision des procureurs européens délégués d'exercer eux-mêmes l'action publique, il saisit le Collège des procureurs généraux qui décide, après concertation avec les procureurs européens délégués et le procureur du Roi ou le procureur général concerné ou le procureur fédéral, qui est compétent pour instruire l'affaire. La décision du Collège des procureurs généraux n'est susceptible d'aucun recours.	§ 4 In the cases referred to in paragraph 3, the Deputy European Public Prosecutors shall decide whether to prosecute themselves. In accordance with Article 25(6) of the same Regulation (EU) 2017/1939 and without prejudice to the other provisions of that Regulation, if the Deputy European Public Prosecutors, the Public Prosecutor or the Federal Public Prosecutor wishes to challenge the decision of the Deputy European Public Prosecutors to prosecute the case themselves, he or she shall refer the matter to the College of Public Prosecutors, which shall decide, after consultation with the Deputy European Public Prosecutors and the Public Prosecutor, the Public Prosecutor or the General Prosecutor or the Federal Public Prosecutor concerned, who shall be responsible for the prosecution of the case. The decision of the Board of Prosecutors General is not subject to appeal.
Aucune nullité ne peut être invoquée en ce qui concerne la répartition de compétence, quant à l'exercice de l'action publique, entre le procureur du Roi ou le procureur général ou le procureur fédéral, d'une part, et les procureurs européens délégués, d'autre part.	No nullity may be invoked with regard to the division of competence, as regards the exercise of public action, between the Public Prosecutor or the Public Prosecutor General or the Federal Public Prosecutor, on the one hand, and the Deputy European Public Prosecutors, on the other hand.

Le Collège des procureurs généraux est admis à saisir la Cour de Justice par question préjudicielle conformément à l'article 42, paragraphe 2, c), du même Règlement (UE) 2017/1939.".	The College of Prosecutors General may refer a question to the Court of Justice for a preliminary ruling in accordance with Article 42(2)(c) of Regulation (EU) 2017/1939.
Art. 4 Dans l'article 309/2, § 6, du même Code, inséré par la loi du 5 mai 2019, les mots "et les modalités de fonctionnement" sont remplacés par les mots ", les modalités de fonctionnement, le statut, la situation juridique et le traitement des membres du personnel concernés".	Art. 4 In Article 309/2, § 6, of the same Code, inserted by the law of 5 May 2019, the words "and the operating procedures" are replaced by the words ", the operating procedures, the status, the legal situation and the salary of the staff members concerned".
Art. 5 L'article 873, alinéa 2, du même Code est complété par la phrase suivante: "L'autorisation préalable du ministre de la Justice n'est pas requise lorsque la commission rogatoire est exécutée par le procureur européen ou les procureurs européens délégués désignés conformément à l'article 309/2.".	Art. 5 The following sentence is added to Article 873, paragraph 2, of the same Code: "The prior authorisation of the Minister of Justice is not required when the letter rogatory is executed by the European Public Prosecutor or the Deputy European Public Prosecutors designated in accordance with Article 309/2.".
Section 2. Modifications du Code d'instruction criminelle Art. 6 Dans le livre Ier, du Code d'instruction criminelle, il est inséré un **CHAPITRE** IVter intitulé "Du procureur européen et des procureurs européens délégués". Art. 7 Dans le **CHAPITRE** IVter, inséré par l'article 6, il est inséré un article 47quaterdecies rédigé comme suit: "Art. 47quaterdecies. Dans l'exercice de leurs compétences, telles que prévues à l'article 156/1 du Code judiciaire, le procureur européen et les procureurs européens délégués désignés conformément à l'article 309/2 du même Code disposent de	Section 2. Amendments to the Code of Criminal Procedure Art. 6 A **CHAPTER** IVb entitled "The European Public Prosecutor and Deputy European Public Prosecutors" is inserted in Book I of the Code of Criminal Procedure. Art. 7 In **CHAPTER** IVb, inserted by Article 6, an Article 47quaterdecies is inserted as follows "Article 47quaterdecies. In the exercise of their powers, as provided for in Article 156/1 of the Judicial Code, the European Public Prosecutor and the Deputy European Public Prosecutors appointed in accordance with Article 309/2 of the same Code shall have all the powers that the law

tous les pouvoirs que la loi confère au procureur du Roi. Dans le cadre de ceux-ci, ils peuvent procéder ou faire procéder à tous actes d'information ou d'instruction relevant de leurs attributions sur l'ensemble du territoire du Royaume, de même qu'exercer l'action publique. Lorsqu'ils exercent leurs compétences, ce procureur européen et ces procureurs européens délégués pourront exclusivement saisir les juges d'instruction spécialisés visés à l'article 79, alinéa 6, du même Code pour connaître des infractions visées à l'article 156/1, § 1er, du même Code."

Art. 8
Dans le même **CHAPITRE** IVter, il est inséré un article 47quindecies rédigé comme suit:
"Art. 47quindecies. Lorsqu'un service de police ne peut donner les effectifs et les moyens nécessaires au procureur européen ou aux procureurs européens délégués désignés conformément à l'article 309/2 du Code judiciaire ou au juge d'instruction visé à l'article 79, alinéa 6, du même Code saisi d'une enquête pénale par ceux-ci, il en informe le procureur général territorialement compétent. Si le procureur général ne trouve pas de solution pour remédier au manque d'effectifs et de moyens, il saisit le Collège des procureurs généraux qui, après concertation avec le directeur général de la police judiciaire et après concertation avec le procureur européen ou les procureurs européens délégués, décide quelle réquisition est exécutée prioritairement.".

confers on the Public Prosecutor. In the context of these powers, they may carry out or have carried out all acts of information or investigation falling within their remit throughout the territory of the Kingdom, as well as exercise public action. When exercising their powers, the European Public Prosecutor and the Deputy European Public Prosecutors may only refer cases to the specialised investigating judges referred to in Article 79, paragraph 6, of the same Code to deal with the offences referred to in Article 156/1, § 1, of the same Code."

Art. 8
In the same **CHAPTER** IVter, an Article 47quindecies is inserted as follows:

"Art. 47quindecies. When a police service cannot provide the necessary staff and resources to the European Public Prosecutor or the Deputy European Public Prosecutors appointed in accordance with Article 309/2 of the Judicial Code or to the investigating judge referred to in Article 79, paragraph 6, of the same Code to whom a criminal investigation has been referred by them, it shall inform the Public Prosecutor with territorial jurisdiction. If the Public Prosecutor does not find a solution to remedy the lack of manpower and resources, he shall refer the matter to the Board of Prosecutors General who, after consultation with the Director General of the Judicial Police and after consultation with the European Public Prosecutor or the Deputy European Public Prosecutors, shall decide which requisition shall be carried out as a matter of priority."

Art. 9 L'article 62bis du même Code, inséré par la loi du 27 mars 1969 et modifié en dernier lieu par la loi du 27 décembre 2005, est complété par un alinéa rédigé comme suit: "Les juges d'instruction spécialisés visés à l'article 79, alinéa 6, du Code judiciaire sont compétents pour connaître des faits dont ils sont saisis conformément à l'article 47quaterdecies, alinéa 2, par le procureur européen ou les procureurs européens délégués désignés conformément à l'article 309/2 du Code judiciaire. En cas d'empêchement légal, ils peuvent être remplacés par les juges d'instruction du tribunal de première instance dont ils font partie." Section 3. Modifications de la loi du 15 juin 1935 concernant l'emploi des langues en matière judiciaire	Art. 9 Article 62bis of the same Code, inserted by the Law of 27 March 1969 and last amended by the Law of 27 December 2005, is completed by a paragraph worded as follows: "The specialised investigating magistrates referred to in Article 79(6) of the Judicial Code are competent to deal with the facts referred to them in accordance with Article 47quaterdecies(2) by the European Public Prosecutor or the Deputy European Public Prosecutors designated in accordance with Article 309/2 of the Judicial Code. In the event of legal impediment, they may be replaced by the investigating judges of the court of first instance to which they belong." Section 3. Amendments to the Act of 15 June 1935 on the use of languages in judicial matters
Art. 10 L'article 12 de la loi du 15 juin 1935 concernant l'emploi des langues en matière judiciaire est complété par un alinéa rédigé comme suit: "Le procureur fédéral et les magistrats fédéraux, le procureur européen et les procureurs européens délégués visés à l'article 309/2 du Code judiciaire, pour leurs actes d'instruction et de poursuite, font usage de la langue prévue en matière pénale devant le tribunal devant lequel ils exercent l'action publique et, dans le cas visé à l'article 47duodecies, § 2, du Code d'instruction criminelle, de la langue selon les nécessités de l'affaire, et ce quelle que soit la langue du diplôme dans laquelle ils ont passé l'examen de doctorat, de licence ou de master en droit.".	Article 10 Article 12 of the Act of 15 June 1935 on the use of languages in judicial matters is supplemented by a paragraph worded as follows "The Federal Public Prosecutor and the federal magistrates, the European Public Prosecutor and the delegated European Public Prosecutors referred to in Article 309/2 of the Code of Judicial Procedure, for their investigative and prosecutorial acts, use the language provided for in criminal matters before the court before which they are prosecuting and, in the case referred to in Article 47duodecies, § 2, of the Code of Criminal Procedure, the language according to the needs of the case, regardless of the language of the diploma

	in which they took the doctorate, bachelor's or master's degree examination in law."
Art. 11 L'article 43bis, § 4, de la même loi, inséré par la loi du 10 octobre 1967, remplacé par la loi du 4 mars 1997 et modifié en dernier lieu par la loi du 30 décembre 2009, est complété par un alinéa rédigé comme suit: "Le procureur fédéral, le procureur européen visé à l'article 309/2 du Code judiciaire, ainsi que s'ils sont titulaires du certificat visé à l'article 43quinquies, § 1er, alinéa 3 ou 4, duquel il ressort qu'ils justifient de la connaissance fonctionnelle ou approfondie de la langue autre que celle de leur diplôme de docteur, de licencié ou de master en droit, les magistrats fédéraux et les procureurs européens délégués visés à l'article 309/2 du même Code, sont autorisés à siéger dans les juridictions de l'autre rôle linguistique que celui de leur diplôme de docteur, de licencié ou de master en droit."	Art. 11 Article 43bis, § 4, of the same law, inserted by the law of 10 October 1967, replaced by the law of 4 March 1997 and last amended by the law of 30 December 2009, is completed by a paragraph worded as follows: "The Federal Public Prosecutor, the European Public Prosecutor referred to in Article 309/2 of the Judicial Code, as well as if they are holders of the certificate referred to in Article 43quinquies, § 1, paragraph 3 or 4, from which it appears that they have a functional or thorough knowledge of the language other than that of their diploma of doctor, or master's degree in law, federal magistrates and delegated European Public Prosecutors referred to in Article 309/2 of the same Code, are authorised to sit in the jurisdictions of the other language group than that of their doctoral, licentiate or master's degree in law."
Section 4. Modifications de la loi générale sur les douanes et accises du 18 juillet 1977	Section 4. Amendments to the General Customs and Excise Act of 18 July 1977
Art. 12 Dans l'article 263 de la loi générale sur les douanes et accises du 18 juillet 1977, modifié par la loi du 12 mai 2014, les mots "de circonstances atténuantes, et" sont remplacés par les mots "de circonstances atténuantes, ou"	Art. 12 In Article 263 of the General Customs and Excise Act of 18 July 1977, as amended by the Act of 12 May 2014, the words "of mitigating circumstances, and" are replaced by the words "of mitigating circumstances, or".
Art. 13 Dans l'article 264 de la même loi, dont le texte néerlandais a été modifié par la loi	Art. 13In Article 264 of the same Act, the Dutch text of which has been amended by the Act of 12 May 2014, the word "Any"

du 12 mai 2014, le mot “Toute” est remplacé par les mots “Sans préjudice de l’article 285/4, § 2, toute”.	is replaced by the words “Without prejudice to Article 285/4, § 2, any”.
Art. 14 Dans la même loi, il est inséré un **CHAPITRE** XXVbis intitulé “Parquet européen”.	Art. 14 In the same Act, a **CHAPTER** XXVbis entitled “European Public Prosecutor’s Office” is inserted.
Art. 15 Dans le **CHAPITRE** XXVbis inséré par l’article 14, il est inséré un article 285/1 rédigé comme suit: “Art. 285/1. Pour l’application du présent **CHAPITRE**, on entend par Règlement (UE) 2017/1939: le Règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en oeuvre une coopération renforcée concernant la création du Parquet européen.”.	Article 15 In **CHAPTER** XXVbis inserted by article 14, an article 285/1 is inserted, worded as follows: “Art. 285/1. For the purposes of this **CHAPTER**, Regulation (EU) 2017/1939 means: Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation concerning the creation of the European Public Prosecutor’s Office”.
Art. 16 Dans le même **CHAPITRE** XXVbis, il est inséré un article 285/2 rédigé comme suit: “Art. 285/2. § 1er. L’Administrateur général de l’Administration générale des douanes et accises désigne au moins un fonctionnaire de l’Administration générale des douanes et accises, chargé de collaborer avec les procureurs européens délégués visés à l’article 309/2 du Code judiciaire, en ce qui concerne les contraventions, fraudes ou délits visés aux articles 281 et 282 et pour lesquels le Parquet européen exerce sa compétence en vertu des articles 22, 25, 26 et 27 du Règlement (UE) 2017/1939. § 2. L’Administrateur général de l’Administration générale des douanes et accises ne peut désigner le fonctionnaire visé au § 1er qu’après avoir recueilli l’avis du procureur européen visé à l’article 309/2 du Code judiciaire.	Art. 16 In the same **CHAPTER** XXVbis, an article 285/2 is inserted, worded as follows: “Art. 285/2. § 1. The General Administrator of the General Administration of Customs and Excise appoints at least one official of the General Administration of Customs and Excise, responsible for collabourating with the European delegated prosecutors referred to in Article 309/2 of the Judicial Code, with regard to the offences, fraud or offences referred to in Articles 281 and 282 and for which the European Public Prosecutor’s Office exercises its jurisdiction pursuant to Articles 22, 25, 26 and 27 of Regulation (EU) 2017 /1939. § 2. The General Administrator of the General Customs and Excise Administration may only appoint the official referred to in § 1 after obtaining the opinion of the European Public Prosecutor referred to in Article 309/2 of the Judicial Code.

§ 3. Le fonctionnaire visé au § 1er peut recourir au Secrétariat visé à l'article 309/2, § 6, du Code judiciaire.".	§ 3. The civil servant referred to in § 1 may have recourse to the Secretariat referred to in Article 309/2, § 6, of the Judicial Code.".
Art. 17 Dans le même **CHAPITRE** XXVbis, il est inséré un article 285/3 rédigé comme suit: "Art. 285/3. § 1er. Dans l'exercice de sa fonction, le fonctionnaire visé à l'article 285/2, § 1er, suit les orientations et instructions de la chambre permanente chargée de l'affaire ainsi que les instructions du procureur européen chargé de la surveillance de l'affaire, tel que prévu par le Règlement (UE) 2017/1939. § 2. Le fonctionnaire visé à l'article 285/2, § 1er, exerce ses compétences de recherche et de poursuite conformément à la présente loi. L'Administration générale des douanes et accises ne peut s'opposer aux mesures prises en application des articles 285/4 et 285/5.".	Art. 17 In the same **CHAPTER** XXVbis, an article 285/3 is inserted, worded as follows: "Art. 285/3. § 1. In the exercise of his function, the official referred to in Article 285/2, § 1, follows the guidelines and instructions of the permanent chamber in charge of the case as well as the instructions of the European Public Prosecutor responsible for supervising the case, as provided for in Regulation (EU) 2017/1939. § 2. The official referred to in Article 285/2, § 1, exercises his research and prosecution powers in accordance with this law. The General Customs and Excise Administration cannot oppose the measures taken pursuant to Articles 285/4 and 285/5.".
Art. 18 Dans le même **CHAPITRE** XXVbis, il est inséré un article 285/4 rédigé comme suit: "Art. 285/4. § 1er. Le pouvoir d'intentement et de poursuite de toute action judiciaire, visé à l'article 281, § 2, est attribué au fonctionnaire visé à l'article 285/2, § 1er, en ce qui concerne les contraventions, fraudes ou délits visés à l'article 281 et pour lesquels le Parquet européen exerce sa compétence en vertu des articles 22, 25, 26 et 27 du Règlement (UE) 2017/1939. Ce fonctionnaire exerce le pouvoir visé à l'alinéa 1er à la seule fin d'exercer les poursuites, conformément à la décision de la chambre permanente ou à la proposition de décision du procureur européen délégué	Art. 18 In the same **CHAPTER** XXVbis, an article 285/4 is inserted, worded as follows: "Art. 285/4. § 1. The power to initiate and pursue any legal action, referred to in Article 281, § 2, is attributed to the official referred to in Article 285/2, § 1, in with regard to contraventions, fraud or offences referred to in Article 281 and for which the European Public Prosecutor's Office exercises its jurisdiction pursuant to Articles 22, 25, 26 and 27 of Regulation (EU) 2017/1939. This official exercises the power referred to in the first paragraph for the sole purpose of carrying out prosecutions, in ac-

dans le cas où elle doit être réputée acceptée par la chambre permanente, en application de l'article 36 du Règlement (UE) 2017/1939.	cordance with the decision of the permanent chamber or the proposal for a decision of the European Delegated Public Prosecutor in the event that it must be deemed accepted by the permanent chamber, pursuant to Article 36 of Regulation (EU) 2017/1939.
Les articles 281, § 3, et 283 s'appliquent.	Articles 281, § 3, and 283 apply.
§ 2. Sans préjudice de l'article 264, toute transaction est interdite lorsque le Parquet européen exerce sa compétence en vertu du Règlement (UE) 2017/1939, ou pendant le délai visé à l'article 27, § 1er, du même Règlement.".	§ 2. Without prejudice to Article 264, any transaction is prohibited when the EPPO exercises its jurisdiction under Regulation (EU) 2017/1939, or during the period referred to in Article 27, § 1, of the same Regulation.".
Art. 19 Dans le même **CHAPITRE** XXVbis, il est inséré un article 285/5 rédigé comme suit: "Art. 285/5. § 1er. Dans les limites visées à l'article 285/4, § 1er, le fonctionnaire visé à l'article 285/2, § 1er, prend les mesures d'enquête et autres mesures visées à l'article 28, § 1er, du Règlement (UE) 2017/1939. Il en informe sans retard indu le procureur européen délégué chargé de l'affaire, lequel peut s'opposer à cette mesure, la suspendre ou ordonner une autre mesure d'enquête ou une autre mesure.	Art. 19 In the same **CHAPTER** XXVbis, an article 285/5 is inserted, worded as follows: "Art. 285/5. § 1. Within the limits referred to in Article 285/4, § 1, the official referred to in Article 285/2, § 1, takes the investigative measures and other measures referred to in Article 28, § 1, of Regulation (EU) 2017/1939. He shall inform without undue delay the European Delegated Prosecutor responsible for the case, who may oppose this measure, suspend it or order another investigative measure or another measure.
§ 2. Si, par application de l'article 31, § 4, du Règlement (UE) 2017/1939, le procureur européen délégué, visé à l'article 309/2 du Code judiciaire, charge l'Administration générale des douanes et accises d'exécuter une mesure déléguée, il requiert cette Administration par l'intermédiaire du fonctionnaire visé à l'article 285/2, § 1er.	§ 2. If, pursuant to Article 31, § 4, of Regulation (EU) 2017/1939, the European Delegated Public Prosecutor, referred to in Article 309/2 of the Judicial Code, instructs the General Administration of Customs and excises to carry out a delegated measure, he requests this Administration through the official referred to in Article 285/2, § 1.

§ 3. En vue de l'application de l'article 35 du Règlement (UE) 2017/1939, lorsque le fonctionnaire visé à l'article 285/2, § 1er, considère que l'enquête est terminée, il soumet au procureur européen délégué chargé de la surveillance de l'affaire un rapport contenant un résumé de l'affaire et un projet de décision visant d'éventuelles poursuites, ou un éventuel renvoi de l'affaire ou un classement sans suite.".	§ 3. With a view to the application of Article 35 of Regulation (EU) 2017/1939, when the official referred to in Article 285/2, § 1, considers that the investigation is over, he submits to the public prosecutor European delegate responsible for supervising the case a report containing a summary of the case and a draft decision on possible prosecution, or a possible referral of the case or dismissal of the case.".
Art. 20 Dans le même **CHAPITRE** XXVbis, il est inséré un article 285/6 rédigé comme suit: "Art. 285/6. Le Roi fixe les pouvoirs des agents en matière contentieuse.".	Art. 20 In the same **CHAPTER** XXVbis, an article 285/6 is inserted, worded as follows: "Art. 285/6. The King determines the powers of agents in contentious matters.".
Section 5. Modifications de la loi du 22 avril 2003 octroyant la qualité d'officier de police judiciaire à certains agents de l'Administration générale des douanes et accises	Section 5. Amendments to the law of 22 April 2003 granting the status of judicial police officer to certain agents of the General Administration of Customs and Excise
Art. 21 Dans la loi du 22 avril 2003 octroyant la qualité d'officier de police judiciaire à certains agents de l'Administration générale des douanes et accises, modifié par la loi du 25 avril 2014, il est inséré un article 2/1 rédigé comme suit: "Art. 2/1. § 1er. Sans préjudice de ses compétences en matière de douanes et accises, le fonctionnaire visé à l'article 285/2, § 1er, de la loi générale sur les douanes et accises du 18 juillet 1977 est revêtu de la qualité d'officier de police judiciaire auxiliaire du procureur du Roi et de l'auditeur du travail. § 2. Les méthodes particulières de recherche consistant en l'observation et le recours aux indicateurs, de même qu'en l'intervention différée relevant des autres méthodes de recherche, ne peuvent être	Art. 21 In the law of April 22, 2003 granting the status of judicial police officer to certain agents of the General Administration of Customs and Excise, amended by the law of April 25, 2014, an article 2/1 is inserted as follows: "Art. 2/1. § 1. Without prejudice to his competence in customs and excise matters, the official referred to in article 285/2, § 1, of the general customs and excise law of 18 July 1977 is with the status of auxiliary judicial police officer of the King's prosecutor and labour auditor. § 2. Specific research methods consisting of observation and the use of indicators, as well as deferred intervention relating to other research methods, cannot be implemented by the agents referred to in Article

mises en oeuvre par les agents visés à l'article 3 sans l'accord préalable du fonctionnaire visé au § 1er, lorsqu'elles sont relatives aux contraventions, fraudes ou délits visés à l'article 285/4, § 1er, de la loi générale sur les douanes et accises du 18 juillet 1977.".	3. without the prior agreement of the official referred to in § 1, when they relate to the contraventions, frauds or offences referred to in Article 285/4, § 1, of the general customs and excise law of 18 July 1977.".
Section 6. Disposition transitoire Art. 22 Les dispositions qui sont introduites par ce **CHAPITRE** 2 s'appliquent aux affaires portant sur des faits commis après le 20 novembre 2017.	Section 6. Transitional provision Art. 22 The provisions that are introduced by this **CHAPTER** 2 applies to cases relating to acts committed after November 20, 2017.
CHAPITRE 3. Modification de la loi du 25 mai 2018 visant à réduire et redistribuer la charge de travail au sein de l'ordre judiciaire Art. 23 L'article 32 de la loi du 25 mai 2018 visant à réduire et redistribuer la charge de travail au sein de l'ordre judiciaire est remplacé par ce qui suit: "Art. 32. L'article 792, alinéa 1er, du même Code est remplacé par ce qui suit: Dans les cinq jours de la prononciation de la décision, tant pour les affaires civiles que pour les affaires pénales, le greffier notifie à chacune des parties ou, le cas échéant, à leurs avocats, une copie non signée de la décision. Cette notification ne fait pas courir le délai de recours. Elle a lieu par voie électronique à l'adresse électronique professionnelle de l'avocat ou, s'il s'agit d'une partie qui a comparu sans avocat, à l'adresse judiciaire électronique de cette partie ou, à défaut, à la dernière adresse électronique que cette partie a fournie dans le cadre de la procédure. Si aucune adresse électronique n'est connue du greffier, ou si la notification à l'adresse	**CHAPTER** 3. Amendment of the law of 25 May 2018 aimed at reducing and redistributing the workload within the judiciary Art. 23 Article 32 of the law of 25 May 2018 aimed at reducing and redistributing the workload within the judiciary is replaced by the following: "Art. 32. Article 792, paragraph 1, of the same Code is replaced by the following: Within five days of pronouncing the decision, both for civil cases and for criminal cases, the clerk notifies each of the parties or, where applicable, their lawyers, an unsigned copy of the decision. This notification does not cause the appeal period to run. It takes place electronically at the professional electronic address of the lawyer or, in the case of a party who appeared without a lawyer, at the judicial electronic address of that party or, failing that, to the last email address that that party provided in the proceeding.If no email address is known to the Registrar, or if notification to the email address has clearly failed, notification is made by simple letter.".

électronique a manifestement échoué, la notification est faite par simple lettre.”.	
CHAPITRE 4. Transposition de la Directive (UE) 2017/1371 du Parlement européen et du Conseil du 5 juillet 2017 relative à la lutte contre la fraude portant atteinte aux intérêts financiers de l’Union au moyen du droit pénal Section 1re. Disposition générale Art. 24 Le présent **CHAPITRE** assure une transposition partielle de la Directive (UE) 2017/1371 du Parlement européen et du Conseil du 5 juillet 2017 relative à la lutte contre la fraude portant atteinte aux intérêts financiers de l’Union au moyen du droit pénal.	**CHAPTER 4.** Transposition of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud affecting the financial interests of the Union by means of criminal law Section 1. General layout Art. 24 This **CHAPTER** provides a partial transposition of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud affecting the financial interests of the Union by means of criminal law.
Section 2. Modifications du Code pénal Art. 25 A l’article 247 du Code pénal, remplacé par la loi du 10 février 1999 et modifié par la loi du 26 juin 2000, les modifications suivantes sont apportées: 1° dans le paragraphe 1er, alinéa 1er, les mots “de six mois à un an” sont remplacés par les mots “de six mois à quatre ans”; 2° dans le paragraphe 1er, alinéa 2, les mots “de six mois à deux ans” sont remplacés par les mots “d’un an à quatre ans”; 3° dans le paragraphe 2, alinéa 1er, les mots “de six mois à deux ans et une amende de 100 euros à 25 000 euros” sont remplacés par les mots “d’un an à quatre ans et une amende de 100 euros à 50 000 euros”; 4° dans le paragraphe 2, alinéa 2, les mots “de six mois à trois ans et une amende de 100 euros à 50 000 euros” sont remplacés	Section 2. Amendments to the Penal Code Art. 25 In article 247 of the Penal Code, replaced by the law of February 10, 1999 and modified by the law of June 26, 2000, the following modifications are made: 1° in paragraph 1, first paragraph, the words “from six months to one year” are replaced by the words “from six months to four years”; 2° in paragraph 1, paragraph 2, the words “from six months to two years” are replaced by the words “from one year to four years”; 3° in paragraph 2, first paragraph, the words “from six months to two years and a fine of 100 euros to 25,000 euros” are replaced by the words “from one year to four years and a fine of 100 euros to 50,000 euros”; 4° in paragraph 2, subparagraph 2, the words “from six months to three years and

par les mots “d’un an à quatre ans et une amende de 100 euros à 75 000 euros”; 5° dans le paragraphe 2, alinéa 3, les mots “de six mois à cinq ans” sont remplacés par les mots “de trois ans à cinq ans”; 6° dans le paragraphe 3, alinéa 1er, les mots “de six mois à trois ans et une amende de 100 euros à 50 000 euros” sont remplacés par les mots “d’un an à quatre ans et une amende de 100 euros à 75 000 euros”; 7° dans le paragraphe 4, alinéa 1er, les mots “de six mois à un an” sont remplacés par les mots “de six mois à quatre ans”; 8° dans le paragraphe 4, alinéa 2, les mots “de six mois à deux ans” sont remplacés par les mots “d’un an à quatre ans”; 9° dans le paragraphe 4, alinéa 3, les mots “de six mois à trois ans et d’une amende de 100 euros à 50 000 euros” sont remplacés par les mots “de trois ans à cinq ans et d’une amende de 100 euros à 75 000 euros”.	a fine of 100 euros to 50,000 euros” are replaced by the words “from one year to four years and a fine of 100 euros to 75,000 euros”; 5° in paragraph 2, paragraph 3, the words “from six months to five years” are replaced by the words “from three years to five years”; 6° in paragraph 3, first paragraph, the words “from six months to three years and a fine of 100 euros to 50,000 euros” are replaced by the words “from one year to four years and a fine of 100 euros to 75,000 euros”; 7° in paragraph 4, first paragraph, the words “from six months to one year” are replaced by the words “from six months to four years”; 8° in paragraph 4, second paragraph, the words “from six months to two years” are replaced by the words “from one year to four years”; 9° in paragraph 4, subparagraph 3, the words “from six months to three years and a fine of 100 euros to 50,000 euros” are replaced by the words “from three years to five years and a fine of 100 euros to 75,000 euros”.
Art. 26 A l’article 249 du même Code, remplacé par la loi du 10 février 1999 et modifié par la loi du 26 juin 2000, les modifications suivantes sont apportées: 1° dans le paragraphe 1er, alinéa 1er, les mots “d’un an à trois ans” sont remplacés par les mots “d’un an à quatre ans”; 2° dans le paragraphe 2, alinéa 1er, les mots “de deux ans à cinq ans” sont remplacés par les mots “de trois ans à cinq ans”.	Art. 26 In article 249 of the same Code, replaced by the law of February 10, 1999 and modified by the law of June 26, 2000, the following modifications are made: 1° in paragraph 1, first paragraph, the words “from one year to three years” are replaced by the words “from one year to four years”; 2° in paragraph 2, first paragraph, the words “from two years to five years” are replaced by the words “from three years to five years”.

Section 3. Modification de l'arrêté royal du 31 mai 1933 concernant les déclarations à faire en matière de subventions et allocations

Art. 27
A l'article 2 de l'arrêté royal du 31 mai 1933 concernant les déclarations à faire en matière de subventions et allocations, remplacé par la loi du 7 juin 1994 et modifié par la loi du 26 juin 2000, les modifications suivantes sont apportées:

1° dans le paragraphe 1er les mots "de huit jours à un an" sont remplacés par les mots "de six mois à quatre ans";
2° dans le paragraphe 2 les mots "de six mois à trois ans" sont remplacés par les mots "de six mois à quatre ans".

CHAPITRE 5. Modification de l'article 21bis du Code d'instruction criminelle
Art. 28 (nouveau)

L'article 21bis, § 1er, alinéa 6, du Code d'instruction criminelle, inséré par la loi du 27 décembre 2012 et modifié par la loi du 23 mars 2019, est complété par la phrase suivante: "Le greffe de la cour d'appel ou du tribunal compétent est chargé de la délivrance des expéditions et copies.".

CHAPITRE 6. Modification de la loi sur les extraditions du 15 mars 1874
Art. 29
La loi sur les extraditions du 15 mars 1874 est complétée par un article 13 rédigé comme suit:

Section 3. Amendment of the Royal Decree of 31 May 1933 concerning the declarations to be made with regard to subsidies and allowances

Art. 27
In article 2 of the royal decree of May 31, 1933 concerning the declarations to be made with regard to subsidies and allowances, replaced by the law of June 7, 1994 and modified by the law of June 26, 2000, the following modifications are made:

1° in paragraph 1, the words "from eight days to one year" are replaced by the words "from six months to four years";
2° in paragraph 2, the words "from six months to three years" are replaced by the words "from six months to four years".

CHAPTER 5. Amendment of article 21bis of the Code of Criminal Procedure
Art. 28 (new)

Article 21bis, § 1, paragraph 6, of the Code of Criminal Procedure, inserted by the law of December 27, 2012 and amended by the law of March 23, 2019, is supplemented by the following sentence: "The registry of the court of 'appeal or the competent court is responsible for the issuance of shipments and copies.".

CHAPTER 6. Modification of the law on extraditions of March 15, 1874
Art. 29
The law on extraditions of March 15, 1874 is supplemented by an article 13 drafted as follows:
"Art. 13. In relations with the United Kingdom of Great Britain and Northern

“Art. 13. Dans les relations avec le Royaume-Uni de Grande-Bretagne et d’Irlande du Nord la détermination des autorités compétentes et la procédure d’émission et d’exécution des demandes de remise sont régies par la loi du 19 décembre 2003 relative au mandat d’arrêt européen, sauf disposition contraire dans la Troisième Partie, Titre VII. Remise, de l’Accord de commerce et de coopération du 30 décembre 2020 entre l’Union européenne et la Communauté européenne de l’énergie atomique, d’une part, et le Royaume-Uni de Grande-Bretagne et d’Irlande du Nord, d’autre part.”. Compte rendu intégral: 11 février 2021	Ireland the determination of the competent authorities and the procedure for issuing and executing requests for surrender are governed by the law of 19 December 2003 on the European Arrest Warrant, unless otherwise provided in Part Three, Title VII Surrender, of the Trade and Cooperation Agreement of 30 December 2020 between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.”. Full report: February 11, 2021
CHAPITRE 7. Entrée en vigueur Art. 30 La présente loi entre en vigueur le jour de sa publication au Moniteur belge. Promulguons la présente loi, ordonnons qu’elle soi revêtue du sceau de l’Etat et publiée par le Moniteur belge. Donné à Bruxelles, le 17 février 2021. PHILIPPE Par le Roi: Le ministre de la Justice, V. VAN QUICKENBORNE Le ministre des Finances, V. VAN PETEGHEM Scellé du sceau de l’Etat: Le Ministre de la Justice, V. VAN QUICKENBORNE Note Chambre des représentants (www.lachambre.be) Documents: 55 1696	**CHAPTER** 7. Entry into force Art. 30 This law comes into force on the day of its publication in the Belgian Official Gazette. Let us promulgate the present law, order that it be coated with the seal of the State and published by the Belgian Monitor. Given in Brussels, February 17, 2021. PHILIP By the King: The Minister of Justice, V. VAN QUICKENBORNE The Minister of Finance, V. VAN PETEGHEM Sealed with the seal of the State: The Minister of Justice, V. VAN QUICKENBORNE Note House of Representatives (www.lachambre.be) Records: 55 1696

B. EPPO-Regulation

I. EPPO: The Loneliness of a Voluntary Celibate in the Belgian Judicial Landscape (Introduction)

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1. Loyal, Although Not Necessarily Efficient EU Partner

Belgium's mainstream politicians and its diplomats take pride in the country's status as a founding member of what is now the European Union. For a small state that depends very much on cross border relations and is the host state to the institutions, the obvious benefits of EU-membership have always dwarfed any possible downsides. In decades of debate on the protection of the financial interests ('PFI') of the EU, Belgium has always **supported Commission initiatives** to strengthen the fight. Overall, the Commission does not really consider Belgium to be a member state suspected of or scrutinised for deliberate underenforcement of its PFI-obligations. As the seat of important EU-institutions and state of residence of many EU staff, Belgium prosecuted (former) officials in some resounding cases.[10] The country's problem rather is the **general inefficiency of its criminal justice system**. That is particularly so in relation to economic and tax crime, due a scarcity of qualified investigators and a **problem of capacity and backlog with prosecutors, judges and courts**, particularly in Brussels.[11] More in general, Belgium's track record on compliance with EU-obligations, including the implementation of legislation or the fulfilment of enforcement duties, does not always match the vocal political support given to the EU.[12] **1**

2. EPPO as a Top-down Initiative

On September 30, 2013, in a reaction to the launch by the Commission of its initial post-Lisbon Treaty proposal for an EPPO, the **Belgian Federal Public Service for Justice** (*i.e.* the Ministry of Justice) organised a symposium "Belgium and the EPPO"[13]. **2**

[10] For example, the criminal investigation by the Belgian authorities into allegations of fraud, forgery and unlawful conflict of interest against Edith Cresson. The charges were ultimately dropped by the Council Chamber the Brussels Court of First Instance: see CJEU 11 July 2006, nr. C-432/04, ECLI:EU:C:2006:455, 6436–6437; Other examples are the criminal investigation into accusations of psychological harassment in the workplace by Jacek Krawczyk, after OLAF submitted two cases to the Belgian authorities and the criminal investigation into the recent scandal surrounding Qatar-related corruption.

[11] Report of the special commission on international fiscal fraud/Panama Papers, *Parl.Doc.* House Repres. 2017–2018, nr. 54-2749/001, pp 75–79.

[12] With 43 new infringement cases in 2022, Belgium far exceeds the amount of infringement cases of comparable states. See European Commission 2022a.

[13] See Justitie Belgium 2013.

It brought together academics and key actors from within the Belgian criminal justice system, with experience in the field of PFI-crime. The academics pointed out that obvious legal and technical challenges would arise, particularly with respect to **judicial control over intrusive** methods to gather evidence in cross-border situations and the subsequent use of such evidence. Some voiced doubts as to the added value of creating yet another separate EU-institution. They would have preferred an extension of the authority of the Eurojust members from the member states that were willing to go ahead with EPPO, granting them – and their national prosecutors working on **PFI-cases** – additional powers or allowing them the use of less burdensome cross-border procedures.

3 The practitioners from within the Belgian criminal justice system were even more outspoken in questioning the **added value of an EPPO**. Whether they did so in veiled, diplomatic language or in a more outspoken way, usually depended on their independence from the executive.

4 Especially the very independent **investigating judges**, who feared that their function would be abolished altogether (infra, nr.6), doubted whether the creation of an EPPO as a separate entity would significantly improve the quality of their judicial investigations.

5 All this made it all the more remarkable, but also quite illustrative, that in a kind of summing up at the end of the conference, the Minister of Justice simply concluded that there was a general consensus in Belgium to go ahead with EPPO as planned.

3. Minimalistic Implementation

6 It is therefore clear that in Belgium, the EPPO has always been more of a priority for the politicians than for law enforcement. Even so, not much public debate was ever dedicated to its shape or legal framework. Its implementation was presented to parliament as a technical necessity under EU-law, supported by the promise of a more effective fight against PFI-crime, something no reasonable person could oppose. **Changes to legislation** were included in omnibus bills, rather than as a separate Bill based on a deliberate policy choice.

7 Whereas the **initial Commission proposal** for a **Regulation in 2013** had reflected a strongly 'federal' logic, eventually the EPPO ended up being conceived as a hybrid institution, linking up EU and Member State prosecutors. [14] Still, in spite of its decentralised structure, EPPO is an 'indivisible Union body operating as one single office' (Art. 8(1), see also → Art. 3(1) of the Regulation). After the adoption of the Regulation in 2017, the Belgian government of the time ordered an academic study by professors of the Universities of Leuven and Liège, to prepare the implementation in Belgian law of

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

the EPPO.[15] While the study was still being conducted, a minor Bill was already adopted to allow for the nomination of a Belgian European prosecutor and delegated European prosecutors, as required by Article 17 of the EPPO Regulation.[16]

In their report, the academics stressed that, as the Regulation is directly applicable and enjoys primacy over conflicting Belgian law, additional Belgian legislation should only be adopted if that was necessary and if the matter could not be solved with regulation-conform interpretation of existing laws.[17] **8**

The EPPO Regulation does indeed **refer to national law for several aspects**, *e.g.* the conditions, procedures and modalities for taking investigative measures (Art. 30). However, there is some tension between the logic behind the EPPO and the way in which criminal investigations and public prosecution are designed by Belgian law. **9**

Belgium believed it could ensure the **practical integration of the EPPO** into its criminal justice system and its obligations under the Regulation, while using the margin of appreciation the Regulation leaves in order to respect the diversity of national criminal procedure (*cf.* Recital (15)) to avoid a revolutionary complete reform of its criminal procedure under the time pressure of the implementation of the EPPO-regulation. Minor adjustments, for instance on the role of Customs as a prosecutor (infra, nr.7), could suffice. **10**

4. Minor Language and Terminological Issues

The EPPO Regulation sometimes opts for terms that are unknown in national criminal procedure. Belgian national terminology therefore has to be subjected to EU-conform interpretation. The Dutch version of the Regulation uses the term *Europees (gedelegeerd) aanklager*, the same notion as in the Dutch translation of the Rome Statute for an International Criminal Court for the (ICC) Prosecutor[18], but a concept as such not used in the domestic order of the two systems with Dutch as an official language. **11**

Trilingual Belgium indeed uses titles and terms for its national public prosecution service that are borrowed from the French system, even in the Dutch language (*procureur* and *advocaat-generaal*).[19] The new art. 309/2 of the Judicial Code copies the concepts **12**

[15] Franssen et al 2021, pp 135–173; Franssen et al 2019.
[16] Article 16(1) and Article 17(2) EPPO Regulation; Law of 5 May 2019 containing various provisions in criminal matters and on worship, and amending the Law of May 28, 2002 on euthanasia and the Social Criminal Code, Belgian Official Journal 24 May 2019, 50023. The law regulates incompatibilities with specific national mandates (articles 96, 97 and 106). Furthermore, it contains provisions on the national requirements for the function of EP and EDP's (articles 99 and 100). It establishes a secretariat for the office of the Belgian EDP's (articles 104 and 105).
[17] Also the Belgian position when introducing domestic legislation concerning the EDPs: Bill of 6 February 2019, Parl. Doc. House Repr. 2018–2019, Nr. 54/3515/001, p 124: "As is the nature of a regulation, it has direct effect in the Belgian legal system, so that it cannot and should not be transposed into national legislation."
[18] https://wetten.overheid.nl/BWBV0001489/2002-07-01#Verdrag_2 Accessed 4 June 2024.
[19] The Netherlands prefer the terms officier van justitie and hoofdofficier van justitie.

from the Regulation, when pointing out who can be "*charged with the mission of (delegated) Europees aanklager"* in Dutch, while sticking to the familiar *procureur* in French. *Aanklager* has the advantage of not favouring one member state's terminology over the other. However, it does stress the accusatory function of a public prosecution service, whereas in practice that is just one of the many tasks performed by modern prosecutors.

13 The EPPO Regulation itself explicitly emphasizes that investigation and independent gathering of evidence which is in favour of the suspect is also a core task of EPPO prosecutors (Art. 5(4); supra, Section 2).More importantly, some terms used in the EPPO Regulation have a different meaning from their traditional counterpart in Belgian legal idiom. For instance, the term dismissal in Article 39 is translated as *classement sans suite* (in French) and *sepot* (in Dutch), but clearly covers a wider range of situations than the same concepts under Belgian law, which only relate to a provisional end to the criminal investigation. Dismissal in the Regulation includes situations where the prosecution is *irrecevable* or *onontvankelijk* (e.g. Art. 39, a), d) and e)), a *non-lieu* or *buitenvervolgingstelling* (a decision by an investigative court at the end of a judicial inquiry) and even an acquittal (*acquittement* or *vrijspraak*, referring to a decision of a trial court; e.g. Art. 39, g)).

14 Unlike the 'domestic Belgian' *classement sans suite* and *sepot*, they put a definitive end to the criminal proceedings and (usually) trigger the application of the principle of *non bis in idem*.

15 **Regulation-conform interpretation** by Belgian authorities should solve this terminological confusion, but in view of the different meanings and legal consequences, a future version of the Code of Criminal Procedure would do well in harmonizing the terminology to eliminate it altogether.

5. Stand-alone Office: Charm and Goodwill, Rather Than Authority

a) Academic Suggestion: The Belgian Chief Federal Prosecutor as Hinge-EDP

16 Some 900 prosecutors and some 2,600 support and administrative staff work for the Belgian prosecution service.[20] It is organised in 14 districts, divided over 5 circuits headed by 5 prosecutors-general. The overall prosecution policy is set out by the College of prosecutors-general, in dialogue with the Minister of Justice. The place of Belgian

[20] According to the public prosecution service's own website. (https://www.om-mp.be/nl/jobs – Accessed 4 June 2024). In an answer to a parliamentary question of 1 October 2019, the Justice Minister stated that 855 prosecutors had been appointed, although the statutory framework at the time envisaged 947. See https://www.dekamer.be/kvvcr/showpage.cfm?section=qrva&language=nl&cfm=qrvaXml.cfm?legislat=55&dossierID=55-B005-1081-0073-0000201900544.xmL. Accessed 4 June 2024.

prosecutors in the ***trias politica*** is ambiguous, somewhere in between the Judicial and Executive branches.

The Minister of Justice cannot give negative injunctions (i.e. forbidding a prosecutor to investigate or prosecute), but positive ones are possible, i.e. the Minister[21] can order the public prosecution service to start an investigation, to press charges or to appeal a decision (Art. 151, § 1 Belgian Constitution). This only happens exceptionally and should be contextualised in the light of the public prosecution's wide discretion not to prosecute (the so-called *principe d'opportunité*) – there is indeed no mandatory prosecution under Belgian law. Although the right of injunction is enshrined in the Constitution, it seems that the clear wording of the Regulation would exclude its application in EPPO-matters. **17**

The EPPO system is indeed based on **mandatory prosecution,** so in Belgian PFI cases reaching the seriousness threshold established by the Regulation, mandatory prosecution is now the rule. The EU stresses more in general that in individual cases Public Prosecution Services should have sufficient independence from the political authorities. This could be a reason for Belgium to abolish the right of injunction altogether, but that requires Constitutional reform and is only possible after a rather complex procedure with qualified majorities. **18**

The report of the academic implementation study stressed that, although **EDPs** belong to a Luxemburg-based Union body that sets out the prosecution policy and gives concrete instructions, they are located at the national level and are part of the national prosecution service. They have the **same powers as national prosecutors** and will cooperate directly with national authorities. In view of this unprecedented structure, the authors suggested a seamless integration of the EDP's within the Belgian national legal order, by **integrating them in federal prosecution service**, preferably with the chief federal prosecutor always as one of the delegated European prosecutors. **19**

The Belgian federal prosecution office has been set up next to the 14 existing local offices, to solve problems of coordination in cross-jurisdiction cases, to provide specialisation and internal cooperation. It is headed by the (chief) federal prosecutor (*federale procureur* or *procureur fédéral*, cf. a *Bundesstaatsanwalt*), who is bilingual (i.e. Dutch- and French-speaking); there is no federal prosecutor-general. The federal prosecution office's tasks have been extended on several occasions and include the facilitation of international cooperation, as well as the prosecution certain offences such as terrorism, illicit arms trade, and criminal organisations. The chief federal prosecutor disposes of 32 federal prosecutors. Before the start of EPPO, two members of the federal prosecution office functioned as the national point of contact for OLAF in Belgium. **20**

[21] In criminal cases relating to matters that have been devolved to the regions (such as environmental crime), regional Ministers of Justice have the same power of injunction.

21 The academic team therefore suggested that, instead of seriously upsetting the Belgian system, a small upgrade of the existing one could suffice for the EPPO to function smoothly. The Belgian chief federal prosecutor and two federal prosecutors would become the Belgian EDP's and thus in EPPO matters subjected to the EPPO hierarchy. As federal prosecutors, they would always be able to rely on the normal rules, structures and channels already up and running for the Belgian federal prosecution office itself, to mobilise the necessary people (both prosecutors and qualified investigators) and means.

22 That includes the **possibility to delegate tasks** to other members of the public prosecution service. Such a policy choice would not have required the chief federal prosecutor to handle many EPPO files personally. That task would mainly fall to the two other EDPs, one Dutch-speaking and one French-speaking. The central idea was that having the chief federal prosecutor on board, would mean that he/she would always have access to all EPPO-related information and would dispose of a direct line of communication with the EPPO headquarters in Luxembourg, i.e. directly with the European Prosecutor for Belgium and with the European Chief Prosecutor. The authors considered that the best way to allay the fear that the Belgian EDPs would be perceived as 'infiltrators' from a rival agency, who can keep their actions and investigative or prosecutorial policy secret from their Belgian colleagues by hiding behind – real or fake – orders from the EPPO central office. If the Belgian EDPs would really work on sensitive cases (f.i. related to high ranking government of judiciary officials), the chief federal prosecutor, as their colleague but also as a key player in the Belgian criminal justice system, would have been able to help them out.

23 The proposed solution would also have made it impossible for local prosecutors dealing with a routine situation, for instance, a hearing on the pre-trial detention of a suspect in an organised crime case with some PFI-aspect, to receive contradictory orders from the federal prosecution office (for the organised crime aspect) and the EDP (for the PFI aspect).

24 If their EPPO workload would allow so, Belgian EDPs could also investigate national cases, as they would wear a '**double hat**' (cf. Art. 13(3) and 17(2)). This 'double hat' approach would have ensured maximum flexibility and efficiency, to the benefit of both the EPPO and the national system.

25 The authors of the study believed that this mode of integration would strengthen bonds, but did not threaten the independence of the EPPO. All Belgian EDPs – and, actually, all Belgian prosecutors - would in EPPO cases be fully subjected to the EPPO hierarchy and bound to follow the EPPO prosecution policy. The academics warned that the independence of the EPPO (as an office for overall policy and in specific cases for the delegated European prosecutors) should not be confounded with isolation of the EDPs in the Member States. Such isolation risked to render the EPPO a toothless institution and a

source of continuous friction or conflict with the Member States, also with states like Belgium that sincerely want to tackle PFI-fraud. They thought that would be counter-productive in view of the ultimate objective of the EPPO.

b) The Choice Made: A Completely New Miniature Stand-alone Public Prosecution Service

The Belgian government decided to ignore the suggestion and adopted the solution which the academics considered the worst possible one for an efficient fight against PFI-offences. It created a completely **new miniature stand-alone public prosecution service** for the EDPs, separate from the existing (national) public prosecution service. It is composed of two[22] (in the future probably three) EDPs, but is separated from the rest of the Belgian public prosecution service. **26**

The **government** did not mention the option suggested by the academic research it had ordered, when it filed its Bills related to EPPO. That makes it difficult to deduce the **reasons for the policy** chosen. **27**

On the one hand, there is the EPPO leadership itself. The Chief European Prosecutor-elect, although at the time awaiting formal confirmation, stressed that she wanted EPPO itself to be very independent from national prosecutors, also from an institutional perspective. Even though the Regulation did not require this, it was made clear that EDP's would have to work exclusively for the EPPO, regardless of the workload, and that any impression of interference by national prosecution services should be avoided. The distrust towards national prosecutors, justified by the experience in PFI-cases in some Central and Eastern states, seems to be extended to national prosecutors in all participating member states. The EPPO has preferred to rely much on its exclusive competence in serious PFI-matters and on Regulation-based legal obligations for national law enforcement to cooperate and support. **28**

On the other hand, it is unlikely that the **Belgian Public Prosecution Service** really minded about the government's choice. The introduction of the EPPO at the Belgian level did not bring any substantial increase in its budget. The EU only pays the wages and expenditure of the EDPs and exceptionally costly investigative measures (Art. 91(5) and (6) Regulation). **29**

Especially in Brussels the **shortage of specialised police detectives** with financial and IT-skills was already huge, so no one in the local prosecution service looked forward to being obliged to cede them to EPPO. Publicly, the Belgian Public Prosecution never made suggestions of its own regarding the integration of the EDPs. In its almost twenty **30**

[22] Jennifer Vanderputten and Pascale Vandeweyer were appointed as Belgian EDP's on 17 may 2021. See Decision of the college of the EPPO of 17 may 2021, available on https://www.eppo.europa.eu/sites/default/files/2021-05/2021.045_Decision_appointment_EDPs_BE_1.pdf. Accessed 4 June 2024.

years of existence, the federal prosecution office had already obtained quite some protagonism, particularly in the fight against terrorism. And in the "war for talent", it was also perceived as attracting many well-prepared or experienced prosecutors from local offices, to the detriment of the latter. If the federal prosecutor would now also be granted the extra powers, means or budget as part of EPPO, the fragile balance in the system would be disturbed. The federal prosecutor himself never insisted that he and his successors should automatically be appointed as EDPs, either. Even if the idea might have seemed interesting from an intellectual and efficiency perspective, the federal prosecutor apparently did not deem it worthwhile to antagonise prosecutors or prosecutors-general over the issue. So it was quite convenient for the Belgian Public Prosecution Service that explicit policy choices of the EPPO's Chief-Prosecutor-elect also ruled out the option suggested the academics altogether.

31 Whereas their predecessors, the Belgian liaison prosecutors for OLAF, had been part of the federal prosecution office, the EDPs are not. One can understand that from a management perspective, the chief federal prosecutor would have been weary of having prosecutors within his federal prosecution office, which would draw on the human and financial resources, but over whom he would have no authority. Such **autonomously acting EPDs**, as small 'islands' within the office, might become a source of resentment and divisiveness, a direct threat to the *esprit de corps* cherished by an institution which was specifically created to supersede existing divisions. A chief responsible does not want people who are unaccountable to him or her in his office.

32 That is why Belgium created a separate miniature prosecution office for the EDPs, with their **own limited support staff**. Its place in the overall hierarchical system was left undefined. It sounds good to have a single purpose organisation that looks very independent and has the exclusive power to investigate and prosecute PFI-cases. However, **running a 24/7 office** that must adequately deal with its numerous partners with two or three EDPs seems almost impossible, even if both are bilingual. Especially as they have to act all over the national territory, not just to prosecute suspects, but also to attend monthly hearings on pre-trial detention, for instance. These two or in the future perhaps **three EDPs** are **exclusively entitled to handle all PFI-fraud cases**. As a result, the other 900+ prosecutors may feel psychologically disaffected from the fight against PFI-crime, perceive it as 'someone else's job', 'not their business (anymore)'. Excessive workload for the EDPs (and inefficient use of their time) will put the system, and the people running it, under enormous stress. Two or three prosecutors in (or alongside) an organisation of some 900 prosecutors may feel somewhat isolated and limited in their capacity to make the impact expected from them. They do not cause resentment among their colleagues, because they are too small to pose a threat to the existing power balance within the criminal justice system. Expanding such a separate prosecution office to a fully-fledged unit with ample staff and its own investigative capacity (detectives) might

change that. It would definitely require an enormous investment and there are no indications that the Belgian authorities are willing to make such an investment. This alternative would also entail a loss of efficiency as PFI-crimes and other crimes or the organisations behind them often overlap. It would be likely to generate continuous friction within the police and the rest of the public prosecution service over coveted specialised (i.e. financially skilled) detectives, especially if EPPO would offer them better financial or working conditions.

33 The current Belgian system does not contain explicit rules on how to resolve conflicts about resources and investigative capacity. Hence, the Belgian EPPO members did not just have to cope with all the **practical concerns** related to setting up a decentralised unit of a newly created EU-agency from scratch. They also had to use their talents and charm to create goodwill with their Belgian colleagues. They seem to insist on loyal cooperation and loyal cooperation towards common law enforcement goals, rather than invoking the primacy of EU-law to impose themselves and issue formal orders to their domestic colleagues. That is a wise policy for a budding institution such as the EPPO. It remains to be seen how this will evolve, once the enthusiastic initial pioneer generation of prosecutors has been replaced, especially if some conflict between local prosecutors or prosecutors-general and the EPPO would surge. It seems crucial that the persons selected to become the Belgian European prosecutor will possess both the personal standing and bureaucratic diplomacy skills to dispel friction with their domestic colleagues and to solve issues. EPPO just cannot afford any longstanding animosity with **local law enforcement**: that would seriously undermine its efficiency. Formal hierarchical orders will never be a substitute for genuine cooperation motivated by team spirit, mutual benefits and a common sense of mission. EPPO is conceived as a h**ybrid institution**, relying on close cooperation with member state law enforcement, not as a parallel federal agency with complete operational self-sufficiency. The Belgian members of EPPO seem very much aware of this.

34 They have definitely been working hard in 2022. According to the EPPO's annual report, they conducted 44 active criminal investigations, for an estimated value of 1,2 billion euro. 26 cross-border investigations, one case was dismissed. None of the cases had yet reached the trial stage. Out of the 33 complaints received, 23 originated with EU institutions, bodies, offices and agencies.[23]

6. Uncertainty About (Specialised) Investigating Judge

35 Belgium, like France, Luxemburg and Spain, still has a system in which investigations are led by an independent investigating judge (under the supervision of the appeal

[23] EPPO 2022, p 16.

court's Indictment Chamber), rather than by the prosecution. Such a judicial investigation is only used in a small minority of all criminal investigations, but it is almost inevitable for the most serious ones: if arrests have to be made, houses or offices have to be searched or IT-systems have to be intercepted covertly. At the end of the investigation, another judge (the Council Chamber, on appeal the Indictment Chamber) will have to decide whether the suspects are committed for trial or whether the case is dismissed. It is an independent decision, the judge is not bound by the opinion of the prosecutor. Most investigations are led by the prosecution service, with short intermezzos led by the investigative judge when an intrusive investigation method has to be used. After the completion of such measure, the investigative judge will return the investigation to the prosecutor who continues without further judicial interference and autonomously decides whether to prosecute or not. The procedure is called **mini-judicial investigation**. The investigating judge who allows the measure requested by the prosecutor, always has the option to take over the investigation and start a judicial investigation, but that will happen only exceptionally.

36 There are plans for an overall **reboot of the criminal procedure**, which would make the prosecution service responsible for the investigation and give the judges the role of issuing warrants for intrusive actions and of protecting fundamental rights and freedoms. These **major reform plans** have encountered quite some resistance though, both within the Judiciary and in the political world. As such, the reform is unlikely to be adopted and even less so implemented in the near future.

37 EPPO is clearly based on the model of the prosecution leading the criminal investigation and not taking orders from national instances, but the Regulation seems constructively ambiguous as to whether member states can maintain the system of investigating judges.

38 Unlike France, Belgium chose not to relinquish the system and opt for an *ad hoc* system without the investigating judge in EPPO-cases. Both the academic study which prepared the implementation and the Belgian European prosecutor *Yves Van Den Berge*[24] believe that this is compatible with the Regulation. They point out that article 28 (1) on the handling of cases by the EDP twice states 'in accordance with national law', which can be read as to indicate that national laws may grant a role to an independent judge (even more independent from political influence than a prosecutor). Indeed, the emphasis on a leading role of the EDP was watered down by the Council. It added recital 15 that explicitly stated that the Regulation *"…is without prejudice to Member States' national systems concerning the way in which criminal investigations are organised*". It is clear that the central role for the investigating judge is a key feature of how the Belgian criminal investigation is organised. The words "leading a case" in article 18(1) of the Commission's 2013 text proposal were changed into "handling a case".

[24] Van Den Berge 2021b, pp 63–64.

The academics who wrote the **pre-implementation report** pointed out that eventually it would be for the CJEU to decide whether the judicial investigations in EPPO cases were compatible with EU-law. If they were not, Belgium **probably could opt** for the overall move to a **prosecutor-led criminal investigation** for all situations. But if Belgium would immediately create a special regime with a minor role for investigating judges only in EPPO cases and the CJEU found there was no obligation to do so under EU law, the regime was likely to run afoul of the Belgian Constitution's Equal Treatment clause as interpreted by the Constitutional Court. On several previous occasions that court has already found that different treatment, and particularly minor judicial protection in prosecutor-led investigations when compared to judicial ones, could violate the constitution. Rather than risking that thousands of investigations ended up being considered unconstitutional retroactively, parliament decided to stick to the existing system and wait to see whether it can withstand the test of the CJEU. If the CJEU would consider the **judicial protection offered by Belgian law** incompatible with the Regulation, such 'excessive' protection of rights could never be a ground for suspects or defendants to complain about the 'illegal' procedure and all evidence gathered could still be used. The negative consequences of Belgian parliament's mistake of (EU) law for pending criminal procedures would be a lot bigger if a special procedure for EPPO would be found to be unconstitutional than if the judicial investigation was found to be incompatible with the Regulation. By assuming the compatibility of the pre-existing system of judge-led judicial investigations with EU-law, Parliament therefore chooses the least risky option.[25] **39**

Belgian law did provide for the appointment of seven **specialised investigative judges**, one or (for linguistic reasons) two in each appeals court circuit of the country.[26] These investigative judges have competence in EPPO-cases. The legislator considered it necessary to select specific investigative judges for reasons of specificity and complexity of the EPPO-cases. They continue to perform their judicial duties outside EPPO-cases as usual. For the EDPs, it is an undeniable advantage to be able to work closely with this limited number of specialised investigating judges, well acquainted with EPPO and its unique legal regime. **40**

Some adjustments had to be made for the **reallocation** (i.e. removal by the EPPO of cases from Belgium to continue or centralise them in another member state for prosecution (Art. 26(5)), and the reopening of closed cases (Art. 39(2) Regulation). The Regulation does not allow the Belgian judges of the Council Chamber or Indictment Chamber to oppose the choice of the EPPO. Belgian judges will be obliged to acknowledge this, **41**

[25] For the full argumentation: See Franssen et al 2021, pp 135–173; Franssen et al 2019.
[26] Article 47quaterdecies of the Code of Criminal Procedure and article 79(6) of the Judicial Code.

in the same. Therefore, a **procedure similar to** the one for cooperation with the **International Criminal Court** may have to be used.[27] The Belgian ICC Cooperation Act of 29 March 2004 provides in its Article 8, § 2 for a 'transfer procedure' whereby the Court of Cassation, at the request of the International Criminal Court, takes away the case from a Belgian court in favour of the requesting tribunal.

7. A Pragmatic Solution to the Very Specific Situation of Belgian Customs

42 Among the member states, Belgian and Luxemburg stood out because they had the exceptional system which granted **Customs major autonomy** from the Public Prosecution Service in investigating and prosecuting Customs offences. There could however be no doubt as to the incompatibility of this system with the EPPO-regulation, since that had granted EPPO a monopoly, which could not be shared with an administrative authority such as the **Customs Service**. The idea of appointing a Customs officer, that is someone from outside the judiciary as an EDP was quickly discarded. Instead, legislation was adapted to ensure that the EPPO would always have the final word, while delegating day to day practice to especially designated Customs officers working for the EPPO. Those designated officers may take instructions outside EPPO matters from their own administration, it is EPPO that exclusively directs them in EPPO-matters. This pragmatic solution keeps the enormous experience of Customs on board and diminishes the workload of the police and EDPs and seems perfectly in conformity with the Regulation. The Belgian legislator did not entirely rule out the possibility of an additional EDP for cases involving the Customs service.[28]

43 The special position of Customs in the **repression of Customs fraud** went way back in history. Not only did Customs have the technical and financial experience which many prosecutors lacked, the pragmatic system in which administrative sanctions and out of court settlements were often used, was also deemed a better way to protect the financial interests of the Union than a classical criminal law approach by the public prosecution service: more money was received and more quickly.

44 The pragmatic way in which cases used to be handled by Customs has been ruled out by Belgian law in EPPO procedures.[29] The Regulation does allow the use of simplified prosecution procedures in conformity with national procedures. [30] In criminal procedure, the transaction ("*minnelijke schikking*") is a very important tool, frequently used by Belgian prosecutors. However, the law prohibits its use for Customs and Excise crimes.[31]

[27] For the time being, no specific rule has been adopted, so judges will have to rely directly on the Regulation and analogy based on the 2004 law on cooperation with the ICC.
[28] Bill 28 May 2002, Parl. Doc. 2018-19, nr. 3515/001, 128, https://www.dekamer.be/FLWB/PDF/54/3515/54K3515001.pdf. Accessed 4 June 2024.
[29] Saen 2022, p 970.
[30] Article 40 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017.
[31] Article 216bis of the Code of Criminal Procedure.

A special Customs transaction regime applies, which is interpreted very broadly and in practice is the standard method of handling Customs matters.[32] A suspect targeted in Customs investigations conducted by the EPPO will not have this option, as the amended law explicitly prohibits the transaction for such cases.[33]

8. Evidence: (Almost) Anything Goes

There is wide agreement that, regardless of whether eventually the EPPO indeed turns out to be more efficient in the fight against PFI-fraud, the whole construction with its cross border prosecutorial and judicial powers is a unique legal experiment. In view of the different national sensitivities and rules on intrusive measures and on the use of illegally gathered evidence, plenty of preliminary rulings are likely to be requested from the CJEU, especially when EPPO investigative practices will be tested in the member state criminal courts. The outcome of such rulings will rarely be problematic for Belgian cases, as the Belgian law on **illegally gathered evidence** (article 32 of the Preliminary Title to the Code of Criminal Procedure) is prosecution-friendly. The criminal court has to rely on the evidence regardless of its illegal gathering, except in three very rare situations: when the law explicitly sanctions a violation with nullity (which only very few laws do), when the illegality affects the reliability of the evidence and when the use of the illegally gathered evidence would violate the fair trial rights of the defendant. It remains to be seen whether the CJEU is more exigent on exclusion of evidence as a sanction for illegal gathering. **45**

9. Conclusion

The effectiveness of the policy choices made by Belgium in order to adapt its national legal system to the new EPPO will have to be proven in practice. In symphony with EPPO leadership in Luxembourg, Belgium found the independence of the EPPO from national authorities, including the national prosecution service, more important than the benefits of gaining efficiency and forging ties with rank and file law enforcement. This insistence on the autonomy and exclusive powers of the EPPO has led to the creation of a separate office for the Belgian EDPs, not integrated into the existing prosecution system. It therefore lacks the formal and informal means to easily rely on established human resources, logistics and coordination mechanisms. Alternatives that centred on institutionalising close cooperation with and strong embedment in the public prosecution's central unit specialised in organised and international crime have been on the table, but were never seriously considered. **46**

A **miniature**, standalone prosecution service of two, in the future perhaps three prosecutors will be exclusively entitled to deal with the investigation, continuous follow-up **47**

[32] Article 264 of the Law 18 juli 1977 (on transactions).
[33] Article 285/4 §2 of the Law 18 juli 1977 (on transactions).

and ultimately prosecution of all PFI-fraud cases. In practice, that makes it impossible to have multiple trials at the same time and implies that during trials, these prosecutors will be in court, making it difficult to execute their tasks related to ongoing investigations. The EDPs will have to rely on the formal authority they have over national law enforcement on the basis of the Regulation. Whether that will work in practice, remains to be seen. Since they lack a clear hierarchical position within the public prosecution service and no enforceable mechanisms are foreseen to solve conflicts over human resources, staff or priorities, they will have to rely on **goodwill of the rest of the Belgian criminal justice system**. The Belgian European Prosecutor and the EDPs seem well aware of this, and they insist on partnership, a shared mission and mutual benefits, rather than on EU-law based authority.

48 Basing itself on the preparatory works and the text of the Regulation, Belgium believes that its system of judicial investigations lead by an investigating judge is compatible with the Regulation. The EPPO must address its cases to seven **specialised investigating judges**, who have been assigned as the only ones who can investigate PFI-cases. It is likely that sooner or later the CJEU will have to pronounce itself on the matter of compatibility of this regime with the Regulation. In the meanwhile, it seems safer for Belgium to risk giving too much power and judicial protection, rather than jeopardising all criminal investigations (PFI and others) by creating a possibly unconstitutional separate regime.

49 **In the long run**, Belgium may eventually **shift the responsibility over all criminal investigations to the prosecution service** and limit the role of judges to granting the power to infringe on fundamental rights and ensuring conformity of law enforcement with law and fundamental rights. Such a reform will however not happen within the near future. On one matter, the Regulation does contain an exception to the Belgian rules on judicial tasks and powers. Belgian judges will not be able to block the removal of a Belgian case under investigation by a Belgian investigating judge to another EPPO member state if EPPO decides to do so. They can merely acknowledge this decision by EPPO.

50 Belgium also made the necessary adjustments to bring its Customs Service, which has investigative powers and a real prosecutorial role in criminal procedures related to Custom offences, under the authority of the EPPO and subjected to all EPPO policy decisions. Designated Customs officers will perform the hinge function between the two institutions. Interference or instructions from national (Customs) authorities to them have been banned explicitly by law.

51 In sum, the introduction of EPPO confronted Belgium not only with yet another European legal instrument, but also with some unanswered questions about the fundamental principles of its own legal system. Instead of speeding up the reform of the rules on

criminal procedure itself, which has now been under discussion in parliament for some time, Belgium opted for the path of least resistance. Time will tell if the current system works in practice.

II. The Start of Criminal Investigations according to the EPPO Regulation based on National Law (Measures)

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52 Belgium is *diverse* and this is not only reflected by its "internal borders" but as well by judicial and jurisdictional rules, see e.g. Art. 79 para 4 of the Judicial Code (see below → Art. 30 EPPO Regulation), which was amended in order to really accommodate the EPPO within Belgium and herewith as well within the language barriers that exist in Belgium. Academics point at the fact that:

53 > "Currently, a strict language border exists between three language regions: Flanders in the north, Wallonia in the south and the bilingual Brussels Region in the center of the country. This border reflects the ongoing efforts of the Flemish Movement to elevate the status of Dutch in public life, a reaction to the social, economic and political discrimination against Dutch-speakers in Flanders by the French-speaking elite during the 19th century (Willemyns, 2002)."[34]

54 Still the EPPO was received and integrated into the Belgian criminal & criminal tax as well as customs procedures system with little infractions.[35] But due to the language difficulties within the country a lot of documents will need to be translated in order to guarantee the rights of suspects and accused citizens.[36]

55 Prosecutors are called "magistrates" like in other countries with a Napoleonic history and designated as well as appointed by the High Council of Justice (*Hoge Raad voor de Justitie*). The national magistrates may according to Art. 309/2 of the Judicial Code act as European Delegated Prosecutors (on behalf and for the EPPO).

56 **Article 309/2**[37] **Code of Judicial Procedure** § 1. Magistrates may fulfil the tasks of European Chief Prosecutor, European Prosecutor and European Delegated Prosecutor

[34] Dekeyser 2020, pp 368–383.
[35] For an analysis see in-depth Careel, De Smedt 2022b, p 4.
[36] In this Country Chapter we either use the dutch version or the french version.
[37] Art. 309/2. § 1. Magistraten kunnen de opdrachten van Europese hoofdaanklager, Europese aanklager en gedelegeerd Europese aanklager vervullen overeenkomstig en volgens de voorwaarden voorzien in de verordening 2017/1939 van de Raad van 12 oktober 2017 betreffende nauwere samenwerking bij de instelling van het Europees Openbaar Ministerie ("EOM").
§ 2. De minister bevoegd voor Justitie wijst drie magistraten aan die voorgedragen worden om de opdracht van Europese aanklager te vervullen zoals bepaald in artikel 16, lid 1, van de in paragraaf 1 genoemde verordening.
Om te kunnen worden voorgedragen als Europese aanklager dient de kandidaat op het ogenblik van de aanwijzing:
1° het ambt van magistraat uit te oefenen waarvan in de laatste vijftien jaar ten minste tien jaar het ambt van magistraat van het openbaar ministerie;
2° houder te zijn van het getuigschrift bedoeld in artikel 43quinquies, § 1, derde lid, van de wet van 15 juni 1935 op het gebruik der talen in gerechtszaken, waaruit de kennis blijkt van de andere taal dan die van zijn diploma van doctor, licentiaat of master in de rechten.
§ 3. De minister bevoegd voor Justitie wijst ten minste één magistraat van de Nederlandstalige taalrol en één magistraat van de Franstalige taalrol aan die voorgedragen worden om de opdracht van gedelegeerd Europese aanklager te vervullen zoals bepaald in artikel 17, lid 1, van de in paragraaf 1 genoemde verordening.

in accordance with and under the conditions provided for in Council Regulation 2017/1939 of 12 October 2017 on enhanced cooperation in the establishment of the European Public Prosecutor's Office ("EPPO").
§ 2. The Minister competent for Justice appoints three magistrates who are nominated to fulfil the mandate of European Prosecutor as stipulated in Article 16, paragraph 1, of the regulation referred to in paragraph 1.
In order to be nominated as European Prosecutor, at the time of designation, the candidate must:
1° to exercise the office of magistrate, of which at least ten years in the last fifteen years the office of magistrate of the Public Prosecution Service;
2° to hold the certificate referred to in Article 43quinquies, § 1, third paragraph, of the Law of 15 June 1935 on the use of languages in court cases, which demonstrates knowledge of the language other than that of his doctorate degree, degree or master's degree in law.
§ 3. The Minister competent for Justice shall designate at least one magistrate of the Dutch-language register and one magistrate of the French-language register to be nominated to fulfil the mandate of European Delegated Prosecutor as provided for in Article 17(1) of the Regulations referred to in paragraph 1 said Regulation.
In order to be nominated as European Delegated Prosecutor, the candidate must, at the time of designation, hold the office of magistrate, of which at least five years in the last ten years as magistrate of the Public Prosecutor's Office.
§ 4. The Minister competent for Justice can only appoint the candidates referred to in paragraphs 2 and 3 after a joint advice from the Board of Procurators General and the Federal Prosecutor. They can hear the candidates for this.
The call in the Belgian Official Gazette states the way in which applications are submitted.
§ 5. The assignments are performed on a full-time basis.
Article 323bis applies.
During their assignment, the magistrates are not subject to the provisions of Part II, Book II, Title V.

Om te kunnen worden voorgedragen als gedelegeerd Europese aanklager dient de kandidaat op het ogenblik van de aanwijzing het ambt van magistraat uit te oefenen waarvan in de laatste tien jaar ten minste vijf jaar het ambt van magistraat van het openbaar ministerie.
§ 4. De minister bevoegd voor Justitie kan de kandidaten bedoeld in de paragrafen 2 en 3 slechts aanwijzen na gemeenschappelijk advies van het College van procureurs-generaal en de federale procureur. Zij kunnen de kandidaten daartoe horen.
De oproep in het Belgisch Staatsblad vermeldt de wijze waarop de kandidaturen worden ingediend.
§ 5. De opdrachten worden voltijds uitgeoefend.
Artikel 323bis is van toepassing.
Tijdens hun opdracht zijn de magistraten niet onderworpen aan de bepalingen van deel II, boek II, titel V.
§ 6. De gedelegeerd Europese aanklagers beschikken over een secretariaat waarvan de samenstelling [2, de nadere werkingsregels, het statuut, de rechtspositie en de wedde van de betrokken personeelsleden vastgesteld worden door de Koning.

§ 6. The European Delegated Prosecutors have a secretariat whose composition, the detailed operating rules, the statute, legal position and salary of the staff members concerned are determined by the King.

57 The current EDPs are *Jennifer Vanderputten* and *Pascale Vandeweyer* who are supervised by *Yves van den Berge*. They have an own secretariat and perform on a full-time basis (see above). In the 2020s the positions will change as the role as an EDP is limited to a special time in office. The regional office is located, alike to France, in the capital Brussels.

Figure 2: Overview EDPs in the Member States

Source: Van Den Berge 2022.

58 The **statistics of the first Annual Report** of the EPPO show that 18 investigations were opened and 8 (back-log) cases were evocated by the regional office. The typologies identified in EU fraud cases counts 7 in non-procurement related expenditure fraud and 8 cases of non-VAT revenue fraud. 16 Cross-border investigation requests were carried out in 2021.

59 **In 2023** the EPPO had **54 open investigations** in Belgium, whereby the estimated total damage was guessed to be 1,3 billion euros. **Three indictements** were filed, whereby eight persons were indicted. From 29 reports to the regional office, 9 stemed from national authorities. **One court decision** was reached. The most typical fraud was **non-procurement expenditure fraud** outnumbering **non-VAT revenue frauds**.[38]

[38] See https://www.eppo.europa.eu/sites/default/files/2022-03/CH2.2_EPPO-Annual-Report-2021-BE.pdf. Accessed 4 June 2024. And see EPPO Annual Report 2023 (published 1 March 2024), p. 16–17.

SECTION 1
Rules on investigations

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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, w thout prejudice to the rules set out in Article 25(2) and (3), initiate an investigation and note this in the case management system.2. Where upon verification in accordance with Article 24(6), the EPPO decides to initiate an investigation, it shall without undue delay inform the authority that reported the criminal conduct in accordance with Article 24(1) or (2).
3. Where no investigation has been initiated by a European Delegated Prosecutor, the Permanent Chamber to which the case has been allocated shall, under the conditions set out in paragraph 1, instruct a European Delegated Prosecutor to initiate an investigation.
4. A case shall as a rule be initiated and handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competences of the EPPO have been committed, the Member State where the bulk of the offences has been committed. A European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation where a deviation from the rule set out in the previous sentence is duly justified, taking into account the following criteria, in order of priority:
(a) the place of the suspect's or accused person's habitual residence;

(b) the nationality of the suspect or accused person;
(c) the place where the main financial damage has occurred.
5. Until a decision to prosecute under Article 36 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:
(a) reallocate the case to a European Delegated Prosecutor in another Member State;
(b) merge or split cases and, for each case choose the European Delegated Prosecutor handling it,
if such decisions are in the general interest of justice and in accordance with the criteria for the choice of the handling European Delegated Prosecutor in accordance with paragraph 4 of this Article.
6. Whenever the Permanent Chamber is taking a decision to reallocate, merge or split a case, it shall take due account of the current state of the investigations.
7. The EPPO shall inform the competent national authorities without undue delay of any decision to initiate an investigation.

Table 4: Overview Box for Art. 26 EPPO Regulation (PIF offences etc.) in Belgium **1**

Overview	
Relevant national law	Sources: Criminal Procedure Code (*Wetboek van Strafordering Belgie*), Criminal Code (*Strafwetboek*), Belgian Customs Code Chapter XXII Control measures Chapter XXIII Right of administrative appeal Chapter XXIIIbis Tax reconciliation Chapter XXIV **Fines and penalties in general** Chapter XXIVbis Administrative penalties Chapter XXV Chapter XXVbis Minutes, contravention statements, seizures and prosecutions European Public Prosecutor's Office Belgian Tax Code, Law of 7 April 2019 amending the law of 17 June 2016 on public procurement, the law of

	June 17 2016 on the concession agreements, the law of 13 August 2011 on public procurement and certain work orders, supplies and services on defence and security area and amending the law of 4 May 2016 on the reuse of government information – 16 April 2019 (*Wet van 7 april 2019 tot wijziging van de wet van 17 juni 2016 inzake overheidsopdrachten, de wet van 17 juni 2016 betreffende de concessieovereenkomsten, de wet van 13 augustus 2011 inzake overheidsopdrachten en bepaalde opdrachten voor werken, leveringen en diensten op defensie- en veiligheidsgebied en tot wijziging van de wet van 4 mei 2016 inzake het hergebruik van overheidsinformatie – BS 16 april 2019*); Law of 30 June 2017 on measures in the fight against tax fraud (*Wet van 30 juni 2017 houdende maatregelen in de strijd tegen de fiscale fraude (BS van 07 juli 2017*); April 3, 1997 – Law on the tax system of manufactured tobacco (*3 APRIL 1997 – Wet betreffende het fiscaal stelsel van gefabriceerde tabak*).
"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…" See *Strafwetboek*, the Belgian Criminal Code (the diferent PIF offences are listed separately below in the first chapter). The main fraud offences are enshrined in the *Strafwetboek*: CHAPTER II. DECEPTION. SECTION I. [Crimes related to insolvency] Art. 489, 489bis, 489ter, 489quater, 489d, 489sexies, 490, 490bis, 490ter, 490quater SECTION II. ABUSE OF TRUST. Art. 491–492, 492bis, 493–495, 495bis SECTION III. FRAUD AND DECEPTION. Art. 496–497, 497bis, 498–501, 501bis, 502–504 → **see below** "The PIF offences in Belgium" DIVISION IIIBIS Art. 504bis, 504b SECTION IIIbis. Computer fraud

	Special subsidy fraud related provisions are enshrines in a Royal Decree, **see below** → "PIF offences in Belgium".
Sanctions for legal persons	Do not confuse with Art. 31–34 et seq. *Strafwetboek*, which relate only to natural persons. Art. 7bis, 41bis *Strafwetboek* relates to the legal person and its criminal liability under Belgian criminal procedure law.
"[Competence of] a European Delegated Prosecutor in a Member State [Belgium]"	Art. 47quaterdecies and Art. 47quindecies CPC, Art. 156 Code of Judicial Procedure (**see below** → Art. 28, 30 EPPO Regulation).
"Jurisdiction"	Cf. ss. from the Belgian Criminal Code and Art. 11 of the PIF Directive. * Do not tangle up with the jurisdiction of the court to hear an EU fraud offence (i.e. in Belgium the regional court) cf. the Belgian Judicial Court (Articles 556 to 663), The territorial jurisdiction in purely national cases or cases below the threshold sums of the Directive (EU) 2017/1371 can be researched on an online website.[39]

Source: The authors.

a) Initiation of Investigations by Virtue of Art. 26 para 1 EPPO Regulation

Art. 26 needs to be seen independent from Art. 27. Art. 26 stands on its own and describes a **principle of legality at Union level**, which has the effect of protecting the Unions's (own) financial interests. This principle is thus opposite to the Belgian standard in similar national situations, which relies on an opportunity principle that enables discretionary actions.[40] Belgian EDPs must therefore stick to a "new" principle, which is more common in other European countries like Germany (s. 152 para 2 CPC, see the German Country Chapter). The role of the criminal investigation in Belgium is described by **Art. 28bis** in the CPC. The role of the Belgian prosecutor, compared to the EPPO is regulated by **Chapter IVbis** of the CPC in the **Art. 47duodecies** et seq. **2**

[39] See https://territoriale-bevoegdheid.just.fgov.be/cgi-main/competence-territoriale.pl. Accessed 4 June 2024.
[40] See in-depth Careel, De Smedt 2022b, pp 8 et seq., with an equal list on p 3.

3 **Section 1bis. The Investigation Article 28bis**[41] § 1. The criminal investigation is the *entirety of the acts aimed at tracing the crimes*, their perpetrators and their evidence and collecting the data that are useful for the execution of criminal proceedings.
The general principles according to which the police services can act autonomously are laid down by law and according to the special rules established by directive issued in accordance with Articles 143bis and 143ter of the Judicial Code.
Irrespective of the provisions of the previous paragraphs, the criminal investigation is conducted under the direction and authority of the competent public prosecutor. He bears the responsibility for this.
§ 2. The criminal investigation extends over the proactive investigation. This means, for the purpose of prosecuting perpetrators of crimes, tracing, collecting, registering and processing data and intelligence *on the basis of reasonable suspicion of criminal offences already committed or already committed but not yet brought to light*, as well as acts, and which are or would be committed in the context of a criminal organisation, as defined by law, or constitute or would constitute crimes or misdemeanours as referred to in Article 90ter, §§ 2, 3 and 4. The initiation of a proactive investigation requires prior written consent, given by the public prosecutor, the labour prosecutor, (or the federal prosecutor) in the context of their respective competence, without prejudice to compliance with the specific legal provisions that limit the (special investigative methods and other methods).
§ 3. Subject to statutory exceptions, investigative acts may not involve any coercive measure or violate individual rights and freedoms. These acts may, however, entail the seizure of the items referred to in (Articles 35 and 35ter).

[41] **Afdeling 1BIS. Het Opsporingsonderzoek Art. 28bis Wetboek van Strafordering Belgie** § 1. Het opsporingsonderzoek is het geheel van de handelingen die ertoe strekken de misdrijven, hun daders en de bewijzen ervan op te sporen en de gegevens te verzamelen die dienstig zijn voor de uitoefening van de strafvordering.
De algemene beginselen volgens welke de politiediensten autonoom kunnen optreden, worden vastgelegd bij wet en volgens de bijzondere regels vastgesteld bij richtlijn uitgevaardigd overeenkomstig de artikelen 143bis en 143ter van het Gerechtelijk Wetboek.
Ongeacht hetgeen is bepaald in de vorige leden, wordt het opsporingsonderzoek gevoerd onder de leiding en het gezag van de bevoegde procureur des Konings. Hij draagt hiervoor de verantwoordelijkheid.
§ 2. Het opsporingsonderzoek strekt zich uit over de proactieve recherche. Hieronder wordt verstaan, met het doel te komen tot het vervolgen van daders van misdrijven, het opsporen, het verzamelen, registreren en verwerken van gegevens en inlichtingen op grond van een redelijk vermoeden van te plegen of reeds gepleegde maar nog niet aan het licht gebrachte strafbare feiten, en die worden of zouden worden gepleegd in het kader van een criminele organisatie, zoals gedefinieerd door de wet, of misdaden of wanbedrijven als bedoeld in artikel 90ter, §§ 2, 3 en 4, uitmaken of zouden uitmaken. Het instellen van een proactieve recherche behoeft voorafgaande schriftelijke toestemming, door de procureur des Konings, de arbeidsauditeur, (of de federale procureur) gegeven in het kader van hun respectieve bevoegdheid, onverminderd de naleving van de specifieke wettelijke bepalingen die de (bijzondere opsporingsmethoden en andere methoden) regelen.
§ 3. Behoudens de wettelijke uitzonderingen mogen de opsporingshandelingen geen enkele dwangmaatregel inhouden noch schending inhouden van individuele rechten en vrijheden. Deze handelingen kunnen evenwel de inbeslagneming van de zaken vermeld in (de artikelen 35 en 35ter) inhouden.
De procureur des Konings waakt voor de wettigheid van de bewijsmiddelen en de loyaliteit waarmee ze worden verzameld.

The Public Prosecutor watches over the legality of the evidence and the loyalty with which it is collected.

Article 28ter[42] § 1. The prosecutor of the King has a general duty to investigate and a general right to investigate. Within the framework of the investigative policy determined in accordance with Articles 143bis and 143ter of the Judicial Code, the Public Prosecutor determines the matters in which the crimes are investigated as a priority in his district.
§ 2. The officers and agents of the judicial police who act on their own initiative inform the Public Prosecutor about the investigations carried out within the term and in the manner laid down by the directive. If these investigations have an interest in a criminal investigation or a judicial investigation that is underway in another district, the judicial

[42] **Art. 28ter. Wetboek van Strafordering Belgie** § 1. De procureur des Konings heeft een algemene opsporingsplicht en een algemeen opsporingsrecht. In het kader van het overeenkomstig de artikelen 143bis en 143ter van het Gerechtelijk Wetboek bepaalde opsporingsbeleid, bepaalt de procureur des Konings de materies waarin in zijn arrondissement de misdrijven prioritair worden opgespoord.
§ 2. De officieren en agenten van gerechtelijke politie die op eigen initiatief handelen, lichten de procureur des Konings in over de gevoerde opsporingen binnen de termijn en op de wijze die deze bij richtlijn vastlegt. Als deze opsporingen belang hebben voor een opsporingsonderzoek of een gerechtelijk onderzoek dat loopt in een ander arrondissement, wordt de betrokken gerechtelijke overheid hierover onmiddellijk ingelicht door de officieren en agenten van gerechtelijke politie en door de procureur des Konings.
§ 3. De procureur des Konings heeft het recht (de politiediensten bedoeld in artikel 2 van de wet op het politieambt, en alle andere officieren van gerechtelijke politie) te vorderen om, met uitzondering van de door de wet ingestelde beperkingen, alle voor het opsporingsonderzoek noodzakelijke handelingen van gerechtelijke politie te doen volbrengen. ´Deze vorderingen worden gedaan en uitgevoerd overeenkomstig (de artikelen 8 tot 8/3 en 8/6 tot 8/8 van de wet op het politieambt en, wat de federale politie betreft, overeenkomstig artikel 110 van de wet van 7 december 1998 tot organisatie van een geïntegreerde politiedienst, gestructureerd op twee niveaus). De gevorderde politiediensten zijn gehouden gevolg te geven aan de vorderingen en de voor de uitvoering noodzakelijke medewerking van de officieren en agenten van gerechtelijke politie te verlenen. <W 1998-12-07/31, art. 218, De procureur des Konings en de arbeidsauditeur, hebben in het kader van het opsporingsonderzoek, een vorderingsrecht ten aanzien van de inspectiediensten bedoeld in artikel 16, 1°, van het Sociaal Strafwetboek. Zij kunnen de inspectiediensten vorderen om, in het kader van hun bevoegdheden, alle voor het opsporingsonderzoek noodzakelijke handelingen te volbrengen. Dit vorderingsrecht doet geen afbreuk aan de bevoegdheden van de arbeidsinspectie, voorzien in artikel 21 van het Sociaal Strafwetboek voor andere inbreuken dan die waarop de vordering van de procureur des Konings of van de arbeidsauditeur betrekking heeft en die in de uitvoering hiervan worden vastgesteld. Enkel de feiten die het voorwerp uitmaken van de vorderingen van het openbaar ministerie en voor dewelke een opsporingsonderzoek werd aangevat, kunnen niet meer het voorwerp uitmaken van een verwittiging of van het vaststellen van een regularisatietermijn. Wanneer een politiedienst of een inspectiedienst aan de procureur des Konings of de arbeidsauditeur niet het vereiste personeel en de nodige middelen kan geven, kan de procureur des Konings of de arbeidsauditeur het dossier meedelen aan de procureur-generaal, waarbij hij hem inlicht over de toestand. De procureur-generaal kan het dossier voorleggen aan het college van procureurs- generaal dat de nodige initiatieven neemt.
§ 4. De procureur des Konings kan de politiedienst of -diensten aanwijzen die in een bepaald onderzoek met de opdrachten van gerechtelijke politie worden belast en waaraan, behoudens uitzondering, de vorderingen zullen worden gericht. Indien meerdere diensten worden aangewezen, ziet de procureur des Konings toe op de coördinatie van hun optreden.
De politieambtenaren van de overeenkomstig het vorige lid aangewezen politiedienst lichten dadelijk de bevoegde gerechtelijke overheid in over de informatie en inlichtingen in hun bezit en over elke ondernomen opsporing op de door de procureur des Konings vastgestelde wijze. Voor al de opdrachten van gerechtelijke politie betreffende deze aanwijzing hebben deze politieambtenaren voorrang op de andere politieambtenaren, welke dadelijk de bevoegde gerechtelijke overheid en de aangewezen politiedienst inlichten over de informatie en inlichtingen in hun bezit en over elke ondernomen opsporing, op de wijze die de procureur des Konings bij richtlijn bepaalt.

authorities concerned are immediately informed by the officers and agents of the judicial police and by the public prosecutor.
§ 3. The Public Prosecutor has the right to demand (the police services referred to in Article 2 of the Police Service Act, and all other officers of the judicial police) to, with the exception of the restrictions imposed by law, charge all for the criminal investigation necessary actions of the judicial police. These claims are made and executed in accordance with (Articles 8 to 8/3 and 8/6 to 8/8 of the Police Service Act and, as regards the Federal Police, in accordance with Article 110 of the Law of 7 December 1998 on Organisation of an integrated police force, structured on two levels). The requested police services are obliged to follow up the claims and to provide the necessary cooperation for the execution of the officers and agents of the judicial police. <L 1998-12-07/31, Article 218,
The Public Prosecutor and the labour prosecutor have, in the context of the criminal investigation, a right of action against the inspection services referred to in Article 16, 1°, of the Social Criminal Code. They can demand that the inspection services, within the framework of their powers, perform all actions necessary for the criminal investigation. This right of action does not affect the powers of the labour inspectorate, provided for in Article 21 of the Social Criminal Code for infringements other than those to which the claim of the Public Prosecutor or of the labour prosecutor relates and which are established in the implementation thereof. Only the facts that are the subject of the claims of the Public Prosecution Service and for which a criminal investigation has been initiated can no longer be the subject of a warning or of the determination of a regularization period. When a police service or an inspection service] 1 cannot provide the public prosecutor or the labour prosecutor with the required personnel and the necessary resources, the public prosecutor or the labour prosecutor can communicate the file to the public prosecutor, informing him about the situation. The Prosecutor General can submit the file to the Board of Procurators General, which takes the necessary initiatives.
§ 4. The Public Prosecutor may designate the police service or services that are charged with the tasks of the judicial police in a particular investigation and to which, barring exceptions, the claims will be directed. If several services are designated, the Public Prosecutor supervises the coordination of their actions.
The police officers of the police service designated in accordance with the previous paragraph shall immediately inform the competent judicial authority of the information and intelligence in their possession and of any investigation undertaken in the manner determined by the Public Prosecutor. For all the assignments of the judicial police concerning this designation, these police officers have priority over the other police officers, who promptly inform the competent judicial authority and the designated police service of the information and intelligence in their possession and of any investigation undertaken, in the manner determined by the prosecutor of the King by directive.

Chapter IVbis. The Federal Attorney

Article 47duodecies[43] § 1. In exercising his powers, the federal prosecutor has all the legal powers of the public prosecutor. Within this framework, he can carry out all investigative acts or to carry out or order acts of judicial inquiry that fall within its competence, as well as to carry out criminal proceedings.

§ 2. The federal prosecutor takes all urgent measures necessary for the exercise of criminal proceedings, as long as a public prosecutor has not exercised his legally determined powers. These measures are binding for the public prosecutor.

§ 3. When exercising the power specified in Article 144ter, § 1, 2°, of the Judicial Code, the federal prosecutor only brings this case before the President of the investigating judges specialised to take cognizance of the offences referred to in the Articles 137 to 141 of the Criminal Code, who assigns the file to one of these investigating judges.

This President may at any time appoint several examining magistrates specialised to take cognizance of the offences referred to in Articles 137 to 141 of the Criminal Code for the same case.

Article 47tredecies[44] A federal magistrate is charged with supervising the operation of the General Directorate of the Judicial Police of the Federal Police. In particular, this magistrate ensures that the specialised judicial tasks are carried out by this general directorate in accordance with the demands and guidelines of the judicial authorities.

A federal magistrate is charged with the specific supervision of the functioning of the "anti-corruption service" within the general directorate of the judicial police of the federal police. This magistrate reports annually to the Minister of Justice. The report is

[43] **Hoofdstuk IVbis. (De Federale Procureur). Art. 47duodecies. Wetboek van Strafordering Belgie**

§ 1. Bij de uitoefening van zijn bevoegdheden beschikt de federale procureur over alle wettelijke bevoegdheden van de procureur des Konings. In het kader daarvan kan hij over het gehele grondgebied van het Rijk alle opsporingshandelingen of handelingen van gerechtelijk onderzoek verrichten of gelasten die tot zijn bevoegdheden behoren, alsmede de strafvordering uitoefenen.

§ 2. De federale procureur neemt alle dringende maatregelen die met het oog op de uitoefening van de strafvordering noodzakelijk zijn, zolang een procureur des Konings zijn wettelijk bepaalde bevoegdheid niet heeft uitgeoefend. Deze maatregelen zijn bindend voor de procureur des Konings.

§ 3. Wanneer hij de bij artikel 144ter, § 1, 2°, van het Gerechtelijk Wetboek bepaalde bevoegdheid uitoefent, maakt de federale procureur deze zaak uitsluitend aanhangig bij de deken van de onderzoeksrechters gespecialiseerd om kennis te nemen van de misdrijven bedoeld in de artikelen 137 tot 141 van het Strafwetboek,
die het dossier toewijst aan één van deze onderzoeksrechters.

Deze deken kan op elk ogenblik verscheidene onderzoeksrechters gespecialiseerd om kennis te nemen van de in de artikelen 137 tot 141 van het Strafwetboek bedoelde misdrijven, aanstellen voor éénzelfde zaak.

[44] **Art. 47tredecies. Wetboek van Strafordering Belgie**

Een federale magistraat wordt belast met het toezicht op de werking van de algemene directie van de gerechtelijke politie van de federale politie. Deze magistraat waakt er in het bijzonder over dat de gespecialiseerde gerechtelijke opdrachten door deze algemene directie worden uitgevoerd overeenkomstig de vorderingen en richtlijnen van de gerechtelijke overheden.

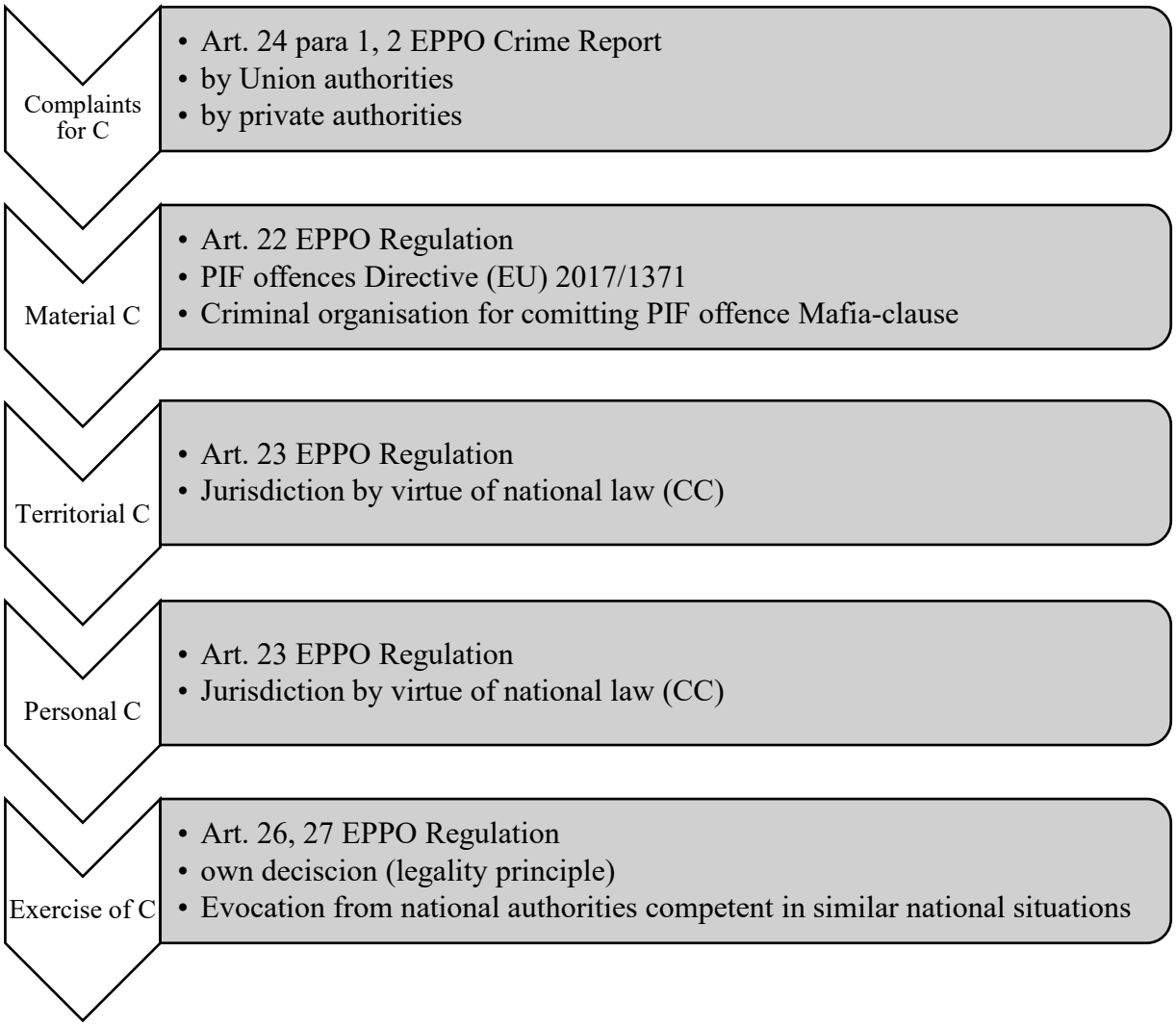
Een federale magistraat wordt belast met het specifieke toezicht op de werking van de "dienst ter bestrijding van de corruptie" binnen de algemene directie van de gerechtelijke politie van de federale politie. Deze magistraat brengt jaarlijks verslag uit aan de minister van Justitie. Het verslag wordt door de minister van Justitie aan de Wetgevende Kamers medegedeeld. Deze magistraat kan door het Parlement worden gehoord over de algemene werking van deze "dienst ter bestrijding van de corruptie".

communicated by the Minister of Justice to the Legislative Chambers. This magistrate can be heard by Parliament on the general functioning of this "anti-corruption service".

4 The Belgian EDPs have been given the same powers as the national magistrates and the legislator has therefore amended the CPC and integrated new provisions: Chapter IVter. The European Prosecutor and the European Delegated Prosecutors, Art. 47quaterdecies and Art. 47quindecies (see above → III. Sources of Law).

5 *Figure 3: EPPO – Exercise of competence in general*

6



But what is the effect of the reference to national law? How have the cases been exercised in practice and what is the situation after one year of operational work?

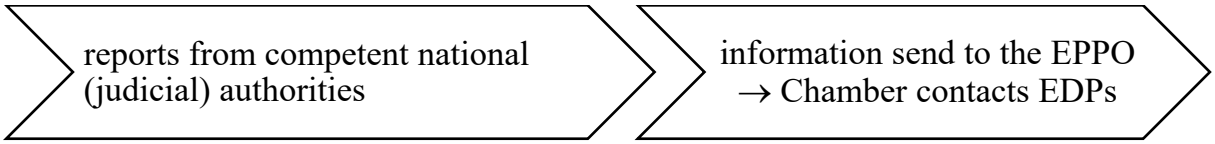
7 The EPPO Annual Report 2021 provides information on the exercise of jurisdiction under Articles 26 and 27 EPPO Regulation.

b) Relevant Sources of the Indications for a Criminal Offence Falling within the Competence of the EPPO

> "In order to achieve its goals, the EPPO will need to establish smart information flows between the central office in Luxembourg, delegated prosecutors, and national authorities and, at the same time, avoid causing delays in the information exchange. […] In this regard, some of the existing EU mechanisms concerning de facto reporting of PIF crimes seem to be obsolete, as well as national law duties to report such information to a national prosecution office in advance or in parallel to the EPPO."[45] **8**

A distinction can be made between the direct and the indirect path for the transfer of information related to the competence: **9**

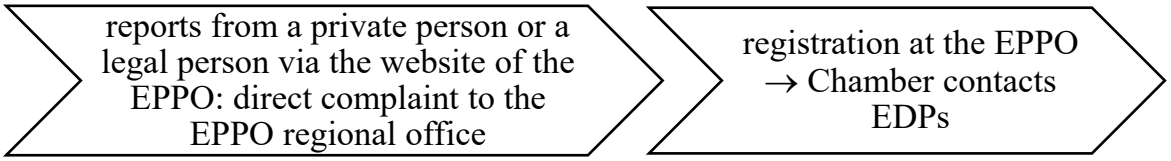
Figure 4: National (indirect way of) Obtaining information for the EPPO competence and the exercise of jurisdiction **10**



Art. 24 para 8: Art. 29, 29bis, 30, 31 CPC. Art. 32 and 33 relate to reports as well.

Art. 29bis. If a criminal investigation reveals indications of fraud relating to direct or indirect taxes, the public prosecutor informs the Minister of Finance or the service he designates and grants access and a copy unless the file is inspected and taking a copy of the file could jeopardize ongoing criminal investigation When the tax administration imposes taxes, including surcharges and surcharges, increases, administrative and fiscal fines, for the offences referred to in the first paragraph, this does not preclude criminal proceedings insofar as the fiscal and criminal treatment of the tax authorities facts are part of a coherent whole in time and content.] **11**

Figure 5: Supranational (direct way of) Obtaining information for the EPPO competence and the exercise of jurisdiction **12**



Another, third source of information are the Union bodies, which are obliged to report either to OLAF or to the EPPO (e.g. obliged by **Working Agreements**) – depending on the seriousness of the suspected conduct: irregularities only or clear foundations for potential criminal offences. **National authorities**, who report to OLAF need to obey eventually own Belgian Guidelines on how to report irregularities and fraud to the European Commission, EPPO, or OLAF. **13**

[45] Klement 2021, pp 51–52.

14 OLAF will either way report conduct that falls in the EPPO's competence by virtue of Art. 12c OLAF Reg.

aa. Determination of the Competence and Verification of Crime Reports

15 The first task of the EDPs in a Belgian regional office is to determine whether the EPPO has competence and jurisdiction or can obtain competence and exercise jurisdiction (see below, Art. 27 → p. 128).

16 These are formal but essential questions. They are determined by means of Union secondary legislation and special delegated guidelines required by secondary legislation, the so-called **Internal Rules on Procedure [of the EPPO]**. This depends on the criteria of the Regulation (see Art. 22, 23).

Nota bene: There are rules issued by the EPPO Chamber but they apply for Art. 27 Right of evocation. Art. 26 para 5 and 6 refer to special rules on splitting or merging cases on Italian territory if different regional offices have intiated an investigation in similar cases.

(1) The Union Standards, Art. 24 para 6 et seq. EPPO Regulation

17 For the EPPO to be competent, the requirements of the Regulation must be met.

18 Either an examination according to Art. 24 para 6 must show that the EPPO is competent or the delegated prosecutor carries out an examination and assessement by virtue of Art. 26 para 1 EPPO Regultion himself/herself without informing the Permanent Chamber and initiates an investigation about which he/she subsequently informs the Permanent Chamber.

19 The IRP rules state the following:

> ***Article 40: Verification of information [Internal Rules of Procedure, 2020-12-/2020.003 IRP – EPPO]***
> 1. The verification for the purpose of initiating an investigation shall assess whether:
> a) the reported conduct constitutes a criminal offence falling under the material, territorial, personal and temporal competence of the EPPO;
> b) ***there are reasonable grounds*** **under** ***the applicable national law*** to believe that an offence is being or has been committed;
> c) there are obvious legal grounds that bar prosecution;
> d) where applicable, the conditions prescribed by Article 25(2), (3) and (4) of the Regulation are met.
> 2. The verification for the purpose of evocation shall additionally assess:
> a) the maturity of the investigation;
> b) the relevance of the investigation with regard to ensuring the coherence of the EPPO's investigation and prosecution policy;

c) the cross-border aspects of the investigation;
d) the existence of any other specific reason, which suggests that the EPPO is better placed to continue the investigation.
3. The ***verification shall be carried out using all sources of information available*** to the EPPO as well as any sources ***available to the European Delegated Prosecutor***, ***in ac-cordance with applicable national law***, including ***those otherwise available to him / her if acting in a national capacity***. The European Delegated Prosecutor may make use of the staff of the EPPO for the purpose of the verification. Where appropriate, the EPPO may consult and exchange information with Union institutions, bodies, offices or agencies, as well as national authorities, subject to the protection of the integrity of a possible future criminal investigation.
4. The European Delegated Prosecutor shall finalise the verification related to the evocation of an investigation at least 2 days before the expiration of the deadline prescribed by Article 27(1) of the Regulation. The verification related to initiating an investigation shall be finalised no later than 20 days following the assignment.
5. If the European Delegated Prosecutor does not finalise the verification on whether or not to initiate an investigation within the prescribed time limit, or he/she informs their inability to do so within the foreseen time limit, the European Prosecutor shall be informed and where deemed appropriate extend the time available or issue an appropriate instruction to the European Delegated Prosecutor.
6. Where it concerns a decision on evocation, the European Delegated Prosecutor may ask the European Chief Prosecutor to extend the time limit needed to adopt a decision on evocation by up to 5 days.
7. Where the European Delegated Prosecutor does not issue a decision within the time limit, it shall be treated as a consideration not to evoke a case, and Article 42 applied accordingly.

The requirements of Art. 25 para 2 and 3 must be observed but he/she can still initiate an investigation "without prejudice to the rules set out in Article 25(2) and (3)". The provisions, jurisdiction (eg territory), thresholds ie " € " of the Regulation and orders of the Luxembourg Chamber must exist for the exercise of competence. **20**

- ***Article 22 Material competence of the EPPO*** **21**

  PIF Implementation (see below → p. 96).

  National databases and information according to Art. 40 para 3 IRP
- ***Article 23 Territorial and personal competences of the EPPO***
- The EPPO is competent if:

  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.

22 - ***Article 24 Communication, registration and verification of information***
The transfer of information to the relevant EDPs or the chamber of the EPPO is mainly regulated by Art. 24 EPPO Regulation. The transfer of information that could establish an inital suspicion for a PIF offence depends on the suspected concrete offence.
We can refer **to the transfer of information** outlined by the Notification of the Government from 2021 by virtue of Art. 117 EPPO Regulation[46]

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

23 The competence in cross-border cases, which involve several investigations is not decided by the EDPs on their own but by the EPPO Chamber in accordance with Art. 26 para 4 EPPO Regulation.

(3) Jurisdiction of the European Delegated Prosecutor

24 There seems to be no internal allocation of jurisdiction but the special jurisdiction adopted by the Law of 17 February 2021, which encompasses the whole territory of the Kingdom of Belgium:

25 **Article 156/1 Code of Judicial Procedure**[47]
§ 1. The European Public Prosecutor and the Delegated European Public Prosecutors appointed in accordance with Article 309/2 [see above IV.] *shall have jurisdiction throughout the territory of the Kingdom to prosecute offences affecting the financial interests of the European Union* in accordance with Articles 4, 22 and 23 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation with regard to the establishment of the European Public Prosecutor's Office.
§ 2 When exercising their jurisdiction in the cases and according to the modalities determined by the law and the same Regulation (EU) 2017/1939, the European Public Prosecutor and the Delegated European Public Prosecutors *shall exercise all the functions of the public prosecutor in criminal cases before the courts of appeal, the assize courts and the courts of first instance*.
§ 3 The Public Prosecutor, the Public Prosecutor General or the Federal Public Prosecutor shall inform the Delegated European Public Prosecutors without undue delay when an offence referred to in paragraph 1 is referred to him in accordance with the procedures laid down in a circular of the College of Public Prosecutors.

[46] From the point-of-view of Brodowski, Herrnfeld in Herrnfeld, Esser 2022, Art. 117 EPPO is only an indication for PIF implementation laws and has no legal validity character.
[47] See above Synopsis Lex specialis. See in-depth Careel, De Smedt 2022b, p 5.

§ 4 In the cases referred to in paragraph 3, the Delegated European Public Prosecutors shall decide whether to prosecute themselves.
In accordance with Article 25(6) of the same Regulation (EU) 2017/1939 and without prejudice to the other provisions of that Regulation, if the Delegated European Public Prosecutors, the Public Prosecutor or the Federal Public Prosecutor wishes to challenge the decision of the Delegated European Public Prosecutors to prosecute the case themselves, he or she shall refer the matter to the College of Public Prosecutors, which shall decide, after consultation with the Delegated European Public Prosecutors and the Public Prosecutor, the Public Prosecutor or the General Prosecutor or the Federal Public Prosecutor concerned, who shall be responsible for the prosecution of the case. The decision of the Board of Prosecutors General is not subject to appeal.
No nullity may be invoked with regard to the division of competence, as regards the exercise of public action, between the Public Prosecutor or the Public Prosecutor General or the Federal Public Prosecutor, on the one hand, and the Delegated European Public Prosecutors, on the other hand.
The College of Prosecutors General may refer a question to the Court of Justice for a preliminary ruling in accordance with Article 42(2)(c) of Regulation (EU) 2017/1939.

Article 47 CPC[48] When the Public Prosecutor, except in the cases of (Articles 32, 46 and 46bis), learns through a report or in any other way that a crime or misdemeanour has been committed in his district or that someone (that of a crime or misdemeanour), is in his district, (he can demand) that the investigating judge will order an investigation and even that he will go to the spot if necessary, in order to draw up all necessary official reports there, such as determined in the chapter Investigating judges. **26**

(4) Internal Agreement on Jurisdiction of the Regional Office of the EPPO in the Present Country as Stipulated by the EPPO Adoption Act?

In Belgium there seems to be no internal agreement on Jurisdiction of the Brussels office. The Judicial Code applies.

bb. How to Assess and Verify the Suspicion Level according to Art. 26 para 1 and the CPC for a Criminal Offence falling within the Competence of the EPPO

The initial suspicion is only to determine the impetus, so to speak, the ball that gets the criminal proceedings rolling if saying it by using a metaphor. The way in which the **27**

[48] **Art. 47.** Wanneer de procureur des Konings, buiten de gevallen van (de artikelen 32, 46 en 46bis), door een aangifte of op enige andere wijze verneemt dat er een misdaad of een wanbedrijf in zijn arrondissement is gepleegd of dat iemand (die van een misdaad of wanbedrijf verdacht wordt), zich in zijn arrondissement bevindt, (kan hij vorderen) dat de onderzoeksrechter een onderzoek zal bevelen en zelfs dat hij zich zo nodig ter plaatse zal begeven, ten einde aldaar alle nodige processen-verbaal op te maken, zoals bepaald in het hoofdstuk Onderzoeksrechters.

public prosecutor's office learns, for example, of the suspicion of subsidy fraud[49] or an offence detrimental to the Union's financial interests according to the *EPPO Adoption Act and PIF Implementation Decree Law*, is addressed by Union law and the communication with the national authorities and Art. 40 para 3 IRP [2020.003 EPPO].

(1) The PIF Offences in Belgium (Overview)/*De PIF-misdrijven in België*

28 The **PIF Directive (EU) 2017/1371**, which determines the material scope of the EPPO's investigations has been implemented in Belgium or was partly implemented prior to the transposition deadline.[50] Offences might be committed by natural persons. In addition to that legal persons might be held accountable by Art. 5 et seq. **Belgian Criminal Code, which was reformed on 8th April 2024 (in force: 2026)**.[51] All objective elements and the *mens rea* of an offence need to be assessed Complicity, instigation and aiding and abetting must be examined. But peculiarities of the local jurisprudence must be obeyed, too e.g. the Court of Cassation held in relation to Art. 496 CC that: "For a final conviction of a defendant as an accomplice to an offence of fraud, it is not necessary for the judge to find that the acts of participation contain all the elements of the offence; it is sufficient that it is proved that an offender committed the offence of fraud and that the accomplice knowingly participated in the commission of that offence by using one of the forms of participation set out in paragraphs 2 and 3 of Article 66 of the Criminal Code. (Criminal Code, Art. 66 and 496.)"[52]

[49] Compare a national case Court of Cassation of Belgium – 13 march 2018 – P.17.0083.N ECLI:BE:CASS:2018:ARR.20180313.2.

[50] See in-depth Careel, De Smedt 2022b, p 8 et seq., with an equal list on p. 10.

[51] See e.g. Court of Cassation of Belgium – 08 February 2022 – P.21.1278.N, ECLI:BE:CASS:2022:ARR.20220208.2N.5: "Article 5 of the Criminal Code does not exclude a legal person who is represented in law or in fact by only one person from criminal responsibility; consequently, an autonomous debt pattern can also be established with such a legal person, irrespective of the fact that account is taken of the conduct or omissions of the only representative (1); the moral imputability of an act described as a crime to a legal person should not always be the subject of a specific investigation, but may be apparent from the information provided by the general investigation into the facts; the court determines whether the information submitted to it is sufficient to make an informed assessment of the imputability referred to. (1) Cass. March 3, 2015, AR P.13.1261.N, AC 2015, no. 151; Cass. 30 April 2013, AR P.12.1290.N, AC 2013, no. 270 and Cass. 20 April 2011, AR P.10.2026.F, AC 2011, no. 269." (Our translation). And see de Smet and Janssens 2019, p. 49 et seq.

[52] See Court of Cassation - 6 February 1973, ECLI:BE:CASS:1973:ARR.19730206.6.

Sources and national sections 1: PIF offences in Belgium (Infractions portant atteinte au budget de l'Union en Belgique/Inbreuken ten nadele van de begroting van de Unie in België) **29**

CC fraud offences/Roycal Decree concerning subsidy fraud	**CC corruption + AML offences**	**Tax and Customs (Decree/Code) offences**
•Art. 488 (Computer fraud) •Art. 498 Penal Code •Art. 499 Penal Code Art. 500 et seqq. Penal Code (see already above, first table and see → Annex applicable from 1st January 2026) •**Susbidy fraud** •Art. 1 of the royal decree of May 31, 1933 concerning the declarations to be made with regard to subsidies and allowances, replaced by the law of June 7, 1994 and modified by the law of June 26, 2000 •Articles 2, 3, 4 of the Royal Decree of May 31, 1933 concerning the declarations to be made with regard to subsidies and allowances, replaced by the law of June 7, 1994 and modified by the law of June 26, 2000	•**Corruption related offences:** •**new CC (8th April 2024, see → Annex)** •**Art. 487** •**old CC** •article 245 •article 246 •article 247 CC •article 248 •article 249 of the Penal Code •**AML related offences:** •mainly Art. 505 CC	• Chapter XXIV. Art. 220 et seqq. Customs Code •Art. 256 Customs Code • Art. 250 Penal Code • Art. 262 Penal Code •TVA/VAT -Code: •Art. 73 •Art. 73bis •Art. 73nonies •Art 73decies •Art 73quinquies •(see below for the law in full length)

* In relation to that pls. take into account that all these offences might be attempted and committed by aiding and abetting as well as other forms of participation like incitement.[53] They might as well be, hypothetically be justified (justificatory defences). **30**

We refer therefore to the provisions of the Belgian Criminal Code, see: **31**

[Excerpt Criminal Code/*Uittreksel Wetboek van Strafrecht*]

CHAPTER IV. ATTEMPTED CRIME OR MISCONDUCT, Art. 51–53

CHAPTER VII. PARTICIPATION OF SEVERAL PERSONS IN THE SAME CRIME OR MISCONDUCT, Art. 66–69

[53] See already the Belgian Notification to the EPPO, https://www.eppo.europa.eu/sites/default/files/2021-11/04-BE_0.pdf, p. 9 et seq. Accessed 4 June 2024.

CHAPTER VIII. JUSTIFICATION AND EXCUSES, Art. 70–78
CHAPTER IX. MITIGATING CIRCUMSTANCES, Art. 79–85
CHAPTER X. NULLIFICATION OF PUNISHMENTS, Art. 86–99[54]

(a) PIF-related Offences in the Belgian Criminal Code: Fraud and Money Laundering/*Fraude en ambtsmisbruik, omkoping*

32 On the following pages the provisions from the Codes that contain the fraud laws and the subsequent legislation implementing the PIF Direcetive 2017/1371(EU), *les bases légales*[55]:

33

Criminal Code

Article 245[56] Any person who exercises a public office, whether directly or through intermediaries or through acts of sham, takes or accepts any interest, whatever it may be, in the operations, tenders, contracts or works under the direction over which, at the time of the act, he had wholly or partly the management or supervision, or who, in charge of arranging payment or settling a matter, takes any interest therein, *shall be punished by imprisonment of one to five years, and with a fine of 100 [EUR] to 50 000 [EUR] or with one of those penalties and, in addition, he may be sentenced, in accordance with Article 33, to deprivation of the right to perform any public office*, *service or relationship.*

The foregoing provision does not apply to a person who in the given circumstances could not promote his private interests through his position and who has acted openly.

⚖ Relevant jurisprudence: Cour de cassation - 08 décembre 1965, ECLI:BE:CASS:1965:ARR.19651208.7.

[54] For all articles see https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1867060801&table_name=wet. Accessed 4 June 2024.

[55] See again already in-depth Careel, De Smedt 2022b, pp 8 et seq., with an equal list on p. 10 et seq.

[56] **Art. 245.** Iedere persoon die een openbaar ambt uitoefent, die, hetzij rechtstreeks, hetzij door tussenpersonen of door schijnhandelingen, enig belang, welk het ook zij, neemt of aanvaardt in de verrichtingen, aanbestedingen, aannemingen of werken in regie waarover hij ten tijde van de handeling geheel of ten dele het beheer of het toezicht had, of die, belast met de ordonnancering van de betaling of de vereffening van een zaak, daarin enig belang neemt, wordt gestraft met gevangenisstraf van een jaar tot vijf jaar, en met geldboete van 100 [euro] tot 50 000 [euro] of met één van die straffen en hij kan bovendien, overeenkomstig artikel 33, worden veroordeeld tot ontzetting van het recht om openbare ambten, bedieningen of betrekkingen te vervullen.
De voorafgaande bepaling is niet toepasselijk op hem die in de gegeven omstandigheden zijn private belangen door zijn betrekking niet kon bevorderen en openlijk heeft gehandeld.

Chapter IV. Bribery of Persons Carrying a Public Office. **34**

Hoofdstuk IV. Omkoping Van Personen Die Een Openbaar Ambt Uitoefenen

Article 246[57] § 1. Passive bribery consists in the fact that a person who exercises public office, directly or through intermediaries, for himself or for a third party, makes an offer, a promise or an advantage of which asks, accepts or receives any kind to engage in any of the conduct referred to in Article 247.

§ 2. Active bribery consists in presenting, directly or through intermediaries, to a person who exercises a public office an offer, a promise or an advantage of any kind for oneself or for a third party to obtain one of the functions referred to in Article 247. adopt behaviours.

§ 3. A person who exercises a public office within the meaning of this article is treated as a person who has applied for such office, who makes one believe that he will exercise such office or who, by making use of false qualities, makes one believe to exercise such an office.

Article 247[58] § 1. If the bribery has as its object the performance by the person exercising public office of an act of his office lawful but not subject to payment, the penalty

[57] **Art. 246.** § 1. Passieve omkoping bestaat in het feit dat een persoon die een openbaar ambt uitoefent, rechtstreeks of door tussenpersonen, voor zichzelf of voor een derde, een aanbod, een belofte of een voordeel van welke aard dan ook vraagt, aanneemt of ontvangt om een van de in artikel 247 bedoelde gedragingen aan te nemen.

§ 2. Actieve omkoping bestaat in het rechtstreeks of door tussenpersonen voorstellen aan een persoon die een openbaar ambt uitoefent, van een aanbod, een belofte of een voordeel van welke aard dan ook voor zichzelf of voor een derde om een van de in artikel 247 bedoelde gedragingen aan te nemen.

§ 3. Met een persoon die een openbaar ambt uitoefent in de zin van dit artikel wordt gelijkgesteld elke persoon die zich kandidaat heeft gesteld voor een dergelijk ambt, die doet geloven een dergelijk ambt te zullen uitoefenen of die, door gebruik te maken van valse hoedanigheden, doet geloven een dergelijk ambt uit te oefenen.

[58] **Art. 247** § 1. Indien de omkoping het verrichten door de persoon die een openbaar ambt uitoefent, van een rechtmatige maar niet aan betaling onderworpen handeling van zijn ambt tot doel heeft, is de straf een gevangenisstraf van zes maanden tot vier jaar en een geldboete van 100 [euro] tot 10 000 [euro] of één van die straffen.

Indien, in het geval bepaald in het vorige lid, de vraag bedoeld in artikel 246, § 1, gevolgd wordt door een voorstel bedoeld in artikel 246, § 2, evenals ingeval het voorstel bedoeld in artikel 246, § 2, aangenomen wordt, is de straf een gevangenisstraf van een jaar tot vier jaar en een geldboete van 100 [euro] tot 25 000 [euro] of één van die straffen.

§ 2. Indien de omkoping het verrichten door de persoon die een openbaar ambt uitoefent, van een onrechtmatige handeling naar aanleiding van de uitoefening van zijn ambt of het nalaten van een handeling die tot zijn ambtsplichten behoort tot doel heeft, is de straf een gevangenisstraf van een jaar tot vier jaar en een geldboete van 100 euro tot 50 000 euro.

Indien, in het geval bepaald in het vorige lid, de vraag bedoeld in artikel 246, § 1, gevolgd wordt door een voorstel bedoeld in artikel 246, § 2, evenals ingeval dat voorstel bedoeld in artikel 246, § 2, aangenomen wordt, is de straf een gevangenisstraf van een jaar tot vier jaar en een geldboete van 100 euro tot 75 000 euro.

Ingeval de omgekochte persoon de onrechtmatige handeling heeft verricht of nagelaten heeft een handeling te verrichten die tot zijn ambtsplichten behoort, wordt deze gestraft met gevangenisstraf van drie jaar tot vijf jaar en met geldboete van 100 [euro] tot 75 000 [euro].

§ 3. Indien de omkoping het plegen door de persoon die een openbaar ambt uitoefent, van een misdaad of een wanbedrijf naar aanleiding van de uitoefening van zijn ambt tot doel heeft, is de straf een gevangenisstraf van een jaar tot vier jaar en een geldboete van 100 euro tot 75 000 euro.

shall be imprisonment of six months to four years and a fine of EUR 100 to EUR 10,000 or one of those penalties.
If, in the case provided for in the previous paragraph, the question referred to in Article 246 § 1 is followed by a proposal referred to in Article 246 § 2 just as if the proposal referred to in Article 246 § 2 is adopted, the penalty shall be imprisonment from one year to four years and a fine of EUR 100 to EUR 25,000 or one of those penalties.
§ 2. If the purpose of the bribery is the performance of an unlawful act by the person who exercises public office in connection with the exercise of his office or the failure to act in connection with his official duties, the penalty shall be imprisonment from one year to four years and a fine of EUR 100 to EUR 50,000.
If, in the case provided for in the previous paragraph, the question referred to in Article 246, § 1, is followed by a proposal referred to in Article 246 § 2 as well as if the proposal referred to in Article 246 § 2 is adopted, the penalty is imprisonment from one year to four years and a fine of EUR 100 to EUR 75,000.
If the bribed person has committed the unlawful act or has failed to perform an act that falls within his official duties, he shall be punished by imprisonment from three years to five years and a fine of EUR 100 to EUR 75,000.
§ 3. If the purpose of the bribery is the commission of a crime or misdemeanour by the person exercising public office in connection with the performance of his duties, the penalty shall be imprisonment from one year to four years and one fine of EUR 100 to EUR 75 000.
If, in the case provided for in the previous paragraph, the question referred to in Article 246, § 1, is followed by a proposal referred to in Article 246 § 2 just as if the proposal referred to in Article 246, § 2 is adopted, the penalty is imprisonment from two years to five years and a fine of EUR 500 to EUR 100,000.
§ 4. If the bribery is aimed at the use by the person who exercises a public office of the real or perceived influence that he has by virtue of his office to prevent an act of a public authority or a public administration or the failure to act act, the penalty is imprisonment from six months to four years and a fine of EUR 100 to EUR 10,000.

Indien, in het geval bepaald in het vorige lid, de vraag bedoeld in artikel 246, § 1, gevolgd wordt door een voorstel bedoeld in artikel 246, § 2, evenals ingeval het voorstel bedoeld in artikel 246, § 2, aangenomen wordt, is de straf een gevangenisstraf van twee jaar tot vijf jaar en een geldboete van 50 0 [euro] tot 100 000 [euro].
§ 4. Indien de omkoping het gebruik tot doel heeft door de persoon die een openbaar ambt uitoefent, van de echte of vermeende invloed waarover hij uit hoofde van zijn ambt beschikt om een handeling van een openbare overheid of een openbaar bestuur of het nalaten van die handeling te verkrijgen, is de straf een gevangenisstraf van zes maanden tot vier jaar en een geldboete van 100 [euro] tot 10 000 [euro].
Indien, in het geval bepaald in het vorige lid, de vraag bedoeld in artikel 246, § 1, gevolgd wordt door een voorstel bedoeld in artikel 246, § 2, evenals ingeval het voorstel bedoeld in artikel 246, § 2, aangenomen wordt, is de straf een gevangenisstraf van een jaar tot vier jaar en een geldboete van 100 [euro] tot 25 000 [euro].
Indien de omgekochte persoon de invloed waarover hij uit hoofde van zijn ambt beschikte, effectief heeft aangewend, wordt deze gestraft met gevangenisstraf van drie jaar tot vijf jaar en met geldboete van 100 euro tot 75 000 euro.

If, in the case provided for in the previous paragraph, the question referred to in Article 246, § 1, is followed by a proposal referred to in Article 246, § 2, just as if the proposal referred to in Article 246, § 2 is adopted, the penalty is imprisonment from one year to four years and a fine of EUR 100 to EUR 25,000.
If the bribed person has effectively used the influence he possessed by virtue of his office, he shall be punished by imprisonment from three years to five years and a fine of EUR 100 to EUR 75,000.

Article 248[59] When the facts referred to in Articles 246 and 247, §§ 1 to 3, concern a police officer, a person in the capacity of a judicial police officer or a member of the public prosecutor's office, the briber and the bribed punished with a penalty, the maximum of which shall be double the penalty provided for in Article 247 for the offences.

Article 249[60] § 1. If the bribery referred to in Article 246 concerns an arbitrator and relates to an act belonging to his judicial office, the penalty shall be imprisonment from one year to four years and a fine of EUR 100 to EUR 50 000.
If, in the case provided for in the previous paragraph, the question referred to in Article 246, § 1, is followed by a proposal referred to in Article 246, § 2, just as if the proposal referred to in Article 246, § 2 is adopted, the penalty is imprisonment of two years to five years and a fine of EUR 500 to EUR 100,000.
§ 2. If the bribery referred to in Article 246 concerns a judge assessor or a juror and relates to an act belonging to his judicial office, the penalty shall be imprisonment from three years to five years and a fine of EUR 500 to EUR 100,000.

[59] **Art. 248.** Wanneer de feiten bedoeld in de artikelen 246 en 247, §§ 1 tot 3, een politieambtenaar, een persoon met de hoedanigheid van officier van gerechtelijke politie of een lid van het openbaar ministerie betreffen, worden de omkoper en de omgekochte gestraft met een straf waarvan het maximum wordt gebracht op het dubbele van de straf die in artikel 247 voor de feiten is bepaald.

[60] **Art. 249.** § 1. Indien de in artikel 246 bepaalde omkoping een arbiter betreft en betrekking heeft op een handeling die behoort tot zijn rechtsprekend ambt, is de straf een gevangenisstraf van een jaar tot vier jaar en een geldboete van 100 [euro] tot 50 000 [euro].
Indien, in het geval bepaald in het vorige lid, de vraag bedoeld in artikel 246, § 1, gevolgd wordt door een voorstel bedoeld in artikel 246, § 2, evenals ingeval het voorstel bedoeld in artikel 246, § 2, aangenomen wordt, is de straf een gevangenisstraf van twee jaar tot vijf jaar en een geldboete van 500 [euro] tot 100 000 [euro].
§ 2. Indien de in artikel 246 bepaalde omkoping een rechterassessor of een gezworene betreft en betrekking heeft op een handeling die behoort tot zijn rechtsprekend ambt, is de straf een gevangenisstraf van drie jaar tot vijf jaar en een geldboete van 500 [euro] tot 100 000 [euro].
Indien, in het geval bepaald in het vorige lid, de vraag bedoeld in artikel 246, § 1, gevolgd wordt door een voorstel bedoeld in artikel 246, § 2, evenals ingeval het voorstel bedoeld in artikel 246, § 2, aangenomen wordt, is de straf opsluiting van vijf jaar tot tien jaar en een geldboete van 500 [euro] tot 100 000 [euro].
§ 3. Indien de in artikel 246 bepaalde omkoping een rechter betreft en betrekking heeft op een handeling die behoort tot zijn rechtsprekend ambt, is de straf opsluiting van vijf jaar tot tien jaar en een geldboete van 500 [euro] tot 100 000 [euro].
Indien, in het geval bepaald in het vorige lid, de vraag bedoeld in artikel 246, § 1, gevolgd wordt door een voorstel bedoeld in artikel 246, § 2, evenals ingeval het voorstel bedoeld in artikel 246, § 2, aangenomen wordt, is de straf opsluiting van tien jaar tot vijftien jaar en een geldboete van 500 [euro] tot 100 000 [euro].

If, in the case provided for in the previous paragraph, the question referred to in Article 246, § 1, is followed by a proposal referred to in Article 246, § 2, just as if the proposal referred to in Article 246, § 2 is adopted, the penalty of imprisonment of five to ten years and a fine of EUR 500 to EUR 100,000.

§ 3. If the bribery provided for in Article 246 concerns a judge and relates to an act belonging to his judicial office, the penalty shall be imprisonment of five to ten years and a fine of EUR 500 to EUR 100,000.

If, in the case provided for in the previous paragraph, the question referred to in Article 246, § 1, is followed by a proposal referred to in Article 246, § 2, just as if the proposal referred to in Article 246, § 2 is adopted, the penalty of imprisonment of ten to fifteen years and a fine of EUR 500 to EUR 100,000.

Article 250[61] If the bribery provided for in Articles 246 to 249 concerns a person who exercises public office in a foreign State or in an international organisation governed by public law, the minimum fines shall be tripled and the maximum fines shall be fivefold.

35 **Chapter V. Abuse of Authority.**

Article 254[62] Shall be punished by imprisonment of one to five years any public official, agent or appointee of the Government, of whatever state or rank, who demands or orders, demands or orders the action or use of public power against the execution of a law or a royal decree, against the collection of a legally introduced tax, or against the execution either of a court order or of a court order, or of any other order issued by the government. In addition, the guilty party may be sentenced to deprivation of the rights referred to in the first three numbers of Article 31(1).

Section III. Scam and Fraud

Article 496[63] **[General fraud offence]** He who, with the intent to appropriate a thing that belongs to another, makes a claim, movable property, obligations, discharges,

[61] **Art. 250.** Indien de in de artikelen 246 tot 249 bepaalde omkoping een persoon betreft die een openbaar ambt uitoefent in een vreemde Staat of in een internationale publiekrechtelijke organisatie, worden het minimum van de geldboetes verdrievoudigd en het maximum van de geldboetes vervijfvoudigd.

[62] **Hoofdstuk V. Misbruik Van Gezag.**
Art. 254. Met gevangenisstraf van een jaar tot vijf jaar wordt gestraft ieder openbaar ambtenaar, ieder agent of aangestelde van de Regering, van welke staat of rang ook, die het optreden of het aanwenden van de openbare macht vordert of beveelt, doet vorderen of bevelen tegen de uitvoering van een wet of van een koninklijk besluit, tegen de inning van een wettelijk ingevoerde belasting, of tegen de uitvoering hetzij van een rechterlijke beschikking of van een rechterlijk bevel, hetzij van enig ander bevel uitgaande van de overheid.
De schuldige kan bovendien worden veroordeeld tot ontzetting van de rechten genoemd in de eerste drie nummers van artikel 31, eerste lid.

[63] **Afdeling III. Oplichting En Bedriegerij.**
Art. 496. Hij die, met het oogmerk om zich een zaak toe te eigenen die aan een ander toebehoort, zich gelden, roerende goederen, verbintenissen, kwijtingen, schuldbevrijdingen doet afgeven of leveren, hetzij door het gebruik maken van valse namen of valse hoedanigheden, hetzij door het aanwenden van listige kunstgrepen om te doen

releases or unveils, whether by using false names or qualities, or by the use of cunning tricks to make people believe in the existence of false undertakings, of an imaginary power or of an imaginary credit, to expect or fear a good outcome, an accident or any other chimerical event, or to make other abuse of confidence or credulity in any way shall be punished by imprisonment of one month to five years and a fine of twenty-six [euro] to three thousand [euro]. If the offences referred to in the first paragraph were committed to the detriment of a person whose vulnerable condition as a result of age, pregnancy, an illness or a physical or mental infirmity or disability was clear or the perpetrator was known, he shall be punished by imprisonment of six months to five years and a fine of twenty-six euros to three thousand euros. (Attempted misdemeanour described in the first paragraph is punishable by imprisonment of eight days to three years and a fine of twenty-six [euro] to two thousand [euro].) (In the cases described in the previous paragraphs, the culprit may also be sentenced to deprivation of rights in accordance with Article 33.)

Cour de cassation - 09 décembre 1997 - P.95.0610.N, ECLI:BE:CASS:1997:ARR.19971209.3.

Cour de cassation - 03 février 2021 - P.20.1008, ECLI:BE:CASS:2021:ARR.20210203.2F.17 : "Fraud is not intended to protect individuals against their own short-sightedness."

Article 497[64] Shall be punished with imprisonment from eight days to three years and a fine of fifty [euros] to five hundred [euros]: Those who, with fraudulent intent, give or attempt to give the appearance of a coin of greater value to a currency legally accepted in Belgium or abroad;
Those who issue or attempt to issue coins which have been given the appearance of coins of greater value, or who introduce or attempt to introduce such coins into the country for the purpose of circulating them.)
Those who spend or attempt to spend pieces of metal without any coinage for coins.

geloven aan het bestaan van valse ondernemingen, van een denkbeeldige macht of van een denkbeeldig krediet, om een goede afloop, een ongeval of enige andere hersenschimmige gebeurtenis te doen verwachten of te doen vrezen of om op andere wijze misbruik te maken van het vertrouwen of van de lichtgelovigheid, wordt gestraft met gevangenisstraf van een maand tot vijf jaar en met geldboete van zesentwintig [euro] tot drieduizend [euro].
Indien de in het eerste lid bedoelde feiten zijn gepleegd ten nadele van een persoon van wie de kwetsbare toestand ten gevolge van de leeftijd, zwangerschap, een ziekte dan wel een lichamelijk of geestelijk gebrek of onvolwaardigheid duidelijk was of de dader bekend was, wordt deze gestraft met gevangenisstraf van zes maanden tot vijf jaar en met geldboete van zesentwintig euro tot drieduizend euro.
(Poging tot het wanbedrijf omschreven in het eerste lid wordt gestraft met gevangenisstraf van acht dagen tot drie jaar en met geldboete van zesentwintig [euro] tot tweeduizend [euro].)
(In de gevallen in de vorige leden omschreven kan de schuldige bovendien worden veroordeeld tot ontzetting van rechten overeenkomstig artikel 33.).

[64] **Art. 497.** Met gevangenisstraf van acht dagen tot drie jaar en met geldboete van vijftig [euro] tot vijfhonderd [euro] worden gestraft:
(Zij die met bedrieglijk opzet aan een in België of in het buitenland wettelijk gangbare munt de schijn geven of pogen te geven van een munt van grotere waarde;
Zij die munten uitgeven of pogen uit te geven, waaraan de schijn is gegeven van munten van grotere waarde, of zodanige munten in het land invoeren of pogen in te voeren met het doel die in omloop te brengen.)
Zij die stukken metaal zonder enige muntslag uitgeven of pogen uit te geven voor muntstukken.

Article 497bis[65] Shall be punished with imprisonment from eight days to six months and a fine of twenty-six [euro] to five hundred [euro] those who receive or acquire coins given the appearance of coins of greater value for the purpose of to put into circulation. Attempt is punishable by imprisonment from eight days to three months and a fine of twenty-six [euro] to one thousand [euro].

Article 498[66] Shall be punished with imprisonment from one month to one year and a fine of fifty [euros] to a thousand [euros] or with one of those penalties only he who deceives the buyer: With regard to the identity of the item sold, by fraudulently supplying an item other than the specific object to which the agreement refers; As to the nature or origin of the thing sold, by selling or supplying an item which in appearance is identical to that which he has bought or has in common to buy.

Article 499[67] To imprisonment from eight days to one year and to a fine of twenty-six [euro] to one thousand [euro] or to one of those penalties only those who by using cunning tricks:
1° deceive the buyer or seller about the quantity of the goods sold;
2° The parties, bound by a contract for the hire of work, or one of those parties, cheat either with regard to the quantity or the quality of the work delivered, if in this second case the determination of the quality of the work must be serve to determine the amount of the wages.

Nota bene: OLAF has an annex-competence for customs duties fraud. This includes controls within the **Opson controls** for falsified food stuff and therefore the following offences from the Belgian Criminal Code might be inextricably linked offences in an investigation, which tries to verify suspicion for fraud to the detriment of the EU's budget.

[65] **Art. 497bis.** Met gevangenisstraf van acht dagen tot zes maanden en met geldboete van zesentwintig [euro] tot vijfhonderd [euro] worden gestraft zij die munten waaraan de schijn is gegeven van munten van grotere waarde, ontvangen of zich aanschaffen met het doel die in omloop te brengen.
Poging wordt gestraft met gevangenisstraf van acht dagen tot drie maanden en met geldboete van zesentwintig [euro] tot duizend [euro]. >

[66] **Art. 498.** Met gevangenisstraf van een maand tot een jaar en met geldboete van vijftig [euro] tot duizend [euro] of met een van die straffen alleen wordt gestraft hij die de koper bedriegt:
Omtrent de identiteit van de verkochte zaak, door bedrieglijk een andere zaak te leveren dan het bepaalde voorwerp waarop de overeenkomst slaat;
Omtrent de aard of de oorsprong van de verkochte zaak, door een zaak te verkopen of te leveren, die in schijn gelijk is aan die welke hij heeft gekocht of heeft gemeen te kopen.

[67] **Art. 499.** Tot gevangenisstraf van acht dagen tot een jaar en tot geldboete van zesentwintig [euro] tot duizend [euro] of tot een van die straffen alleen worden veroordeeld zij die door het aanwenden van listige kunstgrepen:
1° De koper of de verkoper omtrent de hoeveelheid van de verkochte zaken bedriegen;
2° De partijen, verbonden door een contract van huur van werk, of een van die partijen, bedriegen, hetzij omtrent de hoeveelheid, hetzij omtrent de hoedanigheid van het geleverde werk, wanneer in dit tweede geval de bepaling van de hoedanigheid van het werk moet dienen om het bedrag van het loon vast te stellen.

36

Article 500[68] Shall be punished with imprisonment from eight days to one year and a fine of fifty [euros] to a thousand [euros] or one of these penalties alone: Those who falsify or cause to be falsified (foodstuffs) intended to be sold or consumed; Those who sell, sell, or put up for sale these things, knowing that they are; Those who, by means of placards or messages, whether printed or not, maliciously or deceptively interfere with the process m falsify, distribute or disclose the same things.

Article 501[69] Shall be punished by imprisonment from eight days to six months and a fine of twenty-six [euro] to five hundred [euro] or one of those penalties only he in whom (foodstuffs are found) intended to be sold or used, and who know that they are counterfeit.

Article 501bis[70] Shall be punished by imprisonment of eight days to three months and a fine of twenty-six to three hundred [euro] or one of these penalties only, he who, without the fraudulent intent required in article 500, has sold, closed or put up for sale.

Article 502[71] In the cases (of Articles 500 and 501) the court may order that the judgment be posted in the places it determines, and that it be included in whole or in extract in the magazines it designates; all at the expense of the convicted person.
(Paragraph 2 abolished)

[68] **Art. 500**. Met gevangenisstraf van acht dagen tot een jaar en met geldboete van vijftig [euro] tot duizend [euro] of met een van die straffen alleen worden gestraft:
Zij die (voedingsmiddelen) bestemd om verkocht of gesleten te worden, vervalsen of doen vervalsen;
Zij die deze zaken verkopen, slijten of te koop stellen, wetende dat zij vervalst zijn;
Zij die door aanplakbiljetten of door berichten, al dan niet gedrukt, kwaadwillig of bedrieglijk het procédé o m diezelfde zaken te vervalsen, verbreiden of bekendmaken.

[69] **Art. 501.** Met gevangenisstraf van acht dagen tot zes maanden en met geldboete van zesentwintig [euro] tot vijfhonderd [euro] of met een van die straffen alleen wordt gestraft hij bij wie (voedingsmiddelen gevonden worden) bestemd om verkocht of gesleten te worden, en die weet dat zij vervalst zijn.

[70] **Art. 501bis.** Wordt gestraft met gevangenisstraf van acht dagen tot drie maanden en met een geldboete van zesentwintig tot driehonderd [euro] of met één dezer straffen alleen, hij die, zonder het in artikel 500 vereiste bedrieglijk opzet, vervalste (voedingsmiddelen) heeft verkocht, gesloten of te koop gesteld.

[71] **Art. 502.** In de gevallen (van de artikelen 500 en 501) kan de rechtbank bevelen dat het vonnis zal worden aangeplakt op de plaatsen die zij bepaalt, en in zijn geheel of bij uittreksel zal worden opgenomen in de bladen die zij aanwijst; een en ander op kosten van de veroordeelde.
(Lid 2 opgeheven)

Article 503[72] The adulterated foodstuffs found in the possession of the culprit are confiscated and confiscated.
However, if such foodstuffs have been rendered unfit for food as a result of the adulteration and cannot be stored because of their nature or condition, they must be destroyed or denatured after sampling by the examining officer, assisted by an official referred to in Article 11 of the Act on the protection of the health of consumers with regard to foodstuffs and other products, which persons jointly sign the minutes of the seizure and destruction or denaturing of those foodstuffs. In any case, confiscation is ordered.
Foodstuffs which, notwithstanding their falsification, remain suitable for food, may be transferred to a social service establishment dependent on a subordinate administration, either immediately after sampling in the case of foodstuffs which cannot be preserved, or after a judicial decision ordering the confiscation order. ordered, if these foods are amenable to preservation.

Article 504[73] The provision of Article 462 is applicable to the crimes described in Articles 496, 498 and 499.

Article 505[74] **[Money Laundering]** With imprisonment from fifteen days to five years and with a fine from twenty-six [euros] to one hundred thousand [euros] or with one of those punishments alone shall be punished:

[72] **Art. 503.** De vervalste voedingsmiddelen die in het bezit van de schuldige worden gevonden, worden in beslag genomen en verbeurd verklaard.
Nochtans moeten die voedingsmiddelen, wanneer zij ingevolge de vervalsing voor de voeding ongeschikt zijn gemaakt en wegens hun aard of toestand niet kunnen worden bewaard, na monsterneming worden vernietigd of gedenatureerd door de bekeurende beambte, bijgestaan door een ambtenaar bedoeld in artikel 11 van de wet betreffende de bescherming van de gezondheid van de verbruikers op het stuk van de voedingsmiddelen en andere produkten, welke personen gezamenlijk de processen-verbaal van de inbeslagneming en vernietiging of denaturering van die voedingsmiddelen ondertekenen. In ieder geval wordt de verbeurdverklaring bevolen.
De voedingsmiddelen die niettegenstaande hun vervalsing voor de voeding geschikt blijven, mogen worden overgemaakt aan een van een ondergeschikt bestuur afhangende inrichting voor maatschappelijk dienstbetoon, hetzij onmiddellijk na monsterneming zo het voedingsmiddelen betreft die niet voor bewaring vatbaar zijn, hetzij na rechterlijke beslissing waarbij de verbeurdverklaring wordt bevolen, zo deze voedingsmiddelen vatbaar zijn voor bewaring.
[73] Art. 504. De bepaling van artikel 462 is toepasselijk op de misdrijven, in de artikelen 496, 498 en 499 omschreven.
[74] Art. 505.<L 1995-04-07/57, art. 7, 004; Inwerkingtreding: 20-05-1995 Met gevangenisstraf van vijftien dagen tot vijf jaar en met geldboete van zesentwintig [euro] tot honderdduizend [euro] of met een van die straffen alleen worden gestraft: >
1° zij die weggenomen, verduisterde of door misdaad of wanbedrijf verkregen zaken of een gedeelte ervan helen;
2° (zij die zaken bedoeld in artikel 42, 3°, kopen, ruilen of om niet ontvangen, bezitten, bewaren of beheren, ofschoon zij op het ogenblik van de aanvang van deze handelingen, de oorsprong van die zaken kenden of moesten kennen;)
3° zij die de zaken, bedoeld in artikel 42, 3°, (omzetten of overdragen) met de bedoeling de illegale herkomst ervan te verbergen of te verdoezelen of een persoon die betrokken is bij een misdrijf waaruit deze zaken voortkomen, te helpen ontkomen aan de rechtsgevolgen van zijn daden;

1° those who steal stolen, embezzled or by crime or malpractice obtained goods or part thereof;
2° those who buy, exchange or receive free of charge, possess, keep or manage goods referred to in Article 42, 3°, even though they knew or should have known the origin of those goods at the time these acts were committed;
3° those who (convert or transfer) the items referred to in Article 42, 3°, with the intention of hiding or concealing their illegal origin or helping a person involved in a crime from which these items originate to escape the legal consequences of his actions;
4° (those who conceal or disguise the nature, origin, location, disposition, movement or ownership of the items referred to in Article 42, 3°, even though they knew or should have known the origin of those items at the time these acts were committed).
(The offences mentioned in the first paragraph, 3° and 4°, exist if their perpetrator is also the perpetrator, co-perpetrator or accomplice of the offence from which the matters

4° (zij die de aard, oorsprong, vindplaats, vervreemding, verplaatsing of eigendom van de in artikel 42, 3°, bedoelde zaken verhelen of verhullen, ofschoon zij op het ogenblik van de aanvang van deze handelingen de oorsprong van die zaken kenden of moesten kennen.)
(De in het eerste lid, 3° en 4°, genoemde misdrijven bestaan, indien de dader ervan ook dader, mededader van of medeplichtige is aan het misdrijf waaruit de zaken genoemd in artikel 42, 3°, voortkomen. De in het eerste lid, 1° en 2°, genoemde misdrijven bestaan, ook indien de dader ervan eveneens de dader, mededader van of medeplichtige is aan het misdrijf waaruit de zaken genoemd in artikel 42, 3°, voortkomen, wanneer dit misdrijf in het buitenland is gepleegd en in België niet kan worden vervolgd.)
(Behalve ten aanzien van de dader, de mededader en de medeplichtige van het misdrijf dat de zaken bedoeld in artikel 42, 3°, heeft opgeleverd, hebben op fiscaal vlak de misdrijven bedoeld in het eerste lid, 2° en 4°, uitsluitend betrekking op feiten gepleegd in het raam van ernstige fiscale fraude, al dan niet georganiseerd.
De in de artikelen 2, 2bis en 2ter van de wet van 11 januari 1993 tot voorkoming van het gebruik van het financiële stelsel voor het witwassen van geld en de financiering van terrorisme beoogde instellingen en personen kunnen zich op het vorige lid beroepen voor zover zij zich, ten aanzien van de beoogde feiten, hebben geconformeerd aan de voorziene verplichting van artikel 28 van de wet van 11 januari 1993 die de wijze van informatieverstrekking aan de Cel voor financiële informatieverwerking regelt.)
De zaken bedoeld (in het eerste lid, 1°) van dit artikel maken het voorwerp uit van (het misdrijf dat gedekt is door deze bepaling), in de zin van artikel 42, 1°, en zij worden verbeurdverklaard, ook indien zij geen eigendom zijn van de veroordeelde, zonder dat (deze straf) nochtans de rechten van derden op de goederen die het voorwerp kunnen uitmaken van de verbeurd verklaring, schaadt.
(De in het eerste lid, 3° en 4°, bedoelde zaken zijn het voorwerp van de door deze bepalingen bedoelde misdrijven in de zin van artikel 42, 1°, en worden verbeurd verklaard ten aanzien van alle daders, mededaders of medeplichtigen van die misdrijven, ook al heeft de veroordeelde die zaken niet in eigendom. Die straf mag evenwel geen schade berokkenen aan de rechten die derden op de voor verbeurdverklaring vatbare goederen kunnen doen gelden. Zo die zaken niet in het vermogen van de veroordeelde kunnen worden aangetroffen, gaat de rechter over tot een raming van de geldwaarde ervan en heeft de verbeurdverklaring betrekking op een daarmee overeenstemmend geldbedrag. In dat geval kan de rechter dat bedrag evenwel verminderen teneinde de veroordeelde geen onredelijk zware straf op te leggen.
De in het eerste lid, 2°, bedoelde zaken zijn het voorwerp van het door deze bepaling bedoeld misdrijf in de zin van artikel 42, 1°, en worden verbeurd verklaard ten aanzien van alle daders, mededaders of medeplichtigen van die misdrijven, ook al heeft de veroordeelde die zaken niet in bezit. Daarbij mag die straf geen schade berokkenen aan de rechten die derden op de voor verbeurdverklaring vatbare goederen kunnen doen gelden. Zo die zaken niet in het vermogen van de veroordeelde kunnen worden aangetroffen, gaat de rechter over tot een raming van de geldwaarde ervan en heeft de verbeurdverklaring betrekking op een geldbedrag dat in verhouding staat tot de mate waarin de veroordeelde bij het misdrijf betrokken was.) <W 2007-05-10/63, art. 2, 071; Inwerkingtreding: 01-09-2007> Poging tot een van de misdrijven bedoeld in 2°, 3° en 4° van dit artikel wordt bestraft met gevangenisstraf van acht dagen tot drie jaar en met geldboete van zesentwintig [euro] tot vijftigduizend [euro] of met een van die straffen alleen. <W 2000-06-26/42, art. 2, Inwerkingtreding: 01-01-2002>De personen die krachtens deze bepalingen worden gestraft, kunnen bovendien veroordeeld worden tot ontzetting, overeenkomstig artikel 33.

mentioned in Article 42, 3°, originate. The offences mentioned in the first paragraph, 1° and 2°, exist even if their perpetrator is also the perpetrator, co-perpetrator or accomplice of the offence from which the cases mentioned in Article 42, 3°, originate, if this offence was committed abroad and cannot be prosecuted in Belgium).
(Except with regard to the perpetrator, co-perpetrator and accomplice of the offence which produced the cases referred to in Article 42, 3°, at the tax level, the offences referred to in the first paragraph, 2° and 4°, relate exclusively to offences committed in the framework of serious tax fraud, organised or otherwise.
The institutions and persons referred to in Articles 2, 2bis and 2ter of the Law of 11 January 1993 on the prevention of the use of the financial system for money laundering and the financing of terrorism may invoke the preceding paragraph to the extent that, in respect of the offences envisaged, they have complied with the envisaged obligation of Article 28 of the Law of 11 January 1993 regulating the manner of providing information to the Financial Information Processing Unit).
The items referred to (in the first paragraph, 1°) of this article are the object of (the offence covered by this provision), within the meaning of Article 42, 1°, and they shall be forfeited even if they are not the property of the convicted person, without (this punishment) nonetheless damaging the rights of third parties to the items that may be the object of the forfeiture.
(The property referred to in paragraph 1, 3° and 4°, shall be the object of the offences referred to by these provisions under Article 42, 1°, and shall be forfeited with respect to all perpetrators, co-perpetrators or accomplices of such offences, even if the convicted person does not own such property. However, such punishment may not prejudice the rights that third parties may assert over the property subject to forfeiture. If those items cannot be found in the convicted person's property, the court shall proceed to estimate their monetary value and the forfeiture shall relate to a corresponding monetary amount. In that case, however, the judge may reduce that amount in order not to impose an unreasonably severe sentence on the convicted person.
The property referred to in paragraph 1, 2°, shall be the object of the offence referred to by this provision in Article 42, 1°, and shall be forfeited with respect to all perpetrators, co-perpetrators or accomplices of such offences, even if the convicted person does not possess such property. In so doing, such punishment may not prejudice the rights that third parties may assert over the property subject to forfeiture. If those items cannot be found in the convicted person's assets, the court shall proceed to estimate their monetary value and the forfeiture shall relate to an amount of money proportionate to the convicted person's involvement in the crime). Attempting any of the offences referred to in 2°, 3° and 4° of this article shall be punishable by imprisonment from eight days to three years and by a fine from twenty-six [euros] to fifty thousand [euros] or by one

of those punishments alone. Persons punished under these provisions may in addition be sentenced to disqualification, in accordance with Article 33.

(b) Subsidy Fraud Provisions / Bepalingen Inzake Subsidiefraude

Subsidy fraud is a crime under the Royal decree concerning the declarations to be made in matters of subsidies and allowances: **37**

Royal decree concerning the declarations to be made in matters of subsidies and allowances (31 May 1933) **38**

(Note: Consultation of previous versions from 08-07-1994 and updated to 24-02-2021)[75]
Article 1[76] Any declaration made on the occasion of a request to obtain or retain a subsidy, indemnity or allowance which is, in whole or in part, at the expense of the State, another legal person under public law, of the European Community or of another international organisation, or which is, in whole or in part, composed of last public, must be sincere and complete.
Any person who knows or should know that he is no longer entitled to the full amount of a subsidy, indemnity or allowance, provided for in the first paragraph, is required to make a declaration.

Article 2[77] § 1. Anyone who, having not made the declaration provided for in Article 1, paragraph 2, has accepted or kept a subsidy, indemnity or allowance, provided for in Article 1, or part of it, knowing that there is no right or that there is only a partial right,

[75] See already the Belgian Notification to the EPPO, https://www.eppo.europa.eu/sites/default/files/2021-11/04-BE_0.pdf (Accessed 4 June 2024) p. 31 et seq. From 2026 the new Belgian CC applies, see → Annex.
[76] **Article 1.** Toute déclaration faite à l'occasion d'une demande tendant à obtenir ou à conserver une subvention, indemnité ou allocation qui est, en tout ou en partie, à charge de l'Etat, d'une autre personne morale de droit public, de la Communauté européenne ou d'une autre organisation internationale, ou qui est, en tout ou en partie, composée de derniers publics, doit être sincère et complète.
Toute personne qui sait ou devait savoir n'avoir plus droit à l'intégralité d'une subvention, indemnité ou allocation, prévue à l'alinéa 1er, est tenue d'en faire la déclaration.
[77] **Art. 2.<**L 1994-06-07/30, art. 3, 002; En vigueur: 18-07-1994> § 1. Quiconque, n'ayant pas fait la déclaration prévue à l'article 1er, alinéa 2, aura accepté ou conservé une subvention, indemnité ou allocation, prévue à l'article 1er, ou une partie de celle-ci, sachant qu'il n'y a pas droit ou qu'il n'y a que partiellement droit, sera puni d'un emprisonnement de six mois à quatre ans et d'une amende de vingt-six francs à quinze mille francs.
§ 2. Quiconque aura sciemment fait une déclaration inexacte ou incomplète à l'occasion d'une demande tendant à obtenir ou à conserver une subvention, indemnité ou allocation prévue à l'article 1er sera puni d'un emprisonnement de six mois à quatre ans et d'une amende de vingt-six francs à cinquante mille francs.
§ 3. Quiconque aura utilisé une subvention, indemnité ou allocation prévue à l'article 1er à d'autres fins que celles pour lesquelles elle a été obtenue, sera puni d'un emprisonnement de six mois à cinq ans et d'une amende de vingt-six francs à septante-cinq mille francs.
§ 4. Quiconque aura reçu ou conservé une subvention, indemnité ou allocation prévue à l'article 1er en suite d'une déclaration prévue au § 2, sera puni d'un emprisonnement d'un an à cinq ans et d'une amende de vingt-six francs à cent mille francs.
§ 5. Les peines prévues aux paragraphes précédents sont doublées si une infraction à une de ces dispositions est commise dans les cinq ans à compter du prononcé d'un jugement ou d'un arrêt, passés en force de chose jugée, portant condamnation du chef d'une de ces infractions.

shall be punished by imprisonment from six months to four years and a fine from twenty-six francs to fifteen thousand francs.
§ 2. Anyone who knowingly makes an inaccurate or incomplete declaration when applying for or retaining a subsidy, indemnity or allowance provided for in Article 1 shall be punished by imprisonment of six months to four years and a fine of twenty-six to fifty thousand francs.
§ 3. Anyone who has used a subsidy, indemnity or allocation provided for in Article 1 for purposes other than those for which it was obtained, will be punished by imprisonment of six months to five years and a fine of twenty-six francs to seventy-five thousand francs.
§ 4. Anyone who has received or retained a subsidy, indemnity or allowance provided for in Article 1 following a declaration provided for in § 2, shall be punished by imprisonment for one to five years and a fine of twenty-six francs to one hundred thousand francs.
§ 5. The penalties provided for in the preceding paragraphs are doubled if an offence against one of these provisions is committed within five years from the pronouncement of a judgment or a judgment, which has become final, convicting the head of one of these offences.

Article 2bis[78] The natural or legal persons who, in accordance with article 1384 of the Civil Code, are civilly liable for damages and costs, are also liable for the payment of fines.

Article 3[79] Reimbursement of sums unduly paid shall be ordered ex officio by the court seized of the proceedings.

Article 4[80] All the provisions of Book 1 of the Penal Code are applicable to the offences provided for by the preceding articles.
(However, the special confiscation applicable to the things referred to in article 42 of the Penal Code, is always pronounced.)
Our Minister of Justice is responsible for the execution of this order.

[78] **Art. 2bis.** Les personnes physiques ou morales qui, conformément à l'article 1384 du Code civil, sont civilement responsables des dommages-intérêts et des frais, sont également responsables du paiement des amendes.
[79] **Art. 3.** La restitution des sommes indûment payées est ordonnée d'office par le tribunal saisi de la poursuite.
alinéa 2 abrogé
[80] **Art. 4.** Toutes les dispositions du livre 1er du Code pénal sont applicables aux infractions prévues par les articles précédents.
(Toutefois, la confiscation spéciale applicable aux choses visées à l'article 42 du Code pénal, est toujours prononcée.) <L 1994-06-07/30, art. 5, 002; En vigueur: 18-07-1994>
Notre Ministre de la Justice est chargé de l'exécution du présent arrêté.

Cour de cassation - 12 décembre 2005 - S.04.0172.F, ECLI:BE:CASS:2005:ARR.20051212.9.

Cour de cassation - 13 mars 2018 - P.17.0083.N, ECLI:BE:CASS:2018:ARR.20180313.2.

(c) Customs Code Provisions / Bepalingen van Het Douanewetboek

The General Law on Customs and Excise should be viewed regarding customs relating crimes. **39**

General Law of 18 July 1977 on Customs and Excise (LGDA)[81] **40**

Article 115[82] § 1 Any false declaration of transit recognized at the office of departure is punishable by the same penalties as if the goods were declared for consumption. Amended by the law of December 9, 2019 amending the general customs and excise law of July 18, 1977 and the value added tax code transposing directive (EU) 2017/1371 – Belgian Official Gazette of December 18, 2019 – Entry into force effective: December 28, 2019 Any false declaration of transit recognized at the office of departure, when fraudulent intent is proven, is punishable by the penalties provided, as the case may be, by Articles 220 to 225, 227, 229 and 230 or by 231.

Article 202[83] § 1. When, after the closing of the audit certificate, the agents establish, within a period of three years from the date of taking into account the amount originally

[81] See already partly the Belgian Notification to the EPPO, https://www.eppo.europa.eu/sites/default/files/2021-11/04-BE_0.pdf (Accessed 4 June 2024), p. 9 et seq.

[82] **Art. 115** § 1er Toute fausse déclaration de transit reconnue au bureau de départ est punie des mêmes peines que si les marchandises étaient déclarées en consommation. Modifié par la loi du 9 décembre 2019 modifiant la loi générale sur les douanes et accises du 18 juillet 1977 et le code de la taxe sur la valeur ajoutée transposant la directive (UE) 2017/1371 – Moniteur belge du 18 décembre 2019 – Entrée en vigueur: le 28 décembre 2019 Toute fausse déclaration de transit reconnue au bureau de départ, lorsque l'intention frauduleuse est avérée, est punie des peines prévues, suivant le cas, par les articles 220 à 225, 227, 229 et 230 ou par l'article 231.

[83] **Art. 202**
§ 1er. Lorsque, postérieurement à la clôture du certificat de vérification, les agents établissent, dans le délai de trois ans à compter de la date de la prise en compte du montant primitivement exigé du redevable, ou, s'il n'y a pas eu de prise en compte, à compter de la date de la naissance de la dette d'impôts, que par suite d'un acte passible de poursuites judiciaires répressives, les droits ou les droits
d'accises légalement dus sur des marchandises déclarées n'ont pas été ou n'ont pas été intégralement perçus, les droits ou les droits d'accise éludés doivent être payés par le redevable de ces droits, soit à titre principal, soit à titre subsidiaire, ou par ses ayants droit.
§ 2. Les personnes visées au § 1er sont punies d'une amende comprise entre cinq et dix fois les droits. En cas de récidive, elles sont en outre punies d'un emprisonnement de huit jours à un mois,
sans qu'il puisse être fait application de l'article 228. Modifié par la loi du 9 décembre 2019 modifiant la loi générale sur les douanes et accises du 18 juillet 1977 et le code de la taxe sur la valeur ajoutée transposant la directive (UE) 2017/1371 – Moniteur belge du 18 décembre 2019 – Entrée en vigueur: le 28 décembre 2019
§ 1er. Lorsque, postérieurement à la clôture du certificat de vérification, les agents établissent, dans le délai de trois ans à compter de la date de la prise en compte du montant primitivement exigé du redevable, ou, s'il n'y a pas eu de prise en compte, à compter de la date de la naissance de la detted'impôts, que par suite d'un acte passible de poursuites judiciaires répressives, les droits ou les droits
d'accises légalement dus sur des marchandises déclarées n'ont pas été ou n'ont pas été intégralement perçus, les droits ou les droits d'accise éludés doivent être payés par le redevable de ces droits, soit à titre principal, soit à titre subsidiaire, ou par ses ayants droit.

required of the debtor, or, if there has been no taken into account, from the date of the birth of the tax debt, only as a result of an act liable to criminal legal proceedings, the rights or rights of excise duties legally due on declared goods have not been or have not been collected in full, the excise duties or duties evaded must be paid by the person liable for these duties, either as principal or as subsidiary, or by his successors in title.
§ 2. The persons referred to in § 1 **are punished by a fine of between five and ten times the duties**. In case of recidivism, they are further punished by imprisonment from eight days to one month, without it being possible to apply article 228.
Amended by the law of December 9, 2019 amending the general customs and excise law of July 18, 1977 and the value added tax code transposing the directive (EU) 2017/1371 – Belgian Official Gazette of December 18, 2019 – Entry into force: December 28, 2019.
§ 3. When the persons referred to in § 1 have committed the offence with fraudulent intent, they are further punished by imprisonment from eight days to one month. When the persons referred to in § 1 have committed the offence with fraudulent intent and have seriously harmed the financial interests of the European Union, they are punished by imprisonment from 4 months to 5 years. The financial interests of the European Union must in any case be considered seriously harmed when the damage amounts to more than 100,000 euros.

Article 256[84] **[Importation fraud detrimental to the EU]** § 1. The following are punished by a fine of between five and ten times the defrauded rights, which may not be less than 250 euros:

§ 2. Les personnes visées au § 1er sont punies d'une amende comprise entre cinq et dix fois les droits. En cas de récidive, elles sont en outre punies d'un emprisonnement de huit jours à un mois, sans qu'il puisse être fait application de l'article 228.
§ 3. Lorsque les personnes visées au § 1er ont commis l'infraction dans une intention frauduleuse, elles sont punies en outre d'un emprisonnement de huit jours à un mois. Lorsque les personnes visées au § 1er ont commis l'infraction avec une intention frauduleuse et ont gravement lésé les intérêts financiers de l'Union européenne, elles sont punies d'un emprisonnement de 4 mois à 5 ans. Les intérêts financiers de l'Union européenne doivent en tout cas être considérés comme gravement lésés lorsque le préjudice se monte à plus de 100.000 euros.

[84] **Art. 256**. § 1er. Sont punis d'une amende comprise entre cinq et dix fois les droits fraudés sans que celle-ci puisse être inférieure à 250 euros:
1° tout emploi d'une marchandise étrangère, dans des conditions autres que l'usage spécial qu'elle devait recevoir suivant la déclaration faite à l'administration lors de l'importation définitive et qui a justifié l'octroi d'un régime d'imposition plus favorable que celui qui eut été appliqué si l'usage réel qui en serait fait eut été connu de la douane;
2° toute opération ayant pour but d'enlever ou de rendre à ladite marchandise les caractéristiques ou les propriétés à la présence ou à l'absence desquelles était subordonné, au moment de l'importation définitive, l'octroi d'un régime d'imposition plus favorable que celui qui eut été accordé en cas d'absence ou de présence desdites caractéristiques ou propriétés.
Les droits fraudés sont dus en sus.
§ 2. Lorsque les contrevenants ont commis, ou tenté de commettre, les infractions visées au § 1er avec une intention frauduleuse, ils sont en outre punis d'un emprisonnement de huit jours à un mois. Lorsque les contrevenants ont commis les infractions visées au § 1er avec une intention frauduleuse et ont gravement lésé les intérêts financiers de l'Union européenne, ils sont punis d'un emprisonnement de 4 mois à 5 ans.
Les intérêts financiers de l'Union européenne doivent en tout cas être considérés comme gravement lésés lorsque le préjudice se monte à plus de 100.000 euros.

1° any use of foreign goods, under conditions other than the special use that they were to receive according to the declaration made to the administration during the final importation and which justified the granting of a regime of taxation more favourable than that which would have been applied if the actual use to which it would be put had been known to customs;
2° any operation intended to remove or restore to the said goods the characteristics or properties to the presence or absence of which was subject, at the time of final importation, to the granting of a regime of taxation more favourable than that which would have been granted in the absence or presence of the said characteristics or properties.
The defrauded rights are due in addition.
§ 2. When offenders have committed, or attempted to commit, the offences referred to in § 1 with fraudulent intent, they are also punished by imprisonment from eight days to one month. When the offenders have committed the offences referred to in § 1 with fraudulent intent and have seriously damaged the financial interests of the European Union, they are punished by imprisonment from 4 months to 5 years.
The financial interests of the European Union must in any case be considered seriously harmed when the damage amounts to more than 100,000 euros.

Article 257[85] **[No representation or discharge of Customs document]** § 1. Where a document for transit, temporary or provisional relief from duties, dispatch to warehouse or to [temporary warehouse], export with discharge from excise duty or any other customs or excise document whose discharge or representation at the office of issue is prescribed, is not represented or discharged at this office within the specified period or is represented there without the required discharge or an equivalent mention, the holder or the transferee of the document incurs a fine of [[125 euros] to [375 euros]] without prejudice to the payment of the duties applicable to the goods included in the document and

[85] **Art. 257**. § 1er. Lorsqu'un document de transit, de franchise temporaire ou provisoire des droits, d'expédition sur entrepôt ou sur magasin de dépôt temporaire, d'exportation avec décharge de l'accise ou tout autre document de douane ou d'accise dont l'apurement ou la représentation au bureau de délivrance est prescrit, n'est pas représenté ou apuré à ce bureau dans le délai déterminé ou y est représenté non revêtu de la décharge requise ou d'une mention équivalente, le titulaire ou le cessionnaire du document encourt une amende de 125 euros à 375 euros sans préjudice du paiement des droits applicables aux marchandises reprises au document et en outre - s'il s'agit de marchandises étrangères qui, à l'entrée, sont soumises à une mesure de prohibition, de restriction ou de contrôle - du paiement d'un montant compris entre la moitié de la valeur des marchandises et la valeur totale des marchandises.
§ 2. Dans les mêmes hypothèses, si l'expédition de marchandises est faite sous escorte des agents du chemin de fer, l'amende de 125 euros à 375 euros est mise à la charge des administrations, compagnies ou sociétés des chemins de fer, sauf leur recours contre qui de droit.
§ 3. Quiconque donne ou tente de donner, sans autorisation préalable de l'Administration générale des douanes et accises, aux marchandises faisant l'objet de documents de douane visés au § 1, une destination autre que celle qui y est expressément indiquée, est puni des peines prévues, suivant le cas, par l'article 157, les articles 220 à 225, 227 et 277 ou par l'article 231.*[Arrêt de la Cour constitutionnelle n° 16/2019.]*

in addition - if they are foreign goods which, on entry, are subject to a measure of prohibition, restriction or control - [payment of an amount between half the value of the goods and the total value of the goods].

§ 2. In the same cases, if the shipment of goods is made under the escort of railway officials, the fine of [[125 euros] to [375 euros] is the responsibility of the administrations, companies or companies of the railways, saving their recourse against whom it may concern.

§ 3. Anyone who gives or attempts to give, without prior authorisation from the General Customs and Excise Administration, to the goods covered by the customs documents referred to in § 1, a destination other than that which is expressly indicated therein, is liable to the penalties provided, as the case may be, by article 157, articles 220 to 225, 227 and 277 or by article 231.

Article 259[86] **[Deceiving customs with false documents]**

Is punished with a fine of [250 euros] to [625 euros], without it being less than ten times the duties and taxes possibly evaded:

1° anyone who, with the intention of deceiving customs, produces or causes to be produced false, misleading or inaccurate documents;

2° anyone who issues false, misleading or inaccurate certificates, invoices or documents intended to deceive customs.

The offender is further punished by imprisonment from eight to thirty days. When the offender has seriously harmed the financial interests of the European Union, he is punished by imprisonment from 4 months to 5 years.

The financial interests of the European Union must in any case be considered seriously harmed when the damage amounts to more than 100,000 euros.]

Article 260.[87] Without prejudice to the application of the penalties provided for in the Penal Code, a fine of [250 euros] to [625 euros] shall be imposed on anyone who establishes, causes to be established, procures or uses a false or inaccurate invoice, certificate

[86] **Art. 259**. Est puni d'une amende de 250 euros à 625 euros, sans qu'elle puisse être inférieure au décuple des droits et taxes éventuellement éludés:

1° celui qui, dans l'intention de tromper la douane, produit ou fait produire des documents faux, mensongers ou inexact;

2° celui qui délivre des attestations, factures ou documents faux, mensongers ou inexacts destinés à tromper la douane.

Le contrevenant est puni en outre d'un emprisonnement de huit à trente jours. Lorsque le contrevenant a gravement lésé les intérêts financiers de l'Union européenne, il est puni d'un emprisonnement de 4 mois à 5 ans.

Les intérêts financiers de l'Union européenne doivent en tout cas être considérés comme gravement lésés lorsque le préjudice se monte à plus de 100.000 euros.

[87] **Art. 260**. Sans préjudice de l'application des peines prévues par le Code pénal, est puni d'une amende de 250 euros à 625 euros, celui qui établit, fait établir, procure ou utilise une facture, un certificat ou tout autre document faux ou inexact, dans le but de tromper les autorités douanières d'un pays étranger ou en vue d'y obtenir indûment un régime préférentiel en matière de droits de douane, de droits d'accise, de prélèvements ou de restitutions.

or other document with the aim of misleading the customs authorities of a foreign country or with a view to improperly obtaining a preferential regime in terms of customs duties, excise duties, levies or refunds.

Article 261.[88] Are punished by a fine of [125 euros] to [1,250 euros], insofar as they are not repressed by another sanction in matters of customs and excise, offences:
- [regulations and decisions of a general nature of the Council or the Commission of the European Union;]
- to orders issued pursuant to Article 11, § 1;
- in general, laws and decrees on customs and excise.

Goods subject to these offences are seized and confiscated.

Article 261/2.[89] The penalties provided by customs and excise laws are not applicable:
1° to the customs agent who finds himself in the situation determined by Article 135;
2° to anyone who spontaneously reports the fraud or irregularity to the Minister of Finance or his delegate and pays the additional [...] duties and excise duties due.

Article 261/3[90] If, on the occasion of the observation of an irregularity charged to an authorised economic operator, the latter demonstrates to the satisfaction of the administration that this irregularity was committed in good faith and that he fulfils his obligations related to this irregularity, the official designated by the King, holding at least the rank of general counsellor, grants exemption from the sanction to this authorised economic operator.
Irregularities committed in good faith mean those committed without intention to evade the tax or to avoid the measures of prohibition, control and/or restriction or to allow to evade it.

[88] **Art. 261**. Sont punies d'une amende de 125 euros à 1.250 euros, pour autant qu'elles ne soient pas réprimées par une autre sanction en matière de douane et d'accise, les infractions:
- aux règlements et décisions de caractère général du Conseil ou de la Commission de l'Union européenne;
- aux arrêtés pris par application de l'article 11, § 1er;
- d'une manière générale, aux lois et arrêtés en matière de douane et d'accise.

Les marchandises faisant l'objet de ces infractions sont saisies et confisquées.

[89] **Art. 261/2.** Les peines prévues par les lois en matière de douane et accises ne sont pas applicables:
On entend par irrégularités commises de bonne foi, celles commises sans intention d'éluder la taxe ou d'éviter les mesures de prohibition, de contrôle et/ou de restriction ou de permettre de l'éluder.

[90] **Art. 261/3.** Si, à l'occasion de la constatation d'une irrégularité à charge d'un opérateur économique agréé, ce dernier démontre à la satisfaction de l'administration que cette irrégularité a été commise de bonne foi et qu'il remplit ses obligations liées à cette irrégularité, le fonctionnaire désigné par le Roi, possédant au moins le grade de conseiller général, accorde dispense de la sanction à cet opérateur économique agréé.
1° à l'agent en douane qui se trouve dans le cas déterminé par l'article 135;
2° à celui qui signale spontanément la fraude ou l'irrégularité au Ministre des Finances ou à son délégué et acquitte le supplément des droits et des droits d'accise dus.

Article 262[91] Fiscal fines in matters of customs and excise which were fixed by laws prior to April 1, 1926 and which have not been revised after that date are increased by an additional 190 decimas. Excluded from this increase are fines proportional to the rights evaded.

Article 263[92] It may be compromised by the administration or according to its authorisation, as regards the fine, the confiscation, the closing of factories, factories or workshops, on all infringements of this law, and of the special laws on the collection of excise duties, all and as many times as the case is accompanied by mitigating circumstances, or that it can reasonably be supposed that the offence must be attributed rather to negligence or error than to intention premeditated fraud.

Article 264[93]Without prejudice to Article 285/4, § 2, any transaction is prohibited, if the offence must be considered as being sufficiently provable in court, and if there can be no doubt intention of premeditated fraud.

Article 265[94] [Natural or legal persons are jointly and severally liable for fines and costs resulting from convictions pronounced under customs and excise laws against their employees or their administrators, managers or liquidators for the offences they have committed in that capacity.]

Article 266[95] § 1. Unless otherwise provided in specific laws and without prejudice to fines and confiscations for the benefit of the Treasury, the offenders and their accomplices and the persons responsible for the offence are jointly and severally liable for the payment of the duties and taxes of which the Treasury has been or would have been defrauded. by fraud as well as late payment interest which may be due.

[91] **Art. 262**. Les amendes fiscales en matière de douane et d'accise qui ont été fixées par les lois antérieures au 1er avril 1926 et qui n'ont pas été révisées postérieurement à cette date sont majorées de 190 décimes additionnels. Echappent à cette majoration, les amendes proportionnelles aux droits éludés.

[92] **Art. 263**. Il pourra être transigé par l'administration ou d'après son autorisation, en ce qui concerne l'amende, la confiscation, la fermeture des fabriques, usines ou ateliers, sur toutes infractions à la présente loi, et aux lois spéciales sur la perception des accises, toutes et autant de fois que l'affaire sera accompagnée de circonstances atténuantes, ou qu'on pourra raisonnablement supposer que l'infraction doit être attribuée plutôt à une négligence ou erreur qu'à l'intention de fraude préméditée.

[93] **Art. 264**. Sans préjudice de l'article 285/4, § 2, toute transaction est interdite, si l'infraction doit être considérée comme pouvant être suffisamment prouvée en justice, et si l'on ne peut douter de l'intention de fraude préméditée.

[94] **Art. 265**. Les personnes physiques ou morales sont civilement et solidairement responsables des amendes et frais résultant des condamnations prononcées en vertu des lois en matière de douanes et accises contre leurs préposés ou leurs administrateurs, gérants ou liquidateurs du chef des infractions qu'ils ont commises en cette qualité.

[95] **Art. 266**. § 1er. Sauf disposition contraire dans des lois particulières et sans préjudice aus amendes et confiscations au profit du Trésor, les délinquants et leurs complices et les personnes responsables de l'infraction sont tenus solidairement au paiement des droits et taxes dont le Trésor a été ou aurait été frustré par la fraude ainsi que des intérêts de retard éventuellement dus.

§ 2. Les sommes récupérées dans une affaire sont imputées par priorité sur les intérêts de retard et sur les droits et taxes.

§ 2. The sums recovered in a case are allocated by priority to interest on late payment and to duties and taxes.

Chapter XX
IVa. Administrative sanctions
Article 266-2[96]. Without prejudice to the application of the administrative penalties referred to in Articles 17, 19/5, 70/28, 70/29, 129, 130, 131, 133 and without prejudice to the administrative penalties provided for by specific excise laws, any license, authorisation, permission, concession granted on the basis of European or national customs and excise legislation may be withdrawn in the event that:
- the holder of the license, authorisation, permission, concession does not make voluntary payment of the customs debt arising in his name or;
- the holder no longer meets the requirements set out in his licence, authorisation, permission or concession.]

(d) VAT Code Offences [Excerpt] / *Overtredingen van de BTW-Code*

The VAT (fraud) infractions can be investigated and eventually sanctioned in serious cases, which requires that two or more Member States e.g. Belgium and Germany and as a third country France are concerned and the damage is guessed to be more than EUR 100,000.[97] The relevant provisions from the statutory law shall be presented here: **41**

Article 73[98] Will be punished by imprisonment from eight days to two years and a fine of 250 euros to 500,000 euros or only one of these penalties, whoever, with fraudulent intent or with intent to harm, contravenes the provisions of this Code or the decrees taken for its execution. **42**

[96] **Art. 266/2**. Sans préjudice de l'application des sanctions administratives visées aux articles 17, 19/5, 70/28, 70/29, 129, 130, 131, 133 et sans préjudice des sanctions administratives prévues par les lois d'accises spécifiques, toute licence, autorisation, permission, concession octroyée sur base de la législation européenne ou nationale en matière de douane et d'accise peut être retirée au cas où:
- le titulaire de la licence, de l'autorisation, de la permission, de la concession n'effectue pas de paiement volontaire de la dette douanière née en son nom ou;
- le titulaire ne satisfait plus aux prescriptions prévues dans sa licence, dans son autorisation, dans sa permission ou dans sa concession.

[97] See Careel, De Smedt 2022b, pp 9 et seq.

[98] **Art. 73** Sera puni d'un emprisonnement de huit jours à deux ans et d'une amende de 250 euros à 500.000 euros ou de l'une de ces peines seulement, celui qui, dans une intention frauduleuse ou à dessein de nuire, contrevient aux dispositions du présent Code ou des arrêtés pris pour son exécution.
Si les infractions visées à l'alinéa 1er ont été commises dans le cadre de la fraude fiscale grave, organisée ou non, le coupable est puni d'un emprisonnement de huit jours à 5 ans et d'une amende de 250 euros à 500.000 euros ou de l'une de ces peines seulement.
La fraude fiscale est en tout cas considérée grave lorsque les infractions visées à l'alinéa 1er sont en lien avec le territoire d'au moins deux Etats membres et entraînent un préjudice d'un montant total d'au moins 10.000.000 euros.
See already the Belgian Notification to the EPPO, https://www.eppo.europa.eu/sites/default/files/2021-11/04-BE_0.pdf (Accessed 4 June 2024), pp 9 et seq.

If the offences referred to in the first paragraph have been committed in the context of serious tax fraud, organised or not, the culprit is punished by imprisonment from eight days to 5 years and a fine of 250 euros to 500,000 euros. or only one of these penalties. Tax evasion is in any case considered serious when the offences referred to in the first paragraph are linked to the territory of at least two Member States and cause damage for a total amount of at least 10,000,000 euros.

Article 73bis[99] Will be punished by imprisonment of one month to five years and a fine of 250 EUR to 500,000 euros or one of these penalties only, whoever, with a view to committing one of the offences referred to in Article 73, will have committed a forgery in public, commercial or private writings, or in computer referred to in article 210bis, § 1, of Book II of the Penal Code, or who will have made use of such a forgery.
Anyone who knowingly establishes a false certificate that could compromise the interests of the Treasury or makes use of such a certificate, will be punished by imprisonment from eight days to two years and a fine of 250 EUR to 500,000 euros or one of these penalties only.

Article 73nonies[100] The attempt to commit an offence referred to in Article 73, paragraph 3, will be punished by imprisonment from eight days to three years and a fine of 26 euros to 50,000 euros or these penalties only.

Art 73decies[101] When the offence referred to in Article 73, paragraph 3, is committed by a criminal organisation within the meaning of Article 324bis of the Criminal Code, the guilty party is punished by imprisonment for 1 to 5 years and a fine. from 5,000 euros to 500,000 euros or only one of these penalties.

Art 73quinquies[102] Aspects such as complicity or liability of legal persons apply through the provisions of Book I of the Penal Code, which are applicable to offences covered by Articles 73, 73bis and 73quater.

[99] **Art. 73bis** Sera puni d'un emprisonnement d'un mois à cinq ans et d'une amende de 250 EUR à 500.000 euros ou l'une de ces peines seulement, celui qui, en vue de commettre une des infractions visées à l'article 73, aura commis un faux en écritures publiques, de commerce ou privées, ou en informatique visé à l'article 210bis, § 1er, du Livre II du Code pénal, ou qui aura fait usage d'un tel faux.
Celui qui, sciemment, établira un faux certificat pouvant compromettre les intérêts du Trésor ou fera usage de pareil certificat, sera puni d'un emprisonnement de huit jours à deux ans et d'une amende de 250 EUR à 500.000 euros ou de l'une de ces peines seulement.
[100] **Art. 73nonies** La tentative de commettre une infraction visée à l'article 73, alinéa 3, sera punie d'un emprisonnement de huit jours à trois ans et d'une amende de 26 euros à 50.000 euros ou d'une de ces peines seulement.
[101] **Art 73decies** Lorsque l'infraction visée à l'article 73, alinéa 3, est commise par une organisation criminelle au sens de l'article 324bis du Code pénal, le coupable est puni d'un emprisonnement de 1 an à 5 ans et d'une amende de 5.000 euros à 500.000 euros ou de l'une de ces peines seulement.
[102] **Art 73quinquies** Les aspects tels que la complicité ou la responsabilité des personnes morales s'appliquent par l'intermédiaire des dispositions du Livre premier du Code pénal, qui sont applicables aux infractions visées par les articles 73, 73bis et 73quater.

(2) Methods of Investigation, Collecting Information and Documenting the Initiation of an Investigation for an Indictement (Article 34 et seq. EPPO Regulation, Article 40 para 3 IRP)

(a) Impetus of Fraud Knowledge Patterns

Recent studies have analysed and frequently analyse the peculiarities and typologies of (EU-)frauds quite extensively and they are therefore highly important for EDPs and their knowledge about the structures of this crime area (criminological insights): **43**

- National level: Belgian Crime Statistics, De Algemene Nationale Gegevensbank, Police Studies.
- EU-level: PIF Reports, Rule of law Report, "Impact of Organised Crime on the EU's Financial Interests"[103]

Nota bene: The Anti-Fraud Knowledge Centre hosted by the EU Commission/OLAF provides information on fraud patterns, prevention tools and case studies.

(b) Special National Databases for PIF Offences/Digital Investigations, Art. 40 para 3 IRP 2020.003?

Belgium has (police) databases, but it has apparently not any special database that lists primarily PIF offences. PIF offences are listed in the general database on crime statistics. **44**

- *De Algemene Nationale Gegevensbank* / the General National database(, which stems from and is based on art. 13 *van de wet van 8 December 1992*).
- E.g. crime statistics for fiscal fraud:

		ANT-WERPEN		BER-GEN		BRUS-SEL		GENT		LUIK		BEL-GIE
fiscal	l	%		%		%		%		%		%
fraud	112	0,27	76	0,19	166	0,29	130	0,29	195	0,45	679	0,30

Source: https://www.om-mp.be/stat/corr/jstat2021/n/home.html.

[103] See the "Impact of Organised Crime on the EU's Financial Interests", 2022, https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697019/IPOL_STU(2021)697019_EN.pdf. Accessed 4 June 2024.

dd. Examples and Precedents in National Case-Law

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 → 1.C.1) and national authorities in administrative procedures (especially on the expenditure side, for example in the case of subsidies). The first EPPO crime report therefore correctly distinguishes between:

* All information, which is not taken from a judgement, 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. References can be made to national case law.

- Non-procurement expenditure fraud
- Procurement expenditure fraud
- VAT revenue fraud[104]
- Non-VAT revenue fraud
- corruption cases (4% in 2021).

(a) Fraud

45 Fraud offences are often related to forgery. It is therefore important to take into account that "Belgian court[s] may hear a forgery committed abroad when the forger has made use of the counterfeit document in Belgium."[105]

(aa) Revenue Frauds

46 Revenue frauds are manifold. First, the scheme should be identified. 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 characteristics. Assessment can also be based on known cases and the professional groups suspected in these cases.

(bb) Expenditure Frauds

47 Expenditure frauds may relate to grants and subisdies. In this area the Subsidy Fraud Decree applies.

[104] Balboni 2022.

[105] Cass. May 25, 2016, RG P.16.0194.F, No. 2016, No. 348 (cited in Court of Cassation of Belgium, Judgement 10 March 2021 – P.20.1295.F, ECLI:BE:CASS:2021:ARR.20210310.2F.1) "La juridiction belge peut connaître d'un faux en écritures commis à l'étranger alors que le faussaire a fait usage en Belgique de la pièce fausse: l'indivisibilité créée par l'unité de but entraîne la compétence des juridictions de l'Edit le territory duquel une partie du tout a été commise (1). (1) Cass. May 25, 2016, RG P.16.0194.F, Pas. 2016, n° 348."

Case Study 1: Suspicions relating to natural and legal persons obtaining funds for a (fictious) Green Energy project

Suspicions relating to natural and legal persons obtaining funds for a (fictious) Green Energy project

The judgment of the Court of Appeal in Ghent, Criminal Chamber, of 23 December 2016 was appealed in 2017. The Court of Cassation of Belgium decided the appeal in 2018 (see ECLI:BE:CASS:2018:ARR.20180313.2, Roll number: P.17.0083.N.

In the first instance the plaintiff was accused of subsidy fraud. The original plea alleged several actions but mainly an infringement of Article 2, § 2, Subsidy Fraud Decree and the judgment condemned the plaintiff for making an incorrect or incomplete statement to obtain or retain subsidies in relation to an ecological funding scheme of the Belgium Ministries.

The appeal judgement stated:

"**13.** The [first] judgment condemns the claimant and her managing director, the claimant I.3, for applying for, receiving, retaining and averting ecology subsidies for the implementation of a fictitious investment project by the claimant.
[…] **95.** The judgment (ground 18.5) declares the plaintiff guilty of, inter alia, charges C.4 and G.6.1, which relate to the payment of the ecology premium of 750,000 euros to Green Power Solutions bvba. It rules that that company was set up by the claimant III and Fidus + Fiduciaire bvba, of which it further establishes (p. 145) that the claimant was the business manager, that the claimant was a proxy holder of Green Power Solutions bvba and that subsidy funds of Green Power Solutions bvba were transferred to the claimant personally and to his companies Fidus + Fiduciaire bvba, Bobati Construct bvba and TVL bvba. Furthermore, it judges (p. 130 and 150) that the alleged offences against the plaintiff were clearly committed for the purpose of obtaining government funds to remedy either personal financial shortcomings or problems or financial shortcomings or problems of affiliates or third parties. to be able to solve. In addition, it (p. 155) rules that the claimant unlawful ecology for several companies of which he was a partner or manager or for persons and companies that appealed to him, applied for or co-operated with subsidies and for his own purposes and for those of affiliated companies and even third parties turned away the illegally obtained government funds, only to conclude that he was often a key figure in the commission of subsidy fraud by various persons and companies. Those reasons mean that the aforementioned indictments have resulted in a capital advantage consisting in the aforementioned ecology premium, the judgment of which forfeits part of 310,000 euros against the plaintiff.

96. The judgment (ground 18.6) declares the plaintiff guilty of, among other things, indictment C.5, which relates to the payment of the ecology premium of 350,000 euros to Aquafun bvba. It ruled that that company was set up with funds from Green Power Solutions bvba, that the claimant was a proxy holder of the KBC account of Aquafun bvba, that the latter's subsidy application was made with the claimant as authorised representative and that the claimant was not merely an accountant acted on behalf of the manager, but was the one who presented the ecology project to manager Depoortere, performed the financial transactions, did all the administrative transactions for the application, transferred the ecology premium from Aquafun bvba to his own accounts and the claimant III, decided which car the manager was allowed to purchase and answered e-mail and correspondence for the manager. Furthermore, the judgment (p. 150 and 155) rules as stated above in connection with Green Power Solutions bvba. Those reasons mean that the aforementioned indictment has resulted in a capital advantage consisting in the aforementioned ecology premium, the judgment of which forfeits part of 100,000 euros against the plaintiff.
97. The judgment (ground 18.8) declares the claimant guilty of, among other things, indictment C.7, which relates to the payment of the ecology premium of 266,560 euros to the claimant I.4. It finds that the claimant submitted the subsidy application on behalf of that company and that, according to the information it enumerates, he was not merely acting as an accountant for that company, but was undoubtedly well aware of the intention of the claimant I. 3 to submit an application for an ecology subsidy without a concrete investment project and to have cooperated with it in full knowledge of the facts in one of the ways of Article 66 of the Criminal Code. Furthermore, the judgment (p. 150 and 155) rules as stated above in connection with Green Power Solutions bvba.
98. For those reasons, the judgment is duly reasoned, answers the claimant's opinion and justifies the decision in law, without having to answer the arguments put forward by the claimant merely in support of his defence that the majority of the ecology premiums have not ended up in his assets, but which do not constitute an independent defence. To that extent, the part cannot be accepted. […]"[106]

Summary:
This judgement from a purely national situation and national funding scheme clearly shows that subsidy fraud might be related to complex structures involving natural and legal persons. Furthermore, it points at the fact how closely the prosecution must stick to the national procedural rules in order not to produce grounds for appeals in subsidy fraud cases involving Union money.

[106] See Court of Cassation of Belgium – 13 march 2018 – P.17.0083.N, ECLI:BE:CASS:2018:ARR.20180313.2.

(b) Corruption Offences

The corruption offences in Article 247 et seq. CC[107] fall into the competence of the EU if these relate to the financial interest of the EU as stipulated by the Directive (EU) 2017/1371. **48**

(c) Money Laundering with PIF Crimes

OLAF discovered, in due course from information by Belgian judicial authorities, in the last decade (2019) major suspicions in the area of EU-funded railway infrastructure projects in Romania. Involved into the scheme were Belgian authorities, which were assigned fictious tasks in the non-exisiting projects.[108] The *Direcția Națională Anticorupție* (DNA) in Romania and Belgian authorities investigated the case by setting-up a Joint Investigation Team. The results of the investigation related in an indictement by the DNA in Romania. The case is special as it clearly shows that investigations and recommendations by OLAF have already been effective prior to the appearance of the EPPO. Today the investigation could probably even be conducted – if criminal suspicion arises at all in these cases – by the EDPs from Romania and Belgium. The EPPO took over this case in 2022.[109] The Belgian AML law has made quite an evolution.[110] The *wet van 11 januari 1993 tot voorkoming van het gebruik van het financiële stelsel voor het witwassen van geld en de financiering van terrorisme*[111] was replaced in 2017 by the Law on the Prevention of Money Laundering and the Financing of Terrorism and Restriction on the Use of Cash of 8 September 2017/*Wet tot voorkoming van het witwassen van geld en de financiering van terrorisme en tot beperking van het gebruik van contanten 18 September 2017*. **49**

(d) Criminal Organisation (PIF "Mafia clause")

Article 324bis of the Belgian Criminal Code criminalizes the criminal organisation. Art. 56bis CPC allows to conduct observations if serious indications for a crime are present. **50**

[107] Court of Cassation of Belgium – 27 January 2016 – P.15.1362.F, ECLI:BE:CASS:2016:ARR.20160127.6.
[108] Wahl 2020.
[109] See Irina Marica, Romanian Insider, Press Relase, May 2022, https://www.romania-insider.com/eppo-danube-delta-fraud-case-2022.
[110] See https://www.biv.be/kb/het-beroep/antiwitwas/de-evolutie-van-de-antiwitwaswet-sinds-1993#:~:text=Deze%20wet%20verplichtte%20een%20samenwerking,uit%20verdachte%20of%20criminele%20bron. Accessed 4 June 2024.
[111] See MEMO/98/53, Brüssel, den 13 Juli 1998, Geldwäsche: Situation in den Mitgliedstaaten.

d) Actions if "Decision to open a case" (Regulation + Rules in IRP, 2020.003 EPPO)

51 If he/she decides to initiate an investigation he/she **must note this in the case management system (Art. 45 para 1 EPPO Regulation, 38 IRP**[112]**)**. In addition, the numerous obligations to provide information from Art. 24 para 3 to 8.

52 If an investigation is opened by virtue of Art. 26 para 1 EPPO Regulation, he/she must insert the following information in the Case Management System according to **Art. 38 para 3 IRP**:

53

"a) the possible legal qualification of the reported criminal conduct, including if it was committed by an organised group;
b) a short description of the reported criminal conduct, including the date when it was committed;
c) the amount and nature of the estimated damage;
d) the Member State(s) where the focus of the criminal activity is, respectively where the bulk of the offences, if several, was committed;
e) other Member States that may be involved;
f) the names of the potential suspects and any other involved persons in line with Article 24(4) of the Regulation, their date and place of birth, identification numbers, habitual residence and / or nationality, their occupation, suspected membership of a criminal organisation;
g) whether privileges or immunities may apply;
h) the potential victims (other than the European Union);
i) the place where the main financial damage has occurred;
j) inextricably linked offences; […]" [see again last footnote]
k) any other additional information, if deemed appropriate by the inserter

54 Specific information is presented by the IRP, Art. 41 relates to the initiation according to Art. 26 EPPO Regulation:

55

Article 41: Decision to initiate an investigation or to evoke a case
1. Where, following the verification, the European Delegated Prosecutor decides to exercise EPPO's competence by initiating an investigation or evoking a case, a case file shall be opened and it shall be assigned an identification number in the index of the case files (hereinafter the Index). A permanent link to the related registration under Article 38(1) above shall be automatically created by the Case Management System.
If an investigation procedure is to be started, the competent national authorities must be informed:
2. The corresponding reference in the Index shall contain, to the extent available:

[112] See https://www.eppo.europa.eu/sites/default/files/2020-12/2020.003%20IRP%20-%20final.pdf. Accessed 4 June 2024.

a) As regards suspected or accused persons in the criminal proceedings of the EPPO or persons convicted following the criminal proceedings of the EPPO,
i. surname, maiden name, given names and any alias or assumed names;
ii. date and place of birth;
iii. nationality;
iv. sex;
v. place of residence, profession and whereabouts of the person concerned,
vi. social security numbers, ID-codes, driving licences, identification documents, passport data, customs and tax identification numbers;
vii. description of the alleged offences, including the date on which they were committed;
viii. category of the offences, including the existence of inextricably linked offences;
ix. the amount of the estimated damages;

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

vi. ID-codes, identification documents, and passport data. The categories of personal data referred to above under points (a) (x) - (xv) shall be entered in the Index only to the extent practicable, taking into account the operational interest and available resources. The reference in the Index shall be maintained up to date during the investigation of a case file. The Case Management System shall periodically notify the European Delegated Prosecutor if certain categories of information are not entered in the Index.
3. The Case Management System shall notify the supervising European Prosecutor and the European Chief Prosecutor and shall randomly assign the monitoring of the investigation to a Permanent Chamber, in accordance with Article 19.
4. Where the handling European Delegated Prosecutor considers that in order to preserve the integrity of the investigation it is necessary to temporarily defer the obligation to inform the authorities referred to in Articles 25(5), 26(2) and 26(7) of the Regulation, he/she shall inform the monitoring Permanent Chamber without delay. The latter may object to this decision and instruct the European Delegated Prosecutor to proceed with the relevant notification immediately.

e) Consequences to the "Decision to open a case"

56 If this decision has been achieved the EDPs will need to contact the chambers, draw a summary and open an EPPO case sheet, and plan on how to conduct the investigation and gather the relevant evidence in order to collect all information that is necessary to prove a criminal offence 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 of a particular PIF offence of the present country.[113]

57 The EDPs will need to focus on the *actus reus a*nd the *mens rea* conditions of the relevant offence.[114] In other words: What German criminal justice calls "*Tatbestand*"[115], 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[116], the subjective elements (*mens rea*, see above)[117] as well as the unlawfulness of the conduct

[113] The criminalisation has been researched a lot and it is still debated whether ist theory is well explained in EU criminal law, see e.g. Peršak 2018, pp 20–39.
[114] 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).
[115] Bohlander 2009, pp 29 et seq.
[116] 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, Weiser 2022, pp 57–94.
[117] 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.

(i.e. no written or unwritten justifications/justificatory defences[118] 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.[119]

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 almost every country in the EU, with a divide running where common law differs and civil law countries encounter. **58**

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.[120] **59**

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.[121] **60**

For all of these questions and purposes, the EDPs can additionally to the present presentations, analysis and manual 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. **61**

[118] This is a worldwide recognized condition as a basic element of the concept of crime, see Stasi 2021, pp 31–47.
[119] See Eser 1987, pp 17–65, on the historical implications and the differences between the common law and civil law approach; Bohlander 2009, pp 29 et seq., 77 et seq. (Rechtswidrigkeit), 115 et seq. ("Guilt and Excusatory Defences").
[120] See Hauck, 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.
[121] See Hauck, EU Fraud Commentary, Commentary on PIF Directive, Art. 5.

2. Article 27 Right of Evocation

2. Article 27 Right of Evocation 128
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1. Upon receiving all relevant information in accordance with Article 24(2), the EPPO shall take its decision on whether to exercise its right of evocation as soon as possible, but no later than 5 days after receiving the information from the national authorities and shall inform the national authorities of that decision. The European Chief Prosecutor may in a specific case take a reasoned decision to prolong the time limit by a maximum period of 5 days, and shall inform the national authorities accordingly.
2. During the periods referred to in paragraph 1, the national authorities shall refrain from taking **any decision under national law** that may have the effect of precluding the EPPO from exercising its right of evocation.
The national authorities shall take any urgent measures necessary, **under national law**, to ensure effective investigation and prosecution.
3. If the EPPO becomes aware, by means other than the information referred to in Article 24(2), of the fact that an investigation in respect of a criminal offence for which it could be competent is already undertaken by the competent authorities of a Member State, it shall inform these authorities without delay. After being duly informed in accordance with Article 24(2), the EPPO shall take a decision on whether to exercise its right of evocation. The decision shall be taken within the time limits set out in paragraph 1 of this Article.
4. The EPPO shall, where appropriate, consult the competent authorities of the Member State concerned before deciding whether to exercise its right of evocation.

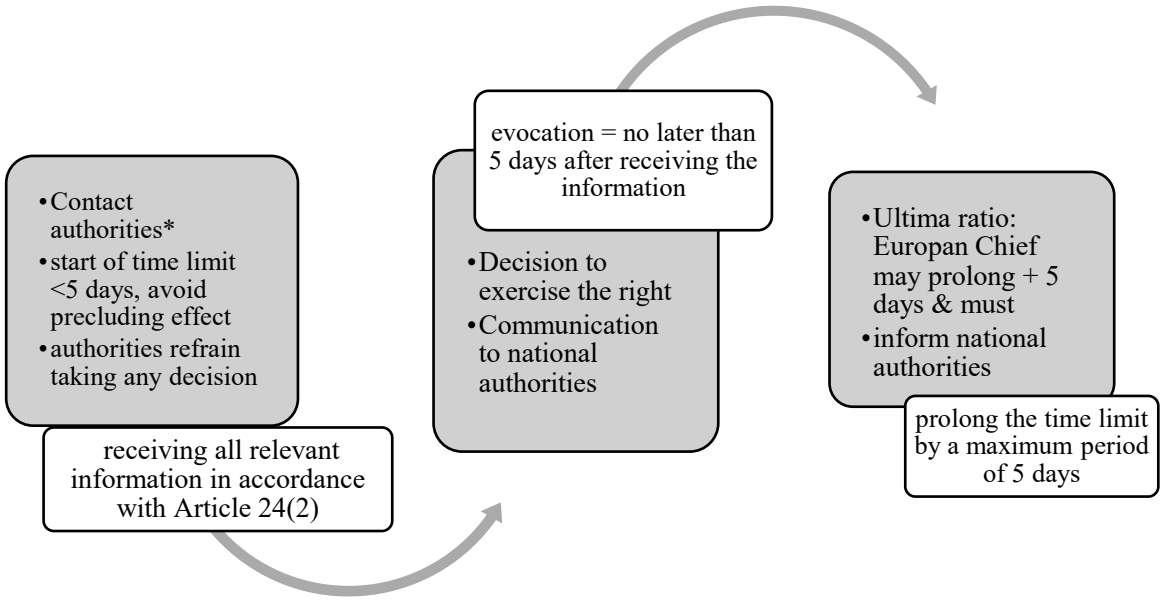
5. Where the EPPO exercises its right of evocation, the competent authorities of the Member States shall transfer the file to the EPPO and refrain from carrying out further acts of investigation in respect of the same offence.
6. The right of evocation set out in this Article may be exercised by a European Delegated Prosecutor from any Member State whose competent authorities have initiated an investigation in respect of an offence that falls within the scope of Articles 22 and 23.
Where a European Delegated Prosecutor, who has received the information in accordance with Article 24(2), considers not to exercise the right of evocation, he/she shall inform the competent Permanent Chamber through the European Prosecutor of his/her Member State with a view to enabling the Permanent Chamber to take a decision in accordance with Article 10(4).
7. Where the EPPO has refrained from exercising its competence, it shall inform the competent national authorities without undue delay. At any time in the course of the proceedings, the competent national authorities shall inform the EPPO of any new facts which could give the EPPO reasons to reconsider its decision not to exercise competence.
The EPPO may exercise its right of evocation after receiving such information, provided that the national investigation has not already been finalised and that an indictment has not been submitted to a court. The decision shall be taken within the time limit set out in paragraph 1.
8. Where, with regard to offences which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute at Union level, it shall in accordance with Article 9(2), issue general guidelines allowing the European Delegated Prosecutors to decide, independently and without undue delay, not to evoke the case.
The guidelines shall specify, with all necessary details, the circumstances to which they apply, by establishing clear criteria, taking specifically into account the nature of the offence, the urgency of the situation and the commitment of the competent national authorities to take all necessary measures in order to fully recover the damage to the Union's financial interests.
9. To ensure coherent application of the guidelines, a European Delegated Prosecutor shall inform the competent Permanent Chamber of each decision taken in accordance with paragraph 8 and each Permanent Chamber shall report annually to the College on the application of the guidelines.

If the EDPs do not exercise the EPPO's competence by virtue of the Union's legality principle in due time on their own and hereby on behalf (*proprio motu*) of the Union and the Union's interests by analysing the *notitiae crimini europea*, i.e. the obligatory **1**

European PIF offences notices, which are sent to the European Prosecution Office in order to inform that a PIF offence is alleged or has been committed, the EDPs and the Chambers must decide on the evocation of cases from the national authorities on to the level of the Union competence. If the national prosecutor or a national office vested with investigative powers have 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).

Nota bene: In addition to that, if reading the following provisions one can take into account that some of them will apply as well to the EDPs if they want to file an indictment by virtue of the EPPO Regulation, i.e. the area, which is not in the focus of this compendium as the country **volumes** have the focal point on the start of investigations, the phase, in which, most likely a huge number of operations will cease already. But the same provisions that apply to the national authorities while standing still until the EPPO has decided to exercise its right of evocation or not (Art. 27) will apply in cases of EPPO indictments (Art. 34 et seq.) and preclude the filing of indictment by virtue of national law before a national court. The conflict of criminal and disciplinary sanctions must be examined for example in order to avoid the precluding effect and to stop the application of the *ne bis in idem* principle.[122]

2 *Figure 6: Right of evocation/time limits/refrain taking decisions that have a precluding effect*



* Caption: Belgian Authorities.[123]

Nota bene: Belgium has publicly notified the EPPO under Art. 117 EPPO Regulation but it seemed as well to trust that EDPs (*de facto* former national prosecutors) know their national system. Despite this guess, the typical authorities are displayed here: Art. 27 para 1 = Public

[122] Beernaert 2010, p 481.

[123] See Notification du Royaume de Belgique en vertu de l'article 117 du règlement (UE) 2017/1939 https://www.eppo.europa.eu/sites/default/files/2021-11/04-BE_0.pdfhere: Autorités compétentes pour la mise en œuvre du règlement. Accessed 4 June 2024.

Prosecutor's Office (General Administration of Customs and Excise (Administration générale des douanes et accises), General Administration of the Special Tax for VAT Fraud (Administration générale de l'Inspection spéciale des impôts pour la fraude TVA). Art. 27 para 2 = same authorities; Public Prosecutor's Office, which had already opened the case, General Administration of Customs and Excise, General Administration of the Special Tax Inspection for the VAT. Art. 27 para 3 = same authorities. Art. 27 para 4 = same authorities.

a) Provisions with a precluding effect for the right of evocation of the EPPO, para 2

Certain provisions in the Belgian statutory law have precluding effect for the right of evocation of the EPPO, such as statute of limitations or amnesty rules. In the following such provisions will be presented. **3**

aa. General precluding rules and Statute of limitations

The Criminal Code contains the main provisions and it stipulates the statues of limitations concerning the PIF offences (see above → Art. 26 EPPO Regulation). **4**

[Excerpt Criminal Code] **5**

Article 86[124] Penalties, pronounced in irrevocable judgments or sentences, are nullified by the death of the convicted person. (The loss of legal personality of the convicted legal person does not invalidate the sentence.)

Article 87[125] Incapacities, pronounced by the judge or attached by law to certain convictions, cease by the remission which the King may grant by virtue of the right of grace.

Article 91[126] (Except for criminal penalties, as provided for in Articles 136bis, 136ter and 136quater, criminal penalties shall expire after twenty years from the date of the judgments or judgments in which they were pronounced.

Article 92[127] Except for penalties relating to crimes as provided for in Articles 136bis, 136ter and 136quater, which are non-barred, correctional penalties expire after five

[124] **Art. 86**. Straffen, uitgesproken bij onherroepelijk geworden arresten of vonnissen, gaan teniet door de dood van de veroordeelde. (Het verlies van rechtspersoonlijkheid van de veroordeelde rechtspersoon doet de straf niet vervallen.)

[125] **Art. 87.** Onbekwaamheden, door de rechter uitgesproken of door de wet aan sommige veroordelingen verbonden, houden op door kwijtschelding, die de Koning daarvan kan verlenen krachtens het recht van genade.

[126] **Art. 91**. (Behoudens straffen met betrekking tot misdrijven, zoals bepaald in de artikelen 136bis, 136ter en 136quater, verjaren criminele straffen) door verloop van twintig jaren, te rekenen van de dagtekening van de arresten of vonnissen waarbij zij zijn uitgesproken. <W 2003-08-05/32, art. 4; Inwerkingtreding: 07-08-2003>.

[127] **Art. 92**. Behoudens straffen met betrekking tot misdrijven zoals bepaald in de artikelen 136bis, 136ter en 136quater, die onverjaarbaar zijn, verjaren correctionele straffen door verloop van vijf jaren, te rekenen van de dagtekening van het arrest of van het in laatste aanleg gewezen vonnis, of te rekenen van de dag waarop het in eerste aanleg gewezen vonnis niet meer kan worden bestreden bij wege van hoger beroep.

years] 1 from the date of the judgment or of the judgment rendered at last instance, or from the day on which the judgment rendered in the first instance can no longer be challenged by means of an appeal.
If the sentence imposed exceeds three years, the limitation period is ten years.
If the sentence imposed exceeds twenty years, the limitation period is twenty years.

Article 93[128] Police sentences become statute-barred by the lapse of one year, calculated from the times established in the previous article.

Article 94[129] The fines become time-barred by the expiry of the time limits laid down in the previous articles, depending on whether they have been pronounced for crimes, misdemeanours or offences.
Special confiscations become time-barred by the expiry of the periods laid down in the previous articles, according to whether they have been pronounced for offences or crimes.
The special confiscations pronounced for misdemeanours shall expire after ten years from the dates specified in Article 92.

Article 95[130] If the convicted person serving his sentence manages to escape, the limitation period starts to run from the day of the escape.
However, if, in that case, a convicted person has served more than five years of his sentence, if it concerns a temporary criminal sentence, or more than two years, if it concerns a correctional sentence, that additional time is added to the period of limitation.

Article 96[131] The statute of limitations of the sentence is interrupted by the arrest of the convicted person.

Indien de uitgesproken straf drie jaar te boven gaat, is de verjaringstermijn tien jaren.
Indien de uitgesproken gevangenisstraf twintig jaar te boven gaat, is de verjaringstermijn twintig jaren.]

[128] **Art. 93**. Politiestraffen verjaren door verloop van een jaar, te rekenen van de tijdstippen, in het vorige artikel vastgesteld.

[129] **Art. 94**. De geldboeten verjaren door verloop van de in de vorige artikelen vastgestelde termijnen, naargelang zij zijn uitgesproken wegens misdaden, wanbedrijven of overtredingen.
De bijzondere verbeurdverklaringen verjaren door verloop van de in de vorige artikelen vastgesteld termijnen, naargelang zij zijn uitgesproken wegens overtredingen of misdaden.
De bijzondere verbeurdverklaringen die uitgesproken zijn wegens wanbedrijven verjaren door verloop van tien jaren, te rekenen vanaf de in artikel 92 vastgestelde tijdstippen.

[130] **Art. 95**. Indien de veroordeelde die zijn straf ondergaat, erin slaagt te ontvluchten, begint de verjaringstermijn te lopen van de dag van de ontvluchting.
Wanneer echter in dat geval een veroordeelde meer dan vijf jaar van zijn straf heeft ondergaan, indien het een tijdelijke criminele straf betreft, of meer dan twee jaar, indien het een correctionele straf betreft, wordt die meerdere tijd toegerekend op de duur van de verjaring.

[131] **Art. 96.** De verjaring van de straf wordt door de aanhouding van de veroordeelde gestuit

Article 97[132] § 1. The limitation period for the confiscation is suspended when the law so provides or when there is a legal impediment that prevents the immediate execution of this sentence.
§ 2. The prescription is in any case suspended in the following cases:
1° as long as the convicted person is the subject of legal collective insolvency proceedings;
2° during the processing of the request for mercy submitted by the convicted person or third parties in accordance with Articles 110 and 111 of the Constitution regarding the confiscation that has been incurred;
3° during the term of a discharge arrangement that the competent official of the Federal Public Service Finance, who is charged with the recovery of the confiscation, the fine or the legal costs, has granted to the convicted person.

Article 98[133] § 1. The limitation period for the confiscation is interrupted by any act of enforcement emanating from the legally competent bodies.
§ 2. The limitation period is interrupted in any case in the following cases:
1° any partial payment made by or on behalf of the convicted person to the competent official of the Federal Public Service Finance who is charged with the recovery of the confiscation and which is not part of a settlement scheme approved by the recipient;

[132] **Art. 97.** § 1. De verjaring van de verbeurdverklaring wordt geschorst wanneer de wet dit bepaalt of wanneer er een wettelijk beletsel bestaat dat de onmiddellijke tenuitvoerlegging van deze straf verhindert.
§ 2. De verjaring wordt in elk geval geschorst in de volgende gevallen:
1° zolang de veroordeelde het voorwerp uitmaakt van een wettelijke collectieve insolventieprocedure;
2° tijdens de behandeling van het door de veroordeelde of derden overeenkomstig de artikelen 110 en 111 van de Grondwet ingediende genadeverzoek betreffende de opgelopen verbeurdverklaring;
3° tijdens de looptijd van een aanzuiveringsregeling die de bevoegde ambtenaar van de federale overheidsdienst Financiën, die belast is met de invordering van de verbeurdverklaring, de geldboete of de gerechtskosten heeft toegestaan aan de veroordeelde.

[133] **Art. 98.**§ 1. De verjaring van de verbeurdverklaring wordt gestuit door elke daad van tenuitvoerlegging uitgaande van de wettelijk bevoegde organen.
§ 2. De verjaring wordt in elk geval gestuit in de volgende gevallen:
1° elke gedeeltelijke betaling die door of voor de veroordeelde is gedaan aan de bevoegde ambtenaar van de federale overheidsdienst Financiën die belast is met de invordering van de verbeurdverklaring en die niet kadert in een door de ontvanger toegestane aanzuiveringsregeling;
2° elk betalingsverzoek of elke ingebrekestelling gericht aan de veroordeelde, bij een aangetekende zending of gerechtsdeurwaardersexploot, uitgaande van de bevoegde ambtenaar van de federale overheidsdienst Financiën die belast is met de invordering van de verbeurdverklaring;
3° elk beslag gelegd door of op verzoek van de bevoegde ambtenaar van de federale overheidsdienst Financiën die belast is met de invordering van de verbeurdverklaring,
4° de beslissing van de directeur van het Centraal Orgaan voor de inbeslagneming en de verbeurdverklaring een onderzoek te voeren naar de solvabiliteit van de veroordeelde;
5° de beslissing van het openbaar ministerie om een in artikel 464/1 van het Wetboek van strafvordering bedoeld strafrechtelijk uitvoeringsonderzoek te openen;
6° alle uitvoeringshandelingen die verricht worden in het raam van het in artikel 464/1 van het Wetboek van strafvordering bedoelde strafrechtelijk uitvoeringsonderzoek]

	2° any request for payment or any notice of default addressed to the convicted person, by registered letter or bailiff's writ, from the competent official of the Federal Public Service Finance in charge of collecting the confiscation; 3° any attachment made by or at the request of the competent official of the Federal Public Service Finance charged with the recovery of the confiscation, 4° the decision of the director of the Central Body for the seizure and confiscation to investigate the solvency of the convicted person; 5° the decision of the Public Prosecution Service to open a criminal investigation as referred to in Article 464/1 of the Code of Criminal Procedure; 6° all implementing acts performed in the context of the criminal investigation referred to in Article 464/1 of the Code of Criminal Procedure.
6	**Law on the preceding title of the Code of Criminal Procedure of April 17 1878** rules on prosecution and jurisdiction in special cases: **Article 7** [Belgian or person with primary residence in the Kingdom who is outside the territory of another state] **Article 10quater [offender may be prosecuted in Belgium if he is guilty outside the territory of the Kingdom]** **Article 21 [statute of limitations].**

7 The sanctions in the VAT Code are enshrined in Chapter XI, Art. 70 et seq. Belgium adapted its legislation to the judgements of ECtHR and ECJ in the past, see Article 72 of the VAT code ("*una via principle*"[134])[135].

bb. Amnesty

8 Art. 103 of the Constitution (*Grondewet*) describes the pardon for a minister. See as well Articles 111 and 125 *Grondewet*.

9 Last but not least, Art. 590 n°16 CPC provides for a binding effect of foreign judgements and amnesties, etc. Art 24 para 1 n° 3 CPC can be viewed as well.

cc. Criminal Complaint

10 The rules on criminal complaints can be found in Art. 27 et seq. CPC, which rule on the criteria and obligations for criminal complaints in detail.

dd. Prosecution before the Trial Court

11 The prosecution before the trial court commences according to Art. 61bis CPC:

[134] Loi instaurant le principe "una via" dans le cadre de la poursuite des infractions à la législation fiscale et majorant les amendes pénales fiscales.
[135] Desterbeck 2019, pp 135–141.

[Excerpt CPC] 12

Article 61bis[136] The examining magistrate will indict any person against whom there are serious indications of guilt. This suspicion takes place on the occasion of an interrogation or by notifying the person concerned. The same rights as the accused shall be enjoyed by anyone against whom the criminal proceedings are instituted in the framework of a judicial investigation.

ee. Opposing Legal Validity

Opposing legal validity may have precluding effect according to 13

General proceedings: 14

- Art. 172, CPC.178 CPC (appeals from police judgements).
- Art. 199–203, 203bis, 204–209, 209bis, 210–211, 211bis, 212–215, 215bis, Art. 341 et seq. Code d'Instrucion Criminelle (aka Criminal Procedure Code), Art. 344 CPC.

Cassation proceedings: 15

- Art. 416–420, 420bis, 420ter, 421–442.
- Applications for revision, Art. 443–447, 447bis.

It might the case that the person, which is suspected of having committed a crime in Belgium has been convicted in another Member State. In this case the rules from the Criminal Code apply: 16

[Excerpt Criminal Code] 17

Chapter XI. Method of taking into account convictions handed down by criminal courts in other states

Article 99bis[137] Convictions handed down by the criminal courts of another Member State of the European Union are taken into account under the same conditions as the convictions handed down by the Belgian criminal courts and have the same legal effects as these convictions.

The rule mentioned in the first paragraph does not apply to the case referred to in Article 65, second paragraph.

[136] **Art. 61bis.** De onderzoeksrechter gaat over tot de inverdenkingstelling van elke persoon tegen wie ernstige aanwijzingen van schuld bestaan. Deze inverdenkingstelling vindt plaats ter gelegenheid van een verhoor of door kennisgeving aan de betrokkene.
Dezelfde rechten als de inverdenkinggestelde geniet eenieder tegen wie de strafvordering wordt ingesteld in het kader van een gerechtelijk onderzoek.

[137] **Art. 99bis.** De veroordelingen uitgesproken door de strafgerechten van een andere lidstaat van de Europese Unie worden in aanmerking genomen onder dezelfde voorwaarden als de veroordelingen uitgesproken door de Belgische strafgerechten en hebben dezelfde rechtsgevolgen als deze veroordelingen.
De in het eerste lid vermelde regel is niet van toepassing op het geval bedoeld in artikel 65, tweede lid.]

Article 100[138] (In the absence of provisions to the contrary in special laws and regulations, the provisions of Book 1 of this Code shall be applied to the offences punishable by such laws and regulations, with the exception of Chapter VII (...) and of Article 85.) (Paragraph 2 abolished)

Article 100bis[139] They are applied without exception to persons who are not subject to the military criminal laws, but who have participated in a crime or misdemeanour described in the Military Penal Code. However, military imprisonment is replaced by imprisonment of the same duration and impeachment, which is the principal penalty, by imprisonment of two months to three years.

Article 100ter[140] When the term "minor" is used in the provisions of Book II, it means any person who has not yet reached the age of eighteen.

ff. Abatement of Action (Dispense with Prosecution)

18 The abatement of action according to Art. 28quater of the Law to improve criminal justice at the criminal investigation and judicial investigation stage has precluding effect:

19

Law to improve criminal justice at the criminal investigation and judicial investigation stage

Article 28quater[141] Taking into account the guidelines of criminal policy, established pursuant to Article 143quater of the Judicial Code, the Public Prosecutor decides on the expediency of the prosecution. He indicates the reason for the dismissal decisions he takes in this regard. […]

- Livre 2, Chapter III, Art. 216bis (termination of public action against payment of a sum of money), 216ter (Extinction of the public action subject to the execution of measures and the respect of the conditions)

[138] **Art. 100.** (Bij gebreke van andersluidende bepalingen in bijzondere wetten en verordeningen, worden de bepalingen van het eerste boek van dit wetboek toegepast op de misdrijven die bij die wetten en verordeningen strafbaar zijn gesteld, met uitzondering van hoofdstuk VII (...) en van artikel 85.) <W 09-04-1930, art. 32> (Lid 2 opgeheven)

[139] **Art. 100bis**. Zij worden zonder uitzondering toegepast op personen die aan de militaire strafwetten niet zijn onderworpen, maar die deelgenomen hebben aan een misdaad of een wanbedrijf omschreven in het Militair Strafwetboek. De militaire gevangenisstraf wordt evenwel vervangen door gevangenisstraf van dezelfde duur, en de afzetting, die als hoofdstraf is gesteld, door gevangenisstraf van twee maanden tot drie jaar.

[140] **Art. 100ter.** Wanneer in de bepalingen van boek II de term " minderjarige " wordt aangewend, wordt daaronder elke persoon verstaan die de leeftijd van achttien jaar nog niet heeft bereikt.

[141] **Art. 28quater.** Wet tot verbetering van de strafrechtspleging in het stadium van het opsporingsonderzoek en het gerechtelijk onderzoek
Rekening houdend met de richtlijnen van het strafrechtelijk beleid, vastgesteld krachtens artikel 143ter van het Gerechtelijk Wetboek, oordeelt de procureur des Konings over de opportuniteit van de vervolging. Hij geeft de reden aan van de beslissingen van seponering die hij terzake neemt. […]

- Art. 375 (imposing administrative liability instead of criminal liability), 381 (settlement)

Nota bene: Art. 27 EPPO Regulation shall **not be confused with** the precluding actions by virtue of Art. 40 para 1 EPPO Regulation, the **settlement procedure for EPPO** action. For an in-depth analysis for this particular field see → Careel, S., De Smedt, J. Diversion, Restorative and Mediation Procedures in PIF Crimes (DRAMP) - National Report Belgium. 11 et seq.).

b) Urgent Measures of National Authorities for Securing an Investigation and Prosecution

The urgent measures of national authorities, which relate to secure an investigation and prosecution are enshrined in Livre I, Chapter 1 (tasks of the judicial police) of the CPC. Section 8. Rules on the task of the judicial police and reads: "The judicial police searches for crimes, misdemeanours and contraventions, collect the evidence, and deliver the perpetrators to the courts responsible for punishing them." **20**

Nota bene: Special measures may only be carried out by an investigating judge, which has eventually to be seized by a Belgian EDP. More urgent measures are presented below → Art. 28 EPPO Regulation. Measures, which are restricted to orders of an investigating judge are enumerated below → Art. 30 EPPO Regulation.

Special investigative measures can e.g. be found in Art. 47novies s. 6 (urgent Infiltration/under-cover Investigation), Art. 47duodecies, as well as Livre I, Chapter VII quinquies, Section 2. [Members of the police services responsible for investigating or intervening in particularly serious offences]. Last not least Art. 112quinquies CPC applies as well as investigation measures, which are presented below in Art. 30 EPPO Regulation. **21**

c) Competent National Authorities in paras 3 to 7 of Art. 27

The Belgian Government has notified the EPPO with the following information[142], which are presented below in a synoptical-style translation: **22**

Art. 27 para 1	Authorities	Art. 27 para 2	Authorities	Art. 27 para 3	Authorities
Dès réception de toutes	Parquet, compétent	Pendant les délais visés	Parquet, compétent	Si le Parquet européen apprend, par	Parquet qui avait déjà ouvert le

[142] French version and information taken from official Belgian Notification, https://www.eppo.europa.eu/sites/default/files/2021-11/04-BE_0.pdf, p. 53–54 (Our translation). Accessed 4 June 2024.

les informations pertinentes conformément à l'article 24, paragraphe 2, le Parquet européen décide, dans les meilleurs délais, et au plus tard cinq jours après réception des informations communiquées par les autorités nationales, d'exercer ou de ne pas exercer son droit d'évocation, et informe les autorités nationales de cette décision. Dans certains cas particuliers, le chef du Parquet européen peut prendre une décision motivée pour prolonger le délai d'une	territorialement et matériellement, qui a communiqué les informations sur l'enquête en cours, Administration générale des douanes et accises, Administration générale de l'Inspection spéciale des impôts pour la fraude TVA	au paragraphe 1, les autorités nationales s'abstiennent de prendre toute décision de droit national susceptible d'empêcher le Parquet européen d'exercer son droit d'évocation.	territorialement et matériellement, qui a communiqué les informations sur l'enquête en cours, Administration générale des douanes et accises, Administration générale de l'Inspection spéciale des impôts pour la fraude TVA	d'autres moyens que les informations visées à l'article 24, paragraphe 2, qu'une enquête liée à une infraction pénale à l'égard de laquelle il pourrait être compétent a déjà été ouverte par les autorités compétentes d'un État membre, il en informe sans tarder ces autorités.	dossier, Administration générale des douanes et accises, Administration générale de l'Inspection spéciale des impôts pour la TVA.

durée maximale de cinq jours, et il en informe les autorités nationales					
Translation:					
Upon receipt of all relevant information in accordance with Article 24(2), the European Public Prosecutor's Office shall decide, as soon as possible, and at the latest five days after receipt of the information communicated by the national authorities, to exercise or not to exercise its right of recall, and inform the national authorities of this decision. In specific cases, the European	Public Prosecutor's Office, with territorial and material jurisdiction, which provided information on the ongoing investigation, General Administration of Customs and Excise, General Administration of the Special Tax Inspectorate for VAT fraud	During the periods referred to in paragraph 1, the national authorities shall refrain from taking any decision under national law which could prevent the European Public Prosecutor's Office from exercising its right of recall.	Public Prosecutor's Office, with territorial and material jurisdiction, which communicated the information on the ongoing investigation, General Administration of Customs and Excise, General Administration of the Special Tax Inspectorate for VAT fraud	If the European Public Prosecutor's Office becomes aware, by means other than the information referred to in Article 24(2), that an investigation relating to a criminal offence in respect of which it may have jurisdiction has already been opened by the competent authorities of a Member State, he shall inform those authorities without delay.	Public Prosecutor's Office which had already opened the file, General Administration of Customs and Excise, General Administration of the Special Tax Inspectorate for VAT.

Chief Prosecutor may take a reasoned decision to extend the time limit by a maximum of five days, and inform the national authorities accordingly.					
Art. 27 para 4	**Authorities**	**Art. 27 para 5**	**Authorities**	**Art. 27 para 7, s. 1**	**Authorities**
Le Parquet européen consulte, s'il y a lieu, les autorités compétentes de l'État membre concerné avant de décider d'exercer ou non son droit d'évocation.	Parquet(s) territorialement et matériellement compétent(s), Administration générale des douanes et accises, et, pour les fraudes TVA, le parquet compétent et l'Administration générale de l'Inspection spéciale des impôts	Lorsque le Parquet européen exerce son droit d'évocation, les autorités compétentes des États membres lui transmettent le dossier et s'abstiennent de procéder à de nouveaux actes d'instruction portant sur la même infraction.	Parquets qui ont communiqué les informations sur l'enquête en cours, et Administration générale des douanes et accises	Lorsque le Parquet européen s'abstient d'exercer sa compétence, il en informe les autorités nationales compétentes sans retard indu. À tout moment de la procédure, les autorités nationales compétentes informent le Parquet européen de tout fait nouveau susceptible de l'amener à revoir sa décision de ne pas	Parquets qui ont communiqué les informations sur l'enquête en cours, l'Administration générale des douanes et accises, l'Administration générale de l'Inspection spéciale des impôts pour la fraude TVA

				exercer sa compétence.	
The EPPO shall, where appropriate, consult the competent authorities of the Member State concerned before deciding whether or not to exercise its right of recall.	Territorially and materially competent public prosecutor's office(s), General Administration of Customs and Excise, and, for VAT fraud, the competent public prosecutor's office and the General Administration of the Special Tax Inspectorate	When the European Public Prosecutor's Office exercises its right of evocation, the competent authorities of the Member States transmit the file to it and refrain from carrying out new acts of investigation relating to the same offence.	Public prosecutor's offices which communicated the information on the ongoing investigation, and the General Administration of Customs and Excise	Where the EPPO fails to exercise its jurisdiction, it shall inform the competent national authorities thereof without undue delay. At any time during the procedure, the competent national authorities shall inform the European Public Prosecutor's Office of any new fact likely to lead it to reconsider its decision not to exercise its jurisdiction.	Public prosecutor's offices which provided information on the ongoing investigation, the General Administration of Customs and Excise, the General Administration of the Special Tax Inspectorate for VAT fraud

e) Provisions regarding the Finalization of the National Investigation, para 7

23 In Belgium, the prosecutor has **several pathways to conclude an investigation**, including dismissing the case, proposing a trial, or negotiating an out-of-court settlement. The legal basis for these actions is found in the Belgian Code of Criminal Procedure, with specific articles such as 127, 128, and 216bis outlining these procedures. In EPPO cases, proposals must align with EPPO guidelines, ensuring a consistent and structured approach that integrates both Belgian law and EU regulations. For the finalization of investigations see Art. 28 et seq. and see → Livre II, Title IV, s. 6, Art. 464/41.

f) Proposal to Chambers

24 The EPPO Guidelines recommend a structured approach for drafting proposals. To enable the chamber to decide, the EDP will need to outline of the facts, including a timeline and the main events uncovered during the investigation and it is is requested by the guidlelines to indicate relevant national laws and EPPO regulations applicable to the case (e.g., Belgian Penal Code provisions on fraud or corruption and Articles from the EPPO Regulation outlining jurisdiction, see below → PIF offences and Annex). The main task is it to present as well a detailed list of the evidence gathered, showing how it substantiates the charges. This may include witness statements, documents, financial records, and expert reports. A short statement on the legal elements of the offences (e.g., fraud affecting EU financial interests), referencing specific articles in the Belgian Penal Code and relevant EU regulations. The propo0sal should ask to either refer the case to trial, dismiss charges, or take an alternative legal action, such as imposing precautionary measures or asset confiscation.

25 Example Structure of a Proposal (not exhaustive):

- Case number, involved parties, and summary of charges.
- A chronological narrative outlining the events and actions leading to the investigation.
- Citation of Belgian and EU laws pertinent to the case.
- Analysis of collected evidence and its relevance to each charge.
- Clear indication of the prosecutorial decision (e.g., to proceed to trial) with reasons.

Nota bene: If Art. 27 EPPO Regulation is completed or exercised the same rules as presented above under "Actions if decision to open a case", → Art. 26 EPPO Regulation shall apply.

3. Article 28 Conducting the investigation

3. Article 28 Conducting the investigation 143
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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.

In the context of our ongoing **explanation and analysis of national procedures under Article 28** of the EPPO Regulation, which concerns a topic that resonates with both EDPs and broader academic and political discussions regarding specialized investigative personnel, we can highlight the following: The execution of investigations is tied to **hierarchical relationships**. Unlike traditional national systems, where dependencies are often more straightforward, EU anti-fraud investigations present a dynamic. Here, the EPPO operates as a supranational, independent entity, endowed with supervisory powers at the college level. This **distinctive structure** reshapes the investigative landscape, allowing for a more **collaborative and multifaceted approach** to tackling fraud across member states.

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"[143] 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

[143] Organized by the University of Luxembourg (Prof. Katalin Ligeti), ECLAN and the EPPO.

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.[144]

As long as there are no special units in all countries as the first Advocate General of the EPPO requested, the detection rates depend on the conduct of investigations and the cooperation with established – e.g. in Italy more than 100 years old structures in the area of tax investigations –national authorities – especially the assignment and instruction of investigative tasks to "those national authorities". The situation in the present country Chapter will be analysed below, stating the cooperation level and important actions to be taken. **2**

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); these investigations are not analysed within this chapter. 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 the present country. **3**

For the different PIF offences, the specific country system provides different investigative bodies acting by virtue of different national codes such as the CPC, General Tax Code, the police laws and the customs laws including the customs administration laws. Generally speaking, it depends, for the analysis of Art. 28 EPPO Regulation, on whether a centrally governed country of the EU is affected or whether there is a federal system with differentiated competences of the federal units. **4**

In addition, the lawfulness of the action is very important as a generalization of all instructions from the staff, which are made available to the EPPO and the EDPs from the national resource area. **5**

a) The Handling EDP Carrying Out the Investigative Measures, para 1

The rules on the handling EDP carrying out the investigative measure is determined by the Judicial Code, the CPC and the tax or customs law (see → II. Sources of Law, lex **6**

[144] EPPO, European Public Prosecutor's Office One Year In Action, https://www.youtube.com/live/v2oUUyTEPFU?si=rZH7YWzX4DZXnVrq (accessed 4 June 2024); Laura Kövesi, So kommt die EU im Kampf gegen Verbrecherbanden in die Offensive, Die Welt (Welt am Sonntag), Stand: 05.06.2022, https://www.welt.de/debatte/kommentare/article239196661/So-kommt-die-EU-im-Kampf-gegen-die-Kriminalitaet-in-die-Offensive.html (accessed 4 June 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." This statements was republished by various newspapers and journals across Europe (see e.g. Figaro article in the French country chapter).

specialis: the law of 17 February 2021 aka EPPO Adoption Law and see → Art. 26 EPPO Regulation above, which already explains and presents the most common provisions from the CPC that apply if the handling EDP of the regional office of the EPPO in Belgium acts.

b) Instructions and Assignment of Investigative Measures for "Those National Authorities"

7 The important national authorities are described (see → Institutions) as well as emphasized here. For EPPO investigations especially judicial police officers,[145] the Central Body for Seizure and Confiscation (*l'Organe central pour la Saisie et la Confiscation*), the General Administration of Customs and Excise, the federal police[146] (with the departments of: Central Office for combating organised economic and financial crime (CDGEFID), Central Directorate for Combating Serious and Organised Crime (DJSOC) at the General Directorate for criminal police, General Directorate of the Administrative Police (railway police, aviation police, maritime police etc.), Federal Computer Crime Unit (FCCU; computer crime, especially attacks on critical infrastructure), Central Office for Combating Corruption (CDBC) → also fraud in public procurement:

- CDBC – Central Anti-Corruption Service (corruption in general, subsidy fraud and public procurement)
- **CDGEFID – Central Office for Combating Organised Economic and Financial Delinquency** (= autonomous and supportive investigations in the following financial cases: fraud against the European Union, large-scale VAT carousels, complex financial files with an international dimension and stock exchange crimes)[147] → also support dept. for all ECOFIN investigations!
  It has 16 tax specialists from the FPS Finance seconded to the CDGEFID.

  Liaison officers have also been seconded to CFI (Financial Information Processing Unit) and COIV (Central Confiscation and Confiscation Body).

may be instructed and assigned. The investigating judge is consulted for coercive measures, while the criminal investigation is mainly carried out by the police.[148]

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[145] See e.g.: **Art. 89bis.** The examining magistrate can order a search and seizure of an officer of the judicial police in his district or of the district where the acts must take place. When the investigating judge acts at the request of an investigating judge of another district, he can order an officer of the judicial police of that other district. He shall give that order by reasoned order and only when necessary. t is prohibited to transfer the assignment.

[146] See Jaarverslagen Federale Politie 2021, https://jaarverslag.federalepolitie.be/assets/pdf/2021/NL/00_JV2021_Federale_Politie.pdf, pp 80 et seq.: "On December 31, 2021, the Federal Police had a total of 13,965 employees, including 10,658 members of the operational framework (Ops) and 3,307 civilian staff (CALog)."

[147] Official website of the Federale Politie, see https://www.politie.be/5998/nl/over-ons/federale-gerechtelijke-politie/centrale-directie-van-de-bestrijding-van-de-zware-en. Accessed 4 June 2024.

[148] Official website of the Opernbaar Ministerie, see https://www.om-mp.be/nl/over-om/taken-opdrachten. Accessed 4 June 2024.

→ Belgian Notification pursuant to Article 117 EPPO Regulation	**8**

Notification for Art. 28 para 2:
"Public prosecutor's offices that have provided information on the ongoing investigation, the public prosecutor's office that takes the measure in question and the General Administration of Customs and Excise."[149]

Notification for Art. 28 para 4:
"The Public Prosecutor's Office and the General Administration of Customs and Excise already informed that the European Public Prosecutor's Office is exercising its jurisdiction."[150]

aa. Criminal and Judicial Police Area

Police Investigation Authorities 1 **9**

	Criminal Procedure Code
→ Art. 8, 9, Art. 28bis, 28ter, 28quater, 28quinquies, 28sexies, 28septies, 28octies, 28novies, Art. 48-5, Art. 55–56, 56bis, 56ter, 57–58, 89bis CPC	
See → Organisation chart of the public prosecution[151] **Book One. The Judicial Police and the Police Officers Who Exercise Them** **Chapter I. Judicial Police** **Article 8**[152] The judicial police shall investigate crimes, misdemeanours and contraventions, gather evidence and hand over the perpetrators to the courts responsible for their punishment. **Article 9**[153] The judicial police shall be exercised, under the authority of the courts of appeal and, within the scope of its competences, under the authority of the Federal Prosecutor, and in accordance with the distinctions established below:	

[149] Notification du Royaume de Belgique en vertu de l'article 117 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen, see https://www.eppo.europa.eu/sites/default/files/2021-11/04-BE_0.pdf (accessed 4 June 2024), p 54.
[150] Notification du Royaume de Belgique en vertu de l'article 117 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen, see https://www.eppo.europa.eu/sites/default/files/2021-11/04-BE_0.pdf (accessed 4 June 2024), pp 54, 55.
[151] https://www.om-mp.be/sites/default/files/u77/sans-titre.png. Accessed 4 June 2024.
[152] Livre Premier. De La Police Judiciaire Et Des Officiers De Police Qui L'exercent.
Chapitre I. De La Police Judiciaire.
Article 8. La police judiciaire recherche les crimes, les délits et les contraventions, en rassemble les preuves, et en livre les auteurs aux tribunaux chargés de les punir.
[153] Art. 9. [La police judiciaire sera exercée, sous l'autorité des cours d'appel et, dans le cadre de ses compétences, sous l'autorité du procureur fédéral, et suivant les distinctions établies ci-après:]
1° par les gardes champêtres particuliers et par les gardes forestiers, [...] par les procureurs du Roi et leurs substituts, [par les auditeurs du travail et leurs substituts,] par les juges au tribunal de police et par les membres de la police fédérale et de la police locale;

1° by the private country wardens and by the forest wardens, [...] by the public prosecutors and their substitutes, [by the labour auditors and their substitutes, by the judges at the police court and by the members of the federal police and the local police;
2° by the federal prosecutor and federal magistrates;
3° by the public prosecutors and other magistrates of the public prosecutor's offices and auditor's offices.

⇒ For all other Articles see below → Article 30 Investigation measures and other measures.

bb. Tax Area

10 *Tax Investigation authorities 1*

Federal Judicial Police (Police/Politie)

- CDGEFID → Central Office for Combating Organised Economic and Financial Delinquency
- With 16 tax specialists from the FPS Finance seconded to the CDGEFID
- Liaison officers have also been seconded to CFI and COIV

⇒ In addition, the Special Tax Inspectorate of the BBI might be involved in VAT fraud investigations as it has a primarily seen, control function that enables it to conduct investigations into irregularities alone. In this area OLAF is competent (see → below Part C, Art. 3 OLAF).

2° par le procureur fédéral et les magistrats fédéraux;]
3° par les procureurs généraux et les autres magistrats des parquets généraux et auditorats généraux.]

dd. Customs Area

Customs Investigation Authorities 1 **11**

Law on Customs and Excise *+
Law granting the status of judicial police officer to certain agents of the Customs and Excise Administration/
Loi du 22 Avril 2003 octroyant la qualité d'officier de police judiciaire à certains agents de l'Administration générale des douanes et accises

Article 285 Law on Customs and Excise et seq. (see above) determine that a special officer is named. He is designated the task to cooperate with the EPPO.[154]

Article 2[155] Officers of the Customs and Excise Administration are vested with the status of auxiliary judicial police officer of the King's prosecutor and the labour auditor, without prejudice to their competence in customs and excise matters:
1° seconded to the Europol National Unit and their deputies;
2° designated within the framework of police and customs cooperation agreements concluded with States having a common border with Belgium pursuant to Article 39, paragraph 4, of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

Article 2/1[156] § 1. Without prejudice to his competence in matters of customs and excise, the official referred to in article 285/2, § 1, of the general law on customs and excise of 18 July 1977 is vested with the quality of judicial police officer. assistant to the King's prosecutor and labour auditor.

[154] See in-depth Careel, De Smedt 2022b, p 5.
[155] **Art. 2 Loi du 22 avril 2003**
Sont revêtus de la qualité d'officier de police judiciaire auxiliaire du procureur du Roi et de l'auditeur du travail, sans préjudice de leurs compétences en matière de douane et accises, les agents de l'Administration des douanes et accises:
1° détachés auprès de l'Unité nationale Europol ainsi que leurs suppléants;
2° désignés dans le cadre des accords de coopération policière et douanière conclus avec des Etats ayant une frontière commune avec la Belgique en application de l'article 39, paragraphe 4, de la Convention d'application de l'Accord de Schengen du 14 juin 1985 relatif à la suppression graduelle des contrôles aux frontières communes.
[156] **Art. 2/1. Loi du 22 avril 2003**
[§ 1er. Sans préjudice de ses compétences en matière de douanes et accises, le fonctionnaire visé à l'article 285/2, § 1er, de la loi générale sur les douanes et accises du 18 juillet 1977 est revêtu de la qualité d'officier de police judiciaire auxiliaire du procureur du Roi et de l'auditeur du travail.
§ 2. Les méthodes particulières de recherche consistant en l'observation et le recours aux indicateurs, de même qu'en l'intervention différée relevant des autres méthodes de recherche, ne peuvent être mises en oeuvre par les agents visés à l'article 3 sans l'accord préalable du fonctionnaire visé au § 1er, lorsqu'elles sont relatives aux contraventions, fraudes ou délits visés à l'article 285/4, § 1er, de la loi générale sur les douanes et accises du 18 juillet 1977.]

§ 2. Specific research methods consisting of observation and the use of indicators, as well as deferred intervention relating to other research methods, cannot be implemented by the agents referred to in Article 3. without the prior agreement of the official referred to in § 1, when they relate to the contraventions, frauds or offences referred to in Article 285/4, § 1, of the general customs and excise law of 18 July 1977.

Article 3[157] Within the limits of the material competences set out in the following paragraph, are vested with the status of auxiliary judicial police officer of the King's prosecutor and the labour auditor, without prejudice to their competences in matters of customs and excises:
1° six agents appointed to a grade of level one and four agents appointed to a grade of level two plus of the National Directorate of Research of the Customs and Excise Administration;
2° four agents appointed to a level one grade of the Antwerp Customs and Excise Research Inspectorate;
3° two officers appointed to a grade of level one per customs and excise investigation inspection, other than the Antwerp customs and excise investigation inspection, and per investigation inspection division of the Customs Administration and excise.
The powers of auxiliary judicial police officer of the Crown prosecutor and the labour auditor conferred on the agents referred to in the preceding paragraph may only be exercised with a view to researching and establishing:
1° infringements of the regulations relating to the protection of the financial interests of the European Communities;
2° offences relating to the intra-Community movement of goods falling under the application of excise regulations and legislation;
3° breaches of all laws and regulations conferring any powers on agents of the Customs and Excise Administration during the import, export or transit of goods;

[157] **Art. 3 Loi du 22 avril 2003**
Dans les limites des compétences matérielles fixées à l'alinéa suivant, sont revêtus de la qualité d'officier de police judiciaire auxiliaire du procureur du Roi et de l'auditeur du travail, sans préjudice de leurs compétences en matière de douane et d'accises:
1° six agents nommés à un grade du niveau un et quatre agents nommés à un grade de niveau deux plus de la Direction nationale des Recherches de l'Administration des douanes et Accises;
2° quatre agents nommés à un grade du niveau un de l'Inspection de recherche des douanes et accises d'Anvers;
3° deux agents nommés à un grade du niveau un par inspection de recherche des douanes et accises, autre que l'Inspection de recherche des douanes et accises d'Anvers, et par division d'inspection de recherche de l'Administration des douanes et accises.
Les pouvoirs d'officier de police judiciaire auxiliaire du procureur du Roi et de l'auditeur du travail conférés aux agents visés à l'alinéa précédent ne peuvent être exercés qu'en vue de la recherche et de la constatation:
1° des infractions à la réglementation relative à la protection des intérêts financiers des Communautés européennes;
2° des infractions en ce qui concerne les mouvements intracommunautaires de marchandises tombant sous l'application des réglementations et législations sur les accises;
3° des infractions à toutes les lois et tous règlements conférant une quelconque attribution aux agents de l'Administration des douanes et accises lors de l'importation, de l'exportation ou du transit de marchandises;
4° des infractions connexes à celles visées aux 1° à 3°.

4° offences related to those referred to in 1° to 3°.

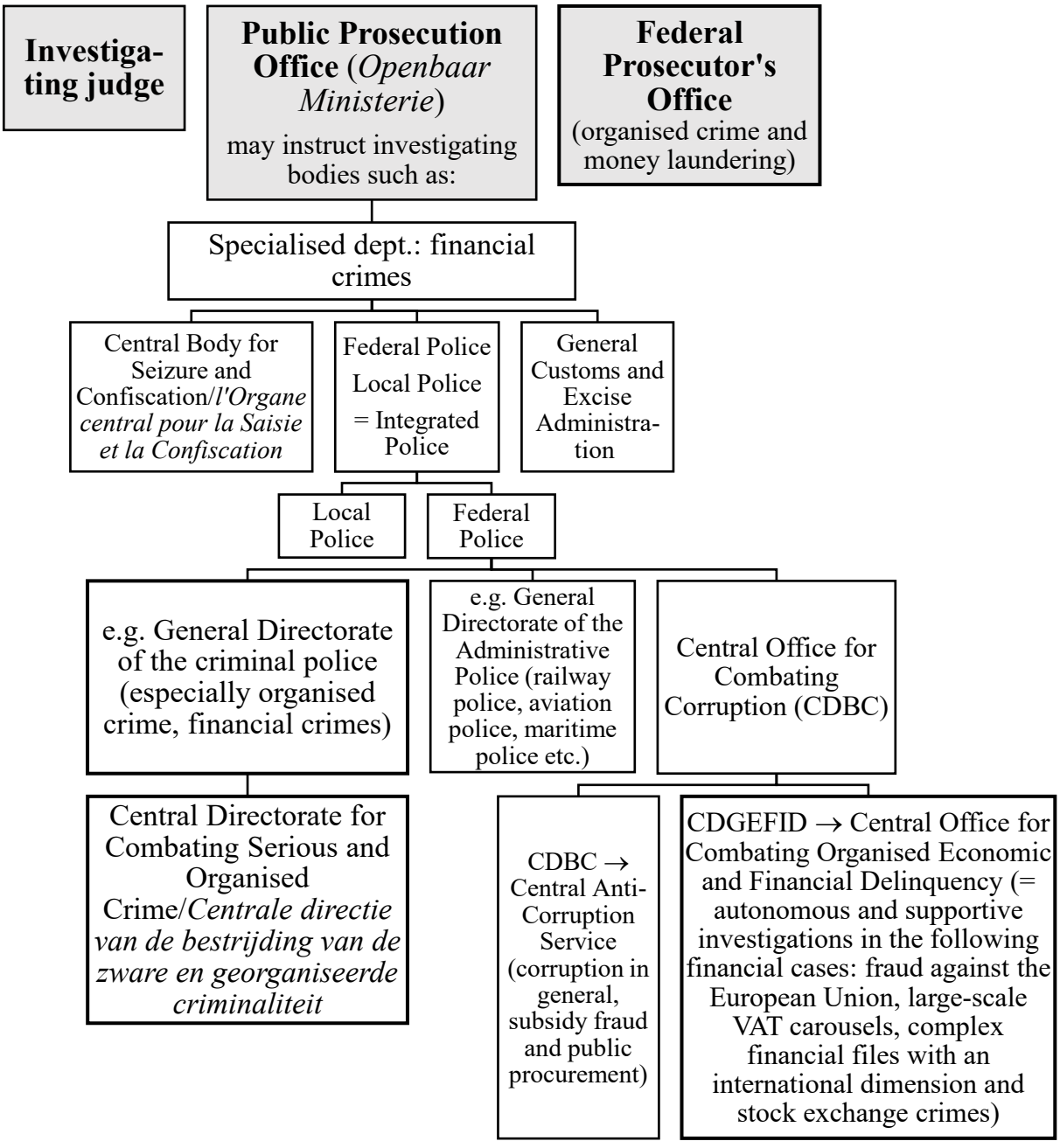
Article 4[158] 1. Without prejudice to the provisions of articles and 40bis of the Code of Criminal Procedure, the agents referred to in article 3 above, bearing the status of auxiliary judicial police officer of the King's prosecutor and the labour auditor, may use, under the same conditions as those laid down by the Code of Criminal Procedure, special research methods consisting of observation and the use of indicators, as well as deferred intervention falling within the scope of other research methods. […]

[158] **Art. 4. Loi du 22 avril 2003**
1. Sans préjudice des dispositions des articles 47ter et 40bis du Code d'instruction criminelle, les agents visés à l'article 3 ci-avant, revêtus de la qualité d'officier de police judiciaire auxiliaire du procureur du Roi et de l'auditeur du travail, peuvent utiliser, dans les mêmes conditions que celles portées par le Code d'instruction criminelle, les méthodes particulières de recherche consistant en l'observation et le recours aux indicateurs, de même qu'en l'intervention différée relevant des autres méthodes de recherche. […]

ee. Visualisation of Instructions and Assignment of Investigative Measures for "those national authorities"

Figure 7: Assignment of "those national authorities" Art. 28 EPPO Regulation

The assignment of those national authorities may look like this:[159]



[159] Cf. Officia website of the Belgian Federal Police, see https://www.polizei.be/5998/de/ and https://www.polizei.be/5998/de/uber-uns/kriminalpolizei/zentraldirektion-der-bekaempfung-der-schweren-und-organisierten. Accessed 4 June 2024.

Figure 8: Infrastructure of the Belgian Federale Politie **12**

Source: See Jaarverslagen Federale Politie 2021, https://www.politie.be/jaarverslag-federalepolitie/sites/jaarverslag/files/files/2024-02/00_JV2021_Federale_Politie.pdf, p. 95.

c) Ensuring Compliance with National Law

aa. Via the General Investigation Provisions

Code of Criminal Procedure **13**

Book One. The Judicial Police and the Police Officers Who Exercise Them.
Chapter IV. Of [the King's Prosecutors] and their Substitutes
Section One. Of the Competence of [the King's Prosecutors] Relating to the Judicial Police
Article 22[160] The King's prosecutors are responsible for researching and prosecuting offences the knowledge of which belongs to the courts of assizes, to the correctional

[160] Chapitre IV. Des [procureurs du roi] et de leurs substituts.
Section Premiere. De la competence des [procureurs du roi], relativement a la police judiciaire.
Art. 22. Les procureurs du Roi sont chargés de la recherche et la poursuite des infractions dont la connaissance appartient aux cours d'assises, aux tribunaux correctionnels et aux tribunaux de police, sauf, pour ces deux dernières juridictions, lorsque l'action publique est confiée à l'auditeur du travail.

courts and to the police courts, except, for these last two jurisdictions, when the public action is entrusted to the labour auditor.

Article 23[161] The public prosecutor of the place where the offence was committed, the public prosecutor of the place of residence of the accused [the public prosecutor of the registered office of the legal person, the public prosecutor of the place where the legal person has its place of business] and the public prosecutor of the place where the accused can be found, are also competent to exercise the powers set out in Article 22.
The King's prosecutor, seized of an offence within the limits of this competence, may carry out or have carried out outside his district all acts of information or investigation falling within his attributions. He notifies the public prosecutor of the district in which the act is to be performed.

Article 25[162] The King's prosecutors and all other officers of the judicial police shall, in the exercise of their functions, have the right to call upon the police directly.

Article 26[163] Without prejudice to article 5 of the law of August 5, 1992 on the function of the police, the public prosecutor takes the general directives necessary for the execution of the missions of the judicial police in his district. These directives remain applicable, unless the investigating judge decides otherwise in the course of his investigation. They are communicated to the Attorney General.

Article 28septies[164] The public prosecutor may require the investigating judge to carry out an act of investigation for which only the investigating judge is competent, with the

[161] Art. 23. [Sont également compétents pour exercer les attributions fixées par l'article 22, le procureur du Roi du lieu de l'infraction, celui de la résidence de l'inculpé [,celui du siège social de la personne morale, celui du siège d'exploitation de la personne morale] et celui du lieu où l'inculpé pourra être trouvé.]
[Le procureur du Roi, saisi d'une infraction dans les limites de cette compétence, peut procéder ou faire procéder hors de son arrondissement à tous actes d'information ou d'instruction relevant de ses attributions. Il en avise le procureur du Roi de l'arrondissement dans lequel l'acte doit être accompli.]

[162] Art. 25. Les [procureurs du Roi] et tous autres officiers de police judiciaire auront, dans l'exercice de leurs fonctions, le droit de requérir directement la force publique.

[163] Art. 26. Sans préjudice de l'article 5 de la loi du 5 août 1992 sur la fonction de police, le procureur du Roi prend les directives générales nécessaires à l'exécution des missions de police judiciaire dans son arrondissement. Ces directives demeurent d'application, sauf décision contraire du juge d'instruction dans le cadre de son instruction. Elles sont communiquées au procureur général.

[164] Art. 28septies. Le procureur du Roi peut requérir du juge d'instruction l'accomplissement d'un acte d'instruction pour lequel seul le juge d'instruction est compétent, à l'exception du mandat d'arrêt tel qu'il est prévu par l'article 16 de la loi du 20 juillet 1990 relative à la détention préventive, du témoignage anonyme complet tel qu'il est prévu à l'article 86bis, de la mesure de surveillance telle qu'elle est prévue par l'article 90ter et des actes d'instruction tels qu'ils sont prévus aux articles 56bis, alinéa 2, et 89ter, sans qu'une instruction soit ouverte. Après l'exécution de l'acte d'instruction accompli par le juge d'instruction, celui-ci décide s'il renvoie le dossier au procureur du Roi qui est responsable de la poursuite de l'information ou si, au contraire, il continue lui-même l'enquête, auquel cas il est procédé conformément aux dispositions du Chapitre VI du présent Livre. Cette décision n'est susceptible d'aucun recours.
En cas de nouveau réquisitoire sur la base de l'alinéa 1er dans un même dossier, le même juge d'instruction en est saisi s'il est encore en fonction.]

exception of the arrest warrant such as Article 16 of the law of July 20, 1990 relating to preventive detention provides for full anonymous testimony as provided for in Article 86bis, the surveillance measure as provided for by article 90ter and evidence as provided for in articles 56bis, paragraph 2, and 89ter, without an instruction being opened. After the execution of the act of investigation carried out by the investigating judge, the latter decides whether to send the case back to the public prosecutor who is responsible for pursuing the information or whether, on the contrary, he continues the investigation itself, in which case it is proceeded in accordance with the provisions of Chapter VI of this Book. This decision is not subject to any appeal.

In the event of a new indictment on the basis of the first paragraph in the same file, the same investigating judge is seized of it if he is still in office.

Method of Proceeding of the King's Prosecutors in the Exercise of their Duties **14**

Article 29[165] […] § 2. Civil servants of the General Administration of Taxation, of the General Administration of Collection and Recovery, of the General Administration of

[165] Section II. Mode De Proceder Des [Procureurs Du Roi] Dans L'exercice De Leurs Fonctions.
Art. 29. § 1er. Toute autorité constituée, tout fonctionnaire ou officier public et, pour le secteur des prestations familiales, toute institution coopérante au sens de la loi du 11 avril 1995 visant à instituer "la charte" de l'assuré social qui, dans l'exercice de ses fonctions acquerra la connaissance d'un crime ou d'un délit, sera tenu de donner avis sur-le-champ au procureur du Roi près le tribunal dans le ressort duquel ce crime ou ce délit aura été commis ou dans lequel l'inculpé pourrait être trouvé, et de transmettre à ce magistrat tous les renseignements, procès-verbaux et actes qui y sont relatifs.
Les fonctionnaires qui, sur la base de la loi du 15 septembre 2013 relative à la dénonciation d'une atteinte suspectée à l'intégrité dans une autorité administrative fédérale par un membre de son personnel, ont recours au système de dénonciation, sont dispensés de l'obligation visée à l'alinéa 1er.
§ 2. Les fonctionnaires de l'Administration générale de la Fiscalité, de l'Administration générale de la Perception et du Recouvrement, de l'Administration générale de la Documentation patrimoniale, de l'Administration générale de l'Inspection Spéciale des Impôts ou le fonctionnaire compétent à cet effet en cas de fiscalité régionale ou locale ne peuvent, sans autorisation du conseiller général dont ils dépendent ou du fonctionnaire assimilé, porter à la connaissance du procureur du Roi les faits pénalement punissables aux termes des lois fiscales et des arrêtés pris pour leur exécution.
§ 3. Sans préjudice de l'application du paragraphe 2, le conseiller général de l'Administration générale de la Fiscalité, de l'Administration générale de la Perception et du Recouvrement, de l'Administration générale de la Documentation patrimoniale et de l'Administration générale de l'Inspection spéciale des Impôts ou le fonctionnaire qu'il désigne ou le fonctionnaire compétent à cet effet en cas de fiscalité régionale ou locale dénonce au procureur du Roi les faits dont l'examen fait apparaître des indices sérieux de fraude fiscale grave, organisée ou non, qui constituent des infractions pénales aux termes des lois fiscales et des arrêtés pris pour leur exécution.
Le procureur du Roi se concerte à cet égard avec les fonctionnaires visés à l'alinéa 1er dans le mois de leur réception. Il peut inviter les services de police compétents à participer à cette concertation.
Sur la base de la concertation, le procureur du Roi décide pour quels faits décrits dans le temps et dans l'espace il exercera l'action publique et en fait part au conseiller général compétent ou au fonctionnaire compétent à cet effet en cas de fiscalité régionale ou locale par écrit et au plus tard dans les trois mois de la dénonciation initiale visée à l'alinéa 1er.
§ 4. Le Roi fixe les critères auxquels répondent les faits visés au paragraphe 3, par un arrêté délibéré en Conseil des ministres.
§ 5. Deux fois par an, le procureur général qui est chargé de la criminalité en matière économique, financière et fiscale au sein du collège des procureurs généraux rencontre les autorités fiscales et la police fédérale afin d'identifier les mécanismes de fraude fiscale, grave ou organisée, qui nécessitent une attention particulière.

Patrimonial Documentation, of the General Administration of the Special Tax Inspectorate or the official competent for this purpose in the event of regional or local taxation may not, without the authorisation of the general councillor on whom they depend or of the assimilated official, bring to the attention of the public prosecutor the facts criminally punishable under the terms of tax laws and orders issued for their execution.
§ 3. Without prejudice to the application of paragraph 2, the general counsel of the General Administration of Taxation, of the General Administration of Collection and Recovery, of the General Administration of Patrimonial Documentation and General Administration of the Special Tax Inspectorate or the official he appoints or the competent official for this purpose in the case of regional or local taxation reports to the Crown prosecutor the facts whose examination reveals serious indications of serious tax evasion, whether organised or not, which constitute criminal offences under the tax laws and the decrees issued for their execution.
The Crown Prosecutor consults in this regard with the officials referred to in the first paragraph within one month of their receipt. He may invite the competent police services to take part in this consultation.
On the basis of consultation, the Crown prosecutor decides for which facts described in time and space he will exercise public action and informs the competent general counsel or the competent official for this purpose in the event of regional taxation. or local in writing and at the latest within three months of the initial denunciation referred to in the first paragraph.
§ 4. The King sets the criteria to which the facts referred to in paragraph 3 meet, by an order deliberated in the Council of Ministers.
§ 5. Twice a year, the public prosecutor who is in charge of crime in economic, financial and tax matters within the college of public prosecutors meets with the tax authorities and the federal police in order to identify the mechanisms of tax evasion, serious or organised, which require particular attention.

Article 29bis[166] If a criminal investigation reveals indications of fraud in the area of direct or indirect taxes, the Crown prosecutor informs the Minister of Finance or the service designated by him and grants consultation and copy unless access to the file and taking a copy of the file could jeopardize ongoing criminal investigations.
When the tax administration establishes taxes including additional centimes and decimas, increments and administrative and fiscal fines for offences referred to in the first

[166] **Art. 29bis**. Si une enquête pénale révèle des indices de fraude en matière d'impôts directs ou indirects, le procureur du Roi en informe le ministre des Finances ou le service qu'il désigne et accorde consultation et copie sauf si l'accès au dossier et la prise de copie du dossier risquent de compromettre des enquêtes pénales en cours.
Lorsque l'administration fiscale établit des impôts incluant les centimes et décimes additionnels, les accroissements et les amendes administratives et fiscales pour des infractions visées à l'alinéa 1er, cela ne constitue pas une entrave à l'action publique dans la mesure où le traitement fiscal et pénal des faits font partie d'un tout cohérent d'un point de vue temporel et matériel.]

paragraph, this does not constitute an obstacle to public action insofar as the treatment fiscal and penal facts are part of a coherent whole from a temporal and material point of view.

Chapter IVbis. Of the Federal Prosecutor **15**

Article 47duodecies[167] § 1. In the exercise of his powers, the federal prosecutor has all the powers conferred by law on the public prosecutor. Within the framework of these, he can carry out or cause to be carried out all acts of information or instruction falling within his attributions on the whole of the territory of the Kingdom, as well as exercising public action.

§ 2. The federal prosecutor takes all the urgent measures that are necessary for the exercise of the public action as long as a public prosecutor has not exercised his legally determined competence. These measures are binding on the Crown prosecutor.

§ 3. When exercising the jurisdiction provided for in Article 144ter, § 1, 2°, of the Judicial Code, the federal prosecutor refers exclusively to the senior specialist investigating judge for to hear the offences referred to in Articles 137 to 141 of the Penal Code, which assigns the file to one of these investigating judges.

This dean may, at any time, for the same case, appoint other specialised investigating judges to hear the offences referred to in Articles 137 to 141 of the Criminal Code.

Article 47tredecies[168] A federal magistrate is responsible for supervising the functioning of the general direction of the judicial police of the federal police. This magistrate ensures in particular that the specialised judicial missions are carried out by this general

[167] CHAPITRE IVBIS. [DU PROCUREUR FEDERAL]
Art. 47duodecies. <NOTE: antérieurement 47ter. Numéroté 47duodecies par L 2003-01-06/34, art. 3, En vigueur: 22-05-2003> [§ 1er. Dans l 'exercice de ses compétences, le procureur fédéral dispose de tous les pouvoirs que la loi confère au procureur du Roi. Dans le cadre de ceux-ci, il peut procéder ou faire procéder à tous actes d'information ou d'instruction relevant de ses attributions sur l'ensemble du territoire du Royaume, de même qu'exercer l'action publique.
§ 2. Le procureur fédéral prend toutes les mesures urgentes qui sont nécessaires en vue de l'exercice de l'action publique aussi longtemps qu'un procureur du Roi n'a pas exercé sa compétence légalement déterminée. Ces mesures sont contraignantes pour le procureur du Roi.]
[§ 3. Lorsqu'il exerce la compétence prévue à l'article 144ter, § 1er, 2°, du Code judiciaire, le procureur fédéral saisit exclusivement le doyen des juges d'instruction spécialisés pour connaître des infractions visées aux articles 137 à 141 du Code pénal, lequel attribue le dossier à l'un de ces juges d'instruction.
Ce doyen peut, à tout moment, pour une même affaire, désigner d'autres juges d'instruction spécialisés pour connaître des infractions visées aux articles 137 à 141 du Code pénal.]

[168] Art. 47tredecies. Un magistrat fédéral est chargé de la surveillance du fonctionnement de la direction générale de la police judiciaire de la police fédérale. Ce magistrat veille en particulier à ce que les missions judiciaires spécialisées soient exécutées par cette direction générale conformément aux réquisitions et aux directives des autorités judiciaires compétentes.
Un magistrat fédéral est chargé de la surveillance spécifique du fonctionnement du "service de répression de la corruption" dans la direction générale de la police judiciaire de la police fédérale. Ce magistrat fait annuellement rapport au ministre de la Justice. Le rapport est communiqué aux Chambres législatives par le ministre de la Justice. Ce magistrat peut être auditionné par le Parlement sur le fonctionnement général du "service de répression de la corruption.

management in accordance with the requisitions and directives of the competent judicial authorities.
A federal magistrate is responsible for the specific supervision of the functioning of the "corruption repression service" in the general direction of the judicial police of the federal police. This magistrate reports annually to the Minister of Justice. The report is communicated to the Legislative Chambers by the Minister of Justice. This magistrate may be heard by Parliament on the general operation of the "corruption repression service.

16 **Chapter IVb. The European Public Prosecutor and Deputy European Public Prosecutors**

Article 47quaterdecies[169] In the exercise of their powers, as provided for in Article 156/1 of the Judicial Code, the European Public Prosecutor and the Delegated European Public Prosecutors appointed in accordance with Article 309/2 of the same Code shall have all the powers that the law confers on the King's Public Prosecutor. In the context of these powers, they may carry out or have carried out all acts of information or investigation falling within their remit throughout the territory of the Kingdom, as well as exercise public action.
When exercising their powers, the European Public Prosecutor and the Deputy European Public Prosecutors may only refer cases to the specialised investigating judges referred to in Article 79(6) of the same Code in order to investigate the offences referred to in Article 156/1(1) of the same Code.

Article 47quindecies[170] When a police service cannot provide the necessary staff and resources to the European Public Prosecutor or to the European Delegated Public Prosecutors designated in accordance with Article 309/2 of the Judicial Code or to the investigating judge referred to in Article 79, paragraph 6, of the same Code seized of a criminal investigation by them, he informs the territorially competent public prosecutor. If the public prosecutor does not find a solution to remedy the lack of staff and resources,

[169] CHAPITRE IVter. - Du procureur européen et des procureurs européens délégués.]
Art. 47quaterdecies. Dans l'exercice de leurs compétences, telles que prévues à l'article 156/1 du Code judiciaire, le procureur européen et les procureurs européens délégués désignés conformément à l'article 309/2 du même Code disposent de tous les pouvoirs que la loi confère au procureur du Roi. Dans le cadre de ceux-ci, ils peuvent procéder ou faire procéder à tous actes d'information ou d'instruction relevant de leurs attributions sur l'ensemble du territoire du Royaume, de même qu'exercer l'action publique.
Lorsqu'ils exercent leurs compétences, ce procureur européen et ces procureurs européens délégués pourront exclusivement saisir les juges d'instruction spécialisés visés à l'article 79, alinéa 6, du même Code pour connaître des infractions visées à l'article 156/1, § 1er, du même Code.

[170] Art. 47quindecies. Lorsqu'un service de police ne peut donner les effectifs et les moyens nécessaires au procureur européen ou aux procureurs européens délégués désignés conformément à l'article 309/2 du Code judiciaire ou au juge d'instruction visé à l'article 79, alinéa 6, du même Code saisi d'une enquête pénale par ceux-ci, il en informe le procureur général territorialement compétent. Si le procureur général ne trouve pas de solution pour remédier au manque d'effectifs et de moyens, il saisit le Collège des procureurs généraux qui, après concertation avec le directeur général de la police judiciaire et après concertation avec le procureur européen ou les procureurs européens délégués, décide quelle réquisition est exécutée prioritairement.

he refers the matter to the College of Public Prosecutors which, after consultation with the Director General of the Judicial Police and after consultation with the European Public Prosecutor or European Public Prosecutors delegates, decides which requisition is executed first.]	
Chapter V. Auxiliary Police Officers of the King's Prosecutor […] **Article 49**[171] In the case of flagrante delicto, or in the case of requisition referred to in article 46, they will draw up the official reports, receive the statements of witnesses, make the visits and the other acts which are, in the said cases, of the competence of the King's prosecutors, all in the forms and following the rules established in the chapter on King's prosecutors. **Article 51**[172] In the cases of competition between the King's prosecutors and the police officers set out in the preceding articles, the King's prosecutor will carry out the acts attributed to the judicial police: if he has been warned, he may continue the procedure, or authorise the officer who started it to follow it. **Article 52**[173] The King's prosecutor, exercising his ministry in the cases of Articles 32 and 46, may, if he deems it useful and necessary, entrust an auxiliary police officer with part of the acts within his competence.	**17**
Chapter VI. Instructing Judges **Section I. Of The Instruction** **Article 55**[174] The investigation is the set of acts whose purpose is to find the perpetrators of offences, to gather evidence and to take measures intended to allow the courts to rule with full knowledge of the facts. It is conducted under the direction and authority of the investigating judge.	**18**

[171] CHAPITRE V. DES OFFICIERS DE POLICE AUXILIAIRES DU [PROCUREUR DU ROI]. […]
Art. 49. Dans le cas de flagrant délit, ou dans les cas de [réquisition visée à l'article 46], ils dresseront les procès-verbaux, recevront les déclarations de témoins, feront les visites et les autres actes qui sont, aux dits cas, de la compétence des [procureurs du Roi], le tout dans les formes et suivant les règles établies au chapitre des [procureurs du Roi].

[172] Art. 51. Dans les cas de concurrence entre les [procureurs du Roi] et les officiers de police énoncés aux articles précédents, le [procureur du Roi] fera les actes attribues à la police judiciaire: s'il a été prévenu, il pourra continuer la procédure, ou autoriser l'officier qui l'aura commencée à la suivre.

[173] Art. 52. Le [procureur du Roi], exerçant son ministère dans les cas des articles 32 et 46, pourra, s'il le juge utile et nécessaire, charger un officier de police auxiliaire de partie des actes de sa compétence.

[174] CHAPITRE VI. DES JUGES D'INSTRUCTION.
SECTION I. [DE L'INSTRUCTION]
Art. 55. L'instruction est l'ensemble des actes qui ont pour objet de rechercher les auteurs d'infractions, de rassembler les preuves et de prendre les mesures destinées à permettre aux juridictions de statuer en connaissance de cause.
Elle est conduite sous la direction et l'autorité du juge d'instruction.

Article 56[175] § 1. The examining magistrate assumes responsibility for the investigation which is carried out for and against. He ensures the legality of the means of proof as well as the fairness with which they are gathered.
He can himself carry out the acts which concern the judicial police, information and instruction.
The investigating judge has, in the exercise of his functions, the right to call directly on the police.
It decides on the necessity of using coercion or infringing on individual freedoms and rights.
When during an investigation, he discovers facts likely to constitute a crime or misdemeanour of which he is not seized, he immediately informs the public prosecutor.

[175] Art. 56. § 1er. Le juge d'instruction assume la responsabilité de l'instruction qui est menée à charge et à décharge. Il veille à la légalité des moyens de preuve ainsi qu'à la loyauté avec laquelle ils sont rassemblés.
Il peut poser lui-même les actes qui relèvent de la police judiciaire, de l'information et de l'instruction.
Le juge d'instruction a, dans l'exercice de ses fonctions, le droit de requérir directement la force publique.
Il décide de la nécessité d'utiliser la contrainte ou de porter atteinte aux libertés et aux droits individuels.
Lorsqu'au cours d'une instruction, il découvre des faits susceptibles de constituer un crime ou un délit dont il n'est pas saisi, il en informe immédiatement le procureur du Roi.
[Le juge d'instruction porte sans délai a la connaissance du procureur fédéral et du procureur du Roi, ou, dans les cas où il exerce l'action publique, uniquement du procureur fédéral, les informations et les renseignements qu'il a recueillis au cours de l'instruction et qui révèlent un péril grave et immédiat pour la sécurité publique et la santé publique.] <L 2004-06-21/33, art. 2, 041; En vigueur: 23-07-2004>
§ 2. Le juge d'instruction a le droit de requérir les [services de police visés à l'article 2 de la loi sur la fonction de police et tous les autres officiers de police judiciaire] pour accomplir, sauf les restrictions établies par la loi, tous les actes de police judiciaire nécessaires à l'instruction. <L 1999-04-19/50, art. 6, 023; En vigueur: 23-05-1999>
Ces réquisitions sont faites et exécutées conformément [aux articles 8 à 8/3 et 8/6 à 8/8 de la loi sur la fonction de police et, pour ce qui concerne la police fédérale, à l'article 110 de la loi du 7 décembre 1998 organisant un service de police intégré, structuré à deux niveaux]. Les services de police requis sont tenus d'obtempérer aux réquisitions et de prêter le concours des officiers et agents de police judiciaire nécessaire à leur exécution. <L 1998-12-07/31, art. 222, 018; En vigueur: 01-01-2001>
Le juge d'instruction a, dans le cadre de l'instruction, le droit de requérir les services d'inspection visés à l'article 16, 1°, du Code pénal social. Il peut requérir les services d'inspection pour accomplir, tous les actes nécessaires à l'instruction, dans le cadre de leurs compétences. Ce droit de réquisition ne porte pas préjudice aux compétences de l'inspection du travail prévues à l'article 21 du code pénal social pour les infractions autres que celles auxquelles se rapporte la réquisition du juge d'instruction et qui sont constatées en exécution de cette dernière. Seuls les faits qui font l'objet d'une saisine du juge d'instruction ne peuvent plus faire l'objet d'un avertissement ou d'un délai de régularisation.
Lorsqu'un service de police ou un service d'inspection ne peut donner au juge d'instruction les effectifs et les moyens nécessaires, celui-ci peut solliciter l'intervention du procureur du Roi ou de l'auditeur du travail après l'avoir informé de la situation. Le juge d'instruction peut, en outre, transmettre copie de son ordonnance au procureur général et à la chambre des mises en accusation.
Le procureur du Roi ou l'auditeur du travail peut lui-même transmettre le dossier au procureur général. Ce dernier peut solliciter l'intervention du collège des procureurs généraux afin qu'il prenne les initiatives qui s'imposent.
§ 3. Le juge d'instruction peut désigner le ou les services de police chargés des missions de police judiciaire dans une enquête particulière, et auxquels les réquisitions et délégations seront, sauf exception, adressées. Si plusieurs services sont désignés, le juge d'instruction veille à la coordination de leurs interventions.
Les fonctionnaires de police du service de police désigné conformément à l'alinéa précédent informent immédiatement l'autorité judiciaire compétente des informations et renseignements en leur possession et de toute recherche entreprise selon les modalités fixées par le procureur du Roi, sauf décision contraire du juge d'instruction. Pour toutes les missions de police judiciaire relatives à cette désignation, ils agissent prioritairement vis-à-vis des autres fonctionnaires de police, lesquels informent immédiatement l'autorité judiciaire compétente et le service de police désigné des informations et renseignements en leur possession et de toute recherche entreprise selon les modalités que le procureur du Roi fixe par directive.

The investigating judge shall immediately bring to the attention of the Federal Prosecutor and the King's Prosecutor, or, in cases where he exercises public prosecution, only the Federal Prosecutor, the information and intelligence that he has collected during the investigation and which reveal a serious and immediate danger to public security and public health.
§ 2. The investigating judge has the right to request the [police services referred to in article 2 of the law on the police function and all other judicial police officers] to carry out, except for the restrictions established by law, all the acts of the judicial police necessary for the investigation.
These requisitions are made and executed in accordance with articles 8 to 8/3 and 8/6 to 8/8 of the law on the police function and, with regard to the federal police, in article 110 of the law of 7 December 1998 organizing an integrated police service, structured at two levels. The requested police services are required to comply with the requisitions and to lend the assistance of the officers and agents of the judicial police necessary for their execution.
The investigating judge has, within the framework of the investigation, the right to request the inspection services referred to in Article 16, 1°, of the Social Penal Code. It may require the inspection services to carry out all the acts necessary for the investigation, within the framework of their competences. This right of requisition does not prejudice the competences of the labour inspectorate provided for in article 21 of the social penal code for offences other than those to which the requisition of the investigating judge relates and which are noted in execution of this last. Only the facts which are the subject of a referral to the investigating judge can no longer be the subject of a warning or a period of regularization.
Where a police service or an inspection service cannot provide the investigating judge with the necessary manpower and resources, the latter may request the intervention of the public prosecutor or the labour inspector after informing him of the situation. The investigating judge may also send a copy of his order to the public prosecutor and the indictment division.
The public prosecutor or the labour prosecutor may himself forward the file to the public prosecutor. The latter may request the intervention of the College of Public Prosecutors to take the necessary initiatives.
§ 3. The investigating judge may designate the police service or services responsible for the judicial police missions in a particular investigation, and to which the requisitions and delegations will be addressed, with some exceptions. If several services are designated, the investigating judge ensures the coordination of their interventions.
The police officers of the police service designated in accordance with the preceding paragraph shall immediately inform the competent judicial authority of the information and information in their possession and of any search undertaken according to the pro-

cedures laid down by the Crown prosecutor, unless the investigating judge decides otherwise. For all judicial police missions relating to this designation, they act as a matter of priority vis-à-vis other police officers, who immediately inform the competent judicial authority and the designated police service of the information and information in their possession and of any research undertaken according to the procedures that the Crown prosecutor sets by directive.

Subsection II. Of The Instruction

Article 61[176] Except in cases of flagrante delicto, the investigating judge shall not carry out any act of investigation or prosecution unless he has notified the public prosecutor of the proceedings.

Nevertheless, the investigating judge shall, if necessary, issue the warrant to bring the case to trial, [...], without this warrant having to be preceded by the conclusions of the public prosecutor.

Article 62bis[177] The investigating judge of the place of the crime or misdemeanour, the investigating judge of the place of residence of the accused the investigating judge of the registered office of the legal person, the investigating judge of the place of operation of the legal person and the investigating judge of the place where the accused may be found shall also be competent.

[176] DISTINCTION II. DE L'INSTRUCTION.
§ 1. DISPOSITIONS GENERALES.
Art. 61. Hors les cas de flagrant délit, le juge de l'instruction ne fera aucun acte d'instruction et de poursuite qu'il n'ait donné communication de la procédure au [procureur du Roi]. [...].
Néanmoins le juge d'instruction délivrera, s'il y a lieu, le mandat d'amener, [...], sans que [ce mandat] doive être précédé des conclusions du [procureur du Roi]. >

[177] Art. 62bis. Sont également compétents le juge d'instruction du lieu du crime ou délit, celui de la résidence du prévenu [celui du siège social de la personne morale, celui du siège d'exploitation de la personne morale] et celui du lieu où le prévenu pourra être trouvé.
Le juge d'instruction, saisi d'une infraction dans les limites de cette compétence, peut procéder ou faire procéder hors de son arrondissement à tous actes de police judiciaire, d'information ou d'instruction relevant de ses attributions. Il en avise le procureur du Roi de l'arrondissement dans lequel l'acte doit être accompli.
En temps de paix, lorsqu'il est saisi de faits commis à l'étranger qui peuvent être poursuivis en Belgique en vertu de l'article 10bis du titre préliminaire du présent Code, le juge d'instruction exerce toutes ses attributions comme si les faits avaient été commis sur le territoire du Royaume. Dans ce cas, lorsque le prévenu n'a pas de résidence en Belgique, les juges d'instruction du tribunal de première instance de Bruxelles sont compétents.
Les juges d'instruction spécialisés pour connaître des infractions visées aux articles 137 à 141 du Code pénal sont compétents pour connaître des faits dont ils sont saisis par le doyen de ces juges d'instruction, lorsque le procureur fédéral a transmis un dossier conformément à l'article 47duodecies, § 3, indépendamment du lieu de l'infraction, du lieu de résidence de l'auteur présumé ou du lieu où celui-ci pourra être trouvé.
Ils exercent dans ce cas leurs attributions sur toute l'étendue du territoire du Royaume.
En cas d'empêchement légal, ils peuvent être remplacés par les juges d'instruction du tribunal de première instance dont ils font partie.
Les juges d'instruction spécialisés visés à l'article 79, alinéa 6, du Code judiciaire sont compétents pour connaître des faits dont ils sont saisis conformément à l'article 47quaterdecies, alinéa 2, par le procureur européen ou les procureurs européens délégués désignés conformément à l'article 309/2 du Code judiciaire. En cas d'empêchement légal, ils peuvent être remplacés par les juges d'instruction du tribunal de première instance dont ils font partie.

The investigating judge, seized of an offence within the limits of this jurisdiction, may carry out or cause to be carried out outside his district any acts of judicial police, information or investigation falling within his powers. He shall notify the public prosecutor of the district in which the act is to be performed. In peacetime, when he is seized of acts committed abroad which may be prosecuted in Belgium by virtue of Article 10bis of the Preliminary Title of this Code, the investigating judge shall exercise all his powers as if the acts had been committed on the territory of the Kingdom. In this case, where the accused has no residence in Belgium, the investigating judges of the Brussels Court of First Instance shall have jurisdiction. The investigating judges specialised in dealing with the offences referred to in Articles 137 to 141 of the Criminal Code are competent to deal with the facts referred to them by the doyen of these investigating judges, when the Federal Public Prosecutor has forwarded a file in accordance with Article 47duodecies, § 3, irrespective of the place where the offence was committed, the place of residence of the alleged perpetrator or the place where the alleged perpetrator can be found. In this case, they shall exercise their powers throughout the territory of the Kingdom. In the event of legal impediment, they may be replaced by the investigating judges of the court of first instance to which they belong.	
The specialised investigating judges referred to in Article 79(6) of the Judicial Code shall be **competent to hear the facts referred to them in accordance with Article 47quaterdecies (2) by the European Public Prosecutor or the Delegated European Public Prosecutors** designated in accordance with Article 309/2 of the Judicial Code. In the event of legal impediment, they may be replaced by the investigating judges of the court of first instance to which they belong.	**19**
Title IIbis [General provisions concerning the functions and duties of the Public Prosecutor's Office] **Article 364**[178] The Attorney General, either ex officio or by order of the Minister of Justice, shall instruct the Crown's Prosecutor to prosecute offences of which he has knowledge. The Attorney General and the other magistrates of the Attorney General's offices and auditor's offices have the right to request the police and inspection services in the manner laid down in Article 28ter, §§ 3 and 4.	**20**

[178] Titre IIbis Dispositions générales concernant les fonctions et les missions du parquet général.]
Art. 364.Le procureur général, soit d'office, soit par les ordres du Ministre de la Justice, charge le procureur du Roi de poursuivre les infractions dont il a connaissance.]
Le procureur-général et les autres magistrats des parquets généraux et auditorats généraux ont le droit de requérir les services de police et d'inspection de la manière arrêtée à l'article 28ter, §§ 3 et 4.]

21

Judicial Code[179]

Article 156/1 Judicial Code

See above under → National Laws: 17 Fevrier 2021. *Loi portant des dis-positions diverses en matière de justice*, Chapt. 2, Section 1, Art. 3

Chapter IVter. Magistrates authorised to carry out a mission to the European Public Prosecutor's Office

Article 309/2[180] § 1. Magistrates may perform the tasks of European Chief Public Prosecutor, European Public Prosecutor and European Delegated Public Prosecutor in accordance with the conditions provided for in Council Regulation 2017/1939 of 12 October 2017 implementing enhanced cooperation concerning the creation of the European Public Prosecutor's Office.

§ 2. The Minister having Justice in his attributions appoints three magistrates who are presented with a view to accomplishing the mission of European Public Prosecutor, provided for in Article 16, paragraph 1, of the regulation cited in paragraph 1.

To be able to be presented as a European Public Prosecutor, the candidate must, at the time of appointment:

[179] *Code Judiciaire.*

[180] Chapitre IVter. - Des magistrats autorisés à accomplir une mission auprès du Parquet européen.]

Art. 309/2. Code Judiciaire § 1er. Des magistrats peuvent accomplir les missions de chef du Parquet européen, de procureur européen et de procureur européen délégué conformément aux conditions prévues dans le règlement 2017/1939 du Conseil du 12 octobre 2017 mettant en oeuvre une coopération renforcée concernant la création du Parquet européen.

§ 2. Le ministre ayant la Justice dans ses attributions désigne trois magistrats qui sont présentés en vue d'accomplir la mission de procureur européen, prévue à l'article 16, paragraphe 1er, du règlement cité au paragraphe 1er.

Pour pouvoir être présenté en qualité de procureur européen, le candidat doit, au moment de la désignation:

1° exercer les fonctions de magistrat et avoir exercé, au cours des quinze dernières années, pendant au moins dix ans la fonction de magistrat du ministère public;

2° être porteur d'un certificat visé à l'article 43quinquies, § 1er, alinéa 3, de la loi du 15 juin 1935 concernant l'emploi des langues en matière judiciaire, prouvant la connaissance de la langue autre que celle de son doctorat, sa licence ou son master en droit.

§ 3. Le ministre qui a la Justice dans ses attributions désigne au moins un magistrat du rôle linguistique néerlandophone et un magistrat du rôle linguistique francophone qui sont présentés en vue d'accomplir les missions de procureur européen délégué, prévues à l'article 17, paragraphe 1er, du règlement cité au paragraphe 1er.

Pour pouvoir être présenté en qualité de procureur européen délégué, le candidat doit, au moment de la désignation, exercer les fonctions de magistrat et avoir exercé, au cours des dix dernières années, pendant au moins cinq ans la fonction de magistrat du ministère public.

§ 4. Le ministre qui a la Justice dans ses attributions ne peut désigner les candidats visés aux paragraphes 2 et 3 qu'après avoir recueilli l'avis commun du Collège des procureurs généraux et du procureur fédéral. Ils peuvent entendre les candidats à cet effet.

L'appel publié dans le Moniteur belge mentionne la manière dont les candidatures sont introduites.

§ 5. Les missions sont exercées à temps plein.

L'article 323bis s'applique.

Pendant leur mission, les magistrats ne sont pas soumis aux dispositions de la partie II, livre II, titre V.

§ 6. Les procureurs européens délégués disposent d'un secrétariat dont la composition [2, les modalités de fonctionnement, le statut, la situation juridique et le traitement des membres du personnel concernés sont fixées par le Roi.]

1° exercise the functions of magistrate and have exercised, during the last fifteen years, for at least ten years the function of magistrate of the public prosecutor's office;
2° hold a certificate referred to in Article 43quinquies, § 1, paragraph 3, of the law of 15 June 1935 concerning the use of languages in judicial matters, proving knowledge of the language other than that of his doctorate, his license or his master's degree in law.
§ 3. The Minister responsible for Justice appoints at least one magistrate from the Dutch-speaking linguistic role and one magistrate from the French-speaking linguistic role who are presented with a view to carrying out the tasks of European Delegated Prosecutor, provided for in Article 17, paragraph 1, of the regulation cited in paragraph 1.
To be able to be presented as European Delegated Prosecutor, the candidate must, at the time of appointment, exercise the functions of magistrate and have exercised, during the last ten years, for at least five years the function of magistrate of the public prosecutor's office.
§ 4. The Minister responsible for Justice may only appoint the candidates referred to in paragraphs 2 and 3 after obtaining the joint opinion of the College of Prosecutors General and the Federal Prosecutor. They can hear the candidates for this purpose.
The call published in the Belgian Official Gazette mentions the way in which applications are submitted.
§ 5. The missions are carried out on a full-time basis.
Article 323bis applies.
During their mission, the magistrates are not subject to the provisions of Part II, Book II, Title V.
§ 6. The European Delegated Prosecutors have a secretariat whose composition [the operating procedures, the status, the legal situation and the treatment of the staff members concerned are set by the King.

Code of Economic Law[181] **22**

Book XV Law enforcement
Title 1 The exercise of surveillance and the investigation and observation of infringements
Chapter 1 General skills
Article XV.1[182] With the exception of the provisions to the contrary mentioned in this Code, the provisions of the Code of Criminal Procedure are applicable to the investigation, observation and prosecution of the offences referred to in Article XV.2, § 1.

[181] *Code de Droit Économique.*
[182] Livre XV. [Application de la loi]
TITRE 1er. [L'exercice de la surveillance et la recherche et la constatation des infractions]
CHAPITRE 1er.[Compétences générales)
Art. XV.1. Code de Droit Économique
A l'exception des dispositions contraires mentionnées dans le présent Code, les dispositions du Code d'instruction criminelle sont applicables à la recherche, la constatation et la poursuite des infractions visées à l'article XV.2, § 1er.]

Article XV.2[183] § 1. Without prejudice to the skills of local and federal police officers, agents commissioned by the Minister are competent to investigate and record violations of this Code. These agents can only exercise the powers defined by this title in order to investigate and record violations of the provisions of this Code, its implementing decrees, laws and their implementing decrees for which this book provides penalties and European Union regulations for which this book provides for penalties, with the exception of those set out in Book IV and its implementing decrees.

Article XV.6[184] In the exercise of their mission relating to the investigation and observation of economic crimes, the agents referred to in Article XV.2 are subject to the supervision, as the case may be, of the competent public prosecutor or the federal public prosecutor, without prejudice to their subordination to their superiors within the administration.

Article XV.7[185] Without prejudice to the right of action of the Public Prosecutor and the investigating judge referred to in Articles 28ter, § 3, and 56, § 2, of the Code of Criminal Investigation, the agents referred to in Article XV.2 have in the exercise of their mission the possibility of providing information and advice, in particular on the most effective means of complying with the provisions of this Code and its implementing decrees and regulations of the European Union for which this Code provides penalties and other laws with which they are responsible for monitoring compliance.

Article XV.8[186] § 1. The King appoints the agents referred to in Article XV.2 who also have the status of judicial police officer, auxiliary to the King's prosecutor.

[183] **Art. XV.2. Code de Droit Économique**
§ 1er. Sans préjudice des compétences des fonctionnaires de police de la police locale et fédérale, les agents commissionnés par le ministre sont compétents pour rechercher et constater les infractions au présent Code. Ces agents peuvent uniquement exercer les compétences définies par le présent titre afin de rechercher et constater les infractions aux dispositions du présent Code, de ses arrêtés d'exécution [4, des lois et leurs arrêtés d'exécution pour lesquels le présent livre prévoit des sanctions et des règlements de l'Union européenne pour lesquels le présent livre prévoit des sanctions, à l'exception de celles reprises dans le Livre IV et dans ses arrêtés d'exécution. […]

[184] **Art. XV.6. Code de Droit Économique**
Dans l'exercice de leur mission relative à la recherche et à la constatation des délits économiques, les agents visés à l'article XV.2 sont soumis à la surveillance, selon le cas, du procureur général compétent ou du procureur fédéral, sans préjudice de leur subordination à leurs supérieurs au sein de l'administration.

[185] **Art. XV.7. Code de Droit Économique**
Sans préjudice du droit d'action du Ministère public et du juge d'instruction visé aux articles 28ter, § 3, et 56, § 2, du Code d'instruction criminelle, les agents visés à l'article XV.2 disposent dans l'exercice de leur mission de la possibilité de fournir des renseignements et des conseils, notamment sur les moyens les plus efficaces pour respecter les dispositions du présent Code et ses arrêtés d'exécution et des règlements de l'Union européenne pour lesquels le présent Code prévoit des sanctions et d'autres lois dont ils sont chargés de surveiller le respect.]

[186] **Art. XV.8. Code de Droit Économique**
§ 1er. Le Roi désigne les agents visés à l'article XV.2 qui sont également revêtus de la qualité d'officier de police judiciaire, auxiliaire du procureur du Roi.
Le Roi détermine les conditions concernant l'expérience et la formation de ces agents.

The King determines the conditions concerning the experience and training of these agents.
§ 2. The powers of judicial police officer, assistant to the King's prosecutor, conferred on agents designated by the King may only be exercised with a view to researching, establishing and investigating the offences referred to in Article XV.2, § 1 and to Articles 196, 197, 210bis, 299, 494 and Book 2, Title IX, Chapter II, section III, of the Penal Code]

General Law on Customs and Excise[187] **23**

Article 281[188] § 1. All actions for contraventions, fraud or offences, against which customs and excise laws impose penalties, will be brought in first instance before the criminal courts, and, in the event of an appeal, before the court of appeal with jurisdiction, to be investigated and judged there in accordance with the Code of Criminal Investigation.
§ 2. All those of the aforementioned actions which tend to the application of fines, confiscations, or the closing of factories or factories, will be brought and prosecuted by the administration or in its name before the said courts, which, in all cases, will only rule on

§ 2. Les pouvoirs d'officier de police judiciaire, auxiliaire du procureur du Roi, conférés aux agents désignés par le Roi ne peuvent être exercés qu'en vue de la recherche, de la constatation et de l'enquête concernant les infractions visées à l'article XV.2, § 1er et aux articles 196, 197, 210bis, 299, 494 et le Livre 2, Titre IX, Chapitre II, section III, du Code pénal.]

[187] *Loi générale sur les douanes et accises*.

[188] **Art. 281. Loi générale sur les douanes et accises** § 1er. Toutes actions du chef de contraventions, fraudes ou délits, contre lesquels les lois en matière de douanes et accises prononcent des peines seront portées en première instance devant les tribunaux correctionnels, et, en cas d'appel, devant la cour d'appel du ressort, pour y être instruites et jugées conformément au Code d'instruction criminelle.
§ 2. Toutes celles des actions susmentionnées qui tendent à l'application d'amendes, de confiscations, ou à la fermeture de fabriques ou usines, seront intentées et poursuivies par l'administration ou en son nom devant lesdits tribunaux, lesquels, en tout cas, ne prononceront sur ces affaires qu'après avoir entendu les conclusions du ministère public. Toutefois, sur la demande écrite qui lui en est faite par un fonctionnaire de l'Administration générale des douanes et accises ayant au moins le grade de conseiller général désigné pour l'administration en charge des contentieux, le ministère public peut requérir le juge d'instruction d'informer, l'exercice de l'action publique restant pour le surplus réservé à l'administration.
§ 3. Dans les cas qu'un même fait de transgression aux lois précitées donne lieu à deux actions différentes, dont l'une doit être intentée par le ministère public et l'autre par l'administration ou en son nom, ces actions seront instruites simultanément, et il y sera statué par un seul et même jugement; mais, dans ces cas, le ministère public n'agira pas avant que l'administration ait, de son côté, porté plainte ou intenté l'action.
§ 4. En recherchant les crimes et délits visés à l'article 8, § 1er, 5°, de la loi du 25 décembre 2016 relative au traitement des données des passagers, le conseiller-général désigné pour l'administration en charge des contentieux peut, par une décision écrite et motivée, charger un agent des douanes et accises, de requérir l'UIP afin de communiquer les données des passagers conformément à l'article 27 de la loi du 25 décembre 2016 relative au traitement des données des passagers.
La motivation de la décision reflète le caractère proportionnel eu égard à la protection des données à caractère personnel et subsidiaire à tout autre devoir d'enquête.
La décision et sa motivation sont notifiées à l'Organe de contrôle de l'information policière visé à l'article 71 de la loi du 30 juillet 2018 relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel.
L'Organe de contrôle de l'information policière interdit au conseiller-général désigné pour l'administration en charge des contentieux d'exploiter les données recueillies dans des conditions qui ne respectent pas les conditions légales..

these cases after having heard the conclusions of the public prosecutor. However, on the written request made to him by an official of the General Administration of Customs and Excise having at least the rank of general adviser designated for the administration in charge of litigation, the public prosecutor may request the investigating judge to inform, the exercise of the public action remaining for the surplus reserved for the administration.
§ 3. In cases where the same act of transgression of the aforementioned laws gives rise to two different actions, one of which must be brought by the public prosecutor and the other by the administration or in its name, these actions shall be heard simultaneously, and it will be decided by one and the same judgment; but, in these cases, the public ministry will not act before the administration has, on its side, lodged a complaint or brought the action.
§ 4. In investigating the crimes and misdemeanours referred to in Article 8, § 1, 5°, of the law of 25 December 2016 relating to the processing of passenger data, the general counsel designated for the administration in charge litigation may, by a written and reasoned decision, instruct a customs and excise agent to request the UIP to communicate passenger data in accordance with article 27 of the law of 25 December 2016 relating to the processing of passenger data. The reasoning for the decision reflects the proportionality with regard to the protection of personal data and subsidiary to any other duty of investigation.
The decision and its reasons are notified to the Police Information Control Body referred to in Article 71 of the Law of 30 July 2018 on the protection of individuals with regard to data processing of a personal nature.
The Police Information Control Body prohibits the General Counsel designated for the administration in charge of litigation from using the data collected under conditions that do not comply with the legal conditions.]

Article 285/2 See above under → National Laws: 17 Fevrier 2021. *Loi portant des dispositions diverses en matière de justice*, Chapt. 2, Section 1, Article 16

Article 285/3 See above under → National Laws: 17 Fevrier 2021. *Loi portant des dispositions diverses en matière de justice*, Chapt. 2, Section 1, Article 17

Article 285/4 See above under → National Laws: 17 Fevrier 2021. *Loi portant des dispositions diverses en matière de justice*, Chapt. 2, Section 1, Article 18

Article 285/5 See above under → National Laws: 17 Fevrier 2021. *Loi portant des dispositions diverses en matière de justice*, Chapt. 2, Section 1, Article 19

bb. Via National Administrative Decrees/Regulations under Criminal Procedural Law

(1) Country Specific Law (Justice Administration)

Act granting the status of officer of judicial police to certain officials of the Customs and Excise Administration[189] 24

Article 2[190] Clothed with the capacity of judicial police officer, assistant public prosecutor and labour auditor without prejudice to their customs and excise competences, officials of the Customs and Excise Administration:
1° seconded to the Europol National Unit as well as their deputies;
2° appointed within the framework of the agreements on police and customs cooperation concluded between the countries having a common border with Belgium pursuant to Article 39 § 4 of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders.

Article 3[191] Within the limits of the material powers as stipulated in the following paragraph, officers of the judicial police, assistant public prosecutor and labour auditor, without prejudice to their powers in respect of customs and excise:

[189] Wet houdende toekenning van de hoedanigheid van officier van gerechtelijke politie aan bepaalde ambtenaren van de Administratie der douane en accijnzen – 22.04.2003.
[190] Art. 2. Wet houdende toekenning van de hoedanigheid van officier van gerechtelijke politie aan bepaalde ambtenaren van de Administratie der douane en accijnzen – 22.04.2003.
Bekleed worden met de hoedanigheid van officier van gerechtelijke politie, hulpofficier van de procureur des Konings en van de arbeidsauditeur onverminderd hun bevoegdheden inzake douane en accijnzen, de ambtenaren van de Administratie der douane en accijnzen:
1° gedetacheerd bij de Nationale Eenheid Europol evenals hun plaatsvervangers;
2° aangewezen in het kader van de akkoorden inzake politie- en douanesamenwerking gesloten tussen de landen die met België een gemeenschappelijke grens hebben met toepassing van artikel 39, § 4, van de Overeenkomst ter uitvoering van het Akkoord van Schengen van 14 juni 1985, betreffende de geleidelijke afschaffing van de controles aan de gemeenschappelijke grenzen.
[191] Art. 3. Wet houdende toekenning van de hoedanigheid van officier van gerechtelijke politie aan bepaalde ambtenaren van de Administratie der douane en accijnzen – 22.04.2003
Binnen de perken van de materiële bevoegdheden zoals bepaald in navolgende alinea, worden bekleed met de hoedanigheid van officier van gerechtelijke politie, hulpofficier van de procureur des Konings en van de arbeidsauditeur, onverminderd hun bevoegdheden inzake douane en accijnzen:
1° zes ambtenaren benoemd in een graad van niveau één en vier ambtenaren benoemd in een graad van niveau twee plus van de Nationale Opsporingsdirectie van de Administratie der douane en accijnzen;
2° vier ambtenaren benoemd in een graad van niveau één van de Opsporingsinspectie der douane en accijnzen te Antwerpen;
3° twee ambtenaren benoemd in een graad van niveau één per opsporingsinspectie der douane en accijnzen, andere dan de Opsporingsinspectie der douane en accijnzen te Antwerpen en per afdeling van een opsporingsinspectie van de Administratie der douane en accijnzen.
De bevoegdheden van officier van gerechtelijke politie, hulpofficier van de procureur des Konings en van de arbeidsauditeur, toegekend aan de ambtenaren bedoeld in vorenstaande alinea, kunnen slechts worden uitgeoefend met het oog op het opsporen en vaststellen van:
1° overtredingen van de wetgeving betreffende de bescherming van de financiële belangen van de Europese Gemeenschappen;

1° six officials appointed to a grade of level one and four officials appointed to a grade of level two plus from the National Investigation Directorate of the Customs and Excise Administration;
2° four officials appointed in a grade of level one from the Investigation Department of the Customs and Excise Administration in Antwerp;
3° two officers appointed in a grade of level one per Customs and Excise Investigation Inspectorate other than the Antwerp Customs and Excise Investigation Inspectorate and per division of a Customs and Excise Administration Investigation Inspectorate.
The powers of judicial police officer, assistant public prosecutor and labour auditor granted to the officers referred to in the above paragraph may only be exercised with a view to detecting and establishing:
1° violations of the legislation on the protection of the financial interests of the European Communities;
2° offences concerning intra-Community flows of goods falling within the scope of excise legislation;
3° violations of laws and regulations that confer one or other power on the officials of the Customs and Excise Administration in the import, export or transit of goods;
4° violations related to those mentioned under 1° to 3°.

Article 4[192] 1. Without prejudice to the provisions of Articles 47ter and 40bis of the Code of Criminal Procedure, the officials referred to in the aforementioned Article 3, clothed with the capacity of judicial police officer, assistant public prosecutor and labour auditor, may, under the same conditions as those set out in the Code of Criminal Procedure, apply special methods of investigation consisting of observation and informant operation, as well as deferred intervention belonging to the other methods of investigation.
2. The King shall determine the conditions concerning the training of the officials referred to in point 1 above.

2° overtredingen wat betreft intracommunautaire goederenstromen die onder het toepassingsgebied van de accijnsregelgeving vallen;
3° overtredingen van wetten en verordeningen die één of andere bevoegdheid toekennen aan de ambtenaren van de Administratie der douane en accijnzen bij de in-, uit- of doorvoer van goederen;
4° overtredingen die samenhangen met die genoemd onder 1° tot 3°.

[192] Art. 4. Wet houdende toekenning van de hoedanigheid van officier van gerechtelijke politie aan bepaalde ambtenaren van de Administratie der douane en accijnzen – 22.04.2003
1. Onverminderd het bepaalde in de artikelen 47ter en 40bis van het Wetboek van strafvordering mogen de ambtenaren bedoeld in vorenstaand artikel 3, bekleed met de hoedanigheid van officier van gerechtelijke politie, hulpofficier van de procureur des Konings en van de arbeidsauditeur, onder dezelfde voorwaarden als die vermeld in het Wetboek van strafvordering, bijzondere opsporingsmethoden toepassen die bestaan uit de observatie en de informantenwerking, evenals de uitgestelde tussenkomst behorende tot de andere onderzoeksmethoden.
2. De Koning bepaalt de voorwaarden betreffende de vorming van de ambtenaren bedoeld in vorenstaande punt 1.
3. De Koning kan, bij een na overleg in de Ministerraad vastgesteld besluit, de in vorenstaand artikel 3 bedoelde lijst van ambtenaren aanpassen.

3. The King may, by decree adopted after deliberation in the Council of Ministers, adapt the list of officials referred to in Article 3 above.

(2) Specific Decrees

Ministerial order of 2 June 2003 designating the officials of the Customs and Excise Administration to be vested with the capacity of judicial police officer[193] **25**

Article 1[194] The officials of the Customs and Excise Administration listed in the list of names annexed to this decision shall take the oath prescribed by Article 5 of the Law of 22 April 2003 granting certain officials of the Customs and Excise Administration the capacity of officer of judicial police.

d) Urgent Measures in Accordance with National Law Necessary to Ensure Effective Investigations

Urgent measures can be found in the Criminal Procedure Code, e.g. in relation to gathering evidence quickly: **26**

Criminal Procedure Code **27**

Article 32[195] In all cases of flagrante delicto, when the fact is likely to lead to a [criminal] penalty, the [King's prosecutor] will go to the place, without any delay, to draw up the necessary reports for the purpose of find the body of the offence, are state, the inventory, and to receive the statements of the people who would have been present, or who would have information to give.
The [King's prosecutor] will give notice of his transfer to the examining magistrate, without however being required to wait for him to proceed as stated in this chapter.

Article 39bis[196] § 1. Without prejudice to the specific provisions of this article, the rules of this code relating to seizure, including article 28sexies, are applicable to measures

[193] *Ministerieel besluit van 2 juni 2003 houdende aanduiding van de ambtenaren van de Administratie der douane en accijnzen om te worden bekleed met de hoedanigheid van officier van gerechtelijke politie.*
[194] Artikel 1. Ministerieel besluit van 2 juni 2003
De ambtenaren van de Administratie der douane en accijnzen opgenomen in de naamlijst gevoegd bij onderhavig besluit, zullen de eed afleggen die voorgeschreven is bij artikel 5 van de wet van 22 april 2003 houdende toekenning van de hoedanigheid van officier van gerechtelijke politie aan bepaalde ambtenaren van de Administratie der douane en accijnzen.
[195] Art. 32. Dans tous les cas de flagrant délit, lorsque le fait sera de nature à entraîner une peine [criminelle], le [procureur du Roi] se transportera sur lieu, sans aucun retard, pour y dresser les procès-verbaux nécessaires à l'effet de constater le corps du délit, sont état, l'état des lieux, et pour recevoir les déclarations des personnes qui auraient été présentes, ou qui auraient des renseignements à donner.
Le [procureur du Roi] donnera avis de son transport au juge d'instruction, sans être toutefois tenu de l'attendre pour procéder ainsi qu'il est dit au présent chapitre.
[196] Art. 39bis. § 1er. Sans préjudice des dispositions spécifiques de cet article, les règles de ce code relatives à la saisie, y compris l'article 28sexies, sont applicables aux mesures consistant à copier, rendre inaccessibles et retirer des données stockées dans un système informatique ou une partie de celui-ci.

consisting in copying, rendering inaccessible and removing data stored in a computer system or a part of it.
§ 2. The search in a computer system or part of it which has been seized may be decided by a judicial police officer.
Without prejudice to the first paragraph, the public prosecutor may order a search in a computer system or part of it which may be seized by him.
The searches referred to in paragraphs 1 and 2 may only extend to data saved in the computer system which is either entered or likely to be entered. To this end, each external connection of this computer system is prevented before the search is started.
§ 3. The public prosecutor may extend the search in a computer system or part of it, started on the basis of paragraph 2, to a computer system or part of it which is located in a place other than that where the research is carried out:
- if this extension is necessary for the manifestation of the truth with regard to the offence that is the subject of the search; and
- if other measures would be disproportionate, or if there is a risk that, without this extension, evidence would be lost.

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§ 2. La recherche dans un système informatique ou une partie de celui-ci qui a été saisi, peut être décidée par un officier de police judiciaire.
Sans préjudice de l'alinéa 1er, le procureur du Roi peut ordonner une recherche dans un système informatique ou une partie de celui-ci qui peut être saisi par lui.
Les recherches visées aux alinéas 1er et 2 peuvent uniquement s'étendre aux données sauvegardées dans le système informatique qui est soit saisi, soit susceptible d'être saisi. A cet effet, chaque liaison externe de ce système informatique est empêchée avant que la recherche soit entamée.
§ 3. Le procureur du Roi peut étendre la recherche dans un système informatique ou une partie de celui-ci, entamée sur la base du paragraphe 2, vers un système informatique ou une partie de celui-ci qui se trouve dans un autre lieu que celui où la recherche est effectuée:
- si cette extension est nécessaire pour la manifestation de la vérité à l'égard de l'infraction qui fait l'objet de la recherche; et
- si d'autres mesures seraient disproportionnées, ou s'il existe un risque que, sans cette extension, des éléments de preuve soient perdus.
L'extension de la recherche dans un système informatique ne peut pas excéder les systèmes informatiques ou les parties de tels systèmes auxquels les personnes autorisées à utiliser le système informatique qui fait l'objet de la mesure ont spécifiquement accès.
En ce qui concerne les données recueillies par l'extension de la recherche dans un système informatique, qui sont utiles pour les mêmes finalités que celles prévues pour la saisie, les règles prévues au paragraphe 6 s'appliquent.
Lorsqu'il s'avère que ces données ne se trouvent pas sur le territoire du Royaume, elles peuvent seulement être copiées. Dans ce cas, le procureur du Roi communique sans délai cette information au Service public fédéral Justice, qui en informe les autorités compétentes de l'état concerné, si celui-ci peut raisonnablement être déterminé.
En cas d'extrême urgence, le procureur du Roi peut ordonner verbalement l'extension de la recherche visée à l'alinéa 1er. Cet ordre est confirmé par écrit dans les meilleurs délais, avec mention des motifs de l'extrême urgence.
§ 4. Seul le juge d'instruction peut ordonner une recherche dans un système informatique ou une partie de celui-ci autre que les recherches visées au paragraphe 2:
- si cette recherche est nécessaire pour la manifestation de la vérité à l'égard de l'infraction qui fait l'objet de la recherche; et
- si d'autres mesures seraient disproportionnées, ou s'il existe un risque que, sans cette recherche, des éléments de preuve soient perdus.
En cas d'extrême urgence, le juge d'instruction peut ordonner verbalement [3... la recherche visée à l'alinéa 1er. Cet ordre est confirmé par écrit dans les meilleurs délais, avec mention des motifs de l'extrême urgence. […]

The scope of the search in a computer system may not exceed the computer systems or parts of such systems to which the persons authorised to use the computer system which is the subject of the measure have specific access.
With regard to the data collected by the extension of the search in a computer system, which are useful for the same purposes as those intended for the input, the rules provided for in paragraph 6 apply.
When it turns out that this data is not on the territory of the Kingdom, it can only be copied. In this case, the public prosecutor communicates this information without delay to the Federal Public Service Justice, which informs the competent authorities of the state concerned, if the latter can reasonably be determined.
In the event of extreme urgency, the public prosecutor may verbally order the extension of the search referred to in the first paragraph. This order is confirmed in writing as soon as possible, with mention of the reasons for the extreme urgency.
§ 4. Only the investigating judge can order a search in a computer system or a part of it other than the searches referred to in paragraph 2:
- if this research is necessary for establishing the truth with regard to the offence which is the subject of the research; and
- whether further action would be disproportionate, or whether there is a risk that, without this search, evidence will be lost.
In cases of extreme urgency, the investigating judge may verbally order the search referred to in the first paragraph. This order is confirmed in writing as soon as possible, with mention of the reasons for the extreme urgency. […]

Article 40[197] The [King's prosecutor], in the said case of flagrante delicto, and when the fact is likely to lead to a [criminal] penalty, will seize the [accused] present against whom there are serious indications.
If [the accused] is not present, the [King's prosecutor] will issue an order for him to appear: this order is called a "warrant of arrest".
Denunciation alone does not constitute a sufficient presumption to issue this order against an individual having domicile.
The [King's prosecutor] will immediately interrogate [the accused] brought before him.

[197] Art. 40. Le [procureur du Roi], au dit cas de flagrant délit, et lorsque le fait sera de nature à entraîner une peine [criminelle], fera saisir les [inculpés] présents contre lesquels il existerait des indices graves.
Si [l'inculpé] n'est pas présent, le [procureur du Roi] rendra une ordonnance à l'effet de le faire comparaître: cette ordonnance s'appelle "mandat d'amener".
La dénonciation seule ne constitue pas une présomption suffisante pour décerner cette ordonnance contre un individu ayant domicile.
Le [procureur du Roi] interrogera sur-le-champ [l'inculpé] amené devant lui.

Article 46quinquies[198] § 1. Without prejudice to article 89ter, the public prosecutor may, by a written and reasoned decision, authorise the police services to enter a private place at any time and to open closed objects located in this place,] 1 without the knowledge of the owner or his successor in title or without their consent, if there are **serious indications that the punishable acts constitute or would constitute an offence** referred to *in Article 90ter*, §§ 2 to 4, or are committed or would be committed within the framework of a criminal organisation referred to in article 324bis of the Penal Code, and if the other means of investigation do not seem to be sufficient to establish the truth.

For the purposes of this article, „private place" means a place which is clearly not:

- a home;
- an outbuilding of a home within the meaning of Articles 479, 480 and 481 of the Penal Code;
- premises used for professional purposes or the residence of a lawyer or a doctor, referred to in Article 56bis, paragraph 3.

In the event of an emergency, the decision referred to in the first paragraph may be communicated verbally. In such a case, the decision must be reasoned and confirmed in writing as soon as possible.

If the decision referred to in the first paragraph is taken within the framework of the application of specific research methods referred to in Articles 47ter to 47decies, the decision and all the reports relating thereto shall be attached to the criminal file at the latest after the particular research method has been terminated.

[198] Art. 46quinquies. § 1er. Sans préjudice de l'article 89ter, le procureur du Roi peut, par une décision écrite et motivée, autoriser les services de police à pénétrer à tout moment dans un lieu privé et à ouvrir les objets fermés se trouvant dans ce lieu, à l'insu du propriétaire ou de son ayant droit ou sans le consentement de ceux-ci, s'il existe des indices sérieux que les faits punissables constituent ou constitueraient une infraction visée à l'article 90ter, §§ 2 à 4, ou sont commis ou seraient commis dans le cadre d'une organisation criminelle visée à l'article 324bis du Code pénal, et si les autres moyens d'investigation ne semblent pas suffire à la manifestation de la vérité.
Au sens du présent article, on entend par " lieu privé ", le lieu qui n'est manifestement pas:

- un domicile;
- une dépendance propre y enclose d'un domicile au sens des articles 479, 480 et 481 du Code pénal;
- un local utilisé à des fins professionnelles ou la résidence d'un avocat ou d'un médecin, visés à l'article 56bis, alinéa 3.

En cas d'urgence, la décision visée à l'alinéa 1er, peut être communiquée verbalement. En pareil cas, la décision doit être motivée et confirmée par écrit dans les plus brefs délais.
Si la décision visée à l'alinéa 1er est prise dans le cadre de l'application de méthodes particulières de recherche visées aux articles 47ter à 47decies, la décision et tous les procès-verbaux y afférents sont joints au dossier répressif au plus tard après qu'il a été mis fin à la méthode particulière de recherche.

Section II. Functions of the Instructing Judge.
Distinction I. Cases of Blagrant Delit.
Article 59[199] In all cases of flagrante delicto or deemed to be such, the examining magistrate can take up the facts and directly take action falling within the competence of the Crown prosecutor.
The investigating judge immediately informs the public prosecutor to allow him to take the requisitions he deems useful.

Article 60[200] When the flagrante delicto has already been established, and the [King's prosecutor] forwards the deeds and documents to the investigating judge, the latter will be required to examine the procedure without delay.
He can redo the acts or those of the acts which do not appear to him to be complete.

[199] SECTION II. FONCTIONS DU JUGE D'INSTRUCTION. DISTINCTION I. DES CAS DE FLAGRANT DELIT. Art. 59. Dans tous les cas de flagrant délit ou réputés tels, le juge d'instruction peut se saisir des faits et poser directement les actes relevant de la compétence du procureur du Roi.
Le juge d'instruction informe immédiatement le procureur du Roi pour lui permettre de prendre les réquisitions qu'il juge utiles.
[200] Art. 60. Lorsque le flagrant délit aura déjà été constaté, et que le [procureur du Roi] transmettra les actes et pièces au juge d'instruction, celui-ci sera tenu de faire, sans délai l'examen de la procedure.
Il peut refaire les actes ou ceux des actes qui ne lui paraîtraient pas complets.

4. Article 29 Lifting privileges or immunities

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

a) National Privilege and Immunity Provisions, para 1

aa. Privilege Provisions

(1) Legal (Professional) Privilege

(a) Provisions in Belgian Law

1 The correspondence with a lawyer (*Avocat*) is protected by secrecy. The situation for the legal statues, which expressis verbis state this rule is divergent as different Codes apply. The reason for this situation is the different Bars in the Country. If you consult e.g. the Flemish Code it will certainly offer the person concerned a provision that may be presented in an investigation.

(b) Provisions on Lifting a Legal (Professional) Privilege

In a case from 2021 the Belgian Court of Cassation had to decide a case of an appeal directed against a judgement of the court of Antwerp (Correctional Chamber, 16 June 2021). The case concerned a cross-border investigation that used intrusive measures (wiretapping and observation) and was conducted by Dutch authorities in the Netherlands. The court declared the measures to be in accordance with the law (Art. 90ter CPC) as the evidence was obtained lawfully.[201] **2**

(2) Privilege against Self-Incrimination

The privilege against self-incrimination is an ECHR standard and must be followed by all national and supranational authorities in an EPPO case. National actions are already subject to the ECtHR jurisdiction and they may encompass tax and customs[202] investigations relating to fraud. **3**

In general, the suspect needs to be informed about his rights e.g. the right not to incriminate oneself, see Art. 47bis CPC: **4**

> **Article 47bis**[203] § 1. Before proceeding with the questioning of a person who is not charged with a crime, the facts about which he is to be questioned are briefly notified and he is informed that: **5**
> 1) he cannot be forced to incriminate himself; […].

b) Immunity Provisions

aa. Parliamentary Privilege or Immunity

The main issue, which is addressed by Art. 29 EPPO Regulation is the corruption at a high or the highest political level. Parliamentarians are usually protected by privileges and immunities.[204] These have their own telos e.g. ensuring the free speech in the parliament itself. If these privileges and immunities are seen with the eyes of magistrates or prosecutors, they are a hindrance to investigations and potential prosecution for e.g. fraud offences. **6**

[201] Court of Cassation – Judgment no. P.21.0965.N dd. October 19, 2021 (ECLI:BE:CASS:2021:ARR.20211019.2N.12).
[202] Claes, Horseele 2022, pp 301–343.
[203] Art. 47bis.§ 1. Vooraleer wordt overgegaan tot het verhoor van een persoon aan wie geen misdrijf ten laste wordt gelegd, wordt op beknopte wijze kennis gegeven van de feiten waarover hij zal worden verhoord en wordt hem meegedeeld dat:
1) hij niet verplicht kan worden zichzelf te beschuldigen;
2) zijn verklaringen als bewijs in rechte kunnen worden gebruikt; [...].
[204] See as well Van Schoubroeck 2014, pp 70 et seq.

7

Belgian Constitution

Article 58[205] No member of either House may be prosecuted or subject to any investigation as a result of an opinion or vote expressed in the performance of his duties.

Article 59[206] Except when discovered in the act, no member of either House may be referred, in session and in criminal matters, to or subpoenaed directly in a court or tribunal, or be arrested except with the permission of the House of which the person is a member.
Except when discovered in the act, coercive measures requiring the intervention of a judge, against a member of either House, during session and in criminal matters, may only be ordered by the first President of the Court of Appeal at the request of the competent court. This decision is communicated to the President of the Chamber concerned.
A search or seizure pursuant to the preceding paragraph may only take place in the presence of the President of the Chamber concerned or of a member designated by him.
The prosecution in criminal matters of a member of one of the two Houses, during the session, can only be instituted by the officials of the Public Prosecution Service and the competent officials.
At any stage of the investigation, the member of either House concerned may, during the session and in criminal matters, request the House of which he belongs to suspend the prosecution. This House must decide for this by a majority of two thirds of the votes cast.
The detention of a member of either House or his prosecution before a court or tribunal shall be suspended during the session if so, requested by the House of which the member belongs.

[205] **Art. 58 Grondewet Be**
Geen lid van een van beide Kamers kan worden vervolgd of aan enig onderzoek onderworpen naar aanleiding van een mening of een stem, in de uitoefening van zijn functie uitgebracht.

[206] **Art. 59 Grondewet Be**
Behalve bij ontdekking op heterdaad kan geen lid van een van beide Kamers, tijdens de zitting en in strafzaken, worden verwezen naar of rechtstreeks gedagvaard voor een hof of een rechtbank, of worden aangehouden dan met verlof van de Kamer waarvan het lid deel uitmaakt.
Behalve bij ontdekking op heterdaad kunnen de dwangmaatregelen waarvoor het optreden van een rechter is vereist, ten opzichte van een lid van een van beide Kamers, tijdens de zitting en in strafzaken, alleen worden bevolen door de eerste voorzitter van het hof van beroep op verzoek van de bevoegde rechter. Deze beslissing wordt aan de voorzitter van de betrokken Kamer meegedeeld.
Huiszoeking of inbeslagneming krachtens het voorgaande lid kan alleen geschieden in aanwezigheid van de voorzitter van de betrokken Kamer of van een door hem aangewezen lid.
De vervolging in strafzaken van een lid van een van beide Kamers kan, tijdens de zitting, enkel worden ingesteld door de ambtenaren van het openbaar ministerie en de bevoegde ambtenaren.
In elke stand van het onderzoek kan het betrokken lid van een van beide Kamers, tijdens de zitting en in strafzaken, aan de Kamer waarvan hij deel uitmaakt de schorsing van de vervolging vragen. Deze Kamer dient hiertoe met een meerderheid van twee derden van de uitgebrachte stemmen te beslissen.
De hechtenis van een lid van een van beide Kamers of zijn vervolging voor een hof of een rechtbank wordt tijdens de zitting geschorst indien de Kamer waarvan het lid deel uitmaakt, het vordert.

bb. Provisions on the Lifting of Immunities?

The lifting or waiving is only possible with the consent of the relevant institution e.g. the parliament or the Chamber. This is clearly indicated by the wording (see above: "except with the permission of the House of which the member is a member." **8**

c) Conclusion / Comparison

The privileges and immunities are strong decisions that opposite criminal investigations. Nevertheless, they may be waived in certain conditions and are therefore no fundamental hindrances in serious cases of corruption or fraud. Still, they might be used in a political way, which is not good for a democratic society e.g. to prevent and protect somebody who has quite clearly acted against the law. Basic functions – e.g. the requirement to ask an investigating judge – are respected by the Constitution. A search or seizure requires the presence of the person concerned. **9**

d) Immunities and Privileges under union law, para 2

Article 29 para 2 focusses on Union staff. The EPPO may need to investigate crimes involving EU officials or other individuals enjoying privileges and immunities under Union law.[207] We do not concentrate on this procedure here, but can only hint you at the following: A standard template agreement between the EU Commission and EPPO regulates the procedure for lifting privileges and immunities. This template can be requested by the EPPO when necessary. For acting in as case with Union officials, which enjoy specific protections under Protocol No. 7 of the Treaty on the Functioning of the European Union (TFEU) as an EDP you apply the Union law. **10**

On 24 June 2024, the European Investment Bank (EIB) agreed to the request of the EPPO to lift the immunity of two former employees and revoke the inviolability of its premises and archives in Luxembourg. This request is part of an ongoing investigation into suspected corruption, abuse of influence, and misappropriation of EU funds, reported by OLAF. The EIB's decision follows Protocol 7 on EU privileges and immunities, allowing the EPPO to effectively pursue the investigation in line with the rule of law and EU Charter of Fundamental Rights. All parties involved are presumed innocent until proven guilty. This case highlights how Article 29 enables the EPPO to tackle serious crimes even when privileges initially restrict direct investigative actions.[208] **11**

For justice staff, this serves as a reminder of the importance of following the formal steps outlined in the EPPO Regulation. **12**

[207] See e.g. an act for annulement and the Art. 263 TFEU case GC, Case T-46/23, 16 January 2024, *Kaili v European Parliament* represented by N. Lorenz and A.-M. Dumbrăvan, acting as Agents, and European Public Prosecutor's Office represented by L. De Matteis, C. Charalambous, and E. Farhat, acting as Agents.
[208] EPPO, Luxembourg: EPPO obtains the lifting of immunity of two former EIB employees, https://www.eppo.europa.eu/en/media/news/luxembourg-eppo-obtains-lifting-immunity-two-former-eib-employees.

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

1. Article 30 Investigation measures and other measures 180
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1. At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:
(a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;
(b) obtain the production of any relevant object or document either in its original form or in some other specified form;
(c) obtain the production of stored computer data, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council;
(d) freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the

owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the judgement ordering confiscation.
(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.

1 Art. 30 EPPO Regulation contains many possibilities to **discover EU frauds** and includes intrusive and effective means of **investigative tools**. Conducting the investigations it is important to closely obey the law and follow the details. The following provisions from the Criminal Procedure Code of Belgium is not "law in the books" but rather the fundamental requisite to combat EU frauds *in praxi*.

2 In Belgium the investigating judge (*onderzoeksrechter*) has a very important role if it comes to investigative measures carried out by one of the Belgian EDPs (Art. 56 et seq. CPC).[209] The Code of Judicial Procedure states in Art. 79 para 4 explicitly what the specialised EU fraud courts in Belgium shall do if an EDP of the regional office acts within their jurisdiction:

[209] See in-depth Careel, De Smedt 2022b, pp 8 et seq., with an equal list on pp. 5, 6.

Article 79[210] The King designates from among the judges in the court of first instance, according to the needs of the service, one or more investigating judges, one or more attachment judges and (, one or more judges in the family- and juvenile court and one or more judges in the criminal enforcement court). **3**

(In the jurisdiction of each court of appeal, the first president, on the advice of the federal prosecutor, appoints one or more investigating judges from among the investigating judges, whose contingent will be determined by the King. These investigating judges must have useful experience for the investigation. of the offences defined by Articles 137 to 141 of the Criminal Code. This designation has no effect on their status or their allocation. Pursuant to this designation, they treat with priority the files brought before them in accordance with Article 47duodecies, § 3, of the Code of Criminal Procedure.

[210] **Art. 79. Code judiciaire** De Koning wijst uit de rechters in de rechtbank van eerste aanleg, volgens de behoeften van de dienst, een of meer onderzoeksrechters, een of meer beslagrechters en (, een of meer rechters in de familie- en jeugdrechtbank en één of meer rechters in de strafuitvoeringsrechtbank) aan.

(In het rechtsgebied van elk hof van beroep wijst de eerste voorzitter, op advies van de federale procureur, onder de onderzoeksrechters één of meerdere onderzoeksrechters aan wier contingent zal worden vastgesteld door de Koning. Deze onderzoeksrechters dienen over een nuttige ervaring te beschikken voor het onderzoek van de bij de artikelen 137 tot 141 van het Strafwetboek bepaalde misdrijven. Deze aanwijzing heeft geen enkel gevolg voor hun statuut noch voor hun affectatie. Krachtens deze aanwijzing, behandelen zij bij voorrang de dossiers die bij hen aanhangig zijn gemaakt overeenkomstig artikel 47duodecies, § 3, van het Wetboek van strafvordering.

De onderzoeksrechter met de meeste dienstjaren die aangewezen is door de Eerste Voorzitter van het hof van beroep te Brussel zorgt, als deken, voor de verdeling van de dossiers die door de federale procureur bij hem aanhangig zijn gemaakt krachtens artikel 47duodecies, § 3, van het Wetboek van strafvordering.

In geval van wettelijke verhindering van de deken, wijst deze in het rechtsgebied van het hof van beroep van Brussel een andere onderzoeksrechter aan gespecialiseerd om kennis te nemen van de in de artikelen 137 tot 141 van het Strafwetboek bedoelde misdrijven, die hem vervangt.) (...)

Een of meer door de voorzitter van de rechtbank van eerste aanleg aangewezen onderzoeksrechters behandelen bij voorrang de zaken wegens een overtreding van de wetten en de verordeningen in fiscale aangelegenheden.

Op advies van de procureur-generaal van het rechtsgebied van het hof van beroep, wijst de eerste voorzitter in het rechtsgebied van de hoven van beroep te Antwerpen, Bergen en Gent onder de onderzoeksrechters één onderzoeksrechter aan, in het rechtsgebied van het hof van beroep te Brussel, één Nederlandstalige en één Franstalige onderzoeksrechter en in het rechtsgebied van het hof van beroep te Luik, één onderzoeksrechter en één onderzoeksrechter die de kennis van de Duitse taal aantoont. Deze onderzoeksrechters dienen over een nuttige ervaring te beschikken voor het onderzoek van de misdrijven waarvoor het Europees Openbaar Ministerie bevoegd is. Deze aanwijzing heeft geen enkel gevolg voor hun statuut noch voor hun affectatie. Krachtens deze aanwijzing, behandelen zij bij voorrang de dossiers die bij hen aanhangig zijn gemaakt door de Europese aanklager en de gedelegeerde Europese aanklagers die worden aangewezen overeenkomstig artikel 309/2.

De onderzoeksrechters (, de beslagrechters en de rechters in de strafuitvoeringsrechtbank) kunnen volgens hun rang zitting blijven nemen voor de berechting van de zaken die aan de rechtbank van eerste aanleg worden voorgelegd.

De rechters in de familie- en jeugdrechtbank kunnen zitting nemen in de burgerlijke kamers van de rechtbank van eerste aanleg. De rechter die echter in de kamer voor minnelijke schikking zitting heeft, kan voor de dossiers waarvan hij kennis heeft genomen, nooit zitting hebben in de andere kamers van de familie- en jeugdrechtbank. De beslissing van een rechter die eerder van het geschil kennis heeft genomen terwijl hij zitting had in een kamer voor minnelijke schikking, is nietig behalve als het om de homologatie van een akkoord of een proces-verbaal van verzoening gaat.

De voorzitter van de rechtbank van eerste aanleg kan de rechter in de familie- en jeugdrechtbank, bij wijze van uitzondering en op advies van de procureur des Konings verzoeken zitting te nemen in de kamers voor correctionele zaken van de rechtbank van eerste aanleg. Wanneer ze worden verzocht zitting te nemen in de correctionele kamers van de rechtbank van eerste aanleg, worden de rechters in de familie- en jeugdrechtbank bij voorrang belast met de strafzaken betreffende misdrijven tegen de orde der familie en tegen de openbare zedelijkheid.)

[3....

The investigating magistrate with the most years of service, appointed by the First President of the Court of Appeal in Brussels, is responsible, as dean, for the distribution of the files brought before him by the federal prosecutor pursuant to Article 47duodecies, § 3, of the Criminal Procedure Code.
In the event of legal impediment of the Dean, he shall appoint another investigating judge specialised in the jurisdiction of the Brussels Court of Appeal to take cognizance of the offences referred to in Articles 137 to 141 of the Criminal Code, who shall replace him.) (...)
One or more investigating judges appointed by the President of the Court of First Instance shall hear as a matter of priority the cases for violation of the laws and regulations in tax matters.
On the advice of the Attorney General of the jurisdiction of the Court of Appeal, the first president in the jurisdiction of the Courts of Appeal in Antwerp, Mons and Ghent appoints one investigating judge from among the investigating judges, in the jurisdiction of the Court of Appeal appeal in Brussels, one Dutch-speaking and one French-speaking investigating judge and in the jurisdiction of the Court of Appeal in Liège, one investigating judge and one investigating judge who demonstrates knowledge of the German language. These investigating judges should have a useful experience in investigating the crimes for which the European Public Prosecutor's Office has jurisdiction. This designation has no effect on their status or their allocation. Pursuant to this designation, they shall, as a matter of priority, handle the files referred to them by the European Prosecutor and the European Delegated Prosecutors designated in accordance with Article 309/2.

Antwerp	Mons	Ghent	Liège
Investigating judge	Investigating judge	Investigating judge	Investigating judge

The investigating judges (, the attachment judges and the judges in the sentence enforcement court) can continue to sit, according to their rank, for the adjudication of cases submitted to the court of first instance.
Judges in the family and juvenile courts may sit in the civil chambers of the court of first instance. However, a judge who sits in the amicable settlement chamber can never sit in the other chambers of the family and juvenile court for the files he has taken cognizance of. The decision of a judge who previously took cognizance of the dispute while sitting in an amicable settlement chamber is null and void unless it concerns the confirmation of an agreement or a report of reconciliation.
The president of the court of first instance may request the judge in the family and juvenile court, exceptionally and on the advice of the public prosecutor, to sit in the correctional chambers of the court of first instance. When asked to sit in the correctional chambers of the Court of First Instance, the judges in the Family and Juvenile Court are

primarily charged with criminal cases concerning crimes against the order of the family and against public morality.)
[3] ....

The Code of Judicial Procedure vests the **Belgian EDPs** with **powers** that they need to carry out the investigation tasks: **4**

Article 47quaterdecies CPC See above → Article 28 Conducting the investigation, Via the General Investigation Provisions. **5**

Article 47quindecies CPC See above → Article 28 Conducting the investigation, Via the General Investigation Provisions.

Article 56[211] § 1. The examining magistrate is responsible for the judicial investigation that is conducted both on the charge and on the discharge. He watches over the legality

[211] **Art. 56.** § 1. De onderzoeksrechter draagt de verantwoordelijkheid voor het gerechtelijk onderzoek dat zowel à charge als à décharge wordt gevoerd. Hij waakt voor de wettigheid van de bewijsmiddelen en de loyauteit waarmee ze worden verzameld. Hij mag zelf de handelingen verrichten die behoren tot de gerechtelijke politie, het opsporingsonderzoek en het gerechtelijk onderzoek.
De onderzoeksrechter heeft in de uitoefening van zijn ambtsverrichtingen het recht om het optreden van de openbare macht rechtstreeks te vorderen.
Hij beslist of het noodzakelijk is dwang te gebruiken of inbreuk te maken op de individuele rechten en vrijheden. Wanneer hij in de loop van een gerechtelijk onderzoek feiten ontdekt die een misdaad of een wanbedrijf kunnen uitmaken dat bij hem niet is aangebracht, stelt hij de procureur des Konings hiervan onmiddellijk in kennis. (De onderzoeksrechter stelt de federale procureur en de procureur des Konings, of, in de gevallen waarin hij de strafvordering uitoefent, uitsluitend de federale procureur, onverwijld in kennis van de informatie en inlichtingen die hij in de loop van het gerechtelijk onderzoek heeft verkregen en die wijzen op een ernstig en onmiddellijk gevaar voor de openbare veiligheid en de volksgezondheid.)
§ 2. De onderzoeksrechter heeft het recht de (politiediensten bedoeld in artikel 2 van de wet op het politieambt, en alle andere officieren van gerechtelijke politie) te vorderen om, met uitzondering van de door de wet ingestelde beperkingen, alle voor het gerechtelijk onderzoek noodzakelijke handelingen van gerechtelijke politie te doen volbrengen.
Deze vorderingen worden gedaan en uitgevoerd overeenkomstig (de artikelen 8 tot 8/3 en 8/6 tot 8/8 van de wet op het politieambt en, wat de federale politie betreft, overeenkomstig artikel 110 van de wet van 7 december 1998 tot organisatie van een geïntegreerde politiedienst, gestructureerd op twee niveaus). De gevorderde politiediensten zijn gehouden gevolg te geven aan de vorderingen en de voor de uitvoering noodzakelijke medewerking van de officieren en agenten van gerechtelijke politie te verlenen. <W 1998-12-07/31, art. 222, 018; Inwerkingtreding: 01-01-2001> De onderzoeksrechter heeft in het kader van het gerechtelijk onderzoek een vorderingsrecht ten aanzien van de in artikel 16, 1°, van het sociaal Strafwetboek bedoelde inspectiediensten. Hij kan de inspectiediensten vorderen om, in het kader van hun bevoegdheden, alle voor het gerechtelijk onderzoek noodzakelijke handelingen te volbrengen. Dit vorderingsrecht doet geen afbreuk aan de bevoegdheden van de arbeidsinspectie, voorzien in artikel 21 van het Sociaal Strafwetboek, voor andere inbreuken dan die waarop de vordering van de onderzoeksrechter betrekking heeft en die in de uitvoering hiervan worden vastgesteld. Enkel de feiten waarvoor de onderzoeksrechter gevat is, kunnen niet meer het voorwerp uitmaken van een verwittiging of van het vaststellen van een regularisatietermijn. Wanneer een politiedienst of een inspectiedienst aan de onderzoeksrechter niet het vereiste personeel en de nodige middelen kan geven, kan deze laatste de procureur des Konings of de arbeidsauditeur verzoeken op te treden na hem over de toestand te hebben ingelicht. Bovendien kan de onderzoeksrechter een kopie van zijn beschikking overzenden aan de procureur-generaal en aan de kamer van inbeschuldigingstelling.
De procureur des Konings of de arbeidsauditeur kan zelf het dossier overzenden aan de procureur- generaal. Deze laatste kan het college van procureurs-generaal verzoeken op te treden en de nodige initiatieven te nemen.

of the evidence and the loyalty with which it is collected. He may perform the acts that belong to the judicial police, the criminal investigation and the judicial investigation himself.
In the performance of his duties, the investigating judge has the right to prevent the conduct of the public power directly.
He decides whether it is necessary to use coercion or to infringe on individual rights and freedoms. If, in the course of a judicial investigation, he discovers facts that may constitute a crime or misdemeanour that has not been reported to him, he immediately informs the Public Prosecutor. (The investigating judge shall immediately inform the federal prosecutor and the public prosecutor, or, in the cases in which he exercises criminal proceedings, exclusively the federal prosecutor, of the information and intelligence obtained in the course of the judicial investigation and which indicate a serious and immediate danger to public security and public health.)
§ 2. The investigating judge has the right to require the (police services referred to in Article 2 of the Police Service Act, and all other officers of the judicial police) to, with the exception of the limitations established by law, take all necessary measures for the judicial investigation and order the acts of judicial police to do this to accomplish it.
These claims are made and implemented in accordance with (Articles 8 to 8/3 and 8/6 to 8/8 of the Law on the Police Service and, as regards the Federal Police, in accordance with Article 110 of the Law of 7 December 1998 organizing an integrated police force, structured on two levels). The advanced police services are obliged to follow up on the claims and to provide the necessary cooperation for the execution of the officers and agents of the judicial police.
In the context of the judicial investigation, the investigating judge has a right of action against the inspection services referred to in Article 16, 1°, of the Social Criminal Code. He may require the inspection services to carry out, within the scope of their powers, all actions necessary for the judicial investigation. This right of claim is without prejudice to the powers of the labour inspectorate, as provided for in Article 21 of the Social Criminal Code, for infringements other than those to which the claim of the investigating judge relates and which are established in the implementation thereof. Only the facts for which the investigating judge is responsible can no longer be the subject of a warning

§ 3. De onderzoeksrechter kan de politiedienst of diensten aanwijzen die in een bepaald onderzoek met de opdrachten van gerechtelijke politie worden belast en waaraan, behoudens uitzondering, de vorderingen en opdrachten zullen worden gericht. Indien meerdere diensten worden aangewezen, ziet de onderzoeksrechter toe op de coördinatie van hun optreden.
De politieambtenaren van de overeenkomstig het vorige lid aangewezen politiedienst lichten dadelijk de bevoegde gerechtelijke overheid in over de informatie en inlichtingen in hun bezit en over elke ondernomen opsporing op de door de procureur des Konings vastgestelde wijze, behoudens andersluidende beslissing van de onderzoeksrechter. Voor al de opdrachten van gerechtelijke politie betreffende deze aanwijzing hebben deze politieambtenaren voorrang op de andere politieambtenaren, welke dadelijk de bevoegde gerechtelijke overheid en de aangewezen politiedienst inlichten over de informatie en inlichtingen in hun bezit en over elke ondernomen opsporing, op de wijze die de procureur des Konings bij richtlijn bepaalt

or of the determination of a regularization period. When a police service or an inspection service cannot provide the required personnel and resources to the investigating judge the latter can request the public prosecutor or the labour prosecutor to act after having informed him of the situation. In addition, the investigating judge can send a copy of his decision to the Attorney General and to the Indictment Chamber.
The Public Prosecutor or the labour prosecutor can himself send the file to the Public Prosecutor. The latter can request the Board of Prosecutors General to act and take the necessary initiatives to take.
§ 3. The investigating judge may designate the police service or services that are charged with the tasks of the judicial police in a particular investigation and to which, barring exceptions, the claims and assignments will be directed. If several services are designated, the investigating judge supervises the coordination of their actions.
The police officers of the police service designated in accordance with the previous paragraph shall immediately inform the competent judicial authority of the information and intelligence in their possession and of any investigation undertaken in the manner determined by the Public Prosecutor, unless otherwise decided by the investigating judge. For all the assignments of the judicial police concerning this designation, these police officers have priority over the other police officers, who promptly inform the competent judicial authority and the designated police service of the information and intelligence in their possession and of any investigation undertaken, in the manner determined by the prosecutor. decreed by the King by directive.

Subsection II. The research. **6**
§ 1. General provisions.

Article 61 See above → Article 28 Conducting the investigation, Via the General Investigation Provisions.

Article 61bis See above → Article 27, Prosecution before the Trial Court.

Article 62[212] § 1. When the investigating judge goes to the scene, he is always accompanied by the public prosecutor and the clerk of the court.
When the investigating judge organises the site visit, which he directs, with a view to reconstructing the facts, the suspect and his lawyer, in accordance with the role assigned to the latter by Article 47bis, § 6, 7), and the civil party and his lawyer the right to attend. Without prejudice to the rights of defence, the lawyer is obliged to maintain secrecy with regard to the information that he becomes aware of by attending the site visit with a view to the reconstruction of the facts. Anyone who violates the duty of confidentiality shall be punished with the penalties provided for in Article 458 of the Criminal Code.
§ 2. The provisions of Article 47bis apply to the confrontation hearing.
§ 3. The suspect's lawyer may attend the multiple confrontation. After the multiple confrontation, the lawyer may request that his remarks with regard to its progress be included in the official report.

Article 62bis See above → Article 28 Conducting the investigation, Via the General Investigation Provisions.
[…] **The specialised investigating judges referred to in Article 79, paragraph 6, of the Judicial Code, have jurisdiction to hear the facts brought before them in accordance with Article 47quadercies, paragraph 2, by the European Prosecutor or the European Delegated Prosecutors appointed designated in accordance with Article 309/2 of the Judicial Code. In case of legal impediment, they may be replaced by the investigating judges of the court of first instance to which they belong**.]

a) Member States Shall Ensure that the European Delegated Prosecutors are Entitled to Order or Request

7 The EDPs are mentioned in the CPC and vested with the powers they need for the measures under Art. 30 EPPO Regulation – at least if they do not need to work closely together with the investigating judge.

[212] **Art. 62.** § 1. Wanneer de onderzoeksrechter zich ter plaatse begeeft, wordt hij altijd vergezeld door de procureur des Konings en door de griffier van de rechtbank.
Wanneer de onderzoeksrechter het plaatsbezoek, waarvan hij de leiding heeft, organiseert met het oog op de reconstructie van de feiten, hebben de verdachte en zijn advocaat, overeenkomstig de aan deze laatste door artikel 47bis, § 6, 7), toebedeelde rol, en de burgerlijke partij en zijn advocaat het recht om deze bij te wonen.
Onverminderd de rechten van verdediging, is de advocaat verplicht tot geheimhouding van de informatie waarvan hij kennis krijgt door het bijwonen van het plaatsbezoek met het oog op de reconstructie van de feiten. Hij die de geheimhoudingsplicht schendt, wordt gestraft met de bij artikel 458 van het Strafwetboek bepaalde straffen.
§ 2. De bepalingen van artikel 47bis zijn van toepassing op het confrontatieverhoor.
§ 3. De advocaat van de verdachte mag de meervoudige confrontatie bijwonen. De advocaat mag na afloop van de meervoudige confrontatie vragen dat zijn bemerkingen met betrekking tot het verloop ervan in het proces-verbaal worden opgenomen.]

aa. Adaption Law of the Member State

Cf. above (before Section 1) → Sources of law. **8**

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.

bb. Provision in the CPC

The Belgian CPC contains the following provisions that relate to investigations: **9**

10

[Excerpt CPC, Art. 19–90duodecies]
SECTION 1BIS. THE INVESTIGATION
Art. 28bis, 28ter, 28quater, 28quinquies, 28sexies, 28septies, 28octies, 28novies

SECTION II. THE WAY IN WHICH THE KING'S Procurators ACT IN THE PERFORMANCE OF THEIR DUTIES.
SECTION II. THE WAY IN WHICH THE KING'S Procurators ACT IN THE PERFORMANCE OF THEIR DUTIES.
Art. 19–21, Art. 29, 29bis, 30–35, 35bis, 35ter, 36–39, 39bis, 39ter, 39quater, 39quinquies, 40, 40bis, 41–44, 44bis, 44ter, 44quater, 44quinquies, 44sexies, 44septies, 45–46, 46bis, 46BIS/1, 46ter, 46quater, 46quinquies, 46sexies, 46septies, 47, 47bis
Section III. The special investigative methods
Subsection 1. Definition
Art. 47ter
Subsection 2. General conditions for the use of the special detection method
Art. 47quater, 47quinquies
Subsection 3. Observation.
Art. 47sexies, 47septies
Subsection 4. Infiltration.
Art. 47octies, 47novies
Subsection 4bis. Civilian infiltration
Art. 47novies/1, 47novies/2, 47novies/3
Subsection 5. Informant work
Art. 47decies
Subsection 6. Legality control
Art. 47undecies
CHAPTER IVBIS. (THE FEDERAL Procurator).
Art. 47duodecies, 47tredecies

CHAPTER IVter. The European Prosecutor and the European Delegated Prosecutors.
Art. 47quaterdecies, 47quindecies
CHAPTER V. POLICE OFFICERS WHO ARE AUXILIARY OFFICER TO THE KING'S Procurator.
Art. 48-5
CHAPTER VI. INVESTIGATING JUDGES
SECTION I. THE INVESTIGATION JUDGE
Art. 55–56, 56bis, 56ter, 57–58
SECTION II. OPERATIONS OF THE INVESTIGATION JUDGE.
SUBSECTION I. CASES OF DISCOVERY IN THE DEED.
Art. 59–60
SUBSECTION II. THE RESEARCH
§ 1. GENERAL PROVISIONS.
Art. 61, 61bis, 61ter, 61quater, 61quinquies, 61sexies, 62, 62bis, 62ter, 62quater
§ 2. COMPLAINTS.
Art. 63–70
§ 2bis. ABOUT THE QUESTION IN GENERAL
Art. 70bis
§ 3. EXAMINATION OF THE WITNESSES.
Art. 71–75, 75bis, 75ter, 75quater, 76–86
§ 3bis. ANONYMOUS TESTIMONIALS.
Art. 86bis, 86ter, 86quater, 86quinquies
§ 4. (WRITTEN EVIDENCE, CONVINCING DOCUMENTS AND TRACTION AND LOCATION OF TELECOMMUNICATIONS).
Art. 87–88, 88bis, 88ter, 88quater, 88sexies, 89, 89bis, 89ter, 90
§ 5. EXAMINATION OF THE BODY.
Art. 90bis
§ 6. [Interception, cognizance, search and recording of communication or data of an IT system or part thereof that is not accessible to the public.]
Art. 90ter, 90quater, 90quinquies, 90sexies, 90septies, 90octies, 90novies, 90decies
§ 7. DNA TESTING.
Art. 90undecies, 90duodecies

b) Investigation Measures

11 The investigation measures are the key tools of the EDPs and the Chamber to gather evidence in an EPPO case in Belgium. Therefore it is highly important to follow the details of the national procedures – even if in EPPO cases, a transnational case might include other states, the measures must be carried out by Belgian authorities.

cc. Para 1(a)

(1) Search Measures

(a) Search Any Premises or Land

[Excerpt CPC] **12**

Article 46quinquies[213] § 1. Without prejudice to Article 89ter, the Public Prosecutor may, by written and reasoned decision, *authorise police forces at any time, without the*

[213] **Art. 46quinquies.** § 1. Onverminderd artikel 89ter, kan de procureur des Konings bij een schriftelijke en met redenen omklede beslissing de politiediensten machtigen om te allen tijde, buiten medeweten van de eigenaar of van zijn rechthebbende, of zonder hun toestemming, een private plaats te betreden en gesloten voorwerpen die zich op deze plaats bevinden te openen, wanneer er ernstige aanwijzingen zijn dat de strafbare feiten een misdrijf uitmaken of zouden uitmaken als bedoeld in artikel 90ter, §§ 2 tot 4, of gepleegd worden of zouden worden in het kader van een criminele organisatie zoals bedoeld in artikel 324bis van het Strafwetboek, en de overige middelen van
onderzoek niet lijken te volstaan om de waarheid aan de dag te brengen. Een private plaats in de zin van dit artikel is de plaats die kennelijk:
- geen woning is;
- geen door een woning omsloten eigen aanhorigheid in de zin van de artikelen 479, 480 en 481 van het Strafwetboek is;
- geen lokaal aangewend voor beroepsdoeleinden of de woonplaats van een advocaat of een arts is als bedoeld in artikel 56bis, derde lid.
In spoedeisende gevallen kan de in het eerste lid bedoelde beslissing mondeling worden meegedeeld. De beslissing moet in dat geval zo spoedig mogelijk schriftelijk met redenen omkleed en bevestigd worden.
Ingeval de in het eerste lid bedoelde beslissing genomen wordt in het kader van de toepassing van de bijzondere opsporingsmethoden zoals bedoeld in de artikelen 47ter tot 47decies, worden de beslissing en alle ermee verband houdende processen-verbaal uiterlijk na het beëindigen van de bijzondere opsporingsmethode bij het strafdossier gevoegd.
§ 2. Het betreden van de private plaats bedoeld in paragraaf 1, en het openen van gesloten voorwerpen die zich op deze plaats bevinden, kan enkel geschieden teneinde:
1° die plaats op te nemen en zich te vergewissen van de eventuele aanwezigheid van zaken die het voorwerp van het misdrijf uitmaken, die gediend hebben of bestemd zijn tot het plegen ervan of die uit een misdrijf voortkomen, van de vermogensvoordelen die rechtstreeks uit het misdrijf zijn verkregen, van de goederen en waarden die in de plaats ervan zijn gesteld of van de inkomsten uit de belegde voordelen;
2° de bewijzen te verzamelen van de aanwezigheid van de zaken bedoeld in 1°;
3° in het kader van een observatie een technisch hulpmiddel als bedoeld in artikel 47sexies, § 1, derde lid, te plaatsen [1, te herstellen of terug te nemen.
4° de overeenkomstig paragraaf 5 meegenomen voorwerpen terug te plaatsen.
§ 3. Een inkijkoperatie kan door de procureur des Konings enkel worden beslist ten aanzien van plaatsen waarvan men op basis van precieze aanwijzingen vermoedt dat de zaken bedoeld in § 2, 1°, er zich bevinden, dat er bewijzen van kunnen verzameld worden, of dat ze gebruikt worden door personen op wie een verdenking rust.
§ 4. Het aanwenden van technische hulpmiddelen met het in § 2 beoogde doel, wordt gelijkgesteld met het betreden van een private plaats zoals bepaald in § 1.
§ 5. Indien het onderzoek van een in paragraaf 1 bedoeld voorwerp niet ter plaatse kan gebeuren en indien de informatie niet op een andere manier kan worden verkregen, is het de politiedienst toegestaan dit voorwerp mee te nemen voor een strikt beperkte duur. Het bewuste voorwerp wordt zo spoedig mogelijk teruggeplaatst, tenzij dit het goede verloop van het onderzoek in de weg staat.
§ 6. In het kader van de maatregel bedoeld in paragraaf 1, is het binnendringen in een informaticasysteem enkel mogelijk met het oog op de doeleinden bedoeld in paragraaf 2, 3°.
§ 7. De officier van gerechtelijke politie die de leiding heeft over de uitvoering van de maatregel bedoeld in paragraaf 1 of in artikel 89ter, § 1, stelt van het verloop van de maatregel een proces-verbaal op. Wanneer tijdens de uitvoering van de maatregel gesloten voorwerpen geopend werden of toepassing gemaakt werd van

knowledge of the owner or his assignee, or to enter a private place without their permission and closed objects located in this place to open, when there are serious indications that *the actions constitute a criminal offence* or as referred to in Article 90ter, §§ 2 to 4, or are or would be committed in the context of a criminal organisation as referred to in Article 324bis of the Criminal Code, and the other means of research does not seem to suffice to reveal the truth.
A private place within the meaning of this article is the place that apparently:
- is not a home;
- no appurtenance enclosed by a house within the meaning of Articles 479, 480 and 481 of the Criminal Code is;
- not a place used for professional purposes or the residence of a lawyer or a doctor is as intended in Article 56bis, third paragraph.
In urgent cases, the decision referred to in the first paragraph may be communicated orally.
In that case, the decision must be reasoned and confirmed in writing as soon as possible.
In the event that the decision referred to in the first paragraph is taken in the context of the application of the special investigative methods as referred to in Articles 47ter to 47decies, the decision and all
related official report at the latest after termination of the special investigative method at attached to the criminal file.
§ 2. Entering the private place referred to in paragraph 1, and opening closed objects that are located in this place, *can only be done in order to:*
1° to take that place and to ascertain the possible presence of things that constitute the object [evidence] of the crime, who have served or are intended to commit it or who are involved in a crime from the capital gains obtained directly from the crime, from the property and securities substituted or of the income from the invested benefits;
2° to collect evidence of the presence of the items referred to in 1°;
3° in the context of an observation a technical aid as referred to in Article 47sexies, § 1, third paragraph, place [1, restore or take back.
4° to return the objects taken in accordance with paragraph 5.
§ 3. A viewing operation can only be decided by the public prosecutor with regard to places of which it is suspected on the basis of precise indications that the items referred to in § 2, 1° are located, that evidence can be collected, or that they are used by persons suspected of peace.
§ 4. The use of technical aids for the purpose intended in § 2 is equated with entering a private place as stipulated in § 1.

paragraaf 5, wordt daarvan melding gemaakt in het proces-verbaal. Het proces-verbaal wordt uiterlijk na het beëindigen van de maatregel bij het strafdossier gevoegd.]

§ 5. If the examination of an object referred to in paragraph 1 cannot be carried out on site and if the information cannot be obtained in any other way, the police department is allowed to use this object for a strictly limited period of time. The object in question will be replaced as soon as possible, unless this hinders the proper conduct of the investigation.
§ 6. In the context of the measure referred to in paragraph 1, the intrusion into an IT system only possible for the purposes referred to in paragraph 2, 3°.
§ 7. The judicial police officer who is in charge of the implementation of the measure referred to in paragraph 1 or in Article 89ter, § 1, draws up an official report of the progress of the measure. When closed objects were opened or application was made during the implementation of the measure paragraph 5, this is mentioned in the official report. The official report will be issued no later than after the termination of the measure attached to the criminal file.]

Article 87. The examining magistrate will, if required, and may even ex officio go to the suspect's home to locate the papers, the cases and in general all objects that can serve to reveal the truth.

Article 88. The investigating judge may also go to other places where he suspects that the objects referred to in the previous article have been hidden.

Code of Economic Law **13**

Article XV.3[214] With a view to investigating and recording the offences referred to in Article XV.2, § 1, the agents referred to in Article XV.2 have the following powers:

[214] **Art. XV.3. Code de droit économique**
En vue de la recherche et de la constatation des infractions visées à l'article XV.2, § 1er, les agents visés à l'article XV.2 disposent des compétences suivantes:
1° pénétrer ou accéder, pendant les heures d'ouverture ou de travail habituelles, pendant le processus de production, ou au moment où les produits ou services sont offerts, ou s'il y a des indices que le processus de production est en cours ou que les produits ou services sont offerts, à des lieux [5, y compris des moyens de transport, dont ils peuvent exiger l'immobilisation par le transporteur, dans lesquels, sur base de motifs raisonnables, ils estiment nécessaire de pénétrer pour l'accomplissement de leur tâche, sauf si cela concerne des locaux habités.
En ce qui concerne la recherche et la constatation des infractions au Livre IX et au Livre XI, les agents visés à l'article XV.2 peuvent toutefois à tout moment pénétrer ou accéder aux lieux visés au premier alinéa.
Ne viole cependant pas les locaux habités celui qui y pénètre avec le consentement préalable et écrit de l'habitant.
S'ils ont des raisons de croire à l'existence d'une infraction, une visite peut, sur demande motivée, être effectuée dans les locaux habités entre cinq et vingt-et-une heure avec l'autorisation préalable, motivée, écrite, signée et datée du juge d'instruction et par au moins deux agents agissant conjointement.
En cas de flagrant délit tel que prévu à l'article 41 du Code d'instruction criminelle, ils pourront aussi pénétrer à toute heure dans les locaux habités [3.... Dans ce cas, ils ne seront pas tenus de faire la perquisition à deux;
2° faire toutes les constatations utiles, procéder à tous examens, contrôles, recherches et recueillir toutes informations qu'ils estiment nécessaires pour s'assurer que les dispositions visées à l'article XV.2, § 1er sont respectées;
3° interroger toute personne sur tout fait dont la connaissance est utile à la recherche ou la constatation;
4° ouvrir les paquets, caisses, tonneaux et tous les autres types d'emballages dont ils présument qu'ils contiennent des marchandises constituant ou prouvant une infraction visée à l'article XV.2, § 1er, et en examiner le contenu;

1° to enter or gain access, during normal business or working hours, during the production process, or when the products or services are offered, or if there are indications that the production process is in progress or that the products or services are offered, at places, including means of transport, which they may require the carrier to immobilize, in which, on the basis of reasonable grounds, they consider it necessary to enter for the accomplishment of their task, except if it concerns inhabited premises.
With regard to the investigation and observation of offences under Book IX and Book XI, the agents referred to in Article XV.2 may, however, at any time enter or gain access to the premises referred to in the first paragraph.
However, the inhabited premises are not violated by anyone who enters them with the prior written consent of the inhabitants.
If they have reason to believe in the existence of an offence, a visit may, on reasoned request, be made to the premises inhabited between five and nine o'clock with the prior, reasoned, written, signed and dated authorisation of the investigating judge and by at least two agents acting jointly.
In the event of flagrante delicto as provided for in article 41 of the Code of Criminal Procedure, they may also enter inhabited premises at any time. In this case, they will not be required to carry out the search together;
2° to make all useful findings, carry out all examinations, checks, research and collect all information they deem necessary to ensure that the provisions referred to in Article XV.2, § 1 are complied with;
(3) question any person about any fact the knowledge of which is useful for the investigation or observation;

5° se faire produire sur première réquisition, sans déplacement ou après s'être rendus aux endroits ou moyens de transport visés à la disposition 1°, tous renseignements, documents, pièces, Livres, dossiers, bases de données et supports informatisés de données [5, quel que soit le support utilisé ou le lieu de stockage, qu'ils estiment nécessaires à l'accomplissement de leurs tâches, et en prendre gratuitement copie ou les emporter gratuitement contre remise d'un récépissé.
Lorsque des supports informatisés sont accessibles par un système informatique ou par tout autre appareil électronique, ils ont le droit de se faire soumettre les données enregistrées à ces supports informatisés de manière lisible et claire, dans la forme demandée par eux, contre remise d'un accusé de réception.
Les agents visés à l'article XV.2 peuvent, le cas échéant, déterminer le délai dans lequel ces données doivent être fournies;
5° /1. par dérogation aux articles 46bis et 46quater du Code d'instruction criminelle, se faire produire par toute personne, gratuitement et sur première réquisition, tous les renseignements permettant l'identification des personnes faisant l'objet d'une enquête et des personnes impliquées dans des flux financiers et de données nécessaires dans le cadre de l'enquête;
5° /2. par dérogation à l'article 46quater du Code d'instruction criminelle, rechercher des flux financiers. Plus précisément, ils peuvent requérir les informations nécessaires relatives aux produits, services et transactions de nature financière et aux valeurs virtuelles concernant le suspect auprès:
a) des personnes et institutions visées à l'article 5, § 1er, 3° à 22°, de la loi du 18 septembre 2017 relative à la prévention du blanchiment de capitaux et du financement du terrorisme et à la limitation de l'utilisation des espèces;

4° to open packages, crates, barrels and all other types of packaging which they presume contain goods constituting or proving an offence referred to in Article XV.2, § 1, and examine the contents;
5° to be produced on first request, without traveling or after having gone to the places or means of transport referred to in provision 1°, all information, documents, exhibits, books, files, databases and media computerized data, regardless of the medium used or the place of storage, that they deem necessary for the performance of their tasks, and take a copy of it free of charge or take it away free of charge against delivery of a receipt.
When computerized media are accessible by a computer system or by any other electronic device, they have the right to have the data recorded on these computerized media submitted in a legible and clear manner, in the form requested by them, against delivery of an acknowledgment of receipt.
The officials referred to in Article XV.2 may, where appropriate, determine the time limit within which this data must be provided;
5° /1. notwithstanding Articles 46bis and 46quater of the Code of Criminal Procedure, obtain from any person, free of charge and on first request, all information enabling the identification of persons subject to an investigation and of persons involved in the financial and data flows necessary within the framework of the survey;
5° /2. by way of derogation from article 46quater of the Code of Criminal Procedure, seek financial flows. More specifically, they can request the necessary information relating to products, services and transactions of a financial nature and virtual values concerning the suspect from:
a) persons and institutions referred to in Article 5, § 1, 3° to 22°, of the law of 18 September 2017 on the prevention of money laundering and terrorist financing and the restriction of the use some change;
b)[215] persons and institutions which, on Belgian territory, make available or offer services in connection with virtual securities allowing the exchange of regulated means of payment in virtual securities;

[215] b) des personnes et institutions qui, sur le territoire belge, mettent à disposition ou proposent des services en lien avec des valeurs virtuelles permettant d'échanger des moyens de payement réglementés en valeurs virtuelles;
6° réaliser ou faire réaliser un inventaire des produits;
7° prélever gratuitement, contre remise d'un accusé de réception, les échantillons nécessaires pour la détermination de la nature et de la composition des biens, ainsi que pour l'administration de la preuve d'une infraction.
Le cas échéant, les propriétaires, possesseurs ou détenteurs des dites choses doivent fournir les récipients nécessaires pour le transport et la conservation des échantillons.
Le Roi détermine les conditions dans lesquelles et les modalités selon lesquelles ces échantillons sont prélevés, emportés et analysés et peut aussi déterminer les conditions et modalités de l'agréation des personnes, physiques ou morales, compétentes pour exécuter les analyses;
8° inspecter, étudier, démonter et tester des biens ou des services, ou les faire inspecter, étudier, démonter et tester. S'il existe des indices suffisants qu'un bien ou qu'un service:
a) ne satisfait pas aux conditions imposées par des arrêtés pris en exécution des articles VI.9, § 1er, et VI.10 ou
b) fait l'objet d'une pratique commerciale déloyale, ou
c) est contraire aux droits de propriété intellectuelle d'une façon rendue punissable au titre 3, chapitre 2, section 8,

6° carrying out or having carried out an inventory of products;
7° to take free of charge, against delivery of an acknowledgment of receipt, the samples necessary for the determination of the nature and composition of the goods, as well as for the administration of proof of an offence.
If necessary, the owners, possessors or holders of the said things must provide the necessary containers for the transport and storage of the samples.
The King determines the conditions under which and the procedures according to which these samples are taken, removed and analysed and can also determine the conditions and procedures for the approval of persons, natural or legal, competent to carry out the analyses;
8° inspect, study, dismantle and test goods or services, or have them inspected, studied, dismantled and tested.
If there are sufficient indications that a good or a service:
(a) does not meet the conditions imposed by decrees issued in execution of articles VI.9, § 1, and VI.
(b) is the subject of an unfair trade practice, or
(c) is contrary to intellectual property rights in a manner made punishable under Title 3, Chapter 2, Section 8, and agents referred to in Article XV.2 do not have the possibility of carrying out the necessary analysis or check themselves or that the results are not

et que les agents visés à l'article XV.2 ne disposent pas de la possibilité d'effectuer eux-mêmes l'analyse ou le contrôle nécessaire ou que les résultats ne sont pas suffisamment fiables, l'entreprise concernée peut être chargée de faire soumettre le bien ou le service à une analyse ou un contrôle par un laboratoire indépendant ou un organisme de recherche dans un délai fixé et à ses propres frais.
L'entreprise demande aux agents visés à l'article XV.2 une confirmation du laboratoire ou de l'organisme de recherche choisi;
9° acheter des biens et des services en tant qu'achats-tests, si nécessaire en utilisant une identité fictive, et approcher des entreprises en se faisant passer pour des clients ou des clients potentiels, sans devoir communiquer leur qualité et le fait que les constatations faites à cette occasion peuvent être utilisées pour l'exercice de la surveillance.
Lorsqu'une infraction est constatée, les montants payés pour l'exécution des achats-tests peuvent être récupérés auprès du contrevenant.
Sont exemptés de peine les agents visés à l'article XV.2 qui commettent dans ce cadre des infractions absolument nécessaires.
La ou les personnes concernées faisant l'objet des constatations ne peuvent être provoquées au sens de l'article 30 du titre préliminaire du Code d'instruction criminelle.
Toutes les autres compétences visées aux 1° à 8° peuvent être utilisées lors de l'exercice de cette compétence.
Cette compétence peut uniquement être exercée s'il est nécessaire à l'exercice de la surveillance de pouvoir constater les circonstances réelles valables pour les clients habituels ou potentiels.
Les agents visés à l'article XV.2 rédigent un rapport reprenant au moins les éléments suivants:
a) la date et le lieu de l'enquête;
b) l'identité des agents concernés, la qualité en laquelle ils interviennent et l'administration dont ils relèvent;
c) la raison pour laquelle l'enquête est menée;
d) les constatations ainsi que, le cas échéant, les éventuelles infractions constatées;
e) les événements survenus au cours de l'enquête;
f) l'identification de la ou des personnes concernées auprès desquelles l'enquête a été menée;
g) le cas échéant, l'identité fictive qui a été utilisée.]

sufficiently reliable, the company concerned may be instructed to have the good or service subjected to an analysis or a control by an independent laboratory or a research organisation within a fixed period and at its own expense.
The company asks the agents referred to in Article XV.2 for confirmation from the laboratory or research organisation chosen;
9° purchase goods and services as test purchases, if necessary, using a fictitious identity, and approach companies posing as customers or potential customers, without having to communicate their quality and the fact that the observations made on this occasion can be used for the exercise of surveillance.
Where a violation is found, amounts paid for the execution of test purchases may be recovered from the violator.
Officials referred to in Article XV.2 who commit absolutely necessary offences in this context are exempt from penalty.
The person or persons concerned who are the subject of the findings cannot be provoked within the meaning of article 30 of the preliminary title of the Code of
All the other skills referred to in 1° to 8° may be used when exercising this skill.
This power can only be exercised if it is necessary for the exercise of supervision to be able to ascertain the actual circumstances valid for regular or potential customers.
The officers referred to in Article XV.2 draw up a report containing at least the following elements:
(a) the date and place of the investigation;
(b) the identity of the officials concerned, the capacity in which they operate and the administration to which they belong;
(c) the purpose for which the investigation is being conducted;
(d) the findings and, where appropriate, any infringements found;
(e) events occurring during the investigation;
(f) the identification of the data subject(s) with whom the inquiry was made;
(g) where applicable, the fictitious identity that was used.]

(b) Search Any Means of Transport

See → Art. 46quinquies CPC above → Search Any Premises or Land. **14**

(c) Search Any Private Home

See → Art. 46quinquies CPC above → Search Any Premises or Land. **15**

(d) Search Any Clothes and Any Other Personal Property

See → Art. 46quinquies CPC above → Search Any Premises or Land. **16**

(e) Search Any Computer System

17 **Article 88ter**[216] The examining magistrate may extend the search in an IT system or part thereof, initiated on the basis of Article 39bis, to an IT system or part of it that is located at a different place than where the search takes place:
- if this extension is necessary to bring to light the truth of the crime that is the subject of the search; and
- if other measures would be disproportionate, or if there is a risk that evidence would be lost without this extension.

The extension of the search in an IT system may not extend beyond the IT systems or the parts thereof to which the persons authorised to use the IT system under investigation have access in particular.

With regard to the data found by the extension of the search in an IT system, which are useful for the same purposes as the seizure, the action will be taken as provided in Article 39bis, § 6.

If it appears that these data are not located on the territory of the Kingdom, they will only be copied. In that case, the investigating judge will immediately inform the Federal Public Service for Justice, which will inform the competent authority of the State concerned, if this can reasonably be determined.

In cases of extreme urgency, the investigating judge may orally order the extension of the search referred to in the first paragraph. This order shall be confirmed in writing as soon as possible, stating the reasons for the extreme urgency.

[216] Art. 88ter.De onderzoeksrechter kan de zoeking in een informaticasysteem of een deel ervan, aangevat op grond van artikel 39bis, uitbreiden naar een informaticasysteem of een deel ervan dat zich op een andere plaats bevindt dan daar waar de zoeking plaatsvindt:
- indien deze uitbreiding noodzakelijk is om de waarheid aan het licht te brengen ten aanzien van het misdrijf dat het voorwerp uitmaakt van de zoeking; en
- indien andere maatregelen disproportioneel zouden zijn, of indien er een risico bestaat dat zonder deze uitbreiding bewijselementen verloren gaan.

De uitbreiding van de zoeking in een informaticasysteem mag zich niet verder uitstrekken dan tot de informaticasystemen of de delen ervan waartoe de personen die gerechtigd zijn het onderzochte informaticasysteem te gebruiken, in het bijzonder toegang hebben.

Inzake de door de uitbreiding van de zoeking in een informaticasysteem aangetroffen gegevens, die nuttig zijn voor dezelfde doeleinden als de inbeslagneming, wordt gehandeld zoals bepaald in artikel 39bis, § 6.

Wanneer blijkt dat deze gegevens zich niet op het grondgebied van het Rijk bevinden, worden ze enkel gekopieerd. In dat geval deelt de onderzoeksrechter dit onverwijld mee aan de Federale Overheidsdienst Justitie, die de bevoegde overheid van de betrokken Staat hiervan op de hoogte brengt, indien deze redelijkerwijze kan worden bepaald.

In geval van uiterst dringende noodzakelijkheid kan de onderzoeksrechter de uitbreiding van de zoeking bedoeld in het eerste lid mondeling bevelen. Dit bevel wordt zo spoedig mogelijk schriftelijk bevestigd, met vermelding van de redenen van de uiterst dringende noodzakelijkheid.

Article 88quater[217] § 1. The investigating magistrate, or on his behalf an officer of the judicial police, assistant officer of the public prosecutor and of the labour prosecutor, may anyone whom he suspects is he has a special knowledge of the computer system that is the subject of the search or its extension referred to in Article 88ter or of services to secure data stored, processed or transferred by means of an computer system, or to encrypt, order to provide information about its operation and how to access it, or to obtain in an intelligible form access to the data stored, processed or transmitted by means of it. The investigating judge states the circumstances specific to the case that justify the measure in a reasoned order that he communicates to the public prosecutor or to the labour prosecutor]

§ 2. The investigating judge, or an officer of the judicial police, assistant officer of the public prosecutor and of the labour prosecutor, may order any suitable person to operate the computer system himself or the relevant data, which stored, processed or transferred by means of it, as the case may be, search, make accessible, copy, disable or delete, in the form requested by him. These persons are obliged to comply with this, insofar as this is within their capabilities.

The order referred to in the first paragraph cannot be given to the suspect and to the persons referred to in Article 156.

[217] Art. 88quater. § 1. De onderzoeksrechter, of in zijn opdracht een officier van gerechtelijke politie, hulpofficier van de procureur des Konings en van de arbeidsauditeur,, kan aan eenieder van wie hij vermoedt dat hij een bijzondere kennis hebben van het informaticasysteem dat het voorwerp uitmaakt van de zoeking of de uitbreiding ervan bedoeld in artikel 88ter of van diensten om gegevens die worden opgeslagen, verwerkt of overgedragen door middel van een informaticasysteem, te beveiligen of te versleutelen, bevelen inlichtingen te verstrekken over de werking ervan en over de wijze om er toegang toe te verkrijgen, of in een verstaanbare vorm toegang te verkrijgen tot de gegevens die door middel daarvan worden opgeslagen, verwerkt of overgedragen. De onderzoeksrechter vermeldt de omstandigheden eigen aan de zaak die de maatregel wettigen in een met redenen omkleed bevelschrift dat hij meedeelt aan de procureur des Konings of aan de arbeidsauditeur.

§ 2. De onderzoeksrechter [1, of een door hem afgevaardigd officier van gerechtelijke politie, hulpofficier van de procureur des Konings en van de arbeidsauditeur, kan iedere geschikte persoon bevelen om zelf het informaticasysteem te bedienen of de ter zake dienende gegevens, die door middel daarvan worden opgeslagen, verwerkt of overgedragen, naargelang het geval, te zoeken, toegankelijk te maken, te kopiëren, ontoegankelijk te maken of te verwijderen, in de door hem gevorderde vorm. Deze personen zijn verplicht hieraan gevolg te geven, voorzover dit in hun mogelijkheden ligt.

Het bevel bedoeld in het eerste lid kan niet worden gegeven aan de verdachte en aan de personen bedoeld in artikel 156.

§ 3. Hij die de in §§ 1 en 2 gevorderde medewerking niet verleent of de zoeking in het informaticasysteem of de uitbreiding ervan hindert, wordt gestraft met geldboete van honderd euro tot dertigduizend euro.

Wanneer de medewerking bedoeld in het eerste lid de uitvoering van een misdaad of een wanbedrijf kan verhinderen, of de gevolgen ervan kan beperken, en deze medewerking niet verleend wordt, zijn de straffen een gevangenisstraf van één tot vijf jaar en een geldboete van vijfhonderd tot vijftigduizend euro of een van die straffen alleen.

§ 4. Iedere persoon die uit hoofde van zijn bediening kennis krijgt van de maatregel of daaraan zijn medewerking verleent, is tot geheimhouding verplicht. Iedere schending van het geheim wordt gestraft overeenkomstig artikel 458 van het Strafwetboek.

§ 5. De Staat is burgerrechtelijk aansprakelijk voor de schade die onopzettelijk door de gevorderde personen aan een informaticasysteem of de gegevens. die door middel daarvan worden opgeslagen, verwerkt of overgedragen, wordt veroorzaakt.

§ 3. Anyone who does not provide the cooperation required in §§ 1 and 2 or who hinders the search in the computer system or its extension, shall be punished by imprisonment of six months to three years and a fine of twenty-six euros to twenty thousand euros or with one of those punishments alone.
If the cooperation referred to in paragraph 1 is likely to prevent the execution of a crime or misdemeanour, or to limit its consequences, and this cooperation is not provided, the penalties shall be imprisonment of one to five years and a fine of five hundred to fifty thousand euros.
§ 4. Any person who, by virtue of his ministry, becomes aware of the measure or cooperates with it, is obliged to observe secrecy. Any breach of secrecy is punished in accordance with Article 458 of the Criminal Code.
§ 5. The State is civilly liable for damage caused unintentionally by the claimed persons to an IT system or the data. that are stored, processed or transmitted through it.

Article 89ter[218] In the context of the implementation of the measure provided for in Article 46quinquies, and under the conditions and in view of the purposes stated therein, only the investigating judge may appoint the police services designated by authorise the King to:
- without the knowledge of the owner or his rightful claimant, or of the occupant, or without their consent, to enter at any time a private place other than that referred to in Article 46quinquies, § 1, including opening closed objects that are in this place;
- without the knowledge of the owner, the possessor or the user or without their consent, access and search an IT system, without prejudice to the possibility for the Public Prosecutor to authorise the intrusion into an IT system within the limits specified in article 46quinquies, § 6.

In the event that the authorisation referred to in the first paragraph is granted in the context of the application of special investigative methods in accordance with Articles

[218] Art. 89ter. In het kader van de uitvoering van de in artikel 46quinquies bepaalde maatregel, en onder de voorwaarden en met het oog op de doeleinden daar vermeld, kan alleen de onderzoeksrechter de politiediensten aangewezen door de Koning machtigen om:
- buiten medeweten van de eigenaar of van zijn rechthebbende, of van de bewoner, of zonder hun toestemming, te allen tijde een andere private plaats dan die bedoeld in artikel 46quinquies, § 1, te betreden, met inbegrip van het openen van gesloten voorwerpen die zich op deze plaats bevinden;
- buiten medeweten van de eigenaar, de bezitter of de gebruiker of zonder hun toestemming, zich toegang te verschaffen tot een informaticasysteem en het te doorzoeken, onverminderd de mogelijkheid voor de procureur des Konings om het binnendringen in een informaticasysteem te machtigen binnen de grenzen bepaald in artikel 46quinquies, § 6.

Ingeval de in het eerste lid bedoelde machtiging wordt verleend in het kader van de toepassing van bijzondere opsporingsmethoden overeenkomstig de artikelen 47ter tot 47decies of artikel 56bis, worden de machtiging en alle ermee verband houdende processen-verbaal uiterlijk na het beëindigen van de bijzondere opsporingsmethode bij het strafdossier gevoegd.
Hij deelt een kopie van dit bevel aan de procureur des Konings mee.
(NOTA: bij arrest nr 202/2004 van 21-12-2004 (B.St. 06-01-2005, p. 388-389), heeft het Arbitragehof artikel 89ter, in zoverre het kan worden toegepast in samenhang met artikel 28septies, vernietigd)

47ter to 47i or Article 56bis, the authorisation and all related official reports shall be sent to the criminal file attached.
He communicates a copy of this order to the Public Prosecutor.

(2) Conservatory Measures Necessary to Preserve their Integrity, Necessary to Avoid the Loss, Necessary to Avoid the Contamination of Evidence

Code of Economic Law **18**

Article XV.5 [219] § 1. When the agents referred to in Article XV.2, in accordance with the powers granted to them, observe an infringement, they may, against delivery of an acknowledgment of receipt, seize:
1° the goods which are the subject of the offence;

[219] **Art. XV.5. Code de Droit Économique**
§ 1er. Lorsque les agents visés à l'article XV.2, conformément aux compétences qui leur sont accordées, constatent une infraction, ils peuvent, contre remise d'un accusé de réception, saisir:
1° les biens qui font l'objet de l'infraction;
2° les moyens de production, de transformation et de transport ou tout autre objet quelconque ayant servi à produire, transformer, distribuer ou transporter les biens qui font l'objet de l'infraction;
3° tous les autres objets susceptibles d'avoir servi à commettre l'infraction;
4° les moyens nécessaires à la prestation des services qui constituent une infraction.
5° les biens de même nature et de même destination que ceux qui font l'objet de l'infraction.
Les agents visés à l'article XV.2 peuvent également procéder à cette saisie si un tiers est le propriétaire.
Cette saisie doit être confirmée par le ministère public dans un délai de quinze jours. A défaut de confirmation par le ministère public, la saisie est levée de plein droit. La personne entre les mains de laquelle les objets sont saisis peut en être constituée gardien judiciaire.
Les saisies peuvent donner lieu à constitution de gardien sur place ou peuvent être exécutées en tout autre lieu désigné par les agents visés à l'article XV.2.
§ 2. Les agents visés à l'article XV.2 peuvent mettre sous scellés des locaux lorsque cela est nécessaire à l'établissement de la preuve d'une infraction visée à l'article XV.2, § 1er, ou lorsque le danger existe qu'avec ces biens, les infractions persistent ou que de nouvelles infractions soient commises.
Cette mise sous scellé doit être confirmée par le ministère public dans un délai de quinze jours.
A défaut de confirmation par le ministère public, la mise sous scellé est levée de plein droit. La personne entre les mains de laquelle les objets sont scellés peut en être constituée gardien judiciaire.
Les mises sous scellés peuvent donner lieu à constitution de gardien sur place désigné par les agents visés à l'article XV.2.
§ 3. Les saisies et mises sous scellés pratiquées en vertu des paragraphes 1er et 2 doivent faire l'objet d'un constat écrit. Ce document doit au moins mentionner:
1° la date et l'heure auxquelles les mesures sont prises;
2° la date et l'heure de la notification;
3° l'identité des agents visés à l'article XV.2, la qualité en laquelle ils interviennent et l'administration dont ils relèvent;
4° les mesures prises;
5° la base factuelle et juridique;
6° le lieu où les mesures ont été prises.
§ 4. Le ministère public peut à tout moment donner mainlevée de la saisie ou de la mise sous scellé qu'il a ordonnée ou confirmée, de même si le contrevenant renonce à offrir les biens dans les conditions ayant donné lieu à l'enquête; cette renonciation n'implique aucune reconnaissance d'une quelconque faute pénale.
§ 5. La saisie ou la mise sous scellé est levée de plein droit par la décision judiciaire mettant fin aux poursuites, lorsque ce jugement est passé en force de chose jugée, ou par le classement sans suite par le ministère public.

2° the means of production, processing and transport or any other object whatsoever used to produce, process, distribute or transport the goods which are the subject of the offence;
3° all other objects likely to have been used to commit the offence;
4° the means necessary for the provision of the services which constitute an offence.
5° goods of the same nature and for the same purpose as those which are the subject of the offence.
The agents referred to in Article XV.2 may also carry out this seizure if a third party is the owner.
This seizure must be confirmed by the public prosecutor within fifteen days. In the absence of confirmation by the public prosecutor, the seizure is automatically lifted. The person in whose hands the objects are seized may be appointed judicial guardian.
Seizures may give rise to the appointment of a guardian on the spot or may be executed in any other place designated by the agents referred to in Article XV.2.
§ 2. The agents referred to in Article XV.2 may seal premises when this is necessary to establish proof of an offence referred to in Article XV.2, § 1, or when the danger exists that with these goods, the offences persist or that new offences are committed.
This sealing must be confirmed by the public prosecutor within fifteen days.
In the absence of confirmation by the public prosecutor, the sealing is automatically lifted. The person in whose hands the objects are sealed may be appointed judicial guardian.
The placing under seal may give rise to the appointment of an on-site guard appointed by the agents referred to in Article XV.2.
§ 3. Seizures and sealing carried out under paragraphs 1 and 2 must be the subject of a written report. This document must mention at least:
1° the date and time at which the measurements are taken;
2° the date and time of the notification;
3° the identity of the agents referred to in Article XV.2, the capacity in which they operate and the administration to which they belong;
4° the measures taken;
5° the factual and legal basis;
6° the place where the measurements were taken.
§ 4. The Public Prosecutor may at any time release the seizure or the sealing that he ordered or confirmed, even if the offender renounces to offer the goods under the conditions that gave rise to the investigation; this waiver does not imply any recognition of any criminal wrongdoing.
§ 5. The seizure or the placing under seal is automatically lifted by the judicial decision putting an end to the proceedings, when this judgment has the force of res judicata, or by the dismissal by the public prosecutor.

dd. Para 1(b) Obtainment of the Production of Any Relevant Object or Document Either in its Original Form or in Some Other Specified Form

Article 28novies CPC[220] § 1. Without prejudice to the provisions of the special laws, the Crown Prosecutor may, at any stage of the criminal proceedings, by written and reasoned decision, order the destruction of seized goods liable to confiscation. **19**

[220] **Art. 28novies.** § 1. Onverminderd de bepalingen in de bijzondere wetten, kan de procureur des Konings in elk stadium van de strafprocedure, bij schriftelijke en met redenen omklede beslissing de vernietiging bevelen van in beslag genomen goederen die vatbaar zijn voor verbeurdverklaring.
Tijdens de duur van het gerechtelijk onderzoek is de voorafgaande instemming van de onderzoeksrechter om de maatregel te kunnen nemen, vereist.
De procureur des Konings licht de rechtmatige eigenaar in middels een verhoor, bij aangetekende zending, per telefax of langs elektronische weg van zijn voornemen om de goederen te vernietigen, voor zover deze persoon en zijn adres gekend zijn. Hij nodigt eveneens de rechtmatige eigenaar uit om hem binnen de door hem bepaalde termijn, mede te delen of hij afstand doet van zijn rechten op de in beslag genomen goederen. De rechtmatige eigenaar die reeds afstand deed van zijn rechten op de te vernietigen goederen moet niet meer worden ingelicht noch verzocht worden om afstand te doen van de voormelde rechten.
§ 2. De procureur des Konings kan de vernietiging bevelen van goederen die tot één van de volgende categorieën behoren:
1° de goederen die uit hun aard een ernstig gevaar opleveren voor de openbare veiligheid of de volksgezondheid;
2° de goederen die bij de opheffing van het beslag de fysieke integriteit of de goederen van personen in ernstige mate kunnen aantasten;
3° de goederen die, indien ze opnieuw in omloop worden gebracht, een inbreuk inhouden op de openbare orde, de goede zeden of een wettelijke bepaling;
4° de goederen waarvan de kosten van de bewaring in natura wegens de aard of hoeveelheid van de goederen, kennelijk niet evenredig zijn met de verkoopwaarde ervan.
§ 3. De procureur des Konings duidt in zijn schriftelijke beslissing aan welke goederen vernietigd moeten worden. Hij bepaalt de wijze en de termijn waarbinnen zijn beslissing tot vernietiging wordt uitgevoerd. In spoedeisende gevallen kan de procureur des Konings de vernietiging mondeling bevelen, mits hij zijn beslissing zo spoedig mogelijk schriftelijk bevestigt.
§ 4. De procureur des Konings wijst een gespecialiseerde prestatieverlener of openbare dienst aan die overgaat tot de vernietiging van het betrokken goed. De procureur des Konings stelt het te vernietigen goed ter beschikking van de aangewezen prestatieverlener of openbare dienst. De leden van de lokale politie of van de federale politie lenen de sterke arm wanneer zij daartoe worden gevorderd.
Het Centraal Orgaan voor de Inbeslagneming en de Verbeurdverklaring kan op verzoek van de procureur des Konings bijstand verlenen bij de vernietiging van goederen.
§ 5. Indien het nodig is om de waarheid aan de dag te brengen, beveelt hij voorafgaand aan de vernietiging van het goed, de monsterneming of een foto- of video-opname van het goed. Hij stelt in voorkomend geval een technisch adviseur aan die de gevorderde politiedienst bijstaat tijdens de monsterneming of de opname. De gevorderde politiedienst legt het genomen monster of de foto- of video-opname ter griffie neer of stelt het genomen monster of de foto- of video-opname ter beschikking van elke andere door de procureur des Konings aangewezen persoon die instaat voor de bewaring ervan tot de opheffing van beslag of de verbeurdverklaring.
§ 6. De kosten van de vernietiging, het nemen en de bewaring van het monster of de foto- of video-opname alsook de bijstand van een technisch adviseur, zijn gerechtskosten.
§ 7. De procureur des Konings brengt de beslissing tot vernietiging, binnen een termijn van acht dagen te rekenen van de dagtekening, per aangetekende zending, per telefax of langs elektronische weg, ter kennis van:
1° de persoon lastens wie het beslag werd gelegd of, in voorkomend geval, zijn advocaat;
2° de personen die volgens de door de rechtspleging verschafte aanwijzingen bevoegd lijken om rechten te doen gelden op de te vernietigen goederen of, in voorkomend geval, hun advocaat.
De kennisgeving bevat de tekst van dit artikel. Hij zendt geen kennisgeving aan de personen bedoeld bij het eerste lid, 1° en 2°, indien zij voorafgaand en schriftelijk hebben ingestemd met de vernietiging. De personen bedoeld in het eerste lid, 1° en 2°, kunnen zich tot de kamer van inbeschuldigingstelling wenden binnen een termijn van vijftien dagen te rekenen van de kennisgeving van de beslissing tot vernietiging. Deze termijn wordt verlengd met

During the course of the judicial investigation, the prior consent of the investigating judge to take the measure is required.
The public prosecutor informs the rightful owner by means of an interrogation, by registered mail, by fax or by electronic means of his intention to destroy the goods, insofar as this person and his address are known. He also invites the rightful owner to inform him, within the period specified by him, whether he waives his rights to the seized goods. The rightful owner who has already waived his rights to the goods to be destroyed must no longer be informed or requested to waive the aforementioned rights.

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vijftien dagen indien een van deze personen buiten het Rijk verblijft of gevestigd is, tenzij woonplaats is gekozen in België.
Het beroep schorst de tenuitvoerlegging van de bestreden beslissing tot vernietiging van de goederen bedoeld in § 2, 2° tot 4°. De beslissing tot vernietiging van de in § 2, 1°, bedoelde goederen is van rechtswege uitvoerbaar.
De procureur des Konings kan zijn beslissing intrekken of herzien op basis van tegenaanwijzingen die betrekking hebben op het verminderde gevaar voor de openbare veiligheid of de volksgezondheid, of onder oplegging van een of meer voorwaarden die kunnen bijdragen aan de bescherming van de maatschappij tegen een ernstige aantasting van de openbare veiligheid of de volksgezondheid. De rechtspleging voor de kamer van inbeschuldigingstelling is geschorst:
1° tot er definitief uitspraak is gedaan over het verzoek tot opheffing van het beslag bedoeld in de artikelen 28sexies en 61quater, of geregeld bij bijzondere wetten, met betrekking tot de goederen bedoeld in § 2, 2° tot 4°;
2° tot er definitief uitspraak is gedaan over de vordering tot het verrichten van een onderzoekshandeling overeenkomstig artikel 61quinquies met betrekking tot de goederen bedoeld in § 2, 2° tot 4°, en, in voorkomend geval, de onderzoekshandeling bedoeld in artikel 61quinquies met betrekking tot de goederen bedoeld in § 2, 2° tot 4°, is verricht;
3° tot de procureur des Konings de opsporingshandelingen heeft laten verrichten die hij nuttig en noodzakelijk acht voor het opsporingsonderzoek en die ambtshalve of op verzoek van elke belanghebbende met betrekking tot de goederen bedoeld in § 2, 2° tot 4°, zijn bevolen. De procedure verloopt overeenkomstig de bepalingen van artikel 28sexies, § 4, tweede tot achtste lid.
§ 8. Als de procureur des Konings na de vernietiging van het goed seponeert of de strafprocedure definitief wordt beëindigd met een vrijspraak wegens ongegrondheid van de strafvordering, of met een buitenvervolgstelling wegens gebrek aan bezwaren, kan de rechtmatige eigenaar van de vernietigde zaak aanspraak maken op een schadevergoeding, in de mate dat het goed op rechtmatige wijze opnieuw in omloop had kunnen worden gebracht.
Het bedrag van de vergoeding stemt overeen met de waarde van het vernietigde goed op het tijdstip van de vernietiging. De vordering tot schadeloosstelling wordt gericht tegen de Belgische Staat in de persoon van de minister van Justitie, in de vorm bepaald door het Gerechtelijk Wetboek.
§ 9. De procureur des Konings kan beslissen om geheel of gedeeltelijk een in paragraaf 2, 3°, bedoeld goed kosteloos ter beschikking te stellen van een politiedienst of wetenschappelijke instelling die het ter beschikking gestelde goed uitsluitend gebruikt voor didactische of wetenschappelijke doeleinden of voor de studie van relevante criminele fenomenen. Daarnaast kan de procureur des Konings o ok geheel of gedeeltelijk een in § 2, 3°, bedoeld goed kosteloos ter
beschikking stellen van een politiedienst in een welbepaald dossier om ze te kunnen gebruiken voor de voorbereiding en de uitvoering van opdrachten die verband houden met de bestrijding van de in artikel 90ter, §§ 2, 3 en 4, bedoelde misdrijven, voor zover dit strikt noodzakelijk is voor de voorbereiding en de uitvoering ervan.
Tijdens de duur van het gerechtelijk onderzoek is de instemming van de onderzoeksrechter met de in het eerste en het tweede lid bedoelde maatregel vereist. In afwijking van artikel 4, § 7, tweede lid, van de wet van 24 februari 1921 betreffende het verhandelen van giftstoffen, slaapmiddelen en verdovende middelen, psychotrope stoffen, ontsmettingsstoffen en antiseptica en van de stoffen die kunnen gebruikt worden voor de illegale vervaardiging van verdovende middelen en psychotrope stoffen of een andere wettelijke bepaling die de vernietiging van goederen oplegt, worden de goederen waarvoor een in het eerste en het tweede lid bedoelde maatregel is genomen, geacht definitief ter beschikking te zijn gesteld van de politiedienst of de wetenschappelijke instelling, behoudens andersluidende.

§ 2. The Crown Prosecutor may order the destruction of goods belonging to one of the following categories include:
1° goods which by their nature present a serious danger to public security or the public health;
2° the goods which, when the attachment is lifted, include the physical integrity or the goods of persons decision of the designated performance provider or public service. Members of the local police or of the federal police lend the strong arm when required to do so.
The *Central Seizure and Confiscation Body* may, at the request of the Public Prosecutor, assist in the destruction of property.
§ 5. If it is necessary to reveal the truth, he orders the taking of samples or a photo or video recording of the good before the destruction of the good. Where appropriate, he appoints a technical advisor to assist the advanced police service during the sampling or recording. The advanced police service deposits the sample taken or the photo or video recording with the registry or makes the sample taken or the photo or video recording available to any other person designated by the Public Prosecutor who is responsible for its preservation until the lifting of attachment or confiscation.
§ 6. The costs of destruction, taking and storage of the sample or the photo or video recording as well as the assistance of a technical adviser are legal costs.
§ 7. The Public Prosecutor shall notify the decision to annul, within a period of eight days from the date, by registered letter, by fax or electronically, to:
1° the person against whom the attachment was levied or, where appropriate, his lawyer;
2° the persons who, according to the indications provided by the court, appear to be authorised to assert rights against the goods to be destroyed or, where appropriate, their lawyer.
The notice contains the text of this article. He shall not send notification to the persons referred to in the first paragraph, 1° and 2°, if they have given prior written consent to the destruction. The persons referred to in the first paragraph, 1° and 2°, can apply to the indictment chamber within a period of fifteen days from the notification of the decision to set aside. This period is extended by fifteen days if one of these persons resides or is established outside the Kingdom, unless domicile has been chosen in Belgium.
The appeal suspends the enforcement of the contested decision to destroy the goods referred to in § 2, 2° to 4°. The decision to destroy the goods referred to in § 2, 1° is enforceable by operation of law. The Public Prosecutor may revoke or revise his decision on the basis of counter-indications relating to the reduced threat to public security or public health, or subject to the imposition of one or more conditions that may contribute to the protection of society against serious harm. of public safety or public health.
The proceedings before the Indictment Chamber have been adjourned:

1° until a final decision has been made on the request to lift the attachment referred to in Articles 28sexies and 61quater, or regulated by special laws, with regard to the goods referred to in § 2, 2° to 4°;
2° until a final decision has been made on the request to perform an investigative act in accordance with Article 61quinquies with regard to the goods referred to in § 2, 2° to 4°, and, where applicable, the investigative act referred to in Article 61quinquies with regard to the goods referred to in § 2, 2°
up to 4°, has been performed;
3° until the Public Prosecutor has had the investigative acts performed that he deems useful and necessary for the criminal investigation and that have been ordered ex officio or at the request of any interested party with regard to the goods referred to in § 2, 2° to 4°. The procedure is conducted in accordance with the provisions of Article 28sexies, § 4, second to eighth paragraph.
§ 8. If, after the destruction of the property, the Public Prosecutor dismisses or the criminal proceedings are finally terminated with an acquittal due to unfoundedness of the criminal proceedings, or with a suspension of prosecution for lack of objections, the rightful owner of the destroyed property can claim compensation, to the extent that the good could have been lawfully put back into circulation.
The amount of the compensation corresponds to the value of the destroyed property at the time of destruction. The claim for compensation is directed against the Belgian State in the person of the Minister of Justice, in the form determined by the Judicial Code.
§ 9. The Public Prosecutor may decide to make available, in whole or in part, a good referred to in paragraph 2, 3°, free of charge, to a police service or scientific institution that uses the good made available exclusively for didactic or scientific purposes or for the study of relevant criminal phenomena. In addition, the public prosecutor can affect severely;
3° goods which, if put into circulation again, constitute an infringement of public order, morality or a legal provision;
4° goods of which the costs of preservation in kind, due to the nature or quantity of the goods, are manifestly not proportional to their sale value.
§ 3. The public prosecutor indicates in his written decision which goods must be destroyed. He determines the manner and the period within which his decision to set aside will be implemented. In
In urgent cases, the Public Prosecutor may orally order the destruction, provided that he confirms his decision in writing as soon as possible.
§ 4. The Public Prosecutor designates a specialised performance provider or public service who proceeds to destroy the property concerned. The Public Prosecutor puts the property to be destroyed in place ok in whole or in part a good referred to in § 2, 3°, free of charge on the

making available a police service in a specific file in order to be able to use it for the preparation and execution of assignments related to the fight against the crimes referred to in Article 90ter, §§ 2, 3 and 4, insofar as this is strictly necessary for its preparation and implementation.
During the duration of the judicial investigation, the consent of the investigating judge with the measure referred to in paragraphs 1 and 2 is required. Notwithstanding Article 4, § 7, second paragraph, of the Act of 24 February 1921 on the marketing of poisons, sleeping pills and narcotics, psychotropic substances, disinfectants and antiseptics and of substances that can be used for the illegal manufacture of narcotic drugs substances and psychotropic substances or another legal provision that imposes the destruction of goods, the goods for which a measure referred to in paragraphs 1 and 2 has been taken, shall be deemed to have been definitively made available to the police service or scientific institution, unless otherwise stated.

Article 35[221] (§ 1.) The Public Prosecutor confiscates everything that appears to constitute one of the matters referred to in Articles 42 and 43quater of the Criminal Code and everything that can serve to tell the truth to show; he asks the suspect to explain himself about the seized objects that will be shown to him; he draws up an official report of this, which is signed by the suspect, or if he refuses, this is reported.

Article 37[222] § 1. If papers or items are found in the suspect's home that can serve as conviction or expulsion, the Public Prosecutor will confiscate these papers or items […].

ee. Para 1(c)

(1) Obtainment of the Production of Stored Computer Data, Encrypted or Decrypted

(a) General Provisions in the CPC

Article 39ter [223] § 1. When investigating crimes and misdemeanours and without prejudice to the powers referred to in Articles 39bis, 46bis and 88bis and Articles XII.17, **20**

[221] **Artikel 35 Wetboek van Strafvordering**
§1. De procureur des Konings neemt alles in beslag wat een van de in de artikelen 42 en 43quater van het Strafwetboek bedoelde zaken schijnt uit te maken en alles wat dienen kan om de waarheid aan de dag te brengen; hij vraagt de verdachte zich te verklaren omtrent de in beslag genomen voorwerpen, die hem vertoond zullen worden; van een en ander maakt hij een proces-verbaal op, dat ondertekend wordt door de verdachte, of ingeval deze weigert, wordt daarvan melding gemaakt.
[222] **Artikel 37 Wetboek van Strafvordering**
§1. Indien er in de woning van de verdachte papieren of zaken worden gevonden, die tot overtuiging of tot ontlasting kunnen dienen, neemt de procureur des Konings deze papieren of zaken in beslag. […]
[223] **Art. 39ter**.§ 1er. Lors de la recherche de crimes et délits et sans préjudice des compétences visées aux articles 39bis, 46bis et 88bis et aux articles XII.17, XII.18, XII.19 et XII.20 du Code de droit économique, tout officier de

XII.18, XII.19 and XII.20 of the Code of Economic Law, any judicial police officer may, if there are reasons to believe that data stored, processed or transmitted by means of a computer system are particularly susceptible to loss or modification, order, by a written and reasoned decision, one or more natural persons or legal persons to keep the data in their possession or under their control.
The reasoned written decision mentions:
- the name and quality of the judicial police officer who orders the preservation;
- the offence which is the subject of of the order;
- the data that must be kept;
- the data retention period, which may not exceed ninety days. This period may be extended in writing.
In an emergency, retention may be ordered verbally. The order must be confirmed as soon as possible in the form provided for in paragraph 2.
§ 2. The natural persons or legal persons referred to in paragraph 1, paragraph 1, ensure that the integrity of the data is guaranteed and that the data is stored securely.
§ 3. Any person who, by virtue of his office, has knowledge of the measure or assists in it, is bound to maintain secrecy. Any breach of secrecy is punished in accordance with article 458 of the Penal Code.
Any person who refuses to cooperate, or who causes the disappearance, destruction or modification of the stored data, is punished by imprisonment of six months to one year or a fine of twenty-six euros to twenty thousand euros or these penalties only.

police judiciaire peut, s'il existe des raisons de croire que des données stockées, traitées ou transmises au moyen d'un système informatique sont particulièrement susceptibles de perte ou de modification, ordonner, par une décision écrite et motivée, à une ou plusieurs personnes physiques ou personnes morales de conserver les données qui sont en leur possession ou sous leur contrôle.
La décision écrite motivée mentionne:
- les nom et qualité de l'officier de police judiciaire qui ordonne la conservation;
- l'infraction qui fait l'objet de l'ordre;
- les données qui doivent être conservées;
- la durée de conservation des données, qui ne peut excéder nonante jours. Ce délai peut être prolongé par écrit.
En cas d'urgence, la conservation peut être ordonnée verbalement. L'ordre doit être confirmé dans les plus brefs délais dans la forme prévue à l'alinéa 2.
§ 2. Les personnes physiques ou personnes morales visées au paragraphe 1er, alinéa 1er, veillent à ce que l'intégrité des données soit garantie et à ce que les données soient conservées de manière sécurisée.
§ 3. Toute personne qui, du chef de sa fonction, a connaissance de la mesure ou y prête son concours, est tenue de garder le secret. Toute violation du secret est punie conformément à l'article 458 du Code pénal.
Toute personne qui refuse de coopérer, ou qui fait disparaître, détruit ou modifie les données conservées, est punie d'un emprisonnement de six mois à un an ou d'une amende de vingt-six euros à vingt mille euros ou d'une de ces peines seulement.

Article 39quater[224] § 1. Without prejudice to the possibilities of direct collaboration with foreign electronic communications network operators and electronic communica-

[224] **Art. 39quater.** § 1er. Sans préjudice des possibilités de collaboration directe avec des opérateurs de résaux de communications électroniques et des fournisseurs de services de communications électroniques étrangers, le procureur du Roi peut, par l'intermédiaire du service de police désigné par le Roi, demander à une autorité compétente étrangère d'ordonner ou d'imposer d'une autre façon la conservation rapide de données stockées, traitées ou transmises au moyen d'un système informatique qui se trouve sur le territoire de cette autorité compétente et au sujet desquelles une autorité judiciaire belge compétente a l'intention de soumettre une demande d'entraide judiciaire.
La demande de conservation est formulée par écrit et mentionne:
- les nom et qualité de l'autorité qui demande la conservation;
- l'infraction qui fait l'objet de la demande et un exposé succinct des faits qui y ont trait;
- les données à conserver et le lien avec l'infraction;
- toutes les informations disponibles concernant le dépositaire des données ou la localisation du système informatique;
- la nécessité de la conservation;
- le fait qu'une demande d'entraide judiciaire concernant les données conservées sera soumise;
- le cas échéant, le fait que les données qui doivent être conservées renvoient à un autre Etat que l'Etat de l'autorité étrangère compétente.
§ 2. Lorsqu'une telle possibilité est prévue dans un instrument de droit international liant la Belgique et un autre Etat, une autorité compétente de cet Etat peut demander au service de police désigné par le Roi d'ordonner ou d'imposer d'une autre manière la conservation rapide de données stockées, traitées ou transmises au moyen d'un système informatique qui se trouve sur le territoire belge et au sujet desquelles cette autorité judiciaire étrangère a l'intention de soumettre une demande d'entraide judiciaire.
La demande de conservation est formulée par écrit et mentionne:
- les nom et qualité de l'autorité qui demande la conservation;
- l'infraction qui fait l'objet de la demande et un exposé succinct des faits qui y ont trait;
- les données à conserver et le lien avec l'infraction;
- toutes les informations disponibles concernant le dépositaire des données ou la localisation du système informatique;
- la nécessité de la conservation;
- le fait qu'une demande d'entraide judiciaire concernant les données conservées sera soumise;
- le cas échéant, le fait que les données qui doivent être conservées renvoient à un autre Etat que l'Etat de l'autorité étrangère compétente.
Après réception de la demande visée à l'alinéa 2, le service de police visé à l'alinéa 1er en informe le procureur du Roi ou le juge d'instruction compétent et prend toutes les mesures appropriées pour procéder sans délai à la conservation rapide des données définies conformément à l'article 39ter.
Sans préjudice des instruments de droit international liant la Belgique en matière d'entraide judiciaire et tendant à promouvoir celle-ci, une demande de conservation peut être rejetée uniquement par le procureur du Roi ou le juge d'instruction compétent:
- si la demande concerne une infraction considérée par la Belgique comme une infraction politique ou un fait connexe à une infraction politique, ou
- si l'exécution de la demande est de nature à porter atteinte à la souveraineté, à la sécurité, à l'ordre public ou à d'autres intérêts essentiels de la Belgique.
Si le service de police visé à l'alinéa 1er estime que la conservation simple ne suffira pas à garantir la disponibilité future des données, ou compromettra la confidentialité de l'enquête de l'autorité étrangère compétente ou nuira d'une autre façon à celle-ci, il en informe sans délai l'autorité étrangère compétente, qui décide alors s'il convient néanmoins d'exécuter la demande.
Une conservation effectuée en réponse à la demande visée à l'alinéa 1er est valable pour une période d'au moins soixante jours afin d'offrir à l'autorité étrangère compétente la possibilité de soumettre une demande d'entraide judiciaire. Après réception d'une telle demande, les données restent conservées dans l'attente d'une décision concernant la demande.
Si les données qui sont stockées, traitées ou transmises au moyen d'un système informatique renvoient à un autre Etat que l'Etat de l'autorité étrangère compétente requérante, le service de police visé à l'alinéa 1er en informe le

tions service providers, the Public Prosecutor may, through the intermediary of the police service designated by the King, request a foreign competent authority to order or otherwise impose the expeditious preservation of data stored, processed or transmitted by means of a computer system that is located on the territory of that competent authority and in respect of which a competent Belgian judicial authority intends to submit a request for mutual legal assistance.
The request for preservation shall be made in writing and shall mention
- the name and capacity of the authority requesting preservation
- the offence that is the subject of the request and a brief statement of the facts relating to it
- the data to be preserved and the link with the offence;
- all available information concerning the custodian of the data or the location of the computer system;
- the necessity of the retention;
- the fact that a request for mutual legal assistance concerning the preserved data will be submitted;
- where applicable, the fact that the data to be preserved relates to a State other than the State of the competent foreign authority.
§ 2 Where such a possibility is provided for in an instrument of international law binding Belgium and another State, a competent authority of that State may request the police service designated by the King to order or otherwise impose the expeditious preservation of data stored, processed or transmitted by means of a computer system located on Belgian territory and in respect of which that foreign judicial authority intends to submit a request for mutual legal assistance.
The request for preservation shall be made in writing and shall mention
- the name and capacity of the authority requesting preservation
- the offence which is the subject of the request and a brief statement of the facts relating to it
- the data to be preserved and the link with the offence;
- any available information concerning the custodian of the data or the location of the computer system;
- the necessity of the retention;
- the fact that a request for mutual legal assistance concerning the preserved data will be submitted;
- where applicable, the fact that the data to be preserved relates to a State other than the State of the competent foreign authority.

procureur du Roi ou le juge d'instruction compétent. Celui-ci divulgue, dans les meilleurs délais, à l'autorité étrangère compétente une quantité de données d'identification ou d'appel suffisante pour retrouver qui est l'opérateur du réseau de communications électroniques ou le fournisseur du service de communications électroniques et par quelle voie la communication a été envoyée.

The police service referred to in paragraph 2 shall, upon receipt of the request referred to in paragraph 1, inform the competent public prosecutor or examining magistrate and take all appropriate measures to proceed without delay to the rapid preservation of the data defined in accordance with Article 39ter.
Without prejudice to the instruments of international law binding on Belgium in respect of mutual legal assistance and designed to promote such assistance, a request for preservation may be refused only by the competent public prosecutor or investigating judge:
- if the request concerns an offence considered by Belgium to be a political offence or an act connected with a political offence, or
- if the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Belgium.
If the police service referred to in paragraph 1 is of the opinion that simple preservation will not be sufficient to guarantee the future availability of the data, or will jeopardise the confidentiality of the investigation of the competent foreign authority or will otherwise harm the latter, it will inform the competent foreign authority without delay, which will then decide whether the request should nevertheless be executed.
A preservation made in response to the request referred to in paragraph 1 shall be valid for a period of at least sixty days in order to give the competent foreign authority the opportunity to submit a request for mutual legal assistance. After receipt of such a request, the data shall remain stored pending a decision on the request.
If the data stored, processed or transmitted by means of a computer system refer to a State other than the State of the requesting competent foreign authority, the police service referred to in paragraph 1 shall inform the competent public prosecutor or investigating judge. The latter shall, as soon as possible, disclose to the competent foreign authority a sufficient amount of identification or call data to find out who the operator of the electronic communications network or the provider of the electronic communications service is and by which channel the communication was sent.

Article 39quinquies[225] § 1. When investigating crimes and offences, the Public Prosecutor may, if there are serious indications that the offences may result in a principal

[225] **Art. 39quinquies.** § 1er. Lors de la recherche de crimes et délits, le procureur du Roi peut, s'il existe des indices sérieux que les infractions peuvent donner lieu à un emprisonnement correctionnel principal d'un an ou à une peine plus lourde, ordonner, par une décision écrite et motivée, à un ou plusieurs acteurs visés à l'alinéa 2, de conserver les données visées à l'article 88bis, § 1, alinéa 1er, générées ou traitées par eux dans le cadre de la fourniture des services de communications concernés, qu'il juge nécessaires.
L'ordre visé à l'alinéa 1er peut être donné, directement ou par l'intermédiaire du service de police désigné par le Roi, à:
- l'opérateur d'un réseau de communications électroniques; et
- toute personne qui met à disposition ou offre, sur le territoire belge, d'une quelconque manière, un service qui consiste à transmettre des signaux via des réseaux de communications électroniques ou à autoriser des utilisateurs à obtenir, recevoir ou diffuser des informations via un réseau de communications électroniques. Est également compris le fournisseur d'un service de communications électroniques.

correctional sentence of one year or a heavier penalty, order, by a written and reasoned decision, one or more of the actors referred to in paragraph 2 to retain the data referred to in Article 88bis, § 1, first paragraph, generated or processed by them in the context of the provision of the communications services concerned, which he or she deems necessary.
The order referred to in paragraph 1 may be given, directly or through the intermediary of the police service designated by the King, to
- the operator of an electronic communications network; and
- any person who makes available or offers, on Belgian territory, in any way, a service which consists in transmitting signals via electronic communications networks or in authorising users to obtain, receive or disseminate information via an electronic communications network. This also includes the provider of an electronic communications service.
The written and reasoned decision shall mention
- the name of the public prosecutor ordering the preservation
- the offence that is the subject of the order
- the factual circumstances of the case that justify the preservation;
- the precise indication of one or more of the following elements: the person or persons, the means of communication or the places which are the subject of the preservation;
- where appropriate, the categories of traffic and location data to be retained
- the duration of the measure, which may not exceed two months from the date of the order, without prejudice to renewal
- the period of retention of the data, which may not exceed six months. This period may be extended in writing.

La décision écrite et motivée mentionne:
- le nom du procureur du Roi qui ordonne la conservation;
- l'infraction qui fait l'objet de l'ordre;
- les circonstances de fait de la cause qui justifient la conservation;
- l'indication précise d'un ou de plusieurs des éléments suivants: la personne ou les personnes, les moyens de communication ou les lieux qui font l'objet de la conservation;
- le cas échéant, les catégories de données de trafic et de localisation qui doivent être conservées;
- la durée de la mesure, qui ne peut excéder deux mois à compter de la date de l'ordre, sans préjudice de renouvellement;
- la durée de conservation des données, qui ne peut excéder six mois. Ce délai peut être prolongé par écrit.
En cas d'urgence, la conservation peut être ordonnée verbalement. L'ordre doit être confirmé dans les plus brefs délais dans la forme prévue à l'alinéa 3.
§ 2. Les acteurs visés au paragraphe 1er, alinéa 2, veillent à ce que l'intégrité, la qualité et la disponibilité des données soit garantie et à ce que les données soient conservées de manière sécurisée.
§ 3. Toute personne qui, du chef de sa fonction, a connaissance de la mesure ou y prête son concours, est tenue de garder le secret. Toute violation du secret est punie conformément à l'article 458 du Code pénal.
Toute personne qui refuse de coopérer, ou qui fait disparaître, détruit ou modifie les données conservées, est punie d'un emprisonnement de six mois à un an ou d'une amende de vingt-six euros à vingt mille euros ou d'une de ces peines seulement.
§ 4. L'accès aux données conservées conformément à cet article n'est possible qu'en application de l'article 88bis.

In case of urgency, retention may be ordered verbally. The order must be confirmed as soon as possible in the form provided for in paragraph 3.
§ 2 The actors referred to in paragraph 1, subparagraph 2 shall ensure that the integrity, quality and availability of the data are guaranteed and that the data are stored securely.
§ 3 Any person who, by virtue of his or her position, has knowledge of the measure or assists with it, is obliged to maintain secrecy. Any breach of secrecy is punishable in accordance with article 458 of the Criminal Code.
Any person who refuses to cooperate, or who causes the data stored to disappear, be destroyed or altered, shall be punished by imprisonment of between six months and one year or by a fine of between twenty-six euros and twenty thousand euros or by one of these penalties only.
§ 4 Access to data retained in accordance with this Article is only possible in application of Article 88a.

Article 88bis[226] § 1. If there are serious indications that the offences are of such a nature as to result in a principal correctional imprisonment of one year or a heavier sentence,

[226] **Art. 88bis**. § 1er. S'il existe des indices sérieux que les infractions sont de nature à entraîner un emprisonnement correctionnel principal d'un an ou une peine plus lourde, et lorsque le juge d'instruction estime qu'il existe des circonstances qui rendent le repérage de communications électroniques ou la localisation de l'origine ou de la destination de communications électroniques nécessaire à la manifestation de la vérité, il peut faire procéder:
1° au repérage des données de trafic de moyens de communication électronique à partir desquels ou vers lesquels des communications électroniques sont adressées ou ont été adressées;
2° à la localisation de l'origine ou de la destination de communications électroniques.
Si nécessaire, il peut pour ce faire requérir, directement ou par l'intermédiaire du service de police désigné par le Roi, la collaboration:
- de l'opérateur d'un réseau de communications électroniques; et
- de toute personne qui met à disposition ou offre, sur le territoire belge, d'une quelconque manière, un service qui consiste à transmettre des signaux via des réseaux de communications électroniques ou à autoriser des utilisateurs à obtenir, recevoir ou diffuser des informations via un réseau de communications électroniques. Est également compris le fournisseur d'un service de communications électroniques.
Dans les cas visés à l'alinéa 1er, pour chaque moyen de communication électronique dont les données de trafic sont repérées ou dont l'origine ou la destination de la communication électronique est localisée, le jour, l'heure, la durée et, si nécessaire, le lieu de la communication électronique sont indiqués et consignés dans un procès-verbal.
Le juge d'instruction indique les circonstances de fait de la cause qui justifient la mesure, son caractère proportionnel eu égard au respect de la vie privée et subsidiaire à tout autre devoir d'enquête, dans une ordonnance motivée.
Il précise également la durée durant laquelle la mesure pourra s'appliquer pour le futur, cette durée ne pouvant excéder deux mois à dater de l'ordonnance, sans préjudice de renouvellement et, le cas échéant, la période pour le passé sur laquelle l'ordonnance s'étend conformément au paragraphe 2.
En cas de flagrant délit, le procureur du Roi peut ordonner la mesure pour les infractions visées à l'article 90ter, §§ 2, 3 et 4. Dans ce cas, la mesure doit être confirmée dans les vingt-quatre heures par le juge d'instruction.
S'il s'agit toutefois de l'infraction visée à l'article 137, 347bis, 434 ou 470 du Code pénal, à l'exception de l'infraction visée à l'article 137, § 3, 6°, du même Code, le procureur du Roi peut ordonner la mesure tant que la situation de flagrant délit perdure, sans qu'une confirmation par le juge d'instruction ne soit nécessaire.
S'il s'agit de l'infraction visée à l'article 137 du Code pénal, à l'exception de l'infraction visée à l'article 137, § 3, 6°, du même Code, le procureur du Roi peut en outre ordonner la mesure dans les septante-deux heures suivant la découverte de cette infraction, sans qu'une confirmation par le juge d'instruction soit nécessaire.

and when the investigating judge considers that there are circumstances which make the identification of electronic communications or the location of the origin or destination of electronic communications necessary for the manifestation of the truth, he may proceed:
1° to the identification of traffic data of means of electronic communication from or to which communications emails are sent or have been sent;
2° the location of the origin or destination of electronic communications.
If necessary, he may to do so require, directly or through the police service designated by the King, the collaboration of:
- the operator of an electronic communications network; and
- any person who makes available or offers, on Belgian territory, in any way, a service which consists of transmitting signals via electronic communications networks or authorizing users to obtain, receive or disseminate information via an electronic communications network. Also included is the provider of an electronic communications service.

Toutefois, le procureur du Roi peut ordonner la mesure si le plaignant le sollicite, lorsque cette mesure s'avère indispensable à l'établissement d'une infraction visée à l'article 145, § 3 et § 3bis de la loi du 13 juin 2005 relative aux communications électroniques.
En cas d'urgence, la mesure peut être ordonnée verbalement. Elle doit être confirmée dans les plus brefs délais dans la forme prévue aux alinéas 4 et 5.
§ 2. Pour ce qui concerne l'application de la mesure visée au paragraphe 1er, alinéa 1er, aux données de trafic ou de localisation conservées sur la base des articles 126/1 et 126/3 de la loi du 13 juin 2005 relative aux communications électroniques, les dispositions suivantes s'appliquent:
- pour une infraction visée au livre II, titre Iter, du Code pénal, le juge d'instruction peut dans son ordonnance requérir les données pour une période de douze mois préalable à l'ordonnance;
- pour une autre infraction visée à l'article 90ter, §§ 2 à 4, qui n'est pas visée au premier tiret ou pour une infraction qui est commise dans le cadre d'une organisation criminelle visée à l'article 324bis du Code pénal, ou pour une infraction qui est de nature à entraîner un emprisonnement correctionnel principal de cinq ans ou une peine plus lourde, le juge d'instruction peut dans son ordonnance requérir les données pour une période de neuf mois préalable à l'ordonnance;
- pour les autres infractions, le juge d'instruction ne peut requérir les données que pour une période de six mois préalable à l'ordonnance.
§ 3. La mesure ne peut porter sur les moyens de communication électronique d'un avocat ou d'un médecin que si celui-ci est lui-même soupçonné d'avoir commis une infraction visée au paragraphe 1er ou d'y avoir participé, ou si des faits précis laissent présumer que des tiers soupçonnés d'avoir commis une infraction visée au paragraphe 1er, utilisent ses moyens de communication électronique.
La mesure ne peut être exécutée sans que le bâtonnier ou le représentant de l'ordre provincial des médecins, selon le cas, en soit averti. Ces mêmes personnes seront informées par le juge d'instruction des éléments qu'il estime relever du secret professionnel. Ces éléments ne sont pas consignés au procès-verbal. Ces personnes sont tenues au secret. Toute violation du secret est punie conformément à l'article 458 du Code pénal.
§ 4. Les acteurs visés au § 1er, alinéa 2, communiquent les informations demandées en temps réel ou, le cas échéant, au moment précisé dans la réquisition, selon les modalités fixées par le Roi, sur la proposition du ministre de la Justice et du ministre compétent pour les Télécommunications.
Toute personne qui, du chef de sa fonction, a connaissance de la mesure ou y prête son concours, est tenue de garder le secret. Toute violation du secret est punie conformément à l'article 458 du Code pénal.
Toute personne qui refuse de prêter son concours technique aux réquisitions visées au présent article, concours dont les modalités sont fixées par le Roi, sur la proposition du ministre de la Justice et du ministre compétent pour les Télécommunications, ou ne le prête pas en temps réel ou, le cas échéant, au moment précisé dans la réquisition, est punie d'une amende de vingt-six euros à dix mille euros..

In the cases referred to in the first paragraph, for each means of electronic communication of which the traffic data are identified or of which the origin or destination of the electronic communications is located, the day, time, duration and, if necessary, the place of the electronic communication is indicated and recorded in a report.
The investigating judge indicates the factual circumstances of the case which justify the measure, its proportional nature with regard to respect for private life and subsidiary to any other duty of investigation, in a reasoned order.
It also specifies the period during which the measure may apply for the future, this period not exceeding two months from the date of the order, without prejudice to renewal and, where applicable, the period for the past over which the order extends in accordance with paragraph 2.
In the event of flagrante delicto, the public prosecutor may order the measure for the offences referred to in Article 90ter, §§ 2, 3 and 4. In this case, the measure must be confirmed within twenty-four hours by the investigating judge.
However, if it concerns the offence referred to in Article 137, 347bis, 434 or 470 of the Penal Code, with the exception of the offence referred to in Article 137, § 3, 6°, of the same Code, the Crown prosecutor may order the measure as long as the situation of flagrante delicto persists, without confirmation by the investigating judge being necessary.
In the case of the offence referred to in Article 137 of the Penal Code, with the exception of the offence referred to in Article 137, § 3, 6°, of the same Code, the public prosecutor may furthermore order the measure within seventy-two hours following the discovery of this offence, without confirmation by the investigating judge being necessary.
However, the Crown prosecutor may order the measure if the plaintiff requests it, when this measure proves to be essential for the establishment of an offence referred to in Article 145, § 3 and § 3bis of the law of June 13, 2005 relating to electronic communications.
In an emergency, the measure may be ordered verbally. It must be confirmed as soon as possible in the form provided for in paragraphs 4 and 5.
§ 2. As regards the application of the measure referred to in paragraph 1, paragraph 1, to traffic data or location stored on the basis of articles 126/1 and 126/3 of the law of 13 June 2005 relating to electronic communications, the following provisions apply:
- for an offence referred to in Book II, Title Iter, of the Penal Code, the investigating judge may in his order require data for a period of twelve months prior to the order;
- for another offence referred to in Article 90ter, §§ 2 to 4, which is not referred to in the first indent or for an offence which is committed within the framework of a criminal organisation referred to in Article 324bis of the Code criminal, or for an offence which is likely to result in a principal correctional imprisonment of five years or a heavier penalty, the examining magistrate may in his order require the data for a period of nine months prior to the order;

- for other offences, the investigating judge may only request data for a period of six months prior to the order.
§ 3. The measure may not relate to the means of electronic communication of a lawyer or a doctor only if the latter is himself suspected of having committed an offence referred to in paragraph 1 or of having participated in it, or if specific facts suggest that third parties suspected of having committed an offence referred to in paragraph 1, use its means of electronic communication.
The measure cannot be executed without the President of the Bar or the representative of the provincial order of physicians, as the case may be, being notified. These same people will be informed by the investigating judge of the elements that he considers to be covered by professional secrecy. These items are not recorded in the minutes. These people are bound to secrecy. Any violation of secrecy is punished in accordance with Article 458 of the Penal Code.
§ 4. The actors referred to in § 1, paragraph 2, communicate the information requested in real time or, where appropriate, at the time specified in the requisition, according to the procedures set by the King, on the proposal of the Minister of Justice and the Minister competent for Telecommunications.
Any person who, by virtue of his position, has knowledge of the measure or lends his support to it, is bound to maintain secrecy. Any breach of secrecy is punished in accordance with article 458 of the Penal Code.
Any person who refuses to lend his technical assistance to the requisitions referred to in this article, assistance the terms of which are set by the King, on the proposal of the Minister of Justice and the Minister competent for Telecommunications, or who does not lend it in real time or, where applicable, at the time specified in the requisition, is punished by a fine of twenty-six euros to ten thousand euros.

(b) Special Provisions in the CPC Tax Code, Digital Evidence Act

21

Code of Economic Law

Article XV.3 See above under → Search Any Premises or Land.
[…] 5° to be produced on first request, without traveling or after having gone to the places [5 or means of transport] referred to in provision 1°, all information, documents, exhibits, books, files, databases and media computerized data [5, regardless of the medium used or the place of storage,] that they deem necessary for the performance of their tasks, and take a copy of it free of charge or take it away free of charge against delivery of a receipt.
When computerized media are accessible by a computer system or by any other electronic device, they have the right to have the data recorded on these computerized media submitted in a legible and clear manner, in the form requested by them, against delivery of an acknowledgment of receipt. […]

(2) Obtainment of Banking Account Data and Traffic Data

Criminal Procedure Code **22**

Article 46septies[227] In investigating the crimes and misdemeanours referred to in Article 8, § 1, 1°, 2° and 5°, of the law of 25 December 2016 on the processing of passenger data, the Crown prosecutor may, by written and reasoned decision, instruct the judicial police officer to request the PIU to communicate passenger data in accordance with article 27 of the law of 25 December 2016 relating to the processing of passenger data. The reasoning reflects the proportionality with respect to privacy and subsidiary to any other investigative duty.
The measurement may relate to a set of data relating to a specific survey. In this case, the Crown prosecutor specifies the duration of the measure, which cannot exceed one month from the date of the decision, without prejudice to renewal.
In the event of extreme urgency, each judicial police officer may, with the oral and prior agreement of the Crown prosecutor, and, by a reasoned and written decision, request from the official in charge of the UIP the communication of passenger data. The judicial police officer communicates this reasoned and written decision as well as the information collected within twenty-four hours to the public prosecutor and also justifies the extreme urgency.

Article 56ter[228] In order to enable the measures referred to in Article 46quater, § 1, the investigating judge may, by specific and reasoned request, ask for information from the Central Contact Point maintained by the National Bank of Belgium in accordance with the Act of 8 July 2018 on the organisation of a central contact point for financial accounts and contracts and on the extension of the access to the central file of notices of seizure, delegation, assignment, collective settlement of debts and protests.

[227] **Art. 46septies**. En recherchant les crimes et délits visés à l'article 8, § 1er, 1°, 2° et 5°, de la loi du 25 décembre 2016 relative au traitement des données des passagers, le procureur du Roi peut, par une décision écrite et motivée, charger l'officier de police judiciaire de requérir l'UIP afin de communiquer les données des passagers conformément à l'article 27 de la loi du 25 décembre 2016 relative au traitement des données des passagers.
La motivation reflète le caractère proportionnel eu égard au respect de la vie privée et subsidiaire à tout autre devoir d'enquête.
La mesure peut porter sur un ensemble de données relatives à une enquête spécifique. Dans ce cas, le procureur du Roi précise la durée de la mesure qui ne peut excéder un mois à dater de la décision, sans préjudice de renouvellement.
En cas d'extrême urgence, chaque officier de police judiciaire peut, avec l'accord oral et préalable du procureur du Roi, et, par une décision motivée et écrite, requérir du fonctionnaire dirigeant de l'UIP la communication des données des passagers. L'officier de police judiciaire communique cette décision motivée et écrite ainsi que les informations recueillies dans les vingt-quatre heures au procureur du Roi et motive par ailleurs l'extrême urgence.]
[228] Art. 56ter.Afin de permettre les mesures visées à l'article 46quater, § 1er, le juge d'instruction peut, par sollicitation spécifique et motivée, demander des informations au Point de contact central tenu par la Banque nationale de Belgique conformément à la loi du 8 juillet 2018 portant organisation d'un point de contact central des comptes et contrats financiers et portant extension de l'accès du fichier central des avis de saisie, de délégation, de cession, de règlement collectif de dettes et de protêt.

23

General Law on Customs and Excise[229]

Article 281 See above under Article 28, Ensuring Compliance via National Law → Via the General Investigation Provisions.

Article 319bis[230] § 1. For the purpose of recovering the tax due, the customs and excise collection advisors may request from the central contact point of the National Bank of Belgium the available data referred to in Article 322, § 3, first paragraph, of the Income Tax Code 1992, relating to a taxable person without the limitations of Article 322, §§ 2 to 4, of the same Code. The authorisation referred to here is granted by an official of at least the rank of general counsellor.
§ 2 The same rule applies to the regional and central services responsible for the recovery of customs and excise debts. This authorisation shall be granted by an official of at least the rank of general counsellor competent for the Administration of Litigation.

(3) Exception of Data Specifically Retained in Accordance with National Law (Pursuant to the Second Sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council)

(a) Transposition of this Directive

24

- Law of 13 June 2005 on electronic communications. *Official publication: Staatsblad; Publication date: 2005-06-20; Page: 28070-28132*
- The law of 24 August 2005 aimed at transposing certain provisions of the distance financial services directive and the directive on privacy and electronic communications transposes Article 13 of Directive 2002/58. *Official publication: Moniteur Belge; Publication date: 2005-08-31; Page: 38144-38152*
- Law of 18 May 2009 laying down various provisions on electronic communications. *Official publication: Staatsblad; Publication date: 2009-06-04; Page: 39917-39924*
- Public Service Federal Economy, Smes, Middle Classes and Energy – 27 March 2014 – Law laying down various provisions on electronic communications. *Official publication: Moniteur Belge; Publication date: 2014-04-28; Page: 35043-35053*

[229] Loi générale sur les douanes et accises.
[230] **Art. 319bis. Loi générale sur les douanes et accises**
§ 1. De adviseurs belast met de invordering inzake douane en accijnzen kunnen teneinde de verschuldigde belasting in te vorderen de in artikel 322, § 3, eerste lid, van het Wetboek van de inkomstenbelastingen 1992 bedoelde beschikbare gegevens opvragen bij het centraal aanspreekpunt van de Nationale Bank van België zonder de beperkingen van artikel 322, §§ 2 tot 4, van hetzelfde Wetboek. De machtiging hiertoe wordt verleend door een ambtenaar met minimum de graad van adviseur-generaal.
§ 2. Dezelfde regeling wordt voorzien voor de regionale en centrale diensten bevoegd voor de invordering van douane- en accijnsschulden. Deze machtiging wordt verleend door een ambtenaar met minimum de graad van adviseur-generaal bevoegd voor de Administratie Geschillen.

(b) National Provision in Relation to Art. 15(1) s. 2 of this Directive

Law on Electronic Communications[231] **25**

Section 2 Secrecy of communications, data processing and Protection of private life

Article 122[232] § 1. Operators delete traffic data concerning subscribers or end users from their traffic data or make this data anonymous, as soon as it is no longer necessary for the transmission of the communication.

Paragraph 1 applies without prejudice to compliance with the obligations of cooperation, provided for by or under the law, with:

1° the competent authorities for the investigation or prosecution of criminal offences;

2° the mediation service for telecommunications to find the identity of any person who has made malicious use of an electronic communications network or service.

§ 2. By way of derogation from § 1, and for the sole purpose of establishing subscriber bills or making interconnection payments, operators store and process the following data:

1° the identification of the calling line;

2° the addresses relating to the subscriber and the place of connection, as well as the type of terminal equipment;

3° the total number of units to be billed for the billing period;

4° the identification of the line called;

5° the type of call, the time at which the call began, the duration of the call or the quantity of data transmitted;

[231] Loi relative aux communications électroniques.

[232] Section 2. Secret des communications, traitement des données et protection de la vie privée

Art. 122. Loi relative aux communications électroniques § 1er. Les opérateurs suppriment les données de trafic concernant les abonnés ou les utilisateurs finals de leurs données de trafic ou rendent ces données anonymes, dès qu'elles ne sont plus nécessaires pour la transmission de la communication.

L'alinéa 1er s'applique sans préjudice du respect des obligations de coopération, prévues par ou en vertu de la loi, avec:

1° les autorités compétentes pour la recherche ou la poursuite d'infractions pénales;

2° le service de médiation pour les télécommunications pour la recherche de l'identité de toute personne ayant effectué une utilisation malveillante d'un réseau ou d'un service de communications électroniques.

§ 2. Par dérogation au § 1er, et dans Ie seul but d'établir les factures des abonnés ou d'effectuer les paiements d'interconnexion, les opérateurs stockent et traitent les données suivantes:

1° l'identification de la ligne appelante;

2° les adresses relatives à l'abonné et au lieu de raccordement, ainsi que le type d'équipement terminal;

3° le nombre total d'unités à facturer pour la période de facturation;

4° l'identification de la ligne appelée;

5° le type d'appel, l'heure à laquelle l'appel a commencé, la durée de l'appel ou la quantité de données transmises;

6° la date de la communication ou du service;

7° d'autres informations relatives aux paiements, telles que celles qui concernent le paiement anticipé, le paiement échelonné, la déconnexion et les rappels.

Sans préjudice de l'application de la loi du 8 décembre 1992 relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel, l'opérateur informe, avant le traitement, l'abonné ou, le cas échéant, l'utilisateur final auquel les données se rapportent:

1° des types de données de trafic traitées;

2° des objectifs précis du traitement;

3° de la durée du traitement.

6° the date of the communication or service;
7° other information relating to payments, such as those relating to advance payment, instalment payment, disconnection and reminders.
Without prejudice to the application of the law of 8 December 1992 relating to the protection of privacy with regard to the processing of personal data, the operator informs, before processing, the subscriber or, where appropriate, the end user to whom the data relates:
1° the types of traffic data processed;
2° the specific purposes of the processing;
3° the duration of the treatment. […]

Article 126[233] § 1. By decree deliberated in the Council of Ministers, the King sets, on a proposal from the Minister of Justice and the Minister and after consulting the Commission for the Protection of Privacy and the Institute, the conditions under which operators record and store traffic data and end-user identification data for the prosecution and suppression of criminal offences, for the suppression of malicious calls to emergency services and for research by the mediation service for telecommunications of the identity of persons who have made malicious use of an electronic communications network or service. § 2. The data to be kept as well as the duration of the storage,

The operators shall ensure that the data mentioned in § 1 is unlimited accessible from Belgium.

Article 127[234] § 1. The King sets, after consulting the Commission for the Protection of Privacy and the Institute, the technical and administrative measures which are imposed on operators or end users, in order to allow:

[233] **Art. 126. Loi relative aux communications électroniques**
§ 1er. Par arrêté délibéré en Conseil des Ministres, le Roi fixe, sur proposition du Ministre de la Justice et du ministre et après avis de la Commission pour la protection de la vie privée et de l'Institut, les conditions dans lesquelles les opérateurs enregistrent et conservent les données de trafic et les données d'identification d'utilisateurs finals en vue de la poursuite et la répression d'infractions pénales, en vue de la répression d'appels malveillants vers les services d'urgence et en vue de la recherche par le service de médiation pour les télécommunications de l'identité des personnes ayant effectué une utilisation malveillante d'un réseau ou d'un service de communications électroniques. § 2. Les données à conserver ainsi que la durée de la conservation, qui en matière de service téléphonique accessible au public ne peut ni être inférieure à douze mois ni dépasser trente-six mois, sont déterminées par le Roi dans un arrêté délibéré en Conseil des ministres, après avis de la Commission pour la protection de la vie privée et de l'Institut.
Les opérateurs font en sorte que les données reprises au § 1er soient accessibles de manière illimitée de Belgique.
[234] **Art. 127. Loi relative aux communications électroniques**
§ 1er. Le Roi fixe, après avis de la Commission pour la protection de la vie privée et de l'Institut, les mesures techniques et administratives qui sont imposées aux opérateurs ou aux utilisateurs finals, en vue de permettre:
1° l'identification de la ligne appelante dans le cadre d'un appel d'urgence;
2° l'identification de l'appelant, le repérage, la localisation, les écoutes, la prise de connaissance et l'enregistrement des communications privées aux conditions prévues par les articles 46bis, 88bis et 90ter à 90decies du Code d'instruction criminelle. […]

(1) the identification of the calling line in the context of an emergency call;
(2) the identification of the caller, tracking, localization, wiretapping, acknowledgment and recording of private communications under the conditions provided for in Articles 46bis, 88bis and 90ter to 90decies of the Code of Criminal Procedure. […]

Article 128[235] Without prejudice to the application of the law of 8 December 1992 relating to the protection of privacy with regard to the processing of personal data, the recording of an electronic communication and of the data relating to the traffic which relating thereto made in lawful business transactions as evidence of a business transaction or other business communication, is permitted provided that the parties involved in the communication are aware of the recording, the specific purposes of the recording and the storage time of the recording, before recording.

The data referred to in this article are erased at the latest at the end of the period during which the transaction can be challenged in court.

By way of derogation from articles 259bis and 314bis of the Penal Code, the knowledge and recording of electronic communications and traffic data, which are intended solely to control the quality of service in call centres are authorised, provided that the persons who work in the call centre are informed in advance and, without prejudice to the application of the law of 8 December 1992 relating to the protection of privacy, the possibility of becoming aware and recording, of the precise purpose of this operation and the storage period of the communication and the stored data. This data can be kept for a maximum of one month.

[235] **Art. 128. Loi relative aux communications électroniques**
Sans préjudice de l'application de la loi du 8 décembre 1992 relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel, l'enregistrement d'une communication électronique et des données relatives au trafic qui s'y rapportent réalisées dans les transactions commerciales licites comme preuve d'une transaction commerciale ou d'une autre communication professionnelle, est autorisé à condition que les parties impliquées dans la communication soient informées de l'enregistrement, des objectifs précis de ce dernier et de la durée de stockage de l'enregistrement, avant l'enregistrement.
Les données visées au présent article sont effacées au plus tard à la fin de la période pendant laquelle la transaction peut être contestée en justice.
Par dérogation aux articles 259bis et 314bis du Code pénal, la prise de connaissance et l'enregistrement de communications électroniques et des données de trafic, qui visent uniquement à contrôler la qualité du service dans les call centers sont autorisés, à condition que les personnes qui travaillent dans le call center soient informées au préalable et, sans préjudice de l'application de la loi du 8 décembre 1992 relative à la protection de la vie privée, de la possibilité de prise de connaissance et d'enregistrement, du but précis de cette opération et de la durée de conservation de la communication et des données enregistrées. Ces données peuvent être conservées maximum un mois.

Article 129[236] The use of electronic communications networks for the storage of information or to access information stored in the terminal equipment of a subscriber or an end user is authorised only on condition that:
1° the subscriber or the end user concerned receives, in accordance with the conditions laid down in the law of 8 December 1992 relating to the protection of privacy and with regard to the processing of personal data, clear and precise information concerning the purposes of the processing and his rights on the basis of the law of 8 December 1992;
2° the data controller gives, prior to the processing, in a clearly readable and unequivocal manner, the possibility to the subscriber or the end user concerned to refuse the planned processing.
Paragraph 1 applies without prejudice to the technical recording of information or access to information stored in the terminal equipment of a subscriber or an end user whose sole purpose is to carry out or facilitate the sending a communication via an electronic communications network or providing an information society service expressly requested by the subscriber.

The absence of refusal within the meaning of the first paragraph or the application of the second paragraph does not exempt the data controller from the obligations of the law of 8 December 1992 relating to the protection of privacy at the with regard to the processing of personal data which is not required by this article.

ff. Para 1(d) Freezing Instrumentalities or Proceeds of Crime, including Assets

26 The investigating judge, who plays a major role in the investigation into fraud offences in Belgium has special powers. He may do the following:

[236] **Art. 129. Loi relative aux communications électroniques**
L'utitisation de réseaux de communications électroniques pour le stockage des informations ou pour accéder aux informations stockées dans les équipements terminaux d'un abonné ou d'un utilisateur final est autorisée uniquement à condition que:
1° l'abonné ou l'utilisateur final concerné reçoive conformément aux conditions fixées dans la loi du 8 décembre 1992 relative à la protection de la vie privée et à l'égard des traitements de données à caractère personnel, des informations claires et précises concernant les objectifs du traitement et ses droits sur la base de la loi du 8 décembre 1992;
2° le responsable du traitement donne, préalablement au traitement, de manière clairement lisible et non équivoque, la possibilité à l'abonné ou à l'utilisateur final concerné de refuser le traitement prévu.
L'alinéa 1er est d'application sans préjudice de l'enregistrement technique des informations ou de l'accès aux informations stockées dans les équipements terminaux d'un abonné ou d'un utilisateur final ayant pour seul but de réaliser ou de faciliter l'envoi d'une communication via un réseau de communications électroniques ou de fournir un service de la société de l'information demandé expressément par l'abonné.
L'absence de refus au sens de l'alinéa 1er ou l'application de l'alinéa 2, n'exempte pas le responsable du traitement des obligations de la loi du 8 décembre 1992 relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel qui ne sont pas imposées par le présent article.

Article 61sexies[237] **(**retrieved from "Act containing various provisions (II) (1) of 27 December 2006/*Wet houdende diverse bepalingen (II) (1)*) **27**

§ 1. The investigating judge who is of the opinion that the attachment of assets should be maintained, you can:

1° allow their alienation by the Central Body to substitute their proceeds;

2° return them to the attached person against payment of a sum of money, the amount of which he determines, in order to substitute this sum of money.

3° order the safekeeping in kind of seized assets in accordance with the means available for this purpose. The investigating judge shall declare his decision provisionally enforceable if a delay could lead to an irreparable disadvantage.

§ 2. Admission to alienation concerns replaceable assets, the value of which can be easily determined and whose safekeeping in kind may lead to depreciation, damage or costs that disproportionate to their value.

§ 3. *The investigating judge shall inform the Public Prosecutor of his decision referred to in § 1 and shall notify it by registered letter or fax to*:

1° the persons dependent on whom and in whose hands the attachment was made, insofar as their addresses are known his and their lawyers;

[237] **Art. 61sexies.**
§ 1. De onderzoeksrechter die
van oordeel is dat het beslag op vermogensbestanddelen dient gehandhaafd te blijven, kan:
1° hun vervreemding door het Centraal Orgaan toelaten, om er hun opbrengst voor in de plaats te stellen;
2° hen teruggeven aan de beslagene tegen betaling van een geldsom waarvan hij het bedrag bepaalt, om er deze geldsom voor in de plaats te stellen.
3° de bewaring in natura van in beslag genomen vermogensbestanddelen bevelen in overeenstemming met de hiertoe beschikbare middelen. De onderzoeksrechter verklaart zijn beschikking uitvoerbaar bij voorraad, wanneer een vertraging kan leiden tot een onherstelbaar nadeel.
§ 2. De toelating tot vervreemding betreft vervangbare vermogensbestanddelen, waarvan de waarde eenvoudig bepaalbaar is en waarvan de bewaring in natura kan leiden tot waardevermindering, schade of kosten die onevenredig zijn met hun waarde.
§ 3. De onderzoeksrechter licht de procureur des Konings in van zijn in § 1 bedoelde beschikking en brengt ze aangetekend of per telefax ter kennis aan:
1° de personen ten laste van wie en in wiens handen het beslag werd gelegd, voorzover hun adressen gekend zijn en hun advocaten;
2° de personen die zich blijkens de gegevens van het dossier uitdrukkelijk hebben kenbaar gemaakt als zijnde geschaad door de onderzoekshandeling en hun advocaten;
3° in geval van onroerend beslag, de schuldeisers die overeenkomstig de hypothecaire staat bekend zijn en hun advocaten. De kennisgeving bevat de tekst van dit artikel. Er dient geen kennisgeving gericht te worden aan de personen die hun instemming hebben gegeven met de betrokken beheersmaatregel of die hebben verzaakt aan hun rechten op de in beslag genomen goederen.
§ 4. De procureur des Konings en de personen aan wie de kennisgeving werd gericht, kunnen zich tot de kamer van inbeschuldigingstelling wenden binnen vijftien dagen vanaf de kennisgeving van de beslissing. Deze termijn wordt verlengd met vijftien dagen indien een van deze personen buiten het Rijk verblijft.
De procedure verloopt overeenkomstig de bepalingen van artikel 61quater, § 5, tweede tot achtste lid.
§ 5. In geval van vervreemding, stelt de onderzoeksrechter de vermogensbestanddelen ter beschikking van het Centraal Orgaan of, op zijn vraag, van de aangeduide lasthebber.
§ 6. Wanneer de beslissing tot vervreemding een onroerend goed betreft, dan gaan door de toewijzing de rechten van de ingeschreven schuldeisers over op de prijs, onder voorbehoud van het strafrechtelijk beslag.

2° the persons who, according to the information in the file, have expressly identified themselves as being harmed by the investigative act and their attorneys;
3° in the event of an attachment of immovable property, the creditors who are known in accordance with the mortgage record and their lawyers. The notice contains the text of this article. No notice should be sent to the persons who have given their consent to the control measure concerned or who have waived their rights over the seized goods.
§ 4. The Public Prosecutor and the persons to whom the notification was addressed may apply to the indictment chamber within fifteen days of the notification of the decision. This period is extended by fifteen days if one of these persons resides outside the State. The procedure is carried out in accordance with the provisions of Article 61quater, § 5, second to eighth paragraph.
§ 5. In the event of alienation, the examining magistrate makes the assets available to the Central Body or, at his request, to the designated agent.
§ 6. If the decision to dispose of property concerns immovable property, the rights of the registered creditors to the prize, subject to criminal attachment.

gg. Para 1(e) Interception of Electronic Communications to and from the Suspect or Accused Person

28

[Excerpt CPC]

§ 4. Written Evidence, Convincing Documents and Traction and Location of Telecommunications

Article 87 See above under Article 30 para 1 (a) → Search Any Premises or Land

Article 88 See above under Article 30 para 1 (a) → Search Any Premises or Land

Article 88bis. See above under Article 30 para 1 (c) → General Provisions in the CPC.

hh. Para 1(f) Tracking & Tracing an Object

29 But **Art. 40bis CPC** enables the EDPs to request a measure that is equal to the wording of Art. 30 para 1(f) EPPO. **Art. 47sexies** and **Art. 47octies CPC** apply as well, but they face some restrictions (see Art. 30 para 2).

30 And see:

Subsection 3. Observation. Article 47sexies[238] § 1. Observation within the meaning of this Code is the systematic observation by a police officer of one or more persons, their presence or behaviour, or of certain things, places or events.

[238] Onderafdeling 3. Observatie.

A systematic observation within the meaning of this Code is an observation of more than five consecutive days or of more than five non-consecutive days spread over a period of one month, an observation involving the use of technical aids, an observation of an international character, or an observation carried out by the specialised units of the federal police.

Art. 47sexies. § 1. Observatie in de zin van dit wetboek is het stelselmatig waarnemen door een politieambtenaar van één of meerdere personen, hun aanwezigheid of gedrag, of van bepaalde zaken, plaatsen of gebeurtenissen.
Een stelselmatige observatie in de zin van dit wetboek is een observatie van meer dan vijf opeenvolgende dagen of van meer dan vijf niet-opeenvolgende dagen gespreid over een periode van een maand, een observatie waarbij technische hulpmiddelen worden aangewend, een observatie met een internationaal karakter, of een observatie uitgevoerd door de gespecialiseerde eenheden van de federale politie.
Een technisch hulpmiddel in de zin van dit wetboek is een configuratie van componenten die signalen detecteert, deze transporteert, hun registratie activeert en de signalen registreert, met uitzondering van de technische middelen die worden aangewend om een maatregel als bedoeld in artikel 90ter uit te voeren. (Een toestel gebruikt voor het nemen van foto's wordt uitsluitend beschouwd als een technisch hulpmiddel in de zin van dit Wetboek in het geval bedoeld in artikel 56bis, tweede lid.)
§ 2. De procureur des Konings kan in het kader van het opsporingsonderzoek een observatie machtigen wanneer het onderzoek zulks vereist en de overige middelen van onderzoek niet lijken te volstaan om de waarheid aan de dag te brengen. Een observatie met gebruik van technische hulpmiddelen kan enkel gemachtigd worden wanneer er ernstige aanwijzingen zijn dat de strafbare feiten een correctionele hoofdgevangenisstraf van een jaar of een zwaardere straf tot gevolg kunnen hebben.
§ 3. De machtiging tot observatie is schriftelijk en vermeldt:
1° de ernstige aanwijzingen van het strafbaar feit die de observatie wettigen, of, indien de observatie zich situeert in het proactieve onderzoek zoals omschreven in artikel 28bis, § 2, het redelijk vermoeden van te plegen of reeds gepleegde maar nog niet aan het licht gebrachte strafbare feiten, en de bijzondere aanwijzingen met
betrekking tot de elementen omschreven in deze laatste bepaling, die de observatie wettigen; 2° de redenen waarom de observatie onontbeerlijk is om de waarheid aan de dag te brengen; 3° de naam of indien die niet bekend is, een zo nauwkeurig mogelijke beschrijving van de geobserveerde persoon of personen, alsmede van de zaken, plaatsen of gebeurtenissen bedoeld in § 1;
4° de wijze waarop aan de observatie uitvoering zal worden gegeven, daaronder begrepen de toelating tot het gebruik van technische hulpmiddelen in de gevallen bepaald bij § 2, tweede lid, en artikel 56bis, tweede lid. In dit laatste geval vermeldt de machtiging van de onderzoeksrechter het adres of een zo nauwkeurig mogelijke plaatsbepaling van de woning waarop de observatie betrekking heeft;
5° de periode tijdens welke de observatie kan worden uitgevoerd en die niet langer mag zijn dan drie maanden te rekenen van de datum van de machtiging;
6° de naam en de hoedanigheid van de officier van gerechtelijke politie, die de leiding heeft over de uitvoering van de observatie.
§ 4. (De procureur des Konings vermeldt op dat ogenblik in een afzonderlijke en schriftelijke beslissing de misdrijven die door de politiediensten en de personen bedoeld in artikel 47quinquies, § 2, derde lid, in het kader van de observatie kunnen worden gepleegd. Deze beslissing wordt in het dossier bedoeld in artikel 47septies, § 1, tweede lid, bewaard.)
§ 5. In spoedeisende gevallen kan de machtiging tot observatie mondeling worden verstrekt. De machtiging moet zo spoedig mogelijk worden bevestigd in de vorm bepaald in paragraaf 3.
§ 6. De procureur des Konings kan steeds op gemotiveerde wijze zijn machtiging tot observatie wijzigen, aanvullen of verlengen. Hij kan te allen tijde zijn machtiging intrekken. Hij gaat bij elke wijziging, aanvulling of verlenging van zijn machtiging na of de voorwaarden bepaald in §§ 1 tot 3, zijn vervuld en handelt daarbij overeenkomstig § 3, 1° tot 6°.
§ 7. De procureur des Konings staat in voor de tenuitvoerlegging van de machtigingen tot observatie die zijn verleend door de onderzoeksrechter in het kader van een gerechtelijk onderzoek overeenkomstig artikel 56bis. (De procureur des Konings vermeldt op dat ogenblik in een afzonderlijke en schriftelijke beslissing de misdrijven die door de politiediensten en de personen bedoeld in artikel 47quinquies, § 2, derde lid, in het kader van de door de onderzoeksrechter bevolen observatie kunnen worden gepleegd. Deze beslissing wordt in het dossier bedoeld in artikel 47septies, § 1, tweede lid, bewaard.).

A technical device within the meaning of this Code is a configuration of components that detect signals, transport them, activate their registration and register the signals, with the exception of the technical means used to implement a measure as referred to in Article 90ter. (A device used for taking pictures is exclusively considered a technical aid within the meaning of this Code in the case referred to in Article 56bis, second paragraph.)
§ 2. The Public Prosecutor may authorise an observation in the context of the criminal investigation if the investigation so requires and the other means of investigation do not appear to be sufficient to reveal the truth. An observation using technical aids can only be authorised if there are serious indications that the offences could result in a correctional main prison sentence of one year or a more severe sentence.
§ 3. The authorisation to observe is in writing and states:
1° the serious indications of the criminal offence that justify the observation, or, if the observation is situated in the proactive investigation as described in Article 28bis, § 2, the reasonable suspicion of having committed or already committed but not yet committed criminal offences brought to light, and the special indications with
with regard to the elements described in this last provision, which legitimize the observation; 2° the reasons why the observation is indispensable to reveal the truth; 3° the name or, if unknown, a description as accurate as possible of the person or persons being observed, as well as of the things, places or events referred to in § 1;
4° the manner in which the observation will be carried out, including the authorisation to use technical aids in the cases specified in § 2, second paragraph, and Article 56bis, second paragraph. In the latter case, the authorisation of the examining magistrate states the address or the most accurate location possible of the home to which the observation relates;
5° the period during which the observation can be carried out and which may not exceed three months from the date of the authorisation;
6° the name and capacity of the judicial police officer who is in charge of carrying out the observation.
§ 4. At that time, the Public Prosecutor shall state in a separate and written decision the crimes that can be committed by the police services and the persons referred to in Article 47quinquies, § 2, third paragraph, in the context of the observation. This decision is kept in the file referred to in Article 47septies, § 1, second paragraph.
§ 5. In urgent cases, the authorisation to observe can be granted orally. The authorisation must be confirmed as soon as possible in the form specified in paragraph 3.
§ 6. The Public Prosecutor can always change, supplement or extend his authorisation for observation in a motivated manner. He can revoke his authorisation at any time. He checks with every amendment, supplement or extension of his authorisation whether the conditions laid down in §§ 1 to 3 have been met, acting in accordance with § 3, 1° to 6°.

§ 7. The Public Prosecutor is responsible for the execution of the observation authorisations granted by the investigating judge in the context of a judicial investigation in accordance with Article 56bis. At that time, the public prosecutor will state in a separate and written decision the crimes that can be committed by the police services and the persons referred to in Article 47quinquies, § 2, third paragraph, in the context of the observation ordered by the investigating judge. This decision is kept in the file referred to in Article 47septies, § 1, second paragraph.

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

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 restrictions (see → e.g. Art. 56 CPC) are enshrined in the procedural norms itself. They concentrate mainly on the protection of information that are presented by a lawyer (avocat, see → Art. 29 above for LLP considerations). 31

d) Para 3: Conditions and Thresholds for Investigation Measures

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.***

aa. Conditions and Limitations for Investigation Measures of para 1(c), (e) and (f)

The measures from the Belgian CPC, which are enumerated and translated above contain conditions and limitations e.g. to certain offences or they require the presence of the person concerned or that the lawyer of the suspect is informed. The main investigation measures in this regard are Art. 88 and 90ter CPC (see above). **32**

bb. Serious Offences Limitation for Offences of para 1(e) and (f)

The Belgian Legislator and the Government produced an enumeration list, which clearly indicates for which offences the EDPs might request the most intrusive investigation measures according to Art. 30 EPPO Regulation. This list may change in the future as **33**

an amendment of the EPPO Regulation is already discussed at the highest political level. Here follows the list translated and taken from the Notification:

34

"***A. List of exceptions to the investigative measures referred to in Article 30 e) and f).***
e) interception of electronic communications to and from the suspected or accused person, using any electronic means of communication used by the suspect or accused person; Article 90ter of the Code of Criminal Procedure limits the measure to the following criminal:
facts:
1° Articles 101 to 110 of the Criminal Code;
2° Articles 136bis, 136ter, 136quater, 136sexies and 136septies of the same Code and article
41 of the law of 29 March 2004 on cooperation with the International
Criminal Court and International Criminal Tribunals;
3° Book II, title Iter, of the same Code;
4° Article 147 of the same Code;
5° Articles 160, 161, 162, 163, 168, 171, 173 and 176 of the same Code;
6° Articles 180 and 186 of the same Code;
7° Article 210bis of the same Code;
8° Articles 246, 247, 248, 249, and 250 of the same Code;
9° Article 259bis of the same Code;
10° Article 314bis of the same Code;
11° Articles 324bis and 324ter of the same Code;
12° Articles 327, 328, 329 and 330 of the same Code, insofar as a complaint has been lodged;
13° Article 331bis of the same Code;
14° Article 347bis of the same Code;
15° Articles 372 to 377bis of the same Code;
16° Article 377quater of the same Code;
17° Articles 379, 380 and 383bis, §§ 1 and 3, of the same Code;
18° Article 393 of the same Code;
19° Articles 394 and 397 of the same Code;
20° Articles 428 and 429 of the same Code;
21° Article 433bis/1 of the same Code;
22° Articles 433quinquies to 433octies of the same Code;
22/1°. Articles 433novies/2 to 433novies/10 of the same Code;
23° Article 434 of the same Code;
24° Articles 468, 470, 471 and 472 of the same Code;
25° Article 475 of the same Code;
26° Book II, Title IX, Chapter I, Section 2bis, and Chapter Ibis of the same Code;

27° Articles 504bis and 504ter of the same Code;
28° Article 504quater of the same Code;
29° Article 505, first paragraph, 1° of the same Code when the matters concerned were taken, misappropriated or obtained by any crime or misdemeanour mentioned in that article;
30° Article 505, first paragraph, 2°, 3° and 4° of the same Code;
31° Articles 510, 511, first paragraph and 516 of the same Code;
32° Article 520 of the same Code, if the circumstances referred to in Articles 510 or 511, paragraph 1, of the same Code are united;
33° Articles 550bis and 550ter of the same Code;
34° Article 2bis of the Law of 24 February 1921 on the trading of toxic substances, hypnotics and narcotics, psychotropic substances, disinfectants and antiseptics and 41 of the substances that can be used for the illicit manufacture of narcotics and psychotropic substances;
35° the law of 28 May 1956 on explosive substances and substances susceptible to deflagration and mixtures and the vehicles loaded therewith;
36° Article 1 of the Royal Decree of 12 April 1974 concerning certain transactions in associated with substances with hormonal, anti-hormonal, anabolic, anti-infective, anti-parasitic, and anti-inflammatory effect, which Article relates to offences to which according to the law of 24 February 1921 regarding the trading of poisons, sleeping pills and narcotics, disinfectants and antiseptics are punished;
37° Articles 77bis to 77quinquies of the Law of 15 December 1980 on access to the territory, residence, settlement and removal of aliens;
38° Article 10, § 1, 2°, of the Law of 15 July 1985 on the use in animals of substances containing hormonal, anti-hormonal, beta-adrenergic or production-stimulating activity;
39° Article 10 of the Law of 5 August 1991 on the import, export and transit of arms, ammunition and special military equipment and related technology;
40° Article 145, § 3 and § 3bis, of the law of 13 June 2005 on electronic communication;
41° Articles 8 to 11, 14, 16, 19, 1°, 2°, 3°, 5° and 6°, 20, 22, 27 and 33 of the law of 8 June 2006 regulating economic and individual activities involving weapons, including 'Weapons Act' named;
42° Articles 21 to 26 of the Cooperation Agreement of 2 March 2007 between the Federal State, the Flemish Region, the Walloon Region and the Brussels-Capital Region regarding the implementation of the agreement prohibiting the development, production, construction of stockpiles and use of chemical weapons and on their destruction in Paris on January 13, 1993;
43° Article 47 of the Flemish Parliament Decree of 15 June 2012 on the in-, out-, transit and transfer of defence-related products, other for military use equipment, law enforcement equipment, civilian firearms, parts and ammunition;

44° Article 20 of the Decree of the Walloon Region of 21 June 2012 on the import, export, transit and transfer of civilian weapons and defence-related products;
45° Article 42 of the Ordinance of the Brussels-Capital Region of 20 June 2013 concerning the import, export, transit and transfer of defence-related products, other military use equipment, law enforcement equipment, civilian firearms, parts, its accessories and ammunition."[239]

cc. Notifications According to the Last Sentence of para 3

35 The Notification has been received by the EPPO in 2021 and can be retrieved above → Sources of law.

e) Para 4: Any Other Measure(s) in the EDP's Member State

36 *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.*

37 Art. 46sexies CPC offers the possibility to conduct an investigation online including a false identity i.e. a pseudonym.

38 **Article 46sexies**[240] § 1. In investigating the crimes and misdemeanours, when the investigation so requires and the other means of inquiry do not appear to be sufficient to reveal the truth, the public prosecutor authorise the police services referred to in the second paragraph to use the internet, if necessary under a fictitious identity, to maintain contact with one or more persons of whom there are serious indications are that they are offences punishable by a correctional principal prison sentence of one year or one result in, commit or would commit a more severe punishment. […]

[239] See Belgian Notification, https://www.eppo.europa.eu/sites/default/files/2021-11/04-BE_0.pdf (accessed 4 June 2024), pp. 40 et seq.
[240] **Art. 46sexies.** § 1. Bij het opsporen van de misdaden en wanbedrijven, wanneer het onderzoek zulks vereist en de overige middelen van onderzoek niet lijken te volstaan om de waarheid aan de dag te brengen, kan de procureur des Konings de politiediensten bedoeld in het tweede lid machtigen om op het internet, desgevallend onder een fictieve identiteit, contact te onderhouden met een of meerdere personen waarvan er ernstige aanwijzingen zijn dat zij strafbare feiten die een correctionele hoofdgevangenisstraf van een jaar of een zwaardere straf tot gevolg kunnen hebben, plegen of zouden plegen. De Koning bepaalt de voorwaarden, onder meer voor wat de opleiding betreft, en de nadere regels voor de aanwijzing van de politiediensten die bevoegd zijn om de maatregel, bedoeld in dit artikel, ten uitvoer te leggen.

Section III. The special detection methods.
Definition of terms.
Article 47ter § 1. (The special investigative methods are *observation, the infiltration, the civilian infiltration and the informant operation*.
These methods are used by the police services designated by the Minister of Justice in the context of a criminal investigation or a judicial investigation, under the control of the Public Prosecution Service and without prejudice to Articles 28bis, §§ 1 and 2, 55 and 56, § 1, and 56bis, for the purpose of prosecuting perpetrators of crimes, tracing, collecting, recording and processing data and intelligence on the basis of serious indications of committing or already committed criminal offences, whether revealed or not.
Under the same conditions as those that apply to observation, infiltration and informing, these methods can also be used in the context of the execution of sentences or deprivation of liberty measures, if the person has abstained from carrying them out.)
§ 2. The Public Prosecutor is responsible for permanent control over the application of the special investigative methods by the police services within his judicial district. The public prosecutor informs the federal prosecutor of the special investigative methods used in his judicial district.
In the event that the application of the special investigative methods extends over several judicial districts or falls within the competence of the federal prosecutor, the competent public prosecutors and the federal prosecutor inform each other without delay and take all necessary measures to ensure the proper conduct of the proceedings. to ensure the operation.
Within each decentralized judicial (directorate), as referred to in Article 105 of the Act of 7 December 1998 organizing an integrated police service structured on two levels, an officer is charged with permanent control over the special investigative methods in the district. This officer is appointed by the Director-General of the General Directorate of the Judicial Police and of the Federal Police, on the recommendation of the Judicial Director and after advice from the Public Prosecutor. He may be assisted by one or more officers who are appointed according to the same procedure.
[NOTE: by judgment no. 105/2007 of 19-07-2007 (B.St. 13-08-2007, p. 42941-42954), the Constitutional Court Article 47ter, § 1, third paragraph, annulled]

Article 47decies [Acting of an Informant]
Nota bene: The Belgium Notification enumerates more measures that are particularly important for Belgium.

39 **Law on the preceding title of the Code of Criminal Procedure of April 17 1878**
Rules on prosecution and jurisdiction in special cases:

Article 7 [Belgian or person with primary residence in the Kingdom who is outside the territory of another state]

Article 10quater [offender may be prosecuted in Belgium if he is guilty outside the territory of the Kingdom**]**

Article 21 [statute of limitations]

f) Para 5: National Procedures and national modalities for taking investigative measures

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.***

40 Generally speaking, the execution of the measures results from the legal texts mentioned above, which comprehensively describe whether the EDP can act alone or whether he must have a measure approved by the investigating judge. Above all, it is important that the measures remain within the limits of what is legally permissible, as otherwise they run the risk of producing inadmissible evidence, which in the end minimizes the change to an indictment by the EPPO.

2. Article 31 Cross-border investigations

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b) Para 2: Assignment of Measures by a Handling EDP to an Assisting EDP in Another Foreign MS 235
aa. Availability of Measures to the EDP in Belgium 235
bb. Justification and adoption of such measures governed by the law of the MS' of the handling EDP 235
c) Para 3: Judicial Authorisation for the Measure Required under the Law of the Member State of the Assisting European Delegated Prosecutor 236
d) Para 8: Decision by the Chamber Concerning the Execution of an Assigned Measure Needed, or a Substitute Measure by the Assisting EDP 236

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.

a) Overview of General National Codes and Provisions

1 First of all, the handling EDP from Belgium will need to determine the Member State that relates to his/her investigations. Potentially this might be any Member State that is part of the EU and opted-in to the enhanced cooperation. The Dutch EDP will need to identify the investigation measure (pls. refer to the other volumes of this series online and pls. refer to Art. 32 of the Belgian volume → 3. for a comprehensive, comparative table of investigations measures including information on the obtainment of judicial authorisations in all participating and non-participating Member States).

I. Determine the Member State, where the investigation measure needs to be carried out
II. Identify the measures by virtue of Art. 31 para 2 (all measures by virtue of Art. 30 EPPO Regulation)
III. Contact the regional EDP office (* information in the EPPO Case Management System and available to the general public on the Website of the EPPO)
IV. Officially assign the relevant measure
V. Adjust the follow-up and obey Art. 31 para 3-8 EPPO Regulation

Applicable codes: **2**

Wetboek van Strafordering/CPC
Wetboek van Strafrecht/Criminal Code of Belgium

b) Para 2: Assignment of Measures by a Handling EDP to an Assisting EDP in Another Foreign MS

In the cases of Art. 31 para 1, para 3 s. 3 EPPO Regulation all provision that were mentioned in Art. 30 EPPO Regulation above shall apply. **3**

aa. Availability of Measures to the EDP in Belgium

If the measure is available under the law of the present Member State depends on the general rules on investigation measures in the CPC of the Member State of the handling EDP. **4**

In order not to have to repeat the regulations here verbatim and in translation (space economy), only the relevant articles or numbers and the respective law (sometimes there are provisions in the Customs or Tax Act). **5**

bb. Justification and adoption of such measures governed by the law of the MS' of the handling EDP

Sources & national sections 1: Art. 31 EPPO Regulation – Overview for Belgium **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 below Art. 30. See above → Belgian CPC Art. 30 EPPO Regulation.
Art. 30 para 1 (a)	e.g. Article 46quinquies § 1; Search Any Computer
Art. 30 para 1 (b)	System Article 88ter, 88quater, 89ter
Art. 30 para 1 (c)	Para 1(b) Article 28novies, 39ter, 39quinquies, 88bis
Art. 30 para 1 (d)	General Law on Customs and Excise Article 319bis

Art. 30 para 1 (e)	Law on Electronic Communications
Art. 30 para 1 (f)	Para 1(f) Art. 40bis CPC

c) Para 3: Judicial Authorisation for the Measure Required under the Law of the Member State of the Assisting European Delegated Prosecutor

7 In the case that judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor it must be obtained by the assisting i.e. not the EDP from the Member State that assigned the measure from his home Member State but the EDP that resides elsewhere and is not conducting or carrying out the investigation as his/her investigation.

8 If the handling EDP looks for information about the question if judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, he/she may refer to the other volumes of this compendium and consult Art. 30 EPPO Regulation in the relevant chapter or take a closer look at Part B, where a comparative overview summarizes these situations.

d) Para 8: Decision by the Chamber Concerning the Execution of an Assigned Measure Needed, or a Substitute Measure by the Assisting EDP

9 The national law that is concerned in relation to the situation of Art. 31 para 8 EPPO Regulation is the national procedural law, which governs the investigation measures by virtue of Art. 30 EPPO Regulation of the law of the handling or of the law of the assisting EDP.

3. Article 32 Enforcement of assigned measures

3. Article 32 Enforcement of assigned measures 237
a) Accordance-Clause: Assigned Measures According to para 2 of Art. 31 237
c) National Formalities and Procedures Expressly Indicated by the Handling European Delegated Prosecutor 252

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. [National] 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) Accordance-Clause: Assigned Measures According to para 2 of Art. 31

The accordance-clause requires the handling EDP to question the assisting EDP if he/she can carry out the assigned measures (see → Art. 31 para 2 EPPO Regulation) a) in accordance with this Regulation and b) in accordance with the law of the Member State of the assisting EDP. The following table indicates in an abstract style, where to locate the law of the assisting Member State. **1**

Sources & national sections 2: Art. 32 EPPO Regulation – Overview for the Belgium **2**

Country of origin of the assisting/or several assisting MS		
	"the law of the Member State of the assisting European Delegated Prosecutor."	Art. 30 para 1 (a) Art. 30 para 1 (b) Art. 30 para 1 (c) Art. 30 para 1 (d) Art. 30 para 1 (e) Art. 30 para 1 (f)
AT *see Art. 30 EPPO*	Strafprozess-ordnung (ÖStPO)	**Art. 30 para 1 (a)** ss. 93 para 2, 111 and 111 in combination with 119 et seq., 119, 120–122 StPO.**Art. 30 para 1 (b)**

Regulation in the CNP volume		ss. 110, 111, 115, 122, 135 para 1, 144, 157 CPC (see above Para 1(b) Obtainment of the Production of Any Relevant Object or Document Either in its Original Form or in Some Other Specified Form). **Art. 30 para 1 (c)** ss. 76a, 110, 111, 112, 113, 114, 115 CPC, 135 para 2 CPC **Art. 30 para 1 (d)** ss. 110, 115, 122 CPC (see above Para 1(d) Freezing Instrumentalities or Proceeds of Crime, including Assets) **Art. 30 para 1 (e)** ss. 135 para 3 CPC, s. 135a was recently declared unconstitutional![241] **Art. 30 para 1 (f)** Art. 30 para 1 f: ss. 130, 135 para 2 et seq. CPC
BG *see Art. 30 EPPO Regulation in the CNP volume*	Nakazatelno protsesualen kodeks	**Art. 30 para 1 (a)** Art. 159 et seq., 164 **Art. 30 para 1 (b)** Art. 159 et seq. CPC **Art. 30 para 1 (c) -** **Art. 30 para 1 (d)** Law on Administrative Offences and Penalties; **Art. 30 para 1 (e)** Art. 165, 172 CPC **Art. 30 para 1 (f)** Art. 165, 172 CPC
BE *see Art. 30 EPPO Regulation in the CNP volume*	Code d'Instruction Criminelle	**Art. 30 para 1 (a)** Art. 62 (Art. 56), Art. 90*coties* search on premises of professionals e.g. lawyers (*juge d'instruction* Art.90*octies* s. 3) **Art. 30 para 1 (b)** Art. 35, 35bis (immovable property) s, 35*ter* (seizure of substitutes), 36, 37, 38, 39*bis* (computers) CPC. **Art. 30 para 1 (c) /** **Art. 30 para 1 (d) /** **Art. 30 para 1 (e)** Art. 39bis, 46bis, but mainly Art. 90ter **Art. 30 para 1 (f)** Art. 46sexies (*juge d'instruction* = Art. 46sexies ss. 3, 5 CPC
CY *see Art. 30 EPPO*	Ο περί Ποινικής Δικονομίας	**Art. 30 para 1 (a)** ss. 11 (for an arrest), 25 CPC (search without a warrant), 26 CPC (Power for means of transport research)

[241] See Eurojust, Cybercrime Judicial Monitor (CJM), N°6, 2021, online https://www.eurojust.europa.eu/sites/default/files/Documents/pdf/cybercrime_judicial_monitor_issue_6_2021.pdf, p. 9 et seq.

Regulation in the CNP volume	Νόμος (ΚΕΦ.155)	**Art. 30 para 1 (b)** s. 33 CPC **Art. 30 para 1 (e)** see 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 (92 (I) / 1996)[242]/ see as well Law on the Regulation of Electronic Communications and Postal Services **Art. 30 para 1 (f)**
CZ *see Art. 30 EPPO Regulation in the CNP volume*	Zákon č. 141/1961 Sb. Zákon o trestním řízení soudním (trestní řád)	**Art. 30 para 1 (a)** mainly ss. 82, 83 but see as well 112, 113, 114, 115 CPC **Art. 30 para 1 (b)** ss. 77b para 3, 78 (obligation to submit things with evidential value), 79, 79a[243] (Securing crime tools and proceeds of crime), 79b CPC **Art. 30 para 1 (c)** ss. 5 et seq. AML Act, s. 78 CPC, s. 88, 88a, CPC, 158d CPC, s. 97 (3) of Act No 127/2005 Coll. on Electronic Communication **Art. 30 para 1 (d)** ss. 8, 78 et seq.; 82 et seq. CPC in combination with Art. 496 Civil Code **Art. 30 para 1 (e)** s. 88 CPC **Art. 30 para 1 (f)** s. 113 CPC
DE *see Art. 30 EPPO Regulation in the CNP volume*	Deutsche Strafprozessordnung	**Art. 30 para 1 (a)** ss. 102–10, 110 CPC **Art. 30 para 1 (b)** Chapter 8 CPC, ss. 94, 97 (Prohibition), 111c, s. 443 CPC **Art. 30 para 1 (c)** ss. 94–98, 99, 100, 108 CPC **Art. 30 para 1 (d)** ss. 73 et seq. CC; 111b CPC; Law on the reform of criminal asset confiscation

[242] Ο περί Προστασίας του Απόρρητου της Ιδιωτικής Επικοινωνίας (Παρακολούθηση Συνδιαλέξεων και Πρόσβαση σε Καταγεγραμμένο Περιεχόμενο Ιδιωτικής Επικοινωνίας) Νόμος του 1996 (92(I)/1996).

[243] § 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, která byla zajištěna, nakládá tak, že hrozí zmaření nebo ztížení účelu zajištění, mu tuto skutečnost neprodleně oznámily. [...]

		Art. 30 para 1 (e) s. 100a° CPC, 100g CPC, 111k CPC **Art. 30 para 1 (f)** ss. 98a–e CPC, ss. 100g CPC, 100i CPC, ss. 161, 163, 163e, f CPC, para 4: ss. 95a StPO-E, 100c Residential surveillance, 100f acoustic surveillance outside the apartment according to § 100f, 110a the use of undercover investigators according to § 110a, source telephone surveillance, ss. 100a paragraph 1 sentences 1 to 3, paragraph 5, 100e StPO (telecommunications using laptops, PCs or IP telephony)
DK *see Art. 30 EPPO Regulation in the CNP volume*	Retsplejeloven Lov om rettens pleje	**Art. 30 para 1 (a)** *****opted out of AFSJ, mutual assistance = 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." **Art. 30 para 1 (b)** 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. **Art. 30 para 1 (c)** See Tax Control Act/ *Skattekontrollov*; Money Laundering Act. **Art. 30 para 1 (d)** ss. 75–77a CC; s. 804 Retspleejeloven and see CIR no 94 of 13/05/1952, Ministry of Justice More information, Circular on the police's management of seized or deposited sums of money or securities/ CIR nr 94 af 13/05/1952, *Cirkulære om politiets forvaltning af beslaglagte eller deponerede pengebeløb eller værdipapirer.* **Art. 30 para 1 (e)** *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*)

		s. 780 et seq. **Art. 30 para 1 (f)** s. 791a Retsplejeloven
EE *see Art. 30 EPPO Regulation in the Manual-Country Chapter.*	Kriminaal-menetluse seadustik	**Art. 30 para 1 (a)** ss. 91, 92, 470 para 5 CPC. **Art. 30 para 1 (b)** 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). **Art. 30 para 1 (c)** s. 142 (2^1) CPC **Art. 30 para 1 (d)** See following Act: "Procedure for transfer, transfer and destruction of confiscated property, return of money from the transfer of property from the budget to the legal owner, accounting and destruction of physical evidence, storage, evaluation and transfer of seized property and assessment, transfer and destruction of quickly perishable physical evidence" **Art. 30 para 1 (e)** ss. 126^1 et seq. CPC **Art. 30 para 1 (f)** s. 126^5. Covert surveillance, covert collection of comparative samples and conduct of initial examinations, covert examination and replacement of things; s. 126^6. Covert examination of postal items s. 126^9. Use of police agents
EL *see Art. 30 EPPO Regulation in the CNP volume*	Νόμος 4620/2019 - ΦΕΚ 96/A/11-6-2019: Κώδικας Ποινικής Δικονομίας	**Art. 30 para 1 (a)** Art. 243 in combination with Art. 253, Art. 256 (night search in a house) CPC **Art. 30 para 1 (b)** Art. 260 (seizure of securities in banks other public or private institutions), Art. 260 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). **Art. 30 para 1 (c)** Art. 258 et seq.; 260 para 2 CPC/ (Law 4619/2019) and see AML legislation Law 4557/2018 **Art. 30 para 1 (d)** Art. 39, 40 AML legislation Law 4557/2018 and Art. 260 CPC **Art. 30 para 1 (e)**

		See 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.* **Art. 30 para 1 (f)** Art. 254 (cover investigation for certain crimes), Art. 254 para 1 c (controlled deliveries for certain crimes), Art. 255 special investigative acts in corruption cases Art. 255 para 1 (cover investigation in order to tackle corruption)
ES[244] *see Art. 30 EPPO Regulation in the CNP volume*	Ley de Enjuiciamiento Criminal	**Art. 30 para 1 (a)** 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 **Art. 30 para 1 (b)** Art. 334, 367bis, 545 et seq. **Art. 30 para 1 (c)** Art. 127 CC **Art. 30 para 1 (d)** Art. 127, 128, 129, 301, 302, 303, 304 CC and AML legislation in combination with the Civil Procedure Code, Art. 367 e t seq. CPC **Art. 30 para 1 (e)** Art. 588 bis et seq., 588ter et seq. CPC and *lex specialis* is provided for in Art. 48 Organic Law 9/2021 **Art. 30 para 1 (f)** Art. 588 bis et seq., 588ter et seq. and lex specialis is provided for in Art. 48 Organic Law 9/2021
FI *see Art. 30 EPPO Regulation in the CNP volume*	Laki oikeudenkäynnistä rikosasioissa 11.7.1997/689	**Art. 30 para 1 (a)** Chapter 8 ss. 1–34 Coercive Measures Act; see ss. 2, 3, 4, 5, 6–14 searches on premises **Art. 30 para 1 (b)** Chapter 2, s. 15 (dangerous objects) Police Act[245]; 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 [Legislation monitored until SDK 178/2022 (published on March 17, 2022)]

[244] See María Luisa Villamarín López, Spanish criminal procedure examined: successes, opportunities and failures in the adaptation to EU requirements, ERA Forum volume 23, 2022, 127–139.
[245] See *Poliisilaki 22.7.2011/872*, cf. https://www.finlex.fi/fi/laki/ajantasa/2011/20110872#L2P3

		Art. 30 para 1 (c) Section 23 of Chapter 8 Coercive Measures Act **Art. 30 para 1 (d)** Chapter 10, ss. 2 et seq. CC[246] **Art. 30 para 1 (e)** Chapter 5, s. 1 et seq., Chapter 6, ss. 6 et seq. Police Act 7/22/2011 / 872[247]; 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 **Art. 30 para 1 (f)** Chapter 5, s. 1 et seq., Chapter 6, ss. 6 et seq., ss. 30, 31, 32 et seq. Police Act[248]; ss. 23, 24, 24, 36 39, 40, 42 (controlled delivery) Law on Crime Prevention in Customs 5/22/2015 / 623[249]; Chapter 10, S. 3 of the Coercive Measures Act Especially ss. 13 "Systematic monitoring and its conditions", s. 15 "Covert access to information and its conditions" Police Act 7/22/2011 / 872
FR *see Art. 30 EPPO Regulation in the CNP volume for the full text.*	Code du procédure pénale	**Art. 30 para 1 (a)** *Depends on the investigatory framework. Pls. see French Chapter.* **Art. 30 para 1 (b)** *Depends on the investigatory framework. Pls. see French Chapter.* **Art. 30 para 1 (c)**Art. L.871-1 of the Internal Security Code Article 230-1 to 230-5 Criminal Code (deciphering) Article 706-102-1 to 706-102-7 Criminal Code **Art. 30 para 1 (d)** *Depends on the investigatory framework. Pls. see French Chapter.* **Art. 30 para 1 (e)** *Depends on the investigatory framework. Pls. see French Chapter.* **Art. 30 para 1 (f)** *Depends on the investigatory framework. Pls. see French Chapter.*

[246] See https://www.finlex.fi/en/laki/kaannokset/1889/en18890039_20150766.pdf.
[247] See *Poliisilaki 22.7.2011/872*, cf. https://www.finlex.fi/fi/laki/ajantasa/2011/20110872#L2P3.
[248] See *Poliisilaki 22.7.2011/872*, cf. https://www.finlex.fi/fi/laki/ajantasa/2011/20110872#L2P3
[249] See *Laki rikostorjunnasta Tullissa 22.5.2015/623*, cf. https://www.finlex.fi/fi/laki/ajantasa/2015/20150623#L3P23.

HU *see Art. 30 EPPO Regulation in the CNP volume*	2017. évi XC. Törvény a büntetőeljárásról	**Art. 30 para 1 (a)** ss. 306, 307, Sec. 820 CPC **Art. 30 para 1 (b)** ss. 306, 307, 820 **Art. 30 para 1 (c)** Art. 308, 309, 324 CPC **Art. 30 para 1 (d)** s. 151 CPC in combination with ss. 72–74 CC of Hungary and see Act LII, of 1994 on judicial enforcement. **Art. 30 para 1 (e)** ss. 261 et seq. Hungary Act XV. 2017. **Art. 30 para 1 (f)**
IT *see Art. 30 EPPO Regulation in the CNP volume*	Codice di Procedura Penale	**Art. 30 para 1 (a)** 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 **Art. 30 para 1 (b)** Art. 262, Art. 316–321 (Chapter 1 and 2) Art. 321 (sequestro preventivo), 368, 253, 252, 254; 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 **Art. 30 para 1 (c)** Art. 240 CC Limitation: Article 51, paragraphs 3-bis and 3-quarter. Art. 30 para 1 (d) CPC EIO may be used, too. **Art. 30 para 1 (e)** Art. 254bis seizure of IT data from IT, telematic and telecommunication service providers Art. 266 – Eligibility limits Art. 266bis – 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; **Art. 30 para 1 (f)** Art. 354, 357 CPC; but cf. as well Art. 9 of Law no. 146 2006 amended Law no. 3 2019; Law 18 February 1992, n. 172, art. 10 Art. 9
LT *see Art. 30 EPPO Regulation in the CNP volume*	Lietuvos Respublikos baudžiamojo proceso kodekso	**Art. 30 para 1 (a)** 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 **Art. 30 para 1 (b)** Art. 17-4 in connection with Art. 133 (security), 134 (seizure of documents), 149 (search and seizure) and in special cases of a pre-trial investigation see Art. 1701 (Powers of the prosecutor to secure the confiscation of property) Lietuvos Respublikos baudžiamojo proceso kodeksas, the Lithuanian and Art. 170 para 5 CPC in pre-trial investigations.

		Art. 30 para 1 (c) Art. 154, 158 CPC **Art. 30 para 1 (d)** Art. 151 CPC in combination with ss. 72–75 CC of Lithuania **Art. 30 para 1 (e)** Art. 154 CPC **Art. 30 para 1 (f)** Art. 159 (covert investigation officer) CPC, Art.160 Covert tracking
LU *see Art. 30 EPPO Regulation in the CNP volume*	Code de procédure pénale	**Art. 30 para 1 (a)** 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." **Art. 30 para 1 (b)** 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 **Art. 30 para 1 (c)** No special provision. **Art. 30 para 1 (d)** Loi du 22 juin 2022 sur la gestion et le recouvrement des avoirs saisis ou confisqués **Art. 30 para 1 (e)** 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 *Nota bene*: all of these provisions are under review as they become more and more outdated with the ongoing "cybercriminalité") 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.) **Art. 30 para 1 (f)** see → CNP volume.

LV *see Art. 30 EPPO Regulation in the CNP volume*	Kriminālprocesa likums	**Art. 30 para 1 (a)** 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. S. 179. Searches, S. 180. Decision on a Search, S. 181. Persons Present at a Search, S. 182. Procedures for Conducting a Search, S. 183. Search of a Person, S. 184. Search in the Premises of Diplomatic or Consular Representative Offices, S. 185. Issuance of a Copy of the Minutes of a Search, S. 186. Removal, s. 188. Removal Procedures **Art. 30 para 1 (b)** ss. 361, S. 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) CPC **Art. 30 para 1 (c) /** **Art. 30 para 1 (d)** ss. 70 CC, ss. 124 CPC **Art. 30 para 1 (e)** Chapter 11 Special Investigative Actions, ss. 215 et seq. CPC but cf. especially ss. 218, 219 **Art. 30 para 1 (f)** Chapter 11 Special Investigative Actions, ss. 217 et seq. CPC, S. 223. Surveillance and Tracking of a Person
MT *see Art. 30 EPPO Regulation in the CNP volume*	SUBSIDIARY LEGISLATION 9.09CRIMINAL PROCEDURE (REGULATION OF REGISTRIES, ARCHIVES AND FUNCTIONS OF DIRECTOR GENERAL (COURTS) AND OTHER COURT EXECUTIVE OFFICERS) REGULATIONS	**Art. 30 para 1 (a) /** see volume Malta. **Art. 30 para 1 (b) /** see volume Malta. **Art. 30 para 1 (c) /** see volume Malta. **Art. 30 para 1 (d) /** see volume Malta. Art. 435B, C Criminal Code of Malta and see mainly CHAPTER 621 of the Laws of Malta: PROCEEDS OF CRIME ACT **Art. 30 para 1 (e) /** see volume Malta. **Art. 30 para 1 (f) /** see volume Malta.

PT *see Art. 30 EPPO Regulation in the CNP volume*	Codigó de Procesal Pénal	**Art. 30 para 1 (a)** ss. 351, 354, 355K, 355L, 355P ("when lawfully on a premise") ss. 351 para 2 in a flagrante delicto situation: "(2) For the purposes of sub-article (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 **Art. 30 para 1 (b)** 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). **Art. 30 para 1 (c)** No special provision in the CPC; Art. 3 See Art. 4 Law No. 5/2002, of January 11 MEASURES TO FIGHT ORGANISED CRIME. **Art. 30 para 1 (d)** See Art. 4 Law No. 5/2002, of January 11 MEASURES TO FIGHT ORGANISED CRIME; Portuguese Securities Market Code. **Art. 30 para 1 (e) -**

		see. ss. 628 para 1 (d) and the newly introduced s. 628E. 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. And last but not least see ss. 6, 7 Security Service Act, Chapter 391 of the Laws of Malta.
RO[250] *see Art. 30 EPPO Regulation in the CNP volume*	Codul de procedură penală al României	**Art. 30 para 1 (a)** 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) **Art. 30 para 1 (b)** Art. 158 para 13 CPC, 168 para 10 CPC; 171 but cf. mainly s. 252, 252^1, 252^2 CPC **Art. 30 para 1 (c)** Article 138 §1 and §3 CPC (access to computer systems), Art. 152 para 1 CPC **Art. 30 para 1 (d)** Art. 270 CC; latest changes by Law no. 228/2020. And see LAW no. 129 of July 11, 2019 for the prevention and combating of money laundering and the financing of terrorism, as well as for the amendment and completion of some normative acts **Art. 30 para 1 (e) /** **Art. 30 para 1 (f)** Art. 138 CPC General dispositions (1) The following are special methods of surveillance or research: a) interception of communications or any type of remote communication; b) access to a computer system; c) video, audio or photography surveillance; d) location or tracking by technical means; e) obtaining data on a person's financial transactions;

[250] See Jderu 2016, 287–297.

		f) detention, delivery or search of postal items; g) the use of undercover investigators and collaborators; h) authorised participation in certain activities; i) supervised delivery; j) obtaining the traffic and location data processed by the providers of public electronic communications networks or the providers of electronic communications services intended for the public.; […] - Article 148 - Use of undercover or real-identity investigators and collaborators - Article 151 Controlled delivery
SI *see Art. 30 EPPO Regulation in the CNP volume*	Zakon o državnem tožilstvu (ZDT-1	**Art. 30 para 1 (a)** Art. 164 but see mainly Art. 214, 215, 216, 217, 218 CPC **Art. 30 para 1 (b)** Art. 148 but see mainly Art. 156 CPC; 220, 221, 222, 222a CPC **Art. 30 para 1 (c) -** **Art. 30 para 1 (d)** Art. 502–502e CPC in combination with Art. 73 et seq. CC **Art. 30 para 1 (e)** Art. 150, 150a150b, 151 Zakon o kazenskem postopku, the Slovenian CPC **Art. 30 para 1 (f) & para 4** Art. 149a para 1 (controlled delivery) CPC
SK *see Art. 30 EPPO Regulation in the CNP volume*	301, ZÁKON z 24. mája 2005 TRESTNÝ PORIADO	**Art. 30 para 1 (a)** ss. 99 et seq., 101, 102, 103, 104, 105 (Inspection and entry into the dwelling, other premises and land) CPC **Art. 30 para 1 (b)** s. 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), S. 1 – Case relevant to criminal proceedings (s. 89), s. 89 – Matter important for criminal proceedings, S. Two - 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, s. 3 – Seizure of criminal instruments and proceeds of crime (ss. 95–98a): s. 95 – Securing funds, ss. 95a, 95b, 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), ss. 97, 98, 98a – Common provisions for securing property, things and other property values **Art. 30 para 1 (c)** ss. 90, 116 §6, 118 CPC **Art. 30 para 1 (d)** The Law 101/2010 Coll. of March 4, 2010 on proving the origin of property applies; Art. 56-60 CC **Art. 30 para 1 (e)** ss. 115–118 Zákon č. 301/2005 Z. z. Trestný poriadok, the Slovakian CPC **Art. 30 para 1 (f) & para 4** s. 111(Controlled delivery) s. 112 (Fake transfers) s. 113 (tracking and tracing people and things) s. 114 (video & audio recordings)

Source: The authors. Own Research and Compilation.

c) National Formalities and Procedures Expressly Indicated by the Handling European Delegated Prosecutor

3 On Belgian territory the standards for formalities and procedures relating to investigative measures enshrined in the Belgian CPC are quite high.

4 The handling EDPs in the regional office of Rotterdam may indicate general provisions from the Belgian Basic Law (*Grondewet*).

5 The concrete formalities and procedures depend on the concerned investigation measures, which cannot be determined completely *in abstracto*. But the main principles can be listed here (not-exhaustive):

- Reasonable suspicion element
- Warrant obtainment
- Right to privacy[251]
- Right to liberty[252]
- Right to a fair investigation including the privilege against self-incrimination (Art. 6 para 2 ECHR), Art. 47quinquies CPC[253]

[251] Article 22 of the Belgian Constitution guarantees the right to privacy. It states that „everyone has the right to the protection of his or her private and family life, except in cases and conditions determined by law."

[252] Article 12 of the Belgian Constitution ensures the right to liberty, emphasizing that no one can be deprived of their freedom without a reason determined by law and through legal procedures. It specifically prohibits arbitrary arrest or detention.

[253] Although the Belgian Constitution does not explicitly mention the privilege against self-incrimination, Article 6 of the ECHR, which is incorporated into Belgian law, covers the right to a fair trial, including the privilege against self-incrimination. Additionally, Article 47quinquies of the CPC addresses specific aspects of fair investigations, particularly procedural guarantees during interrogations and criminal proceedings, aligning with the principles of a fair investigation under Article 6(2) ECHR.

4. Article 33 Pre-trial arrest and cross-border surrender

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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 (3).

a) General Relation to National Law: Applicable Codes

The CPC, the Law on preventive detention, the General Customs and Excise Act apply. **1**

b) Para 1: Provisions for Arrest and Pre-Trial Detention

aa. Arrest

Criminal Procedure Code **2**

Article 28septies[254] The public prosecutor may require the investigating judge to carry out an act of investigation for which only the investigating judge is competent, with the exception of the arrest warrant such as Article 16 of the law of July 20, 1990 relating to preventive detention provides for full anonymous testimony as provided for in Article

[254] **Art. 28septies. Wetboek van Strafvordering**
De procureur des Konings kan de onderzoeksrechter vorderen een onderzoekshandeling te verrichten waarvoor alleen de onderzoeksrechter bevoegd is, met uitzondering van het bevel tot aanhouding bedoeld in artikel 16 van de wet van 20 juli 1990 betreffende de voorlopige hechtenis, de volledig anonieme getuigenis zoals bedoeld in artikel 86bis, de bewakingsmaatregel bedoeld in artikel 90ter, en de onderzoekshandelingen als bedoeld in de artikelen 56bis, tweede lid, en 89ter, zonder dat een gerechtelijk onderzoek wordt ingesteld. Na de uitvoering van de door de onderzoeksrechter verrichte onderzoekshandeling beslist deze of hij het dossier terugzendt aan de procureur des Konings die instaat voor de voortzetting van het opsporingsonderzoek, dan wel of hij het gehele onderzoek zelf voortzet, in welk geval er verder wordt gehandeld overeenkomstig de bepalingen van hoofdstuk VI van dit Boek. Tegen deze beslissing staat geen rechtsmiddel open.
In geval van een nieuwe vordering op grond van het eerste lid in hetzelfde dossier, wordt de zaak aanhangig gemaakt bij dezelfde onderzoeksrechter indien die nog in functie is.

86bis, the surveillance measure as provided for by article 90ter and evidence as provided for in articles 56bis, paragraph 2, and 89ter,] 1without an instruction being opened. After the execution of the act of investigation carried out by the investigating judge, the latter decides whether to send the case back to the public prosecutor who is responsible for pursuing the information or whether, on the contrary, he continues the investigation itself, in which case it is proceeded in accordance with the provisions of Chapter VI of this Book. This decision is not subject to any appeal.
In the event of a new indictment on the basis of the first paragraph in the same file, the same investigating judge is seized of it if he is still in office.] 1

Article 34[255] He will be able to prohibit anyone from leaving the house, or leaving the place until after the closure of his report.
Anyone violating this defence will be, if he can be seized, deposited in the house of arrest: the penalty incurred by the contravention, will be pronounced by the examining magistrate, on the conclusions of the [King's prosecutor], after the offender will have been summoned and heard, or by default if he does not appear, without further formality or delay, and without opposition or appeal.
The penalty may not exceed ten days' imprisonment and a fine of one hundred francs.

Article 40[256] The [King's prosecutor], in the said case of flagrante delicto, and when the fact is likely to lead to a [criminal] penalty, will seize the [accused] present against whom there are serious indications.
If [the accused] is not present, the [King's prosecutor] will issue an order for him to appear: this order is called a "warrant of arrest".
Denunciation alone does not constitute a sufficient presumption to issue this order against an individual having domicile.
The [King's prosecutor] will immediately interrogate [the accused] brought before him.

[255] **Art. 34. Wetboek van Strafvordering**
Hij kan verbieden dat om het even wie het huis verlaat of zich van de plaats verwijdert zolang zijn proces-verbaal niet gesloten is.
Iedere overtreder van dat verbod wordt, indien hij kan worden gevat, naar het huis van arrest gebracht; de op de overtreding gestelde straf wordt door de onderzoeksrechter uitgesproken op de conclusie van de procureur des Konings, nadat de overtreder is gedagvaard en gehoord, of, indien hij niet verschijnt, bij verstek, zonder verdere vormen, zonder termijn en zonder verzet of hoger beroep.
De straf mag tien dagen gevangenisstraf en honderd frank geldboete niet te boven gaan.

[256] **Art. 40. Wetboek van Strafvordering**
In geval van ontdekking op heterdaad, wanneer het feit kan worden gestraft met een criminele straf, doet de procureur des Konings de aanwezige verdachten tegen wie sterke aanwijzingen van schuld bestaan, vatten.
Indien de verdachte niet aanwezig is, geeft de procureur des Konings een bevel om hem te doen verschijnen; dat bevel heet bevel tot medebrenging.
De aangifte alleen levert geen voldoende vermoeden op om dat bevel uit te vaardigen tegen iemand die een woonplaats heeft.
De procureur des Konings ondervraagt dadelijk de vóór hem gebrachte verdachte.

Article 45[257] The [King's prosecutor] will transmit without delay, to the investigating judge, the reports, deeds, documents and instruments drawn up or seized as a result of the preceding articles, to be proceeded as it will be said in the chapter of the Judges of instruction; and yet [the accused] will remain in the hands of justice in a state of arrest warrant.

Subsection II. Of The Instruction

Article 61[258] In the event of a case of flagrante delicto, the investigating judge shall not carry out any act of investigation or prosecution until he has communicated the proceedings to the [King's prosecutor].
Nevertheless, the examining magistrate shall issue, if necessary, the warrant to bring in, [...], without [this warrant] having to be preceded by the conclusions of the [King's prosecutor].

Provisional Freedom and Bail […]

Article 125[259] Without prejudice to prosecutions against the guarantor, if there is reason to do so, the suspect is caught and imprisoned in the house of arrest pursuant to an order of the investigating judge.

Law on Preventive Detention[260] **3**

Title I. Preventive detention.

Chapter I. Arrest

Article 1[261] Arrest in cases of flagrante delicto is subject to the following rules:

[257] **Art. 45. Wetboek van Strafvordering**
De procureur des Konings doet de processen-verbaal, akten, stukken en werktuigen, ingevolge de voorgaande artikelen opgemaakt of in beslag genomen, onverwijld toekomen aan de onderzoeksrechter, opdat zal worden gehandeld zoals bepaald in het hoofdstuk Onderzoeksrechters; intussen blijft de verdachte in handen van het gerecht onder bevel tot medebrenging.

[258] ONDERAFDELING II. HET ONDERZOEK.
§ 1. ALGEMENE BEPALINGEN.
Art. 61. *Wetboek van Strafvordering*
Buiten de gevallen van ontdekking op heterdaad, verricht de onderzoeksrechter geen daad van onderzoek en van vervolging dan na de processtukken aan de procureur des Konings te hebben meegedeeld. (...) <W 1998-03-12/39, art. 11, 016; Inwerkingtreding: 1998-10-02>
De onderzoeksrechter vaardigt evenwel, indien daartoe grond bestaat, het bevel tot medebrenging (...) uit, zonder dat (dit bevel) moet zijn voorafgegaan door de conclusie van de procureur des Konings. <W 1998-03-12/39, art. 11, 016; Inwerkingtreding: 1998-10-02>

[259] **Art. 125. Wetboek van Strafvordering**
Onverminderd de vervolgingen tegen de borg, indien daartoe grond bestaat, wordt de verdachte gevat en in het huis van arrest opgesloten ter uitvoering van een bevel van de onderzoeksrechter.

[260] *Wet betreffende de voorlopige hechtenis.*

[261] **Artikel 1. Wet betreffende de voorlopige hechtenis**
Voor de arrestatie bij op heterdaad ontdekte misdaad of op heterdaad ontdekt wanbedrijf gelden de volgende regels:
1° de vrijheidsbeneming mag in geen geval langer duren dan achtenveertig uren;

1° deprivation of liberty may in no case exceed forty-eight hours;
2° law enforcement officers shall immediately place at the disposal of the judicial police officer any suspected person whose escape they have prevented. The period of forty-eight hours provided for in 1° shall run from the time when the person concerned is no longer free to come and go following the intervention of the law enforcement officer;
3° any private individual who detains a person caught in the act of committing a crime or an offence in flagrante delicto shall immediately report the facts to a law enforcement officer. The period of forty-eight hours provided for in 1° shall run from the time of the report;
4° As soon as the judicial police officer has made an arrest, he shall immediately inform the public prosecutor by the quickest means of communication. He shall carry out the orders given by this magistrate with regard to both the deprivation of liberty and the duties to be performed;
5° if the offence is under investigation, the information provided for in 4° is communicated to the investigating judge;
6° a report of the arrest is drawn up.
This report shall mention:
(a) the precise time of the actual deprivation of liberty, with a detailed indication of the circumstances in which the deprivation of liberty took place
b) the communications made in accordance with 4° and 5°, with an indication of the precise time and the decisions taken by the magistrate.

⚖ A recent case[262] with interest for any EDP involved an **appeal** by the petitioner against a ruling by the **Brussels Court of Appeal**. The petitioner had been placed **under arrest on charges of criminal organization, corruption, and money laundering** on December 10, 2022, but was released under specific conditions in May 2023. Over several instances, the investigating judge extended and modified these conditions. In March 2024, the petitioner sought to have these

2° de agenten van de openbare macht stellen de verdachte van wie zij de vlucht hebben verhinderd, onmiddellijk ter beschikking van de officier van gerechtelijke politie. De termijn van achtenveertig uren waarvan sprake is in het 1°, gaat in op het ogenblik dat de verdachte, ten gevolge van het optreden van de agent van de openbare macht, niet meer beschikt over de vrijheid van komen en gaan;
3° iedere particulier die iemand vasthoudt die bij een misdaad of wanbedrijf op heterdaad betrapt werd, geeft de feiten onverwijld aan bij een agent van de openbare macht. De termijn van achtenveertig uren waarvan sprake is in het 1°, gaat in op het ogenblik dat die aangifte wordt gedaan;
4° zodra de officier van gerechtelijke politie tot arrestatie is overgegaan, deelt hij dit onverwijld mee aan de procureur des Konings door middel van de snelste communicatiemiddelen. Hij voert de bevelen van deze magistraat uit, zowel wat de vrijheidsbeneming als wat de uit te voeren plichten betreft;
5° indien het misdrijf het voorwerp uitmaakt van een gerechtelijk onderzoek, wordt de in het 4° bedoelde mededeling gedaan aan de onderzoeksrechter;
6° van de aanhouding wordt proces-verbaal opgemaakt.
Dit proces-verbaal vermeldt:
a) het juiste uur van de effectieve vrijheidsbeneming, met nauwkeurige opgave van de omstandigheden waarin de vrijheidsbeneming tot stand gekomen is;
b) de mededelingen gedaan overeenkomstig het 4° en het 5°, met opgave van het juiste uur en van de beslissingen genomen door de magistraat.

[262] Cour de cassation - 05 juin 2024 - P.24.0803.F, ECLI:BE:CASS:2024:CONC.20240605.2F.8.

conditions removed or changed, but the court declared his request moot due to a new decision modifying the conditions. The main legal question was whether the court could declare the petitioner's request moot based on the latest extension/modification, or if the petitioner still had a **right to challenge the conditions**. The Court of Appeal incorrectly ruled that the petitioner's request had become irrelevant because the conditions had been extended or changed. **Article 36 of the 1990 Law on Preventive Detention** requires courts to review requests to modify or remove conditions.

Article 2[263] Except in cases of flagrante delicto, a person in respect of whom there is serious evidence of guilt of a crime or offence may only be placed at the disposal of the judicial authorities, and for a period which may not exceed forty-eight hours, subject to the following rules
1° the decision to arrest may only be taken by the public prosecutor;
2° if that person attempts to flee or to evade the surveillance of a law enforcement officer, precautionary measures may be taken pending a decision by the public prosecutor, who shall be informed immediately by the fastest means of communication;
3° the person concerned is immediately notified of the decision to arrest. This notification consists of an oral communication of the decision in the language of the proceedings;
4° a report shall be drawn up which shall mention
a) the decision and the measures taken by the Public Prosecutor, and the manner in which they were communicated
b) the exact time of the actual deprivation of liberty, with details of the circumstances in which the deprivation of liberty took place

[263] **Art. 2. Wet betreffende de voorlopige hechtenis**
Buiten het geval van op heterdaad ontdekte misdaad of op heterdaad ontdekt wanbedrijf, kan een persoon tegen wie ernstige aanwijzingen van schuld aan een misdaad of een wanbedrijf bestaan, slechts ter beschikking van de rechter worden gesteld, en voor een termijn die niet langer duurt dan achtenveertiguren, met inachtneming van de volgende regels:
1° de beslissing tot arrestatie kan alleen worden genomen door de procureur des Konings;
2° indien deze persoon poogt te vluchten of poogt zich te onttrekken aan het toezicht van een agent van de openbare macht, mogen bewarende maatregelen worden getroffen in afwachting dat de procureur des Konings, onverwijld door de snelste communicatiemiddelen op de hoogte gebracht, een beslissing neemt;
3° van de beslissing tot arrestatie wordt onverwijld kennis gegeven aan de betrokkene. Deze kennisgeving bestaat in het mondeling mededelen van de beslissing in de taal van de rechtspleging;
4° er wordt een proces-verbaal opgemaakt. Dit proces-verbaal vermeldt:
a) de beslissing van de procureur des Konings, de door hem getroffen maatregelen en de wijze waarop deze zijn medegedeeld;
b) het juiste uur van de effectieve vrijheidsbeneming, met nauwkeurige opgave van de omstandigheden waarin de vrijheidsbeneming tot stand gekomen is;
c) het juiste uur van de kennisgeving aan de betrokkene van de beslissing tot arrestatie.
5° de gearresteerde of vastgehouden persoon wordt in vrijheid gesteld zodra de maatregel niet langer noodzakelijk is. De vrijheidsbeneming mag in geen geval langer duren dan achtenveertig uren te rekenen van de kennisgeving van de beslissing of, ingeval er bewarende dwangmaatregelen zijn genomen, te rekenen van het ogenblik dat de persoon niet meer beschikt over de vrijheid van komen en gaan;
6° wanneer de zaak aanhangig is bij de onderzoeksrechter, oefent deze de bevoegdheden uit die dit artikel aan de procureur des Konings opdraagt.

(c) the precise time of notification to the person concerned of the decision to arrest.
5° The arrested or detained person shall be released as soon as the measure has ceased to be necessary. The deprivation of liberty may in no case exceed forty-eight hours from the notification of the decision or, if binding precautionary measures have been taken, from the moment when the person no longer has freedom of movement;
6° where the matter is referred to the investigating judge, he or she shall exercise the powers conferred on the public prosecutor by this Article.

Chapter III. The arrest warrant.
Article 16–20 et seq.
Article 16[264] § 1 In the event of absolute necessity for public safety only, and if the act is likely to result in the accused being sentenced to a principal correctional term of imprisonment of one year or a more serious penalty, the investigating judge may issue a warrant for arrest.

[264] HOOFDSTUK III. Het bevel tot aanhouding.
Art. 16. Wet betreffende de voorlopige hechtenis
§ 1. Slechts in geval van volstrekte noodzakelijkheid voor de openbare veiligheid en indien het feit voor de verdachte een correctionele hoofdgevangenisstraf van een jaar of een zwaardere straf tot gevolg kan hebben, kan de onderzoeksrechter een bevel tot aanhouding verlenen.
De onderzoeksrechter beslist eveneens of dit bevel tot aanhouding moet worden uitgevoerd ofwel in een gevangenis, ofwel door een hechtenis onder elektronisch toezicht. De uitvoering van de hechtenis onder elektronisch toezicht, die inhoudt dat de betrokkene, met uitzondering van toegestane verplaatsingen, voortdurend op een bepaald adres moet verblijven, vindt plaats overeenkomstig de door de Koning bepaalde nadere regels.
Deze maatregel mag niet worden getroffen met het oog op onmiddellijke bestraffing, noch met het oog op de uitoefening van enige andere vorm van dwang.
Indien het maximum van de van toepassing zijnde straf vijftien jaar (opsluiting) niet te boven gaat, mag het bevel slechts worden verleend als er ernstige redenen bestaan om te vrezen dat de in vrijheid gelaten verdachte nieuwe misdaden of wanbedrijven zou plegen, zich aan het optreden van het gerecht zou onttrekken, bewijzen zou pogen te laten verdwijnen of zich zou verstaan met derden. Bij misdrijven bedoeld in boek II, titel Iter, van het Strafwetboek waarop het maximum van de van toepassing zijnde straf vijf jaar gevangenisstraf te boven gaat, moeten deze redenen niet vervuld zijn. <W 2003-01-23/42, art. 123, 011; Inwerkingtreding: 13-03-2003>
§ 2. Tenzij de verdachte voortvluchtig is of zich verbergt, moet de onderzoeksrechter alvorens een bevel tot aanhouding te verlenen, de verdachte ondervragen (over de feiten die aan de beschuldiging ten grondslag liggen en die aanleiding kunnen geven tot de afgifte van een bevel tot aanhouding) en zijn opmerkingen horen. (Bij ontstentenis van deze ondervraging, wordt de inverdenkinggestelde in vrijheid gesteld.) <W 2005-05-31/32, art. 6, 014; Inwerkingtreding: 26-06-2005>
De verdachte heeft recht op bijstand van zijn advocaat tijdens de ondervraging. Alleen de meerderjarige verdachte kan hiervan vrijwillig en weloverwogen afstand doen. De onderzoeksrechter maakt melding van deze afstand in het proces-verbaal van het verhoor.
De advocaat mag opmerkingen formuleren overeenkomstig artikel 47bis, § 6, 7), van het Wetboek van strafvordering.
De onderzoeksrechter verwittigt de advocaat tijdig van de plaats en het uur van de ondervraging die hij kan bijwonen. De ondervraging kan op het voorziene uur aanvangen, zelfs indien de advocaat nog niet aanwezig is. Als de advocaat ter plaatse komt, woont hij het verhoor bij.
De onderzoeksrechter moet de verdachte eveneens meedelen dat tegen hem een aanhoudingsbevel kan worden uitgevaardigd en hij moet zijn opmerkingen en, in voorkomend geval, die van zijn advocaat ter zake horen. [4...
Al deze gegevens worden vermeld in het proces-verbaal van verhoor.
(Wanneer het bevel tot aanhouding wordt uitgevoerd overeenkomstig artikel 19, § 1bis, gebeurt deze ondervraging (door middel van radio, telefoon, audiovisuele of andere technische middelen die een rechtstreekse overbrenging

The investigating judge shall also decide whether this arrest warrant is to be executed either in a prison or by electronically monitored detention. The execution of electronically monitored detention, which involves the permanent presence of the person concerned at a specific address, with the exception of authorised travel, shall take place in accordance with the procedures laid down by the King.
This measure may not be taken for the purpose of immediate repression or any other form of coercion.
If the maximum penalty applicable does not exceed fifteen years' imprisonment, the warrant may only be issued if there are serious grounds for fearing that the accused, if left at liberty, will commit further crimes or offences, evade justice, attempt to conceal evidence or collude with third parties. (3) In the case of offences referred to in Book II, Title Iter, of the Criminal Code for which the maximum applicable penalty exceeds five years' imprisonment, these reasons need not be fulfiled.
§ 2 Unless the accused is a fugitive or an escaped convict, the investigating judge shall, before issuing an arrest warrant, question the accused (on the facts which form the basis

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van de stem tussen de onderzoeksrechter en de verdachte toelaten en de vertrouwelijkheid van hun gesprek waarborgen).) <W 2003-04-10/60, art. 50, 012; Inwerkingtreding: 01-01-2004> <W 2006-07-20/39, art. 9, 015; Inwerkingtreding: 07-08-2006>
§ 3. Het bevel tot aanhouding wordt dadelijk na de eerste ondervraging van de verdachte door de onderzoeksrechter verleend, tenzij de rechter onderzoeksmaatregelen treft om een gegeven van de ondervraging te controleren, terwijl de verdachte te zijner beschikking blijft.
§ 4. Indien de verdachte nog geen advocaat heeft, herinnert de onderzoeksrechter hem eraan dat hij het recht heeft een advocaat te kiezen en neemt hij contact op met de permanentiedienst die wordt georganiseerd door de Orde van Vlaamse balies en de "Ordre des barreaux francophones et germanophone", of bij gebrek hieraan door de stafhouder van de Orde of zijn gemachtigde. Van die formaliteiten wordt melding gemaakt in het proces-verbaal van verhoor.
§ 5. Het bevel tot aanhouding bevat de opgave van het feit waarvoor het wordt verleend, vermeldt de wetsbepaling die bepaalt dat het feit een misdaad of een wanbedrijf is en stelt het bestaan vast van ernstige aanwijzingen van schuld.
De rechter vermeldt daarin de feitelijke omstandigheden van de zaak en die welke eigen zijn aan de persoonlijkheid van de verdachte, die de voorlopige hechtenis wettigen gezien de criteria bepaald in § 1. [4...
Indien de onderzoeksrechter beslist dat het bevel tot aanhouding moet worden uitgevoerd door een hechtenis onder elektronisch toezicht, vermeldt hij eveneens het adres van uitvoering van de hechtenis onder elektronisch toezicht.
Het bevel tot aanhouding vermeldt eveneens dat de verdachte vooraf is gehoord.
§ 6. Het bevel wordt ondertekend door de rechter die het heeft verleend, en wordt met zijn zegel bekleed. [4...
De verdachte wordt erin met name genoemd of zo duidelijk mogelijk aangewezen.
§ 6bis. De verdachte die de taal van de procedure niet verstaat, heeft het recht om een vertaling van de relevante passages van het bevel te vragen in een taal die hij verstaat, zodanig dat hij geïnformeerd is over de hem ten laste gelegde feiten en hij zich effectief kan verdedigen, tenzij een mondelinge vertaling aan de verdachte werd verstrekt. Het verzoek dient ter griffie van de rechtbank van eerste aanleg te worden neergelegd, op straffe van verval, binnen drie dagen na het verlenen van het bevel tot aanhouding. De vertaling wordt verstrekt binnen een redelijke termijn.
Indien een mondelinge vertaling aan de verdachte werd verstrekt, wordt daarvan melding gemaakt in het bevel tot aanhouding.
De kosten van vertaling zijn ten laste van de Staat.
§ 7. Het proces-verbaal van het verhoor van de verdachte door de onderzoeksrechter, evenals alle processen-verbaal van de verhoren die van de verdachte werden afgenomen tussen het tijdstip van zijn vrijheidsbeneming en het tijdstip waarop hij naar de onderzoeksrechter wordt verwezen, moeten het uur vermelden van het begin van de ondervraging, van het begin en het einde van de eventuele onderbrekingen en van het einde van de ondervraging.

of the charge and which may give rise to the issuance of an arrest warrant,) and hear his or her observations. (Failing this examination, the accused shall be released).
The accused shall have the right to be assisted by his lawyer during the interrogation. Only an accused person of full age may voluntarily and deliberately waive this right. The investigating judge shall record this waiver in the record of the hearing.
The lawyer may make observations in accordance with Article 47bis(6)(7) of the Code of Criminal Procedure.
The investigating judge shall inform the lawyer in good time of the place and time of the examination, which he may attend. The examination may begin at the scheduled time, even if the lawyer is not yet present. Upon arrival, the lawyer shall join the hearing.
The investigating judge shall also inform the accused of the possibility of an arrest warrant being issued against him or her, and shall hear his or her observations on this matter and, where appropriate, those of his or her lawyer. [4...
All these elements shall be recorded in the record of the hearing.
(Where the arrest warrant is executed in accordance with Article 19, § 1bis, recourse shall be had during the questioning to radio, telephone, audio-visual or other technical means which allow direct voice transmission between the investigating judge and the suspect while guaranteeing the confidentiality of their exchanges.)
§ 3 The arrest warrant shall be issued immediately after the first interrogation of the accused by the investigating judge, unless the judge takes investigative measures for the purpose of verifying an element of the interrogation, the accused remaining at his disposal.
§ 4 If the defendant does not yet have a lawyer, the investigating judge reminds him that he has the right to choose a lawyer and contacts the duty office organised by the French- and German-speaking Bar Association and the "Orde van Vlaamse balies" or, failing that, by the President of the Bar Association or his delegate. These formalities shall be recorded in the minutes of the hearing.
§ 5 The arrest warrant shall contain a statement of the fact for which it is issued, mention the legislative provision which provides that this fact is a crime or an offence and establish the existence of serious evidence of guilt.
The judge shall mention the factual circumstances of the case and those relating to the personality of the accused which justify preventive detention in the light of the criteria laid down in § 1.
If the investigating judge decides that the arrest warrant is to be executed by means of electronically monitored detention, he or she shall also indicate the address where the electronically monitored detention is to be executed.
The arrest warrant shall also indicate that the accused has been heard beforehand.
§ 6 The warrant shall be signed and sealed by the issuing judge. [4...
The accused shall be named or designated as clearly as possible.

§ 6bis An accused person who does not understand the language of the proceedings shall have the right to request a translation of the relevant passages of the warrant into a language he or she understands in order to enable him or her to have knowledge of the facts of the case and to defend himself or herself effectively, unless an oral translation has been provided to the accused person. The request must be filed with the registry of the court of first instance, on pain of forfeiture, within three days of the issue of the arrest warrant. The translation shall be provided within a reasonable time.
If an oral translation has been provided to the defendant, this shall be mentioned in the arrest warrant.
The costs of translation shall be borne by the State.
§ 7 The minutes of the hearing of the accused by the investigating judge, as well as all the minutes of hearings of the accused between the time of his deprivation of liberty and the time when he is brought before the investigating judge, must mention the times of the beginning of the questioning, the beginning and end of any interruptions and the end of the questioning.

Article 17[265] Where the investigating judge refuses to issue an arrest warrant requested by the Public Prosecutor, he or she shall issue a reasoned order which shall be communicated to the Public Prosecutor immediately.
This order is not subject to appeal.

Article 18[266] § 1 The arrest warrant shall be served on the accused within forty-eight hours, which begins to run either at the time determined by Article 1, 2° or 3°, or by Article 2, 5°, or at the time determined by Article 3, paragraph 2, when the arrest warrant is issued for an accused detained on the basis of a warrant to bring him or her to trial.
Service shall be effected by the clerk of the investigating judge, by the director of a prison or by a law enforcement officer.

[265] **Art. 17. Wet betreffende de voorlopige hechtenis**
Wanneer de onderzoeksrechter weigert een door de procureur des Konings gevorderd bevel tot aanhouding te verlenen, geeft hij een met redenen omklede beschikking die hij hem onmiddellijk mededeelt.
Tegen deze beschikking staat geen rechtsmiddel open.

[266] **Art. 18. Wet betreffende de voorlopige hechtenis**
§ 1. Het bevel tot aanhouding wordt aan de verdachte betekend binnen een termijn van achtenveertig uur. Deze termijn gaat in hetzij op het tijdstip dat wordt bepaald door artikel 1, 2° of 3°, of door artikel 2, 5°, hetzij op het tijdstip dat wordt bepaald door artikel 3, tweede lid, wanneer het bevel tot aanhouding is uitgevaardigd tegen een verdachte die van zijn vrijheid is benomen op grond van een bevel tot medebrenging.
De betekening geschiedt door de griffier van de onderzoeksrechter, door de directeur van een strafinrichting of door een agent van de openbare macht.
Ze bestaat in het mondeling meedelen van de beslissing in de taal van de rechtspleging, met afgifte van een volledig afschrift van de akte. Zelfs indien de verdachte zich reeds in hechtenis bevindt, wordt het bevel tot aanhouding hem vertoond en wordt hem daarvan afschrift gegeven.
Bij ontstentenis van regelmatige betekening binnen de wettelijke termijn, wordt de verdachte in vrijheid gesteld.
§ 2. Bij de betekening van het bevel tot aanhouding wordt aan de verdachte een afschrift overhandigd van het proces-verbaal van zijn verhoor door de onderzoeksrechter, alsmede een afschrift van de andere in artikel 16, § 7, bedoelde stukken.

	It consists of an oral communication of the decision, in the language of the proceedings, accompanied by the handing over of a full copy of the document. The arrest warrant shall be shown to the accused even if he is already in custody, and a copy shall be delivered to him. If the warrant is not served within the legal time limit, the accused shall be released. § 2 At the time of service of the arrest warrant, a copy of the record of his hearing by the investigating judge and a copy of the other documents referred to in Article 16, § 7, shall be given to the accused. **Chapter IIIa. (Arrest warrant for immediate appearance)** **Article 20bis**[267] § 1. The public prosecutor may request an arrest warrant for immediate appearance, in accordance with Article 216quinquies of the Code of Criminal Procedure, if the following conditions are met: 1° the act is punishable by a principal correctional imprisonment of one year without exceeding ten years in application of the law of 4 October 1867 on mitigating circumstances 2° the offence is flagrant or the charges, gathered within one month of the commission of the offence, are sufficient to submit the case to the judge on the merits. […]
4	**General Customs and Excise Act**[268] **Chapter XXIV. Fines and penalties in general** […] **Article 247**[269] In the case of a contravention of the kind mentioned in Articles 220 and 224 and to which the provisions of Article 228 are not applicable, the fraudsters may, if with the knowledge of the officers they have no known domicile in the kingdom, be placed under arrest by the officers, in order to be immediately placed at the disposal of the judge. § 1. By extension of Article 247, fraudulent persons can always be placed under preventive arrest when the offence must result in the application of the penalty of imprisonment.

[267] HOOFDSTUK IIIbis. (Bevel tot aanhouding met het oog op onmiddellijke verschijning
Art. 20bis. Wet betreffende de voorlopige hechtenis
§ 1. De procureur des Konings kan overeenkomstig artikel 216quinquies van het Wetboek van strafvordering een bevel tot aanhouding met het oog op onmiddellijke verschijning vorderen indien aan de volgende voorwaarden is voldaan:
1° het feit wordt gestraft met een correctionele hoofdgevangenisstraf van een jaar die overeenkomstig de wet van 4 oktober 1867 inzake de verzachtende omstandigheden tien jaar niet te boven gaat;
2° het gaat om een op heterdaad ontdekt misdrijf of de bezwaren aangevoerd binnen de maand volgend op het plegen van het misdrijf zijn toereikend om de zaak aan de rechter ten gronde voor te leggen. […]
[268] *Loi générale sur les douanes et accises.*
[269] CHAPITRE XXIV. Amendes et peines en général.
[…] **Art. 247. Loi générale sur les douanes et accises**
En cas d'une contravention de l'espèce de celles mentionnées aux articles 220 et 224 et à laquelle les dispositions de l'article 228 ne seront point applicables, les fraudeurs pourront, lorsqu'au su des agents ils n'ont pas de domicile connu dans le royaume, être mis en état d'arrestation par les agents, à l'effet d'être remis sur-le-champ à la disposition du juge.

§ 2. § 1 is also applicable in matters of excise duties and taxes assimilated to excise duties when the offence is punishable by a principal penalty of imprisonment.

Article 249[270] § 1. [All masters, carriers and other individuals] whether foreign or unknown, on whom an offence carrying a pecuniary penalty has been established, may also, if particular circumstances make this measure necessary within the customs radius, be placed under arrest there, and placed at the disposal of the judge, as provided for in article 247, until the amount of the fine has been deposited in the hands of the collector, or until its collection has been ensured in some other manner, and the foreigner has elected domicile in the Kingdom.
§ 2 Any person who has been sentenced to a pecuniary fine and who is unable to pay it shall be punished by imprisonment for a period determined in accordance with Article 40 of the Penal Code.

Article 250[271] Customs and excise officers may bring individuals whom they arrest, in accordance with Articles 247 to 249, before the judge of the police court of the canton in which the arrest was made, or the officers of the federal police, if any are present in that place, and in this case the judge of the police court or the officers of the federal police shall be obliged to bring the arrested individuals before the public prosecutor as soon as possible].

Article 251[272] The customs and excise officers shall be obliged to transmit to the judge at the police court or to the public prosecutor, upon arrest or at least as soon as possible, and within three days at the latest, a copy of the report establishing the offence.

[270] **Art. 249**. § 1er. Tous capitaines, transporteurs et autres individus étrangers ou inconnus, à charge desquels il aura été constaté une infraction emportant peine pécuniaire, pourront également, si des circonstances particulières rendent cette mesure nécessaire dans le rayon des douanes, y être mis en état d'arrestation, et remis à la disposition du juge, comme il est dit à l'article 247, jusqu'à ce que le montant de l'amende aura été consigné entre les mains du receveur, ou que la rentrée en aura été assurée d'une autre manière, et que l'étranger aura fait élection de domicile dans le royaume.
§ 2. Tout individu qui aura été condamné à une amende pécuniaire et qui se trouvera hors d'état de l'acquitter, sera puni d'un emprisonnement dont la durée est fixée conformément à l'article 40 du Code pénal.
[271] **Art. 250**. Les agents des douanes et accises pourront amener les individus qu'ils mettent en état d'arrestation, conformément aux articles 247 à 249, devant le juge au tribunal de police du canton dans lequel l'arrestation s'est faite, ou les officiers de la police fédérale, s'il s'en trouve dans cet endroit, et dans ce cas le juge au tribunal de police ou les officiers de la police fédérale seront tenus de faire conduire, le plus tôt possible, les individus arrêtés devant le procureur du Roi.
[272] **Art. 251**. Les agents des douanes et accises seront obligés de transmettre au juge au tribunal de police ou au procureur du roi, lors de l'arrestation ou du moins aussitôt que possible, et dans les trois jours au plus tard, une copie du procès-verbal constatant l'infraction.

cc. Pre-trial detention

5

Criminal Procedure Code

Article 28septies See above under → Arrest.

6

Law on Preventive Detention[273]

Title I. Preventive detention.
Chapter I. Arrest
Article 1 See above under → Arrest.
Article 2 See above under → Arrest.
Chapter II. Warrant of arrest. Article 3–15
Article 3[274] The investigating judge may issue a warrant to bring to trial any person in respect of whom there is serious evidence of guilt of a crime or offence and who is not already at his disposal.
The warrant for bringing such persons shall provide a title of deprivation of liberty for a maximum of forty-eight hours from the time of actual deprivation of liberty as referred to in Articles 1 and 2.

Chapter IV. The continuation of preventive detention[275]
Article 21–22, 22bis, 23–24, 24bis

Chapter IV/1 Assistance of the lawyer during hearings while in custody[276]
Article 24bis/1

Chapter V. Release of the arrest warrant[277]
Article 25

Chapter VI. Effect of the settlement of the proceedings on measures of deprivation of liberty[278]

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[273] *Loi relative à la détention preventive.*
[274] CHAPITRE II. Du mandat d'amener.
Art. 3. Loi relative à la détention préventive
Le juge d'instruction peut décerner un mandat d'amener motivé contre toute personne à l'égard de laquelle il existe des indices sérieux de culpabilité relatifs à un crime ou à un délit, et qui ne se trouve pas déjà à sa disposition.
Le mandat d'amener fournit à l'égard de ces personnes un titre de privation de liberté de maximum quarante-huit heures à compter du moment de privation effective de liberté telle que visée aux articles 1er et 2.
[275] CHAPITRE IV. Du maintien de la détention préventive.
Art. 21–22, 22bis, 23–24, 24bis
[276] CHAPITRE IV/1. - De l'assistance de l'avocat lors des auditions pendant la période du maintien en détention préventive.
Art. 24bis/1
[277] CHAPITRE V. De la mainlevée du mandat d'arrêt.
Art. 25
[278] CHAPITRE VI. De l'incidence du règlement de la procédure sur les mesures privatives de liberté.
Art. 26–28, 28/1, 29

c) Para 2: Cross-Border Surrender

The (Crown) Public Prosecution Offices in the regions such as the *Parquet du procureur du Roi du Luxembourg, div. Neufchateau*, are responsible for receiving and executing EAW. According to the Law relating to the European arrest warrant the investigative judge takes the decision on the execution of the EAW (Art. 14). 7

An EAW can be issued by investigating judges under the conditions of the **Law of 20 July 1990 on preventive detention** (Art. 32 § 1 Law relating to the European arrest warrant) or the public prosecutors under the conditions provided for in Articles 2 and 3 of the **Law relating to the European arrest warrant of 19 December 2003** (Art. 32 § 2 Law relating to the European arrest warrant). 8

See the **Code relating to the European Arrest Warrant** / *Loi relative au mandat d'arrêt européen* of December 19, 2003 for further provisions. 9

d) Fraud-Related Peculiarities

Law on preventive detention	10
Article 47.[279] This law does not modify the laws relating to the repression of fraud in customs and excise matters.	
General Customs and Excise Act	11
Chapter XXIV. Fines and penalties in general […] **Article 247** See above under → Arrest. ***Article 248***[280] *§ 1. By extension of Article 247, fraudulent persons can always be placed under preventive arrest when the offence must result in the application of the penalty of imprisonment.* *§ 2. § 1 is also applicable in matters of excise duties and taxes assimilated to excise duties when the offence is punishable by a principal penalty of imprisonment.*	

[279] **Art. 47. Loi relative à la détention preventive**
La présente loi ne modifie pas les lois relatives à la répression de la fraude en matière de douanes et accises.
[280] **Art. 248 Loi générale sur les douanes et accises**
§ 1st. By extension of article 247, fraudsters can always be placed under preventive arrest, when the offence must result in the application of a prison sentence.
§ 2. § 1 is also applicable in matters of excise duties and taxes assimilated to excise duties when the offence is punishable by a principal penalty of imprisonment.

e) Relevant Examples and Precedents for the national law references by Art. 33

Reading Suggestions:

- ECLI:BE:CASS:2020:ARR.20200408.2F.12 (arrest, value added tax fraud)

- ECLI:BE:CASS:1984:ARR.19840306.5 (1999-03-26; art. 248 general customs and excise law, pre-trial detention)

- **For any EDP** it is wort reading Cour de cassation - 03 janvier 2024 - P.23.1747.F, ECLI:BE: CASS:2024:ARR.20240103.2F.4:D.B.M., the applicant in this quite recent case, was placed under **preventive detention** for **charges including forgery, use of forgery, and participation in a criminal organization**. The Brussels Court of Appeal on 18 December 2023 upheld the decision to keep the applicant in preventive detention, citing risks related to recidivism, destruction of evidence, and collusion with third parties. He argued that the Court of Appeal wrongly based its decision on factors unrelated to the charges, including references to human trafficking and corruption, which were not accusations against the applicant but against other suspects. The applicant further contested the Court's claim that he posed a flight risk due to alleged ties with Portugal, though he claimed to be Romanian with no connection to Portugal. The Court of Cassation rejected the appeal, noting that **under Belgian law, participation in a criminal organization can justify detention, even if the individual did not commit the specific crimes the organization was involved in**. The Court also emphasized that the risk of recidivism, **tampering with evidence**, and collusion were **valid grounds** for continued detention. While the applicant's challenge to the Portuguese nationality claim was noted, the Court found that the risks of new crimes, disappearance of evidence, and collusion were more critical in justifying continued detention. Therefore, the nationality issue did not affect the legal grounds for detention. In the end the court upheld the decision to continue the applicant's preventive detention, rejecting the appeal and ordering the applicant to pay court fees.The case shows that the EPPO can put hope in the broad discretion of courts to maintain preventive detention when there are significant risks e.g. in PIF cases, even if some of the specific details cited (like nationality) are disputed.

- **For any defence lawyer** it is important to **ensure a precise appeal** as otherwise it might be rejected as it was the case in a short decision from 2023: The argument of the applicant cited violations of various legal provisions, including the Belgian Constitution and several articles of the Criminal Procedure Code. **The claim was deemed imprecise and thus inadmissible since it cited a vague reference to**

“any other provision” without specificity. The prevention was contested with referenced violations of Article 6 of the ECHR, including the right to silence and the presumption of innocence. The court noted that the decision to deny conditional release was justified based on serious evidence against D. P., including her lack of cooperation with law enforcement and prior criminal history. The ruling highlighted risks of reoffending and flight, which were sufficient to maintain D. P.’s detention, independent of the contested reasoning.

5. Provisions on Defence Laws in Belgium Relating to EPPO Actions Concerning PIF Crime Offences

5. Provisions on Defence Laws in Belgium Relating to EPPO Actions Concerning PIF Crime Offences 268
a) Specialised Law Firms (Offering Support in Belgium) 268
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(2) Defence in Case of Arrest and Pre-Trial Detention, Art. 33 EPPO Regulation 281
c) Defence in Indictment Phase and the Trial Phase: Relevant Court 281

1 The material scope of offences, which constitute PIF defence matters is determined by the material competence of the EPPO, *argumentum e contrario* ex Art. 22, 23 EPPO Regulation (see above → Art. 26 EPPO Regulation, "The Belgian PIF offences").

a) Specialised Law Firms (Offering Support in Belgium)

2 In the first two years of operation the regional office has conducted a lot of investigations already. Major law firms that only concentrate on this matter have not been seen yet, but common forms have presented interest in cross-border matters like e.g. DLA Piper, Linklaters[281], White & Case[282] and Hengeler Mueller[283]. Above all, ERA has organised seminars in 2020 and 2022.[284]

[281] See https://www.linklaters.com/en/insights/blogs/businesscrimelinks/2020/october/the-european-public-prosecutors-office. Accessed 4 June 2024.
[282] See https://www.whitecase.com/insight-alert/framework-cooperation-between-european-public-prosecutors-office-and-non-eu-third. Accessed 4 June 2024.
[283] See https://www.hengeler.com/de/2021-06-brussels-a-jour. Accessed 4 June 2024.
[284] See https://www.era.int/cgi-bin/cms?_SID=NEW&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=129234. Accessed 4 June 2024.

b) Defence in the Investigation Phase

Defence in the investigation phase **is crucial**.[285] In 2023 the **ECBA**, which meets with the EPPO frequently, has drafted an initiative that aims to **promote fair trial standards** across the EPPO's jurisdiction, ensuring that procedural rights, especially for non-native speakers, are upheld uniformly in criminal proceedings.[286] The proposal calls for clarity on which documents are essential and must be translated. This includes evidential materials and those necessary for developing a defense. It proposes as well a **legal aid scheme** to help the defense **access translations of documents** not part of the prosecution's case, particularly expert reports. A system should be established within the EPPO to handle **disputes over language** selection or the scope of translations. Last but not least, the proposal highlights the need for independent oversight of translation and interpretation quality, potentially involving experts like EULITA.[287] We hope that these things will be adopted, especially in a trinllingual tate like Belgium the advanbtage would be more than beneficial for the defence (see above → Introduction).

aa. The Input from the Regulation 2017/1939

(1) Access to National Case File

Criminal Procedure Code	**3**
Chapter IIIbis. Authorisation to consult the file or to obtain a copy **Article 21bis** [288] § 1. Without prejudice to the provisions of specific laws, the application of Articles 28quinquies, § 2, 57, § 2, 61ter and 127, § 2, and the procedure referred	

[285] A very good book on the defence in EPPO proceedings in general has been published by Ligeti, Constantinides, Đurđević and Bonacic 2022 (EPPO Handbook) and is easily accessible on the web, see https://bit.ly/4e2BEiZ. Accessed 31 July 2024.

[286] See ECBA 2023, EPPO Working Group Proposal to the College of the EPPO on best practice for promoting the right to interpretation and translation in criminal proceedings conducted by the EPPO https://bit.ly/3ZxAaZD.

[287] Ibid, pp. 2–5.

[288] CHAPITRE IIIbis. - De l'autorisation de consulter le dossier ou d'en obtenir copie Art. 21bis. § 1er. Sans préjudice des dispositions des lois particulières, de l'application des articles 28quinquies, § 2, 57, § 2, 61ter et 127, § 2, et de la procédure visée aux paragraphes 2 à 9, la personne directement intéressée peut, à tout moment, en fonction de l'état de la procédure, demander au procureur du Roi ou au juge d'instruction qu'il lui donne accès au dossier ou d'en obtenir une copie.

Est considérée comme personne directement intéressée: l'inculpé, la personne à l'égard de laquelle l'action publique est engagée dans le cadre de l'instruction, la personne soupçonnée, la partie civilement responsable, la partie civile, celui qui a fait une déclaration de personne lésée, ainsi que ceux qui sont subrogés dans leurs droits ou les personnes qui les représentent en qualité de mandataire ad hoc, de curateur, d'administrateur provisoire, de tuteur ou de tuteur ad hoc.

Dans tous les autres cas, la décision sur l'autorisation de consulter le dossier ou d'en obtenir copie est prise par le ministère public, même pendant l'instruction.

[[3] Les expéditions et copies des actes d'instruction et de procédure des juridictions et des parquets militaires supprimés concernant des dossiers définitivement jugés ou sur lesquels il a été statué par l'auditeur militaire ou l'auditeur général au 31 décembre 2003, ne peuvent être délivrées que sur autorisation expresse du ou de l'un des magistrats du ministère public délégués à cette fin par le Collège des Procureurs généraux.

Le greffe de la cour d'appel de Bruxelles est chargé de la délivrance des expéditions et copies visées à l'alinéa 4.

to in paragraphs 2 to 9, the person directly concerned may, at any moment, depending on the state of the proceedings, ask the public prosecutor or the investigating judge to grant him access to the file or to obtain a copy of it.

Is considered as a person directly interested: the accused, the person against whom the public action is initiated within the framework of the investigation, the suspected person, the party civilly liable, the civil party, the person who a declaration of injured party, as well as those who are subrogated in their rights or the persons who represent them as ad hoc agent, curator, provisional administrator, guardian or ad hoc guardian.

In all other cases, the decision on the authorisation to consult the file or to obtain a copy thereof is taken by the public prosecutor, even during the investigation.

[The shipments and copies of the acts of instruction and procedure of the courts and the military prosecutor's offices abolished concerning files definitively judged or on which it was ruled by the military prosecutor or the general prosecutor on December 31, 2003, cannot be delivered only with the express authorisation of one or more of the public prosecutors delegated for this purpose by the College of Prosecutors General.

The registry of the Brussels Court of Appeal is responsible for issuing the dispatches and copies referred to in paragraph 4.

The costs of all dispatches and copies are borne by the applicants, subject to the application of Articles 28quinquies, § 2, and 57, § 2.] [The registry of the Court of Appeal or of the competent court is responsible for issuing copies and copies.]

§ 2. The person directly concerned may, during the investigation, send a request to the Crown prosecutor with a view to consulting the file relating to a crime or misdemeanour. For offences which fall within the jurisdiction of the police court, this possibility only applies with regard to the offences referred to in Article 138, 6° bis and 6° ter, and offences for which the limitation period is three years pursuant to article 68 of the law of March 16, 1968 relating to the road traffic police.

Les frais de toutes les expéditions et copies sont à la charge des requérants, sous réserve de l'application des articles 28quinquies, § 2, et 57, § 2.][3] [[4] Le greffe de la cour d'appel ou du tribunal compétent est chargé de la délivrance des expéditions et copies.][4]

§ 2. La personne directement intéressée peut, en cours d'enquête, envoyer une requête au procureur du Roi en vue de consulter le dossier relatif à un crime ou un délit. Pour les délits qui sont de la compétence du tribunal de police, cette possibilité ne s'applique qu'à l'égard des délits visés à l'article 138, 6° bis et 6° ter, et des délits pour lesquels le délai de prescription est de trois ans en application de l'article 68 de la loi du 16 mars 1968 relative à la police de la circulation routière.

A peine d'irrecevabilité, la requête est motivée et contient l'élection de domicile en Belgique si le requérant n'y a pas son domicile ou son siège. Elle est adressée ou déposée au secrétariat du parquet, qui l'insère dans un registre ouvert à cet effet.

§ 3. Le procureur du Roi statue dans un délai de quatre mois après l'insertion de la requête dans le registre.

Si la demande concerne un dossier dans lequel le procureur du Roi a requis du juge d'instruction, en application de l'article 28septies, l'accomplissement d'un acte d'instruction pour lequel seul le juge d'instruction est compétent, le délai susmentionné est ramené à un mois maximum à partir de la première autorisation délivrée par le juge d'instruction.

§ 4. La décision motivée est notifiée au requérant et, le cas échéant, à son avocat, par télécopie, par lettre simple ou par voie électronique, dans un délai de huit jours à dater de la décision.

On pain of inadmissibility, the request is reasoned and contains the election of domicile in Belgium if the applicant does not have his domicile or his registered office there.is addressed to or filed with the secretariat of the public prosecutor's office, which inserts it in a register opened for this purpose.
§ 3. The Crown prosecutor decides within four months after the application is entered in the register.
If the request concerns a file in which the Crown prosecutor has requested the investigating judge, pursuant to Article 28septies, to carry out an act of investigation for which only the investigating judge is competent, the aforementioned period is reduced to a maximum of one month from the first authorisation issued by the investigating judge.
§ 4. The reasoned decision is notified to the applicant and, where applicable, to his lawyer, by fax, by simple letter or electronically, within eight days of the date of the decision.
§ 5.[289] The public prosecutor may prohibit the consultation or the taking of copies of the file or of certain documents if the requirements of the information so require, if the

[289] § 5. Le procureur du Roi peut interdire la consultation ou la prise de copie du dossier ou de certaines pièces si les nécessités de l'information le requièrent, si la consultation présente un danger pour les personnes ou porte gravement atteinte à leur vie privée, si le requérant ne justifie pas d'un motif légitime la consultation du dossier, si le dossier ne contient que la déclaration ou la plainte, dont le requérant ou son avocat a déjà reçu une copie, si l'affaire a été mise à l'instruction ou si le requérant a été renvoyé devant une juridiction de jugement ou a été cité ou convoqué par procès-verbal. Il peut limiter la consultation du dossier ou la prise de copie à la partie du dossier à l'égard de laquelle le requérant a fait valoir un intérêt.
§ 6. Si la demande de consultation du dossier ou d'obtention d'une copie de ce dernier est acceptée, le dossier est mis à la disposition du requérant et de son avocat en original ou en copie, pour consultation dans les vingt jours suivant la décision du procureur du Roi et au plus tôt après le délai visé au paragraphe 4, pour une durée minimale de quarante-huit heures. Le secrétariat du parquet notifie au requérant et à son avocat par télécopie, par lettre simple ou par voie électronique, la date et le lieu où le dossier peut être consulté.
[2 L'acceptation de la demande de consultation du dossier implique que le requérant ou son avocat peuvent eux-mêmes et par leurs propres moyens, en prendre une copie gratuitement, sur place. Le procureur du Roi peut toutefois, de manière motivée, interdire la prise de copie du dossier ou de certaines pièces si les nécessités de l'information le requièrent, ou si cette prise de copie présente un danger pour les personnes ou porte gravement atteinte à leur vie privée.]2
Le requérant ne peut faire usage des renseignements obtenus par la consultation ou par la prise d'une copie du dossier que dans l'intérêt de sa défense, à condition de respecter la présomption d'innocence et les droits de la défense de tiers, la vie privée et la dignité de la personne.
§ 7. Si la consultation ou la prise d'une copie du dossier ou de certaines pièces a été refusée, le requérant peut porter l'affaire devant la chambre des mises en accusation par une requête motivée déposée au greffe du tribunal de première instance, dans un délai de huit jours suivant la notification de la décision au requérant, et insérée dans un registre prévu à cet effet. Si l'information est menée par le procureur fédéral, l'affaire est portée devant la chambre des mises en accusation de la cour d'appel de Bruxelles. La chambre des mises en accusation se prononce sans débat dans les quinze jours à compter du dépôt de la requête. Le greffier communique, par télécopie, par lettre simple ou par voie électronique, les lieu, jour et heure de l'audience au requérant et, le cas échéant, à son avocat, au plus tard quarante-huit heures au préalable. Le procureur général peut adresser ses réquisitions écrites à la chambre des mises en accusation. La chambre des mises en accusation peut entendre, séparément et en l'absence des parties, le procureur général en ses observations. Elle peut entendre le requérant ou son avocat en présence du procureur général.
§ 8. Si le ministère public n'a pas pris de décision dans le délai prévu, selon le cas, au paragraphe 3, alinéa 1er ou 2, augmenté de quinze jours, le requérant peut s'adresser à la chambre des mises en accusation. Ce droit prend fin si la requête motivée n'est pas déposée dans les huit jours suivant l'expiration du délai, au greffe du tribunal de

consultation presents a danger to persons or seriously infringes their privacy, if the applicant does not have a legitimate reason to consult the file, if the file only contains the statement or complaint, of which the applicant or his lawyer has already received a copy, if the case has been put on the investigation or if the applicant has been referred to a trial court or has been summoned or summoned by report.
He may limit the consultation of the record or the taking of a copy to the part of the record in respect of which the applicant has asserted an interest.
§ 6. If the request to consult the file or to obtain a copy of it is accepted, the file is made available to the applicant and his lawyer in original or in copy, for consultation within twenty days following the decision of the public prosecutor and at the earliest after the period referred to in paragraph 4, for a minimum period of forty-eight hours. The secretariat of the public prosecutor's office notifies the applicant and his lawyer by fax, simple letter or electronically, of the date and place where the file can be consulted.
[The acceptance of the request for consultation of the file implies that the applicant or his lawyer can themselves and by their own means, take a copy free of charge, on the spot. The public prosecutor may, however, on a reasoned basis, prohibit the taking of copies of the file or of certain documents if the requirements of the information so require, or if this taking of copies presents a danger to persons or seriously harms their private life.
The applicant may only use the information obtained by consulting or taking a copy of the file in the interests of his or her defence, provided that the presumption of innocence and the rights of defence of third parties, privacy and personal dignity are respected.
§ 7. If consultation or the taking of a copy of the file or of certain documents has been refused, the applicant may bring the case before the indictment division by means of a reasoned request filed with the registry of the court of first instance, within eight days following the notification of the decision to the applicant, and inserted in a register provided for this purpose.
If the investigation is conducted by the federal prosecutor, the case is brought before the indictment chamber of the Brussels Court of Appeal.
The indictment chamber rules without debate within fifteen days of the filing of the request.
The court clerk communicates, by fax, simple letter or electronically, the place, day and time of the hearing to the applicant and, where applicable, to his lawyer, no later than forty-eight hours in advance.

première instance. La requête est insérée dans un registre prévu à cet effet. Si l'information est menée par le procureur fédéral, l'affaire est portée devant la chambre des mises en accusation de la cour d'appel de Bruxelles. La procédure se déroule conformément au paragraphe 7, alinéas 3 à 5.
§ 9. Le requérant ne peut envoyer ni déposer de requête ayant le même objet avant l'expiration d'un délai de trois mois à compter de la dernière décision portant sur le même objet.

The public prosecutor may address his written submissions to the indictment division. The indictment chamber may hear, separately and in the absence of the parties, the public prosecutor in his observations. It may hear the petitioner or his lawyer in the presence of the public prosecutor.
§ 8. If the public prosecutor has not taken a decision within the period provided for, as the case may be, in paragraph 3, paragraph 1 or 2, increased by fifteen days, the applicant may apply to the indictment chamber. This right ends if the reasoned request is not filed within eight days following the expiry of the time limit, at the registry of the court of first instance. The request is inserted in a register provided for this purpose.
If the investigation is conducted by the federal prosecutor, the case is brought before the indictment chamber of the Brussels Court of Appeal.
The procedure takes place in accordance with paragraph 7, paragraphs 3 to 5.
§ 9. The petitioner may not send or lodge a petition having the same object before the expiration of a period of three months from the last decision relating to the same object.]

Article 61ter[290] § 1. The parties directly concerned, as referred to in Article 21bis, may, during the investigation, apply to the investigating judge for permission to consult the file or to obtain a copy thereof].

[290] Art. 61ter § 1er. Les parties directement intéressées, visées à l'article 21bis, peuvent, pendant l'instruction, demander au juge d'instruction l'autorisation de consulter le dossier ou d'en obtenir copie.]
§ 2 A peine d'irrecevabilité, la requête est motivée et contient élection de domicile en Belgique si le requérant n'y a pas son domicile ou son siège. Elle est adressée ou déposée au greffe du tribunal de première instance au plus tôt un mois après l'engagement des poursuites et est insérée dans un registre ouvert à cet effet. Le greffier en communique sans délai une copie au procureur du Roi. Celui-ci prend les réquisitions qu'il juge utiles.
Le juge d'instruction statue au plus tard dans le mois de l'insertion de la requête dans le registre.
L'ordonnance est communiquée par le greffier au procureur du Roi et est notifiée au requérant et, le cas échéant, à son conseil par télécopie, par lettre simple ou par voie électronique dans les huit jours à dater de la décision.]
§ 3 Le juge d'instruction peut interdire la consultation ou la copie du dossier ou de certaines pièces si les nécessités de l'instruction le requièrent, ou si la consultation présente un danger pour les personnes ou porte gravement atteinte à leur vie privée ou que le requérant ne justifie pas d'un motif légitime pour consulter le dossier. Le juge d'instruction peut limiter la consultation ou la copie à la partie du dossier pour laquelle le requérant peut justifier d'un intérêt.]
§ 4 S'il est accédé à la demande de consultation ou d'obtention d'une copie, le dossier est, sans préjudice de l'application éventuelle du § 3, mis à disposition dans les vingt jours de l'ordonnance du juge d'instruction et au plus tôt après le délai visé au § 5, alinéa 1er, en original ou en copie, pour être consulté par le requérant et son conseil pendant quarante-huit heures au moins. Le greffier donne avis au requérant et à son conseil, par télécopie, par lettre simple ou par voie électronique, du moment où le dossier pourra être consulté.
Le requérant ne peut faire usage des renseignements obtenus par la consultation ou la copie que dans l'intérêt de sa défense, à la condition de respecter la présomption d'innocence, ainsi que les droits de la défense de tiers, la vie privée et la dignité de la personne, sans préjudice du droit prévu à l'article 61quinquies pour l'inculpé et la partie civile.]
L'acceptation de la demande de consultation du dossier implique que le requérant ou son avocat peuvent eux-mêmes et par leurs propres moyens, en prendre une copie gratuitement, sur place. Le juge d'instruction peut toutefois, de manière motivée, interdire la prise de copie du dossier ou de certaines pièces si les nécessités de l'instruction le requièrent, ou si cette prise de copie présente un danger pour les personnes ou porte gravement atteinte à leur vie privée.]
§ 5 Le procureur du Roi et le requérant peuvent saisir la chambre des mises en accusation d'un recours par requête motivée [déposée au greffe du tribunal de première instance dans un délai de huit jours et insérée dans un registre

§ 2 On pain of inadmissibility, the application shall state the reasons on which it is based and shall contain an address for service in Belgium if the applicant is not domiciled there or has his seat. It shall be addressed to or lodged with the registry of the court of first instance not earlier than one month after the commencement of the proceedings and shall be inserted in a register opened for that purpose. The clerk of the court shall immediately send a copy to the public prosecutor. The latter shall make such submissions as he or she considers appropriate.
The investigating judge shall give a ruling within one month of the insertion of the request in the register.
The order shall be communicated by the Registrar to the Public Prosecutor and shall be notified to the applicant and, where appropriate, to his or her counsel by fax, letter or electronic means within eight days of the date of the decision.]
§ 3 The investigating judge may prohibit the consultation or copying of the file or of certain documents if the needs of the investigation so require, or if the consultation presents a danger to persons or seriously infringes their privacy or if the applicant does not show a legitimate reason for consulting the file. The investigating judge may limit the consultation or copying to that part of the file in which the applicant can show an interest].
§ 4 If the request to consult or obtain a copy is granted, the file shall, without prejudice to the possible application of § 3, be made available within twenty days of the order of the investigating judge and at the earliest after the time limit referred to in § 5, first paragraph, in original or copy form, to be consulted by the applicant and his or her counsel for a period of at least forty-eight hours. The Registrar shall notify the applicant and his or her counsel by fax, letter or electronic means of the time at which the file may be consulted.
The applicant may make use of the information obtained by consultation or copying only in the interests of his or her defence, provided that the presumption of innocence is respected, as well as the rights of defence of third parties, privacy and personal dignity,

ouvert à cet effet]. Ce délai court à l'égard du procureur du Roi à compter du jour où l'ordonnance est portée à sa connaissance et à l'égard du requérant, du jour où elle lui est notifiée. Le recours du procureur du Roi a un effet suspensif sur l'exécution de l'ordonnance du juge d'instruction.
La chambre des mises en accusation statue sans débat dans les quinze jours du dépôt de la requête.
Le greffier donne avis au requérant et, le cas échéant. à son conseil, par télécopie, par lettre simple ou par voie électronique, des lieu, jour et heure de l'audience, au plus tard quarante-huit heures à l'avance.
Le procureur général peut transmettre ses réquisitions écrites et le juge d'instruction peut transmettre un rapport à la chambre des mises en accusation. La chambre des mises en accusation peut entendre, séparément et en l'absence des parties, les observations du procureur général. Elle peut entendre séparément le juge d'instruction, le requérant ou son avocat, en présence du procureur général.
§ 6. [Si le juge d'instruction n'a pas statué dans le délai prévu au § 2, alinéa 2, majoré de quinze jours, le requérant peut saisir la chambre des mises en accusation. Celui-ci est déchu de ce droit si la requête motivée n'est pas déposée, dans les huit jours, au greffe du tribunal de première instance. La requête est insérée dans un registre ouvert à cet effet. La procédure se déroule conformément au § 5, alinéas 2 à 4.]
§ 7 Le requérant ne peut [adresser ni déposer] de requête ayant le même objet avant l'expiration d'un délai de trois mois à compter de la dernière décision portant sur le même objet.

without prejudice to the right provided for in Article 61d for the accused and the civil party].
Acceptance of the request to consult the file implies that the applicant or his or her lawyer may themselves and by their own means take a copy of the file free of charge, on the spot. The investigating judge may, however, give reasons for prohibiting the taking of copies of the file or of certain documents if the needs of the investigation so require, or if the taking of such copies presents a danger to persons or seriously affects their privacy].
§ 5 The public prosecutor and the applicant may lodge an appeal with the Indictments Division by means of a reasoned request [filed with the registry of the court of first instance within eight days and [inserted in a register opened for that purpose]. The time limit shall run in respect of the public prosecutor from the day on which the order is brought to his attention and in respect of the applicant from the day on which he is notified of it. The appeal by the public prosecutor has a suspensive effect on the execution of the order of the investigating judge.
The indictment division shall rule without debate within fifteen days of the filing of the petition.
The court clerk shall notify the applicant and, where applicable, his or her counsel, by fax, by letter or by electronic means of the place, day and time of the hearing, at the latest forty-eight hours in advance.
The public prosecutor may submit written submissions and the investigating judge may submit a report to the Indictments Division. (b) the court may, in the absence of the parties, hear the submissions of the public prosecutor separately. [It may hear separately from the investigating judge, the applicant or his or her lawyer, in the presence of the public prosecutor.
§ 6 [If the investigating judge has not given a decision within the period provided for in § 2, paragraph 2, plus fifteen days, the applicant may refer the matter to the Indictments Division. This right shall be forfeited if the reasoned application is not filed with the registry of the court of first instance within eight days. The application shall be inserted in a register opened for this purpose. The procedure shall be conducted in accordance with § 5(2) to (4)].
§ 7 The applicant may not [address or file] an application on the same subject-matter until three months have elapsed from the last decision on the same subject-matter.

(2) Access to EPPO Case File

The Access to the EPPO case file is primarily determined by Union law. **4**

Read → Article 45 Case files of the EPPO **5**

bb. Defence while Investigation is Under-Way, Art. 28–33 EPPO Regulation

(1) In Cases Involving Investigative Measures of Art. 30 EPPO-Regulation

6 In general, the suspect needs to be informed about his rights e.g. the right not to incriminate oneself, see:

> **Article 47bis**[291] § 1. Before proceeding with the questioning of a person who is not charged with a crime, the facts about which he is to be questioned are briefly notified and he is informed that:
> 1) he cannot be forced to incriminate himself;
> 2) his statements can be used as evidence in court;
> 3) he may request that all questions put to him and all answers he gives are noted in the terms used;
> 4) he can request that a specific investigative act be performed or that a specific interrogation be conducted;
> 5) he may use the documents in his possession without delaying the interrogation and may, during the interrogation or later, request that these documents be added to the record of the interrogation or to the file.

[291] **Art. 47bis**. § 1. Vooraleer wordt overgegaan tot het verhoor van een persoon aan wie geen misdrijf ten laste wordt gelegd, wordt op beknopte wijze kennis gegeven van de feiten waarover hij zal worden verhoord en wordt hem meegedeeld dat:
1) hij niet verplicht kan worden zichzelf te beschuldigen;
2) zijn verklaringen als bewijs in rechte kunnen worden gebruikt;
3) hij kan vragen dat alle vragen die hem worden gesteld en alle antwoorden die hij geeft, worden genoteerd in de gebruikte bewoordingen;
4) hij kan vragen dat een bepaalde opsporingshandeling wordt verricht of een bepaald verhoor wordt afgenomen;
5) hij gebruik mag maken van de documenten in zijn bezit, zonder dat daardoor het verhoor wordt uitgesteld en dat hij, tijdens de ondervraging of later, mag vragen dat deze documenten bij het proces-verbaal van het verhoor of bij het dossier worden gevoegd.
Al deze elementen worden nauwkeurig opgenomen in een proces-verbaal.
§ 2. Vooraleer wordt overgegaan tot het verhoor van een verdachte, wordt aan de te ondervragen persoon op beknopte wijze kennis gegeven van de feiten waarover hij zal worden verhoord en wordt hem meegedeeld dat:
1) hij als verdachte wordt verhoord en dat hij het recht heeft om voor het verhoor een vertrouwelijk overleg te hebben met een advocaat naar keuze of een hem toegewezen advocaat, en zich door hem kan laten bijstaan tijdens het verhoor, in zoverre de feiten die hem ten laste kunnen worden gelegd een misdrijf betreffen waarvoor een vrijheidsstraf kan worden opgelegd; en, in geval hij niet van zijn vrijheid is benomen, hij zelf de nodige maatregelen moet nemen om zich te laten bijstaan;
2) hij de keuze heeft na bekendmaking van zijn identiteit om een verklaring af te leggen, te antwoorden op de hem gestelde vragen of te zwijgen;
3) hij niet verplicht kan worden zichzelf te beschuldigen;
4) zijn verklaringen als bewijs in rechte kunnen worden gebruikt;
5) hij kan vragen dat alle vragen die hem worden gesteld en alle antwoorden die hij geeft, worden genoteerd in de gebruikte bewoordingen;
6) in voorkomend geval: hij niet van zijn vrijheid is benomen en hij op elk ogenblik kan gaan en staan waar hij wil;
7) hij kan vragen dat een bepaalde opsporingshandeling wordt verricht of een bepaald verhoor wordt afgenomen;
8) hij gebruik mag maken van de documenten in zijn bezit, zonder dat daardoor het verhoor wordt uitgesteld en dat hij, tijdens de ondervraging of later, mag vragen dat deze documenten bij het proces-verbaal van het verhoor of bij het dossier worden gevoegd.

All these elements are accurately recorded in an official report.
§ 2. Before the questioning of a suspect is started, the person to be questioned is informed in a succinct manner of the facts about which he is to be questioned and he is informed that:
1) he is being questioned as a suspect and that he has the right to have a confidential consultation before the questioning with a lawyer of his choice or a lawyer assigned to him, and to be assisted by him during the questioning, insofar as the facts concerning him are may be charged with a crime for which a custodial sentence may be imposed; and, if he is not deprived of his liberty, he must himself take the necessary measures to be assisted;
2) he has the choice, after disclosure of his identity, to make a statement, to answer questions put to him or to remain silent;
3) he cannot be compelled to incriminate himself;
4) his statements can be used as evidence in court;
5) he can ask that all questions asked and all answers he gives are noted in
the terms used;
6) where appropriate: he has not been deprived of his liberty and he can go wherever he pleases at any time;
7) he can request that a certain investigative act be performed or that a certain interrogation be carried out
declined;
8) he may use the documents in his possession without delaying the interrogation and may request, during the interrogation or later, that these documents be attached to the record of the interrogation or to the file.
§ 3.[292] If the questioning of an adult suspect takes place on written invitation, the rights referred to in paragraph 2, as well as the summary statement of the facts about which

[292] § 3. Indien het verhoor van een meerderjarige verdachte op schriftelijke uitnodiging geschiedt, kunnen de in paragraaf 2 bedoelde rechten, evenals de beknopte mededeling van de feiten waarover de te ondervragen persoon zal worden verhoord, reeds ter kennis worden gebracht in deze uitnodiging waarvan een kopie gevoegd wordt bij het proces-verbaal van verhoor. In dit geval geldt de uitnodiging als mededeling van de rechten bedoeld in paragraaf 2 en wordt de betrokkene geacht een vertrouwelijk overleg te hebben gepleegd met een advocaat en de nodige maatregelen te hebben genomen om zich door hem te laten bijstaan tijdens het verhoor. Indien de betrokkene zich niet laat bijstaan door een advocaat, wordt hij, vooraleer het verhoor aanvangt, alleszins gewezen op de rechten bedoeld in paragraaf 2, 2) en 3).
Indien het in het eerste lid bedoelde verhoor een minderjarige betreft die zich zonder advocaat aanmeldt voor verhoor, kan het verhoor pas plaatsvinden na een vertrouwelijk overleg tussen de minderjarige en een advocaat, dit ofwel in een lokaal van de politie ofwel telefonisch. Teneinde de door hem gekozen advocaat of een andere advocaat te contacteren en door deze bijgestaan te worden tijdens het verhoor, wordt contact opgenomen met de permanentie-dienst die wordt georganiseerd door de Orde van Vlaamse balies en de "Ordre des barreaux francophones et germanophone", of bij gebrek hieraan door de stafhouder van de Orde of zijn gemachtigde. Indien het verhoor van een meerderjarige verdachte niet op uitnodiging geschiedt of indien bij de uitnodiging de [...].in paragraaf 2 bedoelde elementen niet zijn vermeld, wordt hij in kennis gesteld van deze elementen en kan het verhoor op verzoek van de te ondervragen persoon eenmalig worden uitgesteld, teneinde hem de gelegenheid te geven zijn in paragraaf 2, 1), bedoelde rechten uit te oefenen. In dat geval wordt een datum bepaald voor het

verhoor waarop het eerste lid van toepassing is. De meerderjarige te ondervragen persoon kan vrijwillig en weloverwogen afstand doen van de in paragraaf 2, eerste lid, 1), bedoelde rechten. Hij moet de afstand schriftelijk doen, in een door hem gedateerd en ondertekend document, waarin hem de nodige informatie wordt verstrekt over de mogelijke gevolgen van een afstand van het recht op bijstand van een advocaat.
Betrokkene wordt in kennis gesteld dat hij zijn afstand kan herroepen.
Indien het in het derde lid bedoelde verhoor een minderjarige betreft, kan het verhoor pas plaatsvinden na een vertrouwelijk overleg tussen de minderjarige en een advocaat, dit ofwel in een lokaal van de politie ofwel telefonisch. Teneinde de door hem gekozen advocaat of een andere advocaat te contacteren en door deze bijgestaan te worden tijdens het verhoor, wordt contact opgenomen met de permanentiedienst die wordt georganiseerd door de Orde van Vlaamse balies en de "Ordre des barreaux francophones etg ermanophone", of bij gebrek hieraan door de stafhouder van de Orde of zijn gemachtigde. Indien de advocaat in akkoord met de minderjarige hierom verzoekt, wordt het verhoor eenmaal uitgesteld zodanig dat de minderjarige een advocaat kan raadplegen en door deze bijgestaan kan worden tijdens het verhoor.
Al de in deze paragraaf vermelde elementen worden nauwkeurig opgenomen in een proces-verbaal.
§ 4. Onverminderd paragraaf 2, wordt aan eenieder die van zijn vrijheid is benomen overeenkomstig de artikelen 1, 2, 3, 15bis en 16 van de wet van 20 juli 1990 betreffende de voorlopige hechtenis meegedeeld dat hij de rechten geniet die worden opgesomd in de artikelen 2bis, 15bis, 16 en 20, § 1, van dezelfde wet.
§ 5. Aan de in de paragrafen 2 en 4 bedoelde personen wordt zonder onnodig uitstel voor het eerste verhoor een schriftelijke verklaring van de in de paragrafen 2 en 4 bedoelde rechten overhandigd. De vorm en inhoud van deze verklaring van rechten worden door de Koning bepaald.
§ 6. De volgende bepalingen zijn op alle verhoren van toepassing:
1) Het proces-verbaal vermeldt nauwkeurig het tijdstip waarop het verhoor wordt aangevat, eventueel onderbroken en hervat, alsook beëindigd. Het vermeldt nauwkeurig de identiteit van de personen die in het verhoor, of in een gedeelte daarvan, tussenkomen, en het tijdstip van hun aankomst en vertrek. Het vermeldt ook de bijzondere omstandigheden en alles wat op de verklaring of de omstandigheden waarin zij is afgelegd, een bijzonder licht kan werpen.
2) De bewoordingen van de mededeling van de in de paragrafen 1, 2 en 4, bedoelde rechten worden aangepast in functie van de leeftijd van de betrokkene of in functie van een mogelijke kwetsbaarheid van de betrokkene die zijn vermogen aantast om deze rechten te begrijpen.
Hiervan wordt melding gemaakt in het proces-verbaal van verhoor.
3) Aan het einde van het verhoor geeft men de ondervraagde persoon de tekst van zijn verhoor te lezen, tenzij hij vraagt dat het hem wordt voorgelezen. Er wordt hem gevraagd of hij zijn verklaringen wil verbeteren of daaraan iets wil toevoegen. Deze bepaling is eveneens van toepassing op het audio gefilmd verhoor overeenkomstig artikel 2bis, § 3, van de wet van 20 juli 1990 betreffende de voorlopige hechtenis.
4) Indien een in de hoedanigheid van slachtoffer of van verdachte ondervraagde persoon de taal van de procedure niet verstaat of spreekt of indien hij lijdt aan gehoor- of spraakstoornissen, wordt een beroep gedaan
op een beëdigd tolk tijdens het verhoor. Indien geen enkele beëdigd tolk beschikbaar is, wordt de ondervraagde persoon gevraagd zelf zijn verklaring te noteren.
Indien een in een andere hoedanigheid dan slachtoffer of verdachte ondervraagde persoon de taal van de procedure niet verstaat of spreekt of indien hij lijdt aan gehoor- of spraakstoornissen, wordt ofwel een beroep gedaan op een beëdigd tolk, ofwel worden zijn verklaringen genoteerd in zijn taal, ofwel wordt hem gevraagd zelf zijn verklaring te noteren. In geval van vertolking maakt het proces-verbaal melding van de bijstand door een beëdigd tolk, alsmede van
diens naam en hoedanigheid. De kosten van vertolking zijn ten laste van de Staat.
5) Indien tijdens het verhoor van een persoon, die aanvankelijk niet werd verhoord als verdachte, blijkt dat er elementen zijn die laten vermoeden dat hem feiten ten laste kunnen worden gelegd, dan wordt hij ingelicht over de rechten die hij heeft ingevolge paragraaf 2 en, in voorkomend geval, paragraaf 4 en wordt hem de in paragraaf 5 bedoelde schriftelijke verklaring overhandigd.
6) Het verhoor wordt geleid door de verhoorder. De verhoorder geeft op beknopte wijze kennis aan de advocaa t van de feiten waarop het verhoor betrekking heeft.
7) De advocaat kan aanwezig zijn tijdens het verhoor, dat evenwel reeds een aanvang genomen kan hebben. De bijstand van de advocaat tijdens het verhoor heeft tot doel toezicht mogelijk te maken op:
a) de eerbiediging van het recht van de te horen persoon zichzelf niet te beschuldigen en de keuzevrijheid om een verklaring af te leggen, te antwoorden op de gestelde vragen of te zwijgen;
b) de wijze waarop de ondervraagde persoon tijdens het verhoor wordt behandeld, inzonderheid op het al dan niet kennelijk uitoefenen van ongeoorloofde druk of dwang;

the person to be questioned will be questioned, can already be notified in this invitation, of which a copy is added to the record of the interrogation. In this case, the invitation serves as a notification of the rights referred to in paragraph 2 and the person concerned is deemed to have consulted confidentially with a lawyer and to have taken the necessary measures to be assisted by him during the interrogation. If the person concerned is not assisted by a lawyer, he will in any event be informed of the rights referred to in paragraphs 2, 2) and 3) before the interrogation starts.
If the interrogation referred to in the first paragraph concerns a minor who registers for interrogation without a lawyer, the interrogation can only take place after a confidential consultation between the minor and a lawyer, either in a police room or by telephone. In order to contact the lawyer of his choice or another lawyer and to be assisted by this lawyer during the interrogation, contact is made with the permanence service organised by the Flemish Bar Council and the "Ordre des barreaux francophones et Germanophone", or, failing this, by the president of the Bar Association or his authorised representative. If the questioning of an adult suspect is not by invitation or if the invitation elements referred to in paragraph 2 are not stated, he shall be informed of these elements and the interview may be postponed once at the request of the person to be questioned, in order to give him the opportunity to exercise his rights referred to in paragraph 2, 1). to practice. In that case, a date is determined for the
hearing to which paragraph 1 applies. The adult person to be interviewed may voluntarily and deliberately waive the rights referred to in paragraph 2(1)(1). He must make the waiver in writing, in a document dated and signed by him, in which he is provided with the necessary information about the possible consequences of a waiver of the right to the assistance of a lawyer.
The person concerned is informed that he can revoke his waiver.
If the interrogation referred to in the third paragraph concerns a minor, the interrogation can only take place after confidential consultation between the minor and a lawyer, either in a police room or by telephone. In order to contact the lawyer of his choice or another lawyer and to be assisted by him during the interrogation, contact is made with the permanent service organised by the Flemish Bar Council and the "Ordre des barreaux francophones etg ermanophone", or at lack thereof by the president of the Bar Association or his authorised representative. If the lawyer so requests in agreement with

c) de kennisgeving van de in paragraaf 2, en in voorkomend geval paragraaf 4, bedoelde rechten van verdediging en de regelmatigheid van het verhoor. De advocaat kan op het verhoorblad melding laten maken van de schendingen van de in de bepaling onder a),
b) en c) vermelde rechten die hij meent te hebben vastgesteld. De advocaat kan vragen dat een bepaalde opsporings-handeling wordt verricht of een bepaald verhoor wordt afgenomen. Hij kan verduidelijking vragen over vragen die worden gesteld. Hij kan opmerkingen maken over het onderzoek en over het verhoor. Het is
hem evenwel niet toegelaten te antwoorden in de plaats van de verdachte of het verloop van het verhoor te hinderen.
Al deze elementen worden nauwkeurig opgenomen in het proces-verbaal van verhoor.

the minor, the interrogation will be postponed once so that the minor can consult a lawyer and be assisted by him during the interrogation.
All the elements mentioned in this paragraph are accurately recorded in an official report.
§ 4. Without prejudice to paragraph 2, anyone who has been deprived of his liberty in accordance with Articles 1, 2, 3, 15bis and 16 of the Act of 20 July 1990 on pre-trial detention is informed that he enjoys the rights listed in the Articles 2bis, 15bis, 16 and 20, § 1, of the same law.
§ 5. A written statement of the rights referred to in paragraphs 2 and 4 shall be handed over to the persons referred to in paragraphs 2 and 4 without undue delay before the first interrogation. The form and content of this declaration of rights are determined by the King.
§ 6. The following provisions apply to all hearings:
1) The official report shall state precisely the time at which the interrogation is started, interrupted and resumed, if necessary, as well as ended. It states precisely the identity of the persons who intervene in the interrogation, or in part thereof, and the time of their arrival and departure. It also mentions the special circumstances and anything that may throw special light on the statement or the circumstances in which it was made.
2) The wording of the communication of the rights referred to in paragraphs 1, 2 and 4 shall be adapted according to the age of the data subject or according to a possible vulnerability of the data subject which affects his ability to understand these rights.
This will be mentioned in the record of the interrogation.
3) At the end of the interrogation, the person questioned is given to read the text of his interrogation, unless he asks that it be read to him. He is asked whether he would like to correct or add to his statements. This provision also applies to the audio filmed interrogation in accordance with Article 2bis, § 3, of the Act of 20 July 1990 on pre-trial detention.
4) If a person interrogated in the capacity of victim or suspect does not understand or speak the language of the proceedings or if he suffers from hearing or speech impairments, an appeal shall be made by a sworn interpreter during the interrogation. If no sworn interpreter is available, the person questioned is asked to write down his own statement.
If a person interrogated in a capacity other than a victim or suspect does not understand or speak the language of the proceedings or if he suffers from hearing or speech impairments, either a sworn interpreter is used or his statements are recorded in his language, or he is asked to write down his statement himself. In the case of interpretation, the official report mentions the assistance of a sworn interpreter, as well as of
its name and status. The costs of interpretation are borne by the State.
5) If during the questioning of a person who was not initially questioned as a suspect, it appears that there are elements that suggest that he may be charged with offences, he

will be informed of the rights he has under paragraph 2 and, where appropriate, paragraph 4 and the written statement referred to in paragraph 5 is handed over to him.
6) The interrogation is led by the interrogator. The interrogator briefly informs the lawyer t of the facts to which the interrogation relates.
7) The lawyer may be present during the interrogation, which may have already started. The purpose of the lawyer's assistance during the interrogation is to enable supervision of:
a) respect for the right of the person to be heard not to incriminate himself and the freedom of choice to make a statement, to answer questions or to remain silent;
b) the manner in which the person questioned is treated during the interrogation, in particular whether or not manifestly exerting undue pressure or coercion;
(c) notification of the rights of defence referred to in paragraph 2 and, where applicable, paragraph 4, and the regularity of the questioning. The lawyer can have the violations of the provisions referred to in the provision under a) mentioned on the interrogation sheet.
b) and c) stated rights which he believes to have established. The lawyer can request that a specific investigative act be performed or that a specific interrogation be conducted. He can ask for clarification on questions being asked. He can make comments about the investigation and the interrogation. It is
however, he is not allowed to answer in the place of the suspect or to hinder the course of the interrogation.
All these elements are accurately recorded in the official report of the interrogation.

(2) Defence in Case of Arrest and Pre-Trial Detention, Art. 33 EPPO Regulation

The provisions that apply in this regard have been enumerated in full length above (see above → Art. 33).

c) Defence in Indictment Phase and the Trial Phase: Relevant Court

It must be taken into account that the Belgian legislator has changed the jurisdiction landscape in this regard. The first European Prosecutor for Belgium has stated the following: "The EPPO criminal cases are dealt with as a matter of priority by specialised investigating judges appointed by the first presidents of the Court of Appeal (Article 79(6)"[293] Most cases will therefore be handled by specialised judges, like e.g. economic-crime judges at country courts in Germany (s. 74 German Act on the Constitution of courts, see → the German CNP volume). **7**

[293] See Van Den Berge 2022, p 28; see in-depth Careel, De Smedt 2022b, pp 8 et seq., with an equal list on pp 5, 6.

C. OLAF-Regulation (EU, EURATOM) No 883/2013

I. General Introduction: Investigation Powers and National Law Related to OLAF in Belgium (Art. 3–8 OLAF Regulation)

OLAF's task and role as well as it actions are determined primarily by Union law. The history of OLAF can be traced back to the early 2000s and its predecessor UCLAF.[294] OLAF has a renewed role within the changed **anti-fraud architecture** of the Union in the 2020s and is an important actor against fraud within the multi-annual framework legislation and the Union's policies, which depend on the action of the Member States and the agreements concluded on the political levels. **1**

In addition to that OLAF and its investigators shall follow internal guidelines[295], manuals on procedures[296] reports and working arrangements with union partners[297] as well as Administrative Cooperation Agreements (ACAs) with national partners, EU external actors[298]. OLAF issues compendia, researches itself, organises meetings and conferences and workshops for its national partners. All of these non-binding guides and handbooks might be useful in the course of investigations.[299] The statistics on latest actions and the past year can be deduced from the OLAF Reports, equal to the new EPPO's annual report and the PIF Report, which is issued by the EU Commission in close cooperation with OLAF, IBOAs and the EPPO as well as the input from ECA and national AFCOS, governments and researchers. The European Anti-fraud office is well accommodated in the Union anti-fraud architecture these days (see EU Fraud Commentary, Art. 1 PIF Directive) and the academic research is extensive and long lasting since the 2000s.[300] Last decade's landmark judgement "*Sigma Orionis SA vs European Commission*", decided by the European General. **2**

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[294] See Hauck, EU Fraud Commentary, Chronology Part 3 and 4 as well as the Commentary on Art. 1 OLAF Regulation.
[295] See EU Commission (OLAF) 2021; OLAF 2021; EU Commission (OLAF) 2016. See all translations: https://anti-fraud.ec.europa.eu/guidelines-investigations-olaf-staff_en. Accessed 4 June 2024.
[296] Brüner 2009, whereby it is unclear if certain Manuals are really still used by investigators and the Office staff.
[297] OLAF, Working Arrangement between EPPO and OLAF, Point 4: "Exchange of information", 4.5 and 4.6 (cross double check between the databases for a PIF offence action), 5 ("Mutual Reporting and transmittsion of potential cases"), 5.1, 5.1.1.European Commission – "Agreement establishing the modalities of cooperation between the European Commission and the European Public Prosecutor's Office" 18 June 2021, Art 5 para 1, 4, 5 ("Reporting by the Commission") in combination with Annex I Contact points: "information will be trasnmitted via the head of OLAF to the head of operation at EPPO/central office", Annex III.A ("Information on the Initiation of an Investigation – template").
[298] Prosecution Office of Hungary and OLAF. See State of Play – July 2022 Administrative Cooperation Arrangements (ACAs) with partner authorities in non-EU countries and territories and counterpart ad-ministrative investigative services of International Organisations, online: https://anti-fraud.ec.europa.eu/system/files/2022-07/list_signed_acas_en.pdf. Accessed 4 June 2024.
[299] See European Commission 2011; EU Commission (OLAF) 2017; EU Commission (OLAF) 2022c; European Commission (DG regional Policy) 2009; EU Commission (DG Policy, U 2) 2014.
[300] Brüner 2001, pp 17–26; Brüner 2008, pp 859–872; Brüner 2009; Gellert 2009, pp 85–88.

Court[301], clarified the application of national law and Union law[302] in relation to external investigations of OLAF.[303] In the light of this jurisprudence the resistance to the actions of OLAF, in order to awaken national law, might be a defence strategy that Economic operators use. If this is the case, OLAF has to rely on national homologue investigators and thus as well limitations, thresholds and conditions of national law i.e. investigative powers in various areas of budget spending and structural funds (direct management) and revenue-related obligations (indirect management).

3 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.[304] More and more questions are raised if the analogue society in law enforcement and the area of criminal justice is a problem of the digital age and presents obstacles to effective investigations. The access to bank accounts and registers if highly important for OLAF investigators as well as their national homologues. The relationship to the EPPO, especially the regional centres of the EDPs in the present country should be close. In addition to that external investigations require a good coordination, which shall be governed by the relevant AFCOS (see below → Art. 12a OLAF Regulation), which has been part of the current study. Its staff answered a questionnaire or commented and reviewed (for some countries that are very prone to frauds or countries that have recently changed their anti-fraud prevention in order to fulfil the requests for a national anti-fraud prevention strategy) Part C.

4 Another question and debate have ever since existed concerning the Reports of OLAF (cf. → Art. 11 OLAF Regulation), 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 by *Luchtman/Vervaele/Ligeti and others* in OLAF studies from the last decade, which we can refer to.[305]

5 Part C, alike to the first Part B on the EPPO and its investigative powers, gives a bilingue collection of the relevant Belgian laws – including the recently adopted laws (in relation to Regulation (EC) 2185/96) of certain countries. In addition to the analysis parts of this **volume** the national authorities and the role the AFCOS are explained below.

[301] GC (aka CFI), Case T-48/16, 3.5.2018, Sigma Orionis SA v. Commission, paras 70 et seq., 80–81 published in the electronic Reports of Cases (Court Reports – general) and in the OJ, 01/06/2018.
[302] See De Bellis 2021, pp 431 et seq; Herrnfeld 2021, pp 426 et seq.; recently Wouters 2020, pp 132 et seq.
[303] De Bellis 2021, 431 et seq.; see OLAF Website, List of rulings of the Court of Justice of the EU concerning OLAF, https://anti-fraud.ec.europa.eu/about-us/legal-background/list-rulings-court-justice-eu-concerning-olaf_en (accessed 4 June 2024).
[304] See Carrera, Mitsilegas and Stefan 2021.
[305] See Luchtman and Vervaele 2017.

Art. 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.

6 Art. 2 of the OLAF Regulation contains definitions, which apply for all assessments of Seconded National Experts, Investigators, AFCOS staff or national authorities managing structural funds or other EU programmes. It might be cited e.g. for an OLAF Report (see → Art. 11 below) in order to subsume a conduct, which was investigated.

Art. 2 Definitions
The definitions have legal value and force. They stem from the original legislator of the Regulation. They are open to interpretation by parties and courts:
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(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(2) of Regulation (EC, Euratom) No 2988/95;
(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.

First, we should take a look, at how OLAF receives notifications, reports and signs of fraudulent conduct or irregularities: **7**

How does OLAF receive reports about irregularities in Belgium?

Example from the area of structural funds:

In the area of funds operated, managed and distributed in a decentral manner by Belgian authorities on behalf of the EU (Commission), the closest authorities are competent to report to the supervisor, which is competent to report to the Belgian Structural Funds Agency. The FSE Agency will then report any irregularity via OLAF's Information System to the Units of the European Anti-Fraud Office:

"It should be noted that cases of irregularities detected by the IO, after certification, are communicated to OLAF. certification, are communicated to the ESF Agency, which transmits them via the Anti-fraud Information System (AFIS system). **8**

The IOs are required to adapt their control methodology to the new features of the 2021–2027 programming as well as to the audit conclusions drawn by the Audit Authority in the context as part of its systems and operations audits. When a partnership is entrusted to an "inexperienced" partner organisation (e.g. ASBL) of the eligibility rules inherent in AMIF, support must be provided by the IO in order to reduce the risk of financial penalties."[306]

The IOs are the regional, intermediary organism and authority that needs substantial training in discovering fraud and irregularities as it is the closest body in the Belgian system (in the area of structural funds), which could discover signs of fraud and corruption. The same mechanism applies to the area of revenue (customs and tax authorities), which are close to the tax payer and economic operators. **9**

[306] See https://fse.be/fileadmin/sites/fse/uploads/documents/Programmation_21-27_AMIF/Guides_AMIF_21-27/Guide_admin_AMIF_Vaccessible_novembre22.pdf (accessed 4 June 2024), p. 11.

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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(1) of Regulation (Euratom, EC) No 2185/96 and Article 7(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(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.***

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(1) of Regulation (Euratom, EC) No 2185/96

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(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.

7. The Office shall conduct on-the-spot checks and inspections upon production of written authorisation, as provided for in Article 7(2). It shall, at the latest at the start of the

on-the-spot check and inspection, inform the economic operator concerned of the procedure applicable to the on-the-spot check and inspection, including the applicable procedural safeguards, and the economic operator's duty to cooperate.

8. In the exercise of the powers assigned to it, the Office shall comply with the procedural guarantees provided for in this Regulation and in Regulation (Euratom, EC) No 2185/96. In the conduct of an on-the-spot check and inspection, the economic operator concerned shall have the right not to make self-incriminating statements and to be assisted by a person of the economic operator's choice. When making statements during an on-the-spot check and inspection, the economic operator shall be provided with the possibility to use any of the official languages of the Member State where that economic operator is located. The right to be assisted by a person of choice shall not prevent access by the Office to the premises of the economic operator and shall not unduly delay the start of the on-the-spot check and inspection.

9. Where a Member State does not cooperate with the Office in accordance with paragraphs 5 and 6, the Commission may apply the relevant provisions of Union law in order to recover the funds related to the on-the-spot check and inspection in question.

10. As part of its investigative function, the Office shall carry out the checks and inspections provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9(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.

11. During an external investigation, the Office may have access to any relevant information and data, irrespective of the medium on which it is stored, held by the institutions, bodies, offices and agencies, connected with the matter under investigation, where necessary in order to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. For that purpose Article 4(2) and (4) shall apply.

12. Without prejudice to Article 12c(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(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.

On-the-spot checks have been discussed in the last decade quite thoroughly[307], but not enough for all countries. For **Belgium**, it is worth taking a closer look at the applicable provisions. **10**

a) On-the-spot Checks and Inspections – Renouncing the Applicable National Law, para 2, 4

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. **11**

b) Assistance Needed, Competent Authorities and Access to Information in the Member States, para 5

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.). **12**

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

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. **13**

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 a **Belgian** Economic Operator Union law applies, thus the Regulation allows OLAF officials to conduct on-the-spot checks without prior information of national authorities. **14**

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.[308] **15**

[307] See Bovend'Eerdt 2018.

[308] ECJ, Case T-48/16, *Sigma Orionis v the Commission*, 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."

e) Competent Authorities

16 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:
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.

For example, one area of shared management can be presented here:

VAT controls	**Customs Controls**	**Subsidy and Funds area**	**Procurement area**	**Direct EU financing**
Revenue-related	*Revenue-related*	*Expenditure-related*	*Expenditure-related*	*Expenditure-related*
See Art. 63a Code de la TVA[309] Art. 63b[310]			Direction générale de l'Inspection économique du Service public fédéral Economie, P.M.E., Classes moyennes et Energie	The Belgian Ministries competent to implement the EU policies and e.g. the structural funds.
Officials in the Tax	Officials in the Customs Admi-	Service public fédéral Justice		

[309] **Article 63bis Code de la TVA**
(Current text, as of 01.01.2020)(1) [history]
The officials responsible for recovery have all the powers referred to in Articles 61, 62, § 1, 62bis and 63 in order to establish the debtor's financial situation in order to ensure the recovery of tax, interest, tax fines and costs.

[310] **Article 63b Code de la TVA**
§ 1. Twenty-five tax officials with at least the rank of attaché, are endowed with the status of judicial police officer, auxiliary to the public prosecutor.
The number of twenty-five tax officials may be increased by the King after consulting the College of Public Prosecutors.
The King may determine the conditions relating to the experience and training of these tax officials.
§ 2. The prerogatives of judicial police officer, auxiliary to the public prosecutor, conferred on the tax officials referred to in paragraph 1, may be exercised only with a view to investigating and establishing the offences referred to in this Code or the orders made for its execution or by article 505 of the Criminal Code, oriented primarily but not exclusively on the fight against organized crime, and to the extent that they assist the joint multidisciplinary investigation teams provided for in article 105, § 11, of the Act of 7 December 1998 organising an integrated police service, structured at two levels.
§ 3. However, the tax officials referred to in paragraph 1 may not assist a joint multi-disciplinary investigation team in so far as they are involved in an ongoing administrative investigation to which the investigation referred to in paragraph 2 relates.
§ 4. In order to exercise the prerogatives of judicial police officer, auxiliary to the public prosecutor, the tax officials referred to in paragraph 1 take an oath before the public prosecutor of the jurisdiction of their domicile, in the following terms:
"I swear loyalty to the King, obedience to the Constitution and the laws of the Belgian people, and faithfully fulfill the functions conferred on me."
They may exercise their powers outside the jurisdiction of their domicile.

Administration Special Tax Inspectorate at the Service Public Fédéral Finances SPF	nistration (l'Administration des Douanes et Accises du Service public fédéral Finances) "Les demandes d'assistance en matière douanière sont traitées par les Douanes"[311] l'Agence fédérale des médicaments et des produits de santé (AFMPS) l'Agence fédérale pour la sécurité de la chaine alimentaire (AFSCA) l'Agence fédérale des médicaments et des produits de santé (AFMPS) The competent bodies are: Officers of the Investigative Service of the Supreme Control Committee	la Police Fédérale			

[311] Information obtained from the Belgian AFCOS.

	Officials of the [General] Customs and Excise Administration			

SPF Economie = AFCOS, see below → Art. 12a OLAF Regulation.
And CICF
"L'Inspection économique préside la Commission interdépartementale pour la coordination de la lutte contre la fraude dans les secteurs économiques (CICF). Cette commission rassemble différents services de contrôle visant des actions contre la fraude économique."
See below → Art.12a below containing information on the

SPF Finances				
	Federal Agency for the Safety of the Food Chain/*Agence Fédérale pour la Sécurité de la Chaîne Alimentaire AFSCA*			
	Directorate Health and Food Audits and Analysis of the DG Health and Food Safety (DG SANTE)			

Direction Générale De L'inspection Économique of *FPS Economie*
La Commission interdépartementale pour la Coordination de la Lutte contre les Fraudes dans les secteurs économiques (CICF)
Direction C6 Fraude Service collaboration internationale

	Interdepartmental Coordination Unit for			

	Food Safety Control (CICSA)	The Inter-federal Finance Inspectorate/ *le Corps Interfédéral de l'Inspection des Finances*[312] Competence Area: Funds and Spending via the Asylum, Migration and Integration Fund (2021–2027)		Public Service of Wallonia Agriculture, Natural Resources and Environment/*Service Public de Wallonie Agriculture, Ressources naturelles et Environnement* Paying body of Wallonia/*Organisme payeur de Wallonie* Audit Unit for EAGF+EAFRD/*Cellule*

[312] By decree of the Walloon Government, the Audit Unit of the Inspectorate of Finance (CAIF) has entrusted part of its tasks to the DAPE (European Projects Audit Department, Joint Audit Service of the Wallonia-Brussels Federation and Wallonia).

				Audit FEAGA/FEADER at the *SPW*
Other inspection services (FPS Finances, FAMHP, FPS Social Affairs etc.)				

* Disclaimer: The table is not exhaustive, but it displays the main structure and categories in which the relevant authorities operate most of their time.

f) National Law and "Checks and Inspections" of OLAF

The Belgian AFCOS may provide assistance determining the competent authorities (see → Art. 12a OLAF below). **17**

aa. Administrative Procedure in General

The Belgian law does neither knows a special General Administrative Code nor an Administrative Procedure Code.[313] The acts of officials can be classified as an administrative act eventually .[314] **18**

bb. Special Administrative Powers and Provisions in Certain Areas of Revenue and Expenditure

(1) Administrative Provisions

(a) Administrative Provisions in the Area of Customs Duties and Value Added Tax (VAT) = Revenue

(aa) Customs Duties

In the area of tax and customs duties Belgian authorities have paid attention to fraud typologies for a long time.[315] In relation to OLAF investigations the situation is equal to the national situation for administrative offences detrimental to the Belgian economic interests. **19**

The General Customs and Excise Act of 18th July 1977[316] as amended applies to customs duties, audits and investigations in this area. **20**

[313] Harksen 2004, p 294; C.07.0172.N, 22 mei 2008 AC nr. 311, ECLI:BE:CASS:2008:ARR.20080522.2.
[314] See Cloeckaert and Onderdonck 1997, https://bib.kuleuven.be/rbib/collectie/archieven/boeken/vanmensel-administratieverechtshandeling-1997.pdf.Administratieve rechtshandelingen gaan uit van publiekrechtelijke rechtspersonen, die genieten van (een deel van) het gezagsmonopolie. Het zijn in de eerste plaats de openbare machten als de gemeente, de provincie, het gewest, de gemeenschap, de staat, de Europese Unie, … die handelen door middel van hun organen. And see P.06.1404.N 5 juni 2007 AC nr. 304ECLI:BE:CASS: 2007:ARR.20070605.9 „Het Hof van Justitie besliste eerder dat de boeking van de douaneschuld een administratieve handeling is die niet noodzakelijk bestaat in de inschrijving in de boeken van het betrokken bedrag door de douaneautoriteit (H.v.J. 11 okt. 2001, C-30/00, Jur. H.v.J. 2001, I, 7513)."
[315] See above → Part A.
[316] Algemene Wet inzake douane en accijnzen 18 JULI 1977.

The structure of the Code is as follows:

Belgian Customs Code

Chapter I	Definitions, customs debt and taking into account, generalities and dematerialization of written communications between the General Administration of Customs and Excise and users
Chapter II	Determination of the applicable rate or amount
Chapter IIbis	Relief from import duties
Chapter IIter	Exemption from export duties
Chapter III	Excise exemptions and refunds
Chapter IIIbis	Bringing goods into the country
Chapter IV	» M42 Importation by sea or air
Chapter V	[Provisional storage of goods and discharge of loading lists]
Chapter VI	Ships in lay-off
Chapter VII	Shipwrecked and rescued goods
Chapter VIII	Importation by rivers and land
Chapter VIIIbis	Release of goods for free circulation
Chapter IX	Export by sea
Chapter X	Export by rivers and land
Chapter Xbis	» M42 Export of Union goods
Chapter XI	» M42 Special provisions concerning the export of goods under an excise duty suspension arrangement
Chapter XII	Prohibited, unknown goods not accepted or without consignee
Chapter XIII	Transit
Chapter XIV	Customs Representative
Chapter XV	» M42 Statistics
Chapter XVI	Loading and Unloading Regulations
Chapter XVII	Inspection of Goods » M42
Chapter XVIII	Custody and sealing
Chapter XIX	Customs Department
Chapter XX	Visits and censuses
Chapter XXI	Special provisions concerning excise visits and censuses
Chapter XXII	Control measures
Chapter XXIII	Right of administrative appeal

Chapter XXIIIbis	Tax reconciliation
Chapter XXIV	Fines and penalties in general
Chapter XXIVbis	Administrative penalties
Chapter XXV	Minutes, contravention statements, seizures and prosecutions European Public Prosecutor's Office
Chapter XXVbis	
Chapter XXVI	» M42 Guarantees, credits and payments
Chapter XXVII	Ready execution, lien and legal hypothec
Chapter XXVIII	Duties and rights of staff – Protection to be accorded to them

Nevertheless, Art. 11 rules on further rules and how they can be established: **21**

Art. 11 General Customs and Excise Act[317] § 1 Without prejudice to the general rules and decisions of the Council or of the Commission of the European Union in customs matters, **the King may, by decree deliberated in the Council of Ministers, take all measures in customs and excise matters specifically designed to ensure the proper implementation of international acts, decisions, recommendations or agreements**, which measures may include the repeal or amendment of statutory provisions.
§ 2. All decrees issued during a year in pursuance of § 1 shall be the subject of a confirmation bill submitted to the legislative Houses at the beginning of the following year.

Additionally, the Income Tax Act annexed to the Royal Decree of 26 February 1964 coordinating the legal provisions relating to income tax, published in the Belgian Official Gazette of 10 April 1964[318] may apply. **22**

23

[317] **Art. 11. Algemene Wet inzake douane en accijnzen**
§ 1. [Onverminderd de verordeningen en beschikkingen van algemene aard, door de Raad of door de Commissie van de Europese Unie genomen inzake douane, mag de Koning, bij wege van een besluit waarover door de in Raad vergaderde Ministers is beraadslaagd, alle maatregelen treffen inzake douane en accijnzen om de goede uitvoering te verzekeren van internationale akten, beslissingen, aanbevelingen en afspraken, hieronder begrepen zijnde het opheffen of het wijzigen van wetsbepalingen.]
§ 2. De besluiten, die in de loop van een jaar zijn getroffen bij toepassing van § 1, maken tezamen het voorwerp uit van een ontwerp van bekrachtigingwet dat, bij het begin van het volgende jaar bij de Wetgevende Kamers wordt ingediend.

[318] *Code des impôts sur les revenus" annexé à l'arrêté royal du 26 février 1964 portant coordination des dispositions légales relatives aux impôts sur les revenus, publié au Moniteur belge du 10 avril 1964.*

Taking the tobacco area as an example, the Act on the Tax Systems for Manufactured Tobacco from April 3, 1997 regulates in Art. 3 the excise duties.[319] Art. 11 grants an

[319] Art. 3.<W 1999-05-04/31, art. 2, 003; Entry into force: 08-06-1999> § 1. Manufactured tobacco put into consumption here in the country is subject to an ad valorem excise duty and an ad valorem special excise duty fixed as follows:
1° [19 Cigars:
a) excise duty: 5.00 percent of the retail selling price;
(b) special excise duty: 6,50 % of the retail selling price;] 19
2° [15 Cigarettes:
a) excise duty: 40.04 percent of the retail selling price;
(b) special excise duty: 0,00 % of the retail selling price;] 15
3° Fine-cut smoking tobacco for the rolling of cigarettes and other types of smoking tobacco:
a) excise duty: 31,50 pa percentage of the retail selling price;
(b) special excise duty: 0,00 % of the retail selling price.] 6
§ 2. [19 In addition to the ad valorem excise duty and ad valorem special excise duty provided for in § 1, 2 ° and 3 °, cigarettes and fine-cut smoking tobacco for the rolling of cigarettes and other types of smoking tobacco released for consumption here in the country are subject to a specific excise duty and a specific special excise duty, which are fixed as follows:
(a) for cigarettes:
- excise duty: EUR 6,8914 per 1 000 pieces,
- special excise duty: EUR 83,1609 per 1 000 pieces,
(b) for fine-cut smoking tobacco for the rolling of cigarettes and other types of smoking tobacco:
- excise duty: EUR 0,0000 per kilogram,
- special excise duty: EUR 75,1654 per kilogram.] 19
§ 3. [16 In the case of cigarettes, the total of excise duties and special excise duties levied in accordance with § 1, 2 °, and § 2, a) may in no case be less than one hundred and five percent of the total of these excise duties applicable to the weighted average price.] 16
§ 4. [16 In the case of fine-cut smoking tobacco for the rolling of cigarettes and other types of smoking tobacco, the total of excise duties and special excise duties levied in accordance with § 1, 3 °, and § 2, b) may in no case be less than one hundred and five percent of the total of these excise duties applicable to the weighted average price.] 16
In the case of cigars, the total of the excise duty and of the special excise duty levied in accordance with Paragraph 1(1) and of the VAT may in no case be less than one hundred percent of the total of those taxes applicable to the price category most in demand.] 4
§ 5. By way of derogation from Paragraphs 1 and 4, smoking tobacco intended by planters for their own consumption and limited to a maximum of 150 plants per year shall be subject to an excise duty of 20% of the retail selling price for smoking tobacco belonging to the price category most in demand.
§ 5bis. The most in-demand price range for cigars is the one that was most sold during the period laid down in Article 2, § 2, of this Act.
The weighted average price for cigarettes shall be equal to the total value of all cigarettes released for consumption, calculated on the basis of the retail selling price inclusive of all taxes, divided by the total quantity of cigarettes released for consumption during the period laid down in Article 2, § 2, of this Law.
The weighted average price for fine-cut smoking tobacco for the rolling of cigarettes and other types of smoking tobacco shall be equal to the total value, calculated on the basis of the retail selling price inclusive of all taxes, of all fine-cut smoking tobacco released for consumption for the rolling of cigarettes and other types of smoking tobacco, divided by the total quantity of smoking tobacco released for consumption ofn fine cut for the rolling of cigarettes and other types of smoking tobacco during the period laid down in article 2, § 2, of this law.] 4
§ 5ter. (discontinued) <W 2006-11-26/38, art. 2, 015; Entry into force: 08-12-2006>
§ 6. [17 The King determines what is meant by retail price. Referring to the elements of the retail selling price of each of the products defined by that law belonging to the price range corresponding to the price category most in demand, it may also determine the method of calculating the notional retail selling price of the corresponding manufactured tobacco put into consumption here in the country without being the subject of a trade.
The King may, for the categories of tobacco manufactured products which he determines, determine the duration of the period during which the tax markings may be used for consumption.
The King may, for the categories of manufactured tobacco which he determines, fix the quantity of tax markings that can be obtained by economic operators.

exemption in special cases, which will most likely not apply to fraudsters but they may rely on these grounds in order to confuse customs staff. Art. 13 punishes any infringement of these legal provisions and leads to the payment of the excise duty and a fine. Articles 14 and 15 relate to other penalties. The general excise duty regime, enshrined in Law of 22 December 2009 applies to the whole act (see → Art. 17).

(bb) VAT Area

The VAT area is mainly determined by Royal Decrees.[320] It is further determined primarily by the Belgian VAT Code (*Wetboek Van De Btw Bijgewerkt Tot En Met De Wet Van 05.07.2022 (B.S. 15.07.2022)).*[321] The General Administration of Taxes is competent to deal with the VAT (fraud) laws. The Special Tax Inspectorate (STI) and the tax collection offices work closely together. **24**

The VAT Code has the following structure: **25**

Table of contents of the VAT Code/Table des matières du Code de la TVA[322]

CHAPTER I:	ASSESSMENT OF THE TAX	Art. 1–3bis
CHAPTER II:	SUBJUGATION	Art. 4–8bis
CHAPTER III:	SCOPE	
Section 1:	Supplies of goods	
Sous-sect. 1:	Assets and operations covered	Art. 9–13
Sous-sect. 2:	Place of supply of goods	Art. 14–15

The King may prescribe the obligation to publish annually the weighted average prices of the different categories of tobacco manufactured products.] 17

§ 7. No exemption or reduction of excise duty [1...] 1 laid down in this Article shall not be granted either for the products serving as samples or for products supplied free of charge.

§ 8. Where raw tobacco harvested here in the country, imported from third countries or introduced from another Member State has been removed from official control for any reason, prior to processing into manufactured products, excise duty shall be payable in solidarity between the owner and the possessor or the transporter. The excise duty is levied at the rate for smoking tobacco laid down in § 1, on the basis of the retail selling price fixed by the [18 King8 on a flat-rate basis in accordance with Article 16.

[320] Royal Decree amending Royal Decree No. 20 of 20 July 1970 fixing the rates of value added tax and classifying goods and services under those rates with regard to photovoltaic solar panels, thermal solar panels and solar water heaters, the heat pumps, and the demolition and reconstruction of buildings on the entire Belgian territory, concerns/ *Koninklijk besluit tot wijziging van het koninklijk besluit nr. 20 van 20 juli 1970 tot vaststelling van de tarieven van de belasting over de toegevoegde waarde en tot indeling van de goederen en de diensten bij die tarieven wat de fotovoltaïsche zonnepanelen, de thermische zonnepanelen en de zonneboilers, de warmtepompen, en de afbraak en heropbouw van gebouwen op het hele Belgische grondgebied, betreft (2022).*

And see 11 DECEMBER 2019. – Royal Decree no. 50 on VAT statements for intra-Community transactions 11 DECEMBRE 2019. – Arrêté royal n° 50 relatif au relevé à la T.V.A. des opérations intracommunautaires.

[321] See https://eservices.minfin.fgov.be/myminfin-web/pages/public/fisconet/document/503f4c00-9bca-4e7d-a3ca-c5b607723c95 (accessed 4 June 2024). FICONET plus offers up-to-date laws, pls. Refer to this service if the current version oft he Manual chapter has not integrated the latest legislation. The newest will be found in the same amended article (practice shows this).

[322] The French, German and Dutch text versions can be found here: https://eservices.minfin.fgov.be/myminfin-web/pages/public/fisconet/document/0d4dbaa6-8f28-4044-b582-79fb5171220d. Accessed 4 June 2024.

Sous-sect. 3:	Chargeable event and chargeability of the tax	Art. 16–17
Section 2:	Provision of services	
Sous-sect. 1:	Supplies of services covered	Art. 18–20
Sous-sect. 2:	Place of supply of services	Art. 21–21ter
Sous-sect. 3:	Chargeable event and chargeability of the tax	Art. 22–22bis
Section 2bis:	Provisions common to Sections 1 and 2	Art. 22ter
Section 3:	Imports	Art. 23–25
Section 4:	Intra-Community acquisitions of goods	Art. 25bis–25septies
CHAPTER IV:	TAXABLE AMOUNT	Art. 26–36
CHAPTER V:	TAX RATES	Art. 37–38ter
CHAPTER VI:	EXEMPTIONS	
Section 1:	Exports, intra-Community supplies and acquisitions, international imports and transport	Art. 39–43
Section 2:	Other exemptions	Art. 44–44bis
CHAPTER VII:	DEDUCTIONS	Art. 45–49
CHAPTER VIII:	MEASURES TO ENSURE PAYMENT OF THE FEE	Art. 50–55
CHAPTER IX:	SPECIAL SCHEMES	
Section 1:	Small businesses	Art. 56–56bis
Section 2:	Farms	Art. 57
Section 3:	Other special schemes	Art. 58
Section 4:	Special schemes for telecommunications, broadcasting or electronic services supplied to non-taxable persons	
Subsection 1:	Definitions	Art. 58bis
Subsection 2:	Special scheme for services supplied by taxable persons not established within the territory of the Community	Art. 58ter

Subsection 3:	Special scheme applicable to services supplied by taxable persons established within the territory of the Community but not in the Member State of consumption	Art. 58quater
Subsection 4:	Special arrangements for distance sales of goods imported from third territories or third countries	Art. 58d
Section 5:	Special arrangements for the declaration and payment of import VAT	Art. 58sexies
CHAPTER X:	MEANS OF PROOF AND CONTROL MEASURES	Art. 59–69
CHAPTER Xbis	DEMATERIALISATION OF RELATIONS BETWEEN THE FEDERAL FINANCE PUBLIC SERVICE, TAXABLE PERSONS, NON-TAXABLE LEGAL PERSONS AND NON-TAXABLE NATURAL PERSONS Chapter Xbis is inserted from 01.01.2025	Art. 69bis–69octies
CHAPTER XI:	SANCTIONS	
Section 1:	Tax fines	Art. 70–72
Section 2:	Correctional Sentences	Art. 73–74ter
CHAPTER XII:	REFUNDS	Art. 75–80
CHAPTER XIII:	PRESCRIPTIONS	Art. 81–83
CHAPTER XIV:	PERCEPTION AND INSTANCES	Art. 84–93
CHAPTER XV:	PROFESSIONAL SECRET	Art. 93bis–93bis/1
CHAPTER XVI:	RESPONSIBILITY AND OBLIGATIONS OF CERTAIN PUBLIC OFFICERS AND OFFICERS AND OTHER PERSONS	Art. 93ter–93undeciesE
CHAPTER XVII:	OBLIGATIONS OF CREDIT INSTITUTIONS OR ORGANISATIONS	Art. 93duodecies
CHAPTER XVIII:	MUTUAL ASSISTANCE	Art. 93terdecies
CHAPTER XIX:	PROVISIONS COMMON TO ALL TAXES	Art. 93c

REPEAL PROVISIONS	Art. 94–97
ENTRY INTO FORCE	Art. 98
GENERAL AND SPECIFIC TRANSITIONAL PROVISIONS – TEMPORARY PROVISIONS	Art. 99–109

Nota bene: The Belgian authorities, especially the **FPS Finance** offers a VAT Commentary and a VAT handbook for special procedures. It contains information on the rights of taxable persons as well as control and recovery obligations.[323]

26 The address of the **GAT Office** is: General Administration of Tax and Tax Collection Boulevard du Roi Albert II 33 bte 295. 1030 Brussels.

[323] See https://eservices.minfin.fgov.be/myminfin-web/pages/public/fisconet/document/1a9e5e71-8c6f-46f5-b686-705def6db7bc., Accessed 4 June 2024. It contains the following chapters, which are of interest to OLAF investigators.
Chapter 17: Evidence (01.0 1.2020)
Chapter 18: Control measures (01.05.2020)
Chapter 19: Requirements (01.01.2020)
Chapter 20: Administrative and criminal sanctions (31.10.2021)
Chapter 21: Administrative cooperation with other Member States (01.07.2018).

Of particular interest for any SNE of OLAF, any national officer or OAFCN member as well as EDP, should be the **Belgian Special Tax Inspectorate (STI)**, which is one of the six general administration bodies **within the Belgian Federal Public Service (FPS) Finance** and focuses on combating serious and organized tax evasion. It is authorized to examine the tax situation of any individual or entity subject to taxes and duties overseen by the state. Its primary tasks include investigating: **27**

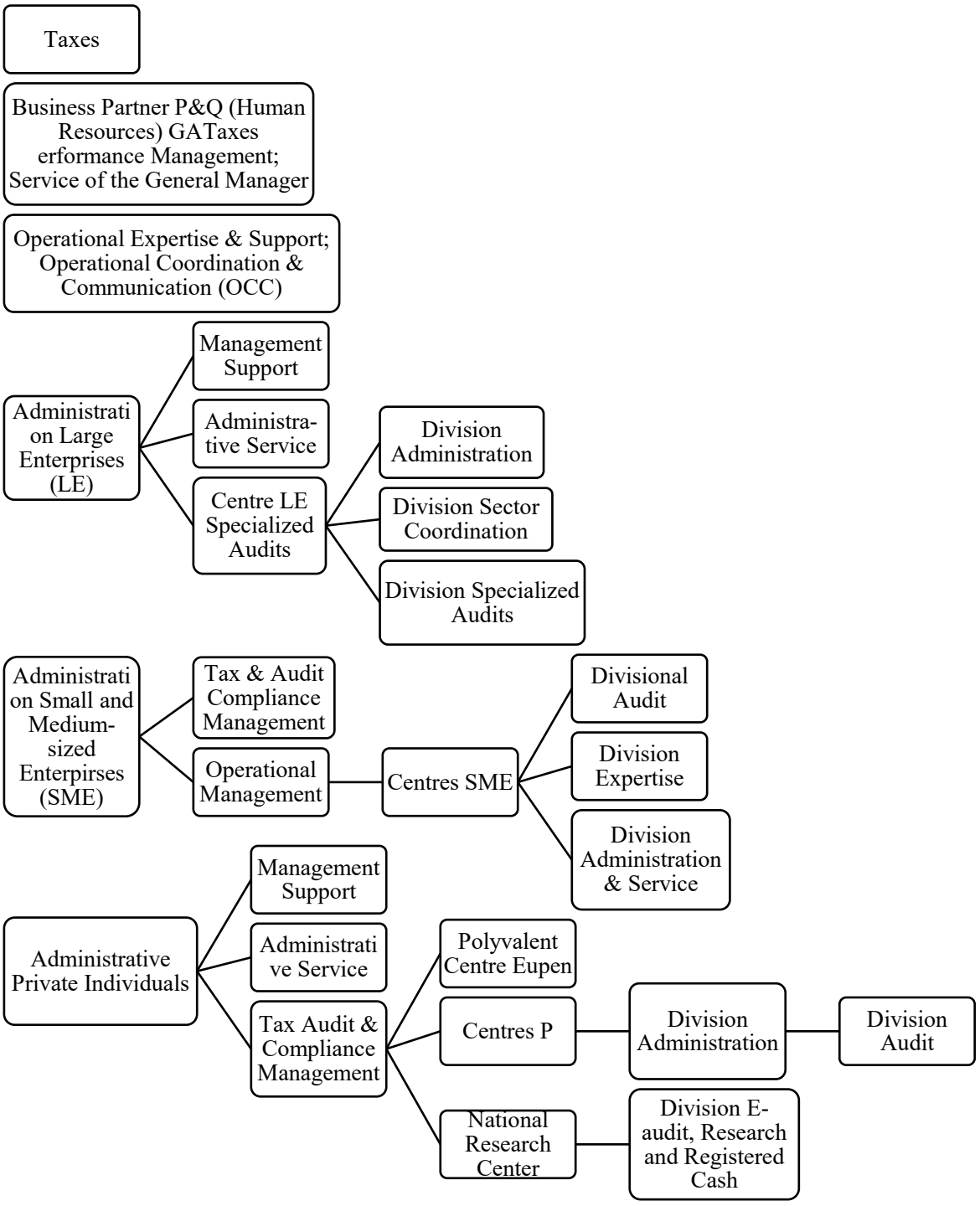
- Organized and serious tax evasion using complex or international schemes (e.g., carousel fraud)
- Financial swindling
- Fraudulent use of corporate assets
- Fraudulent insolvency arrangements.[324]

Since 2022 officers of the STI can operate within **Multidisciplinary Investigation Teams** (short: 'MOTEMs' – *multidisciplinaire onderzoeksteams* / *équipes d'enquête mixtes*) a 2014-based creation, as judicial police officers.[325]

[324] See Federal Public Service, https://finance.belgium.be/en/about_fps/structure_and_services/general_administrations/sti. Accessed 31 July 2024.
[325] See Markey, New provisions grant judicial police powers to Belgian tax inspectors to combat fraud, PwC, 11 April 2022, https://bit.ly/3MU3SAu. Accessed 31 July 2024.

Figure 9: Organigram of the General Administration of Taxes

The following organigramm displays the structure of the GAT-Administration:



Another important obligation in this area is the following:

Section 69[326] **VAT Code**
Any collector responsible for collecting taxes on means of transport or their trailers may, prior to the issue of the document evidencing payment of such taxes, require the owner to furnish proof of payment or exemption on his part from value added tax.

(cc) Principle of Investigation (General Customs and Excise Act)

The General Customs and Excise Act rules the principle of investigation in Art. 51. **28**

Art. 51 General Customs and Excise Act[327]
The nature and quantity of the goods will, as soon as possible, be broadly investigated by or before of the officials, and the facts will be established in writing.

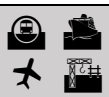
(dd) External Audit

External audits are possible in the area of customs duties and in the area of tax-revenue. **29**

(ee) Tax and Customs Investigation (Customs Code/General Tax Code)

The powers relating to investigations is presented below. Beforehand, a glimpse is shown into the VAT policy of Belgium: **30**

Case Study 2: VAT Exemptions in Belgium: As High as Nowhere Else – A Source for EU Frauds? **31**



VAT Exemptions in Belgium: As High as Nowhere Else – A Source for EU Frauds?

Being one of the countries that grants the most VAT exemptions in Europe, Belgium is experiencing a wave of fraud in the customs and tax sectors.[328]

The tax authorities and the customs authorities must be extremely vigilant, as they must also use the irregularities as an opportunity to check whether EU relevant funds and revenues are affected, e.g. whether customs duties are incurred in favour of the EU budget, etc.

[326] **Art. 69 Code de la TVA** Tout receveur préposé à la perception de taxes sur les moyens de transport ou leurs remorques peut, préalablement à la délivrance du document constatant le paiement de ces taxes, exiger du propriétaire la justification du paiement ou de l'exonération dans son chef de la taxe sur la valeur ajoutée.
[327] Art. 51. De aard en hoeveelheid van de goederen zal, zodra mogelijk, door of ten overstaan van de ambtenaren globaal worden onderzocht, en zullen de feiten schriftelijk worden vastgesteld.
[328] Balboni 2022.

32 It is not far-fetched to claim that if Belgium reduced the exemptions in the sales tax sector, especially in the sectors, which have enough money to cope with the higher duties, it would see less fraud.

(ff) Fiscal Supervision

33 The Fiscal Supervision is done by the Belgian Ministry of Finance.

(b) Administrative Provisions in the Area of Structural Funds and Internal Policies = Expenditure

34 Regarding the expenditure-related area, the structural funds and internal policies in Belgium have to be addressed.

(aa) Structural Funds

35 The area of structural funds has been regulated from 2014–2020 and has been renewed in 2021 for the phase until 2027. The EU Regulations prescribe certain measures that prevent fraud along with reporting obligations for irregularities and the designation of competent authorities. These authorities are competent to conduct external investigations together with OLAF officials if a beneficiary resists and national law applies.

36 Belgium operates a portal, which presents transparent information on the spending of EU structural funds.[329] The Belgian Ministries and the Government have published in late 2022 their strategy for the financing phase 2021–2027 (SFC2021 Programme for AMIF, ISF and BMVI[330]). There has also been published a short manual on the spending rules and the methods.[331]

37 One of the competent authorities, which with OLAF can work together is the Belgian European Social Funds (FSE) Agency[332]. It operates with an inspection service that can be contacted easily.[333] It is competent for the area of the Ministry of the Wallonia-Brussels Federation.

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[329] See https://fse.be/autres-fonds/europe-in-belgium/. Accessed 4 June 2024.
[330] See https://fse.be/fileadmin/sites/fse/uploads/documents/Programmation_21-27_AMIF/Programme_AMIF_2021-2027_Version_07112022.pdf. Accessed 4 June 2024.
[331] Guide administratif et financier AMIF, Guide méthodologique à l'usage des bénéficiaires, Agréés dans le cadre du Programme national AMIF Belgique 2021–2027, Volet francophone (RW, FWB et COCOF), Version 1 – Novembre 2022.
[332] *L'Agence FSE.*
[333] Service Inspection Direction adjointe vacante
Patrick MOT - Gradué - 02/234.39.81
Axel PATRIS - Gradué - 02/234.39.67
Fabienne PIEDBOEUF - Attachée - 02/234.39.57
Michaël RIEGA - Attaché - 02/234.39.82
Françoise VANDEVILLE - Attachée - 02/234.39.51
See https://fse.be/autres-fonds/europe-in-belgium/. Accessed 4 June 2024.

(bb) Agricultural Funds

In the area of agricultural payments structural funds might be important but mostly the agricultural sector is dominated by direct payments of an EU institution (direct management)[334]: **38**

Act of 28 March 1975 on trade in agricultural, horticultural and sea-fishery products amended by the law of 5 February 1999[335] **39**

(cc) Structural funds and national administrative authorities – Cohesion policy (2021–2027)

Table 5: Structural funds and national administrative authorities – Cohesion policy acc. to the CFR Regulation in Belgium (2021–2027)

The European Regional Development Fund (ERDF) – includes European Territorial Cooperation (Interreg)	Total EU allocation for Belgium: 993 million euros	**Administrative authority**: Brussels-Capital Region: Brussels Regional Public Service (SPRB-GOB) Flanders: Flanders Innovation & Entrepreneurship (VLAIO) Wallonia: Public Service of Wallonia – Office of Secretary General[336]
Just Transition fund	Total EU allocation for Belgium: 182,6 million euros[337]	
European Social Fund Plus (ESF+)	Total EU allocation for Belgium: 1 328 million euros	**Managing Authority (for ESF):** "The managing authorities for the European Social Fund (ESF) in Belgium are: Brussels-Capital Region: Actiris Flanders: Department of Work and Social Economy, section for the ESF and Sustainable Entrepreneurship German-speaking community: Ministry of the German-Speaking Community

[334] See https://aidesetat.wallonie.be/home.html. Accessed 4 June 2024.
[335] *Loi du 28 mars 1975 relative au commerce des produits agricoles, horticoles et de la pêche maritime, modifiée par la loi du 5 février 1999* (***repealed*** *by Flemish and Walloon region*).
[336] European Website on Integration, see https://ec.europa.eu/migrant-integration/funding/national-level/funds-migrant-integration-belgium_en. Accessed 4 June 2024.
[337] Website of the European Commission on the Cohesion policy, see https://cohesiondata.ec.europa.eu/stories/s/2021-2027-EU-allocations-available-for-programming/2w8s-ci3y/. Accessed 4 June 2024.

		Wallonia and the French-speaking community: Agence FSE"[338]
European Maritime, Fisheries and Aquaculture Fund (EMFAF)	Total EU allocation for Belgium: 40,3 million euros	**Managing Authority:** Secretaris Generaal Departement Landbouw en Visserij/ Department of Agriculture and Fisheries Vlaamse overheid
Asylum, Migration and Integration Fund (AMIF)	Total EU allocation for Belgium: 204,3 million euros	**Administrative authority**: "The Responsible Authority for the AMIF Belgium National Programme is the **European Funds Unit of the FPS Interior**. It is the point of contact for the European Commission, to which it sends reports, payment requests and other required documents."[339] See also: Public Planning Service - Social Integration.
Internal Security Fund (ISF)	Total EU allocation for Belgium: 30,7 million euros	
Instrument for Financial Assistance in the Field of Border Management and Visa (BMVI)	Total EU allocation for Belgium: 37,5 million euros	
European Rural Development Fund (EAFRD) * Not part of the CFR Regulation anymore (as of 2023)	EU funds for Belgium in 2021 and 2022: 48.2 million euros[340]	**Managing Authority:** Flanders: Department of Agriculture and Fisheries

[338] European Website on Integration, see https://ec.europa.eu/migrant-integration/funding/national-level/funds-migrant-integration-belgium_en. Accessed 4 June 2024.
[339] See https://fse.be/fileadmin/sites/fse/uploads/documents/Programmation_21-27_AMIF/Guides_AMIF_21-27/Guide_admin_AMIF_Vaccessible_novembre22.pdf (accessed 4 June 2024), p 9 "L'Autorité responsable du Programme national AMIF Belgique est la Cellule Fonds européen du SPF Intérieur. Elle est l'interlocutrice de la Commission européenne à laquelle elle transmet les rapports, demandes de paiements et autres documents requis."
[340] Breakdown of European Agricultural Fund for Rural Development per Member State (NextGenerationEU), see https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/eafrd_-_ngeu_current_0_0.pdf. Accessed 4 June 2024.

	EU funds for Belgium in MFF 2021–2027 program: 597.9 million euros[341]	Wallonia: SPW Agriculture, Natural Resources and Environment[342]

(dd) Internal Policies

Exemplarily food safety as an internal policy has been examined here. **40**

The (FASFC) as the competent authority was founded by the Act of 4 February 2000. It is responsible for the assessment and management of risks that may be of potential harm to the consumer, animal and plant health. The FASFC carries out food safety inspections throughout the food chain.[343] **41**

The FASFC also cooperates with the police and customs.[344] The controls and inspections are carried out by the Directorate General Control. This department "prevents, detects and controls fraud and combats certain illegal practices of economic interest and the use of certain prohibited substances."[345] Each province has a local control unit (LCU). The National Investigation Unit NIU is responsible for prevention and detection of fraud; they collaborate with the public prosecutor's offices and police.[346] **42**

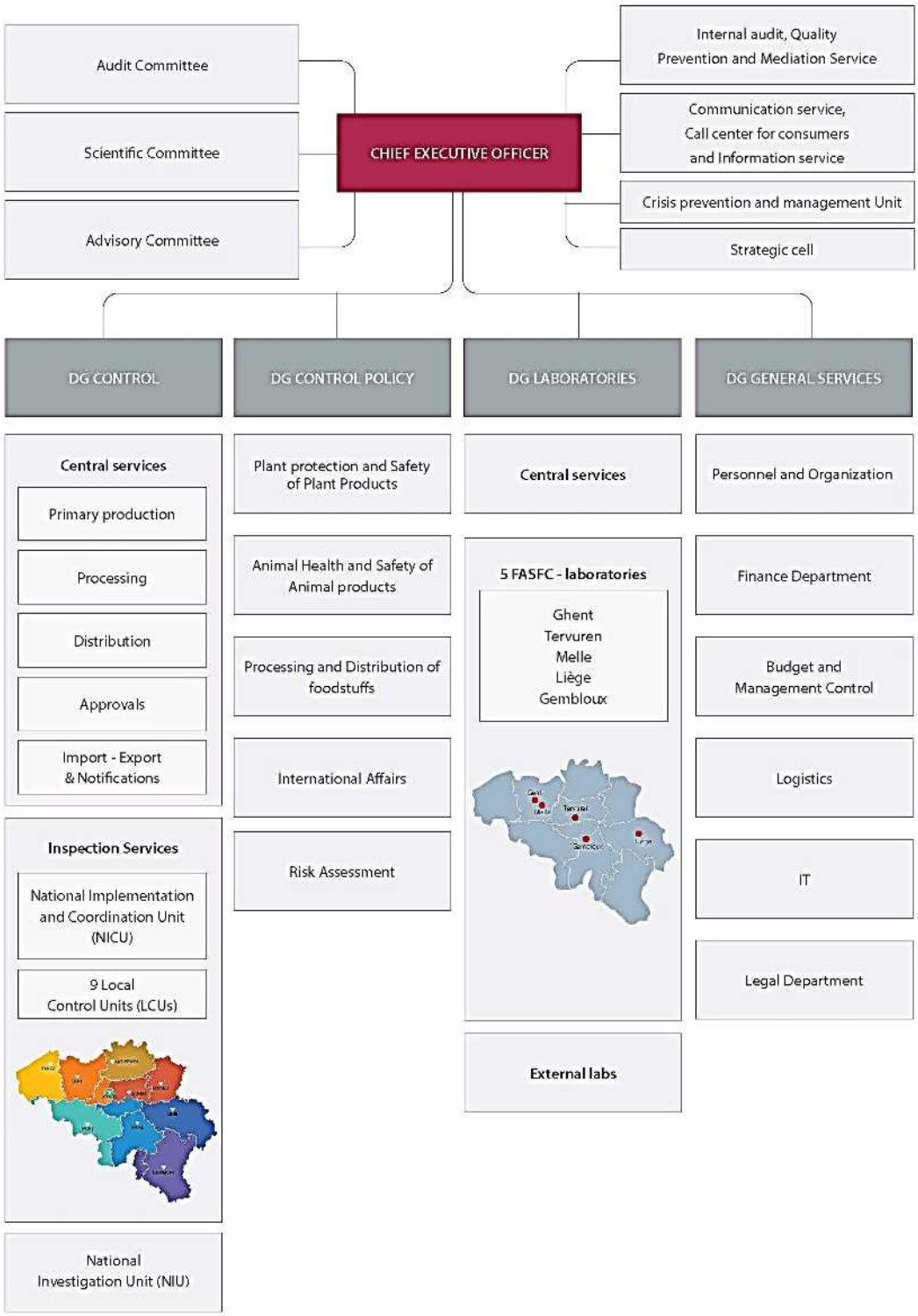
The FASFC operates according to the **43**

⇒Law on the creation of the Federal Agency for the Safety of the Food Chain.

The FASFC is organised as can be seen from the following chart: **44**

[341] Breakdown of European Agricultural Fund for Rural Development per Member State (MFF), see https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/eafrd_-_mff_current.pdf. Accessed 4 June 2024.
[342] European Website on Integration, see https://ec.europa.eu/migrant-integration/funding/national-level/funds-migrant-integration-belgium_en. Accessed 4 June 2024.
[343] Official website of the Federal Agency for the Safety of the Food Chain, see https://www.fasfc.be/about-fasfc. Accessed 4 June 2024.
[344] Official website of the Federal Agency for the Safety of the Food Chain, see https://www.fasfc.be/about-fasfc/structure. Accessed 4 June 2024.
[345] Official website of the Federal Agency for the Safety of the Food Chain – Directorate General Control, see https://www.fasfc.be/about-fasfcstructure/directorate-general-control. Accessed 4 June 2024.
[346] Official website of the Federal Agency for the Safety of the Food Chain – Directorate General Control, see https://www.fasfc.be/about-fasfcstructure/directorate-general-control. Accessed 4 June 2024.

Figure 10: Organigram of the Federal Agency for the Safety of the Food Chain (Belgium)

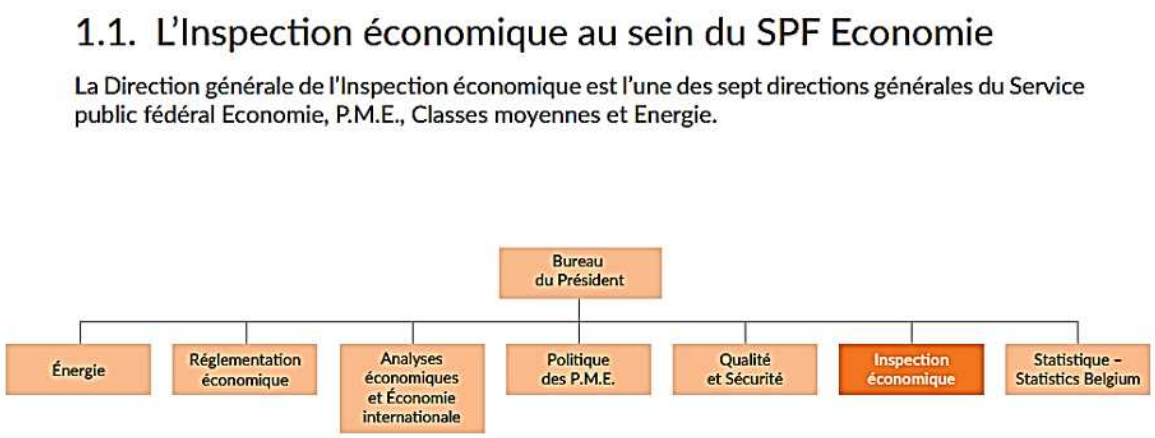


Source: https://www.fasfc.be/about-fasfc/organisation-chart. Accessed 4 September 2024.

(c) Administrative Provisions in the Area of the Common Organisation of the Markets= Expenditure

The General Directorate of Economic Inspection (*Direction Générale De L 'Inspection Économique*) is part of the SPF Economie: **45**

Figure 11: Organigram of the SPF Economie – Belgium



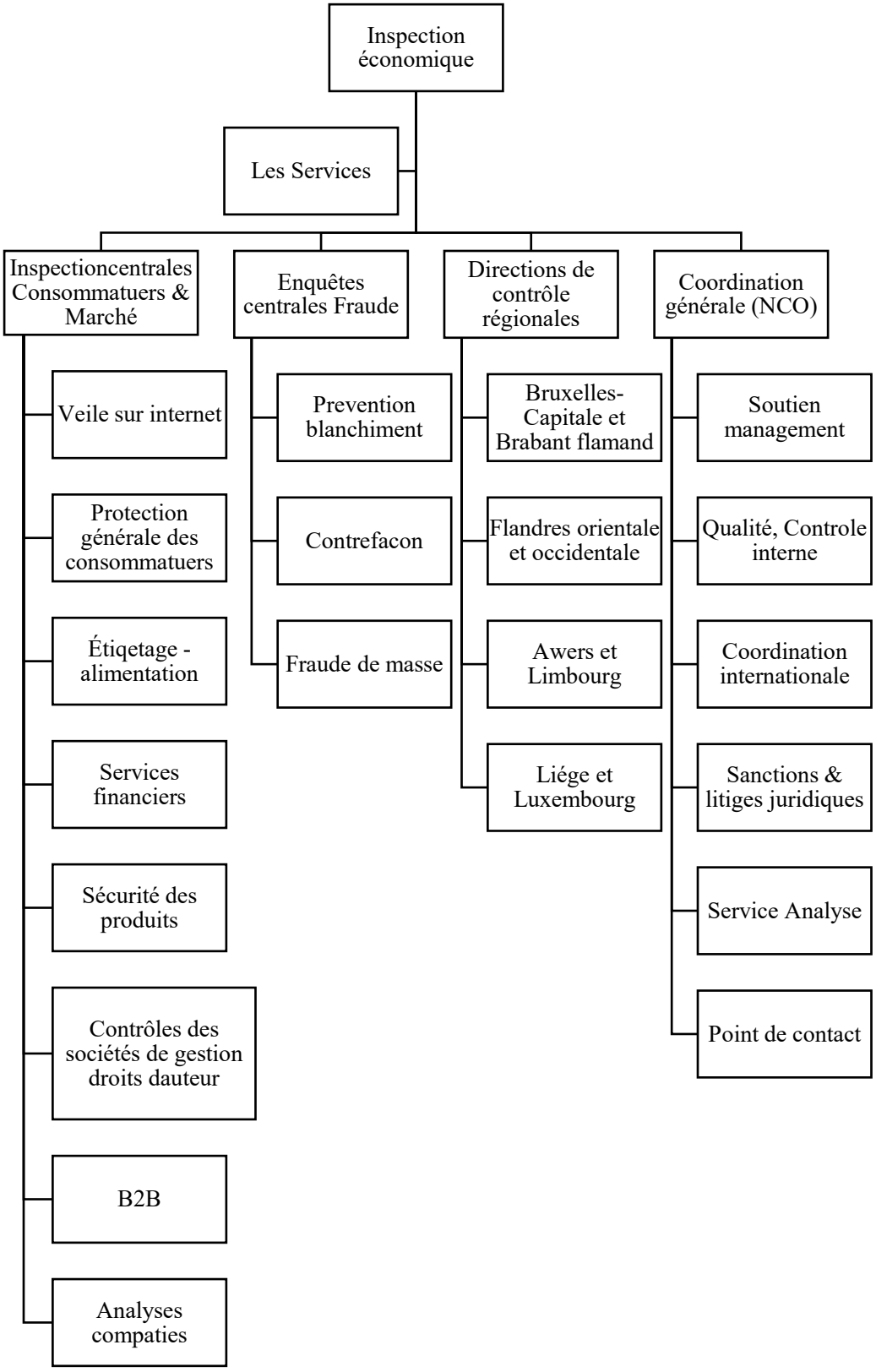
Source: Questionnaire and Website of the SPF.

It ensures the proper functioning of the market through compliance with economic regulations through information, prevention, guidance and repression.[347] It chairs the AFCOS body of Belgium (*La Commission interdépartementale pour la Coordination de la Lutte contre les Fraudes dans les secteurs économiques* CICF) and therefore assists OLAF in controls to protect the financial interests of the EU. In 2021 there have been 11 requests by OLAF requiring assistance in cases of suspected fraud affecting the financial interests of the European Union.[348] The Economic Inspectorate also deals with the prevention of money laundering.[349] **46**

The following organigram shows the structure of *L'Inspection économique*: **47**

[347] Service public fédéral Economie, P.M.E., Classes moyennes et Energie Direction Générale De L'inspection Économique 2021, p 9.
[348] Service public fédéral Economie, P.M.E., Classes moyennes et Energie Direction Générale De L'inspection Économique 2021, p 45.
[349] Service public fédéral Economie, P.M.E., Classes moyennes et Energie Direction Générale De L'inspection Économique 2021, p 46.

Figure 12: Organigram of the L'Inspection économique – Belgium



Source: https://economie.fgov.be/sites/default/files/Files/About-SPF/064-18-organigramme-F-E7.pdf. Accessed 4 September 2024.

The Federal Agency for the Safety of the Food Chain[350] is part of the *SPF Santé Publique, Sécurité de la Chaîne alimentaire et environnement* and also responsible for controls in the area of common market organisations.[351] **48**

The following laws can be considered as a first point of reference, because although some of them are no longer in force in parts of Belgium, they were for some time the relevant standards for the common organisation of the markets. They can be consulted and examined for updates: **49**

- Act of 28 March 1975 on trade in agricultural, horticultural and sea-fishery products amended by the law of 5 February 1999[352]
- Law of 11 July 1969 on pesticides and raw materials for agriculture, horticulture, forestry and animal husbandry[353]
- Royal Decree of 22 February 2001 organising the controls carried out by the Federal Agency for the Safety of the Food Chain and amending various legal provisions legal provisions[354]

(2) Investigative Powers

The investigative powers are regulated in the various codes, which we mentioned above and repeat now below with their full provisions, which enables us to see the details, formalities, procedures and thresholds for certain measures: **50**

(a) Investigative Powers in the Area of Customs Duties and VAT (General Tax Code)

The investigative powers in the area of customs duties and VAT are taken from the Customs Code and the VAT code. Measures of the customs and tax investigations are presented in the table below. **51**

Customs Investigations Measures 1 **52**

	Measures
Customs Investigation:	
- Customs Code/*Code des douanes*, Chapter XXII, Art. 201 et seq. and Chapter XXV. Minutes, contraventions statements, seizures and prosecutions Collection-related	

[350] *Agence Fédérale pour la Sécurité de la Chaîne Alimentaire AFSCA.*
[351] Harksen 2004, p 299.
[352] Loi du 28 mars 1975 relative au commerce des produits agricoles, horticoles et de la pêche maritime, modifiée par la loi du 5 février 1999 (*repealed by Flemish and Walloon region*).
[353] Loi du 11 juillet 1969 relative aux pesticides et aux matières premières pour l'agriculture, l'horticulture, la sylviculture et l'élevage (*repealed by Flemish and Walloon region*).
[354] Arrêté Royal du 22 février 2001 organisant les contrôles effectués par l'Agence fédérale pour la Sécurité de la Chaîne alimentaire et modifiant diverses dispositions legales.

- Art. 201 (obtaining documents)
- Art. 202 (repayment of evaded excise duties)
- Art. 203 (reporting of invoices obligation addressed to importers and exporters)
- Art. 203 § 1 issues the applicability of Art. 201 in these cases
- Art. 204 (Import duties on motor vehicles)
- Art. 205 (Irregularities establishing a suspicion of fraud)
- Art. 206 (Taking of samples when inspecting goods/obligation to work with inspectors)
- Art. 207 (Support inspectors with invoices, books and documents)
- Art. 208 (Prevention of fraud: ordering of supervisions and regulation of work in factories (infringements are sanctioned)
- Art. 209 (Equal powers of the Investigation Department of the Higher Audit Committee and the officials of the General Administration of Customs and Excise)
- Art. 209/1 (Recourse to mobile or fisex cameras during checks)
- Art. 209/2 (Identity checks and detention with information of police)
- Art. 210 (Collection of taxes)
- Art. 267 (offences of fraud/drawing up obligation)
- Art. 268 (collection of information/minutes)
- Art. 269 (Reports of infringements)
- Art. 273 (Seizure of goods)
- Art. 274 (Objects of which or with which fraud has been committed)
- Art. 275 (Seizure of goods and means of transport)
- Art. 276 (Prohibition to sell seized goods until confiscation has been pronounced by court)
- Art. 278 (Damages during seizures)
- Art. 281 (contraventions and fraud offences will be heard at first instance and they are investigated in accordance with the Criminal Procedure Code, see above investigations of the EPPO and see below OLAF's obligation according to Art. 12e OLAF Regulation to report criminal conduct to the EPPO).

Tax investigations:

- VAT CODE/Code de la TVA, Art. 59–69. Evidence Gathering provisions/Moyens de preuve et mesures de contrôle.
- Section 61 § 2 of the VAT Code (taking books and document)
- Section 63 VAT Code (entering premises)
- Section 63a confers the powers to officials of the tax administration

For a case see the press release of OLAF below: OLAF, Press Release, No 3/2019, Fighting crime in real time: OLAF and Belgium customs lead international cyber patrol to stop online traffickers.[355]

(b) Investigative Powers in the Area of Structural Funds and Internal Policies

First of all, the Code of Economic Law[356] should be consulted for investigative powers in the area of structural funds and internal policies. **53**

Code of Economic Law **54**

Section 9. [Other Special Skills]

Article XV.30/2[357] The agents appointed by the Minister are competent to provide the necessary assistance to European Commission controllers, in accordance with Article 9 of Regulation (Euratom, EC) No 2185/96 of the Council of 11 November 1996 relating to on-the-spot checks and inspections carried out by the Commission for the protection of the financial interests of the European Communities against fraud and other irregularities.

The agents referred to in the first paragraph have the powers provided for in ***Title 1, Chapter 1*** for this purpose.]

Book XV. [Law Enforcement]

Title 1. [The exercise of surveillance and the investigation and observation of offences]

Chapter 1. [General Skills]

Article XV.1 See above Article 28 EPPO Regulation → Via the General Investigation Provisions

Article XV.2 See above Article 28 EPPO Regulation → Via the General Investigation Provisions

Article XV.3 See above Article 30 para 1 (a) EPPO Regulation → Search Any Premises or LandVia the General Investigation Provisions

[355] See https://anti-fraud.ec.europa.eu/media-corner/news/fighting-crime-real-time-olaf-and-belgium-customs-lead-international-cyber-patrol-stop-online-2019-05-21_en. Accessed 4 June 2024.

[356] *Code de Droit Économique.*

[357] Section 9. Autres compétences particulières Art. XV.30/2. Les agents désignés par le ministre sont compétents pour prêter l'assistance nécessaire aux contrôleurs de la Commission européenne, conformément à l'article 9 du règlement (Euratom, CE) n° 2185/96 du Conseil du 11 novembre 1996 relatif aux contrôles et vérifications sur place effectués par la Commission pour la protection des intérêts financiers des Communautés européennes contre les fraudes et autres irrégularités.
Les agents visés à l'alinéa 1er disposent pour cela des compétences prévues au titre 1er, chapitre 1er.

Article XV.4[358] § 1. With a view to researching and recording the offences referred to in Article XV.2, § 1, the agents referred to in Article XV.2 also have the power to make findings by taking images, regardless of their medium, and by telecommunications recording or
public communications or telecommunications or private communications in which the agent referred to in Article XV.2 participates himself.
§ 2. In inhabited premises, the agents referred to in Article XV.2 may only make observations by means of images and/or sound recordings, whatever the medium, provided that they have the effect of an authorisation issued by the investigating judge.
The request addressed to the investigating judge by the official referred to in Article XV.2, includes at least:
1° the identification of the persons who are the subject of it, insofar as this is possible;

[358] Art. XV.4. § 1er. En vue de la recherche et de la constatation des infractions visées à l'article XV.2, § 1er, les agents visés à l'article XV.2 disposent également de la compétence de procéder à des constatations par la réalisation d'images, peu importe leur support, et par l'enregistrement de télécommunications ou communications publiques ou de télécommunications ou communications privées auxquelles l'agent visé à l'article XV.2 participe lui-même.
§ 2. Dans les locaux habités, les agents visés à l'article XV.2 peuvent uniquement faire des constatations au moyen d'images et /ou des enregistrements sonores, quel qu'en soit le support, à la condition de disposer à cet effet d'une autorisation délivrée par le juge d'instruction.
La requête adressée au juge d'instruction par le fonctionnaire visé à l'article XV.2, comporte au moins:
1° l'identification des personnes qui en sont l'objet, pour autant que cela soit possible;
2° la législation applicable et les infractions visées;
3° tous les documents et informations dont il ressort que le recours à ce moyen est nécessaire.
§ 3. Les constatations faites par les agents visés à l'article XV.2 au moyen des images qu'ils ont faites, font foi jusqu'à preuve du contraire, pour autant qu'il soit satisfait aux conditions mentionnées ci-après:
1° les constatations doivent faire l'objet d'un procès-verbal de constatation d'une infraction faite au moyen d'images, qui doit comprendre les données suivantes:
a) l'identité de l'agent ayant réalisé les images;
b) le jour, la date, l'heure et la description exacte du lieu où les images ont été réalisées;
c) l'identification complète de l'équipement technique ayant permis de réaliser les images;
d) une description de ce qui est visible sur les images en question, ainsi que le lien avec l'infraction constatée;
e) lorsqu'il s'agit d'une prise de vues d'un détail, une indication sur l'image permettant de déterminer l'échelle;
f) une reproduction de l'image ou, si cela s'avère impossible, une copie sur un support en annexe du procèsverbal, ainsi qu'un aperçu complet de toutes les spécifications techniques nécessaires pour pouvoir examiner la copie de ces images;
g) lorsqu'il y a plusieurs reproductions ou plusieurs supports, une numérotation de ces reproductions ou de ces supports, qui doit également apparaître dans la description correspondante, dans le procès-verbal, de ce qui peut être observé sur les images;
2° le support originel des images doit être conservé par l'administration dont fait partie l'agent qui a réalisé les images, selon le cas:
a) jusqu'à ce qu'une décision judiciaire mettant fin à la poursuite de l'infraction ait acquis force de chose jugée;
b) jusqu'à acceptation de la proposition de transaction visée à l'article XV.61;
c) jusqu'au moment où les agents visés à l'article XV.2 ont constaté qu'il avait été donné suite à l'avertissement visé à l'article XV.31;
d) après le paiement total du règlement transactionnel visé à l'article 216bis du Code d'instruction criminelle.
Si le contrevenant n'accepte pas la proposition de transaction ou ne paie pas la somme proposée dans les temps, auquel cas le procès-verbal est remis au procureur du Roi, le support originel des images est conservé jusqu'à ce que l'action pénale soit couverte par la prescription ou avant cela, en cas de décision expresse du ministère public;
§ 4. Les agents visés à l'article XV.2 peuvent également utiliser des images provenant de tiers, pour autant que ces personnes les ont réalisées ou obtenues de façon légitime.]

2° the applicable legislation and the offences covered;
3° all the documents and information from which it appears that recourse to this means is necessary.
§ 3. The findings made by the agents referred to in Article XV.2 by means of the images they have made are authentic until proven otherwise, provided that the conditions mentioned below are met:
1° the observations must be the subject of a report of observation of an offence made by means of images, which must include the following data:
(a) the identity of the agent who produced the images;
b) the day, date, time and exact description of the location where the images were taken;
(c) complete identification of the technical equipment used to produce the images;
(d) a description of what is visible in the images in question, as well as the link with the infringement found;
e) in the case of a shot of a detail, an indication on the image making it possible to determine the scale;
f) a reproduction of the image or, if this proves impossible, a copy on a medium attached to the report, as well as a complete outline of all the technical specifications necessary to be able to examine the copy of these images;
g) where there are several reproductions or several supports, a numbering of these reproductions or of these supports, which must also appear in the corresponding description, in the minutes, of what can be seen in the pictures;
2° the original medium of the images must be kept by the administration of which the agent who made the pictures, as appropriate:
(a) until a judicial decision terminating the prosecution of the offence has acquired the force of res judicata;
b) until acceptance of the transaction proposal referred to in Article XV.61;
(c) until the officials referred to in Article XV.2 ascertain that the warning had been acted upon referred to in Article XV.31;
d) after full payment of the transactional settlement referred to in article 216bis of the Code of Criminal Procedure.
If the offender does not accept the transaction proposal or does not pay the proposed amount within time, in which case the report is given to the King's prosecutor, the original medium of the images is kept until the criminal action is covered by the statute of limitations or before that, in the event of an express decision by the public minister;
§ 4. The agents referred to in Article XV.2 may also use images from third parties, provided that such persons legitimately made or obtained them.
Article XV.5 See above Article 30 para 1 (a) EPPO Regulation → Conservatory Measures Necessary to Preserve their Integrity, Necessary to Avoid the Loss, Necessary to Avoid the Contamination of Evidence

Article XV.5/1[359] § 1. Where no other effective means are available to cease or prohibit the offences referred to in Article XV.2, § 1, and in order to prevent the risk of serious harm to collective interests' consumers, the agents appointed for this purpose by the Minister have the powers to:
1° to remove content from an online interface or to restrict access to it or to order that a message warning sign is clearly displayed when consumers access an online interface;
2° order a hosting service provider to remove, disable or restrict access to an online interface;
3° order registry operators or domain registrars to delete a name complete domain name and allow the competent authority concerned to register it.
The measures taken on the basis of the preceding paragraph are confirmed by the public prosecutor within a period of forty-eight hours. In the absence of confirmation by the

[359] Art. XV.5/1. § 1er. Lorsqu'aucun autre moyen efficace n'est disponible pour faire cesser ou interdire les infractions visées à l'article XV.2, § 1er, et afin de prévenir le risque de préjudice grave pour les intérêts collectifs des consommateurs, les agents désignés à cette fin par le ministre disposent des compétences de:
1° retirer un contenu d'une interface en ligne ou de restreindre l'accès à celle-ci ou d'ordonner qu'un message d'avertissement s'affiche clairement lorsque les consommateurs accèdent à une interface en ligne;
2° ordonner à un fournisseur de services d'hébergement qu'il supprime, désactive ou restreigne l'accès à une interface en ligne;
3° ordonner aux opérateurs de registre ou aux bureaux d'enregistrement de domaines de supprimer un nom de domaine complet et de permettre à l'autorité compétente concernée de l'enregistrer.
Les mesures prises sur la base de l'alinéa précédent sont confirmées par le ministère public dans un délai de quarante-huit heures. A défaut d'une confirmation par le ministère public, le retrait, l'ordre de mentionner un message d'avertissement, la suppression, la désactivation ou la restriction sont levés de plein droit.
Le ministère public peut également ordonner aux agents visés à l'alinéa 1er de prendre les mesures visées dans le présent paragraphe, dans les mêmes conditions.
§ 2. Sauf en cas d'urgence motivée, avant de pouvoir prendre une mesure visée au paragraphe 1er et dans la mesure où les coordonnées visées à l'article XII.6 sont disponibles, les agents visés au paragraphe 1er prennent contact avec l'entreprise responsable de l'interface en ligne au moins vingt-quatre heures avant de prendre la mesure. Ils renvoient aux infractions visées à l'article XV.2, § 1er, qu'ils ont constatées et/ou au risque de préjudice grave pour les intérêts collectifs des consommateurs qui est constaté et aux mesures qui peuvent être prises sur la base de la présente disposition.
La mesure visée ne peut être prise que si l'entreprise ne réagit pas ou que la réaction n'a pas pour effet d'éviter le risque de préjudice grave pour les intérêts collectifs des consommateurs avant l'échéance du délai de vingtquatre heures.
§ 3. Les mesures prises sur la base du paragraphe 1er, font l'objet d'un constat écrit. Cet écrit mentionne au moins:
1° la date et l'heure à laquelle les mesures sont prises;
2° la date et l'heure de la prise de contact visée au paragraphe 2;
3° l'identité des agents visés au paragraphe 1er, la qualité en laquelle ils interviennent et l'administration dont ils relèvent;
4° les mesures prises;
5° la base factuelle et juridique.
§ 4. Le ministère public peut à tout moment donner mainlevée des mesures qu'il a ordonnées ou confirmées.
Tant qu'il n'y a pas eu confirmation par le ministère public, les agents visés au paragraphe 1er peuvent donner mainlevée des mesures.
Après la confirmation des mesures ou après l'ordre, un recours contre les mesures prises peut être formé de manière motivée devant le ministère public.
§ 5. Les mesures visées au paragraphe 1er sont levées de plein droit par la décision judiciaire mettant fin aux poursuites, lorsque ce jugement est passé en force de chose jugée, ou par le classement sans suite par le ministère public, ou par une décision des agents visés au paragraphe 1er.]

public prosecutor, the withdrawal, the order to mention a warning message, deletion, deactivation or restriction are automatically lifted.
The public prosecutor may also order the agents referred to in the first paragraph to take the measures referred to in this paragraph, under the same conditions.
§ 2. Except in the case of justified urgency, before being able to take a measure referred to in paragraph 1 and in the insofar as the contact details referred to in Article XII.6 are available, the agents referred to in paragraph 1 shall take contact with the company responsible for the online interface at least twenty-four hours before making the measure. They refer to the offences referred to in Article XV.2, § 1, which they have noted and/or at the risk of serious harm to the collective interests of consumers that is found and to the measures that can be taken on the basis of this provision.
The measure referred to can only be taken if the company does not react or if the reaction does not have the effect of avoiding the risk of serious harm to the collective interests of consumers before the expiry of the 24-hour period.
§ 3. The measures taken on the basis of paragraph 1 are the subject of a written report. This writing mentions less:
1° the date and time at which the measurements are taken;
2° the date and time of the contact referred to in paragraph 2;
3° the identity of the agents referred to in paragraph 1, the capacity in which they operate and the administration for which they fall under;
4° the measures taken;
5° the factual and legal basis.
§ 4. The public prosecutor may at any time release the measures that he has ordered or confirmed.
As long as there has not been confirmation by the public prosecutor, the agents referred to in paragraph 1 may give lifting of the measures.
After the confirmation of the measures or after the order, an appeal against the measures taken can be made from reasoned manner before the public prosecutor.
§ 5. The measures referred to in paragraph 1 are automatically lifted by the court decision terminating the proceedings, when this judgment has the force of res judicata, or by the filing without follow-up by the public prosecutor, or by a decision of the officials referred to in paragraph 1.

Article XV.6 See above Article 28 EPPO Regulation → Via the General Investigation Provisions
Article XV.7 See above Article 28 EPPO Regulation → Via the General Investigation Provisions

Article XV.8 See above Article 28 EPPO Regulation → Via the General Investigation Provisions

Article XV.9[360] In order to be able to exercise their powers as judicial police officer, auxiliary to the King's prosecutor, the agents referred to in Article XV.8. take an oath, before the public prosecutor of the jurisdiction of their domicile, in the following terms: "I swear loyalty to the King, obedience to the Constitution and the laws of the Belgian people, and to fulfil faithfully the functions conferred on me".
They can exercise their powers throughout the territory of the Kingdom.

Article XV.10[361] The King may, by decree deliberated in the Council of Ministers, assign specific powers to the officers referred to in Article XV.2 to search for and record offences, in addition to the powers they have by virtue of the provisions of this chapter and of chapter 2. This royal decree must be confirmed by law within 18 months of its entry into force.

55 The Act of 28 March 1975 on trade in agricultural, horticultural and sea-fishery products amended by the law of 5 February 1999[362] formerly held the investigative powers for investigators, such as:

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- Access to premises (factories, shops, depots, offices, means of transport, business and livestock buildings, auctions, markets, minques, [fishing vessels, slaughterhouses, cutting plants, freezing facilities,] sorting plants, refrigeration plants, warehouses, railway stations and to holdings located in the open air), **Art. 5** (no searching)
- Obtaining of all information, documents and computer data carriers necessary, **Art. 5 para 6**
- Obtaining of documents from the premises of the economic operators, **Art. 5 para 7**
- Taking samples, **Art. 5 para 4**
- Consulting experts, **Art. 5 para 7**

57 Article 5 of the Act of 28 March 1975 can be viewed below:

[360] Art. XV.9. Pour pouvoir exercer leurs attributions d'officier de police judiciaire, auxiliaire du procureur du Roi, les agents visés à l'article XV.8. prêtent serment, devant le procureur-général du ressort de leur domicile, dans les termes suivants: "Je jure fidélité au Roi, obéissance à la Constitution et aux lois du peuple belge, et de remplir fidèlement les fonctions qui me sont conférées".
Ils peuvent exercer leurs attributions sur l'ensemble du territoire du Royaume.
[361] Art. XV.10. Le Roi peut, par arrêté délibéré en Conseil des ministres, attribuer des compétences spécifiques supplémentaires aux agents visés à l'article XV.2 pour rechercher et constater des infractions, en plus des compétences dont ils disposent en vertu des dispositions du présent chapitre et du chapitre 2. Cet arrêté royal doit être confirmé par loi dans les 18 mois qui suivent son entrée en vigueur.]
[362] Loi du 28 mars 1975 relative au commerce des produits agricoles, horticoles et de la pêche maritime, modifiée par la loi du 5 février 1999 (*repealed by Flemish and Walloon region*)

Article 5 Act of 28 March 1975 on trade in agricultural, horticultural and sea-fishery products amended by the law of 5 February 1999[363]
Without prejudice to the powers of the judicial police officers, infringements of the provisions of this Law and its implementing decrees shall be investigated and recorded by the judicial agents of the public prosecutor's offices, the members of the gendarmerie and the municipal police officers, as well as, as the case may be, the statutory and contractual staff of the Federal Public Service Public Health, Safety of the Food Chain and the Environment, members of the staff of the Belgian Intervention and Restitution Office, agents of the Customs and Excise Administration, inspectors and controllers of the General Directorate for Control and Mediation of the Federal Public Service Economy, P. M.E., Middle Classes and Energy. They may make findings on the basis of observations made by air, sea or land using all available technical means.
Those of these persons who have not taken the oath prescribed by the decree of 20 July 1831, shall take it before the justice of the peace. The members of the personnel of the Federal Public Service of Public Health, Food Chain Safety and Environment shall take the oath, prior to the exercise of their function, before the Minister who has Public Health in his attributions or his delegate.

[363] Art. 5.[Sans préjudice des pouvoirs des officiers de police judiciaire, les infractions aux dispositions de la présente loi et de ses arrêtés d'exécution sont recherchées et constatées par les agents judiciaires auprès des parquets, les membres de la gendarmerie et les agents de la police communale, ainsi que selon le cas [les membres du personnel statutaire et contractuel du Service public fédéral Santé publique, Sécurité de la Chaîne alimentaire et Environnement, les membres du personnel du Bureau d'intervention et de restitution belge, les agents de l'Administration des Douanes et Accises, les inspecteurs et contrôleurs de la Direction générale Contrôle et Médiation du Service public fédéral Economie, P.M.E., Classes moyennes et Energie]. Ils peuvent faire des constatations sur la base d'observations faites par voies aériennes, en mer ou sur terre à l'aide de tous les moyens techniques disponibles.]
Celles d'entre ces personnes qui n'auraient point prêté le serment prescrit par le décret du 20 juillet 1831, le prêteront devant le juge de paix. [Les membres du personnel du Service public fédéral Santé publique, Sécurité de la Chaîne alimentaire et Environnement prêtent serment, préalablement à l'exercice de leur fonction, entre les mains du Ministre qui à la Santé publique dans ses attributions ou de son délégué.]
Les procès-verbaux établis par ces agents de l'autorité font foi jusqu'à preuve du contraire; une copie en est envoyée dans les quinze jours de la constatation, aux auteurs de l'infraction.
Les mêmes agents de l'autorité sont autorisés à prélever des échantillons et à les faire analyser dans un laboratoire agréé à cette fin.
Ils ont, dans l'exercice de leurs fonctions, libre accès aux usines, magasins, dépôts, bureaux, moyens de transport, bâtiments d'entreprise et d'élevage, criées, marchés, minques, [bateaux de pêche, abattoirs, locaux de découpe, installations de congélation,] entreprises de triage, installations frigorifiques, entrepôts, gares et aux exploitations situées en plein air.
[Ils ne peuvent procéder à la visite des lieux servant à l'habitation si ce n'est en vertu d'une autorisation du juge au Tribunal de police.]
Ils peuvent se faire communiquer tous renseignements [, documents et supports informatiques de données] nécessaires à l'exercice de leurs fonctions, et procéder à toutes constatations utiles avec la collaboration éventuelle d'experts choisis sur une liste établie par (le Ministre qui a la Santé publique dans ses attributions).
[Si des documents et supports informatiques de données sont emportés, il en est dressé sur le champ un inventaire détaillé dont une copie est remise au détenteur.]
[Le présent article ne s'applique pas aux contrôles effectués en application de la loi du 4 février 2000 relative à la création de l'Agence fédérale pour la Sécurité de la Chaîne alimentaire.]

The reports drawn up by these enforcement officers are authentic until proven otherwise; a copy is sent within fifteen days of the finding, to the authors of the offence.
The same enforcement officers are authorised to take samples and have them analysed in a laboratory approved for this purpose shall, in the exercise of their duties, have free access to factories, shops, depots, offices, means of transport, business and livestock buildings, auctions, markets, minques, fishing vessels, slaughterhouses, cutting plants, freezing facilities, sorting plants, refrigeration plants, warehouses, railway stations and to holdings located in the open air.
[They may not enter premises used for habitation except by virtue of an authorisation from the judge at the Police Court].
They may be provided with all information, documents and computer data carriers necessary for the performance of their duties, and carry out any useful findings with the possible collaboration of experts chosen from a list drawn up by (the Minister who has Public Health in his or her attributions).
If documents and computer data carriers are taken away, a detailed inventory shall be drawn up on the spot, a copy of which shall be given to the holder.
This article shall not apply to controls carried out pursuant to the Act of 4 February 2000 on the establishment of the Federal Agency for the Safety of the Food Chain.

58 For the Flemish region the Framework decree on Administrative Maintenance may be consulted. There can be found a section dedicated to the assistance to OLAF – especially Article 80:

Framework decree on administrative maintenance/
Décret-cadre relatif au maintien administratif

6. Assistance to OLAF
Article 80[364] § 1. If invited to do so, supervisors, administrative investigators and judicial police agents and officers of the Flemish inspection services may make use of the powers conferred on them by this decree to assist OLAF in meaning of Regulation 2185/96.

[364] 6. Assistance à l'OLAF
Art. 80. Décret-cadre relatif au maintien administratif
§ 1er. S'ils y sont invités, les superviseurs, les agents de recherche administratifs et les agents et officiers de police judiciaire des services d'inspection flamands peuvent faire usage des pouvoirs qui leur sont conférés dans le présent décret pour prêter assistance à l'OLAF au sens du règlement 2185/96. § 2. Les membres du personnel des services d'inspection flamands chargés de missions de tutelle ou de recherche administrative en vertu de la réglementation flamande à laquelle le présent décret ne s'applique pas peuvent faire appel aux pouvoirs visés au chapitre 2 pour prêter assistance à l'OLAF au sens du règlement 2185/96.
Les membres du personnel visés à l'alinéa 1er peuvent également utiliser les pouvoirs qui leur sont conférés en vertu d'autres réglementations flamandes pour l'exécution de missions de tutelle administrative et de recherche administrative pour prêter assistance à l'OLAF au sens du règlement 2185/96.
Lorsque des membres du personnel prêtent assistance à l'OLAF conformément aux alinéas 1er et 2, les limitations, prévues par les autres réglementations flamandes précitées, de la portée des obligations et des droits visés aux articles 5, 12 à 22 et 34 du règlement général sur la protection des données sont également applicables.

§ 2. Staff members of the Flemish inspection services responsible for supervisory or administrative research tasks under Flemish regulations to which this decree does not apply may call on the powers referred to in Chapter 2 to provide assistance to OLAF within the meaning of Regulation 2185/96.
The staff members referred to in the first paragraph may also use the powers granted to them under other Flemish regulations for the performance of administrative supervision and administrative research tasks to provide assistance to OLAF within the meaning of the regulation. 2185/96.
When staff members provide assistance to OLAF in accordance with paragraphs 1 and 2, the limitations, provided for by the other aforementioned Flemish regulations, of the scope of the obligations and rights referred to in Articles 5, 12 to 22 and 34 of the general regulations on data protection also apply.

Furthermore, the Organic Ordinance containing the provisions applicable to the budget, accounting and auditing[365] (Articles 81 et seq.) can be consulted for provisions on budgetary control: **59**

Administrative and budgetary control **60**

Article 81[366] The Government organises administrative and budgetary control.
In addition to exercising that control, the finance inspectors fulfil the function of budgetary and financial adviser to the minister with whom they are accredited.
The finance inspectors issue their advice in full independence and in accordance with the deontology of the interfederal Corps of the Inspectorate of Finance.
The financial inspectors carry out their assignment on paper and on the spot. They have access to all files and all archives of the departments of the Government and autonomous administrative institutions of the first category subject to this ordinance, and receive from these departments and institutions any information they request.
They may not participate in the administration or management of the services of the Government and autonomous administrative institutions, nor may they give orders to prevent or suspend operations.

[365] Organieke ordonnantie houdende de bepalingen die van toepassing zijn op de begroting, de boekhouding en de controle.
[366] **HOOFDSTUK IV. De administratieve en begrotingscontrole**
Art. 81. De Regering organiseert een administratieve en begrotingscontrole.
Naast de uitoefening van die controle, vervullen de inspecteurs van financiën de functie van budgettaire en financiële raadgever van de minister bij wie ze zijn geaccrediteerd.
De inspecteurs van financiën brengen hun adviezen uit in volle onafhankelijkheid en in overeenstemming met de deontologie van het interfederaal Korps van de Inspectie van Financiën.
De inspecteurs van financiën voeren hun opdracht uit op stukken en ter plaatse. Ze hebben toegang tot alle dossiers en alle archieven van de aan deze ordonnantie onderworpen diensten van de Regering en autonome bestuursinstellingen van eerste categorie, en ontvangen van deze diensten en instellingen alle inlichtingen die zij vragen.
Zij mogen niet deelnemen aan het bestuur noch aan het beheer van de diensten van de Regering en autonome bestuursinstellingen en ook geen bevelen geven tot het verhinderen of schorsen van verrichtingen.

Article 82[367] The Government supervises the implementation of the budget.
It determines its attitude towards ordinance proposals and amendments from Parliament, the adoption of which could have an impact either on revenue or on expenditure.
It regulates the prior budgetary control of preliminary drafts and draft ordinances, preliminary drafts and drafts of government decree and ministerial decree, circular or decree, taking into account the available appropriations or their impact on revenue and the expenses.

Article 83[368] By order of the Government, the inspectors of finance may be charged with an investigation assignment for financial and budgetary aspects in the departments of the Government and autonomous administrative institutions of the first category subject to this ordinance.
The financial inspectors have the widest investigative powers to fulfil this task.

(c) Investigative Powers in the Area of Common Market Organisations

61 For investigative powers in the area of the Common Market Organisations it can be referred to the relevant provisions from the *Code of Economic Law* and *Loi du 28 mars 1975*, see above → Investigative Powers in the Area of Structural Funds and Internal Policies.

62 Additionally, the following codes are relevant for investigations in the area of common market organisations:

63 - Law of 11 July 1969 on pesticides and raw materials for agriculture, horticulture, forestry and animal husbandry[369]
  - Access to premises (factories, shops, depots, offices, ships, company buildings, stables, warehouses, stations, wagons, vehicles and businesses located in the open air), Art. 6 para 4 (no searching)
  - Obtaining of all information, documents and computer data carriers necessary, Art. 6 para 6

[367] **Art. 82.**De Regering houdt toezicht op de uitvoering van de begroting.
Ze bepaalt haar houding ten opzichte van de voorstellen van ordonnantie en de van het Parlement uitgaande amendementen, waarvan de goedkeuring een weerslag zou kunnen hebben, hetzij op de ontvangsten, hetzij op de uitgaven.
Ze regelt de voorafgaande begrotingscontrole van de voorontwerpen en ontwerpen van ordonnantie, van de voorontwerpen en de ontwerpen van besluit van de regering en van ministerieel besluit, van circulaire of van beslissing, rekening houdend met de beschikbare kredieten of met de weerslag ervan op de ontvangsten en de uitgaven.
[368] **Art. 83.**In opdracht van de Regering kunnen de inspecteurs van financiën worden belast met een onderzoeksopdracht voor financiële en begrotingsaspecten bij de diensten van de Regering en autonome bestuursinstellingen van eerste categorie onderworpen aan deze ordonnantie.
De inspecteurs van financiën beschikken voor het vervullen van deze taak over de ruimste onderzoeksbevoegdheid.
[369] Loi du 11 juillet 1969 relative aux pesticides et aux matières premières pour l'agriculture, l'horticulture, la sylviculture et l'élevage (***repealed*** *by Flemish and Walloon region)*.

- Taking of documents from the premises of the economic operators, Art. 6 para 7
- Taking samples, Art. 6 para 3
- Consulting experts, Art. 6 para 6

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Article 6 Law of 11 July 1969 on pesticides and raw materials for agriculture, horticulture, forestry and animal husbandry [370]
(Without prejudice to the powers of the judicial police officers, infringements of the provisions of this Law and its implementing decrees shall be investigated and recorded by the magistrates of the Public Prosecutor's Office, the members of the local and federal police and, as the case may be by the civil servants and agents of the Federal Public Service for Public Health, Safety of the Food Chain and the Environment, designated by the Minister responsible for Public Health, the agents of the Customs and Excise Administration, the inspectors and controllers of the General Directorate for Supervision and Mediation of the Federal Public Service for the Economy, Finance and Industry, and the agents of the Federal Public Service for the Environment. M.E., Classes moyennes et Energie and other officials and agents designated by the King).
(Paragraph 2 repealed)
The reports drawn up by these enforcement officers shall be deemed authentic until proven otherwise; a copy shall be sent, within fifteen days of the finding, to the offenders.

[370] TITRE III. Dispositions générales.
Art. 6.(Sans préjudice des pouvoirs des officiers de police judiciaire, les infractions aux dispositions de la présente loi et de ses arrêtés d'exécution sont recherchées et constatées par les magistrats du ministère public, les membres du personnel de la police locale et fédérale, ainsi que, selon le cas, par les fonctionnaires et les agents du Service public fédéral Santé publique, Sécurité de la Chaîne alimentaire et Environnement, désignés par le Ministre qui a la Santé publique dans ses attributions, les agents de l'Administration des Douanes et Accises, les inspecteurs et contrôleurs de la Direction générale Contrôle et Médiation du Service public fédéral Economie, P.M.E., Classes moyennes et Energie et les autres fonctionnaires et agents désignés par le Roi.)
(Alinéa 2 abrogé)
Les procès-verbaux établis par ces agents de l'autorité font foi jusqu'à preuve du contraire; une copie en est envoyée, dans les quinze jours de la constatation, aux auteurs de l'infraction.
Les mêmes agents de l'autorité sont autorisés à prélever des échantillons et à les faire analyser dans un laboratoire agréé à cette fin.
Ils ont, dans l'exercice de leurs fonctions, libre accès aux usines, magasins, dépôts, bureaux, bateaux, bâtiment d'entreprise, étables, entrepôts, gares, wagons, véhicules et aux entreprises situées en plein air.
Ils ne peuvent procéder à la visite des lieux non accessibles au public avant cinq heures du matin et après neuf heures du soir, si ce n'est en vertu d'une autorisation du juge au tribunal de police. Cette autorisation est aussi nécessaire pour visiter des lieux servant à l'habitation.
Ils peuvent aussi se faire communiquer tous (renseignements, documents et supports informatiques de données) nécessaires à l'exercice de leurs fonctions, et procéder à toutes constatations utiles, avec la collaboration éventuelle d'experts choisis sur une liste établie par le Ministre compétent. <L 1999-02-05/35, art. 7, 3°, 003; En vigueur: 29-03-1999>
(Si des documents et supports informatiques de données sont emportés, il en est dressé sur le champ un inventaire détaillé dont une copie est remise au détenteur.) <L 1999-02-05/35, art. 7, 4°, 003; En vigueur: 29-03-1999>
(Le présent article ne s'applique pas aux contrôles effectués en application de la loi du 4 février 2000 relative à la création de l'Agence fédérale pour la Sécurité de la Chaîne alimentaire.) <AR 2001-02-22/33, art. 14, 004; En vigueur: 01-01-2003>

The same enforcement officers are authorised to take samples and have them analysed in a laboratory approved for this purpose.
In the exercise of their duties, they shall have free access to factories, shops, depots, offices, ships, company buildings, stables, warehouses, stations, wagons, vehicles and businesses located in the open air.
They may not visit places not accessible to the public before five in the morning and after nine in the evening, except by virtue of an authorisation from the judge at the police court. Such authorisation is also required to visit places used for habitation.
They may also be provided with all (information, documents and computer data carriers) necessary for the performance of their duties, and carry out any useful findings, with the possible collaboration of experts chosen from a list established by the competent Minister.
(If documents and computer data carriers are taken away, a detailed inventory shall be drawn up on the spot, a copy of which shall be given to the holder).
(This article shall not apply to controls carried out pursuant to the Act of 4 February 2000 on the establishment of the Federal Agency for the Safety of the Food Chain).

65 For further investigative powers, the

- Royal Decree of 22 February 2001 organising the controls carried out by the Federal Agency for the Safety of the Food Chain and amending various legal provisions legal provisions[371]

has been examined and certain powers of the investigators have been located:

- Access to and searching of premises, Art. 3 § 2
- Obtaining of all information, documents and computer data necessary, Art. 3 § 3
- Taking of documents from the premises of the economic operators, Art. 3 § 3
- Taking samples, Art. 3 § 5
- Consulting experts
- Enhanced control, Art. 4 § 2

66 **Article 3 Royal Decree of 22 February 2001 organising the controls carried out by the Federal Agency for the Safety of the Food Chain and amending various legal provisions legal provisions**[372] § 1. Without prejudice to the powers of the judicial police

[371] *Arrêté Royal du 22 février 2001 organisant les contrôles effectués par l'Agence fédérale pour la Sécurité de la Chaîne alimentaire et modifiant diverses dispositions legales.*

[372] **Art. 3.**
§ 1er. Sans préjudice des attributions des officiers de police judiciaire, les membres du personnel statutaire ou contractuel de l'Agence désignés à cette fin par le Ministre surveillent l'exécution des dispositions des lois visées à l'article 5 de la **loi du 4 février 2000** et de leurs arrêtés d'exécution ainsi que des règlements de l'Union européenne et qui relèvent des compétences de l'Agence.
Les membres du personnel contractuel prêtent serment, préalablement à l'exercice de leurs fonctions, entre les mains du Ministre ou de son délégué.

officers, the members of the Agency's statutory or contractual staff designated for this purpose by the Minister oversee the execution of the provisions of the laws referred to in Article 5 of the Law of 4 February 2000 and of their implementing decrees as well as of European Union regulations and which fall within the competence of the Agency.
Members of contractual staff take an oath, prior to the exercise of their functions, in the hands of the Minister or his delegate.
Other agents or persons may be appointed by Us, by decree deliberated in the Council of Ministers. They will take an oath, if necessary, in the hands of the Minister.
§ 2. In the exercise of their powers, the persons referred to in paragraph 1 may at any time enter and investigate any place where products may be found as well as places where evidence of the existence of an offence.
The visit of premises used exclusively as dwellings is only permitted between 5 am and 9 pm and can only be done with the authorisation of the judge of the police court.

D'autres agents ou personnes peuvent être désignés par Nous, par arrêté délibéré en conseil des Ministres. Ils prêteront serment, le cas échéant, entre les mains du Ministre.
§ 2. Dans l'exercice de leurs compétences, les personnes visées au paragraphe 1er peuvent à tout moment pénétrer et investiguer dans tout lieu où peuvent se trouver des produits ainsi que dans les lieux où sont susceptibles d'être trouvées les preuves de l'existence d'une infraction.
La visite des locaux servant exclusivement d'habitation n'est permise qu'entre 5 heures du matin et 9 heures du soir et il ne peut y être procédé qu'avec l'autorisation du juge du tribunal de police.
§ 3. Ils peuvent se faire remettre sur place tout document, renseignement ou élément d'information qu'ils jugent nécessaire à l'accomplissement de leur mission et procéder à toutes constatations utiles, avec la collaboration éventuelle d'experts choisis sur une liste établie par le Ministre.
Les experts qui n'auraient point prêté le serment prescrit par le décret du 20 juillet 1831, le prêteront entre les mains du Juge de paix.
Si des pièces, documents ou supports informatiques de données sont emportés, il en est dressé sur le champ un inventaire détaillé dont une copie est remise au détenteur.
§ 4. Ils recherchent et constatent les infractions aux lois visées à l'article 5 de la **loi du 4 février 2000** et à leurs arrêtés d'exécution ainsi qu'aux règlements de l'Union européenne visés à l'article 2, 4°, du présent arrêté par des procès-verbaux faisant foi jusqu'à preuve du contraire.
Ils procèdent à l'audition du contrevenant et à toute autre audition utile.
Une copie du procès-verbal est transmise au contrevenant dans un délai de trente jours prenant cours le lendemain de la constatation de l'infraction.
Ils peuvent requérir, dans l'exercice de leurs missions, l'assistance des forces de police.
§ 5. Ils sont autorisés à soumettre le produit ou un échantillon de celui-ci à un examen ou une analyse, dans un laboratoire agréé.
Des analyses particulières peuvent cependant être effectuées dans un laboratoire non agréé selon les conditions fixées par Nous.
Le mode et les conditions de prélèvement des produits ou des échantillons ainsi que les conditions et la procédure d'agrément des laboratoires d'analyse sont déterminés par Nous.
Le Ministre définit les méthodes d'analyse. Il peut fixer les tarifs maxima des analyses ou des examens.
L'Agence agrée les laboratoires.
§ 6. Lorsqu'un procès-verbal est établi par les personnes désignées en exécution du § 1er du présent article pour infraction soit aux lois visées à l'article 5 de la **loi du 4 février 2000** ou à leurs arrêtés d'exécution soit aux règlements de l'Union européenne, et qui relèvent des compétences de l'Agence conformément à la loi précitée, le procès-verbal est envoyé dans un délai de trente jours prenant cours le lendemain de la constatation de l'infraction à l'agent désigné par Nous, en application de l'article 7 du présent arrêté.
Au cas où le procès verbal est dressé par le bourgmestre ou son délégué ou par un officier de police judiciaire, il peut également être envoyé à l'agent précité.

§ 3. They may obtain on site any document, information or piece of information they deem necessary for the performance of their mission and make any useful findings, with the possible collaboration of experts chosen from an established list. by the Minister.
The experts who have not taken the oath prescribed by the decree of July 20, 1831, will take it in the hands of the Justice of the Peace.
If exhibits, documents or computer data media are taken away, a detailed inventory is drawn up immediately, a copy of which is given to the holder.

§ 4. They research and record infringements of the laws referred to in Article 5 of the Act of 4 February 2000 and their implementing decrees as well as the regulations of the European Union referred to in Article 2, 4°, of this decree by authentic minutes until proven otherwise.
They proceed with the hearing of the offender and any other useful hearing.
A copy of the report is sent to the offender within a period of thirty days starting the day after the observation of the infringement.
They may request, in the exercise of their missions, the assistance of the police forces.

§ 5. They are authorised to submit the product or a sample thereof to examination or analysis in an approved laboratory.
However, specific analyses may be carried out in a non-accredited laboratory under the conditions set by Us.
The method and conditions for taking products or samples as well as the conditions and procedure for approving analysis laboratories are determined by Us.
The Minister defines the methods of analysis. It can set the maximum rates for analyses or examinations.
The Agency approves the laboratories.

§ 6. When a report is drawn up by the persons designated in execution of § 1 of this article for an infringement either of the laws referred to in article 5 of the law of February 4, 2000 or of their implementing decrees or of the regulations of the European Union, and which fall within the powers of the Agency in accordance with the aforementioned law, the report is sent within thirty days starting the day after the observation of the infringement to the designated agent by Us, pursuant to Article 7 of this Order.
If the report is drawn up by the mayor or his delegate or by a judicial police officer, it may also be sent to the aforementioned agent.

Article 4[373] § 1. Other methods of control and inspection may be set by Us, in particular in order to meet the obligations resulting from international treaties and international acts taken under them.
§ 2. Without prejudice to the application of other legal or regulatory provisions, in the event of repeated infringements, refusal of an injunction, fraud or the absence or breaches in the imposed self-monitoring, the Minister may submit one or more locations under enhanced control.
The circumstances and methods of this reinforced control are specified by Us.
The costs of the reinforced control are borne by the persons concerned.

(3) Protection of Information

The protection of information is important and ensures the principle of the equality of arms in the investigation procedure. **67**

(a) Tax Secrecy (VAT Code)

Secrecy is a very high good and protected by the Belgian Constitution (*Grondewet*). The VAT Code regulates in **Art. 93bis** the secrecy in VAT procedures. **Art. 337 Criminal Code** of Belgium penalises certain disclosures of information and documents related to secrecies but exemptions from this rule exist.[374] The violation of tax secrecies is sanctioned in **Chapter XI** of the VAT Code (Article 73octies: The text of art. 73octies is inserted from 14.02.1981 (Art. 9, L 10.02.1981)) The violation of professional secrecy, as defined in Art. 93bis, will be punished in accordance with Articles 66, 67 and 458 of the Penal Code. **68**

Article 93bis VAT Code[375] Anyone who intervenes, in any capacity whatsoever, in the application of tax laws or who has access to the offices of the administration in charge **69**

[373] **Art. 4.**
§ 1er. D'autres modalités de contrôle et d'inspection peuvent être fixées par Nous, notamment afin de satisfaire aux obligations résultant des traités internationaux et des actes internationaux pris en vertu de ceux-ci.
§ 2. Sans préjudice de l'application d'autres dispositions légales ou réglementaires, en cas d'infractions répétées, de refus d'injonction, de fraudes ou de l'absence ou de manquements dans l'autocontrôle imposé, le Ministre peut soumettre un ou plusieurs lieux à un contrôle renforcé.
Les circonstances et les modalités de ce contrôle renforcé sont précisées par Nous.
Les frais du contrôle renforcé sont à charge des personnes intéressées.

[374] See e.g. Court of Cassation of Belgium, Judgement of 7 June 2011, P.10.1850.N, ECLI:BE:CASS:2011:ARR.20110607.7 explaining that Officials of the tax administration, who think they became a victims of an offence which is not of a tax nature in the exercise of their functions may make a complaint or constitution of civil party and submit thse information to the investigation authorities.

[375] **Article 93bis Code de la TVA**
[Le texte de l'art. 93bis, alinéa 2, est modifié à partir du 10.07.2021 (Art. 108, L 27.06.2021, M.B. 30.06.2021, Ed. 3, p. 66736, Numac: 2021021157)]
Celui qui intervient, à quelque titre que ce soit, dans l'application des lois fiscales ou qui a accès dans les bureaux de l'administration en charge de la taxe sur la valeur ajoutée, est tenu de garder, en dehors de l'exercice de

of value added tax, is required to keep, outside the exercise of his functions, the most absolute secrecy concerning everything of which he has become aware as a result of the performance of his mission.
The officials of the administration in charge of value added tax, remain in the exercise of their functions when they communicate information to the other administrative services of the State, to the prosecutor's offices and the registries of the courts and all the jurisdictions, to the administrations of the communities, regions, provinces, agglomerations, federations of municipalities and municipalities, and public institutions or bodies. The information is communicated to the aforementioned departments to the extent that it is necessary to ensure the execution of their legal or regulatory missions. Such communication must comply with the relevant rules laid down by the European Communities.
Persons belonging to the departments to which the administration in charge of value added tax has provided tax information pursuant to the preceding paragraph shall also be bound by the same secrecy and may not use information obtained outside the framework of the legal provisions for the execution of which it was provided.
Public institutions or bodies are those institutions, companies, associations, establishments and offices in whose administration the State participates, in which the State provides a guarantee, over whose activities the State exercises supervision or whose management staff is appointed by the Government, on its proposal or with its approval.

ses fonctions, le secret le plus absolu au sujet de tout ce dont il a eu connaissance par suite de l'exécution de sa mission.
Les fonctionnaires de l'administration en charge de la taxe sur la valeur ajoutée, restent dans l'exercice de leurs fonctions lorsqu'ils communiquent des renseignements aux autres services administratifs de l'Etat, aux parquets et aux greffes des cours et de toutes les juridictions, aux administrations des communautés, des régions, des provinces, des agglomérations, des fédérations de communes et des communes, ainsi qu'aux établissements ou organismes publics. Les renseignements sont communiqués aux services précités dans la mesure où ils sont nécessaires pour assurer l'exécution de leurs missions légales ou réglementaires. Cette communication doit se faire dans le respect des dispositions de la réglementation édictée en la matière par les Communautés européennes.
Les personnes appartenant aux services à qui l'administration en charge de la taxe sur la valeur ajoutée, a fourni des renseignements d'ordre fiscal en application de l'alinéa précédent sont également tenues au même secret et elles ne peuvent utiliser les renseignements obtenus en dehors du cadre des dispositions légales pour l'exécution desquelles ils ont été fournis.
Par établissements ou organismes publics il faut entendre les institutions, sociétés, associations, établissements et offices à l'administration desquels l'Etat participe, auxquels l'Etat fournit une garantie, sur l'activité desquels l'Etat exerce une surveillance ou dont le personnel de direction est désigné par le gouvernement, sur sa proposition ou moyennant son approbation.

(c) Data Secrecy (Data Protection Laws, Customs Code, General Tax Code)

Art. 28quinquies[376] and **Art. 57** of the Belgian CPC requests secrecy with regard to criminal investigations. Therefore, it is questionable whether the same secrecy landscape exists in customs and tax matters. A disclosure of protected secrecies is punishable by Art. 458 of the Criminal Code. **70**

(4) Investigation Reports (Customs Code)

The customs code contains rules on investigations reports according to Art. 267 et seq, which was ruled: "Offences, frauds or infringements of the law in connection with duties payable on import or export are established, this is entered in the accounts, by an official report drawn up by persons authorised to do so, a copy of which, if the person fined is not present when the report is drawn up, must be sent to him for the purpose of safeguarding his rights of defence and ensuring communication of the customs debt to the person liable for payment (1) (2) (see → Cass, P.06.1404.N, AC nr. 304ECLI:BE:CASS: 2007:ARR.20070605.9)." **71**

Chapter XXV. Reports, declarations of contravention, seizures and prosecutions.
Article 267[377] When offences, fraud or contraventions of the law are noted by means of official reports, these acts shall be drawn up immediately or as soon as possible, by at least two persons qualified for this purpose, including one must be appointed or commissioned by the General Administration of Customs and Excise].

Article 268[378] The official report must contain a succinct and exact narration of what was recognized, as also of the cause of the declaration in contravention, with designation of the persons, qualities, day and place, and observing the provisions of Article 176, for the particular cases mentioned therein.

Article 269[379] Reports may be drawn up and offences observed every day of the year, and consequently also on Sundays and legal holidays.

[376] Art. 28quinquies. § 1. Subject to legal exceptions, the investigation is secret. Anyone who is required to cooperate professionally in the criminal investigation is obliged to observe secrecy. Anyone who violates this secrecy shall be punished with the penalties provided for in Article 458 of the Criminal Code.
§ 2. Without prejudice to the provisions of the special laws, the Public Prosecutor and any police service questi ning a person shall inform this person that he can obtain a copy of (the text of) his interrogation free of charge.
[377] CHAPITRE XXV. Procès-verbaux, déclarations en contravention, saisies et poursuites.
Art. 267.Lorsque les délits, fraudes ou contraventions à la loi sont constatés au moyen de procès-verbaux, ces actes seront dressés sur-le-champ ou le plus tôt que faire se pourra, par au moins deux personnes qualifiées à cet effet, dont l'une doit être nommée ou munie de commission de la part de l'Administration générale des douanes et accises].
[378] Art. 268. Le procès-verbal devra contenir un narré succinct et exact de ce que l'on a reconnu, comme aussi de la cause de la déclaration en contravention, avec désignation des personnes, qualités, jour et lieu, et en observant les dispositions de l'article 176, pour les cas particuliers y mentionnés.
[379] Art. 269. Les procès-verbaux pourront être rédigés et les infractions constatées tous les jours de l'année, et par conséquent aussi les dimanches et jours fériés légaux.

Article 270[380] Within five days of the drafting of a report referred to in article 267, the original is submitted for the visa ne varietur of a hierarchical chief of the reporting officers, and a copy is given to the offenders. If the offenders refuse this communication or are unknown, the notification is made to the mayor of the commune where the offence was observed, or to his delegate.

Article 271[381] The offender, present at the time of the declaration of contravention, will be invited to also attend the drafting of the report and to sign it if he wishes, and to receive a copy immediately; in case of absence, a copy of the report is sent to the offender by registered letter by post.

(5) Support to the Inspectors (Customs Code, General Tax Code)

72 The support to inspectors is partly regulated in the Customs Code and the General Tax Code.

(a) Customs Area

73 The Customs Code Chapter XII contains in **Art. 203** a general obligation and in **Art. 206 § 2** the obligation to support inspectors if they take samples during an inspection.

(b) VAT Area

74 In the area of VAT matters the taxable persons are obliged to keep invoices, books, etc. and support the investigators in the case of an irregularity:

[380] Art. 270. Dans les cinq jours de la rédaction d'un procès-verbal visé à l'article 267, l'original est soumis au visa ne varietur d'un chef hiérarchique des verbalisants, et copie en est remise aux contrevenants. Si les contrevenants refusent cette communication ou sont inconnus, la notification est faite au bourgmestre de la commune où l'infraction a été constatée, ou à son délégué.

[381] Art. 271.Le contrevenant, présent au moment de la déclaration en contravention, sera invité à assister aussi à la rédaction du procès-verbal et à le signer s'il le désire, et en recevoir immédiatement une copie; en cas d'absence, une copie du procès-verbal est envoyée au contrevenant par lettre recommandée à la poste.]

Article 60 VAT Code[382] (The text of Art. 60, § 2, paragraph 1, is amended from 16.05.2014 (Art. 42, L 25.04.2014, Belgian Official Gazette 16.05.2014, p. 39621)) [historical] **75**

§ 1. Every taxable person shall be required to keep copies of invoices issued by him, by the customer or, in his name and on his behalf, by a third party.

All persons are required to keep the invoices received.

§ 2. Provided that all invoices and copies of invoices referred to in paragraph 1 are made available to the administration in charge of value added tax, without undue delay, at any request on his part, the taxable person may determine the place where they are kept.

[382] **Article 60 Code de la TVA** *(Le texte de l'art. 60, § 2, alinéa 1er, est modifié à partir du 16.05.2014 (Art. 42, L 25.04.2014, M.B. 16.05.2014, p. 39621))* § 1er.Tout assujetti est tenu de conserver des copies des factures émises par lui-même, par l'acquéreur ou le preneur ou, en son nom et pour son compte, par un tiers.
Toute personne est tenue de conserver les factures reçues.
§ 2.A condition de mettre à la disposition de l'administration en charge de la taxe sur la valeur ajoutée, sans retard indu, à toute réquisition de sa part, toutes les factures et copies de factures visées au paragraphe 1er, l'assujetti peut déterminer le lieu de conservation de celles-ci.
Par dérogation à l'alinéa 1er, toutes les copies de factures émises par les assujettis établis en Belgique, soit par eux-mêmes, soit en leur nom et pour leur compte par leur cocontractant ou par un tiers ainsi que toutes les factures qu'ils ont reçues, doivent être conservées sur le territoire belge, lorsque cette conservation n'est pas effectuée sous un format électronique garantissant en Belgique un accès complet et en ligne aux données concernées.
§ 3.Les factures et copies de factures visées au paragraphe 1er doivent être conservées pendant sept ans à compter du 1er janvier de l'année qui suit leur date d'émission.
§ 4.Les livres et autres documents dont la tenue, la rédaction ou l'émission sont prescrits par le présent Code ou en exécution de celui-ci doivent être conservés par les personnes qui les ont tenus, dressés, émis ou reçus pendant sept ans à partir du 1er janvier de l'année qui suit leur clôture s'il s'agit de livres, leur date s'il s'agit d'autres documents ou l'année au cours de laquelle le droit à déduction a pris naissance dans les situations visées à l'article 58, § 4, 7°, alinéa 2, s'il s'agit des documents visés à l'article 58, § 4, 7°, alinéa 4.
La même obligation incombe aux assujettis et aux personnes morales non assujetties, établis en Belgique, en ce qui concerne les factures ou documents en tenant lieu relatifs aux acquisitions intracommunautaires de biens ou aux achats effectués à l'étranger, les livres et documents comptables, les contrats, les pièces relatives à la commande des prestations de services et des livraisons de biens, à l'expédition, à la remise et à la livraison de biens, les extraits de compte, les documents de paiement et les autres livres et documents relatifs à l'activité.
Par dérogation à l'alinéa 2, en ce qui concerne la documentation relative aux analyses, à la programmation et à l'exploitation de systèmes informatisés, le délai de conservation prend cours à partir du 1er janvier de l'année qui suit la dernière année pendant laquelle le système décrit dans cette documentation a été utilisé.
Le Roi peut prolonger le délai de conservation visé à l'alinéa 1er et au paragraphe 3 en vue d'assurer le contrôle des révisions des déductions qui sont opérées en exécution de l'article 49, 2° et 3°. Dans les cas qu'Il détermine et selon les modalités qu'Il fixe, Il peut réduire le délai de conservation des documents autres que les factures et les livres.
§ 5.L'authenticité de l'origine, l'intégrité du contenu et la lisibilité d'une facture, que celle-ci se présente sur papier ou sous format électronique, doivent être assurées à compter du moment de son émission et jusqu'à la fin de sa période de conservation.
On entend par ″authenticité de l'origine″ l'assurance de l'identité du fournisseur ou de l'émetteur de la facture.
On entend par ″intégrité du contenu″ le fait que le contenu prescrit par les règles applicables à la facture n'a pas été modifié.
Chaque assujetti détermine la manière dont l'authenticité de l'origine, l'intégrité du contenu et la lisibilité de la facture sont assurées. Tout contrôle de gestion qui établit une piste d'audit fiable entre une facture et une livraison de biens ou une prestation de services, est de nature à donner cette assurance.
§ 6.Les factures doivent être conservées soit sous un format électronique, soit sur papier.
On entend par conservation d'une facture sous un format électronique, une conservation effectuée au moyen d'équipements électroniques de conservation de données y compris la compression numérique.

By way of derogation from paragraph 1, all copies of invoices issued by taxable persons established in Belgium, either by themselves or in their name and on their behalf by their contracting partner or by a third party, as well as all invoices they have received, must be kept on Belgian territory, when this storage is not carried out in an electronic format guaranteeing in Belgium full and online access to the data concerned.
§ 3. The invoices and copies of invoices referred to in paragraph 1 shall be kept for seven years from 1 January of the year following their date of issue.
§ 4. Books and other documents the keeping, drafting or issuance of which is prescribed by or in pursuance of this Code shall be kept by the persons who kept, erected, issued or received them for seven years from 1 January of the year following their closure in the case of books, their date in the case of other documents or the year in which the right to deduct arose in the case of the situations referred to in Article 58, § 4, 7°, paragraph 2, if they are the documents referred to in Article 58, § 4, 7°, paragraph 4.
The same obligation shall be imposed on taxable persons and non-taxable legal persons established in Belgium as regards invoices or documents in lieu thereof relating to intra-Community acquisitions of goods or purchases made abroad, accounting books and documents, contracts, documents relating to the ordering of services and supplies of goods, shipping, delivery and delivery of goods, account statements, payment documents and other books and documents relating to the activity.

By way of derogation from paragraph 2, as regards documentation relating to the analysis, programming and operation of computerised systems, the retention period shall begin on 1 January of the year following the last year in which the system described in such documentation was used.
The King may extend the retention period referred to in paragraph 1 and paragraph 3 in order to ensure the control of the revisions of deductions that are made in execution of Article 49, 2 ° and 3 °. In the cases he determines and according to the terms and conditions he fixes, he may reduce the retention period for documents other than invoices and books.
§ 5. The authenticity of the origin, the integrity of the content and the legibility of an invoice, whether in paper or electronic format, must be ensured from the time of its issue until the end of its retention period.
“Authenticity of origin” means assurance of the identity of the supplier or issuer of the invoice.
“Contentinterest” means the fact that the content prescribed by the rules applicable to the invoice has not been modified.
Each taxable person shall determine how the authenticity of origin, the integrity of the content and the legibility of the invoice are ensured. Any management control that establishes a reliable audit trail between an invoice and a delivery of goods or services is likely to provide such assurance.

§ 6. Invoices must be kept either in electronic format or on paper.
Preservation of an invoice in an electronic format means storage by means of electronic data storage equipment, including digital compression.
Preservation must guarantee the authenticity of the origin and integrity of the content of these invoices.

(6) Preservation of Evidence (Customs Code, General Tax Code)

The tax payers and persons subject to customs duties (like excise duties etc.) are obliged to keep their invoices and communicate these as all this material falls under the right of the state to order the preservation of evidence (related to irregularities): **76**

Article 61 VAT Code[383] § 1. Every person shall be required to communicate, without movement and without undue delay, at any request of the administration responsible for **77**

[383] **Art. 61 Code de la TVA**
§ 1er.Toute personne est tenue de communiquer, sans déplacement et sans retard indu, à toute réquisition de l'administration en charge de la taxe sur la valeur ajoutée, les livres, factures, copies de factures et autres documents ou leurs copies qu'elle doit conserver conformément à l'article 60, à l'effet de permettre de vérifier l'exacte perception de la taxe à sa charge ou à la charge de tiers.
En ce qui concerne l'unité T.V.A. au sens de l'article 4, § 2, la communication des livres, factures et autres documents conformément à l'alinéa 1er, est effectuée par le représentant désigné par les autres membres pour exercer, en leur nom et pour leur compte, les droits et obligations de cette unité T.V.A.. L'administration en charge de la taxe sur la valeur ajoutée peut néanmoins exiger que la communication visée à l'alinéa 1er, s'effectue par le membre de l'unité T.V.A. pour les livres, factures et autres documents qui le concernent.
A des fins de contrôle, lorsqu'un assujetti conserve, sous un format électronique garantissant un accès en ligne aux données visées à l'article 60, les factures et copies de factures qu'il émet ou qu'il reçoit, l'administration en charge de la taxe sur la valeur ajoutée a le droit d'accéder à ces factures et copies de factures, de les télécharger et de les utiliser, lorsque cet assujetti est établi en Belgique ou lorsque la taxe est due en Belgique. Les autorités compétentes d'un autre Etat membre disposent des mêmes pouvoirs lorsque la taxe est due dans cet Etat membre.
Pour les livres, factures et autres documents conservés sous un format électronique, cette administration a le droit de se faire communiquer les données enregistrées sur des supports informatiques sous forme lisible et intelligible. Elle peut également requérir la personne visée à l'alinéa 1er d'effectuer, en présence de ces agents, et sur leur matériel, des copies, dans le format qu'ils souhaitent, de tout ou partie des données précitées, ainsi que les traitements informatiques jugés nécessaires à la vérification de l'exacte perception de la taxe.
Sans préjudice du droit du contribuable de demander ou fournir des renseignements verbaux, la communication des livres, factures, copies de factures et autres documents ou leurs copies visés à l'alinéa 1er s'applique, pour les personnes physiques et les personnes morales visées à l'alinéa 4, également à la mise à disposition de ces livres, factures et autres documents via une plateforme électronique sécurisée du SPF Finances.
Lorsque cela est nécessaire à des fins de contrôle, l'administration en charge de la taxe sur la valeur ajoutée peut exiger, pour certains assujettis ou dans certains cas, pour les factures établies dans une langue autre qu'une des langues nationales, une traduction dans une de ces langues nationales des factures relatives à des livraisons de biens ou des prestations de services qui ont lieu en Belgique conformément aux articles 14, 14bis, 15, 21 et 21bis, ainsi que de celles reçues par les assujettis établis en Belgique.
L'assujetti visé à l'article 50, § 1er, alinéa 1er, 3°, qui n'a pas fait agréer un représentant responsable, ainsi que l'assujetti visé à l'article 50, § 3, qui n'est pas établi en Belgique, sont tenus de faire connaître à l'administration en charge de la taxe sur la valeur ajoutée, une adresse en Belgique où les livres, factures, copies de factures et autres documents, visés à l'alinéa 1er seront communiqués à toute réquisition des agents de cette administration.
Le paragraphe n'est pas applicable à la Direction générale Statistique et Information économique et l'Institut économique et social des classes moyennes, pour ce qui concerne les renseignements individuels recueillis.
§ 2.L'administration en charge de la taxe sur la valeur ajoutée a le droit de retenir les livres, factures, copies de factures et autres documents ou leur copie qu'une personne doit conserver conformément à l'article 60, chaque

value added tax, the books, invoices, copies of invoices and other documents or copies thereof which he must keep in accordance with Article 60, in order to enable the exact collection of the tax at his expense or at the expense of third parties to be verified.
With regard to the VAT unit within the meaning of Article 4, § 2, the communication of books, invoices and other documents in accordance with paragraph 1, is carried out by the representative appointed by the other members to exercise, in their name and on their behalf, the rights and obligations of this VAT unit. The administration in charge of value added tax may nevertheless require that the communication referred to in paragraph 1, is made by the member of the VAT unit for books, invoices and other documents concerning him.
For control purposes, where a taxable person keeps, in an electronic format ensuring online access to the data referred to in Article 60, invoices and copies of invoices issued or received, the administration responsible for value added tax shall have the right to access, download and use those invoices and copies of invoices, where that taxable person is established in Belgium or where the tax is due in Belgium. The competent authorities of another Member State shall have the same powers where the tax is due in that Member State.
For books, invoices and other documents kept in electronic format, this administration has the right to have the data recorded on computer media communicated to it in legible and intelligible form. It may also require the person referred to in paragraph 1 to make, in the presence of these agents, and on their equipment, copies, in the format they wish, of all or part of the aforementioned data, as well as the computer processing deemed necessary to verify the exact collection of the tax.
Without prejudice to the taxpayer's right to request or provide verbal information, the communication of books, invoices, copies of invoices and other documents or their copies referred to in paragraph 1 also applies, for natural persons and legal persons referred to in paragraph 4, to the provision of these books, invoices and other documents via a secure electronic platform of the FPS Finance.
Where necessary for control purposes, the administration responsible for value added tax may, for certain taxable persons or, in certain cases, for invoices drawn up in a language other than one of the national languages, require a translation into one of those

fois qu'elle estime que ces livres, documents ou copies établissent ou concourent à établir la débition d'une taxe ou d'une amende à sa charge ou à la charge de tiers.
Ce droit ne s'étend pas aux livres qui ne sont pas clôturés. Lorsque ces livres sont conservés sous un format électronique, l'administration précitée a le droit de se faire remettre des copies de ces livres dans la forme qu'elle souhaite.
La rétention visée à l'alinéa 1er fait l'objet d'un procès-verbal de rétention qui fait foi jusqu'à preuve du contraire. Une copie de ce procès-verbal est délivrée à la personne visée à l'alinéa 1er dans les cinq jours ouvrables qui suivent celui de la rétention.
§ 3.Les obligations mentionnées au présent article sont également d'application lorsque les données requises par l'administration sont situées digitalement en Belgique ou à l'étranger.

national languages of invoices relating to supplies of goods or services which take place in Belgium in accordance with Article 14, 14bis, 15, 21 and 21a, as well as those received by taxable persons established in Belgium.
The taxable person referred to in Article 50, § 1, paragraph 1, 3 °, who has not approved a responsible representative, as well as the taxable person referred to in Article 50, § 3, who is not established in Belgium, are required to inform the administration in charge of value added tax, an address in Belgium where books, invoices, copies of invoices and other documents, referred to in paragraph 1 shall be communicated at any request of the agents of this administration.
The paragraph shall not apply to the Directorate-General for Statistics and Economic Information and the Economic and Social Institute for the Middle Classes with regard to the individual information collected.
§ 2. The administration responsible for value added tax shall have the right to retain books, invoices, copies of invoices and other documents or copies thereof which a person must keep in accordance with Article 60, whenever it considers that such books, documents or copies establish or contribute to the imposition of a tax or fine payable by him or others.
This right does not extend to books that are not closed. Where such books are kept in electronic format, the above-mentioned administration shall have the right to obtain copies of such books in the form it wishes.
The detention referred to in paragraph 1 is the subject of a detention report which is authentic until proven otherwise. A copy of this report shall be issued to the person referred to in paragraph 1 within five working days following that of detention.
§ 3. The obligations mentioned in this article also apply when the data required by the administration are located digitally in Belgium or abroad.

Article 62 VAT Code[384] (The text of Art. 62(2) shall be repealed with effect from 01.04.2019 (Art. 34, L 11.02.2019, Belgian Official Gazette 22.03.2019, p. 28349))
§ 1st. Every person shall furnish, orally or in writing, whenever required by the officials of the administration responsible for value added tax, any information requested from him in order to verify the exact collection of the tax at his expense or at the expense of third parties.

[384] **Article 62 Code de la TVA**
§ 1er.Toute personne est tenue de fournir verbalement ou par écrit, à toute réquisition des agents de l'administration en charge de la taxe sur la valeur ajoutée, tous renseignements qui lui sont réclamés aux fins de vérifier l'exacte perception de la taxe à sa charge ou à la charge de tiers.

Article 62a VAT Code[385] By way of derogation from Articles 61, §1, and 62, §1, the agents of the administration in charge of value added tax may not require, in order to verify the correct application of the tax borne by third parties, the communication of books and documents other than those referred to in Article 60, § 4, paragraph 1, and the provision of information from the Banque de La Poste, banking, exchange, credit and savings institutions, only when they act under an authorisation issued by the official designated for that purpose by the Minister of Finance.
Officials of the administration in charge of value added tax with at least the rank of general counsel have the authorisation to request, when the administration has one or more indications of tax fraud, the available data referred to in Article 322, § 3, paragraph 1, of the Income Tax Code 1992, relating to a taxpayer at the central contact point of the National Bank of Belgium
The authorisation referred to in the preceding subparagraph shall be granted only when all other legal means necessary to obtain the information or information required, except the right of access provided for in Article 63, have been exhausted, after questioning the person liable for payment. On the occasion of this question, it is communicated to the taxpayer that, in the absence of a reply, the central contact point referred to in paragraph 2 will be consulted.
The consultation of the central contact point referred to in paragraph 2, takes place in accordance with the procedures provided for pursuant to Article 322, § 3, paragraph 3, 3 °, of the Income Tax Code 1992.

g) A Closer Look at Single Measures for On-the-Spot-Checks in Belgium

78 A closer look at Single Measures for On-the-Spot-Checks in Belgium is important for OLAF officials and AFCOS as the national provisions determine the scope of their actions.

[385] **Article 62bis Code de la TVA** *(Le texte de l'art. 62bis, alinéa 2, est remplacé à partir du 31.12.2020 (Art. 19, L 20.12.2020, M.B. 30.12.2020 – Ed. 1, p. 96068, Numac: 2020044541. La mise en vigueur est fixée par l'article 21))* Par dérogation aux articles 61, §1er, et 62, §1er, les agents de l'administration en charge de la taxe sur la valeur ajoutée ne peuvent exiger, en vue de vérifier la correcte application de la taxe à charge de tiers, la communication des livres et documents autres que ceux visés à l'article 60, § 4, alinéa 1er, et la fourniture de renseignements de la Banque de La Poste, des établissements de banque, de change, de crédit et d'épargne, que lorsqu'ils agissent en vertu d'une autorisation délivrée par le fonctionnaire désigné à cet effet par le Ministre des Finances.
Les agents de l'administration en charge de la taxe sur la valeur ajoutée avec le grade de conseiller général au moins ont l'autorisation de demander, lorsque l'administration dispose d'un ou de plusieurs indices de fraude fiscale, les données disponibles visées à l'article 322, § 3, alinéa 1er, du Code des impôts sur les revenus 1992, relatives à un redevable au point de contact central de la Banque Nationale de Belgique
L'autorisation visée à l'alinéa précédent est uniquement octroyée lorsque tous les autres moyens légaux nécessaires pour l'obtention des renseignements ou informations requis, sauf le droit de visite prévu à l'article 63 ont été épuisés et, ce après avoir interrogé le redevable. A l'occasion de cette interrogation, il est communiqué au redevable qu'à défaut de réponse, il sera procédé à la consultation du point de contact central visé à l'alinéa 2.
La consultation du point de contact central visé à l'alinéa 2, a lieu selon les modalités prévues en application de l'article 322, § 3, alinéa 3, 3°, du Code des impôts sur les revenus 1992.

aa. Interviewing/Questioning of "Persons Concerned" (in Relation to Suspects/Defendants)

Contrary to OLAF, national authorities might have the power to interview or question the "person concerned". The tax law, the customs law and the rules on investigating financial irregularities apply. **79**

bb. The Taking of Statements from Economic Operators

In the area of VAT controls the administration is vested with the power to conduct interviews and prove their assumptions with witnesses, etc. Art. 59 VAT Code regulates on these matters: **80**

Section 59 VAT Code[386] (The text of Art. 59, § 1, paragraph 3, is inserted from 04.04.2022 (Art. 15, L 17.03.2022, Belgian Official Gazette 25.03.2022, p. 24484, Numac: 2022020530)) **81**

§ 1. The administration is authorised to prove according to the rules and by all means of common law, including witnesses and presumptions, with the exception of the oath, and, in addition, by the minutes of the employees of the Federal Public Service Finance, any infringement or abusive practice of the provisions of this Code or taken for its execution, as well as any fact whatsoever that establishes or contributes to establish the chargeability of the tax or a fine.

The minutes are authentic until proven otherwise.

Without prejudice to the application of Article 93quaterdecies, § 1, paragraph 3, the evidence collected by the tax officials of the Federal Public Service Finance referred to in Article 63ter, § 1, during their collaboration with a joint multidisciplinary investigation team referred to in Article 63b, § 2, may be used to establish the existence and

[386] **Article 59 Code de la TVA**
(Le texte de l'art. 59, § 1, alinéa 3, est inséré à partir du 04.04.2022 (Art. 15, L 17.03.2022, M.B. 25.03.2022, p. 24484, Numac: 2022020530))[historique]
§ 1er.L'administration est autorisée à prouver selon les règles et par tous les moyens de droit commun, témoins et présomptions compris, à l'exception du serment, et, en outre, par les procès-verbaux des agents du Service public fédéral Finances, toute infraction ou toute pratique abusive aux dispositions du présent Code ou prises pour son exécution, de même que tout fait quelconque qui établit ou qui concourt à établir l'exigibilité de la taxe ou d'une amende.
Les procès-verbaux font foi jusqu'à preuve du contraire
Sans préjudice de l'application de l'article 93quaterdecies, § 1er, alinéa 3, les éléments de preuve recueillis par les fonctionnaires fiscaux du Service public fédéral Finances visés à l'article 63ter, § 1er, lors de leur collaboration avec une équipe mixte d'enquête multidisciplinaire visée à l'article 63ter, § 2, peuvent être utilisés pour établir l'existence et le montant de la dette d'impôt ainsi que pour constater une infraction aux dispositions du présent Code ou des arrêtés pris pour son exécution.
§ 2.Sans préjudice des autres moyens de preuve prévus au § 1er, le fonctionnaire désigné par le Roi ou le redevable de la taxe a la faculté de requérir l'expertise pour fixer la valeur normale des biens et des services visés à l'article 36, §§ 1er et 2.
Cette faculté existe également en ce qui concerne les services visés à l'article 19, § 2, 1°, lorsque ceux-ci portent sur l'érection d'un bâtiment.
Le Roi arrête la procédure d'expertise. Il détermine le délai dans lequel cette procédure doit être introduite et indique la personne qui doit en supporter les frais.

amount of the tax debt as well as to establish an infringement of the provisions of this Code or the orders adopted for its execution.
§ 2. Without prejudice to the other means of proof provided for in § 1, the official designated by the King or the person liable for payment of the tax has the right to request the expertise to fix the normal value of the goods and services referred to in Article 36, §§ 1 and 2.
This option also exists with regard to the services referred to in Article 19, § 2, 1 °, when they relate to the erection of a building.
The King shall adopt the expert appraisal procedure. It shall determine the time limit within which such proceedings must be instituted and shall indicate the person who must bear the costs thereof.
§ 3. (repealed)

cc. Inspections (Revenue Sector)

82 The rules on inspections and external audits have been presented above and are mainly regulated by the Customs Code and the Tax Procedures Code. During a normal inspection into sales tax obligations and the excise administration the general officers are vested with certain rights in the General Customs and Excise Act:

83

Chapter XX. Inspections and censuses.
Art. 182[387] § 1. The agents invested with their commission shall have power to act at all times and places, that is to say, by night as well as by day, and both at their place of residence and outside, to visit any conveyance which they find or receive laden with goods, and goods transported by individuals, and, moreover, of all persons whom they suspect of being carriers of goods, in order to ascertain whether no importation, exportation, transit or carriage is contrary to law.
§ 2. vessels or buildings which are closed and moored or at anchor shall not be subject to inspection during the night.
§ 3. If the inspection of vessels cannot be carried out during the voyage, it shall be carried out at the place of destination or, in the case of suspected fraud, at the first place of unloading, at the expense of the losing party and within the limits of the responsibility of the agents.

[387] CHAPITRE XX. Visites et recensements.
Art. 182.
§ 1er. Les agents, munis de leur commission, sont autorisés à faire, en tous temps et lieux, c'est-à-dire aussi bien la nuit que le jour, et tant dans leur résidence qu'en dehors de celle-ci, la visite de tout moyen de transport, qu'ils trouveront ou présumeront être chargé de marchandises, ainsi que de toute marchandises transportée [1... par des individus, et, en outre, de toutes personnes qu'ils soupçonneront être porteurs de marchandises, afin de s'assurer s'il ne se fait point d'importation, d'exportation, de transit ou de transport en contravention aux lois.
§ 2. Les navires ou bâtiments clos et amarres ou à l'ancre ne sont pas soumis à la visite pendant la nuit.
§ 3. Si la visite des navires ne peut se faire pendant la navigation, elle sera effectuée au lieu de la destination, ou, en cas de soupçon de fraude, au premier lieu de déchargement, aux frais de la partie succombante et sous la responsabilité des agents.

Art. 185[388] Visits, including those referred to in Articles 173 and 174, may be carried out on any day of the year and therefore also on Sundays and public holidays if the need to expedite the dispatch of goods or the interests of the administration do not permit such visits to be postponed until the following day.

Art. 186[389] § 1 All officials and servants of public administrations, in particular local administrations, police officers, agricultural and forestry officers, as well as all bailiffs and distrainers shall be entitled to co-operate with customs and excise officials in visits for the purpose of ascertaining offences and making the seizures resulting therefrom, provided that their commission or part thereof is brought to their notice public quality, and this with the same effect as if they were special agents of the administration.
§ 2. The interested party must always be invited to attend visits, inspections or inventories, provided that he is present.

Art. 187[390] Independently of the various commissioners referred to in Article 186, the sworn private guards shall have the power to assist in the search for and observation of breaches of customs law.

Art. 188[391] The provisions of Articles 197 and 198 shall apply to the investigation of customs fraud [...].

Art. 189[392] Agents who, in the exercise of the provisions of law relating to the investigation of customs and excise fraud, make a visit to a factory, shop or other place, including the private residence of an individual, may if they have done so at least the

[388] Art. 185. Les visites, même celles désignées aux articles 173 et 174, pourront se faire tous les jours de l'année et par conséquent aussi les dimanches et jours fériés légaux lorsque la nécessité d'accélérer l'expédition des marchandises ou l'intérêt de l'administration ne permettront pas de différer ces visites jusqu'au lendemain.
[389] Art. 186.
§ 1er. Tous les fonctionnaires et agents des administrations publiques, notamment ceux des administrations communales, les policiers, les gardes champêtres et forestiers, ainsi que tous huissiers de justice et porteurs de contraintes sont autorités à coopérer, avec les agents des douanes et accises, aux visites à l'effet de constater les contraventions et de faire les saisies qui en résulteront, pourvu qu'ils soient munis de leur commission ou de la pièce constatant leur qualité publique, et ce avec le même effet que s'ils étaient particulièrement agents de l'administration.
§ 2. Lors des visites, vérifications ou recensements, la partie intéressée devra toujours être invitée à y assister, lorsqu'elle est présente.
[390] Art. 187. Indépendamment des divers agents désignés à l'article 186, les gardes particuliers assermentés ont qualité pour coopérer à la recherche et à la constatation des contraventions aux lois de douanes.
[391] Art. 188. Les dispositions des articles 197 et 198 sont applicables aux recherches de la fraude en matière de douane [...].
[392] Art. 189.Les agents qui, en exécution des dispositions légales sur la recherche de la fraude en matière de douane et d'accise, pratiquent une visite dans une usine, un magasin ou un tout autre endroit, y compris le domicile privé d'un particulier, peuvent, s'ils ont au moins un grade d'expert financier, y saisir et emporter les livres, correspondances et documents quelconques de nature à établir la culpabilité des délinquants ou à mettre sur la trace de leurs complices.

degree of financial expert seize and take away all books, correspondence and documents likely to establish the guilt of the offenders or to trace their accomplices.

Art. 205[393] Where customs and excise officials find that a trader's books, business records or commercial documents contain inconsistent data relating to the purchase and sale of [dutiable goods, amounts of import or export to be granted or excise duties], such books, records and documents may be used to support tax evasion until proven otherwise.

Art. 206[394] § 1 Officials may take samples free of charge when inspecting customs or excise goods. They may also take free samples from factories under their supervision of materials intended for manufacture, materials in the process of being processed and products received.
§ 2. the declarants and the operators of the factories shall be obliged to provide, on request and free of charge, the containers provided for taking the samples.
§ 3. disputes concerning the manner of carrying out the withdrawals or the quantity to be withdrawn shall be settled by the agents appointed by the Minister of Finance.

dd. Administrative Searches and Seizures in Belgium: The System of the Measure in the Different Codes (Customs, Tax Procedures, VAT, Subsidy Fraud Area, Procurement Area)

84 **Section 63 VAT Code**[395] (The text of art. 63 is modified from 01.01.1993 (Art. 78, L 28.12.1992). (By its judgment no. 104/2019 of 27.06.2019, the Constitutional Court identified an unconstitutional interpretation of Article 63, paragraph 3 (1))

[393] Art. 205. Lorsque les agents des douanes et accises constatent que les livres comptables, les écritures commerciales ou les documents commerciaux d'un commerçant contiennent des données qui ne sont pas concordantes concernant l'achat et la vente de [marchandises soumises à des droits, des montants à octroyer à l'importation ou à l'exportation ou à des droits d'accise], ces livres, écritures et documents peuvent être invoqués à l'appui d'une fraude des droits jusqu'à preuve contraire. <L 1993-12-27/47, art. 41, En vigueur: 01-01-1994>

[394] Art. 206. § 1er. [Les agents peuvent prélever gratuitement des échantillons lors de la vérification de marchandises se trouvant sous régime de douane ou d'accise. Ils peuvent également prélever gratuitement dans les usines soumises à leur surveillance, des échantillons des matières destinées à la fabrication, des matières en cours de travail et des produits obtenus.] <L 1989-12-22/30, art. 94>
§ 2. Les déclarants et les exploitants des usines sont tenus, s'ils en sont requis, de fournir gratuitement les récipients destinés à renfermer les échantillons.
§ 3. Les contestations sur la façon de procéder aux prélèvements ou sur la quantité à prélever sont tranchées par les agents désignés par le Ministre des Finances.

[395] **Article 63**
(Texte actuel, à partir du 01.01.1993) [historique]
(Par son arrêt n° 104/2019 du 27.06.2019, la Cour constitutionnelle a indentifiée une interprétation non constitutionnelle de l'article 63, alinéa 3 (1))
(Droit futur disponible, applicable à partir du 01.01.2025 - voir l'historique)
Toute personne qui exerce une activité économique est tenue d'accorder, à tout moment et sans avertissement préalable, le libre accès des locaux où elle exerce son activité, aux fins de permettre aux agents habilités à contrôler l'application de la taxe sur la valeur ajoutée et munis de leur commission:

(Future law available, applicable from 01.01.2025 – see history)
Any person who carries on an economic activity is required to grant, at any time and without prior notice, free access to the premises where he carries out his activity, in order to allow officials empowered to monitor the application of value added tax and equipped with their commission:
(1) examine all the books and documents contained therein;
(2) verify, by means of the equipment used and with the assistance of the person requested, the reliability of the information, data and computer processing, in particular by requiring the communication of specially drawn up documents in order to present the data recorded on the computer media in a legible and intelligible form;
(3) ascertain the nature and importance of the activity carried on therein and the personnel assigned to it, as well as of the goods and all the property therein, including the means of production and transportation.
Premises where an activity is carried out include offices, factories, factories, workshops, shops, sheds, garages and land used as factories, workshops or depots.
Such agents may, for the same purpose, freely enter, at any time, without prior warning, all buildings, workshops, establishments, premises or other places not referred to in the preceding paragraph and where operations covered by this Code are carried out or are presumed to be carried out. However, they may enter buildings or inhabited premises only from five o'clock in the morning to nine o'clock in the evening and only with the authorisation of the police judge.
They may also stop and visit at any time, without prior warning, any conveyance, including containers, used or presumed to be used to carry out operations covered by the Code, in order to examine the goods and the books and documents carried.

1°d'examiner tous les livres et documents qui s'y trouvent;
2°de vérifier, au moyen du matériel utilisé et avec l'assistance de la personne requise, la fiabilité des informations, données et traitements informatiques, en exigeant notamment la communication de documents spécialement établis en vue de présenter les données enregistrées sur les supports informatiques sous une forme lisible et intelligible;
3°de constater la nature et l'importance de l'activité qui s'y exerce et le personnel qui y est affecté, ainsi que des marchandises et tous les biens qui s'y trouvent, y compris les moyens de production et de transport.
Sont notamment des locaux où une activité est exercée, les bureaux, fabriques, usines, ateliers, magasins, remises, garages et les terrains servant d'usines, d'ateliers ou de dépôts.
[Ces agents peuvent, dans le même but, pénétrer librement, à tout moment, sans avertissement préalable, dans tous les bâtiments, ateliers, établissements, locaux ou autres lieux qui ne sont pas visés à l'alinéa précédent et où sont effectuées ou sont présumées être effectuées des opérations visées par le présent Code. Toutefois, ils ne peuvent pénétrer dans les bâtiments ou les locaux habités que de cinq heures du matin à neuf heures du soir et uniquement avec l'autorisation du juge de police.] (1)
Ils peuvent également arrêter et visiter à tout moment, sans avertissement préalable, tous moyens de transport, y compris les conteneurs, utilisés ou présumés être utilisés pour effectuer des opérations visées par le Code, en vue d'examiner les biens et les livres et documents transportés.

85 **Future law:** ***Article 63 (future law)*** (The text of Article 63 is supplemented by a paragraph 5, **from 01.01.2025** (art. 52, L 26.01.2021, Belgian Official Gazette, 10.02.2021, p. 12719, Numac: 2021040269). The King may set an earlier date of entry into force (art. 219, paragraph 2)) Any person who carries on an economic activity is required to grant, at any time and without prior notice, free access to the premises where he carries out his activity, in order to allow officials empowered to monitor the application of value added tax and equipped with their commission:
(1) examine all the books and documents contained therein;
(2) verify, by means of the equipment used and with the assistance of the person requested, the reliability of the information, data and computer processing, in particular by requiring the communication of specially drawn up documents in order to present the data recorded on the computer media in a legible and intelligible form;
(3) ascertain the nature and importance of the activity carried on therein and the personnel assigned to it, as well as of the goods and all the property therein, including the means of production and transportation.
Premises where an activity is carried out include offices, factories, factories, workshops, shops, sheds, garages and land used as factories, workshops or depots.
Such agents may, for the same purpose, freely enter, at any time, without prior warning, all buildings, workshops, establishments, premises or other places not referred to in the preceding paragraph and where operations covered by this Code are carried out or are presumed to be carried out. However, they may enter buildings or inhabited premises only from five o'clock in the morning to nine o'clock in the evening and only with the authorisation of the police judge.
They may also stop and visit at any time, without prior warning, any conveyance, including containers, used or presumed to be used to carry out operations covered by the Code, in order to examine the goods and the books and documents carried.
Without prejudice to the provisions of this Code regarding the dematerialization of relations between the Federal Public Finance Service, taxable persons, non-taxable legal persons and non-taxable natural persons, in particular Article 53octies, § 3, agents who are competent to control the application of value added tax and who are provided with their commission, may, in the exercise of the competences conferred on them in the preceding paragraphs of this article, communicate each message that they write on the spot by paper means and any on-site communication concerning this message may also take place by paper means.

ee. The Seizure of Digital Forensic Evidence including Bank Account Information

86 The seizure of digital forensic evidence including bank account information becomes more and more important. The recent changes of the OLAF Regulation No 883/2013 (as

amended 2020/2223) codified that OLAF shall under the same conditions that apply to national competent authorities have access to bank account information. The relevant national law shall be displayed on the following pages:

(1) General Remarks

In the area of VAT collections and irregularities **Art. 61 et seq. VAT Code** apply with regard to the obtainment of bank account information. **87**

(2) Formal Requirements

Formally Art. 61 et seq. require the taxable persons to offer access to the tax inspectors. The tax inspectors have the "right to have the data recorded on computer media communicated to it in legible and intelligible form". The FPS Finance Administration must handle the data and ensure the secrecy of them (see above, Art. 93 VAT Code). **88**

(3) Substantive Requirements

The provision of the relevant section of the VAT Code can be presented here in full: **89**

Article 61 VAT Code[396] § 1. Every person shall be required to communicate, without movement and without undue delay, at any request of the administration responsible for **90**

[396] **Article 61**
(Dans le texte de l'art. 61, § 1er, un alinéa est inséré entre les alinéas 4 et 5 à partir du 10.07.2021 (Art. 106, L 27.06.2021, M.B. 30.06.2021, Ed. 3, p. 66736, Numac: 2021021157))
(Droit futur disponible, applicable à partir du 01.01.2025 - voir l'historique)
[historique]
§ 1er.Toute personne est tenue de communiquer, sans déplacement et sans retard indu, à toute réquisition de l'administration en charge de la taxe sur la valeur ajoutée, les livres, factures, copies de factures et autres documents ou leurs copies qu'elle doit conserver conformément à l'article 60, à l'effet de permettre de vérifier l'exacte perception de la taxe à sa charge ou à la charge de tiers.
En ce qui concerne l'unité T.V.A. au sens de l'article 4, § 2, la communication des livres, factures et autres documents conformément à l'alinéa 1er, est effectuée par le représentant désigné par les autres membres pour exercer, en leur nom et pour leur compte, les droits et obligations de cette unité T.V.A.. L'administration en charge de la taxe sur la valeur ajoutée peut néanmoins exiger que la communication visée à l'alinéa 1er, s'effectue par le membre de l'unité T.V.A. pour les livres, factures et autres documents qui le concernent.
A des fins de contrôle, lorsqu'un assujetti conserve, sous un format électronique garantissant un accès en ligne aux données visées à l'article 60, les factures et copies de factures qu'il émet ou qu'il reçoit, l'administration en charge de la taxe sur la valeur ajoutée a le droit d'accéder à ces factures et copies de factures, de les télécharger et de les utiliser, lorsque cet assujetti est établi en Belgique ou lorsque la taxe est due en Belgique. Les autorités compétentes d'un autre Etat membre disposent des mêmes pouvoirs lorsque la taxe est due dans cet Etat membre.
Pour les livres, factures et autres documents conservés sous un format électronique, cette administration a le droit de se faire communiquer les données enregistrées sur des supports informatiques sous forme lisible et intelligible. Elle peut également requérir la personne visée à l'alinéa 1er d'effectuer, en présence de ces agents, et sur leur matériel, des copies, dans le format qu'ils souhaitent, de tout ou partie des données précitées, ainsi que les traitements informatiques jugés nécessaires à la vérification de l'exacte perception de la taxe.
Sans préjudice du droit du contribuable de demander ou fournir des renseignements verbaux, la communication des livres, factures, copies de factures et autres documents ou leurs copies visés à l'alinéa 1er s'applique, pour les personnes physiques et les personnes morales visées à l'alinéa 4, également à la mise à disposition de ces livres, factures et autres documents via une plateforme électronique sécurisée du SPF Finances.

value added tax, the books, invoices, copies of invoices and other documents or copies thereof which he must keep in accordance with Article 60, in order to enable the exact collection of the tax at his expense or at the expense of third parties to be verified.
With regard to the VAT unit within the meaning of Article 4, § 2, the communication of books, invoices and other documents in accordance with paragraph 1, is carried out by the representative appointed by the other members to exercise, in their name and on their behalf, the rights and obligations of this VAT unit. The administration in charge of value added tax may nevertheless require that the communication referred to in paragraph 1, is made by the member of the VAT unit for books, invoices and other documents concerning him.
For control purposes, where a taxable person keeps, in an electronic format ensuring online access to the data referred to in Article 60, invoices and copies of invoices issued or received, the administration responsible for value added tax shall have the right to access, download and use those invoices and copies of invoices, where that taxable person is established in Belgium or where the tax is due in Belgium. The competent authorities of another Member State shall have the same powers where the tax is due in that Member State.
For books, invoices and other documents kept in electronic format, this administration has the right to have the data recorded on computer media communicated to it in legible and intelligible form. It may also require the person referred to in paragraph 1 to make, in the presence of these agents, and on their equipment, copies, in the format they wish, of all or part of the aforementioned data, as well as the computer processing deemed necessary to verify the exact collection of the tax.

Lorsque cela est nécessaire à des fins de contrôle, l'administration en charge de la taxe sur la valeur ajoutée peut exiger, pour certains assujettis ou dans certains cas, pour les factures établies dans une langue autre qu'une des langues nationales, une traduction dans une de ces langues nationales des factures relatives à des livraisons de biens ou des prestations de services qui ont lieu en Belgique conformément aux articles 14, 14bis, 15, 21 et 21bis, ainsi que de celles reçues par les assujettis établis en Belgique.
L'assujetti visé à l'article 50, § 1er, alinéa 1er, 3°, qui n'a pas fait agréer un représentant responsable, ainsi que l'assujetti visé à l'article 50, § 3, qui n'est pas établi en Belgique, sont tenus de faire connaître à l'administration en charge de la taxe sur la valeur ajoutée, une adresse en Belgique où les livres, factures, copies de factures et autres documents, visés à l'alinéa 1er seront communiqués à toute réquisition des agents de cette administration.
Le paragraphe n'est pas applicable à la Direction générale Statistique et Information économique et l'Institut économique et social des classes moyennes, pour ce qui concerne les renseignements individuels recueillis.
§ 2.L'administration en charge de la taxe sur la valeur ajoutée a le droit de retenir les livres, factures, copies de factures et autres documents ou leur copie qu'une personne doit conserver conformément à l'article 60, chaque fois qu'elle estime que ces livres, documents ou copies établissent ou concourent à établir la débition d'une taxe ou d'une amende à sa charge ou à la charge de tiers.
Ce droit ne s'étend pas aux livres qui ne sont pas clôturés. Lorsque ces livres sont conservés sous un format électronique, l'administration précitée a le droit de se faire remettre des copies de ces livres dans la forme qu'elle souhaite.
La rétention visée à l'alinéa 1er fait l'objet d'un procès-verbal de rétention qui fait foi jusqu'à preuve du contraire. Une copie de ce procès-verbal est délivrée à la personne visée à l'alinéa 1er dans les cinq jours ouvrables qui suivent celui de la rétention.
§ 3.Les obligations mentionnées au présent article sont également d'application lorsque les données requises par l'administration sont situées digitalement en Belgique ou à l'étranger.

Without prejudice to the taxpayer's right to request or provide verbal information, the communication of books, invoices, copies of invoices and other documents or their copies referred to in paragraph 1 also applies, for natural persons and legal persons referred to in paragraph 4, to the provision of these books, invoices and other documents via a secure electronic platform of the FPS Finance.
Where necessary for control purposes, the administration responsible for value added tax may, for certain taxable persons or, in certain cases, for invoices drawn up in a language other than one of the national languages, require a translation into one of those national languages of invoices relating to supplies of goods or services which take place in Belgium in accordance with Article 14, 14bis, 15, 21 and 21a, as well as those received by taxable persons established in Belgium.
The taxable person referred to in Article 50, § 1, paragraph 1, 3°, who has not approved a responsible representative, as well as the taxable person referred to in Article 50, § 3, who is not established in Belgium, are required to inform the administration in charge of value added tax, an address in Belgium where books, invoices, copies of invoices and other documents, referred to in paragraph 1 shall be communicated at any request of the agents of this administration.
The paragraph shall not apply to the Directorate-General for Statistics and Economic Information and the Economic and Social Institute for the Middle Classes with regard to the individual information collected.
§ 2. The administration responsible for value added tax shall have the right to retain books, invoices, copies of invoices and other documents or copies thereof which a person must keep in accordance with Article 60, whenever it considers that such books, documents or copies establish or contribute to the imposition of a tax or fine payable by him or others.
This right does not extend to books that are not closed. Where such books are kept in electronic format, the above-mentioned administration shall have the right to obtain copies of such books in the form it wishes.
The detention referred to in paragraph 1 is the subject of a detention report which is authentic until proven otherwise. A copy of this report shall be issued to the person referred to in paragraph 1 within five working days following that of detention.
§ 3. The obligations mentioned in this article also apply when the data required by the administration are located digitally in Belgium or abroad.

Article 62 VAT Code See above → Preservation of Evidence (Customs Code, General Tax Code).

Article 62a VAT Code See above → Preservation of Evidence (Customs Code, General Tax Code).

ff. Digital Forensic Operations within Inspections or On-The-Spot Checks

91 Digital forensic operations within inspections or on-the-spot checks became more and more important in the last decade already.

92 Bulgaria, which has included a special paragraph in the State Investigations Office Act, Art. 31a (see → **Bulgarian volume** of the compendium) makes a direct reference to Art. 7 of the applicable provision of Regulation 2185/96 and is therefore a role model with regard to Digital forensic operations within inspections or on-the-spot checks of OLAF.

93 In Belgium only the Criminal Procedure Code provides for an extensive right for investigators to search IT material, see → Art. 88ter Criminal Procedure Code.

h) Investigative missions in third countries

94 In the area of counterfeit products and substances, which are often imported into the EU via the Belgian territory e.g. via one of the Belgian ports a suspicion for irregularities might arise. This area requires to obtain information abroad e.g. in the country of origin. The Belgian Customs might conduct investigative missions together with an OLAF official in another non-EU country via mutual requests and special agreements, which OLAF has concluded with several countries worldwide.

i) National Procedural Rules for "Checks and Inspections" by the Assisting National Authority

95 The national procedural rules for "checks and inspections" by the assisting national authorities (see above → Competent authorities) can be determined via the area of the irregularity. In case of VAT irregularities, the VAT Act and the Tax Procedures Code will apply.

j) Cooperation and Mutual Assistance Agreements

96 Cooperation and mutual assistance agreements are not concluded by the Belgian Authorities, but by OLAF on behalf of the EU. Thus, OLAF has to offer information about special relationships to e.g. the Malaysian Customs Authority to the relevant authorities that investigate a case in Belgium on behalf of OLAF.

3. 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(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.

Internal investigations of OLAF can lead to repercussions at national level i.e. the level of the authorities that cooperate with OLAF and which e.g. employed the economic operator, managed his funds etc. or who are responsible for disciplinary actions for officials that work at Union level or as a national expert for OLAF (corruption cases). **1**

a) References to National Law, para 8

Any action on the basis of the information transmitted by OLAF to the national authorities, which are competent in external investigations will be based on the relevant codes, which were mentioned above. This may include substantial information about an alleged customs irregularity or an irregularity in the agricultural sector. The authority will then decide if it has any possibility to act on its own: secure things, freeze money, enact disciplinary measures, send information to OLAF etc. **2**

b) Competent Authorities

The competent authorities in Belgium might start a disciplinary procedure if the person concerned is still related to the Belgian State and for example only seconded to the EU IBOA. The judicial authorities might investigate if a criminal suspicion is established (they may need to inform the EPPO of any indications). For a list of authorities, which are competent in external investigations see above → Competent authorities. **3**

4. 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

4 See above → Institutions and Article 5 Opening of Investigations, Competent Authorities.

- E.g. *Direction Générale De L'inspection Économique* of *FPS Economie*
  - Direction C6 Fraude
  - Service collaboration internationale

b) National Rules

5

Code of Economic Law

Section 9. Other Special Skills

Article XV.30/2[397] The agents appointed by the Minister are competent to provide the necessary assistance to European Commission controllers, in accordance with Article 9 of Regulation (Euratom, EC) No 2185/96 of the Council of 11 November 1996 relating to on-the-spot checks and inspections carried out by the Commission for the protection of the financial interests of the European Communities against fraud and other irregularities.

The agents referred to in the first paragraph have the powers provided for in ***Title 1, Chapter 1*** for this purpose.

[397] Section 9. Autres compétences particulières
(1)<Inséré par L 2017-04-18/03, art. 23, 046; En vigueur: 04-05-2017>
Art. XV.30/2. *Code de Droit Économique*
Les agents désignés par le ministre sont compétents pour prêter l'assistance nécessaire aux contrôleurs de la Commission européenne, conformément à l'article 9 du règlement (Euratom, CE) n° 2185/96 du Conseil du 11 novembre 1996 relatif aux contrôles et vérifications sur place effectués par la Commission pour la protection des intérêts financiers des Communautés européennes contre les fraudes et autres irrégularités.
Les agents visés à l'alinéa 1er disposent pour cela des compétences prévues au titre 1er, chapitre 1er.

Book XV. Law Enforcement

Title 1. The exercise of surveillance and the investigation and observation of offences

Chapter 1. General Skills

Article XV.1–Article XV.10 See above under Article 3 → Investigative Powers in the Area of Structural Funds and Internal Policies.

General Law on Customs and Excise **6**

Section 3. General Provisions

Article 4[398] The General Administration of Customs and Excise is charged with the collection of import and export duties referred to in Article 1, 4° and of excise duties.]

Chapter XX. Visits and censuses.

Article 182 et seq. See above → Art. 3 External Investigations, Inspections (Revenue Sector).

Law on the import, export and transit of goods and related technology[399] **7**

[may not be relevant for OLAF investigations[400]]

Article 9bis.[401]Any importer, exporter or forwarder as well as the personnel of their company and any other person concerned or likely to be concerned, directly or indirectly, by the import, export or transit of goods and technologies for which measures have been taken in execution of the present law, shall be obliged to provide all useful information and to communicate the documents, correspondence and any other papers, in any form whatsoever, allowing the verification of compliance with the provisions enacted by virtue of the present law.

[398] Afdeling 3. Algemene bepalingen
Art. 4. *Loi générale sur les douanes et accises*
De Algemene Administratie van de Douane en Accijnzen is belast met de inning van de rechten bij invoer en uitvoer bedoeld in artikel 1, 4° en van de accijnzen.]

[399] 11 SEPTEMBRE 1962. Loi relative à l'importation, à l'exportation et au transit des marchandises et de la technologie y afférente.

[400] Harksen 2004, p 249.

[401] Art. 9bis. <Inséré par L 1992-08-03/30, art. 5, 003; En vigueur: indéterminée> Tout importateur, exportateur ou transitaire ainsi que le personnel de leur entreprise et toute autre personne concernée ou susceptible de l'être, directement ou indirectement, par l'importation, l'exportation ou le transit de marchandises et de technologies pour lesquelles des mesures ont été prises en exécution de la présente loi, sont tenus de fournir toutes les informations utiles et de communiquer les documents, correspondance et toutes autres pièces, sous quelque forme que ce soit, permettant de vérifier le respect des dispositions édictées en vertu de la présente loi.

Article 10[402] Infringements and attempted infringements of the provisions of this Law shall be punished in accordance with (Articles 231, 249 to 253 and 263 to 284 of the General Customs and Excise Law).
The attempted offences referred to in the first paragraph shall include any dispatch, transport or detention of goods, which are clearly intended to carry out an import, export or transit, to be carried out under conditions contrary to the provisions adopted pursuant to this law.
(Without prejudice to the powers of judicial police officers and agents of the Customs and Excise Administration, agents of the General Economic Inspectorate and agents commissioned for this purpose by the competent Minister shall be entitled to investigate and establish, even alone, infringements of the provisions adopted pursuant to this law.
The agents referred to in the previous paragraph are entitled to take copies of the documents referred to in Article 9bis; they are entitled to keep these documents against delivery of an acknowledgement of receipt when they provide proof of an infringement of this Law or contribute to the establishment thereof).

8 **Act of 28 March 1975 on trade in agricultural, horticultural and sea-fishery products amended by the law of 5 February 1999**[403]

Article 5
See above under Article 3 → Investigative Powers in the Area of Structural Funds and Internal Policies.

9 **Law of 11 July 1969 on pesticides and raw materials for agriculture, horticulture, forestry and animal husbandry**[404]

Article 6 See above under Article 3 → Investigative Powers in the Area of Common Market Organisations**.**

[402] Art. 10. Les infractions et les tentatives d'infractions aux dispositions prises en vertu de la présente loi sont punies conformément aux (articles 231, 249 à 253 et 263 à 284 de la loi générale sur les douanes et accises).
Sont assimilés aux tentatives d'infraction visées au premier alinéa, toute expédition, tout transport ou toute détention de marchandises, qui ont manifestement pour objet la réalisation d'une importation, d'une exportation ou d'un transit, à effectuer dans des conditions contraires aux dispositions prises en vertu de la présente loi.
(Sans préjudice des pouvoirs des officiers de police judiciaires et des agents de l'Administration des douanes et accises, les agents de l'Inspection générale économique ainsi que les agents commissionnés à cette fin par le Ministre compétent, ont qualité pour rechercher et constater, même seuls, les infractions aux dispositions prises en vertu de la présente loi.
Les agents visés à l'alinéa précédent sont habilités à prendre copie des pièces mentionnées à l'article 9bis; ils sont habilités à conserver ces pièces contre remise d'un accusé de réception lorsque celles-ci apportent la preuve d'une infraction à la présente loi ou contribuent à en apporter le constat.) <L 1992-08-03/30, art. 6, 003; En vigueur: indéterminée>
[403] *Loi du 28 mars 1975 relative au commerce des produits agricoles, horticoles et de la pêche maritime, modifiée par la loi du 5 février 1999.*
[404] *Loi du 11 juillet 1969 relative aux pesticides et aux matières premières pour l'agriculture, l'horticulture, la sylviculture et l'élevage.*

Royal Decree of 22 February 2001 organising the controls carried out by the Federal Agency for the Safety of the Food Chain and amending various legal provisions legal provisions[405] **Article 3.** See above under Article 3 → Investigative Powers in the Area of Common Market Organisations. **Article 4.** See above under Article 3 → Investigative Powers in the Area of Common Market Organisations**.**	**10**
For the Flemish region: **Framework decree on administrative maintenance**[406] **6. Assistance to OLAF** **Article 80** See above under Article 3 → Investigative Powers in the Area of Structural Funds and Internal Policies.	**11**

[Article 6 Access to information in databases prior to the opening of an investigation – omitted] Not analysed here.

5. Art. 7 Investigations Procedure

The Director-General shall direct the conduct of investigations on the basis, where appropriate, of written instructions. Investigations shall be conducted under his or her direction by the staff of the Office designated by him or her. The Director-General shall not personally carry out concrete investigative acts.
2. The staff of the Office shall carry out their tasks on production of a written authorisation showing their identity and their capacity. The Director-General shall issue such authorisation indicating the subject matter and the purpose of the investigation, the legal bases for conducting the investigation and the investigative powers stemming from those bases.
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:

[405] *Arrêté Royal du 22 février 2001 organisant les contrôles effectués par l'Agence fédérale pour la Sécurité de la Chaîne alimentaire et modifiant diverses dispositions legales.*
[406] Décret-cadre relatif au maintien administratif

(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.
4. Where an investigation combines external and internal elements, Articles 3 and 4 shall apply respectively.
5. Investigations shall be conducted continuously over a period which must be proportionate to the circumstances and complexity of the case.
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.
8. If an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating the reasons and, where appropriate, the remedial measures envisaged with a view to speeding up the investigation.

a) References to National Law

Sources & national sections 3: Art. 7 OLAF-Regulation – Overview for the Belgium **1**

Para 3	**Code of Economic Law**
	Book XV. [Law Enforcement] **Title 1. [The exercise of surveillance and the investigation and observation of offences]** **Chapter 1. [General Skills]** **Article XV.1–Article XV.10** See above under Article 3 → Investigative Powers in the Area of Structural Funds and Internal Policies. **General Law on Customs and Excise** **Chapter XX. Visits and censuses.** **Article 182** See above → Art. 3 External Investigations, Inspections (Revenue Sector). **Article 183**[407] Among the means of transport designated in article 182 are included vehicles used by the universal postal service provider; but trunks or packages containing letters shall be exempt from inspection, provided that they are closed or sealed by the care of the universal postal service provider. **Article 184**[408] § 1. In all visits or verifications as to the quantity, nature or kind of goods, the agents in this office may open the packages and examine the contents; They shall also be bound, when so required, to close them immediately, and in all cases they shall take care that the goods do not suffer any damage as a result of their inspection or verification, on pain of com-

[407] Art. 183.Parmi les moyens de transport désignés à l'article 182 sont compris les véhicules servant à le fournisseur du service postal universel; mais les malles ou paquets renfermant les lettres seront exempts de la visite, pourvu qu'ils soient fermés ou scellés par les soins de le fournisseur du service postal universel.

[408] Art. 184.
§ 1er. Dans toutes les visites ou vérifications quant à la quantité, la nature ou l'espèce des marchandises, les agents à ce commis pourront ouvrir les colis, et en examiner le contenu; ils seront aussi tenus, lorsqu'ils en seront requis, de les refermer immédiatement, et, dans tous les cas, ils devront avoir soin que, par suite de leur visite ou vérification, les marchandises n'éprouvent aucun dommage, sous peine de dédommagement d'après l'estimation à faire par le conseiller général désigné par l'administrateur général des douanes et accises dans le ressort duquel il a été commis, ou au besoin par l'administration, sauf aux intéressés leurs recours en justice.
§ 2. Lorsqu'en cas de visite en cours de route de marchandises sous scellés,, les agents jugent, pour des motifs particuliers ou de soupçons graves, l'ouverture des colis nécessaire, elle pourra se faire, mais sans aucun frais pour le conducteur relativement aux scellés qui doivent de nouveau y être apposés.

pensation according to the estimate to be made by the general adviser appointed by the Administrator General of Customs and Excise in whose district he has been appointed, or if necessary by the administration, without prejudice to the legal remedies of the parties concerned.
§ 2 If, in the case of an en route inspection of goods under seal, the officials deem it necessary, for special reasons or on the basis of serious suspicions, to open the packages, this may be done, but without any charge to the driver in respect of the seals which must be affixed again.

Article 185 See above → Art. 3 External Investigations, Inspections (Revenue Sector).

Article 186 See above → Art. 3 External Investigations, Inspections (Revenue Sector).

Article 187 See above → Art. 3 External Investigations, Inspections (Revenue Sector).

Article 188 See above → Art. 3 External Investigations, Inspections (Revenue Sector).

Article 189 See above → Art. 3 External Investigations, Inspections (Revenue Sector).

Article 190[409] § 1. The officers are also authorised to oblige or compel the masters of vessels which are on the sea side, between the sea and the place

[409] Art. 190. § 1er. Les agents sont aussi autorisés à obliger ou à contraindre les capitaines des navires qui se trouvent du côté de la mer, entre la mer et le lieu de déchargement ou de chargement, de diminuer la vitesse de leur navire ou d'arrêter celui-ci; les bateliers ou patrons de ceux qui se trouvent le long des rivières entre le territoire étranger jusqu'à proximité du premier bureau de paiement, d'aborder ou d'amarrer leurs bâtiments aux rives; et les voituriers ou personnes qui conduisent ou transportent des marchandises dans le rayon des douanes, de s'arrêter avec leurs voitures, chevaux ou autres moyens de transport, ou avec les ballots ou paquets qu'ils portent.
§ 2 Les capitaines, bateliers ou patrons de navires ou bâtiments, ainsi que les voituriers, charretiers ou autres personnes qui tenteraient ou se permettraient de se soustraire à cette obligation, pourront y être contraints par les agents, par tels moyens de rigueur qui seront nécessaires pour effectuer la visite et prévenir la fraude.
§ 3. Lorsqu'un agent aura abusé ou fait usage intempestif de ces moyens, et notamment lorsqu'il se sera servi des armes à lui confiées, ailleurs que sur le territoire désigné ci-dessus, ou bien sans la plus stricte nécessité, et tandis qu'il lui restait d'autres moyens convenables pour assurer l'exécution de la loi, il sera puni de ce chef d'après la rigueur du Code pénal.

of unloading or loading, to reduce the speed of their vessel or to stop it; the boatmen or skippers of those who are along the rivers between the foreign territory and the vicinity of the first office of payment, to board or moor their vessels to the banks; and the carriers or persons who drive or transport goods within the radius of the Customs, to stop with their carriages, horses or other means of transport, or with the bundles or packages which they carry.
§ 2 Masters, boatmen or skippers of ships or vessels, as well as carriers, carters or other persons who attempt or permit themselves to evade this obligation, may be compelled to do so by the officers, by such strict means as may be necessary to carry out the inspection and prevent fraud.
§ 3 If an officer abuses or makes untimely use of these means, and in particular if he uses the weapons entrusted to him elsewhere than in the territory designated above, or without the strictest necessity, and while there are other suitable means left to ensure the execution of the law, he shall be punished in accordance with the rigour of the Penal Code.

Article 191[410] § 1. By extension of Article 190, carriers who, within the area of the Customs radius or outside the Customs radius, if the fraud has been followed without interruption from the Customs radius, refuse to allow the inspection of the parcels to take place, after having been requested to do so by the agents, and who prevent the latter from carrying out the inspection by means of dogs that oppose their approach, shall be considered to be committing armed fraud.
§ 2 The agents of the administration are authorised to use their weapons to shoot dogs thus employed or serving to facilitate the course of the carriers, as well as horses loaded or mounted by fraudsters, when the latter do not stop at their first requisition.

Article 192[411] Within a radius of 10 kilometres along the land and sea borders, the customs and excise officers and the officers who work with them

[410] Art. 191.§ 1er. Par extension de l'article 190, les transporteurs qui, dans l'étendue du rayon des douanes ou en dehors du rayon des douanes, si la fraude a été suivie sans interruption à partir du rayon des douanes, refuseront de laisser opérer la visite des colis, après en avoir été requis par les agents, et qui empêcheront ces derniers de l'effectuer au moyen de chiens qui s'opposeraient à leur approche, seront considérés comme fraudant à main armée.
§ 2. Les agents de l'administration sont autorisés à faire usage de leurs armes pour abattre les chiens ainsi employés ou servant à faciliter la course des transporteurs, ainsi que les chevaux chargés ou montés par des fraudeurs, lorsque ceux-ci ne s'arrêteront pas à leur première réquisition.
[411] Art. 192.Dans un rayon de 10 kilomètres le long des frontières de terre et de mer, les agents des douanes et des accises et les agents qui concourent avec eux à la répression de la fraude peuvent se servir de leurs armes d'ordonnance pour abattre les chiens, les chevaux et les autres animaux employés pour la fraude, introduits frauduleusement ou circulant irrégulièrement dans le pays, quand il ne leur est pas possible de les capturer vivants.

in the suppression of fraud may use their prescription weapons to shoot dogs, horses and other animals used for fraud, introduced fraudulently or circulating irregularly in the country, when it is not possible for them to capture them alive.
They are authorised to use their weapons and any appropriate devices, such as harrows, hedgehogs, cables, rockets, etc., to immobilise vehicles when the drivers do not comply with the signal or order to stop given to them.
They may also use their weapons:
1° against persons who attack them or resist them with their weapons, or who put them in serious danger of being injured or losing their lives;
2° against persons who, without obeying the order to stop, flee after having attacked them with a weapon, and against drivers of vehicles with mechanical engines who flee after having manoeuvred to put their lives in danger
3° to repel those who, in spite of being ordered to leave, attempt to take goods or means of transport seized from them, to dislodge them from a post where they are exercising their surveillance, or to release their prisoners.

Chapter XXI. Special provisions concerning excise surveys and censuses
Article 193[412] Shall be subject to inspection, between five o'clock in the morning and nine o'clock in the evening, factories vineyards, enclosures, whether built or not, and land used as factories or workshops, shops or any other enclosed premises, the possession or use of which is subject to the formality of an admission by the administration, or a declaration to be made to the said administration, as well as those where an industry is carried on, the products of which are subject to excise duty, or which are subject to any verification by virtue of the laws.

Ils sont autorisés à se servir de leurs armes et de tous engins appropriés, tels que herses, hérissons, câbles, fusées, etc., pour immobiliser les véhicules [1... quand les conducteurs n'obtempèrent pas au signal ou à l'ordre d'arrêt qui leur est donné.
Ils peuvent aussi faire usage de leurs armes:
1° contre les personnes qui les attaquent ou leur résistent à main armée, ou qui les mettent sérieusement en danger d'être blessés ou de perdre la vie;
2° contre les personnes qui, sans obéir à l'ordre de s'arrêter, fuient après les avoir attaqués à main armée, et contre les conducteurs de véhicules pourvus de moteurs mécaniques qui fuient après avoir manoeuvre pour mettre leur vie en péril;
3° pour repousser ceux qui, malgré la sommation de s'éloigner, tendent de leur enlever des marchandises ou des moyens de transport saisis, de les déloger d'un poste où ils exercent leur surveillance, ou de délivrer leurs prisonniers.

[412] CHAPITRE XXI. Dispositions particulières concernant les visites et recensements en matière d'accises.
Art. 193.Sont assujetties à la visite, entre cinq heures du matin et neuf heures du soir, les usines vignobles, enclos, bâtis ou non bâtis, et terrains servant d'usines ou d'ateliers, boutiques ou tous autres lieux clos, dont la possession ou l'usage est assujetti à la formalité d'une admission de la part de l'administration, ou d'une déclaration à faire à ladite administration, ainsi que ceux où l'on exerce une industrie dont les produits sont soumis à l'accise, ou sont assujettis à quelque vérification en vertu des lois.

Article 194[413] Visits may also be made at night in the buildings, factories and other places designated in Article 193, if they are being worked on during that time.
With regard to factories for which the time at which the work will begin and end must be declared, and those for which the declaration is made for a limited period, such as breweries and distilleries, the time of their activity shall be understood to be the time mentioned in the declaration, even if the work is suspended.

Article 195[414] When factories are not in operation, inspections may only be carried out before five o'clock in the morning or after nine o'clock in the evening, provided that the agents are accompanied by an agent of the municipal administration or an agent of the public authority appointed by the mayor.

Article 196[415] The factories and buildings must always be accessible to the agents, while they are working there, and there must be someone on behalf of those concerned who is able to give the necessary information during the visit.

Article 197[416] (NOTE: Limitation of the scope of application by ruling no. 10/2011 of the Constitutional Court, dated 27 January 2011, M.B. 18 March 2011) With the exception of the customs department and the case provided for in Article 174, no visit may be made to the buildings or enclosures of private individuals except between five o'clock in the morning and nine o'clock in the evening, and only with the authorisation of the judge at the police court of the canton in which the buildings or enclosures to be visited

[413] Art. 194. Les visites pourront aussi se faire la nuit dans les bâtiments, fabriques et autres lieux désignés à l'article 193, si l'on y travaille pendant ce temps.
Relativement aux fabriques pour lesquelles on doit déclarer l'époque à laquelle les travaux commenceront et finiront, et celles pour lesquelles la déclaration se fait à terme limité, telles que les brasseries, distilleries, on entendra par l'époque de leur activité celle mentionnée dans la déclaration, quand bien même les travaux seraient suspendus.
[414] Art. 195. Lorsque les usines ne sont pas en activité, les visites ne pourront se faire avant cinq heures du matin ou après neuf heures du soir, que pour autant que les agents soient accompagnés d'un agent de l'administration communale ou d'un agent de l'autorité publique commis par le bourgmestre.
[415] Art. 196.Les fabriques et bâtiments devront toujours être accessibles pour les agents, pendant qu'on y travaillera, et il devra s'y trouver quelqu'un de la part des intéressés à même de donner les indications nécessaires lors de la visite.
[416] Art. 197. (NOTE: limitation du chant d'application par l'arrêt n° 10/2011 de la Cour constitutionnelle, en date du 27 janvier 2011, M.B. 18 mars 2011) A l'exception du rayon des douanes, et du cas prévu par l'article 174, on ne pourra faire aucune visite dans les bâtiments ou enclos des particuliers qu'entre cinq heures du matin et neuf heures du soir, et sur l'autorisation du juge au tribunal de police du canton dans lequel les bâtiments ou enclos à visiter sont situés. Ce magistrat accompagnera lui-même ou chargera son greffier ou autre agent de l'autorité publique, d'accompagner les agents dans leur visite.

are situated. This magistrate shall himself accompany or instruct his clerk or other public official to accompany the officers on their visit.

Article 198[417] (NOTE: limitation of the scope of application by judgment no. 10/2011 of the Constitutional Court, dated 27 January 2011, M.B. 18 March 2011)
§ 1. Requests for assistance shall always be made in writing; they shall state the time and place of the visit, and the name of the individual at whose house it is to be made.
§ 2 If the aforementioned assistance is to be given by the communal administration, it shall always be given at the risk of the agents.
§ 3 In the event that the authorisation of the judge of the police court is required, the request in writing must be made by any civil servant of at least the rank of attaché; on the other hand, the judge of the police court may refuse authorisation only on the well-founded presumption that the assistance has been demanded without valid grounds.

Article 199[418] The interested party who is present shall always be invited to present the registers, acquittals, declarations and other documents that may be used to ensure the effect of the visit.

Article 200[419] § 1. In the visit mentioned in Article 193, the agents must be shown all tanks, boilers, coolers, vessels and utensils, as well as the shops used for the exercise of the industry whose factory or workshop they have come to inspect.
§ 2 If the agents come to carry out potting, the factory workers must assist them in this operation, on pain of incurring a fine of not less than [100 euros], and not more than [300 euros].

[417] Art. 198.(NOTE: limitation du chant d'application par l'arrêt n° 10/2011 de la Cour constitutionnelle, en date du 27 janvier 2011, M.B. 18 mars 2011) § 1er. Les demandes d'assistance devront toujours être faites par écrit; elles énonceront l'heure et le lieu de la visite, et le nom de l'individu chez lequel elle doit être faite.
§ 2 Si l'assistance précitée doit être accordée par l'administration communale, elle sera toujours donnée aux risques et périls des agents.
§ 3. Dans le cas où l'autorisation du juge au tribunal de police est requise, la demande par écrit devra être faite par tout fonctionnaire ayant au moins le grade d'attaché; par contre, le juge au tribunal de police ne pourra refuser l'autorisation que sur la présomption bien fondée qu'on a exigé l'assistance sans motifs valables.
[418] Art. 199. La partie intéressée qui se trouve présente sera toujours invitée de représenter les registres, acquits, déclarations et autres pièces qui pourraient servir à assurer l'effet de la visite.
[419] Art. 200.
§ 1er. A la visite mentionnée à l'article 193, on sera tenu de représenter aux agents toutes cuves, chaudières, bacs-refroidisseurs, vaisseaux et ustensiles, ainsi que les magasins tenant à l'exercice de l'industrie dont ils viennent inspecteur la fabrique ou l'atelier.
§ 2 Si les agents viennent pour faire empotement, les ouvriers de la fabrique devront les aider dans cette opération, sous peine d'encourir une amende qui ne sera pas moindre que de [100 euros], et n'excédera pas [300 euros].

Chapter XXII. Control measures.

Article 201[420] § 1. Except in the cases determined by the King, the invoice and all other documents necessary for the application of the provisions governing the customs procedure for which the goods are declared must be attached to the customs declaration. The King may charge the Minister of Finance with the execution of this paragraph.

§ 2. At the request of a customs and excise officer with at least the grade of financial expert, the declarant, the importer, the exporter and the consignee of goods declared for any customs procedure, are required to produce all documents and correspondence and to provide verbally or in writing all information relating to these goods, when communication is deemed necessary for the control of the elements of the customs declaration.

When the documents referred to in the first paragraph are kept, drawn up, issued, received or stored by means of a computerized system, these agents have the right to have the data recorded on computer media communicated to them in readable and intelligible form. These agents may also require the person referred to in the first paragraph to make, in their presence, and on their equipment, copies, in the form they wish, of all or part of the aforementioned data, as well as the computer processing deemed necessary to verify the exact collection of the tax.

§ 3. Refusal to produce or provide the documents and information referred to in §§ 1 and 2 is punishable by a fine of 25 euros to 250 euros.

Article 202[421] § 1. When, after the closing of the certificate of verification, the agents establish, within a period of three years from the date of taking

[420] CHAPITRE XXII. Mesures de contrôle.

Art. 201.§ 1er. [Sauf dans les cas déterminés par le Roi, doivent être joints à la déclaration en douane la facture et tous autres documents nécessaires pour l'application des dispositions régissant le régime douanier pour lequel les marchandises sont déclarées.] Le Roi peut charger le ministre des Finances de l'exécution du présent paragraphe.

§ 2. [A la demande d'un agent des douanes et accises ayant au moins le grade d'expert financier, le déclarant, l'importateur, l'exportateur et le destinataire de marchandises déclarées pour un régime douanier quelconque, sont tenus de produire tous documents et correspondance et de fournir verbalement ou par écrit tous renseignements relatifs à ces marchandises, lorsque la communication est jugée nécessaire pour le contrôle des éléments de la déclaration en douane.

Lorsque les documents visés au premier alinéa sont tenus, établis, délivrés, reçus ou conservés au moyen d'un système informatisé, ces agents ont le droit de se faire communiquer les données enregistrées sur des supports informatiques sous forme lisible et intelligible. Ces agents peuvent également requérir la personne visée à l'alinéa 1er d'effectuer, en leur présence, et sur son matériel, des copies, dans la forme qu'ils souhaitent, de tout ou partie des données précitées, ainsi que les traitements informatiques jugés nécessaires à la vérification de l'exacte perception de la taxe.]

§ 3. Le refus de produire ou de fournir les pièces et renseignements visés aux §§ 1 et 2 est puni d'une amende de [25 euros] à [250 euros].

[421] Art. 202. § 1er. [Lorsque, postérieurement à la clôture du certificat de vérification, les agents établissent, dans le délai de trois ans à compter de la date de la prise en compte du montant primitivement exigé du redevable, ou,

into account the amount originally required of the person liable, or, if there has been no taking into account, from the date of the birth of the tax debt, that following an act liable to repressive legal proceedings, the duties or excise duties legally due on goods declared n have not been or have not been collected in full, the duties or excise duties evaded must be paid by the person liable for these duties, either principally or subsidiarily, or by his successors in title.
§ 2. The persons referred to in § 1 are punished by a fine of between five and ten times the duties. In the event of recidivism, they are also punished by imprisonment for a period of eight days to one month, without it being possible to apply article 228.
§ 3. When the persons referred to in § 1 have committed the offence with fraudulent intent, they are further punished by imprisonment from eight days to one month.
When the persons referred to in § 1 have committed the offence with fraudulent intent and have seriously damaged the financial interests of the European Union, they are punished by imprisonment from 4 months to 5 years.
The financial interests of the European Union must in any case be considered seriously harmed when the damage amounts to more than 100,000 euros.]

Article 203[422] § 1. Importers, exporters and all persons directly or indirectly interested in the import or export of goods are required to communicate,

s'il n'y a pas eu de prise en compte, à compter de la date de la naissance de la dette d'impôts, que par suite d'un acte passible de poursuites judiciaires répressives, les droits ou les droits d'accise légalement dus sur des marchandises déclarées n'ont pas été ou n'ont pas été intégralement perçus, les droits ou les droits d'accise éludés doivent être payés par le redevable de ces droits, soit à titre principal, soit à titre subsidiaire, ou par ses ayants droit.]
§ 2. [Les personnes visées au § 1er sont punies d'[une amende comprise entre cinq et dix fois les droits]. En cas de récidive, elles sont en outre punies d'un emprisonnement de huit jours à un mois, sans qu'il puisse être fait application de l'article 228.]
§ 3. Lorsque les personnes visées au § 1er ont commis l'infraction dans une intention frauduleuse, elles sont punies en outre d'un emprisonnement de huit jours à un mois.
Lorsque les personnes visées au § 1er ont commis l'infraction avec une intention frauduleuse et ont gravement lésé les intérêts financiers de l'Union européenne, elles sont punies d'un emprisonnement de 4 mois à 5 ans.
Les intérêts financiers de l'Union européenne doivent en tout cas être considérés comme gravement lésés lorsque le préjudice se monte à plus de 100.000 euros.

[422] Art. 203.§ 1er. Les importateurs, les exportateurs et toutes personnes intéressées directement ou indirectement à l'importation ou à l'exportation de marchandises sont tenus de communiquer, sans déplacement, à toute réquisition des agents des douanes et accises ayant au moins le grade d'expert financier, leurs facturiers, leurs factures, leurs copies de lettres, leurs livres de caisse, leurs livres des inventaires et tous livres, registres, documents et correspondances relatifs à leur activité commerciale ou professionnelle et dont la production serait jugée nécessaire. Toutefois, en ce qui concerne les établissements de crédit, les banquiers et les agents de change, la communication des pièces susvisées ne peut être requise que moyennant une autorisation spéciale du conseiller général désigné pour l'administration en charge des contentieux.
[Les dispositions de l'article 201, § 2, alinéa 2 sont d'application.]

without travel, at any request from customs and excise officers having at least the rank of expert financial, their billers, their invoices, their copies of letters, their cash books, their inventory books and all books, registers, documents and correspondence relating to their commercial or professional activity and the production of which would be deemed necessary. know. However, with regard to credit institutions, bankers and stockbrokers, the communication of the aforementioned documents may only be required subject to special authorisation from the designated general counsel for the administration in charge of litigation.
The provisions of article 201, § 2, paragraph 2 is applicable.
§ 2. These agents also have the right to take copies of or retain documents and correspondence which establish or contribute to establishing a customs or excise offence. Of the items retained, they draw up an inventory of which they give a copy, signed by them, to the owner or holder.
Where the documents referred to in the preceding paragraph are kept by means of a computerized system, agents have the right to be provided with copies of these documents in the form they wish.
§ 3. Violations of the provisions of § 1 and obstacles to the exercise of the rights granted to agents by § 2 are punishable by a fine of 25 euros to 250 euros.
§ 4. Via a reasoned authorisation issued by the General Administrator, officials of the General Customs and Excise Administration may, within the framework of investigations, request to be provided with data by the Central Contact Point as provided in article 322, § 3, first paragraph, of the Income Tax Code 1992 taking into account the limitations of article 322, §§ 2 to 4, of the same Code.

Article 204[423] § 1. The King may take all necessary steps to have motor vehicles in the country checked to see if they are in order from the point of

§ 2. Ces agents ont aussi le droit de prendre copie ou de retenir les documents et correspondances qui établissent ou concourent à établir une infraction en matière de douane ou d'accise. Des pièces retenues, ils dressent un inventaire dont ils remettent une copie, signée par eux, au propriétaire ou au détenteur.
[Lorsque les documents visés à l'alinéa précédent sont conservés au moyen d'un système informatisé, les agents ont le droit de se faire remettre des copies de ces documents dans la forme qu'ils souhaitent.]
§ 3. Les infractions aux dispositions du § 1 et les entraves apportées à l'exercice des droits reconnus aux agents par le § 2 sont punies d'une amende de [25 euros] à [250 euros].
§ 4. Via une autorisation motivée émanant de l'Administrateur général, les fonctionnaires de l'Administration générale des douanes et accises peuvent, dans le cadre des enquêtes, demander de se faire communiquer des données par le Point de Contact Central comme prévu à l'article 322, § 3, alinéa 1er, du Code des impôts sur les revenus 1992 compte tenu des limitations de l'article 322, §§ 2 à 4, du même Code.]
[423] Art. 204.§ 1er. Le Roi peut prendre toutes dispositions nécessaires en vue de faire vérifier si les véhicules à moteur se trouvant dans le pays y sont en situation régulière au point de vue des droits à l'importation et des mesures de prohibition, de restriction ou de contrôle applicables à l'importation.

	view of import duties and prohibitive measures., restriction or control applicable to imports. For the purposes of this article, motor vehicles are understood to mean all means of transport, motorized, by land or water, with the exception of seagoing or inland navigation vessels referred to in Articles 1 and 271 Book II of the Commercial Code; road trailers are assimilated to motor vehicles. § 2. The provisions made under § 1 may in particular provide that the registration of a motor vehicle cannot be obtained or ceases to be valid, within a specified period, if the person who applied for such registration n does not establish the regular status of the vehicle in the country. § 3. The import duties are payable on any vehicle whose regular situation in the country is not established from the point of view of these duties. The importer, owner, holder and driver of the vehicle are jointly and severally liable for payment. § 4. Without prejudice to any penalties incurred by application of other provisions, shall be punished by a fine of between one and two times the import duties applicable to the vehicle in the event of import [or between half the value and the total value of the vehicle] when it is subject, on importation, to measures of prohibition, restriction or control, the owner, holder or driver of a motor vehicle: 1° whose regular situation in the country he does not establish; 2° which bears a registration mark other than that attributed to it;

Pour l'application du présent article, il faut entendre par véhicules à moteur, tous moyens de transport, à moteur, par terre ou par eau, à l'exception des bâtiments de mer ou de navigation intérieure visés aux articles 1 et 271 du Livre II du Code de commerce; les remorques routières sont assimilées à des véhicules à moteur.

§ 2. Les dispositions prises en vertu du § 1 peuvent notamment prévoir que l'immatriculation d'un véhicule à moteur ne peut être obtenue ou cesse d'être valable, dans un délai déterminé, si la personne ayant sollicité cette immatriculation n'établit pas la situation régulière du véhicule dans le pays.

§ 3. Les droits à l'importation sont exigibles sur tout véhicule dont la situation régulière dans le pays n'est pas établie au point de vue de ces droits.

L'importateur, le propriétaire, le détenteur et le conducteur du véhicule sont tenus solidairement au paiement.

§ 4. Sans préjudice des peines éventuellement encourues par application d'autres dispositions, est puni d'[une amende comprise entre une et deux fois les droits à l'importation] applicables au véhicule en cas d'importation [ou comprise entre la moitié de la valeur et la valeur totale du véhicule] lorsqu'il est soumis, à l'importation, à des mesures de prohibition, de restriction ou de contrôle, le propriétaire, le détenteur ou le conducteur d'un véhicule à moteur:

1° dont il n'établit pas la situation régulière dans le pays; <L 2009-12-21/13, art. 25, En vigueur: 10-01-2010>

2° qui porte une marque d'immatriculation autre que celle qui lui a été attribuée;

3° dont les marques du moteur, du châssis ou de toute autre partie essentielle, figurant sur les documents d'immatriculation ou sur les documents douaniers, ont été enlevées ou modifiées.

Dans tous ces cas, le véhicule est saisi et confisqué, quel qu'en soit le propriétaire.

§ 5. Est punie d'une amende de [125 euros] à [625 euros] toute infraction aux dispositions prises en vertu du § 1er.

§ 6. Le Roi désigne les représentants de l'autorité qui, outre les agents des douanes ou des accises, sont qualifiés pour rechercher et constater les infractions.

3° from which the marks of the engine, the chassis or any other essential part, appearing on the registration documents or on the customs documents, have been removed or modified.
In all these cases, the vehicle is seized and confiscated, whoever owns it.
§ 5. A fine of 125 euros to 625 euros shall be imposed on any breach of the provisions made pursuant to § 1.
§ 6. The King appoints the representatives of the authorities who, in addition to the customs or excise agents, are qualified to investigate and record infringements.
Article 205 See above →

Art. 3 External Investigations, Inspections (Revenue Sector).

Article 206 See above →

Art. 3 External Investigations, Inspections (Revenue Sector).

Article 207[424] § 1. Under penalty of a fine of 25 euros to 250 euros, manufacturers and traders who engage in the manufacture or trade of products subject to [excise duties] are required, at any request of the agents, to communicate, without displacement, their invoices, books and other accounting documents whose production would be deemed necessary.
§ 2. The Minister of Finance determines the categories of agents specially qualified to require the communication of the aforementioned invoices, books or documents.

Article 208[425] § 1. With a view to preventing fraud, the Minister of Finance is authorised to organise, according to the bases which he determines, the supervision and regulation of work in establishments or factories whose products are subject to [excise duties] or a special consumption tax. Unless

[424] Art. 207.§ 1er. Sous peine d'une amende de [25 euros] à [250 euros], les industriels et commerçants qui se livrent à la fabrication ou au commerce de produits soumis à [des droits d'accise] sont tenus, à toute réquisition des agents, de communiquer, sans déplacement, leurs factures, livres et autres documents de comptabilité dont la production serait jugée nécessaire.
§ 2. Le Ministre des Finances détermine les catégories d'agents spécialement qualifiés pour requérir la communication des factures, livres ou documents précités.
[425] Art. 208.§ 1er. En vue de prévenir la fraude, le Ministre des Finances est autorisé à organiser, d'après les bases qu'il détermine, la surveillance et la réglementation des travaux dans les établissements ou usines dont les produits sont soumis à [des droits d'accise] ou à une taxe spéciale de consommation. A moins qu'elles ne soient déjà sanctionnées par une autre disposition légale, les infractions aux mesures qu'il arrête sont punies d'une amende de [125 euros] à [625 euros].
§ 2. Il peut aussi faire rembourser par les intéressés les frais occasionnés par la surveillance de leurs établissements ou usines. Eventuellement ces frais peuvent être recouvrés par voie de contrainte conformément aux dispositions des articles 313 et 314.

they are already sanctioned by another legal provision, infringements of the measures it adopts are punishable by a fine of 125 euros to 62 euros.
§ 2. He may also have the interested parties reimburse the costs occasioned by the supervision of their establishments or factories. If necessary, these costs may be recovered by coercion in accordance with the provisions of Articles 313 and 314.

Article 209[426] Agents of the investigation department of the Higher Control Committee are granted, for the investigation and observation of fraud, powers identical to those enjoyed by agents of the General Administration of Customs and excise duties.

Article 209/1[427] Within the limits of the powers attributed to them by or by virtue of a law for the execution of checks and the observation of offences, agents of the General Administration of Customs and Excise may, during checks carried out on public roads or in closed places accessible to the public, use mobile or fixed cameras.
The power to use mobile or fixed cameras also extends to cases in which the said agents carry out, within the framework of their powers, checks on the public highway or in closed places accessible to the public, concerning the effective payment of customs and excise or other taxes, as well as in cases in which these agents intervene under the law of June 17, 2013 on better collection of criminal fines.
The information collected by the use of mobile or fixed cameras can be used as proof in court of the offences which are noted during the checks carried out by the said agents.

[426] Art. 209.Il est accordé aux agents du service d'enquêtes du Comité supérieur de contrôle, pour la recherche et la constatation de la fraude, des pouvoirs identiques à ceux dont jouissent les agents de l'Administration générale des douanes et accises]
[427] Art. 209/1. Dans les limites des compétences qui leurs sont attribuées par ou en vertu d'une loi pour l'exécution de contrôles et la constatation d'infractions, les agents de l'Administration générale des douanes et accises peuvent, lors de contrôles effectués sur la voie publique ou sur des lieux fermés accessibles au public, avoir recours aux caméras mobiles ou fixes.
La compétence d'utiliser des caméras mobiles ou fixes s'étend également aux cas dans lesquels lesdits agents effectuent dans le cadre de leurs compétences, des contrôles sur la voie publique ou sur des lieux fermés accessible au public, concernant le paiement effectif de droits de douane et d'accise ou d'autres impôts, ainsi qu 'aux cas dans lesquels ces agents interviennent en vertu de la loi du 17 juin 2013 portant une meilleure perception d'amendes pénales.
Les informations recueillies par l'utilisation des caméras mobiles ou fixes peuvent être utilisées comme preuve en justice des infractions qui sont constatées lors des contrôles effectués par lesdits agents.]

Article 209/2[428] § 1. Within the limits of the powers attributed to them by or by virtue of this law for the execution of customs and excise controls and forming part of this control, the customs and excise officers who carry out this control may request the submission of evidence establishing the identity of any person subject to checks.
Information relating to the identity of the person referred to in the 1st paragraph is not kept longer than necessary for the purposes for which it is processed, with a maximum retention period not exceeding one year after the final cessation of legal and administrative procedures and appeals resulting from the control of the person concerned referred to in the first paragraph.
The proof of identity that is given to the agents can only be retained for the time necessary to identify the person concerned and must then be returned to him immediately.
§ 2. If the person referred to in paragraph 1 refuses or is unable to prove his identity, as well as if his identity is doubtful, he may be detained for the time necessary to verify his identity.
The person concerned is informed beforehand of this possibility of retention and must be given the opportunity to prove his identity in any way whatsoever.
The police services are immediately informed of the detention carried out by the customs and excise agents.

[428] Art. 209/2. § 1er. Dans les limites des compétences qui leurs sont attribuées par ou en vertu de la présente loi pour l'exécution de contrôles en matière de douane et accises et faisant partie de ce contrôle, les agents des douanes et accises qui effectuent ce contrôle peuvent demander la remise de preuves établissant l'identité de toute personne faisant l'objet d'un contrôle.
Les informations relatives à l'identité de la personne visée à l'alinéa 1er, ne sont pas conservées plus longtemps que nécessaire au regard des finalités pour lesquelles elles sont traitées, avec une durée maximale de conservation ne pouvant excéder un an après la cessation définitive des procédures et recours juridictionnels et administratifs découlant du contrôle de la personne concernée visée à l'alinéa 1er.
Les preuves d'identité qui sont remises aux agents ne peuvent être retenues que pendant le temps nécessaire à l'identification de l'intéressé et doivent ensuite lui être immédiatement remises.
§ 2. Si la personne visée au paragraphe 1er refuse ou est dans l'impossibilité de faire la preuve de son identité, de même que si son identité est douteuse, elle peut être retenue pendant le temps nécessaire à la vérification de son identité.
L'intéressé est préalablement averti de cette possibilité de rétention et la possibilité doit lui être donnée de prouver son identité de quelque manière que ce soit.
Les services de police sont immédiatement avertis de la rétention effectuée par les agents des douanes et accises.
Sans préjudice de l'application de l'article 34, § 4, de la loi sur la fonction de police du 5 août 1992, l'intéressé ne peut en aucun cas, être retenu plus de deux heures à cet effet. Il est en outre immédiatement mis fin à cette rétention:
1° au moment où le service de police averti indique qu'il ne viendra pas ou qu'il ne sera pas sur place dans les deux heures à compter de l'avertissement;
2° si aucun service de police n'est sur place dans les deux heures à compter de l'avertissement.
L'intéressé est soustrait le plus rapidement possible à la vue du public. Jusqu'à l'arrivée des fonctionnaires de police, l'intéressé reste sous la surveillance directe permanente de la douane. Il est interdit d'enfermer l'intéressé ou de l'attacher à un endroit par quelque moyen que ce soit.
§ 3. La non remise des preuves visées au § 1er est punie d'une amende de 625 à 3125 euros.]

Without prejudice to the application of article 34, § 4, of the law on the police function of August 5, 1992, the person concerned cannot in any case be detained for more than two hours for this purpose. In addition, this retention is immediately terminated:
(1) when the notified police department indicates that it will not come or that it will not be on site within two hours of the warning;
(2) if no police service is on site within two hours of the warning.
The person concerned is removed from public view as quickly as possible. Until the arrival of the police officers, the person concerned remains under the permanent direct supervision of the customs. It is forbidden to confine the person concerned or to tie him to a place by any means whatsoever.
§ 3. Failure to submit the evidence referred to in § 1 is punishable by a fine of 625 to 3125 euros.]

Provisions common to the various taxes
Article 210[429] § 1. The administrative services of the State, including the public prosecutors' offices and the registries of the courts and tribunals, the

[429] Dispositions communes aux divers impôts.
Art. 210.§ 1er. Les services administratifs de l'Etat, y compris les parquets et les greffes des cours et tribunaux, les administrations des provinces et des communes, ainsi que les organismes et établissements publics, sont tenus, lorsqu'ils en sont requis par un fonctionnaire de l'une des administrations de l'Etat chargées de l'établissement ou du recouvrement des impôts, de lui fournir tous renseignements en leur possession, de lui communiquer, sans déplacement, tous actes, pièces registres et documents quelconques qu'ils détiennent et de lui laisser prendre tous renseignements, copies ou extraits, que ledit fonctionnaire juge nécessaires pour assurer l'établissement ou la perception des impôts perçus par l'Etat.
Par organismes publics, il faut entendre, au voeu de la présente loi, les institutions, sociétés, associations, établissements et offices à l'administration desquels l'Etat participe, auxquels l'Etat fournit une garantie, sur l'activité desquels l'Etat exerce une surveillance ou dont le personnel de direction est désigné par le gouvernement, sur sa proposition ou moyennant son approbation.
Toutefois, les actes, pièces, registres et documents ou renseignements relatifs à des procédures judiciaires ne peuvent être communiqués ou copiés sans l'autorisation expresse du ministère public.
L'alinéa 1 n'est pas applicable à l'Office des chèques postaux, à l'Institut National de Statistique, ni aux établissements de crédit. D'autres dérogations à cette disposition peuvent être apportées par des arrêtés royaux contresignés par le Ministre des Finances.
§ 2 Tout renseignement, pièce, procès-verbal ou acte découvert ou obtenu dans l'exercice de ses fonctions, par un agent [du Service public fédéral Finances], soit directement, soit par l'entremise d'un des services désignés ci-dessus, peut être invoqué par l'Etat pour la recherche de toute somme due en vertu des lois d'impôts. <L 2009-12-23/04, art. 159, 1°, En vigueur: 09-01-2010>
Néanmoins la présentation à l'enregistrement des procès-verbaux et des rapports d'expertise relatifs à des procédures judiciaires ne permet à l'administration d'invoquer ces actes que moyennant l'autorisation prévue au § 1, alinéa 3.
§ 3. [Toutes les administrations qui ressortissent du Service public fédéral Finances sont tenues de mettre à disposition de tous les agents dudit Service Public régulièrement chargés de l'établissement ou du recouvrement des impôts tous les renseignements adéquats, pertinents et non excessifs en leur possession, qui contribuent à la poursuite de la mission de ces agents en vue de l'établissement ou du recouvrement de n'importe quel impôt établi par l'Etat.
Tout agent du Service public fédéral Finances, régulièrement chargé d'effectuer un contrôle ou une enquête, est de plein droit habilité à prendre, rechercher ou recueillir les renseignements adéquats, pertinents et non excessifs, qui contribuent à assurer l'établissement ou le recouvrement de n'importe quel autre impôt établi par l'Etat.]

administrations of the provinces and the communes, as well as the public bodies and establishments, are required, when requested by an official of one of the administrations of the State responsible for the establishment or collection of taxes to provide him with all information in their possession, to communicate to him, without displacement, all acts, registers and documents whatsoever which they hold and to allow him to take all information, copies or extracts, which the said official deems necessary to ensure the establishment or collection of taxes collected by the State.
By public bodies is meant, for the purposes of this law, the institutions, companies, associations, establishments and offices in whose administration the State participates, to which the State provides a guarantee, over whose activity the State exercises supervision or whose management staff is appointed by the Government, on its proposal or with its approval.
However, acts, documents, registers and documents or information relating to judicial proceedings may not be communicated or copied without the express authorisation of the Public Prosecutor].
Paragraph 1 shall not apply to the Post Office, the National Institute of Statistics or to credit institutions. Other derogations to this provision may be made by Royal Decrees countersigned by the Minister of Finance.
§ 2 Any information, document, report or act discovered or obtained in the exercise of his duties by an agent [of the Federal Public Service Finance], either directly or through the intermediary of one of the above-mentioned services, may be invoked by the State for the recovery of any sum due under the tax laws.
However, the submission for registration of minutes and expert reports relating to judicial proceedings shall only allow the administration to invoke such acts subject to the authorisation provided for in § 1, paragraph 3.
§ 3 [All administrations that are part of the Federal Public Service Finance are obliged to make available to all agents of the said Public Service regularly responsible for the assessment or collection of taxes all adequate, relevant and not excessive information in their possession, which contributes to the pursuit of the mission of these agents with a view to the assessment or collection of any tax established by the State.
Any agent of the Federal Public Service Finance, regularly entrusted with the task of carrying out a control or an investigation, is by right entitled to take, search or collect adequate, relevant and not excessive information, which contribute to ensure the establishment or the collection of any other tax established by the State].
Further provisions can be found in the

	- VAT Code (*Code de la TVA*) - Act on trade in agricultural, horticultural and sea-fishery products (*Loi du 28 mars 1975*), Article 5 (See above → - Art. 3 External Investigations, Investigative Powers in the Area of Structural Funds and Internal Policies) - Law of 11 July 1969 on pesticides and raw materials for agriculture, horticulture, forestry and animal husbandry, Article 6 (See above → - Art. 3 External Investigations, Investigative Powers in the Area of Common Market Organisations) - Royal Decree of 22 February 2001 organising the controls carried out by the Federal Agency for the Safety of the Food Chain and amending various legal provisions legal provisions (*AR du 22 février 2001*), **Article 3 and 4** (See above → - Art. 3 External Investigations, Investigative Powers in the Area of Common Market Organisations)
Para 3a (a) (b)	**General Law on Customs and Excise:** **Article 203**[430] § 1. Importers, exporters and all persons directly or indirectly interested in the import or export of goods are required to communicate, without travel, at any request from customs and excise officers having at least the rank of expert financial, their billers, their invoices, their copies of letters, their cash books, their inventory books and all books, registers, doc-

[430] Art. 203.§ 1er. Les importateurs, les exportateurs et toutes personnes intéressées directement ou indirectement à l'importation ou à l'exportation de marchandises sont tenus de communiquer, sans déplacement, à toute réquisition des agents des douanes et accises ayant au moins le grade d'expert financier, leurs facturiers, leurs factures, leurs copies de lettres, leurs livres de caisse, leurs livres des inventaires et tous livres, registres, documents et correspondances relatifs à leur activité commerciale ou professionnelle et dont la production serait jugée nécessaire. Toutefois, en ce qui concerne les établissements de crédit, les banquiers et les agents de change, la communication des pièces susvisées ne peut être requise que moyennant une autorisation spéciale du conseiller général désigné pour l'administration en charge des contentieux.
[Les dispositions de l'article 201, § 2, alinéa 2 sont d'application.]
§ 2. Ces agents ont aussi le droit de prendre copie ou de retenir les documents et correspondances qui établissent ou concourent à établir une infraction en matière de douane ou d'accise. Des pièces retenues, ils dressent un inventaire dont ils remettent une copie, signée par eux, au propriétaire ou au détenteur.
[Lorsque les documents visés à l'alinéa précédent sont conservés au moyen d'un système informatisé, les agents ont le droit de se faire remettre des copies de ces documents dans la forme qu'ils souhaitent.]
§ 3. Les infractions aux dispositions du § 1 et les entraves apportées à l'exercice des droits reconnus aux agents par le § 2 sont punies d'une amende de [25 euros] à [250 euros].
§ 4. Via une autorisation motivée émanant de l'Administrateur général, les fonctionnaires de l'Administration générale des douanes et accises peuvent, dans le cadre des enquêtes, demander de se faire communiquer des données par le Point de Contact Central comme prévu à l'article 322, § 3, alinéa 1er, du Code des impôts sur les revenus 1992 compte tenu des limitations de l'article 322, §§ 2 à 4, du même Code.]

	uments and correspondence relating to their commercial or professional activity and the production of which would be deemed necessary. know. However, with regard to credit institutions, bankers and stockbrokers, the communication of the aforementioned documents may only be required subject to special authorisation from the designated general counsel for the administration in charge of litigation. [The provisions of article 201, § 2, paragraph 2 is applicable.] § 2. These agents also have the right to take copies of or retain documents and correspondence which establish or contribute to establishing a customs or excise offence. Of the items retained, they draw up an inventory of which they give a copy, signed by them, to the owner or holder. [Where the documents referred to in the preceding paragraph are kept by means of a computerized system, agents have the right to be provided with copies of these documents in the form they wish.] § 3. Violations of the provisions of § 1 and obstacles to the exercise of the rights granted to agents by § 2 are punishable by a fine of [25 euros] to [250 euros]. § 4. Via a reasoned authorisation issued by the General Administrator, officials of the General Customs and Excise Administration may, within the framework of investigations, request to be provided with data by the Central Contact Point as provided in article 322, § 3, first paragraph, of the Income Tax Code 1992 taking into account the limitations of article 322, §§ 2 to 4, of the same Code.] **Article 325**[431] The General Administration of Customs and Excise is authorised, subject to reciprocity, to provide the competent authorities of foreign countries with all information, certificates, reports and other documents, with a view to preventing, investigating and punishing infringements of the laws and regulations applicable to entry into or exit from their territory.
Para 6 (c)	**General Law on Customs and Excise:** **Chapter XXVIII. Obligations and rights of officials. Protection to be granted to them** **Article 320**[432] Any official or person who intervenes, in any capacity whatsoever, in the application of tax laws or who has access to the offices of the

[431] Art. 325.L'Administration générale des douanes et accises est autorisée, sous condition de réciprocité, à fournir aux autorités compétentes des pays étrangers, tous renseignements, certificats, procès-verbaux et autres documents, en vue de prévenir, de rechercher et de réprimer les infractions aux lois et règlements applicables à l'entrée ou à la sortie de leur territoire.

[432] CHAPITRE XXVIII. - Obligations et droits des agents. Protection à leur accorder.

General Administration of Customs and Excise shall be obliged to maintain, outside the performance of his duties, the strictest secrecy with regard to everything of which he has become aware as a result of the performance of his duties.

The officials of the General Administration of Customs and Excise shall remain in the performance of their duties when communicating information to other administrative services of the State, to the administrations of the Communities and Regions of the Belgian State, to the public prosecutors' offices and registries of the courts and tribunals and of all jurisdictions, and to public establishments or bodies. The information is communicated to the above-mentioned services insofar as it is necessary to ensure the execution of their legal or regulatory missions. Such communication shall be made in accordance with the provisions of the relevant regulations issued by the European Union.

Persons belonging to the departments to which the General Administration of Customs and Excise has provided tax information pursuant to the preceding paragraph shall also be bound by the same secrecy obligation and may not use the information obtained outside the framework of the legal provisions for the performance of which it was provided.

Public institutions or bodies shall be understood to mean institutions, companies, associations, establishments and offices in whose administration the

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Art. 320. Tout fonctionnaire et toute personne qui intervient, à quelque titre que ce soit, dans l'application des lois fiscales ou qui a accès aux bureaux de l'Administration générale des douanes et accises est tenu de garder, en dehors de l'exercice de ses fonctions, le secret le plus absolu au sujet de tout ce dont il a eu connaissance par suite de l'exécution de sa mission.

Les fonctionnaires de l'Administration générale des douanes et accises restent dans l'exercice de leurs fonctions lorsqu'ils communiquent des renseignements aux autres services administratifs de l'État, aux administrations des Communautés et des Régions de l'État belge, aux parquets et aux greffes des cours et des tribunaux et de toutes les juridictions, et aux établissements ou organismes publics. Les renseignements sont communiqués aux services précités dans la mesure où ils sont nécessaires pour assurer l'exécution de leurs missions légales ou réglementaires. Cette communication doit se faire dans le respect des dispositions de la réglementation édictée en la matière par l'Union européenne.

Les personnes appartenant aux services à qui l'Administration générale des douanes et accises a fourni des renseignements d'ordre fiscal en application de l'alinéa précédent sont également tenues au même secret et elles ne peuvent utiliser les renseignements obtenus en dehors du cadre des dispositions légales pour l'exécution desquelles ils ont été fournis.

Par établissements ou organismes publics il faut entendre les institutions, sociétés, associations, établissements et offices à l'administration desquels l'État participe, auxquels l'État fournit une garantie, sur l'activité desquels l'État exerce une surveillance ou dont le personnel de direction est désigné par le Gouvernement, sur sa proposition ou moyennant son approbation.

Les fonctionnaires des douanes et accises se conduiront envers tous ceux avec lesquels ils ont des relations dans l'exercice de leurs fonctions, et surtout envers les voyageurs et personnes qui viennent de l'étranger, avec égards et célérité et leur donneront tous les renseignements dont ils pourraient avoir besoin, sans néanmoins donner à un tiers des communications quelconques concernant les affaires d'un particulier à un autre.

	State participates, to which the State provides a guarantee, over whose activity the State exercises supervision or whose management staff is appointed by the Government, on its proposal or with its approval. Customs and excise officials shall conduct themselves towards all those with whom they have dealings in the exercise of their functions, and especially towards travellers and persons coming from abroad, with consideration and promptness and shall give them all the information they may require, without, however, giving any communication to a third party concerning the affairs of one individual to another. **! Does not preclude Article 203 of the same code** (see above, **"**§ 1. Importers, exporters and all persons directly or indirectly interested in the import or export of goods are required to communicate, without travel, at any request from customs and excise officers having at least the rank of expert financial, their billers, their invoices, their copies of letters, their cash books, their inventory books and all books, registers, documents and correspondence relating to their commercial or professional activity and the production of which would be deemed […]"**)**
Para 7	**General Law on Customs and Excise** **Article 273**[433] § 1. When goods are seized, officers will transport them to the nearest office to be checked, duly inventoried, weighed, measured, gauged or counted in the presence of the officer with at least an attaché designated by the general administrator of customs and excise and of the interested party, if he is there and wishes to attend this operation, according to the invitation which will be made to him and which will be mentioned in the trial- verbal. § 2. The administration has the right to have the seized goods then transported to the chief town of the department in which the seizure was made, and, in the event of sale, to have it carried out where it deems best. advantageous. **Article 274**[434] Only the goods, means of transport, utensils, instruments or other objects in respect of which or with which a fraud has been committed,

[433] Art. 273.§ 1er. Lors de la saisie de marchandises, les agents les transporteront au bureau le plus proche pour y être vérifiées, dûment inventoriées, pesées, mesurées, jaugées ou comptées en présence de l'agent ayant au moins un titre d'attaché désigné par l'administrateur général des douanes et accises et de la partie intéressée, si elle s'y trouve et veut assister à cette opération, d'après l'invitation qui lui en sera faite et qui sera mentionnée au procès-verbal.
§ 2. L'administration a le droit de faire transporter ensuite les marchandises saisies au chef-lieu de la direction, dans laquelle la saisie a été pratiquée, et, en cas de vente, de la faire effectuer là où elle le jugera le plus avantageux.
[434] Art. 274.On retiendra uniquement les marchandises, moyens de transport, ustensiles, instruments ou autres objets à l'égard desquels ou avec lesquels une fraude a été commise, et dont, en conformité de l'article 253, la saisie doit avoir pour objet l'exécution d'une peine, ou qui sont affectés au recouvrement d'un droit].

and of which, in conformity with article 253, the seizure must have for purpose of the execution of a sentence, or which are assigned to the recovery of a right].

Article 275[435] § 1. If the seized party requests it, the goods and means of transport will be released, subject to sufficient surety of their value agreed between the receiver and the interested party or of the amount of the fine incurred.

§ 2. If, however, the seizure is based on a prohibition on entry, release cannot be granted for the goods whose importation is prohibited.

§ 3. The release may also be refused when the seizure takes place for erroneous declaration with respect to the type of goods, and it would not be possible, by means of samples, to maintain the whole case until a decision dispute; as also when the goods are seized from unknown persons, by which we mean, in general, those who put themselves in the situation of not being able to be designated in the report of seizure.

§ 4. When release on bail has not been given, the goods shall remain under the supervision and direction of the administration until they can be disposed of, either temporarily or definitively, according to the law.

§ 5. [In the event of the release under bail of goods taxed according to the value, the agreed estimate will at the same time serve as the basis for setting the fine incurred.]

Et seq.

Act on trade in agricultural, horticultural and sea-fishery products

(Loi du 28 mars 1975)

Article 8bis (precautionary seizure/*saisie conservatoire*)

Article 9 (execution seizure/*saisie-exécution*)

Article 10 (*confiscation*)

[435] Art. 275.§ 1er. Si le saisi le réclame, il sera donné mainlevée des marchandises et moyens de transport, sous caution suffisante de leur valeur convenue entre le receveur et la partie intéressée ou du montant de l'amende encourue.

§ 2. Si cependant la saisie est motivée sur une prohibition à l'entrée, il ne pourra être accordé mainlevée pour les marchandises dont l'importation est prohibée.

§ 3. La mainlevée pourra également être refusée lorsque la saisie a lieu pour déclaration erronée relativement à l'espèce des marchandises, et qu'on ne pourrait, pas, au moyen d'échantillons, maintenir l'affaire en entier jusqu'à décision de la contestation; comme aussi lorsque les marchandises sont saisies sur des personnes inconnues, par lesquelles on entend, en général, celles qui se mettent dans le cas de ne pouvoir être désignées dans le procès-verbal de saisie.

§ 4. Lorsqu'il n'aura pas été donne mainlevée sous caution, les marchandises resteront sous la surveillance et direction de l'administration jusqu'à ce qu'on puisse en disposer, soit provisoirement, soit définitivement, suivant la loi.

§ 5. [En cas de mainlevée sous caution de marchandises imposées d'après la valeur, l'estimation convenue servira en même temps de base pour la fixation de l'amende encourue.] <L 1989-12-22/30, art. 104>

	Law of 11 July 1969 on pesticides and raw materials for agriculture, horticulture, forestry and animal husbandry Article 11 (seizure) Article 12 Article 13 (execution seizure/*saisie-exécution*) **Royal Decree of 22 February 2001 organising the controls carried out by the Federal Agency for the Safety of the Food Chain and amending various legal provisions legal provisions** (AR du 22 février 2001) Article 3 § 3 (informing police officers) **Chapter II. Seizures** Article 6

Source: The authors.

b) References to National Authorities

See above → Institutions and below → Art. 12a OLAF Regulation. **2**

6. 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.

A report obligation can at least be determined from the principle of sincere cooperation with Union bodies, cf. Art. 4 para 3 TEU. This principle applies in all areas of potential irregularities and frauds (for the typology of EU frauds see → EU Fraud Commentary and see above → Art. 26 EPPO Regulation, where the material scope of the EPPO is determined). Additionally, Art. 12a in combination with Art. 8 para 2 and 3 OLAF Regulation 883/2013 obliges the AFCOS of the present Member State to report to OLAF any of the requested material. The obligations exist throughout the different areas of irregularities (tax revenue related, customs revenue related; tax expenditure related i.e. structural funds area, direct grants etc.) and are therefore enshrined in different national **1**

laws. The competent authorities of the Member States are either the same that can conduct external investigations (in cases of resistance, *Sigma Orionis*[436]) or those that must be informed by the Director General if he/she decides not open a case according to Art. 5 para 5 OLAF Regulation No 883/2013 as amended 2020/2223.

2 The importance of the reporting obligation becomes vivid if taking a look at a case from a decade ago, where OLAF acted upon information submitted:

3 On **16 May 2014**, the Brussels Criminal Court upheld the findings of OLAF in a long-running corruption case involving two EU staff members and three external contractors. The investigation, launched by OLAF in 2004, revealed a **bid-rigging scheme** related to the leasing and procurement of European Commission buildings and security installations outside the EU, which took place between 2001 and 2004.[437] The court sentenced five defendants to suspended jail terms, along with fines and legal costs. The defendants were ordered to **pay reputational damages** to the European Union. The European Commission joined the criminal proceedings in 2007 to protect the EU's financial interests. The case once again underscores the importance of OLAF's role in detecting and investigating corruption within EU institutions and highlights the EU's commitment to addressing such misconduct. The court's ruling relied heavily on OLAF's findings and statements from its administrative investigation.

[436] See → Art 3 OLAF Regulation above in this Chapter.
[437] See OLAF Press Release No 09/2014, dated 27 May 2014. https://anti-fraud.ec.europa.eu/media-corner/news/court-upholds-olaf-findings-corruption-investigation-within-eu-institutions-2014-05-27_en?prefLang=pt. Accessed 31 July 2024.

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

Art. 9 para 3 and 4 relate to a fundamental right of a "person concerned", a term used troughout the whole OLAF Regulation and open to judicial interpretation. The obligation to inform the person and invite her to comment, which is enshrined as well in **Regulation No 1049/2001**, is hampered if e.g. a Belgian judicial authority conducts any iuvestigative proceedings (see above → Art. 3 OLAF Regulation). The *telos* is that it is provided OLAF's information invitation does not undermine the investigation's purpose. In a landmark decision from 2023 ECJ reversed previous case law by ruling that individuals classified as "persons concerned" in OLAF investigations should have the right to request access to investigation files. This decision strengthens the procedural rights of individuals and companies involved in OLAF investigations again, increasing transparency and accountability in the process.[438] **1**

[438] ECJ, C-787/22 P, Judgment of the Court (Tenth Chamber) of 30 November 2023, *"Sistem ecologica" production, trade and services d.o.o. Srbac v European Commission*, mn. 147 stating OLAF's plea "In essence, OLAF noted that Regulation No 883/2013 did not grant persons concerned by an investigation a right of access to the file and that the absence of such access did not constitute an infringement of Article 41(2) of the Charter. It added that granting such access could undermine OLAF's work and recalled that, in the event that information should be forwarded, by OLAF, to the national authorities, additional rights are conferred on such persons, including the right of access to the file." And 165 et seq.: The existence of a general presumption, whereby the disclosure of the documents on the file for an investigation conducted by OLAF would, in principle, undermine the purpose of investigations within the meaning of the third indent of Article 4(1) of Regulation No 1049/2001, must be recognised on the basis of paragraph 61 of the judgment of 29 June 2010, Commission v Technische Glaswerke Ilmenau (C-139/07 P, EU:C:2010:376). In the present case, it must be held, in the first place, that the appellant's request of 27 October 2020, seeking disclosure of certain documents contained in the OLAF file, in no way indicated that that request was submitted on the basis of Regulation No 1049/2001. However, for the reasons set out in paragraphs 79 to 81 of the present judgment and in accordance with the ruling of the Court in paragraphs 63 to 76 of the

⚖ *Case Sistem Ecologica v EU Commission* **(2023)**

2 The case involved the company **Sistem Ecologica**, which was Bosnia based and accused of fraud in importing biodiesel into the EU. OLAF investigated the company and **refused its request to access** certain documents. The European General Court (EGC) had initially sided with OLAF, arguing that **Regulation (EU) No. 883/2013** did not grant "persons concerned" the right to access documents during investigations. However, the ECJ overturned this ruling, confirming that **persons concerned** should have the same right to request access to documents as others, provided it doesn't undermine the investigation's purpose.

3 Lawyers and human rights defenders welcomed the decision as it significantly strengthens the rights of individuals involved in investigations by the OLAF.[439]

4 This decision is essential for Article 9 of the OLAF Regulation (Regulation (EU, Euratom) No. 883/2013), which sets out procedural guarantees for individuals involved in OLAF investigations. Article 9 emphasizes the rights of the person concerned to:

- Be given the opportunity to comment on the facts.
- Avoid self-incrimination.
- Be informed about the conclusions before the final report is drawn up.

5 Under Article 9, OLAF may withhold information if providing it would prejudice the conduct of the Belgian investigation. Investigative proceedings within a national judicial authority, such as those in Belgium. The risk is that e.g., if disclosing certain documents to a "person concerned" could **compromise ongoing investigative actions** or sensitive data gathering, OLAF could deny access. In Belgium, several national judicial authorities have the power to investigate fraud and irregularities. To avoid excessive repetition in the volume, only the most important points will be mentioned again, as the rest is covered above in → Article 3 and at the beginning of Part A under → Institutions.

- EDPs
- Investigating judges (*Juges d'instruction*): Conduct formal investigations and can issue warrants for searches and arrests.
- Federal Prosecutor's Office: Oversees serious national and transnational crimes, including fraud.
- Customs and Excise Administration: Investigates customs-related fraud, often in cooperation with OLAF.

judgment of 13 January 2022, Dragnea v Commission (C-351/20 P, EU:C:2022:8), OLAF was required to examine that request in the light not only of Regulation No 883/2013, but also of Regulation No 1049/2001.

[439] See Stein, von Rummel and Louca, Blomstein, The ice has been broken: access to OLAF files for "persons concerned", Blogpost, 15 February 2024, https://www.blomstein.com/en/news/das-eis-ist-gebrochen-zugang-zu-olaf-akten-fuer-betroffene. Accessed 31 July 2024.

- Anti-Corruption Office (OCRC), which investigates corruption and financial crimes.

These authorities work closely with OLAF when irregularities are detected that involve EU funds or financial interests. **6**

The ECJ ruling ensures that persons concerned can now request access to documents during investigations, improving transparency and procedural fairness. However, OLAF may still deny access if it would undermine the investigation, but must provide valid reasoning for such a denial. **7**

Summarizing the short analysis, it can be said that the question in this area is always the same: When does OLAF need to inform the person concerned and can it do so after submitting information to a national judicial authority or not. The remit of a national judicial authority is determined by the law, which describes the scope of investigation and the task of the authority. The ECJ interpreted the "national judicial authority" as a criminal investigative authority (Mn. 56–57). Thus, in Belgium the police reporting to the criminal prosecution offices, the prosecutors, the regional offices of the EPPO and special tax and customs investigators are meant by this phrase. **8**

b) Art. 9 para 4 – National Judicial Authorities

The same judicial authorities as above see → Art. 3 OLAF Regulation apply. **9**

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. […]

1 Generally speaking, the data-protection laws might apply in connection with special obligations for Belgian officials, which are enshrined in the Customs and Excise Code for example.
The following laws might apply:
- Law of July 30, 2018 on the protection of natural persons with regard to the processing of personal data
- Law of December 25, 2016 on the processing of passenger data

2 The **Belgian tax area** has seen huge changes recently. In late 2022 the Belgian Government installed a prolongated time-limit for investigations and created new powers for the tax administration. If the EU revenue is concerned, the Belgian Tax administration has the task to recover money, which belongs to the EU budget. Therefore, the rules of the Federal Service of Public Finances apply. Royal decrees, ministerial decrees may contain further rules on the proceedings, which national judicial authorities adhere to in Belgium.

3 During the **customs procedure**, which might be the source for an irregularity relating to revenue-related budget claims of the Union, the officials are obliged to keep secrets. Art. 320 of the General Code on Customs and Excise stipulates the secrecy obligation and describes an exclusion:

4 **Chapter XXVIII. Duties and rights of agents. Protection to be afforded to them**
Art. 320[440] All civil servants and all persons who intervene in any capacity whatsoever in the application of tax laws or who have access to the offices of [the General Administration of Customs and Excise] are required to maintain, outside the performance of

[440] CHAPITRE XXVIII. Obligations et droits des agents. Protection à leur accorder.
Art. 320. Tout fonctionnaire et toute personne qui intervient, à quelque titre que ce soit, dans l'application des lois fiscales ou qui a accès aux bureaux de l'Administration générale des douanes et accises est tenu de garder, en dehors de l'exercice de ses fonctions, le secret le plus absolu au sujet de tout ce dont il a eu connaissance par suite de l'exécution de sa mission.
Les fonctionnaires de l'Administration générale des douanes et accises restent dans l'exercice de leurs fonctions lorsqu'ils communiquent des renseignements aux autres services administratifs de l'État, aux administrations des Communautés et des Régions de l'État belge, aux parquets et aux greffes des cours et des tribunaux et de toutes les juridictions, et aux établissements ou organismes publics. Les renseignements sont communiqués aux services précités dans la mesure où ils sont nécessaires pour assurer l'exécution de leurs missions légales ou réglementaires.

their duties, **the strictest secrecy with regard to everything of which they have become aware as a result of the performance of their duties**.
Officials of the [General Administration of Customs and Excise] remain in the performance of their duties when they communicate information to other administrative services of the State, to the administrations of the Communities and Regions of the Belgian State, to the public prosecutors' offices and registries of the courts and tribunals and of all jurisdictions, and to public establishments or bodies. **Information is communicated to the aforementioned services insofar as it is necessary to ensure the performance of their legal or regulatory duties. Such communication must comply with the provisions of the relevant regulations issued by the [European Union].**
Persons belonging to the departments to which [the General Customs and Excise Administration] has provided tax information pursuant to the previous paragraph are **also bound by the same secrecy obligation** and may not use the information obtained outside the framework of the legal provisions for the performance of which it was provided.
By public establishments or bodies is meant institutions, companies, associations, establishments and offices in whose administration the State participates, to which the State provides a guarantee, over whose activities the State exercises supervision or whose management staff is appointed by the Government, on its proposal or with its approval.
Customs and excise officials shall conduct themselves towards all those with whom they have dealings in the performance of their duties, and especially towards travellers and persons coming from abroad, with consideration and promptness and shall give them all the information they may require, without however giving any third party any communications concerning the affairs of one private individual to another.

Cette communication doit se faire dans le respect des dispositions de la réglementation édictée en la matière par l'Union européenne.
Les personnes appartenant aux services à qui l'Administration générale des douanes et accises a fourni des renseignements d'ordre fiscal en application de l'alinéa précédent sont également tenues au même secret et elles ne peuvent utiliser les renseignements obtenus en dehors du cadre des dispositions légales pour l'exécution desquelles ils ont été fournis.
Par établissements ou organismes publics il faut entendre les institutions, sociétés, associations, établissements et offices à l'administration desquels l'État participe, auxquels l'État fournit une garantie, sur l'activité desquels l'État exerce une surveillance ou dont le personnel de direction est désigné par le Gouvernement, sur sa proposition ou moyennant son approbation.
Les fonctionnaires des douanes et accises se conduiront envers tous ceux avec lesquels ils ont des relations dans l'exercice de leurs fonctions, et surtout envers les voyageurs et personnes qui viennent de l'étranger, avec égards et célérité et leur donneront tous les renseignements dont ils pourraient avoir besoin, sans néanmoins donner à un tiers des communications quelconques concernant les affaires d'un particulier à un autre.

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 timelimit 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.

b) References to National Law

Sources & national sections 4: Art. 11 OLAF Regulation – Overview for the Belgium **1**

Para 2	In drawing up the reports and recommendations account shall be taken [by the OLAF Units and Investigators] of the relevant provisions of the national law of the Member State concerned [Belgium]. The relevant provisions stem from the Customs Code, the Tax Code, the VAT Code and the rules on structural funds in Belgium. Either the OLAF Officers contact AFCOS (see below Art. 12a OLAF Regulation) or they read the single provisions from Art. 3 OLAF Regulation above, which contain the investigative powers, the rules on inspections and audits and the restrictions OLAF has to adhere to if investigating in an on-the-spot check, in which the national member resists.
Para 2 (a)	In general Articles 1315-1369 of the Civil Code and Article 870 of the Judicial Code must be obeyed. See Article 59 VAT Code, which enshrines provisions on evidence. OLAF reports may be introduced in proceedings as written proofs but in addition OLAF investigators might be heard as witnesses in a trial. The national experts, which conduct investigations of a Sigma Orionis situation (see above → Art. 3 External Investigations) can be heard in the minutes (e.g. as employees of the FPS, Belgian Tax Administration Service).
Para 2 (b)	See → Art. 71 et seq. CPC [below].
Para 2 (c)	An excerpt of the CPC presents an example. The rules of the CPC are partly applicable in the customs procedure: **§ 3 CPC**[441] **Examination of the Witnesses** Art. 71. The investigating judge will summon the persons who, by the declaration, by the complaint, be designated by the Public Prosecutor or otherwise as having knowledge, either of the crime or misdemeanour, or from its circumstances.[442] Art. 72. The witnesses are summoned by a (court bailiff) or by an agent of the public power, at the request of the Public Prosecutor.[443]

[441] § 3. Verhoor Van De Getuigen.
[442] Art. 71. De onderzoeksrechter doet voor zich de personen dagvaarden, die door de aangifte, door de klacht, door de procureur des Konings of op andere wijze worden aangewezen als kennis dragende, hetzij van de misdaad of het wanbedrijf, hetzij van de omstandigheden ervan.
[443] Art. 72. De getuigen worden gedagvaard door een (gerechtsdeurwaarder) of door een agent van de openbare macht, op verzoek van de procureur des Konings.

	Art. 73. They are heard, individually and without the presence of the suspect, by the examining magistrate, assisted by his clerk. [444] Art. 74. Before being heard, they show the subpoena to which they have been summoned to testify; this is stated in the official report. [445] Art. 75. The witnesses take the oath that they will tell the whole truth and nothing but the truth; the examining magistrate asks them their surname, first names, age, state, profession, place of residence, whether they are a domestic servant, are related by blood or marriage to the parties and to what degree; of the question and of the answers of the […].[446] The other acts contain further provisions, which are alike to the ones above.

c) National Authority and "action that the results of the external investigation warrant", para 3

2 A possible action in the VAT area is the ordering of automatic recovery of VAT sums, see Art. 66 Code de la TVA[447].

[444] Art. 73. Zij worden, ieder afzonderlijk en buiten de aanwezigheid van de verdachte, gehoord door de onderzoeksrechter, bijgestaan door zijn griffier.
[445] Art. 74. Vooraleer te worden gehoord, vertonen zij de dagvaarding waarbij zij zijn opgeroepen om te getuigen; daarvan wordt melding gemaakt in het proces-verbaal.
[446] Art. 75. De getuigen leggen de eed af dat zij de gehele waarheid en niets dan de waarheid zullen zeggen; de onderzoeksrechter vraagt ze hun naam, voornamen, leeftijd, staat, beroep, woonplaats, of zij dienstbode, bloedverwant of aanverwant van de partijen zijn en in welke graad; van de vraag en van de antwoorden der
[447] **Art. 66 Code de la TVA** When, for any reason whatsoever, a person liable for payment of the tax under Article 51, §§ 1, 2 or 4, has not submitted the declaration provided for in Article 53, § 1, paragraph 1, 2 °, 53ter, 1 °, or 53h, § 1, has not complied, in whole or in part, with the obligations imposed by this Code or in execution of it concerning the holding, the establishment, preservation or communication of books or documents, or has failed to respond to the request for information provided for in section 62, the Minister of Finance or his delegate shall be authorized to establish ex officio the fees payable by that person by reason of the presumed amount of the transactions carried out by him during the month or months to which the irregularity relates.
They shall also be entitled to tax ex officio the abovementioned person who, for transactions liable to VAT, has not entered the transaction in the prescribed book or document or has not issued an invoice to the contracting party when required to do so, has issued an invoice which incorrectly indicates either the name or address of the parties interested in the transaction, either the nature or quantity of the goods or services supplied, or the price or its accessories, or the amount of value added tax due on the transaction. In such cases, automatic taxation may extend to the entire period covered by the audit.
Automatic taxation may not, however, be carried out where the irregularities referred to in the preceding subparagraph are to be regarded as purely accidental, in particular having regard to the number and importance of transactions not recorded by regular invoices, compared with the number and importance of transactions for which regular invoices have been issued.
In the event of a late declaration, submitted before automatic taxation, the fee will be established on the basis of the declaration, provided that the delay in filing the return does not exceed twelve months.

Further actions that become possible through information obtained during external investigations might be taken in the area of revenue and customs duties. The General Customs and Excise Act stipulates that the authorities might e.g. assess administrative sanctions: **3**

Art. 129.[448] § 1. Customs registration shall be refused or withdrawn from persons convicted of fraud in the field of direct and indirect taxation or equivalent taxes, theft, concealment, fraud, embezzlement or simple or fraudulent bankruptcy, embezzlement or bribery of public officials without parole. **4**
§ 2. The prohibitions laid down in Article 128 § 2 shall apply to the persons referred to in § 1 of this Article.

Chapter XXIVbis. [Administrative sanctions]
Art. 266-2.[449] [Without prejudice to the application of the administrative penalties referred to in Articles 17, 19/5, 70/28, 70/29, 129, 130, 131, 133 and without prejudice to the administrative penalties provided for in specific excise legislation, the following shall apply: the licence, authorisation, permit or concession issued on the basis of European or national customs and excise legislation may be withdrawn if: - the holder of the
- licence, authorisation, permit or concession does not voluntarily pay the customs debt incurred on his behalf, or;
- the holder no longer complies with the requirements set out in his licence, authorisation, permit or concession].

The Customs and Excise Act further contains **fines and penalties** in general in Chapter XXIV. The **concrete action depends on the results of the external investigation** and OLAF's report. Material might be seized, money recovered, civil claims addressed to the legal or natural person, a concession stopped or a person excluded from the potential list of beneficiaries. **5**

[448] **Art. 129. Algemene Wet inzake douane en accijnzen**
§ 1. De inschrijving wordt geweigerd of ingetrokken aan de personen welke niet voorwaardelijk veroordeeld werden wegens bedrog op het stuk van rechtstreekse, onrechtstreekse of daarmede gelijkgestelde belastingen, wegens diefstal, heling, oplichting, misbruik van vertrouwen of eenvoudige of bedrieglijke bankbreuk, wegens knevelarij of omkoping van ambtenaren.
§ 2. De ontzegging waarvan sprake in artikel 128, § 2, geldt mede voor de in § 1 van dit artikel bedoelde personen.
[449] Chapitre XXIVbis. - Sanctions administratives
Art. 266-2. Sans préjudice de l'application des sanctions administratives visées aux articles 17, 19/5, 70/28, 70/29, 129, 130, 131, 133 et sans préjudice des sanctions administratives prévues par les lois d'accises spécifiques, toute licence, autorisation, permission, concession octroyée sur base de la législation européenne ou nationale en matière de douane et d'accise peut être retirée au cas où:
- le titulaire de la licence, de l'autorisation, de la permission, de la concession n'effectue pas de paiement volontaire de la dette douanière née en son nom ou;
- le titulaire ne satisfait plus aux prescriptions prévues dans sa licence, dans son autorisation, dans sa permission ou dans sa concession.

4. Article 12 Exchange of Information Between the Office and the Competent Authorities of the Member States

a) Art. 12 para 1 OLAF Regulation (Competent Authorities & Appropriate Action in Accordance with their National Law) 390
b) Art. 12 para 3 OLAF Regulation (Information to the Office by Competent Authorities of the Member State Concerned) 391
c) Art. 12 para 4 OLAF Regulation (Providing Evidence in Court Proceedings before National Courts and Tribunals in Conformity with National Law) 391

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***. […]
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.
4. The Office may ***provide evidence*** in proceedings before national courts and tribunals ***in conformity with national law*** and the Staff Regulations. […]

a) Art. 12 para 1 OLAF Regulation (Competent Authorities & Appropriate Action in Accordance with their National Law)

1 **Competent Authorities**
See above → Institutions.

2 Especially for corruption offences:
- Central Office for Combating Corruption (CDBC) → also fraud in public procurement
  - CDBC – Central Anti-Corruption Service (corruption in general, subsidy fraud and public procurement)

- CDGEFID – Central Office for Combating Organised Economic and Financial Delinquency

  With 16 tax specialists from the FPS Finance seconded to the CDGEFID Liaison officers have also been seconded to CFI (Financial Information Processing Unit) and COIV (Central Confiscation and Confiscation Body)

b) Art. 12 para 3 OLAF Regulation (Information to the Office by Competent Authorities of the Member State Concerned)

These are the authorities, which were presented under a) and b) above. They are obliged to fulfil the time-limit by virtue of Art. 12 para 3 OLAF Regulation. **3**

Prevention by national law **4**

The right to withhold information (for a certain time) may result from provisions, which ensure the secrecy of an action under national law.

Cases from the Belgian Jurisdiction deal with these information channels and the support of OLAF investigators to competent authorities.[450]

c) Art. 12 para 4 OLAF Regulation (Providing Evidence in Court Proceedings before National Courts and Tribunals in Conformity with National Law)

The Criminal Procedure Code (*Code D'Instruction Criminelle*) might apply if providing evidence decision is subject to cassation challenge in national court proceedings before criminal courts and tribunals. **5**

Article 221[451] Except in the case provided for in the preceding article, the judges will examine whether there is evidence against [the accused] of evidence or indications of a fact falling within the jurisdiction of the Assize Court] 1, and whether such evidence or clues are serious enough to warrant an indictment. **6**

Article 237[452] The judge will hear the witnesses, or will appoint, in order to receive their depositions, one of the judges of the court of first instance in whose jurisdiction they live, will question [the accused], will cause to be recorded in writing all the evidence or clues that may be collected, and will issue, depending on the circumstances, warrants to bring, commit or arrest.

[450] Court of Cassation of Belgium, Judgment of September 14, 2016, ECLI:BE:CASS:2016:ARR.20160914.1, No Role: P.15.1357.F.

[451] Art. 221.Hors le cas prévu par l'article précédent, les juges examineront s'il existe contre [l'inculpé] des preuves ou des indices d'un fait relevant de la compétence de la cour d'assises, et si ces preuves ou indices sont assez graves pour que la mise en accusation soit prononcée.

[452] Art. 237. Le juge entendra les témoins, ou commettra, pour recevoir leurs dépositions, un des juges du tribunal de première instance dans le ressort duquel ils demeurent, interrogera [l'inculpé], fera constater par écrit toutes les preuves ou indices qui pourront être recueillis, et décernera, suivant les circonstances, les mandats d'amener, de dépôt ou d'arrêt.>

Chapter VI. [Procedure before the Assize Court]
Section 1. [Preliminary hearing] Article 274–278, 278bis, 279, 279bis
Article 281[453] § 1. The president is personally responsible for guiding the jurors in the performance of their duties, informing them of the bodies they can turn to for psychological support at the end of their mission, reminding them of their duties, in particular their duty to discretion, and to urge them to stay away from the media. He is also personally responsible for presiding over the entire investigation and determining the order in which the floor is given to those who request it.
He has the hearing police.
However, he cannot admit to reserved places people whose presence is not justified, either by the investigation of the case or the service of the audience, or by reason of their functions or professions.
§ 2. The president takes, even ex officio, all useful measures to collect all the evidence for and against him. He conducts the debates in an objective and impartial manner. The president is vested with discretionary power, by virtue of which he can take upon himself whatever he deems useful in discovering the truth; the law charges him to employ in honour and conscience all his efforts to favour the manifestation of it.
The president may, during the course of the proceedings, call, even by summons, and hear any person, or have any new documents brought to him which appear to him, according to the new developments given at the hearing, either by the accused, or by the witnesses, to be able to shed useful light on the disputed fact.
The witnesses thus called will be heard in the manner provided for in articles 295 to 299.
The president must reject anything that would tend to prolong the debates without giving reason to hope for more certainty in the results.

[453] Art. 281.§ 1er. Le président est chargé personnellement de guider les jurés dans l'exercice de leurs fonctions, de les informer des instances auxquelles ils peuvent s'adresser pour obtenir un soutien psychologique au terme de leur mission, de leur rappeler leurs devoirs, en particulier leur devoir de discrétion, et de les exhorter à se tenir à l'écart des médias. Il est aussi chargé personnellement de présider à toute l'instruction et de déterminer l'ordre dans lequel la parole est donnée à ceux qui la demandent.
Il a la police de l'audience.
Néanmoins, il ne peut admettre à des places réservées les personnes dont la présence ne serait pas justifiée, soit par l'instruction de la cause ou le service de l'audience, soit à raison de leurs fonctions ou professions.
§ 2. Le président prend, même d'office, toute mesure utile pour recueillir toutes les preuves à charge et à décharge. Il mène les débats d'une manière objective et impartiale. Le président est investi d'un pouvoir discrétionnaire, en vertu duquel il peut prendre sur lui tout ce qu'il croit utile pour découvrir la vérité; la loi le charge d'employer en honneur et conscience tous ses efforts pour en favoriser la manifestation.
Le président peut dans le cours des débats, appeler, même par mandat d'amener, et entendre toutes personnes, ou se faire apporter toutes nouvelles pièces qui lui paraîtraient, d'après les nouveaux développements donnés à l'audience, soit par les accusés, soit par les témoins, pouvoir donner un éclairage utile sur le fait contesté.
Les témoins ainsi appelés seront entendus dans les formes prévues aux articles 295 à 299.
Le président doit rejeter tout ce qui tendrait à prolonger les débats sans donner lieu d'espérer plus de certitude dans les résultats.]

Article 326[454] The president, after asking the questions, gives them to the jurors; at the same time, he gives them the indictment, if necessary, the statement of defence, the official reports recording the offence and the trial documents.
The president reminds the jurors of their oath. It indicates to them that a conviction can only be pronounced if it emerges from the elements of evidence admitted and submitted to the contradiction of the parties that the accused is guilty beyond all reasonable doubt of the facts incriminated against him.
If necessary, the president informs the jurors that the testimonies which have been obtained in application of articles 86bis, 86ter, 112bis, § 6, 294, 298, § 5, and 299, §§ 4 and 5, cannot be taken into account. consideration as evidence only insofar as they are corroborated to a decisive extent by other means of evidence.
When the president of the assize court gives the questions to the jurors, he will inform them of the way in which they must proceed and vote. Articles 329bis to 329sexies will be printed in large type and displayed in the deliberation chamber.
He removes the accused from the courtroom.

[454] Art. 326.Le président, après avoir posé les questions, les remet aux jurés [2...; il leur remet en même temps l'acte d'accusation, le cas échéant l'acte de défense, les procès-verbaux qui constatent l'infraction et les pièces du procès.
Le président rappelle aux jurés leur serment. Il leur indique qu'une condamnation ne peut être prononcée que s'il ressort des éléments de preuve admis et soumis à la contradiction des parties que l'accusé est coupable au-delà de tout doute raisonnable des faits qui lui sont incriminés.
Le cas échéant, le président avertit les jurés que les témoignages qui ont été obtenus en application des articles 86bis, 86ter, 112bis, § 6, 294, 298, § 5, et 299, §§ 4 et 5, ne peuvent être pris en considération comme preuve que pour autant qu'ils soient corroborés dans une mesure déterminante par d'autres moyens de preuve.
[2....
Lorsque le président de la cour d'assises remettra les questions aux jurés, il les informera de la manière dont ils doivent procéder et voter. Les articles 329bis à 329sexies seront imprimés en gros caractères et affichés dans la chambre des délibérations [2....
Il fait retirer l'accusé de la salle d'audience.

5. Article 12a Anti-Fraud Coordination Services

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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. […]

a) General Remarks

aa. Definition and History

1 Cooperation, Coordination and Facilitation are buzz words in anti-fraud literature.[455] Anti-fraud coordination services are known worldwide and exist in many international organisations and cooperate with nation states.[456] In the EU the term "AFCOS" has a *very special meaning* as it means the *Anti-fraud coordination services created on behalf of the European Anti-fraud Office* for the facilitation of interactions with the national

[455] Kuhl 2019, pp 160 et seq.; Wells 2014; John W. Spink 2019; Saporta, Maraney 2022; FCPA 2012; ECA 2022; Malan et al 2022, pp 135–139; focusing on the customs area Van der Paal et al 2019; de Vries 2022, pp 401–463; House of Lords, The Fight Against Fraud on the EU's Finances 12th Report of Session 2012-13, pp 32 et seq.

[456] Bartsiotas, Achamkulangare 2016; See World Customs Organization, http://www.wcoomd.org/en/about-us/partners/international_organizations.aspx (accessed 4 June 2024); see UNDOC, https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html (accessed 4 June 2024), focusing on the designation of anti-corruption bodies. They exist even on national level and are especially common in federal state systems, see Austria, which was special „Betrugsbekämpfungskoordinator:innen" https://www.bmf.gv.at/en/topics/combating-fraud/anti-fraud-units/anti-fraud-coordinators.html (accessed 4 June 2024): "In each office there is an Anti-Fraud Coordinator (AFC; in German: Betrugsbekämpfungskoordinator, BBKO) for the individual sectors and regional customs units. They are members of the management and communicate in their function at management level and with each other. The AFC is the point of contact for all anti-fraud matters at the local level, within the department for other organisational units, as well as externally for institutions and public authorities. They also act as an information hub to the outside world, for example when it comes to external information exchange or cooperation with external institutions and authorities."

Member States of the EU (see recitals below).[457] The obligation to designate these services runs and derives from primary Union law. Art. 325 TFEU (ex-Art. 280 TEC) requests the Union *and* the Member States to fight fraud (together). The history of these services, adapted to the financial and budgetary law sector and set-up in the Member States' internal justice and financial systems dates back to the early 2000s.[458] Historically, the coordinating bodies emerged primarily in the new Member States that were awaiting accession. The European Parliament has already in 2010 called for the AFCOS to be set up as independent bodies in the MS. Today one could not be further from this idea than ever, since the AFCOS are mostly subordinated deep in the structure of a Financial or Treasury Department/Ministry, Financial Inspections Services of the Treasury Department/Ministry, the Department of Commerce or the Ministry/Department of the Interior. The simplicity of the coordination from within a ministry and the size of the administrative apparatus certainly speak in favour of this, but the interconnectedness is also problematic from the point of view of efficiency (states with political goodwill coordinate very easily and others are politically manoeuvrable):

"**Friday 24 April 2009 Protection of the Communities' financial interests and the fight against fraud - Annual Report 2007 P6_TA(2009)0315 European Parliament resolution of 24 April 2009 on the protection of the Communities' financial interests and the fight against fraud - Annual Report 2007 (2008/2242(INI)) 2010/C 184 E/14 The European Parliament,"** **2**

68. points out that the Anti-Fraud Coordination Units (AFCOS) set up for OLAF in the Member States that joined the European Union after 2004 are very important sources of information and contact points for OLAF; points out, however, ***that the functional added value of these offices (in particular in terms of reporting irregularities to the Commission) is minimal as long as they are not independent from national administrations***; therefore calls on the Commission to submit a proposal to Parliament's competent committee on how the work of these offices could be made more useful and considers it necessary to improve cooperation with the candidate countries" [459] **3**

[457] Kuhl 2019, p 164.
[458] Quirke 2015, pp 236 et seq.
[459] See PB, 8.7.2010, CE 184/72 Vrijdag, 24 april 2009 Bescherming van de financiële belangen van de Gemeenschappen en fraudebestrijding - Jaarverslag 2007 P6_TA(2009)0315 Resolutie van het Europees Parlement van 24 april 2009 over de bescherming van de financiële belangen van de Gemeenschappen en fraudebestrijding - Jaarverslag 2007 (2008/2242(INI)) 2010/C 184 E/14 Het Europees Parlement, 68. wijst erop dat de voor OLAF opgerichte antifraudecoördinatiebureaus (AFCOS) in de lidstaten die na 2004 tot de Europese Unie zijn toegetreden, zeer belangrijke informatie- en contactpunten voor OLAF zijn; wijst erop dat de AFCOS een belangrijke rol spelen bij de bescherming van de financiële belangen van de Gemeenschappen en fraudebestrijding 68. wijst erop dat de coördinatiebureaus voor fraudebestrijding (AFCOS) die voor OLAF zijn opgericht in de lidstaten die na 2004 tot de Europese Unie zijn toegetreden, zeer belangrijke informatiebronnen en contactpunten voor OLAF zijn; wijst er echter op dat de functionele toegevoegde waarde van deze bureaus (met name wat betreft

4 At least there is legal and technical oversight of the areas of administration in most states and nowadays the AFCOS are implemented at the highest level.[460]

5 However, the existing Member States are also aware of weaknesses in the fight against fraud. Only since 2010 and in the last decade has more attention been paid to these coordination points. They have become a *sine qua non* in the EU's fight against fraud and it seems that they are becoming more and more the "eyes and ears" of OLAF in the Member States. They only have their own investigative skills, which would make them an "**extended arm**" of OLAF in the member states, if at all, e.g. in Bulgaria or Italy. On the other hand, in Germany and France, they are more active in the background and do not appear too clearly. Activity reports may also have to be requested by the Commission, i.e. the responsible departments of OLAF.

bb. Legislative Developments

6 The Commission has evaluated the impact of the AFCOS in the past decade.[461] Recent changes at the beginning of the 2020s have enlarged the competences of the AFCOS. These are now even allowed to cooperate with each other and not only with OLAF in Luxembourg alone, which was the case prior to the amendments of the Regulation (EU) 2020/2223.

7 The recent changes describe the role of the AFCOS in the recitals. Thus, by reading them the task and role of these bodies becomes vivid:

8

> (23) The Office is able, under Regulation (EU, Euratom) No 883/2013, to enter into administrative arrangements with ***competent authorities of Member States***, such as anti-fraud coordination services, and institutions, bodies, offices and agencies, in order to specify the arrangements for their cooperation under that Regulation, in particular ***concerning the transmission of information, the conduct of investigations and any follow-up action***.
>
> (30) Due to the large diversity of national institutional frameworks, Member States should, on the basis of the principle of sincere cooperation, ***have the possibility to notify***

de melding van onregelmatigheden aan de Commissie) minimaal is zolang zij niet onafhankelijk zijn van de nationale overheden; Verzoekt de Commissie derhalve bij de bevoegde commissie van het Parlement een voorstel in te dienen over de wijze waarop het werk van deze bureaus nuttiger kan worden gemaakt en acht het noodzakelijk de samenwerking met de kandidaat-lidstaten te verbeteren; [. ..])."

[460] Byrne 2018, p 13.

[461] Commission Staff Working Document Evaluation of the application of Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 Accompanying the document Commission report to the European Parliament and the Council., pp 3, 12, 72.
The Commission document was accompanied by a Report (called ICF Report 2017), which reesulted from an external study: European Commission, European Anti-Fraud Office, Evaluation of the application of Regulation No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF): final report, Publications Office, 2017, https://data.europa.eu/doi/10.2784/281658. Accessed 4 June 2024.

to the Office the authorities that are competent to take actions upon recommendations of the Office, as well as the authorities that need to be informed, such as for financial, statistical or monitoring purposes, for the performance of their relevant duties. Such authorities ***may include national anti-fraud coordination services***. In accordance with the settled case-law of the CJEU, the Office recommendations included in its reports have no binding legal effects on such authorities of Member States or on institutions, bodies, offices and agencies.
(37) The anti-fraud coordination services of Member States were introduced by Regulation (EU, Euratom) No 883/2013 to facilitate an effective cooperation and exchange of information, including information of an operational nature, between the Office and Member States. The Commission evaluation report concluded that they have contributed positively to the work of the Office. The Commission evaluation report also identified the ***need to further clarify the role of those anti-fraud coordination services*** in order to ensure that the Office is provided with the necessary assistance to ensure that its investigations are effective, while leaving the organisation and powers of the anti-fraud coordination services to each Member State. In that regard, the anti-fraud coordination services should be able to provide or coordinate the ***necessary assistance*** to the Office ***to carry out its tasks effectively, before, during or at the end of an external or internal investigation***.
(40) It should be possible for the anti-fraud coordination services in the context of coordination activities to provide assistance to the Office, as well as for the anti-fraud coordination services ***to cooperate among themselves***, in order to further reinforce the available mechanisms for cooperation in the fight against fraud.

c) Visualisation of old (prior to 2020) vs. new (since 2020) Cooperation and Role of the AFCOS

9

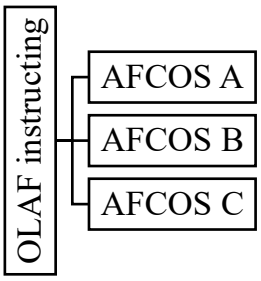

Figure 13: Visualisation of the old cooperation by virtue of Regulation No. 883/2013

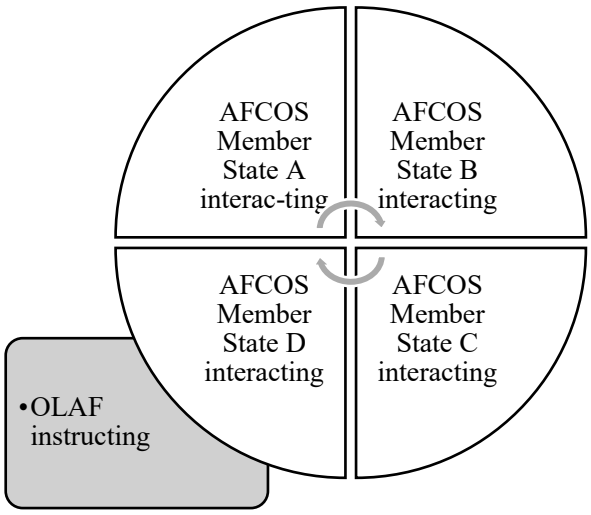

Figure 14: Visualisation of the new cooperation by virtue of Regulation No. 883/2013 (as amended 2020/2223)

d) A Closer Look at the Relevant AFCOS in the Present Member State

10 The relevant Belgian AFCOS is the **Interdepartmental Commission for Coordination of the Fight against Fraud**[462] within the Ministry of Economy.

11 → *Direction générale de l'Inspection économique – Direction C6 Fraude*

SPF Economie, P.M.E., Classes moyennes et Energie
Direction générale de l'Inspection économique
Direction Contrôles organisations du Marché UE et Lutte contre la fraude économique
North Gate - Bureau 3A08
Boulevard du Roi Albert II, 16
1000 Bruxelles
Belgique

aa. General Information

The **Belgian AFCOS** is a single point of contact for OLAF – it ties together all the institutions at the federal and regional level that are involved in the management of the financial interests of the EU (structural fund managers in the regions, Customs, Finance and Economy at federal level, etc.). BE AFCOS is responsible for receiving requests from OLAF and distributing them to the competent authorities. Beyond that, the bureau

[462] Commission interdépartementale pour la coordination de la lutte contre la fraude dans les secteurs économiques (CICF / ICCF).

drafts the anti-fraud strategy and handles initiatives concerning fraud prevention based on risks that have been identified. The Belgian AFCOS body does not coordinate investigation, but provides assistance to external OLAF investigations (on-the-spot checks) in Belgium; banking information as well as other information is forwarded by AFCOS to OLAF. There are approx. 10 requests by OLAF for assistance of the Belgian AFCOS body per year.

bb. Staff and links to the EPPO

The **BE AFCOS** does not have own staff. It is a coordination structure; the staff is provided by the **FPS Economy**. The AFCOS bureau does not have any links to the EPPO since it is only concerned with administrative investigations – investigations initiated by the EDPs are carried out by the Federal Police. Therefore, the assistance in customs matters is handled by the Customs while assistance for VAT irregularities is provided for by the FPS Finance.

cc. Training

The staff of the BE AFCOS (that is the staff provided by the FPS Economy) receives standard economic inspector training that does not involve visiting police schools or universities.

dd. National Anti-Fraud Strategy (2021–2027)

During the drafting of this compendium, the national anti-fraud strategy for the period 2021–2027 is being developed.

[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; […]

See above → Institutions.

[Article 12f–g omitted]

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. […]

- Federal Prosecutor's Office[463]
- Public Prosecution Offices of the Crown[464]
- Central Office for Seizure and Confiscation[465]
- Federal Public Service Justice Directorate General for Legislation and Fundamental Freedoms and Rights Central Authority for International Cooperation in Criminal Matters[466]

[Article 14–16 omitted]

[463] Parquet fédéral / Federaal Parket.
[464] Parquet du procureur du Roi.
[465] L'Organe central pour la Saisie et la Confiscation.
[466] Service public fédéral Justice Direction générale de la législation et des Libertés et des Droits fondamentaux Autorité centrale de coopération internationale en matière pénale.

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(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.

The Supervisory Committee once noted that OLAF's country mini-profiles provided some information on national laws but were insufficient for compensating occasional expertise issues.[467] 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, funbdamental rights** 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 emphasised the importance of compliance with rights and procedural rules in promoting the rights of those affected. **1**

Country-specific **rules on fundamental rights** such as on *nemo tenetur se ipsum accusare* or *nullum crimen sine lege* may also prove to be relevant in such a legality check (for more rights of an investigated person see above → Introduction, Art. 3, 9, 9a OLAF Regulation). In general, the provisions relating to the gathering of evidence during investigations or rules on confidentiality may play an important role (see above → Art. 3 OLAF Regulation). Major laws, which need to be respected are the right to be heard, the right to legal assistance and the right to data protection. **2**

[467] Supervisory Committee, Opinion No 2/2015, Legality check and review in OLAF, p. 6 et seq.

a) National Law Applicable to Judicial Proceedings

3 The following codes might be applicable:
- Criminal Procedure Code
- Judicial Code
- General Customs and Excise Act, see Chapter XXIII, Chapter XXIV.
- Data protection codes
- Code of Economic Law.

b) Internal Advisory and Control Procedure: Legality Check involving National Law

4 General principles of the administrative procedure:[468]
- *Le principe du contradictoire*: defence rights of the individual
- *Le principe de la non-rétroactivité des actes administratifs*: prohibition of retroactivity
- *Les principes de bonne administration*: e.g. exercise of discretion (*pouvoir discretionnaire*), Proportionality principle (*principe de proportionnalité*), principle of legal certainty (*droit à la securité judirique*), protection of confidence (*principe de confiance*)

5
- E.g. Art. 8 § 2 Loi du 28 mars 1975: The imposition of administrative sanctions in addition to the initiation of criminal proceedings by the public prosecutor is expressly excluded
- Official secrecy/*secret professionnel* rule based on administrative practice approved by the *Conseil D'Etat*[469]
- Data secrecy provisions
- Secrecy provisions such as Art. XV.6/1 in the Code of Economic Law:

6 **Art. XV.6/1 Code of Economic Law**[470] § 1. The agents referred to in Article XV.2 are bound by professional secrecy and may not disclose to any person or authority whatsoever the confidential information of which they have become aware in because of their duties.

[468] Harksen 2004, pp 345–346.
[469] Harksen 2004, pp 345, 348.
[470] Art. XV.6/1.§ 1er. Les agents visés à l'article XV.2 sont tenus au secret professionnel et ne peuvent divulguer à quelque personne ou autorité que ce soit les informations confidentielles dont ils ont eu connaissance en raison de leurs fonctions.
Par dérogation à l'alinéa 1er, ces agents peuvent communiquer des informations confidentielles:
1° sous une forme sommaire ou agrégée, à condition que des personnes physiques ou morales individuelles ne puissent pas être identifiées;
2° dans les cas où la communication de telles informations est prévue ou autorisée par ou en vertu du présent Code;
3° lors d'un témoignage en justice en matière pénale;

By way of derogation from the first paragraph, these agents may communicate confidential information:
1° in summary or aggregated form, provided that individual natural or legal persons cannot be identified;
2° in cases where the communication of such information is provided for or authorised by or under this Coded;
3° during testimony in court in penal matters;
4° to denounce to the judicial authorities criminal offences other than those referred to in this Code and its implementing decrees;
5° to other public services and institutions if this is part of the research, prosecution and penalties for infringements of the legislation within their jurisdiction;
[6° to foreign authorities, where applicable within the limits or compliance with the directives and regulations Europeans, if this forms part of the investigation and prosecution of offences that are comparable offences for which this book provides penalties.]
§ 2. Violations of paragraph 1 are punishable by the penalties provided for in Article 458 of the Penal Code.

This list is not exhaustive. Thus, further provisions might apply, which have not been listed here. **7**

[Article 18–21 omitted]

Annex Update to Belgian Legal Reforms 2024

Belgium has enacted in over 150 years with the old Criminal Code, a new Criminal Code, which was legislated on 8th April 2024 and will be effective from 1st January 2026. This new CC contains two books. While book one regulates the criminal law and contains the general provisions on criminal law. Chapter 2 explains the general emelents of an offence and Chapter 3 deals with the offender. The fourth chapter determines the penalties, while Chapter 5 contains civil precautions and security measures and quite important for the EPPO or OLAF the dissolution of the legal person. Last but not least Chapter 6 describes the termination and limitation of civil penalties and chapter 7 deals **1**

4° pour dénoncer aux autorités judiciaires d'autres infractions pénales que celles visées par le présent Code et ses arrêtés d'exécution;
5° à d'autres services et institutions publics si cela s'intègre dans le cadre de la recherche, la poursuite et la sanction des infractions aux législations relevant de leurs compétences;
6° à des autorités étrangères, le cas échéant dans les limites ou le respect des directives et règlements européens, si cela s'intègre dans le cadre de la recherche et de la poursuite d'infractions qui sont comparables aux infractions pour lesquelles ce livre prévoit des sanctions.
§ 2. Les infractions au paragraphe 1er sont punies des peines prévues à l'article 458 du Code pénal.

with the consequences of convictions handed down in another Member State of the European Union.

2 The offences are stipulated by book 2, which is grouped into eight titles, each corresponding to a separate theme Title I: Grave breaches of international humanitarian law; Title 2: The crime of ecocide; Title 3: Offences against the person; Title 4: Offences against public safety; Title 5: Forgery; Title 6: Offences against property; title 7: economic offences and Title 8: offences against the State and its functioning. It is important to state that it contains adjustments to penalties for existing crimes such as fraud and corruption.

3 The important PIF offence can be found in: **Book 2 Section 2. Fraud Subsection 1.**

4 **Abuse of trust or vulnerability**

Art. 475. Breach of trust

A breach of trust consists in the perpetrator fraudulently misappropriating or dissipating, to the detriment of another person, movable property of economic value which had been given to him on condition that he return it or make a specific use of it. This offence is punishable by a level 3 penalty.

5 **Art. 476. Misuse of corporate assets**

Misuse of corporate assets consists of the direct or indirect use, with fraudulent intent and for personal ends, by a de jure or de facto director of a legal person governed by private law, of the assets or credit of the legal person in a manner that he knew to beignificantly prejudicial to the financial interests of the legal person and those of its creditors or partners.

6 **Section 2. Fraud and deceit**

Art. 479. Fraud Fraud consists in seeking to obtain, for oneself or for another person for oneself or for another, with fraudulent intent, an unlawful economic advantage unlawful economic advantage, either by using a false name or false capacity, or by by employing fraudulent manoeuvres in order to gain the confidence of another person. This offence is punishable by a level 3 penalty.

7 **Art. 480. Aggravated fraud**

When committed against a minor or a person in a vulnerable situation, aggravated vulnerable, fraud is punishable by a level

8 **Art. 481. Deception as to the value of money**

Art. 482. Deception as to the goods sold

Art. 486. Fraudulent misappropriation of business assets

Art. 502. Money laundering **9**

Money laundering consists of a person:
1° deliberately acquiring, receiving free of charge, keeping, managing or possessing patrimonial benefits derived from an offence,
property or assets that have been substituted for them or the income from these benefits invested when the perpetrator knew or should have known
the origin of these things at the start of these operations, or;
2° converting or transferring things referred to in 1°, with the aim of
concealing or disguising their illicit origin or helping any person
who is involved in the initial offence to escape the legal consequences of his or her acts, when the perpetrator knows or should have known
that they come from a criminal activity, or;
3° deliberately concealing or disguising the nature, origin, location, arrangement, movement or ownership of the things referred to in 1° when the perpetrator knows or should have known that they come from a criminal activity.
Money laundering exists even when the offence from which the patrimonial advantages, the assets or values that have been substituted for them or the income from these invested advantages, came was committed abroad and cannot be prosecuted in Belgium.
This offence is punishable by a level 3 penalty.
By way of derogation from Article 52, § 1, paragraph 2, the judge may impose, as an accessory penalty, a fine of 200 euros to 2,000,000 euros or an amount that may rise to a sum equivalent to the value of the laundered assets. By way of derogation from Article 53, § 2, paragraph 1, 1°, the things which form the object of the money laundering are confiscated even if the ownership does not belong to the convicted person, without prejudice to the rights which third parties may assert over these things.

The adoption law changes as well the subsidy fraud legislation by amending its wording: **10**

Art. 96. In Article 231 of the same Code, the words “of Articles 196, 197, 210bis and 496 of the Penal Code and of the provisions of the Royal Decree of 31 May 1933 concerning declarations to be made in matters of subsidies, compensation and allowances” are replaced by the words “of Articles 451, 479, 480 and 691 of the Penal Code”.

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This **Belgian EPPO/OLAF volume** focuses on criminal and administrative investigations in Belgium. It includes a comprehensive collection of material relating to Art. 26–33 EPPO Regulation and Art. 3–17 OLAF Regulation, addressing the national statutory law relating to Belgian fraud investigations. The handbook contains translations, a synopsis of the EPPO adoption law (17 FEVRIER 2021. - Loi portant des dispositions diverses en matière de justice) and a list of the most important PIF offences (De PIF-misdrijven in België). Prof Dr Frank Verbruggen and Pieter van Rooij have acted as the publication's national experts.

While written in English, the volume includes footnotes that reproduce the original Belgian legislation in French. 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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