

# THE EPPO/OLAF

X

## Compendium of National Procedures

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

Pierre Hauck, Jan-Martin Schneider and H el ene Christodoulou

# France



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*Volume X – France*

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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 X – France*

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# **The EPPO/OLAF Compendium of National Procedures: France**

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# The EPPO/OLAF Compendium of National Procedures

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## Preface and Acknowledgements

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

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

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

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

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

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

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Fair comments and suggestions for improving the work are always welcome at [eppo.olaf@web.de](mailto:eppo.olaf@web.de).

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Pierre Hauck & Jan-Martin Schneider

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*Executive Summary:*

In the first chapter (A) the reader is furnished with a comprehensive overview to the collection of cases, institutions in the EPPO and OLAF sector in France and last but not least the main sources of law. In the second chapter (B) the inquiry pertains to elucidating the framework of both Union law and French law under which the European Public Prosecutor's Office operates. Conversely, the subsequent chapter (C) is dedicated to examining the fact-finding missions conducted by the European Anti-Fraud Office (OLAF) and its domestic counterparts within the scope of external investigations. Prior to each segment, an introductory discourse precedes the explication of both Union law and national legislation, which mutually enrich each other. To undertake these discussions, the main body of the chapter's text is translated into English, while the original French text is preserved in the footnotes. Practitioners are empowered to swiftly locate the pertinent legal provisions, concise elucidations, and interpretations of Union law.

*Si dans la première partie (A), il est question de décrire tant le droit de l'Union que le droit français auxquels le parquet européen est soumis, la seconde partie (B) a vocation, quant à elle, à se concentrer sur les missions d'enquête menées par l'Office de lutte antifraude (OLAF) et ses partenaires nationaux dans le cadre des investigations externes. Avant chacune des deux parties, une introduction précède la présentation tant du droit de l'Union que du droit national, lesquels se complètent. Afin de mener à bien ces développements, le corps du texte de l'ensemble du chapitre est traduit en anglais alors que les notes de bas de page reprennent le texte original en langue française.*

---

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## Abbreviations

ACAPSE	Association of the Antillean-Guyanese Center for the Health and Social Advancement of Children
AFA	<i>L'Agence française anticorruption</i> /National Anti-corruption agency
BNRDF	<i>La brigade nationale de répression de la délinquance fiscale dite « police fiscale »</i> / National Tax Crime Repression Brigade
BOMI	Bulletin officiel du ministère de l'Intérieur/ Official Bulletin of the Ministry of the Interior (police-related)
BOMJ	<i>Le Bulletin officiel du ministère de la Justice</i> / The Official Bulletin of the Ministry of Justice (justice-related)
CASSIOPEE	<i>Chaîne Applicative Supportant le Système d'Information Orienté Procédure pénale Et Enfants</i> / Application Chain Supporting the Information System Oriented Criminal Procedure and Children
CGI	Le code général des impôts
CLJ	Code de l'organisation judiciaire
CODAFs	<i>Comités opérationnels départementaux anti-fraude</i> /Departmental Anti-Fraud Operational Committees
CPP	Code de procédure pénale/ <i>Criminal procedure Code</i>
DGFIP	<i>Direction générale des Finances publiques</i> /General Directorate of Public Finance
DNEFce	La direction nationale d'enquêtes fiscales
DNIFF	The National Division of Financial and Tax Investigations/ <i>Division Nationale des Enquêtes Financières et Fiscales</i>
FDJ	Freedom and Detention Judge – Juge des Libertés et de la Détention (JLD)

GAV	<i>Garde à vue (police custody)</i>
GONAF	<i>groupes opérationnels nationaux anti-fraude/Anti-fraud operational groups</i>
JIRS	<i>Juridictions interrégionales spécialisées/ Specialized interregional courts</i>
JLD	Juge des Libertés et de la Détention – FDJ – Freedom and Detention Judge
JORF	Journal officiel de la République française
JUNALCO	<i>Juridiction nationale chargée de la lutte contre la criminalité organisée/ National jurisdiction in charge of the fight against organized crime</i>
MICAF	<i>Mission interministérielle de coordination anti-fraude/Interministerial/Anti-Fraud Coordination Mission</i>
OCLCIFF	<i>L’Office central de lutte contre la corruption et les infractions financières et fiscales /Central Office for the Fight against Corruption and Financial and Tax Offenses</i>
OCRGDF	The central office for the repression of major financial crime/ <i>L’office central pour la répression de la grande délinquance financière</i>
PED	Procureur européen délégué/European delegated prosecutor
HATVP	High Authority for Transparency in Public Life
SEDIA	Funding and Tenders Portal
PNF	<i>Le parquet national financier/ National Financial Prosecutor ‘s Office</i>

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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		=	(criminal) police); relevant for investigators
	=	Customs legislation/Customs cases		=	Funds area (e.g maritime)
	=	Examples		=	procurement area
	=	Nota bene/General note		=	judicial authorisation required (e.g. Art. 30)
	=	Case Law/Access to files		=	urgent measures (e.g. Art. 27, 28)
	=	Tax police/tax-related matters	$\Pi$	=	Plaintiff (Pi)
	=	Excerpt	$\Delta$	=	(Delta) Defendant
	=	Arrest, pre-trial detention (e.g. Art. 33)		=	Case Studies (Overviews)
	=	Problems resulting from national law		=	Expert comment
	=	(Important) National Sections			

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National transposition measures communicated by the Member States concerning: Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law OJ L 198, 28/07/2017, p. 29–41 (BG, ES, CS, DA, DE, ET, EL, EN, FR, GA, HR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV). The member states bear sole responsibility for all information on this site provided by them on the transposition of EU law into national law. This does not, however, prejudice the results of the verification by the Commission of the completeness and correctness of the transposition of EU law into national law as formally notified to it by the member states. The collection National transposition measures is updated weekly. <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32017L1371>. Art. 15 TFEU and Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

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## A. General collection of material for Part A and Part B

### I. Collection of cases

There were no explicit cases concerning the EPPO Regulation in France until 16 February 2023.<sup>1</sup> The table relates to the analysis in Part B and C (→ see below B/C).



Relevant Articles of the EPPO, OLAF Regulations	Judgement, ECLI etc.	Keywords
<b>EPPO Regulation</b>		
National Courts Art. 26	Paris Criminal Court.	Two individuals and one company were convicted of customs fraud involving luxury cars (2020–2022). They have imported several high-end models from Switzerland to France, evading customs duties and causing €110,000 in damages to the EU and national budgets. One individual was also accused of witness tampering. Investigation was done by Mulhouse-customs service. Proceedings were done via a previous Recognition of guilt (CRPC). <sup>2</sup> Condemnation: 18 prison with a suspended sentence and a customs fine 150,000 EUR. <sup>3</sup>
<b>OLAF-Regulation</b>		
CJEU and National Courts		
Art. 3, 11	Judgment of the General Court (First Chamber) of 3 May 2018, <i>Sigma Orionis SA v European</i>	The legal case of <i>Sigma Orionis v the Commission</i> deals with the resistance of the Economic Operator during an external investigation of OLAF. The decisions deals with the applicability of national law

<sup>1</sup> The EPPO is presented on the Website of the *Tribunal de Paris*: <https://www.tribunal-de-paris.justice.fr/75/le-parquet-europeen-en-france>. Accessed 31 January 2024.

<sup>2</sup> Plea of guilty (CRPC) is an alternative to prosecution, enabling quick resolution for specific offenses under certain conditions.

<sup>3</sup> In pre-EPPO times, similar cases of fraud involving such amounts were usually settled directly with customs without going to court, see <https://www.swissinfo.ch/fre/premi%c3%a8re-condamnation-en-france-voitures-lou%c3%a9es-en-suisse/48293390>.

	Commission (dominant OLAF case-law).	in case of on-the-spot-checks. It deals with the suspension of payments and termination of grant contracts following a financial audit.
	Décision de la Cour de Justice du 26 octobre 1999 relative aux conditions et modalités des enquêtes internes en matière de lutte contre la fraude, la corruption et toute activité illégale préjudiciable aux intérêts des Communautés.	This decision is available only in French and has not been published in the Official Journal. It deals with the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests.
<b>Art. 4 Internal Investigations</b>	Judgment of the Court of First Instance (Third Chamber) 8 July 2008 Franchet & Byk <sup>4</sup> ECLI:EU:T:2008:257.	The decisions deals with the non-contractual liability, the civil service and investigations by OLAF. It is called the 'Eurostat' case, [...]. It contains information on the role of the Supervisory Committee, Leaks in the press, Disclosure by OLAF and by the Commission, Breach of the principle of the presumption of innocence, non-material damage and the legal causal link.
<b>Art. 11 OLAF Report</b>	Judgment of the Court (First Chamber) of 10 June 2021, European Commission v Fernando De Esteban Alonso (Case C-591/19 P), ECLI:EU:C:2021:468.	This case contains relevant information on the legality of forwarding information concerning matters liable to result in criminal proceedings to the national judicial authorities. The officials concerned were not informed about the measures, which constituted a failure in the proceedings.
<b>Art. 3, 4 External, Internal Investigations</b>	Judgment of the European Union Civil Service Tribunal (Second Chamber) of 19 June 2013, Charles Dieter Goetz v Committee of	This decision deals with an OLAF investigation, de facto an administrative investigation including disciplinary proceedings before the Disciplinary Board. It is a classical staff case concerning officials and their non-contractual liability. It contains

<sup>4</sup> See White, eucrim 2008, 146 et seq.; Wojahn and Buttice, eucrim 2008, 148 et seq.

	<p>the Regions of the European Union (Case F-89/11), ECLI:EU:F:2013:83.</p>	<p>an action for damages. Questions of admissibility, the starting point of the time-limit for bringing proceedings are included. The obligation on the administration to act with diligence, the duration of disciplinary proceedings and the liability arising from the opening of disciplinary proceedings closed without sanction are addressed.</p>
<p><b>Article 9(4) of Regulation No 883/2013</b></p>	<p>Arrêt du Tribunal du 28 novembre 2018, Le Pen/Parlement (Affaire T-161/17), Marion Le Pen v European Parliament, ECLI:EU:T:2018:848.</p>	<p>The decision focuses on rules governing the payment of expenses and allowances to Members of the European Parliament (Parliamentary assistance allowance). It addresses the recovery of sums wrongly paid. The jurisdiction of the Secretary-General is emphasized as well as the rights of the defence. Further key words are: Legitimate expectations, obligation to state reasons, equal treatment, misuse of powers, error of fact and proportionality.</p>
<p><b>General Decisions</b> without specific relevance for special articles</p>	<p>Court of Cassation, Criminal, Criminal Chamber, January 16, 2013, 12-84.221, Unpublished.</p>	<p>The key words for this decision are: Appeal, rejected, requests for cancellation of procedural documents, corruption, complicity of corruption, alleging violation of Articles 6 § 1 of the European Convention on Human Rights lacks basis.</p>
<p><b>Art. 3 External Investigations, Art. 11 OLAF Report</b></p>	<p>Court of Cassation, Criminal, Criminal Division, December 9, 2015, 15-82.300, Published in the bulletin, ECLI:FR:CCASS:2015:CR05876.</p>	<p>Contested decision: Investigation Chamber of the Colmar Court of Appeal, March 19, 2015: concealment and aggravated passive corruption &amp; misuse of social property (<i>délits de corruption et d'abus de biens sociaux</i>), external investigation, allocation of European subsidies by the Center for the development of enterprise (CDE), European Development fund, countries of the zone Africa, Caribbean and Pacific (ACP), copying of hard drive,</p>

		<p>search, enter premises, lifting of immunity of beneficiary in the interest of its official functions, OLAF = accused of violating Articles 1 and 11 of Protocol 2 on privileges and immunities to the Cotonou Agreement, Article 2 of Annex III to that Agreement, Article 1 of Decision No 8/2005 of the Committee of Ambassadors of 20 July 2005, Article 4 of Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999 of 25 May 1999, Articles 6 and 8 of the European Convention on Human Rights and Articles 1, 591 and 593 of the Code of Criminal Procedure; appeal rejected by Cour de Cassation<sup>5</sup></p>
	<p>Cour de cassation, civile, Chambre commerciale, 13 janvier 2009, 07-18.082, Inédit.</p>	<p>Imports, origin, falsified, rejection of appeal, Latvia, Denmark</p> <p>Small town, town of Ventranges, Le Bourg, structural fund and subsidies, ERDF fund, project, church, renovation, cultural heritage, grant and subsidy from the Commission, European Communities and European Union. Disputes relating to the payment of Community aid, inspection carried out under Article 209 point (c) of the Treaty, on-the-spot-checks, recovery of undue payment, 570,073.04 euros, town of Ventranges alleging ignorance of the principles of adversarial proceedings, insufficient reasoning, error of fact and law as well as ignorance of the principles of legal certainty and legitimate expectation, all allegations dismissed.</p>
	<p>Administrative Court of Appeal of Lyon, 3rd</p>	<p>Unfounded plea by company, five grounds of appeal, partially wrong decision by</p>

<sup>5</sup> See <https://www.legifrance.gouv.fr/juri/id/JURITEXT000031607095>.

<p>chamber - training at 3, 09/10/2012, 12LY00259, Unpublished in the Lebon collection.</p>	<p>Paris Court of Appeal, correct investigations by OLAF, « What is a company premise? », customs duties to be recovered, business secret, Commission, visits and seizures carried out on the premises of the company, two documents emanating from law firms must be annulled insofar as they are covered by professional secrecy, Collection/recovery notice (AMR = <i>Avis de mise en recouvrement</i>), Articles 213 of the Community Customs Code and 354 of the Customs Code.</p>
<p>Administrative Court of Appeal of Lyon, 3rd chamber – 3, 09/10/2012, 12LY00273, Unpublished in the Lebon collection.</p>	<p>Commune of Cordelle, request for annulment of Court Decision declaring a recovery request for legal, ERDF fund, appeal against recovery decision, 29,106.86 euros corresponding to ERDF subsidies for operations n°s 50133 „Promotion of religious heritage: restoration of listed objects (part B 1996)“, 50367 „Promotion of religious heritage: restoration of religious objects (part B 1997) )” and 50390 „Valorisation of the religious heritage: restoration of the church (component C 1996)”, arguments of the Commune: time barred action, conclusions of OLAR reported never communicated, lack of reasoning, illegal decision by the Commission vitiated by an error of law and based on materially inaccurate facts, violation of legal certainty, Minister of Interior as highest Managing authority.</p>
<p>CAA of Bordeaux, 6th chambre, 3, 07/03/2017, 15BX01786, Unpublished in the Lebon collection.</p>	<p>ACAPSSE, ERDF grant totaling 3,357,291 euros, Department of Martinique, „Unit Pedagogical Integration“ as aim and basis for grant, compliance with grant conditions deceases, breach of its contractual obligations, Local authorities.</p>

		Department. Departmental finances. Receipts. Subsidies.
	Court of Cassation, Criminal, Criminal Division, June 15, 2016, 15-80.628, Unpublished, ECLI:EN:CCASS:2016:CR02656.	Appeal by the EU (civil party), dismissed, Article 618-1 of the Code of Criminal Procedure, concealment and complicity in breach of trust, ground of cassation: Articles 314-1 of the Criminal Code, 591 and 593 of the Code of Criminal Procedure, Eurostat, datashops, administrative inquiry carried out by the European Anti-Fraud Office, no sufficient charges against anyone likely to establish breach of trust.
	Court of Cassation, Criminal, Criminal Chamber, January 27, 2010, 09-81.693, Unpublished.	Fraud, subsidies, pleas, appeals rejected, witness employed by OLAF.
	Court of Cassation, civil, Commercial Chamber, September 6, 2011, 10-14.075, Unpublished.	Amaryllis company imported textile products from Syria into France, preferential origin, Syria-EEC treaty, Recovery, AMR, DHL company brought an action for annulment of the AMR, investigation carried out in Syria, customs fraud, administrative assistance requested from the Syrian customs authorities.
	CRTC. CRC Rhône-Alpes. Judgement. 09/16/2010. University – University of Savoy – Chambéry (Savoie). No. 2010–024.	Higher school of engineers in environmental engineering of Chambéry (ESIGEC), request to the Commission in 1998 by the laboratory of chemistry and environmental engineering (LCIE), application, Scholarship contract for a common European project „Tempus Tacis“, contract ratified, account for funding opened at Crédit Lyonnais in Chambéry, €233,100 over three years, „organizational grant“, „mobility grant“, difficulties encountered in conducting an audit, ensuring the aim

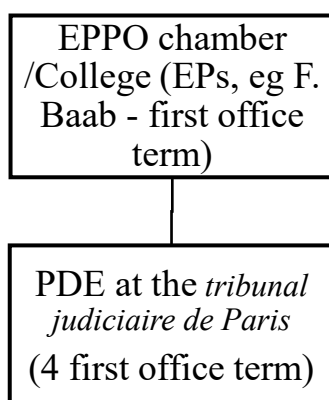


		of the grant is pursued, no authorization to handle the funds of the University of Savoy.
<b>ECtHR</b>		
<b>Art. 4 Internal Investigations</b>	Case of <i>Allenet de Ribemont v. France</i> App. No(s). 15175/89, ECLI:CE:ECHR:1995:0210JUD001517589.	This decision concerns administrative investigations.

Source: The authors.

## II. Institutions

*Table 1 The EPPO in France*



Source: The authors, EPPO Website. Be aware the structure might change.

The **contact to the French EDPs** can be established via the official channels for the transmission of reports, communication on an obligation to report, questions on a Working Arrangement or a case. The current **permanent address** for informal exchange is: *permanence.dpef.@justice.fr*. The **postal address for official exchange** is: Parquet européen en France/Cour d’appel de Paris, 34 Quai des Orfèvres, 75055 Paris CEDEX 01, France (French Republic).<sup>6</sup> EDPs might according to Art. 10 of the WA with MICAF provide practical support e.g. a **“handbook” on reporting fraud**, the **EPPO template**.

<sup>6</sup> See *Arrangement de travail avec la Direction générale du Trésor et la Mission interministérielle de coordination anti-fraude*, <https://bit.ly/3xvaekK>, p. 5. Accessed 31 May 2024. We thank the EDPs in Paris answering our questionnaire from 2022-2023. The information is without legal validity and presented for information purposes only. We strongly recommend to check information channels of your internal EU IBOA, EPPO, OLAF, national authority guideline.

The next table enumerates specific national authorities from the EPPO/OLAF sector:

*Table 2 National Institutions 1*

<b>In purely national cases</b>	La police judiciaire (Articles 12 à 29-1 CPP)	Le ministère public (Articles 31 à 48-1 CPP) (The National Financial Prosecutor’s Office is simply a specialised prosecutor, but it remains subject to the classic rules.) <sup>7</sup>	Le juge d’instruction (Articles 49 à 52-1 CPP)
<b>In PIF matters</b>	will act under the supervisions of the EDP or will e.g. conduct own measures acc. to Art. 28 para 2	Might need to relinquish/hand the case to French EDP → Art. 696-115 al. 1 applies	Might need to relinquish/hand the case to French EDP → Art. 696-115 sentence 2 applies.

Source: The authors. DGFIP 2019.

<sup>7</sup> Le parquet national financier est simplement un procureur spécialisé, mais il reste soumis aux règles classiques.

The ensuing table itemizes again specific national authorities within the EPPO/OLAF sector, but with a particular emphasis on entities within other institutions (departments, bureaus, etc.). It deals as well with the courts and the judicial order in general:

*Table 3 National Institutions 2*

<b>Courts (Judicial and Administrative Overview):<sup>8</sup></b>	<p><b>The Judicial Order (<i>Ordre judiciaire</i>)</b></p> <p><b>Ordinary Courts – Civil and Criminal Law</b></p> <p>Judicial Court/Tribunal Judiciaire<sup>9</sup></p> <p>Labour Court (Conseil de Prud’hommes),</p> <p>The Commercial Court (Tribunal de Commerce);</p> <p>Joint Rural Tenancy Court (tribunal paritaire des baux ruraux)</p> <p>The Police Court (Tribunal de police),</p> <p>The Correctional (criminal) Court (Tribunal Correctionnel),</p> <p>The Court of Sessions (Cour d’Assises) (for serious crimes punished with more than 10 years of imprisonment),</p> <p>Juvenile Courts (Juridictions pour mineurs: Juge des enfants → tribunal pour enfants → le tribunal correctionnel pour mineur → cour d’assises des mineurs)</p> <p>2<sup>nd</sup> °: Court of Appeal (Cour d’Appel and Cour d’Assises d’Appel</p> <p>Court of Cassation</p> <p>There are two degrees (first instance and appeal) the Court of Cassation judges the law and not the facts.</p> <p>(Cour de Cassation: Chambre/s civile (3), sociale, commerciale, et criminelle):</p> <p>Judges (Conseillers)</p> <p>Office of the Prosecutor (Chief prosecutor + Delegated prosecutors <i>avocats généraux</i>) (= independent from the Minister of justice)</p> <p>Administrative Office of Courts (Bureau administratif des tribunaux)</p> <p>Higher Council of the Judiciary, barristers</p>
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<sup>8</sup><http://www.justice.gouv.fr/organisation-de-la-justice-10031/lordre-judiciaire-10033/> and [https://www.justice.gouv.fr/art\\_pix/french\\_legal\\_system.pdf](https://www.justice.gouv.fr/art_pix/french_legal_system.pdf).

<sup>9</sup> On January 1, 2020, the district courts (*Tribunaux d’instance*) and the high courts (*Tribunaux de grande instance*) merged into the Judicial Court (*Tribunal Judiciaire*) acc. to Law no 2019-222 of of March 23, 2019 of programming 2018-2022 and justice reform (LOI n° 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice, NOR: JUST1806695L, JORF n°0071 du 24 mars 2019). See also: <http://www.justice.gouv.fr/organisation-de-la-justice-10031/modernisation-de-lorganisation-des-juridictions-32862.html>

	<p><b>The Administrative Order</b></p> <p><b>Administrative Courts (Ordre Administratif) – Public law:</b></p> <p>1st °: Administrative Court/Tribunal (Tribunal administratif)</p> <p>2nd °: Administrative appeals court (Cour administrative d’appel/ Cour de cassation)</p> <p>3rd °: Council of State (Conseil d’Etat<sup>10</sup>) = Supreme court for public law (L111-1, L112-1, -5 of the Code of administrative justice)</p> <p>Specialized administrative jurisdictions: Refugees Appeal Board, Disciplinary Section of Professional Bodies, Repatriated Persons Compensation Commission, social Aid Local Commission</p> <p>Financial Courts: The Audit Court (Cour de Comptes), Regional Audit Courts, Court of Budgetary and Financial Discipline</p> <p>Jurisdictional court (Tribunal des conflits) (handles conflicts between civil system of justice and administrative system of justice)</p> <p>Constitutional council (Conseil Constitutionnel)</p>
<b>Public Prosecutor’s Office</b>	<p>Attorney General (Procureur general)</p> <p>District Attorney (Procureur de la République),</p>
<b>Ministry of Justice<sup>11</sup></b>	<p>Minister of Justice, Keeper of the Seals (Ministere de la justice, Garde des Sceaux)</p> <p>General Secretariat (Secrétaire Général)</p> <p>Judicial Services Directorate (Direction des Services Judiciaires)</p> <p>Civil Affairs and Seals Directorate (Direction des Affaires Civiles et du Sceau)</p> <p>Criminal Matters and Pardons Directorate (Direction des Affaires Criminelles et des Graces)</p> <p>Prisons Administration Directorate (Direction de l’Administration Pénitentiaire)</p> <p>Judicial Youth Protection Directorate (Direction de la Protection Judiciaire de la Jeunesse)</p>

<sup>10</sup> Permanent mission of inspection with regard to administrative jurisdictions (L112-5). Organisation in L121-2 of Code of Administrative Justice.

<sup>11</sup> See [http://www.justice.gouv.fr/art\\_pix/organigramme\\_mj\\_12\\_2021.pdf](http://www.justice.gouv.fr/art_pix/organigramme_mj_12_2021.pdf).

	Inspectorate-General of the Judicial Services (Inspection Générale de la Justice)
<b>Ministry of Interior</b> <sup>12</sup>	<p>General Administration Inspectorate (L'inspection générale de l'administration)</p> <p>The Security Industries Delegation (La Délégation aux Industries de Sécurité)</p> <p>The Higher Council for Territorial Support and Evaluation (Le Conseil supérieur de l'appui territorial et de l'évaluation)</p> <p>The sub-directorate of cabinets (La sous-direction des cabinets)</p> <p>Budgetary control and ministerial accounting (Le contrôle budgétaire et comptable ministériel)</p> <p>The General Directorate of Civil Security and Crisis Management (La Direction Générale de la Sécurité Civile et de la Gestion des Crises)</p> <p>The General Directorate of the National Police (La Direction Générale de la Police Nationale)</p> <p>The General Directorate of Internal Security (La Direction Générale de la Sécurité Intérieure)</p> <p>The General Directorate of the National Gendarmerie (La Direction Générale de la Gendarmerie Nationale)</p> <p>The General Secretariat - Senior Defense Official (Le secrétariat général - Haut fonctionnaire de défense)</p> <p>The General Directorate for Foreigners in France (La Direction Générale des Étrangers en France)</p> <p>The General Directorate of Local Authorities (La Direction Générale des Étrangers en France)</p> <p>The Road Safety Delegation (La Délégation à la Sécurité Routière)</p> <p>The Strategic College (Le Collège stratégique)</p> <p>The encryption and security office (Le bureau chiffre et sécurité)</p> <p>[...]</p> <p>National Police (police nationale)</p> <p>National Gendarmerie (Gendarmerie nationale)</p> <p>Municipal Police (police municipale)</p> <p>Central Office for Combating Corruption and Financial and Tax Offences (OCLCIFI) (Office central de lutte contre la corruption et les infractions financières et fiscales (OCLCIFI))</p>

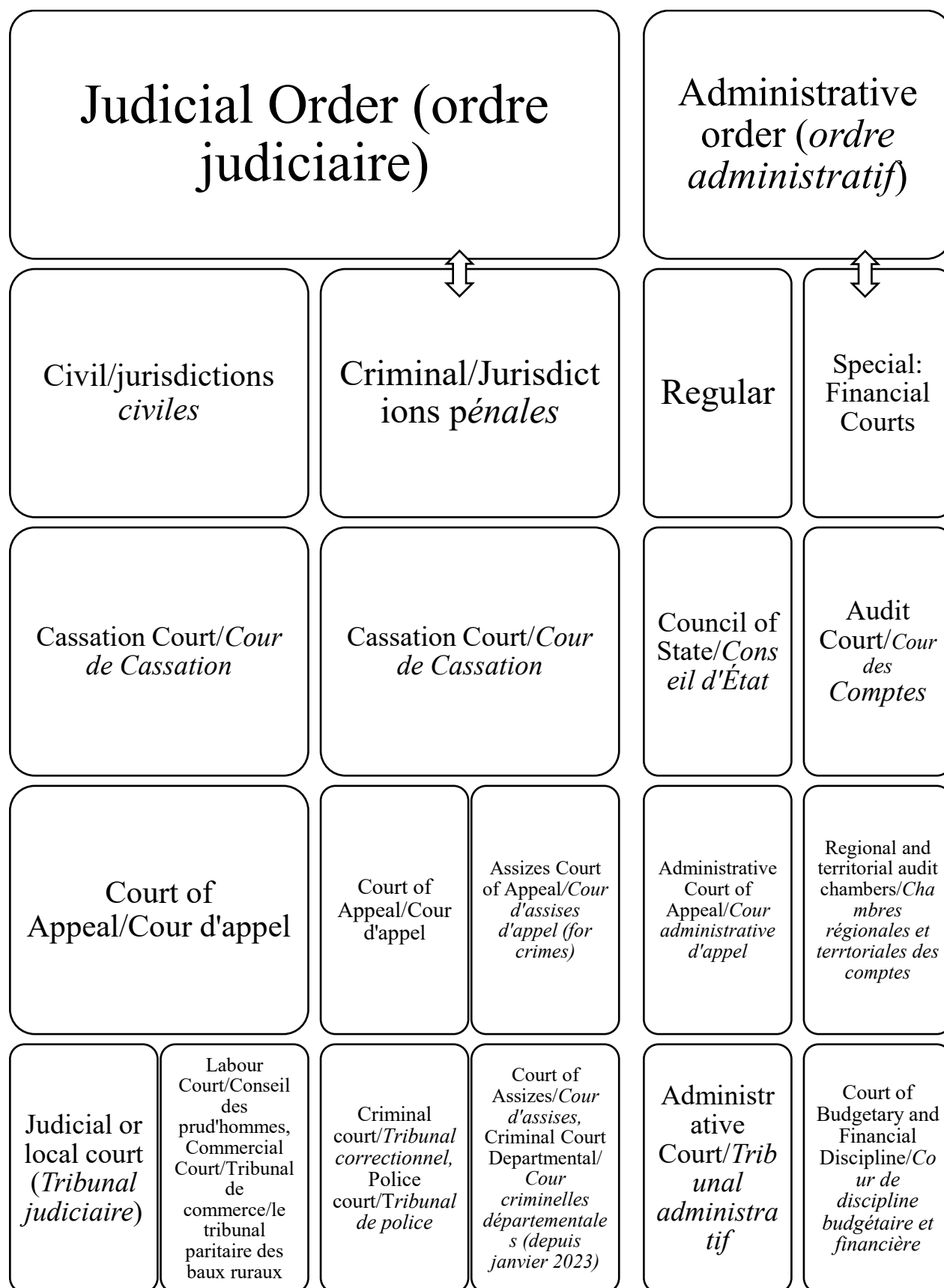
<sup>12</sup> See <https://www.interieur.gouv.fr/Le-ministere/Organisation>.

<p><b>Ministry of Agriculture and Food</b></p>	<p>Administrative authority, Art. L201-4 et seq. Rural and maritime fishing code (Section 2: Responsibilities of the State in the surveillance, prevention and fight against health hazard)</p> <p>Empowered to record violations of certain provisions of the rural and maritime fishing code (concerning Production and markets) are those listed in Art. L671-1 (1° The agents of the establishment(s) mentioned in Article L. 621-1 [National Establishment for Agricultural and Seafood Products (FranceAgriMer)] approved and commissioned by the Minister of Agriculture under the conditions set by decree in Council of State;</p> <p>2° The agents of the decentralized services of the Ministry of Agriculture approved and commissioned for this purpose by the Minister of Agriculture under the conditions fixed by decree in Council of State;</p> <p>3° Competition, consumer and fraud prevention officers;</p> <p>4° The agents mentioned in 1° to 6° of I of Article L. 205-1 ;</p> <p>6° Agents in charge of legal metrology;</p> <p>7° Customs officers;</p> <p>8° Agents of the decentralized services of the General Directorate of Public Finance.)</p>
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Source: The authors. Compilation with public information.

The French judicial system, while not inherently complex, is essential for comprehending how the fight against fraud implicates court decisions. Oversight of the actions of national authorities or OLAF, whether by investigators or the European Delegated Prosecutors (EDPs) of the EPPO, varies depending on the nature of the action and the investigative domain. Two areas of significant importance are the administrative and criminal branches.

Figure 1 Visualization of the judicial and administrative order in France



Source: The authors, Légifrance.

### III. Sources of law

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

#### 1. National laws

##### a) EPPO-Investigation related Codes and Laws

The EPPO adoption law is named as follows « *LOI n° 2020-1672 du 24 décembre 2020* ». It modified several Codes, e.g. le code de procédure pénale, le code de l'organisation judiciaire et le code des douanes. The French terms are explained below.

##### Codes

- *le code de procédure pénale*/Criminal Procedure Code
- *le code de l'organisation judiciaire*/Code for the organization of the judiciary
- *le code des douanes*/Customs Code
- *le code monétaire et financier*/Monetary and Financial Code
- *le code général des impôts*/General Tax Code

##### Laws (lois)

- Law n° 2018-898 of October 23, 2018, relating to the fight against fraud (1) / *LOI n° 2018-898 du 23 octobre 2018 relative à la lutte contre la fraude (1)*
- Law n° 2013-1117 of December 6, 2013, relating to the fight against tax fraud and major economic and financial crime/ *LOI n° 2013-1117 du 6 décembre 2013 relative à la lutte contre la fraude fiscale et la grande délinquance économique et financière*

##### b) Decrees (*Décrets*), Ordinances (*Ordonnances*), Orders (*Arrêtés*), Circulars (*circulaires*)

##### EPPO related:

- Ministerial Decret for the execution of the EPPO/ *Décret n° 2021-694 du 31 mai 2021 relatif au Parquet européen*<sup>13</sup>
- Ordonnance from 2020 for the fight against money laundering and terrorism/ *L'ordonnance n° 2020-115 du 12 février 2020 renforçant le dispositif national de lutte contre le blanchiment de capitaux et le financement du terrorisme*
- Tax Procedures Code Regulatory part - Decrees in Council of State (Articles R\*1-1 to R289-2)/ *Livre des procédures fiscales*
- Ordinance No. 2019-963 of September 18, 2019, on the fight against fraud affecting the financial interests of the European Union by means of criminal law/ *Ordonnance n° 2019-963 du 18 septembre 2019 relative à la lutte contre la fraude portant atteinte aux intérêts financiers de l'Union européenne au moyen du droit pénal*

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<sup>13</sup> Journal officiel électronique authentifié n° 0125 du 01/06/2021, NOR: JUSD2115808D, Texte 17 sur 109 du 1er juin <<https://www.legifrance.gouv.fr/eli/decret/2021/5/31/JUSD2115808D/jo/texte>> accessed 17 July 2021].



**OLAF related:**

- Decree No 2020-872 of 15 July 2020 on interministerial coordination in the fight against fraud and the creation of an interministerial anti-fraud coordination mission (MICAF)/*Décret no 2020-872 du 15 juillet 2020 relatif à la coordination interministérielle en matière de lutte contre la fraude et à la création d'une mission interministérielle de coordination anti-fraude.*
- Order of 12 October 2020 establishing the composition in each department of the departmental anti-fraud operational committees/*Arrêté du 12 octobre 2020 fixant la composition dans chaque département des comités opérationnels départementaux antifraude NOR: ECOP2020520A ELI: <https://www.legifrance.gouv.fr/eli/arrete/2020/10/12/ECOP2020520A/jo/texte> JORF n°0253 du 17 octobre 2020.*

The obligation of Art. 117 EPPO Regulation was fulfilled by the French Government and the EPPO made the information public on its website<sup>14</sup>.

**c) OLAF-Investigations related laws**

- *Code de la commande publique*/Market Organization Act
- *Code rural et de la pêche maritime*/ Rural and maritime fishing code
- *Code général des impôts*/General Tax Code
- *Code des douanes*/Customs Code
- *Code des juridictions financières*/Code of Financial Jurisdictions (especially: Contrôle des comptes et de la gestion (Articles LO262-5 à L262-11-2))
- *Code monétaire et financier*/Monetary and Financial Code
- *Code commerce*/Trade code

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<sup>14</sup> See <https://www.eppo.europa.eu/sites/default/files/2021-11/10-FR.pdf>.

## 2. National laws

### a) The Federal Act on the Execution of the EPPO in France (LOI n° 2020-1672 du 24 décembre 2020)

The French Act on the execution of the European Public Prosecutor's Office contains provisions that affect all Sections, which are explored below, i.e. Art. 26–33 of the EPPO Regulation:

*Synopsis 1 Official Text of the EPPO Adoption Act and Translation of the French EPPO Adoption Act*

<p><b>Official text<sup>15</sup></b>  <b>LOIS</b>  <b>Loi n° 2020-1672 du 24 décembre 2020 relative au Parquet européen, à la justice environnementale et à la justice pénale spécialisée</b></p> <p>(1) NOR: JUSX1933222L  L'Assemblée nationale et le Sénat ont adopté, Le Président de la République promulgue la loi dont la teneur suit:</p> <p>TITRE I<sup>er</sup>  DISPOSITIONS RELATIVES AU PARQUET EUROPÉEN</p> <p>CHAPITRE I<sup>er</sup>  DISPOSITIONS MODIFIANT LE CODE DE PROCÉDURE PÉNALE  Article 1<sup>er</sup>  Après le titre X du livre IV du code de procédure pénale, il est inséré un titre X bis ainsi rédigé:</p> <p>TITRE X BIS « DU PARQUET EUROPÉEN » CHAPITRE I<sup>er</sup> « COMPÉTENCE ET ATTRIBUTIONS DES</p>	<p>Unofficial translation  <b>LAWS</b>  <b>Law n° 2020-1672 of 24<sup>th</sup> December 2020 concerning the European Public Prosecutor, environmental justice and specialized criminal justice</b></p> <p>(1) NOR: JUSX1933222L  The National Assembly and the Senate have adopted, The President of the Republic promulgates the law and its content which follows:</p> <p>1<sup>st</sup> TITLE  PROVISIONS RELATING TO THE EUROPEAN PROSECUTION OFFICE</p> <p>1<sup>st</sup> CHAPTER  PROVISIONS AMENDING THE CODE OF PENAL PROCEDURE  1<sup>st</sup> Article  After Title X of Book IV of the Code of Criminal Procedure, a Title X bis is inserted as follows:</p> <p>TITLE X BIS OF THE EUROPEAN PARQUET 1<sup>st</sup> Chapter JURISDICTION AND DUTIES OF DELEGATED EUROPEAN Prosecutors</p>
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<sup>15</sup> Cf. for the authentic version in the Journal Officielle, <https://www.legifrance.gouv.fr/download/pdf?id=Ta4lC9NxVBJnpowWgmcZ8XEKAp4FIzANS-DxD8-Hjk=>.

## PROCUREURS EUROPÉENS DÉLÉGUÉS

« Art. 696-108. – Les procureurs européens délégués sont compétents sur l'ensemble du territoire national pour rechercher, poursuivre et renvoyer en jugement les auteurs et complices des infractions pénales portant atteinte aux intérêts financiers de l'Union européenne mentionnées aux articles 4, 22, 23 et 25 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen, qui sont commises après le 20 novembre 2017.

« Art. 696-109. – Pour les infractions relevant de leur compétence, les procureurs européens délégués exercent, en application des articles 4 et 13 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 précité, les attributions du procureur de la République et du procureur général près la cour d'appel, y compris pour l'application des articles 12, 12-1, 225 et 229-1 du présent code et pour l'exercice des voies de recours. « L'article 30, la première phrase de l'article 33, les quatre premiers alinéas de l'article 35, les articles 36, 37, 39-1, 39-2 et 40-3, le troisième alinéa de l'article 41 et l'article 44 *ne sont pas applicables*. Pour l'application de l'article 695-2, le procureur européen délégué peut constituer une équipe commune d'enquête avec le consentement du ou des autres Etats membres concernés, après en avoir informé le ministre de la justice.

« Art. 696-110. – Les procédures dont sont saisis les procureurs européens délé-

Art. 696-108. – The European Delegated Prosecutors are competent throughout the national territory to search for, prosecute and bring to trial the perpetrators and accomplices of criminal offenses affecting the financial interests of the European Union mentioned in Articles 4, 22, 23 and 25 of the Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation regarding the creation of the European Public Prosecutor's Office, which are committed after 20 November 2017.

Art. 696-109. – For offenses falling within their jurisdiction, the European Delegated Prosecutors exercise, in application of Articles 4 and 13 of the aforementioned Council Regulation (EU) 2017/1939 of 12 October 2017, the powers of the Public Prosecutor and the General Prosecutor at the court of appeal, including for the application of Articles 12, 12-1, 225 and 229-1 of this code and for the exercise of remedies. 'Article 30, the first sentence of article 33, the first four paragraphs of article 35, articles 36, 37, 39-1, 39-2 and 40-3, the third paragraph of article 41 and article 44 *are not applicable*. For the application of Article 695-2, the European Delegated Prosecutor may set up a joint investigation team with the consent of the other member state (s) concerned, after having informed the Minister of Justice thereof.

Art. 696-110. – The proceedings lead by the European Delegated Prosecutors fall within the jurisdiction competence of the

<p>gués relèvent de la compétence des juridictions de jugement de Paris, tant en première instance qu'en appel. « Par dérogation aux articles 206, 207, 207-1, 221-1 à 221-3, la chambre de l'instruction de la cour d'appel de Paris ne peut pas évoquer ces procédures.</p> <p>« <b>CHAPITRE II</b> « <b>PROCÉDURE</b> « <b>Section 1</b> « <b>Saisine du Parquet européen</b></p>	<p>Paris trial courts, both at first instance and on appeal. By way of derogation from Articles 206, 207, 207-1, 221-1 to 221-3 Criminal Procedure Code, the investigative chamber of the Paris Court of Appeal cannot evoke these proceedings.</p> <p><b>CHAPTER II</b> <b>PROCEDURE</b> <b>Section 1</b> <b>Referral to the European Public Prosecutor's Office</b></p>
<p>« Art. 696-111. – Les signalements prévus aux 1 à 3 et au 5 de l'article 24 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen sont adressés au Parquet européen par l'intermédiaire du procureur de la République compétent, lui-même informé sur le fondement de l'article 19, du second alinéa de l'article 40 ou de l'article 80 du présent code.</p> <p>« Art. 696-112. – Lorsque le Parquet européen décide d'exercer sa compétence, le procureur de la République ou le juge d'instruction saisi d'une enquête ou d'une information portant sur des faits relevant de l'article 696-108 est tenu de se dessaisir de la procédure au profit du Parquet européen en application du 1 de l'article 25 et du 5 de l'article 27 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 précité. « Le procureur de la République requiert le juge d'instruction initialement saisi de se dessaisir au profit du Parquet européen. Le juge</p>	<p>Art. 696-111. – The reports provided for in 1 to 3 and 5 of Article 24 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation concerning the creation of the European Public Prosecutor's Office are sent to the European Public Prosecutor's Office by the intermediary of the competent public prosecutor, himself informed on the basis of article 19, the second paragraph of article 40 or article 80 of this code.</p> <p>Art. 696-112. – When the European Public Prosecutor's Office <b>decides to exercise its jurisdiction</b>, the public prosecutor or the examining magistrate „seized” of/for an investigation or information relating to facts falling under article 696-108 is required to relinquish jurisdiction of the procedure for the benefit of the European Public Prosecutor's Office in application of para 1 of article 25 and para 5 of article 27 of the aforementioned Council Regulation (EU) 2017/1939 of 12<sup>th</sup> October 2017. The public prosecutor requests the investigating judge (<i>juge d'instruction</i>), which was</p>

<p>d’instruction notifie son ordonnance de dessaisissement aux parties.</p> <p><b>« Section 2 « Cadres procéduraux</b></p>	<p>initially seized, to relinquish/repeal jurisdiction in favour of the EPPO. The investigating judge notifies the parties of his discharge order.</p> <p><b>Section 2 Procedural frameworks</b></p>
<p>« Art. 696-113. – Dans les procédures relevant de sa compétence, le procureur européen délégué conduit les investigations conformément aux dispositions applicables à l’enquête de flagrance ou à l’enquête préliminaire et aux dispositions du code des douanes.</p>	<p>Art. 696-113. - In proceedings falling within his competence, the European Delegated Prosecutor conducts the investigations in accordance with the provisions applicable to the investigation <b>[1] of flagrante delicto</b> or <b>[2] the preliminary investigation</b> and <b>[3] to the provisions of the customs code.</b></p>
<p>« Art. 696-114. – Toutefois, lorsqu’il est nécessaire soit de mettre en examen une personne ou de la placer sous le statut de témoin assisté, soit de recourir à des actes d’investigation qui ne peuvent être ordonnés qu’au cours d’une instruction, en raison de leur durée ou de leur nature, le procureur européen délégué conduit les investigations conformément aux dispositions applicables <i>à l’instruction</i>, sous réserve des dispositions de la section 3 du présent chapitre.</p>	<p>Art. 696-114. – However, when it is necessary either to indict a person or to place him under the status of assisted witness, or to resort to investigative acts which can only be ordered during of an investigation, due to their duration or nature, the European Delegated Prosecutor conducts the investigations in accordance with the provisions applicable <b>to the [special instruction] investigation</b>, subject to the provisions of section 3 of this chapter.</p>
<p>« Art. 696-115. – Lorsque le procureur de la République se dessaisit au profit du Parquet européen, les investigations se poursuivent dans le cadre de l’article 696-113 ou, s’il y a lieu, de l’article 696-114.</p> <p>« Lorsque le juge d’instruction rend une ordonnance de dessaisissement au profit du Parquet européen, les investigations se poursuivent dans le cadre du même article 696-114.</p>	<p>Art. 696-115. – When the public prosecutor relinquishes jurisdiction in favour of the European Public Prosecutor’s Office, investigations are continuing under section 696-113 or, where applicable, section 696-114.</p> <p>When the investigating judge issues an order of relinquishment in favour of the European Public Prosecutor’s Office, the investigations are continuing within the framework of the same article 696-114.</p>

<p>« Section 3 « Dispositions spécifiques à la procédure prévue à l'article 696-114</p>	<p>Section 3 Provisions specific to the procedure provided for in Article 696-114 CPC</p>
<p>« Art. 696-116. – La présente section précise les dispositions spécifiques à la procédure prévue à l'article 696-114, qui s'applique dès lors que le procureur européen délégué conduit les investigations conformément au même article 696-114. « Dans le cadre de cette procédure, <i>ne sont pas applicables</i> les dispositions de l'article 80 relatives au réquisitoire introductif et aux réquisitoires supplétifs ainsi que les autres dispositions du présent code prévoyant que le ministère public adresse des réquisitions ou des avis au juge d'instruction.</p>	<p>Art. 696-116. – This section specifies the provisions specific to the procedure provided for in Article 696-114, which applies as soon as the European Delegated Prosecutor conducts the investigations in accordance with the same article 696-114. In the context of this procedure, the provisions of Article 80 relating to the indictment <i>do not apply</i> introductory and supplementary indictments as well as the other provisions of this code providing that the public prosecutor sends requisitions or opinions to the investigating judge.</p>
<p>« Art. 696-117. – Dans le cadre de la procédure prévue à l'article 696-114, les actes et décisions mentionnés à la présente section sont pris, selon les distinctions prévues aux sous-sections 1 à 3: « 1° Soit par le procureur européen délégué ; « 2° Soit par le juge des libertés et de la détention saisi par réquisitions écrites et motivées du procureur européen délégué.</p> <p>« <b>Sous-section 1</b> « <b>Actes et décisions relevant de la procédure prévue à l'article 696-114</b></p> <p>« Art. 696-118. – Au cours de la procédure prévue à l'article 696-114, le procureur européen délégué accomplit les actes et prend les décisions en matière:</p> <ul style="list-style-type: none"> <li>- « 1° De mise en examen ;</li> <li>- « 2° D'interrogatoire et de confrontation ;</li> </ul>	<p>Art. 696-117. – Under the procedure provided for in Article 696-114, the acts and decisions mentioned in this section are taken, according to the distinctions provided for in subsections 1 to 3: 1° Either by the European Delegated Prosecutor; 2° Either by the judge of freedoms and detention seized by written and motivated requisitions of the European delegated prosecutor [a <b>French EDP</b>].</p> <p><b>Subsection 1</b> <b>Acts and decisions under the procedure provided for in Article 696-114</b></p> <p>Art. 696-118. – During the procedure provided for in Article 696-114, the European Delegated Prosecutor carries out acts and takes decisions in matters of:</p> <ul style="list-style-type: none"> <li>- 1° of indictment;</li> <li>- 2° interrogation and confrontation;</li> </ul>

- « 3° D'audition de témoins, y compris du témoin assisté;
- « 4° De recevabilité de la constitution de partie civile et d'audition de la partie civile;
- « 5° De transport ;
- « 6° De commission rogatoire;
- « 7° D'expertise;
- « 8° De mandat de recherche, de comparution ou d'amener.

« Art. 696-119. – Les décisions en matière de placement, de maintien et de modification du contrôle judiciaire sont prises par le procureur européen délégué. Ces décisions peuvent être prises tant dans le cadre de la procédure prévue à l'article 696-114 que dans le cadre des procédures de convocation par procès-verbal ou de comparution à délai différé prévues aux articles 394 et 397-1-1.

« La personne placée sous contrôle judiciaire par le procureur européen délégué peut immédiatement contester cette décision devant le juge des libertés et de la détention, qui statue dans un délai maximal de soixantedouze heures sur cette contestation lors d'un débat contradictoire. Si le juge confirme le placement sous contrôle judiciaire, la personne peut faire appel de cette décision devant la chambre de l'instruction.

« Art. 696-120. – Les décisions en matière de placement, de prolongation et de modification de l'assignation à résidence avec surveillance électronique sont prises par le juge des libertés et de la détention, saisi par réquisitions écrites et motivées du procureur européen délégué

- 3° hearing witnesses, including assisted witnesses;
- 4° Admissibility of the constitution of civil party and hearing of the civil party;
- 5° of transport;
- 6° rogatory commission;
- 7° Expertise;
- 8° of a search warrant, appearance before the investigator or bringing before an investigative organ.

Art. 696-119. – Decisions on the placement, maintenance and modification of judicial control are taken by the European Delegated Prosecutor. These decisions can be taken both as part of the procedure provided for in article 696-114 only within the framework of the proceedings of summons by minutes or of appearance with deferred timeframe provided for in Articles 394 and 397-1-1. The person placed under judicial supervision by the European Delegated Prosecutor ***can immediately contest this decision before the judge of freedoms and detention***, who rules within a maximum period of sixty-two hours on this challenge during an adversarial debate. If the judge confirms the placement under control court, the person can appeal this decision to the investigating chamber.

Art. 696-120. – Decisions on placement, extension and modification of the assignment in residence with electronic surveillance are taken by the judge of freedoms and detention, seized by written and reasoned requests from the European Delegated Prosecutor and after, if necessary,

<p>et après, le cas échéant, un débat contradictoire organisé conformément aux articles 142-6 et 142-7.</p> <p>« Art. 696-121. – Les décisions en matière de placement et de <b>prolongation de la détention provisoire</b> sont prises par le <i>juge des libertés et de la détention</i> qui, après avoir été saisi par réquisitions écrites et motivées du procureur européen délégué, statue à l’issue d’un débat contradictoire organisé conformément aux dispositions de l’article 145.</p>	<p>an adversarial debate organized in accordance with Articles 142-6 and 142-7.</p> <p>Art. 696-121. – Decisions on the placement and <b>extension of pre-trial detention</b> are taken by the <i>judge of freedoms and detention</i> who, after having been seized by written and motivated requisitions of the European Delegated Prosecutor, decides after an adversarial debate organized in accordance with the provisions of section 145.</p>
<p>« Art. 696-122. – Toutefois, le procureur européen délégué est compétent pour ordonner les mesures suivantes, d’office ou à la demande de la personne mise en examen:</p> <ul style="list-style-type: none"> <li>- « 1° Supprimer tout ou partie des obligations comprises dans l’assignation à résidence avec surveillance électronique ou accorder une dispense occasionnelle ou temporaire de les observer ;</li> <li>- « 2° Ordonner la mainlevée de l’assignation à résidence avec surveillance électronique ;</li> <li>- « 3° Modifier ou autoriser, en application de l’article 142-9, le chef d’établissement pénitentiaire ou le directeur</li> <li>- du service pénitentiaire d’insertion et de probation à modifier les horaires de présence de la personne mise en examen au domicile ou dans les lieux d’assignation lorsqu’il s’agit de modifications favorables à cette dernière ne touchant pas à l’équilibre de la mesure de contrôle ;</li> </ul>	<p>Art. 696-122. – However, the European Delegated Prosecutor is competent to order the following measures, <i>ex officio</i> or at the request of the person under investigation:</p> <ul style="list-style-type: none"> <li>- 1° Remove all or part of the obligations included in the house arrest with surveillance electronic or grant occasional or temporary dispensation from observing them;</li> <li>- 2° Order the release of the house arrest with electronic surveillance;</li> <li>- 3° Modify or authorize, in application of article 142-9, the head of the penitentiary establishment or the director of the integration and probation prison service to modify the hours of presence of the person placed in examination at home or in places of assignment when there are changes favorable to the latter not affecting the balance of the control measure;</li> <li>- 4° Order the release, if necessary with judicial supervision, of a person placed in custody. If the European Delegated Prosecutor does not grant the person’s request within five days, he transmits the file, together with its</li> </ul>



- « 4° Ordonner la mise en liberté, le cas échéant assortie d'un contrôle judiciaire, d'une personne placée en détention provisoire. « Si le procureur européen délégué ne fait pas droit à la demande de la personne dans les cinq jours, il transmet le dossier, assorti de son avis motivé, au juge des libertés et de la détention, qui statue dans les trois jours ouvrables à compter de cette transmission, selon les modalités prévues aux articles 140 et 148.

« Art. 696-123. – Le procureur européen délégué est également compétent pour prendre les décisions relatives aux modalités d'exécution d'une détention provisoire ou à l'exercice de ses droits par une personne placée en détention provisoire en application des articles 145-4 à 145-4-2 et 148-5 du présent code et des articles 35, 36, 39 et 40 de la loi no 2009-1436 du 24 novembre 2009 pénitentiaire.

« Art. 696-124. – La décision de décerner un mandat d'arrêt est prise par le juge des libertés et de la détention, saisi par réquisitions écrites et motivées du procureur européen délégué.

« Art. 696-125. – Le procureur européen délégué met le mandat d'arrêt à exécution sous la forme d'un mandat d'arrêt européen conformément à l'article 695-16.

« Art. 696-126. – Les perquisitions, visites domiciliaires et saisies doivent, en l'absence de flagrance ou d'assentiment exprès de la personne chez laquelle elles ont lieu, être effectuées avec l'autorisation du juge des libertés et de la déten-

reasoned opinion, to the liberties and detention judge, who rules within three working days from the date of this transmission, in accordance with the procedures provided for in Articles 140 and 148.

Art. 696-123. – The European Delegated Prosecutor is also competent to take decisions relating to the modalities for the execution of pre-trial detention or the exercise of their rights by a person placed in pre-trial detention in application of articles 145-4 to 145-4-2 and 148-5 of this code and of articles 35, 36, 39 and 40 of Law No. 2009-1436 of November 24, 2009 on prisons.

Art. 696-124. – The decision to issue an **arrest warrant is taken by the liberty and detention judge**, seized by written and motivated requisitions from the European Delegated Prosecutor.

Art. 696-125. – The European Delegated Prosecutor executes the arrest warrant in the form of a warrant judgment in accordance with Article 695-16.

Art. 696-126. – **Searches, home visits and seizures** must, in the absence of flagrance or with the express consent of the person in which they take place, be carried out **with the authorization of the judge of freedoms [liberty] and detent**

<p>tion saisi par réquisitions écrites et motivées du procureur européen délégué dans les conditions prévues à l'article 76.</p> <p>« Art. 696-127. – <i>Les décisions ordonnant une interception de correspondance émise par la voie des télécommunications</i>, une géolocalisation, une enquête sous pseudonyme ou une technique spéciale d'enquête prévue à la section 6 du chapitre II du titre XXV du présent livre sont prises <i>par le juge des libertés et de la détention</i>, saisi par réquisitions écrites et motivées du procureur européen délégué, sauf si ces mesures sont ordonnées dans des conditions d'utilisation et de durée permettant au procureur de la République d'y recourir dans le cadre de l'enquête de flagrance ou de l'enquête préliminaire.</p>	<p><i>ion</i> seized by written and motivated requisitions from the European Delegated Prosecutor in the conditions provided for in Article 76.</p> <p>Art. 696-127. – <i>Decisions ordering the interception of correspondence sent by way of telecommunications</i>, geolocation, a survey under a pseudonym or a special survey technique provided for in section 6 of chapter II of title XXV of this book <i>are taken by the judge of freedoms and detention</i>, seized by written and motivated requisitions from the European Delegated Prosecutor, unless these measures are ordered under conditions of use and duration allowing the public prosecutor to use them in as part of the flagrante delicto or preliminary investigation.</p>
<p>« Art. 696-128. – Les décisions ordonnant <i>les saisies spéciales</i> prévues au titre XXIX du présent livre et les mesures conservatoires prévues à l'article 706-166 sont prises par le juge des libertés et de la détention, saisi par réquisitions écrites et motivées du procureur européen délégué, sous réserve des pouvoirs propres du procureur prévus au premier alinéa de l'article 706-154.</p> <p>« <b>Sous-section 2</b> « <b>Des droits des parties</b> « Art. 696-129. – Dans le cadre de la procédure prévue à l'article 696-114, les personnes mises en examen, témoins assistés ou parties civiles exercent l'intégralité des droits qui leur sont reconnus</p>	<p>Art. 696-128. – The decisions ordering the <i>special seizures</i> provided for in Title XXIX of this book and the protective measures provided for in article 706-166 are <i>taken by the judge of freedoms and detention</i>, seized by written and reasoned requests from the European Delegated Prosecutor, subject to the prosecutor's own powers provided for in the first paragraph of Article 706-154.</p> <p><b>Subsection 2</b> <b>Rights of the parties</b> Art. 696-129. – Under the procedure provided for in article 696-114, the indicted persons, assisted witnesses or civil parties exercise all of the rights recognized to them by this code at the course of the investigation, in particular the right to be</p>

<p>par le présent code au cours de l’instruction, en particulier le droit d’être assisté par un avocat et d’avoir accès au contenu de la procédure, de formuler une demande d’acte auprès du procureur européen délégué, de présenter une requête en annulation ou de former un recours devant la chambre de l’instruction.</p>	<p>assisted by a lawyer and to have access to the content of the proceedings, to file a request for an act with the European Delegated Prosecutor, to present a request for annulment or to appeal to the investigating chamber.</p>
<p>« Art. 696-130. – Dès lors que le procureur européen délégué a procédé à la mise en examen d’une personne ou l’a placée sous le statut de témoin assisté, ou dès lors que le juge des libertés et de la détention a autorisé l’un des actes prévus aux articles 696-124 ou 696-127 dans des conditions ne permettant pas d’y recourir dans le cadre de l’enquête de flagrance ou de l’enquête préliminaire, le procureur européen délégué:</p> <p>« 1° Applique les dispositions de l’article 105 à l’ensemble des personnes à l’encontre desquelles il existe des indices graves et concordants d’avoir participé aux faits ;</p> <p>« 2° Avise la victime de l’infraction de son droit de se constituer partie civile dans les conditions prévues à l’article 80-3.</p>	<p>Art. 696-130. – As soon as the European Delegated Prosecutor has carried out the indictment of a person or placed it under the status of assisted witness, or when the liberties and detention judge authorized acts provided for in Articles 696-124 or 696-127 under conditions that do not allow them to be used within the framework the flagrant investigation or the preliminary investigation, the European Delegated Prosecutor:</p> <p>1° Applies the provisions of Article 105 to all persons against whom there are serious and consistent evidence of having participated in the events;</p> <p>2° Notify the victim of the offense of his right to become a civil party under the conditions provided for in Article 80-3.</p>
<p>« Art. 696-131. – La victime ne peut se constituer partie civile conformément aux articles 87 et 89 que lorsqu’il a été procédé à un des actes mentionnés au premier alinéa de l’article 696-130.</p> <p>« La partie civile dispose des droits prévus à l’article 89-1.</p>	<p>Art. 696-131. – The victim cannot become a civil party in accordance with Articles 87 and 89 unless when one of the acts mentioned in the first paragraph of article 696-130 has been carried out. The civil party has the rights provided for in article 89-1.</p>
<p>« <b>Sous-section 3</b></p> <p>« <b>De la clôture de la procédure</b></p> <p>« Art. 696-132. – Aussitôt que la procédure prévue à l’article 696-114 lui paraît</p>	<p><b>Subsection 3</b></p> <p><b>From the closure of the procedure</b></p> <p>Art. 696-132. – As soon as the procedure provided for in article 696-114 appears</p>

terminée, le procureur européen délégué en avise les parties et leurs avocats conformément au I de l'article 175. « Si les parties en ont fait la demande conformément au III du même article 175, elles disposent d'un délai d'un mois, si une personne mise en examen est détenue, ou de trois mois, dans les autres cas, pour lui adresser des observations selon les modalités prévues à l'avant-dernier alinéa de l'article 81 ou pour formuler des demandes ou présenter des requêtes sur le fondement du neuvième alinéa du même article 81, des articles 82-1 et 82-3, du premier alinéa de l'article 156 et du troisième alinéa de l'article 173, sous réserve que ces demandes ou requêtes ne soient pas irrecevables en application des articles 82-3 et 173-1.

A l'expiration de ce délai, les parties ne peuvent plus adresser de telles observations ni formuler ou présenter de telles demandes ou requêtes. « A l'issue du délai, le procureur européen délégué procède alors au règlement du dossier au vu des observations éventuelles des parties. Il rend son ordonnance conformément aux articles 176 à 184, sous réserve de la compétence du juge des libertés et de la détention pour, sur réquisitions écrites et motivées du procureur européen délégué, ordonner le maintien de la personne sous assignation à résidence avec surveillance électronique ou en détention provisoire. « En matière correctionnelle, s'il ne renvoie pas la personne mise en examen devant le tribunal correctionnel et si les conditions prévues à l'article 180-1 sont réunies, le procureur européen délégué peut lui proposer de faire application de

to him to be completed, the European Delegated Prosecutor shall notify the parties and their lawyers in accordance with I of Article 175. If the parties have requested it in accordance with III of same Article 175, they have a period of one month, if an indicted person is detained, or three months, in other cases, to send him observations according to the modalities provided for in the penultimate paragraph. of article 81 or to formulate requests or present requests on the basis of the ninth paragraph of the same article 81, articles 82-1 and 82-3, the first paragraph of article 156 and the third paragraph of the article 173, provided that such requests or requests are not inadmissible in application of articles 82-3 and 173-1.

At the end of this period, the parties may no longer make such observations or formulate or present such requests or questions At the end of the deadline, the European Delegated Prosecutor then proceeds to settle the case in light of any observations from the parties. He issues his order in accordance with Articles 176 to 184, subject to the competence of the judge of freedoms and detention to, upon written and motivated requests from the European Delegated Prosecutor, order the person to be kept under house arrest with electronic surveillance or in pre-trial detention. In correctional matters, if he does not send the accused person back to the criminal court and if the conditions provided for in article 180-1 are met, the European Delegated Prosecutor may suggest that he apply the appearance procedure. On prior acknowledgment of

la procédure de comparution sur reconnaissance préalable de culpabilité, dont il prononce la mise en œuvre par ordonnance. « Si les conditions prévues à l'article 180-2 sont réunies, le procureur européen délégué peut prononcer, par ordonnance, la mise en œuvre de la procédure prévue à l'article 41-1-2. Dans les cas mentionnés au dernier alinéa de l'article 180-2, la procédure prévue à l'article 696-114 est reprise à l'égard de la personne morale. « Les dispositions des deux premiers alinéas du présent article sont également applicables au témoin assisté.

**« CHAPITRE III  
« DE L'ARTICULATION DES COM-  
PÉTENCES ENTRE LE PROCU-  
REUR EUROPÉEN, LES PROCU-  
REURS EUROPÉENS DÉLÉGUÉS  
ET L'AUTORITÉ JUDICIAIRE  
FRANÇAISE**

« Art. 696-133. – Lorsque le procureur européen conduit personnellement l'enquête en application du 4 de l'article 28 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen, il exerce les attributions du procureur européen délégué.

« Art. 696-134. – Lorsque le Parquet européen décide de ne pas exercer sa compétence, le procureur de la République saisi de l'enquête ou le juge d'instruction saisi de l'information demeurent compétents, y compris dans les cas mentionnés au 6 de l'article 25 du règlement (UE) 2017/1939 du Conseil du 12 octobre

guilt, the implementation of which he pronounces by ordinance.

If the conditions provided for in Article 180-2 are met, the European Delegated Prosecutor may issue, by order, the implementation of the procedure provided for in Article 41-1-2. In the cases mentioned in the last paragraph of Article 180-2, the procedure provided for in Article 696-114 is repeated with regard to the legal person. The provisions of the first two paragraphs of this article are also applicable to assisted witnesses.

**CHAPTER III  
OF THE ARTICULATION OF JU-  
RISDICTION BETWEEN THE EU-  
ROPEAN PROSECUTORS, THE  
DELEGATED EUROPEAN PROSE-  
CUTORS AND THE FRENCH JUDI-  
CIAL AUTHORITY**

Art. 696-133. – When the European Public Prosecutor personally conducts the investigation in application of 4 of Article 28 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation concerning the creation of the European Public Prosecutor's Office, he exercises the powers of the European Delegated Prosecutor.

Art. 696-134. – *When the European Public Prosecutor's Office decides not to exercise its jurisdiction*, the public prosecutor seized of the investigation or the investigating judge seized of the information remain competent, including in the cases mentioned in para 6 of article 25 of the aforementioned Council

2017 précité. « Tant que le Parquet européen n'a pas statué sur l'exercice de sa compétence, il n'y a pas lieu d'examiner la recevabilité d'une plainte avec constitution de partie civile déposée devant le juge d'instruction pour des faits susceptibles de relever de l'article 696-108 du présent code. La prescription de l'action publique est suspendue jusqu'à la réponse du Parquet européen.

« Art. 696-135. – Lorsque, dans les cas mentionnés au 6 de l'article 25 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 précité, le procureur de la République saisi de l'enquête refuse de se dessaisir au profit du Parquet européen, le procureur général compétent désigne le magistrat compétent pour poursuivre les investigations.

« Art. 696-136. – Lorsque, dans les cas mentionnés au 6 de l'article 25 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 précité, le juge d'instruction saisi de l'information refuse de se dessaisir au profit du Parquet européen, il invite les parties à faire connaître leurs observations dans un délai de cinq jours. « A l'issue de ce délai, le juge d'instruction rend une ordonnance de refus de dessaisissement qui est notifiée au procureur de la République et aux parties. « Dans les cinq jours de sa notification, cette ordonnance peut être déferée, à la requête du Parquet européen, du procureur de la République ou des parties, à la

Regulation (EU) 2017/1939 of 12 October 2017. As long as the European Public Prosecutor's Office has not ruled on the exercise of its jurisdiction, there is no need to examine the admissibility of a complaint with the constitution of a civil party that was lodged before the investigating judge for facts likely to fall under article 696-108 of this code. The statute of limitations for public action is suspended until the European Public Prosecutor's Office responds.

Art. 696-135. – When, in the cases mentioned in para 6 of article 25 of the aforementioned Council Regulation (EU) 2017/1939 of 12 October 2017, *the public prosecutor seized of the investigation refuses to relinquish jurisdiction in favour of the European Public Prosecutor's Office*, the competent public prosecutor designates the competent magistrate to continue the investigations.

Art. 696-136. – When, in the cases mentioned in para 6 of article 25 of the aforementioned Council Regulation (EU) 2017/1939 of 12 October 2017, *the investigating judge/magistrate seized of the information refuses to relinquish jurisdiction in favour of the European Public Prosecutor's Office*, he invites the parties to make their observations known within five days. At the end of this period, the investigating judge issues an order refusing relinquishment which is notified to the public prosecutor and to the parties. Within five days of its notification, this order may be referred, at the request of the European Public Prosecutor's Office, the public prosecutor or the

chambre criminelle de la Cour de cassation. « La chambre criminelle de la Cour de cassation désigne, dans les huit jours suivant la date de réception du dossier, le magistrat compétent pour poursuivre les investigations. L'arrêt de la chambre criminelle est porté à la connaissance du Parquet européen, du juge d'instruction et du ministère public et notifié aux parties. Le juge d'instruction demeure saisi jusqu'à ce que cet arrêt soit porté à sa connaissance.

« Art. 696-137. – Lorsque le Parquet européen décide de renvoyer l'affaire aux autorités nationales en application de l'article 34 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 précité, le procureur européen délégué en informe: « 1o Le procureur de la République compétent dans les cas mentionnés aux 1 à 3 du même article 34 ; « 2o Le procureur général compétent dans le cas mentionné au 6 dudit article 34. « Le procureur de la République doit alors indiquer, dans les cas mentionnés aux 2 et 3 du même article 34, s'il accepte ou non de se charger de l'affaire dans un délai maximal de trente jours à compter de la réception de l'information. « Lorsque le Parquet européen se dessaisit dans le cadre de la procédure prévue à l'article 696-113 du présent code, les investigations se poursuivent dans le cadre de l'enquête de flagrance ou de l'enquête préliminaire. « Lorsque le Parquet européen se dessaisit dans le cadre de la procédure prévue à l'article 696-114, les investigations se poursuivent dans le cadre d'une information judiciaire. »

parties, to the criminal chamber of the Court of Cassation. The criminal chamber of the Court of Cassation designates, within eight days of the date of receipt of the file, the competent magistrate to continue the investigations. The judgment of the criminal chamber is brought to the attention of the European Public Prosecutor's Office, the investigating judge and the public prosecutor and notified to the parties. The examining magistrate remains seized until this judgment is brought to his attention.

Art. 696-137. – When the European Public Prosecutor's Office decides to *refer the case to the national authorities* in application of Article 34 of the aforementioned Council Regulation (EU) 2017/1939 of 12 October 2017, the European Delegated Prosecutor informs: 1o The public prosecutor, who is competent in the cases mentioned in 1 to 3 of the same article 34; 2o The competent public prosecutor in the case mentioned in 6 of said article 34. The public prosecutor must then indicate, in the cases mentioned in 2 and 3 of the same article 34, whether or not he accepts to take charge of the case within a maximum period of thirty days from receipt of the information. When the European Public Prosecutor's Office relinquishes jurisdiction within the framework of the procedure provided for in Article 696-113 of this code, the investigations continue within the framework of the flagrance investigation or the preliminary investigation. When the European Public Prosecutor's Office relinquishes

	<p>jurisdiction in the framework of the procedure provided for in Article 696-114, the investigations continue within the framework of a judicial investigation.</p>
<p>Article 2 I.          – La seconde phrase du troisième alinéa de l’article 694-20 du code de procédure pénale est remplacée par trois phrases ainsi rédigées:          « Si la décision d’enquête concerne un acte exigeant l’autorisation préalable du juge des libertés et de la détention, elle ne peut être émise qu’après l’autorisation de ce dernier. Les autorisations du juge des libertés et de la détention prévues aux articles 76, 230-33, 230-34 et 706-92 peuvent ne pas mentionner l’adresse du lieu privé dans lequel une perquisition pourra intervenir ou dans lequel un dispositif de géolocalisation pourra être installé ou retiré, si cette adresse n’est pas connue lors de la délivrance de la décision d’enquête, à condition de mentionner l’identité de la personne chez laquelle ces opérations pourront intervenir. La première décision du juge des libertés et de la détention prévue au 1o de l’article 230-33 permettant la poursuite pour un mois de la géolocalisation décidée pour quinze jours ou huit jours par le procureur de la République peut être délivrée avant l’émission de la décision d’enquête.          » II. – Le présent article entre en vigueur le premier jour du troisième mois suivant la publication de la présente loi et est applicable aux décisions d’enquête européenne émises à compter de cette entrée en vigueur.</p>	<p>Article 2 I.          – The second sentence of the third paragraph of Article 694-20 of the Code of Criminal Procedure is replaced by three sentences worded as follows:          If the investigative decision concerns an act requiring the prior authorization of the judge of freedoms and detention, it can only be issued after authorization by the latter. The authorizations of the judge of freedoms and detention provided for in articles 76, 230-33, 230-34 and 706-92 may not mention the address of the private place in which a search may take place or in which a geolocation device may be installed or withdrawn, if this address is not known when the investigation decision is issued, provided the identity of the person with whom these operations may take place is mentioned. The first decision of the judge of freedoms and detention provided for in 1o of article 230-33 allowing the continuation for one month of the geolocation decided for fifteen or eight days by the public prosecutor may be issued before the issue of the investigation decision.          II. - This article enters into force on the first day of the third month following the publication of this law and is applicable to European investigation decisions issued as of this entry into force.</p>



<p><b>CHAPITRE II</b> <b>DISPOSITIONS MODIFIANT LE</b> <b>CODE DE L'ORGANISATION JU-</b> <b>DICIAIRE</b></p>	<p><b>CHAPTER II</b> <b>PROVISIONS AMENDING THE</b> <b>CODE OF THE JUDICIAL ORGAN-</b> <b>IZATION</b></p>
<p>Article 3</p> <p>Le code de l'organisation judiciaire est ainsi modifié: 1° La sous-section 2 de la section 1 du chapitre I er du titre I er du livre II est complétée par un article L. 211-19 ainsi rédigé:</p> <p>« Art. L. 211-19. – Le tribunal judiciaire de Paris connaît des infractions pénales portant atteinte aux intérêts financiers de l'Union européenne et relevant de la compétence du procureur européen conformément au règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen, dans les cas et conditions prévus par le code de procédure pénale. » ;2o Après l'article L. 212-6, il est inséré un article L. 212-6-1 ainsi rédigé:« Art. L. 212-6-1. – Nonobstant les articles L. 122-2 et L. 212-6, le ministère public près le tribunal judiciaire de Paris est exercé par le procureur européen ou ses délégués pour les affaires relevant de ses attributions. » ;3o La section 2 du chapitre III du titre I er du livre II est complétée par un article L. 213-13 ainsi rédigé:</p> <p>« Art. L. 213-13. – Le code de procédure pénale fixe les règles relatives à la compétence, à l'organisation et au fonctionnement du tribunal judiciaire de Paris pour la poursuite des infractions portant atteinte aux intérêts financiers de l'Union européenne conformément au règlement</p>	<p>Article 3</p> <p>The code of judicial organization is thus amended:</p> <p>1° Sub-section 2 of section 1 of chapter Ist of title Ist of Book II is supplemented by an article L. 211-19 thus worded: Art. L. 211-19. – The <i>Paris judicial court hears criminal offenses affecting the interests' financial institutions of the European Union and falling under the competence of the European Public Prosecutor</i> in accordance with Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation concerning the creation of the European Public Prosecutor's Office, in the cases and under the conditions provided for by the Code of Criminal Procedure. ;2o After article L. 212-6, an article L. 212-6-1 is inserted as follows: Art. L. 212-6-1. - Notwithstanding Articles L. 122-2 and L. 212-6, the public prosecutor at the judicial tribunal de Paris is exercised by the European Public Prosecutor or his delegates for matters falling within his remit. ;3o Section 2 of Chapter III of Title Ist of Book II is supplemented by an article L. 213-13 as follows:</p> <p>Art. L. 213-13. – The <i>code of criminal procedure sets the rules relating to jurisdiction, organization and functioning of the Paris judicial tribunal for the prosecution of offenses affecting the interests financial institutions of the European Union</i> in accordance with Coun-</p>

(UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen. » ; 4o La section 2 du chapitre II du titre Ier du livre III est complétée par un article

L. 312-8 ainsi rédigé:

« Art. L. 312-8. – Nonobstant les articles L. 122-3 et L. 312-7, le ministère public près la cour d’appel de Paris est exercé par le procureur européen ou ses délégués pour les affaires relevant de ses attributions. »

### **CHAPITRE III DISPOSITIONS MODIFIANT LE CODE DES DOUANES**

Article 4

Le code des douanes est ainsi modifié:

1o Après la section 1 du chapitre II du titre XII, est insérée une section 1 bis ainsi rédigés:

« Section 1 bis

« Du Parquet européen

« Art. 344-1. – Conformément aux dispositions de l’article 696-111 du code de procédure pénale, lorsqu’ils portent sur des infractions prévues par le présent code, les signalements prévus à l’article 24 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen sont adressés au Parquet européen par l’intermédiaire du procureur de la République compétent, lui-même informé par les agents des douanes sur le fondement du

cil Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation concerning the creation of the European Public Prosecutor’s Office. ; 4o Section 2 of Chapter II of Title Ist of Book III is supplemented by an article L. 312-8 as follows:

Art. L. 312-8.: – Notwithstanding Articles L. 122-3 and L. 312-7, the function and tasks of the public prosecutor [seated] at the Paris Court of Appeal is exercised by the European Public Prosecutor or his delegates [French EDPs] for matters falling within his remit.

### **CHAPTER III PROVISIONS AMENDING THE CUSTOMS CODE**

Article 4

The customs code is amended as follows:

1o After section 1 of chapter II of title XII, a section 1a is inserted as follows:

Section 1a

From the European Public Prosecutor’s Office

Art. 344-1. – In accordance with the provisions of Article 696-111 of the Code of Criminal Procedure, when they relate to offenses provided for by this code, the reports provided for in Article 24 of Regulation (EU) 2017/1939 of the Council of 12 October 2017 implementing enhanced cooperation concerning the creation of the European Public Prosecutor’s Office are sent to the European Public Prosecutor’s Office through the competent public prosecutor, itself informed by

second alinéa de l'article 40 du code de procédure pénale.

« Art. 344-2. – En application de l'article 696-113 du code de procédure pénale, lorsque le Parquet européen décide d'exercer sa compétence sur des infractions prévues par le présent code, le procureur européen délégué peut conduire les investigations conformément aux dispositions du présent code.

« Art. 344-3. – Dès lors que le Parquet européen exerce sa compétence, ou pendant les délais prévus au 1 de l'article 27 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 précité:

« 1o Par dérogation au 2 de l'article 343 du présent code, l'action pour l'application des sanctions fiscales n'est pas exercée par l'administration des douanes, mais par le procureur européen délégué ;

« 2o L'administration des douanes ne peut transiger, en application de l'article 350, que si le Parquet européen admet le principe d'une transaction.

« Art. 344-4. – Lorsque le Parquet européen a exercé sa compétence, le procureur européen délégué compétent communique, dès que possible, à l'administration des douanes l'ensemble des informations permettant la notification de la dette douanière, en application des articles 102 et 103 du règlement (UE) no 952/2013 du Parlement européen et du Conseil du 9 octobre 2013 établissant le code des douanes de l'Union. » ; 2o Après le mot: « tribunal », la fin du 1 de

customs officials on the basis of the second paragraph of Article 40 of the Code of penal procedure.

Art. 344-2. – Pursuant to article 696-113 of the Code of Criminal Procedure, when the European Public Prosecutor's Office decides to exercise jurisdiction over offenses provided for by this code, the European Delegated Prosecutor may conduct investigations in accordance with the provisions of this code.

Art. 344-3. – As soon as the European Public Prosecutor's Office exercises its competence, or during the periods provided for in 1 of Article 27 of the aforementioned Council Regulation (EU) 2017/1939 of 12 October 2017: 1o By way of derogation from 2 of article 343 of this code, the action for the application of tax sanctions is not exercised by the customs administration, but by the European Delegated Prosecutor; 2o The customs administration can only compromise, in application of Article 350, if the European Public Prosecutor's Office admits the principle of a transaction.

Art. 344-4. – When the European Public Prosecutor's Office has exercised its competence, the competent European Delegated Prosecutor communicates, as soon as possible, to the customs administration all the information allowing the notification of the customs debt, pursuant to Articles 102 and 103 of Regulation (EU) No 952/2013 of European Parliament and of the Council of 9 October 2013 establishing the Union customs code. ; 2o After the word: court, the end

<p>l'article 358 est ainsi rédigée: « compétent en application des dispositions du code de procédure pénale. »</p>	<p>of 1 of article 358 reads as follows: competent in application of provisions of the Code of Criminal Procedure.</p>
<p><b>CHAPITRE IV</b> <b>DISPOSITIONS DIVERSES</b></p> <p>Article 5</p> <p>Les procureurs européens délégués nommés pour la France en position de détachement ainsi que leurs ayants droit sont affiliés, en ce qui concerne la couverture des risques maladie, invalidité, décès, maternité et paternité, au régime spécial de sécurité sociale prévu à l'article L. 712-1 du code de la sécurité sociale. Par dérogation à l'article L. 712-3 du même code, les administrations ou les établissements desquels sont détachés ces procureurs liquident et payent les prestations mentionnées au même article L. 712-3.</p> <p>Les procureurs mentionnés au premier alinéa du présent article bénéficient des prestations d'allocations familiales dans les conditions prévues à l'article L. 212-1 du code de la sécurité sociale.</p> <p>Les cotisations de sécurité sociale d'origine légale et réglementaire finançant la couverture des risques mentionnés au premier alinéa du présent article, la cotisation mentionnée à l'article L. 241-6 du code de la sécurité sociale ainsi que les contributions mentionnées à l'article L. 136-1 du même code, à l'article 14 de l'ordonnance no 96-50 du 24 janvier 1996 relative au remboursement de la dette sociale et à l'article L. 14-10-4 du code de l'action sociale et des familles sont prises en charge par l'Etat français. [...]</p>	<p><b>CHAPTER IV</b> <b>MISCELLANEOUS</b> [<i>social security for French EDPs and EPs</i>]</p> <p>Article 5</p> <p>The European delegated prosecutors appointed for France in secondment position as well as their successors rights are affiliated, with regard to the coverage of the risks of illness, invalidity, death, maternity and paternity, to the special social security scheme provided for in Article L. 712-1 of the Social Security Code. By way of derogation from Article L. 712-3 of the same code, the administrations or establishments of which are these seconded attorneys liquidate and pay for the services mentioned in the same article L. 712-3.</p> <p>The prosecutors mentioned in the first paragraph of this article benefit from allowances family under the conditions provided for in Article L. 212-1 of the Social Security Code and contributions of legal and regulatory origin financing risk coverage mentioned in the first paragraph of this article, the contribution mentioned in article L. 241-6 of the social security code as well as the contributions mentioned in article L. 136-1 of the same code, in article 14 of the ordinance no 96-50 of 24 January 1996 relating to the reimbursement of the social debt and to article L. 14-10-4 of the code of social action and families are supported by the French state. [...]</p>

**b) Decree n o 2021-694 of May 31, 2021 relating to the European Public Prosecutor's Office**

*Synopsis 2 Official Text of the EPPO Adoption Decree and Translation of the French EPPO Decree*

<p>Décrets, arrêtés, circulaires<sup>16</sup>  <b>TEXTES GÉNÉRAUX</b>  <b>MINISTÈRE DE LA JUSTICE</b>          Décret n° 2021-694 du 31 mai 2021 relatif au Parquet européen          NOR: JUSD2115808D</p>	<p>Decrees, orders, circulars  <b>GENERAL TEXTS</b>  <b>MINISTRY OF JUSTICE</b>  <b>Decree n o 2021-694 of May 31, 2021 relating to the European Public Prosecutor's Office</b>          NOR: JUSD2115808D</p>
<p><b>Publics concernés:</b> procureurs européens délégués et magistrats exerçant des fonctions pénales.  <b>Objet:</b> dispositions prises pour l'application de celles des dispositions de la loi n° 2020-1672 du 24 décembre 2020 qui sont relatives au Parquet européen.  <b>Entrée en vigueur:</b> le texte entre en vigueur à la date fixée par l'article 32 de la loi n° 2020-1672 du 24 décembre 2020.  <b>Notice:</b> le décret précise les modalités d'application des dispositions relatives au Parquet européen résultant de la loi n° 2020-1672 du 24 décembre 2020 relative au Parquet européen, à la justice environnementale et à la justice pénale spécialisée. Il indique comment les autorités judiciaires françaises doivent signaler aux procureurs européens délégués nommés pour la France les procédures susceptibles de relever de leur compétence. Il précise les modalités d'exercice de sa compétence par le procureur européen délégué ainsi que le déroulement des procédures qu'il suit.  <b>Références:</b> les dispositions du présent décret sont prises pour l'application des</p>	<p><b>Public concerned:</b> European delegated prosecutors and magistrates exercising criminal functions.  <b>Subject:</b> measures taken for the application of those of the provisions of the law n o 2020-1672 of 24 December 2020 which relate to the European Public Prosecutor's Office.  <b>Effective:</b> the text comes into force on the date fixed by Article 32 of Law n o 2020-1672 December 24, 2020.  <b>Notice:</b> the decree specifies the methods of application of the provisions relating to the European Public Prosecutor's Office resulting from Law n o 2020-1672 of 24 December 2020 concerning the European Prosecutor, environmental justice and specialized criminal justice. It indicates how the French judicial authorities should report to prosecutors European delegates appointed for France the procedures likely to fall within their competence. He specifies the procedures for exercising his competence by the European Delegated Prosecutor as well as the conduct of procedures he follows.</p>

<sup>16</sup> <https://www.actu-juridique.fr/breves/droit-penal/precisions-sur-lexercice-des-procureurs-europeens-delegues/>.

articles 696-108 à 696-137 du code de procédure pénale. Ces articles ainsi que les textes modifiés par le présent décret peuvent être consultés, dans leur rédaction issue de cette modification, sur le site Légifrance (<https://www.legifrance.gouv.fr>).

Le Premier ministre,  
Sur le rapport du garde des sceaux, ministre de la justice,  
Vu le règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen ;  
Vu le code des douanes, notamment ses articles 344-1 à 344-4 ;  
Vu le code de procédure pénale, notamment ses articles 40, 696-108 à 696-137 ;  
Vu la loi n° 2020-1672 du 24 décembre 2020 relative au Parquet européen, à la justice environnementale et à la justice pénale spécialisée, notamment son article 32,

Décète:

**Art. 1<sup>er</sup>.** – Le code de procédure pénale (troisième partie: décret) est modifié conformément aux dispositions du présent décret.

**Art. 2.** – Après l'article D. 47-1-29, il est inséré un titre XI ainsi rédigé:

**« TITRE XI  
« Du Parquet européen  
« CHAPITRE I<sup>er</sup>**

**References:** the provisions of this decree are taken for the application of articles 696-108 to 696-137 of the Code of Criminal Procedure. These articles as well as the texts modified by this decree can be consulted, in their wording resulting from this modification, on the Légifrance site (<https://www.legifrance.gouv.fr>).

The Prime Minister,  
On the report of the Keeper of the Seals, Minister of Justice,  
Having regard to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation concerning the creation of the European Public Prosecutor's Office;  
Having regard to the customs code, in particular its articles 344-1 to 344-4;  
Having regard to the code of criminal procedure, in particular its articles 40, 696-108 to 696-137;  
Given Law n o 2020-1672 of 24 December 2020 concerning the European Prosecutor, environmental justice and specialized criminal justice, in particular Article 32 thereof,

Decrees:

**Art. 1 st .** – The code of criminal procedure (third part: decree) is amended in accordance with the provisions of this decree.

**Art. 2.** – After article D. 47-1-29, a title XI is inserted as follows:

**TITLE XI  
From the European Public Prosecutor's Office  
CHAPTER I st**

**« DES SIGNALEMENTS AU PROCUREUR EUROPÉEN DÉLÉGUÉ ET DE L'EXERCICE DE SA COMPÉTENCE**

**A. « Section 1**

**I. « Des obligations de signalement au procureur européen délégué**

« Art. D. 47-1-30. – Pour l'application des articles 696-108 et 696-111, les infractions commises après le 20 novembre 2017 relevant de la compétence du Parquet européen et pour lesquelles il doit être procédé aux signalements prévus par l'article 696-111 sont celles prévues par les articles D. 47-1-31 à D. 47-1-34.

« Art. D. 47-1-31. – I. – Il doit être procédé au signalement des délits suivants'ils portent atteinte aux recettes perçues, aux dépenses exposées ou aux avoirs qui relèvent du budget de l'Union européenne, des budgets des institutions, organes et organismes de l'Union européenne ou des budgets gérés et contrôlés directement par eux, et si le montant du préjudice causé à l'Union européenne est susceptible d'être au moins égal à 10 000 euros:

« 1<sup>o</sup> Délits d'escroquerie prévus à la section 1 du chapitre III du titre I du livre III du code pénal ;

« 2<sup>o</sup> Délits d'abus de confiance prévus à la section 1 du chapitre IV du titre I du livre III du code pénal ;

« 3<sup>o</sup> Délits de soustraction, détournement ou destruction de biens prévus au paragraphe 5 de la section 3 du chapitre II du titre III du livre IV du code pénal ;

**REFERRAL TO THE ATTORNEY EUROPEAN DELEGATE AND ' EXERCISE OF COMPETENCE**

**Section 1**

Reporting obligations to the European Delegated Prosecutor

**Art. D. 47-1-30.** – For the application of articles 696-108 and 696-111, offenses committed after

on 20 November 2017 falling under the competence of the European Public Prosecutor's Office and for which the reports provided for in article 696-111 are those provided for in articles D. 47-1-31 to D. 47-1-34.

**Art. D. 47-1-31.** – I. – The following offenses must be reported if they affect revenue received, expenditure incurred or assets coming under the budget of the European Union, the budgets of European Union institutions, bodies, offices and agencies or budgets managed and controlled directly by them, and if the amount of damage caused to the European Union is likely to be at least equal to 10,000 euros:

1 o Fraudulent offenses provided for in section 1 of chapter III of title I of book III of the penal code;

2 o Crimes of breach of trust provided for in section 1 of chapter IV of title I of book III of the penal code;

3 o Crimes of theft, embezzlement or destruction of property provided for in paragraph 5 of section 3 Chapter II of Title III of Book IV of the Penal Code;

4 o Corruption offenses provided for in articles 432-11, 433-1, 435-1 and 435-3 of the penal code;

« 4° Délits de corruption prévus aux articles 432-11, 433-1, 435-1 et 435-3 du code pénal ;

« 5° Délits de contrebande, d'importation ou d'exportation frauduleuse prévus à l'article 414-2 du code des douanes ;

« 6° Délits de blanchiment prévus à l'article 415 du code des douanes, lorsqu'ils portent sur des fonds provenant de délits mentionnés aux 1° à 5° du présent I ;

« 7° Délits de blanchiment prévus à la section 1 du chapitre IV du titre II du livre III du code pénal, lorsqu'ils portent sur des fonds provenant de délits mentionnés aux 1° à 5° du présent I.

« II. – Lorsque les délits mentionnés au I ont causé ou sont susceptibles d'avoir causé un préjudice d'un montant inférieur à 10 000 euros, le signalement ne doit intervenir que si l'une au moins des conditions suivantes est remplie:

« 1° Les répercussions du dossier à l'échelle de l'Union sont de nature à rendre nécessaire la conduite d'une enquête par le Parquet européen ;

« 2° Des fonctionnaires ou d'autres agents de l'Union, ou des membres des institutions de l'Union pourraient être soupçonnés d'avoir commis l'infraction.

« Le signalement doit toutefois également intervenir lorsqu'il n'est pas possible de déterminer si les critères prévus aux 1° et 2° ci-dessus sont remplis.

« Art. D. 47-1-32. – Lorsque l'infraction porte sur la taxe sur la valeur ajoutée, il ne doit être procédé au signalement des délits mentionnés au I de l'article D. 47-1-31 que si les conditions suivantes sont remplies:

5 o Fraudulent smuggling, importation or exportation offenses provided for in article 414-2 of the code of customs;

6 o Money laundering offenses provided for in Article 415 of the Customs Code, when they relate to funds from offenses mentioned in 1 o to 5 o of this I;

7 o Money laundering offenses provided for in section 1 of chapter IV of title II of book III of the penal code, when relate to funds resulting from offenses mentioned in 1 o to 5 o of this I.

II. – When the offenses mentioned in I have caused or are likely to have caused a loss of an amount less than 10,000 euros, the report should only take place if at least one of the following conditions is fulfilled:

1 o The repercussions of the case at Union level are such as to make it necessary to conduct a investigation by the European Public Prosecutor's Office;

2 o Officials or other servants of the Union, or members of the institutions of the Union could be suspected of having committed the offense.

However, reporting must also take place when it is not possible to determine whether the criteria provided for in 1 o and 2 o above are fulfilled.

**Art. D. 47-1-32.** – When the infringement relates to the value added tax, it should not be carried out reporting of the offenses mentioned in I of article D. 47-1-31 only if the following conditions are met:



« 1° Le montant du préjudice total en résultant s'élève à au moins dix millions d'euros ;

« 2° L'infraction a un lien avec le territoire d'au moins deux États mentionnés ci-dessous, qui participent à la coopération renforcée concernant la création du Parquet européen:

« – l'Allemagne,

« – l'Autriche,

« – la Belgique,

« – la Bulgarie,

« – Chypre,

« – la Croatie, «

– l'Espagne, «

– l'Estonie,

« – l'Italie,

« – la Finlande,

« – la France,

« – la Grèce,

« – la Lettonie,

« – la Lituanie,

« – le Luxembourg,

« – Malte,

« – les Pays-Bas,

« – le Portugal,

« – la République tchèque,

« – la Roumanie, « – la Slovaquie, « – la Slo-  
vénie.

« Art. D. 47-1-33. – Il doit être procédé au signalement du délit d'association de malfaiteurs prévu par l'article 450-1 du code pénal lorsqu'il vise à la préparation et la commission des infractions prévues aux articles D. 47-1-31 et D. 47-1-32.

« Art. D. 47-1-34. – Il doit être procédé au signalement des infractions connexes aux délits prévus aux articles D. 47-1-31 à D. 47-1-32 lorsqu'elles sont indissociablement liées avec ces délits.

1 o The amount of the total loss resulting therefrom amounts to at least ten million euros;

2 o The offense has a link with the territory of at least two States mentioned below, which participate in the enhanced cooperation concerning the creation of the European Public Prosecutor's Office:

- Germany,

- France,

- Belgium,

- Bulgaria,

- Cyprus,

- Croatia,

- Spain,

- Estonia,

- Italy,

- Finland,

- France,

- Greece,

- Latvia,

- Lithuania,

- Luxembourg,

- Malta,

- the Netherlands,

- Portugal,

- the Czech Republic,

- Romania, - Slovakia, - Slovenia.

**Art. D. 47-1-33.** – The offense of criminal association provided for by article 450-1 of the penal code when it aims at the preparation and the commission of the offenses provided for in Articles D. 47-1-31 and D. 47-1-32.

**Art. D. 47-1-34.** – The offenses related to the offenses provided for in the Articles D. 47-1-31 to D. 47-1-32 when they are inextricably linked with these offenses.

« Art. D. 47-1-35. – Sans préjudice des dispositions du dernier alinéa de l'article D. 47-1-36, les signalements au Parquet européen prévus par l'article 696-111 sont adressés au procureur européen délégué par:

« 1° Le procureur de la République financier prévu par l'article 705 si l'une au moins des infractions faisant l'objet du signalement relève de cet article ;

« 2° Le procureur de la République territorialement compétent près la juridiction interrégionale spécialisée en matière économique et financière prévue par l'article 704 dans les autres cas.

« Lorsque le signalement concerne une infraction prévue par le code des douanes, l'administration des douanes est informée.

« Art. D. 47-1-36. – Tout procureur de la République ou toute juridiction d'instruction ou toute autorité mentionnée à l'article 40 qui a connaissance ou qui est saisie d'une infraction relevant des articles D. 47-1-31 à D. 47-1-33 en avise, selon les cas, en lui transmettant par tout moyen une copie de la procédure, le procureur de la République financier ou le procureur de la République spécialisé mentionnés aux 1° et 2° de l'article D. 47-1-35, afin que celui-ci procède au signalement prévu par cet article.

« Lorsque la procédure mentionnée à l'alinéa précédent concerne une infraction prévue par le code des douanes, l'administration des douanes est informée de la transmission effectuée.

« Les autorités mentionnées au premier alinéa peuvent adresser simultanément au

**Art. D. 47-1-35.** – Without prejudice to the provisions of the last paragraph of article D. 47-1-36, the reports to the European Public Prosecutor's Office provided for in article 696-111 are addressed to the European Delegated Prosecutor by:

1 o The financial public prosecutor provided for in article 705 if at least one of the offenses

the subject of the report falls under this article; 2 o The district prosecutor with territorial jurisdiction near the interregional jurisdiction specializing in

economic and financial matters provided for in article 704 in other cases.

When the report concerns an offense provided for by the customs code, the customs administration is informed.

**Art. D. 47-1-36.** – Any public prosecutor or any investigating court or any authority mentioned in Article 40 who is aware of or is seized of an offense falling under Articles D. 47-1-31 to D. 47-1-33 notify it, as the case may be, by sending it by any means a copy of the procedure, the public prosecutor Financial Republic or the specialized public prosecutor mentioned in 1 o and 2 o of article D. 47-1-35, so that the latter proceeds to the report provided for in this article.

When the procedure mentioned in the previous paragraph concerns an offense provided for by the customs code, the customs administration is informed of the transmission made.

The authorities mentioned in the first paragraph may simultaneously address to the European Delegated Prosecutor the reports provided for in article 696-111, in particular in an emergency.

procureur européen délégué les signalements prévus par l'article 696-111, notamment en cas d'urgence.

« Art. D. 47-1-37. – Les signalements et avis prévus aux articles D. 47-1-35 et D. 47-1-36 comprennent à tout le moins les éléments suivants:

« 1° Une description des faits, y compris une évaluation du préjudice causé ou susceptible d'être causé à l'Union européenne et, le cas échéant, à d'autres victimes ;

« 2° La ou les qualifications juridiques possibles ;

« 3° Toute information disponible sur les victimes potentielles, les suspects et toute autre personne impliquée, notamment si sont mis en cause ou susceptibles d'être mis en cause un ou plusieurs fonctionnaires ou autres agents de l'Union européenne, ou des membres des institutions de l'Union européenne.

« 4° S'il existe une ou plusieurs infractions connexes dans les conditions prévues à l'article D. 47-1-34, il est précisé si la peine privative de liberté maximale encourue pour cette ou ces infractions est équivalente ou supérieure à la peine encourue pour les délits prévus aux articles D. 47-1-31 à D. 47-1-33, et si l'infraction connexe a ou non contribué à la réalisation de l'infraction financière.

« 5° S'il y a lieu de supposer que le préjudice causé ou susceptible d'être causé aux intérêts financiers de l'Union par une infraction visée aux articles D. 47-1-31 ou D. 47-1-32 n'excède pas le préjudice causé ou susceptible d'être causé à une autre victime.

**Art. D. 47-1-37.** – The reports and notices provided for in Articles D. 47-1-35 and D. 47-1-36 include in all at least the following:

1 o A description of the facts, including an assessment of the damage caused or likely to be caused to the Union European Union and, where appropriate, to other victims;

2 o The possible legal qualification (s);

3 o Any information available on potential victims, suspects and any other person involved,

in particular if one or more officials or other agents are implicated or likely to be implicated.

of the European Union, or of members of the institutions of the European Union.

4 o If there is one or more related offenses under the conditions provided for in article D. 47-1-34, it is whether the maximum custodial sentence incurred for this or these offense (s) is equivalent or greater than the penalty incurred for the offenses provided for in Articles D. 47-1-31 to D. 47-1-33, and if the related offense has or has not contributed to the commission of the financial offense.

5 o If it is to be assumed that the damage caused or likely to be caused to the financial interests of the Union by an offense referred to in Articles D. 47-1-31 or D. 47-1-32 does not exceed the damage caused or likely to be caused to another victim.

« 6° Dans les cas prévus aux 4° et 5°, il est précisé si l'autorité judiciaire estime que, conformément au paragraphe 3 de l'article 25 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017, le Parquet européen pourrait ne pas exercer sa compétence.

**B. « Section 2**

**II. « De l'exercice de sa compétence par le procureur européen délégué**

« Art. D. 47-1-38. – Pour l'application de l'article 696-112, le magistrat national initialement saisi de l'enquête adresse sans délai l'ensemble de la procédure au procureur européen délégué dès que ce dernier l'avise qu'il retient sa saisine, sauf conflits de compétences prévus aux articles 696-135 et 696-136. Lorsque l'enquête concerne une infraction prévue par le code des douanes, l'administration des douanes est informée de ce dessaisissement.

« La décision de dessaisissement du procureur de la République ou l'ordonnance rendue à cette fin par le juge d'instruction sont des mesures d'administration judiciaire insusceptibles de recours.

« Art. D. 47-1-39. – Pour l'application de l'article 696-135, le procureur général compétent pour décider si les investigations seront poursuivies par le procureur de la République ayant refusé de se dessaisir ou par le procureur européen délégué est le procureur général près la cour d'appel dans le ressort de laquelle se trouve la juridiction interrégionale spécialisée en matière économique et financière prévue par l'article 704 dans le ressort de

6 o In the cases provided for in 4 o and 5 o, it is specified whether the judicial authority considers that, in accordance with paragraph 3 of article 25 of Council Regulation (EU) 2017/1939 of 12 October 2017, the European Public Prosecutor's Office may not exercise its jurisdiction.

**Section 2**

**Of the exercise of his competence by the European Delegated Prosecutor**

**Art. D. 47-1-38.** – For the application of article 696-112, the national magistrate initially seized of the investigation send the entire procedure to the European Delegated Prosecutor without delay as soon as the latter advises him that he is its referral, except for conflicts of jurisdiction provided for in articles 696-135 and 696-136. When the investigation concerns an offense provided for by the customs code, the customs administration is informed of this relinquishment.

The decision of the public prosecutor to relinquish jurisdiction or the order issued for this purpose by the judge of instruction are measures of judicial administration which cannot be appealed against.

**Art. D. 47-1-39.** – For the application of article 696-135, the public prosecutor competent to decide whether the investigations will be continued by the public prosecutor who refused to relinquish jurisdiction or by the public prosecutor European Delegate is the Attorney General at the Court of Appeal in whose jurisdiction is the jurisdiction interregional specialized in economic and financial matters provided for by article 704 within the ju-

laquelle se trouve ce procureur de la République, ou, si ce procureur ayant refusé de se dessaisir est le procureur de la République financier, le procureur général près la cour d'appel de Paris.

« Le procureur de la République chargé par le procureur général compétent de poursuivre les investigations peut décider que celles-ci seront poursuivies par l'administration des douanes, conformément aux dispositions du code des douanes, lorsque l'infraction concernée relève du dit code.

« La décision du procureur général, qui constitue une mesure d'administration judiciaire insusceptible de recours, est adressée par tout moyen et dans les meilleurs délais au procureur de la République et au procureur européen délégué. »

« Art. D. 47-1-40. – Le procureur général compétent pour recevoir, en application du 2° de l'article 696-137, l'information du procureur européen délégué indiquant qu'il renvoie aux autorités nationales une infraction connexe qu'il envisageait de classer sans suite est le procureur général mentionné à l'article D. 47-1-39.

« Lorsque le procureur général reçoit l'information qu'une affaire est classée sans suite par le Parquet européen, il en informe sans délai l'administration des douanes, aux fins de recouvrement des ressources propres, conformément à l'article 39 § 4 du règlement (UE) 2017/1039 du Conseil du 12 octobre 2017.

« Art. D. 47-1-41. – Tous les signalements, informations, avis et procédures adressés au procureur européen délégué

jurisdiction of which finds this public prosecutor, or, if this public prosecutor who refused to relinquish jurisdiction is the public prosecutor Financial Republic, the Attorney General at the Paris Court of Appeal.

The public prosecutor appointed by the competent public prosecutor to continue the investigations may decide that these will be continued by the customs administration, in accordance with the provisions of the code customs, when the offense concerned falls within the said code. The decision of the Attorney General, which constitutes a measure of judicial administration which cannot be appeal, is addressed by any means and as soon as possible to the public prosecutor and to the public prosecutor European delegate.

**Art. D. 47-1-40.** – The public prosecutor competent to receive, in application of 2° of article 696-137, information from the European Delegated Prosecutor indicating that he is referring an offense to the national authorities related which he intended to dismiss is the Attorney General mentioned in article D. 47-1-39.

When the public prosecutor receives the information that a case is closed without further action by the European public prosecutor, he immediately informs the customs administration, for the purpose of recovering own resources, in accordance with Article 39 § 4 of Council Regulation (EU) 2017/1039 of 12 October 2017.

**Art. D. 47-1-41.** – All reports, information, opinions and procedures addressed to the delegated European Public

ou transmis ou par lui peuvent être établis ou convertis sous format numérique et communiqués par voie électronique conformément aux dispositions des articles 801-1, 803-1 et D. 589 à D. 592.

**« CHAPITRE II  
« DES PROCÉDURES SUIVIES PAR  
LE PROCUREUR EUROPÉEN DÉ-  
LÉGUÉ**

« Art. D. 47-1-42. – Lorsqu’il procède à des investigations selon la procédure prévue par l’article 696-114, le procureur européen délégué est assisté d’un greffier dans les mêmes conditions que le juge d’instruction.

« Les ordonnances prises par le juge des libertés et de la détention dans le cadre de cette procédure peuvent faire l’objet d’un appel de la part du procureur européen délégué dans les conditions prévues à l’article 185.

« Les ordonnances prises par le juge des libertés et de la détention en matière de contrôle judiciaire, d’assignation à résidence avec surveillance électronique ou de détention provisoire peuvent faire l’objet d’un appel, de la part de la personne mise en examen par le procureur européen délégué, dans les conditions prévues à l’article 186, en faisant le cas échéant application des articles 187-1 et 187-2.

« Les ordonnances prises par le procureur européen délégué en application des articles 80-1-1, 87, 139 et 140 ainsi que du quatrième aliéna de l’article 167 peuvent faire l’objet d’un appel de la part de la personne mise en examen dans les conditions prévues à l’article 186.

Prosecutor or transmitted or by him may be drawn up or converted into digital format and communicated by electronic in accordance with the provisions of articles 801-1, 803-1 and D. 589 to D. 592.

**CHAPTER II  
PROCEDURES FOLLOWED BY  
THE DELEGATED EUROPEAN AT-  
TORNEY**

Art. D. 47-1-42. – When carrying out investigations according to the procedure provided for in article 696-114, the European Delegated Prosecutor is assisted by a registrar under the same conditions as the investigating judge.

The orders taken by the judge of freedoms and detention within the framework of this procedure can make the subject of an appeal by the European Delegated Prosecutor under the conditions provided for in Article 185.

The orders taken by the judge of freedoms and detention in matters of judicial control, house arrest with electronic surveillance or pre-trial detention may be appealed, on behalf of the person indicted by the European Delegated Prosecutor, under the conditions provided for in article 186, by applying articles 187-1 and 187-2 where applicable.

Orders taken by the European Delegated Prosecutor in application of Articles 80-1-1, 87, 139 and 140 as well as the fourth paragraph of article 167 may be the subject of an appeal by the person in charge. examination under the conditions provided for in article 186.

Orders taken by the European Delegated Prosecutor in application of Article 87 may be subject to an appeal from the civil

« Les ordonnances prises par le procureur européen délégué en application de l'article 87 peuvent faire l'objet d'un appel de la partie civile dans les conditions prévues à l'article 186.

« Les parties peuvent également former appel des ordonnances mentionnées à l'article 186-1, lorsqu'elles sont rendues par le procureur européen délégué, dans les conditions prévues par cet article.

« Art. D. 47-1-43. – Pour l'application de l'article 696-119, lorsque le procureur européen délégué ordonne le placement de la personne mise en examen sous contrôle judiciaire, il l'avise qu'elle peut immédiatement contester cette décision devant le juge des libertés et de la détention. Si la personne ou son avocat déclare contester cette ordonnance, le dossier de la procédure doit être transmis sans délai au juge des libertés et de la détention, et au plus tard dans le délai de vingt-quatre heures.

« L'ordonnance du juge des libertés et de la détention peut faire l'objet d'un appel par le procureur européen délégué dans les conditions prévues à l'article 185, et par la personne mise en examen dans les conditions prévues à l'article 186.

« En l'absence de contestation immédiate devant le juge des libertés et de la détention, la personne mise en examen peut former appel de l'ordonnance du procureur européen délégué dans les conditions prévues à l'article 186.

« Art. D. 47-1-44. – Lorsque le procureur européen délégué saisi d'une demande de mise en liberté estime ne pas pouvoir faire

party under the conditions provided for in article 186.

The parties may also appeal against the orders mentioned in article 186-1, when they are issued by the European Delegated Prosecutor, under the conditions provided for in this article.

**Art. D. 47-1-43.** – For the application of article 696-119, when the European Delegated Prosecutor orders placing the Charged Person under judicial supervision, he advises him that he can immediately contest this decision before the liberty and detention judge. If the person or their lawyer declares that they are contesting this order, the file of the procedure must be transmitted without delay to the judge of freedoms and detention, and to the later within the twenty-four-hour period.

The order of the judge of freedoms and detention can be appealed by the European prosecutor delegated under the conditions provided for in Article 185, and by the Charged Person under the conditions provided for in section 186.

In the absence of an immediate dispute before the judge of freedoms and detention, the person placed in examination may appeal against the order of the European Delegated Prosecutor under the conditions provided for in section 186

**Art. D. 47-1-44.** – When the European Delegated Prosecutor seized of a request for release considers that he

droit à celle-ci, ni pouvoir placer la personne sous contrôle judiciaire, mais considère que celle-ci pourrait être placée sous assignation à résidence avec surveillance électronique, il en avise le juge des libertés et de la détention lorsqu'il le saisit en application du dernier alinéa de l'article 696-122.

« Art. D. 47-1-45. – Lorsque, conformément aux dispositions du premier alinéa de l'article 696-109, le procureur européen délégué exerce les fonctions de procureur général devant la chambre de l'instruction ou devant la chambre des appels correctionnels, il peut former un pourvoi en cassation contre les décisions rendues par ces juridictions, dans les conditions prévues par articles 567, 568 et 585-2. »

**Art. 3.** – Le présent décret est applicable sur l'ensemble du territoire de la République.

**Art. 4.** – Le présent décret entre en vigueur à la date fixée à l'article 32 de la loi du 24 décembre 2020 susvisée.

**Art. 5.** – Le garde des sceaux, ministre de la justice, est chargé de l'exécution du présent décret, qui sera publié au Journal officiel de la République française.

Fait le 31 mai 2021.

JEAN CASTEX

Par le Premier ministre:

Le garde des sceaux, ministre de la justice,

ÉRIC DUPOND-MORETTI

not be able to grant it, nor be able to place the person under judicial control, but considers that the latter could be placed under house arrest with electronic surveillance, he advises the judge of freedoms and detention when seized by it pursuant to the last paragraph of article 696-122.

**Art. D. 47-1-45.** – When, in accordance with the provisions of the first paragraph of article 696-109, the European Delegated Prosecutor exercises the functions of Prosecutor General before the investigating chamber or before the correctional appeals chamber, he can lodge an appeal in cassation against the decisions rendered by these courts, under the conditions provided for by articles 567, 568 and 585-2.

**Art. 3.** – This decree is applicable throughout the territory of the Republic.

**Art. 4.** – This decree comes into force on the date set in article 32 of the aforementioned law of 24 December 2020.

**Art. 5.** – The Keeper of the Seals, Minister of Justice, is responsible for the execution of this decree, which will be published in the Official Journal of the French Republic.

Dated May 31, 2021.

JEAN CASTEX

By the Prime Minister:

The Keeper of the Seals,  
Justice Ministry,

ERIC DUPOND –Moretti



## B. EPPO-Regulation

### I. Criminal investigations according to the EPPO Regulation based on national law (measures)

#### 1. Introduction to the French system related to the EPPO investigations

*Author: Hélène Christodoulou, Maître de conférences*



The European Public Prosecutor's Office – this revolutionary body to fight against offences against the financial interests of the European Union<sup>17</sup> – has now been in operation for over two years. Even if it is true that the Union's legislator is allowing for a convergence of national laws, **discrepancies still prevail**.

1

The authority, as it was created in 2017, operates, in reality, with the help of twenty-three sets of national laws, those of the Member States participating in the project and those of the Union, the very differences of which must be emphasized, thus making its action more complex. Indeed, the Regulation creating the body, which remains the result of a vague compromise, makes numerous references to national laws.

2

Consequently, faced with the **singularity of its structure**, which is both centralized and decentralized, the national laws of the twenty-two member states participating in the project have had to undergo major changes in order to integrate the European Union's first prosecuting authority into their national legal systems. In practice, the substantive and procedural law of the delegated European Public Prosecutor in charge of the case applies for the most part.<sup>18</sup>

3

The idea of establishing a **manual (i.e. compendium) specific to each Member State** was therefore a logical one. By way of illustration, the investigating judge – a symbol of the specificity of the pre-trial phase – no longer has a place if the European Public Prosecutor's Office exercises its jurisdiction.

4

While the flagrante, preliminary or derogatory investigations remain, the investigation no longer exists, leaving room for a new type of hybrid investigation created from the

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<sup>17</sup> See Andreone 2018, p 52 et seq.

<sup>18</sup> Original text: Le parquet européen - cet organe révolutionnaire pour lutter dans un premier temps contre les infractions portant atteinte aux intérêts financiers de l'Union européenne – fonctionne, désormais, depuis plus de deux ans. Même s'il est vrai que le législateur de l'Union permet une convergence des droits nationaux, des disparités persistent.

L'organe, tel qu'il a été conçu en 2017, fonctionne, en réalité, à l'aide de vingt-trois droits, ceux des États membres participant au projet et celui de l'Union, dont l'hétérogénéité doit être soulignée, complexifiant ainsi son action. En effet, le règlement portant création de l'organe, lequel demeure le fruit d'un compromis sibyllin, opère de nombreux renvois aux droits nationaux.

Dès lors, face à la singularité de sa structure à la fois centralisée et décentralisée, les droits nationaux des vingt-deux États membres participants au projet ont dû réaliser d'importantes mutations afin que la première autorité de poursuite de l'Union européenne s'intègre au mieux dans les ordres juridiques internes. Concrètement, le droit, tant substantiel que procédural, du procureur européen délégué en charge de l'affaire s'applique majoritairement.

blue by the French legislator. This hybrid investigation allows French delegated European prosecutors to use the „extreme“ powers of the investigating judge under the control of the judge of freedoms and detention, in the most intrusive cases. This French trait is not found anywhere else, which is why it is important to describe it.

- 6 All the more so since most of the investigations opened by the European Public Prosecutor's Office, initially or by implementing its right of evocation, are carried out across borders. This situation implies cooperation on the ground between the delegated European Public Prosecutor in charge of the case and his assistant who is located in another State and **applies his own national law** to gather evidence.
- 7 Thus, all the members of the European Public Prosecutor's Office will have, if necessary, a new resource to protect the financial interests of the European Union in the best possible way: „**national procedural guidebooks**“ in order to know the broad outlines of the various procedures, which are the basis of the action they are taking. Although only articles 26 to 33 of the Regulation are analysed, other provisions would have worthy of attention – perhaps in a future manual? – Unless in the meantime a totally Europeanized system, from investigation to judgment, emerges. A new and more progressive revolution is then still to come.<sup>19</sup>

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<sup>19</sup> L'idée d'établir un manuel propre à chaque État membre apparaissait donc comme une évidence. À titre d'illustration, le juge d'instruction – symbole de la spécificité de la phase préalable au jugement – n'a plus sa place lorsque le parquet européen exerce sa compétence. Si les enquêtes de flagrance, préliminaire ou encore dérogatoire demeurent, l'instruction n'existe plus pour laisser place à une enquête hybride créée de toute pièce par le législateur français. Cette dernière permet aux procureurs européens délégués français d'user des pouvoirs « exorbitants » du juge d'instruction sous le contrôle du juge des libertés et de la détention, dans les hypothèses les plus attentatoires. Or cette caractéristique française ne se retrouve nulle part ailleurs, d'où l'importance d'en brosser le portrait. D'autant que la plupart des enquêtes ouvertes par le parquet européen, initialement ou en mettant en œuvre son droit d'évocation, sont transfrontières. Cette situation implique une coopération de terrain entre le procureur européen délégué en charge de l'affaire et son assistant qui se situe sur un autre État et applique, pour récolter une preuve, son propre droit national. Ainsi, l'ensemble des membres du parquet européen disposera, si nécessaire, d'une nouvelle ressource pour protéger au mieux les intérêts financiers de l'Union européenne: « les manuels procéduraux nationaux » afin de connaître dans les grandes lignes les différentes procédures, support de l'action qu'ils mènent. Si seuls les articles 26 à 33 du règlement sont analysés, d'autres dispositions auraient mérité l'attention - peut être dans un prochain manuel ? – à moins qu'entre-temps un système totalement européenisé, allant de l'enquête jusqu'au jugement, émerge. Une nouvelle révolution, pas à pas, est alors encore attendue. Introduction by Christodoulou, Hélène.

„Le simple fait d’avoir créé ce Parquet européen apporte déjà une première réponse, il revivifie le système de détection des fraudes et la transmission de ces informations aux autorités judiciaires.”<sup>20</sup>

Hauck/Schneider/Laird/Karakocaoğlu



The French **judiciary and doctrine**<sup>21</sup> are intensively engaged with the European Public Prosecutor’s Office (EPPO) and its work in the national judicial system (→ p. 48). This was already the case during the establishment phase, and it will not abate one year after the operation of the EPPO. Finally, a *high-level colloquium* held at the *Cour de Cassation* in mid-2022 discussed the future of the European Public Prosecutor’s Office.<sup>22</sup>

8

In France there are currently 4 (soon 5) European delegated public prosecutors working in the Paris center.

9

The EPPO was (well) received in France and integrated into the structure of the national judicial system. A year after the start of operational work, it was already evident that the system worked on the average. Even an **enlargement of competences** for a „European Green Prosecutor’s Office/*Parquet vert européen*” is already requested for the future.<sup>23</sup>

10

Initial investigations into the existing competence for fraud to the detriment of the Union were conducted and over eighty decisions taken in 2021, but no judgement successes were recorded yet. Still several successful actions with other countries were started. (About 80 investigations have been opened, but no decision has been taken yet).<sup>24</sup>

11

There is **currently no new specific judicature** that relates only to the actions of the EPPO in France.<sup>25</sup> Nevertheless, the respective provisions of national law can be applied equally and in connection with comparable national cases and the fraud fields (the so-called EU fraud typology). Two legal decision-making areas come into question: the ordinary courts, in this case the criminal jurisdiction with the *tribunal judiciaire de Paris*

12

<sup>20</sup> Baab 2022: “The simple fact of having created this European Public Prosecutor's Office already provides an initial response, it revives the system for detecting fraud and the transmission of this information to the judicial authorities.” See Baab 2021a, Baab 2021b and Baab 2021c. See Beauvais 2018 analytical, Botton and Taupiac-Nouvel 2018; Brigaud and Charroux 2016; finally Chevallier-Govers 2021 with numerous articles on the subject matter; Christodoulou 2022b; Delmas Marty 2021; Tricot 2018, pp. 635 seq.

Christodoulou H, Schneider J-M (2021)

<sup>21</sup> See the path from historic papers to the modern analysis : Delmas-Marty and Vervaele 2001 ; Delmas-Marty and Spencer 2002; Delmas Marty 2021 Créons un parquet européen », Tribune publiée dans Le Monde; Segonds 2018 287 et seq.; Tricot 2018, 635 seq. ; Botton 2020 Lexbase pénal, n° 25; Cahn 2019; in a comparative perspective Christodoulou and Schneider 2021, 593 et seq.; Gogorza 2021; Schneider 2020; Thierry 2021; Verges 2021.

<sup>22</sup> Cf. Cour de Cassation, Le parquet européen: entre présent et avenir, Lundi 16 mai 2022, Grand'chambre, <https://www.courdecassation.fr/agenda-evenementiel/le-parquet-europeen-entre-present-et-avenir>. Chevallier-Govers 2021 passim; Csonka P 2018, 283 ; Christodoulou 2022 In F Riem (dir) La confiance mutuelle dans l’Union européenne ; Christodoulou 2022a ; Clement 2016, p. 577 s.

<sup>23</sup> Baab 2022.

<sup>24</sup> See <https://www.eurojust.europa.eu/news/eurojust-assists-first-joint-investigation-team-eppo-swedish-authorities>. *Nota bene*: « 80 enquêtes environ ont été ouvertes, mais aucune décision n’a été prise encore », 70/2022.

<sup>25</sup> Own Interview (Questionnaire) and see as well Gonzalès, P., Contre la fraude aux subventions, les débuts prometteurs du parquet européen, Le Figaro, Société, online: <https://www.lefigaro.fr/actualite-france/contre-la-fraude-aux-subventions-les-debuts-prometteurs-du-parquet-europeen-20220731>, 31.7.2022.

and the *Court de Cassation* as the appellate instance, and the administrative jurisdiction (*jurisprudence administrative*) for OLAF investigations, whereby it must be noted that, if necessary, the fiscal administration also acts and thus the fiscal court code applies.

- 13 In April 2023, the EPPO conducted searches and arrests in France as part of a **large-scale investigation** into a €60 million VAT fraud scheme. French authorities collaborated with the EPPO during this operation. Another **important milestone** was achieved in January 2024: A cooperation agreement was signed between the EPPO and the Treasury and Interministerial Anti-Fraud Coordination Mission (**MICAF**) of France (see below → Mn. 1 et seq., Art. 12a OLAF Regulation). The goal of the **arrangement** is to identify fraudulent activity pertaining to the EU's recovery plan's €750 billion (→ see below Art. 3 OLAF Reg.). It creates a framework for collaboration between the French administrations in charge of these funds and the EPPO, along with a fraud report template. The EPPO and **French Treasury**, which oversees the National Recovery and Resilience Plan in France, had conversations that led to the agreement.<sup>26</sup>
- 14 Further **French EPPO cases** involved a manager of e-bike importers, who was detained by the EPPO for customs fraud and money laundering totaling €26 million, as revealed by public information. He was indicted and detained on June 2, 2023. The Customs Investigations Directorate (*La direction des enquêtes douanières*) and the Financial Judicial Investigation Service (*Le service d'enquêtes judiciaires des finances*, see → Art. 28) were entrusted with the investigation – both authorities, which we deal with in this volume.<sup>27</sup> In the course of an investigation into automobile sales-related VAT fraud (“a missing trader, false invoices case”), which is estimated to have caused damage of €19 million, EPPO conducted 27 searches e.g. in France. Numerous vehicles, together with over € 1 million in cash, were confiscated along with the arrest of four individuals.<sup>28</sup> In this volume the provisions on search measures are explored in detail (see below → Art. 30 EPPO Regulation). Cases also involved e.g. tobacco smuggling networks, evasion of customs duties with imported fashion goods, VAT fraud scheme involving the export of goods from France to other countries and into suspected offences of misappropriation of public funds, complicity and concealment, which were dismissed in 2024.<sup>29</sup> **Typical PIF offences** and the thresholds are presented below → Art. 26, Mn. 43. The examination demonstrates the appropriate provisions, which are targeted but not mentioned in Union legislation hereby enabling quick references for investigations on a reported case.

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<sup>26</sup> The signatories are Mr. Eric Belfayol, the Head of Mission from MICAF, Ms. Muriel Lacoue-Labarthe, General Director of the French Treasury, and Mr. Frédéric Baab, the European Prosecutor. Investigating and prosecuting crimes against the financial interests of the EU is the responsibility of the EPPO. See <https://bit.ly/3xvaekK>.

<sup>27</sup> See <https://bit.ly/3KXsnMf>. Accessed 31 May 2024.

<sup>28</sup> See <https://bit.ly/4cCqLmZ>. Accessed 31 May 2024.

<sup>29</sup> See <https://bit.ly/45Cedtm>, <https://bit.ly/45H4IcC>, <https://bit.ly/3KXsnMf>, <https://bit.ly/4beh8JX>.

## EPPO Regulation 2017/1939

[...]

## SECTION 1

## Rules on investigations

## 2. Article 26 Initiation of investigations and allocation of competences

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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, without 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.

The next section provides an **overview** of how French EDPs can independently start investigations – without relying on Art. 27 EPPO Regulation. On the one hand, this requires knowledge of national law, national jurisprudence and, on the other hand, knowledge of the typology of fraud in the Union, which is taught by OLAF in seminars and training courses and has also been available in France for a long time, financed e.g. by the *Parquet national financier*.

*Sources and national sections 1 Overview for France – Art. 26 EPPO Regulation*

<b>Overview</b>	
<b>Relevant national law</b>	Sources: Art. 696-108 et seq. Code de procédure pénale, the French Criminal Procedure Code; Art. 113-14 Code pénal, the French Criminal Code [for more PIF offences related Sections cf. next column below]
<b>An offence within the competence of the EPPO</b>	For the offences that are mentioned by Art. 26 EPPO Regulation cf. the EU Fraud Commentary, which mentions: Art. 113-14 Code pénal <sup>30</sup> Notwithstanding the second paragraph of article 113-6, French criminal law is applicable in all circumstances, and the second sentence of article 113-8 is not applicable, to the

<sup>30</sup> Article 113-14 Par dérogation au deuxième alinéa de l'article 113-6, la loi pénale française est applicable en toutes circonstances, et la seconde phrase de l'article 113-8 n'est pas applicable, aux infractions suivantes commises à l'étranger par un Français ou par une personne résidant habituellement ou exerçant tout ou partie de son activité économique sur le territoire français, lorsqu'elles portent atteinte aux recettes perçues, aux dépenses exposées ou aux avoirs qui relèvent du budget de l'Union européenne, des budgets des institutions, organes et organismes de l'Union européenne ou des budgets gérés et contrôlés directement par eux:

1° Délits d'escroquerie prévus à la section 1ère du chapitre III du titre Ier du livre III ;

2° Délits d'abus de confiance prévus à la section 1ère du chapitre IV du titre Ier du livre III ;

3° Délits de soustraction, détournement ou destruction de biens prévus aux articles 432-15 et 433-4 ;

4° Délits de corruption prévus aux articles 432-11 et 433-1, ainsi que, sans préjudice de l'article 435-11-2, aux articles 435-1 et 435-3 ;

5° Délits de contrebande, d'importation ou d'exportation frauduleuse prévus à l'article 414-2 du code des douanes ;

6° Délits de blanchiment prévus à la section 1ère du chapitre IV du titre II du livre III des délits mentionnés au présent article.

Pour la poursuite de la personne qui s'est rendue coupable sur le territoire français, comme complice, d'une infraction prévue aux 1° à 6° commise à l'étranger et portant atteinte aux intérêts financiers de l'Union européenne mentionnés au premier alinéa du présent article, les conditions prévues à l'article 113-5 ne sont pas applicables.

following offenses committed abroad by a French or by a person habitually residing or exercising all or part of his economic activity on French territory, when they affect the **revenue collected, the expenditure incurred or the assets which come under the budget of the European Union, the budgets of the institutions, bodies and agencies of the European Union or budgets managed and controlled directly by them:**

**1 °** Fraudulent offenses provided for in section 1 of chapter III of title I of book III;

**2 °** Crimes of breach of trust provided for in section 1 of chapter IV of title I of book III;

**3 °** Crimes of theft, embezzlement or destruction of property provided for in articles 432-15 and 433-4;

**4 °** Corruption offenses provided for in articles 432-11 and 433-1, as well as, without prejudice to article 435-11-2, in Articles 435-1 and 435-3 [Chapter V: Attacks on the public administration and the action of justice of the European Communities, of the Member States of the European Union, of other foreign States and of other public international organizations (Articles 435-1 to 435-15)];

**5 °** Offenses of smuggling, fraudulent importation or exportation provided for in article 414-2 of the code of customs;

**6 °** Money laundering offenses provided for in section 1 of chapter IV of title II of book III of the offenses mentioned to this article.

For the prosecution of the person who is guilty on French territory, as an accomplice, of an offense provided for in 1 ° to 6 ° committed abroad and **harming the financial interests of the European Union** mentioned in the first paragraph of this article, the conditions provided for in article 113-5 do not apply.

Opinion of the national expert<sup>31</sup>

<sup>31</sup> Expert comment: The national point-of view is the following: The Directive has been not well transposed. It lacks the following, for example: -Firstly, the offences of “forgery” and “use of forgeries” are not covered by the transposition although there is no justification for this exclusion.

-Secondly, the “offence of tax fraud”, provided for in Article 1741 of the General Tax Code, does not appear in the list of offences. However, it seems to cover situations that the other offences cannot cover. Indeed, VAT fraud has a complex material element requiring, in addition to fraudulent manoeuvres, a remittance of funds. However, VAT fraud does not always fall under the heading of fraud in the same way as failure to comply with reporting



<p><b>Competence of a European Delegated Prosecutor in France</b></p>	<p><b>In addition</b> see Art. 432-10 Code pénal, 414-2 Codes des douanes. And last but not least cf. Art. 1741 CGI<sup>32</sup>:  Nota bene: There is no enumeration in the French Notification to the EPPO. This list only concentrates on authorities detrimental to the requirement in Art. 117 EPPO Regulation (Note des autorités françaises).  Cf. the newly created Art. 696-108 et s. of the French law executing the EPPO Regulation, the so-called „<i>LOI n° 2020-1672 du 24 décembre 2020 relative au Parquet européen, à la justice environnementale et à la justice pénale spécialisée</i>”  Nota bene: Sections 20 para 2, 20a, b CCP do not apply.</p>
<p><b>Jurisdiction in criminal matters</b>  <b>Jurisdiction in procedural matters</b></p>	<p>Cf. Art. 11 of the PIF Directive. But see as well <i>le code des juridictions financières</i>/Code of the financial jurisdictions.  If the jurisdiction is present the indictments are centralized in Paris at the <i>tribunal judiciaire de Paris</i>”<sup>33</sup> and in case of an appeal « la Cour d’appel de Paris » (Art. 696-10 CPC).  Art. L211-19 Code of the judiciary (Code de l’organisation judiciaire)<sup>34</sup>  The Paris Judicial Court shall hear criminal offences affecting the financial interests of the European Union and falling within the jurisdiction of the European Public Prosecutor in accordance with Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation regarding the establishment of the European Public Prosecutor’s Office,</p>

obligations, which constitutes negative behaviour, or the organisation of insolvency. This absence seems to be linked to the very national problem of the Bercy lock, which should in no case apply to the European body.

-Finally, as regards handling stolen goods, it also seems surprising that it has not been transposed into national law. Indeed, the PIF Directive mentions money laundering as defined by Article 1 § 3 of the text relating to "the prevention of the use of the financial system for the purpose of money laundering or terrorist financing". However, the latter refers to the two cases of laundering recognised by national law, i.e. when the illicit origin is known: on the one hand, by "the agreement or transfer of property"; on the other hand, by the fact of concealing or disguising the fraudulent origin. In addition, it highlights a third hypothesis, namely the "acquisition, possession or use of property" resulting from an offence which in fact corresponds to the qualification of receiving stolen goods under national law. In order to be fully in line with the PIF Directive, handling stolen goods should therefore also have been transposed. In reality, it would seem that the European Public Prosecutor's Office already has jurisdiction over these offences on the basis of the European Regulation, which extends its jurisdiction "in respect of any other indissociably related criminal offence". Nevertheless, the content of this wording is questionable and the Court of Justice should be asked to rule on the meaning it intends to give it.

<sup>32</sup> Cf. already Delmas-Marty *Droit pénal des affaires* II p. 127 et seq., 129 et seq.

<sup>33</sup> See <https://www.tribunal-de-paris.justice.fr/75/les-services-penaux>. 11ème chambre - Économique & financier/ 32ème chambre - Économique & financier. Competent for corruption, tax evasion, frauds and the stock market law, offences falling within the jurisdiction of the national financial prosecutor's office/ and the EPPO.

<sup>34</sup> **Art. L-211-19 CLJ** Le tribunal judiciaire de Paris connaît des infractions pénales portant atteinte aux intérêts financiers de l'Union européenne et relevant de la compétence du procureur européen conformément au règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen, dans les cas et conditions prévus par le code de procédure pénale.

in the cases and under the conditions provided for by the Code of Criminal Procedure.

Source: The authors, French Notification.

***Art. 26 Ouverture des enquêtes et répartition des compétences au sein du Parquet européen et art. 27 droit d'évocation***

**a) Powers and jurisdiction of the French EDP by virtue of Art. 13 and 26 EPPO Regulation/*Pouvoirs et juridiction de PED en vertu des art. 13 et 26 du Règlement***

- 3 First and foremost, the *Code de procédure pénale* will be applicable if the Regulation makes a reference to national, French law. The structure is as follows:

**Criminal Procedure Code/*Code de Procédure pénale***

***Legislative part*** (Preliminary Articles to 937)

Preliminary title: General provisions (Articles 1 to 10-6)

**Book I:** Conduct of criminal policy, exercise of public action and instruction (Articles 11 to 230-53)

**Book II:** Jurisdictions (Articles 231 to 566)

**Book III:** Extraordinary remedies (Articles 567 to 626-1)

Book IV: Some special procedures (Articles 627 to 706-182)

**Book V:** Enforcement procedures (Articles 707 to 803-8)

**Book VI:** Provisions relating to overseas territories (Articles 804 to 937)

***Regulatory part*** – Decrees in Council of State (Articles R1 to R430)

***Regulatory part*** – Simple decrees (Articles D1 to D602)

Orders (Articles A1 to A59)

- 4 In addition to this Code all the other Codes, which were mentioned above under III.

See → Sources of law contain the applicable provisions. Thus, the Tax Code/*Code d'impôts*, the Code for the organization of the judiciary/*Code de l'organisation judiciaire* and the Customs Code/*Codes des douanes* should be mentioned.

**Competences of the prosecutors/EDPs in France**

**Code of Criminal Procedure**

**Art. 696-108 CPC<sup>35</sup>**

The European Delegated Prosecutors are competent throughout the national territory to search for, prosecute and bring to trial the perpetrators and accomplices of criminal offenses affecting the financial interests of the European Union mentioned in Articles 4,

<sup>35</sup> Art. 696-108. CPP

Les procureurs européens délégués sont compétents sur l'ensemble du territoire national pour rechercher, poursuivre et renvoyer en jugement les auteurs et complices des infractions pénales portant atteinte aux intérêts financiers de l'Union européenne mentionnées aux articles 4, 22, 23 et 25 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen, qui sont commises après le 20 novembre 2017.

22, 23 and 25 of the Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation regarding the creation of the European Public Prosecutor's Office, which are committed after 20 November 2017.

#### **Art. 696-109 CPC<sup>36</sup>**

For offenses falling within their jurisdiction, the European Delegated Prosecutors exercise, in application of Articles 4 and 13 of the aforementioned Council Regulation (EU) 2017/1939 of 12 October 2017, the powers of the Public Prosecutor and the General Prosecutor at the court of appeal, including for the application of Articles 12, 12-1, 225 and 229-1 of this code and for the exercise of remedies. 'Article 30, the first sentence of article 33, the first four paragraphs of article 35, articles 36, 37, 39-1, 39-2 and 40-3, the third paragraph of article 41 and article 44 are not applicable. For the application of Article 695-2, the European Delegated Prosecutor may set up a joint investigation team with the consent of the other member state (s) concerned, after having informed the Minister of Justice thereof.

#### **Customs Code**

**Section 344-1 Customs Code<sup>37</sup>** [Amended by LAW n°2021-1729 of December 22, 2021 - art. 52] In accordance with the provisions of article 696-111 of the code of criminal procedure, the reports provided for in article 24 of regulation (EU) 2017/1939 of the Council of October 12 2017 implementing enhanced cooperation concerning the creation of the European Public Prosecutor's Office are, if they relate to offenses provided for by this code, sent to the European Delegated Prosecutor either directly or through the competent public prosecutor, himself informed by customs officers on the basis of the second paragraph of Article 40 of the Code of Criminal Procedure.

Informed by custom officers

Informed on the basis of art. 40 alin. 2 CPC

<sup>36</sup> **Art. 696-109. CPP**

Pour les infractions relevant de leur compétence, les procureurs euro-péens délégués exercent, en application des articles 4 et 13 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 précité, les attributions du procureur de la République et du procureur général près la cour d'appel, y compris pour l'application des articles 12, 12-1, 225 et 229-1 du présent code et pour l'exercice des voies de recours. « L'article 30, la première phrase de l'article 33, les quatre premiers alinéas de l'article 35, les articles 36, 37, 39-1, 39-2 et 40-3, le troisième alinéa de l'article 41 et l'article 44 ne sont pas applicables. Pour l'application de l'article 695-2, le procureur européen délégué peut constituer une équipe commune d'enquête avec le consentement du ou des autres Etats membres concernés, après en avoir informé le ministre de la justice.

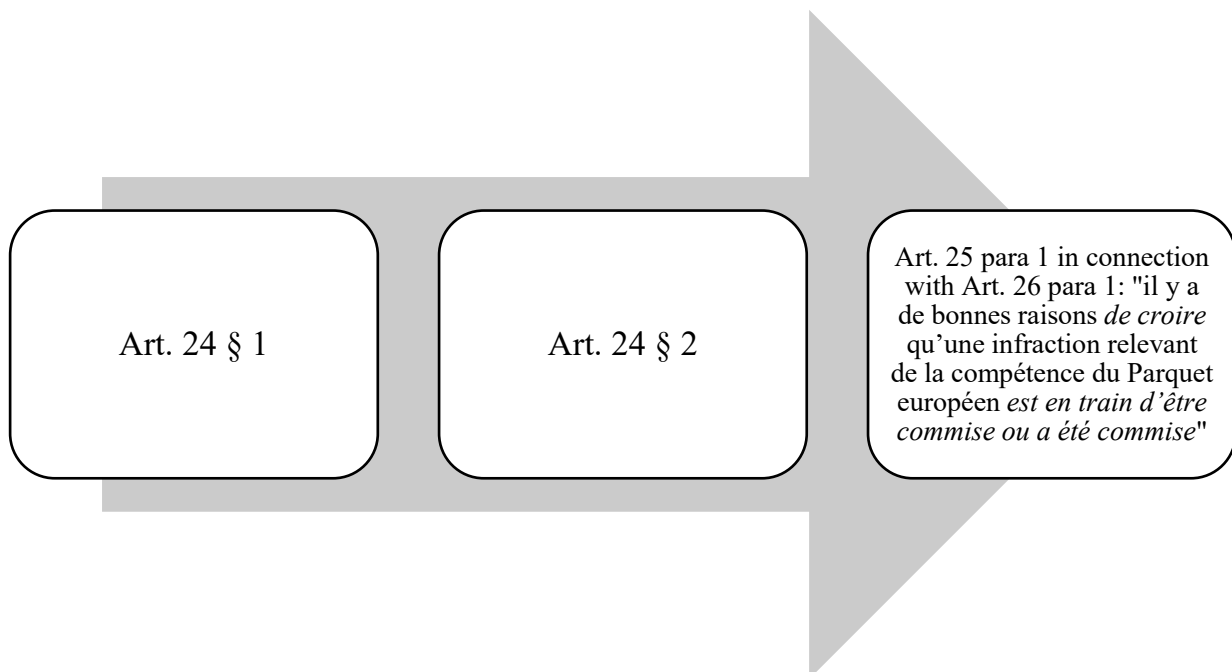
<sup>37</sup> **Article 344-1 Codes des douanes** Conformément aux dispositions de l'article 696-111 du code de procédure pénale, lorsqu'ils portent sur des infractions prévues par le présent code, les signalements prévus à l'article 24 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen sont adressés au procureur européen délégué soit directement, soit par l'intermédiaire du procureur de la République compétent, lui-même informé par les agents des douanes sur le fondement du second alinéa de l'article 40 du code de procédure pénale.

**b) The opening of an investigation/L'ouverture d'une enquête**

**aa. Indications of a criminal PIF offence/Signes d'une infraction de loi pénale PIF**

5 The information about a PIF offence can arrive at the EPPO headquarters in at least two main ways. The first one is stipulated by Art. 24 para 1 EPPO Regulation. The second is described in Art. 24 para 2 EPPO Regulation. Thus supranational law determines the transfer of information that may constitute a PIF offence according to French PIF law, i.e. the harmonized PIF Directive Implementation legal area. This process can be visualized as follows:

6 *Figure 2 Transfer of information to the French EDPs*



7 - Art. 24 § 1: information to the European Public Prosecutor's Office when a national investigation has not yet been opened, by the institutions, bodies, offices and agencies of the European Union and the authorities competent under the applicable national law<sup>38</sup>. In this respect, a note from the French authorities provides that these are Judicial authorities (judges and prosecutors). Any constituted authority, public officer or civil servant who, in the exercise of his or her duties, acquires jurisdiction over an offence falling within the material competence of the European Public Prosecutor's Office.<sup>38</sup>

<sup>38</sup> See <https://www.eppo.europa.eu/sites/default/files/2021-11/10-FR.pdf>. information du parquet européen quand il n'y a pas encore d'enquête nationale ouverte, par les institutions, les organes et organismes de l'Union européenne et les autorités compétentes en vertu du droit national applicable ». À ce titre, une note des autorités françaises prévoient qu'il s'agit

- Des autorités judiciaires (les juges du siège et du parquet)
- De toute autorité constituée, tout officier public ou fonctionnaire qui, dans l'exercice de ses fonctions acquiert la compétence d'une infraction relevant de la compétence matérielle du parquet européen.

- Art. 24 § 2: implementation of the right of evocation when an investigation is already opened by a competent national judicial or law enforcement authority.<sup>39</sup>

**Caption & Explication:** The information depicted in the figure above stem from the French Government.<sup>40</sup> 8

The figure is just an ideal representation of the ideas of the Union legislator. In the French criminal justice system the EDPs have integrated the EPPO into the „applications of the Ministry of Justice, such as Cassiopée or the digital criminal procedure”<sup>41</sup>. 9

Since 2022 the French police authorities will initiate a criminal proceeding digitally. This initiative was a long-planned step towards digitization of the French criminal justice.<sup>42</sup> 10

**The penal/judicial investigation phase in PIF offences in France as described by LOI 2020-1672 n°/“L’enquête/l’instruction pénale en matière d’infractions portant atteinte aux intérêts financiers de l’Union/PIF”):<sup>43</sup> 11**

#### ***Le signalement au Procureur/Reporting to the Prosecutor***

**Art. 696-111 CPC<sup>44</sup>** The reports provided for in 1 to 3 and 5 of Article 24 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation concerning the creation of the European Public Prosecutor’s Office are sent to the European Public Prosecutor’s Office by the intermediary of the competent public prosecutor, himself informed on the basis of article 19, the second paragraph of article 40 or article 80 of this code.

<sup>39</sup> Mise en œuvre du droit d’évocation quand une enquête est déjà ouverte par une autorité judiciaire ou répressive compétente nationale.

<sup>40</sup> See <https://www.eppo.europa.eu/sites/default/files/2021-11/10-FR.pdf>. Accessed 31 May 2024.

<sup>41</sup> See Thierry 2021.

<sup>42</sup> Ministère de la Justice, <http://www.justice.gouv.fr/justice-penale-11330/dematerialisation-de-la-procedure-penale-33617.html>; Depay, Procédure Pénale Numérique: Où En Est-On ? Réponses Avec Haffide Boulakras, Directeur du Programme, <https://www.village-justice.com/articles/procedure-penale-numerique-est,37888.html>.

<sup>43</sup> This (early, investigative) phase can acc. to Christodoulou/Schneider, RSC 2021, 593 (601) be called “L’avènement d’un cadre d’enquête de police européenisé”/ The awakening of an Europeanised Police Investigation Framework.

<sup>44</sup> **Art. 696-11 CPP** Les signalements prévus aux 1 à 3 et au 5 de l’article 24 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen sont adressés au Parquet européen par l’intermédiaire du procureur de la République compétent, lui même informé sur le fondement de l’article 19, du second alinéa de l’article 40 ou de l’article 80 du présent code.

**Art. 19 CPC [Judicial police]<sup>45</sup>**

Judicial police officers are required to inform the public prosecutor without delay of crimes, misdemeanours and contraventions of which they are aware. As soon as their operations are closed, they must send him directly the original as well as a copy of the minutes they have drawn up; all deeds and documents relating thereto are sent to it at the same time; the objects seized are made available to him.

The reports must state the status of judicial police officer of their writer

The public prosecutor may authorize that the minutes, deeds and documents be sent to him in electronic form.

**Art. 28-2 CPC<sup>46</sup>** I. - Category A and B tax officials, specially designated by order of the Ministers of Justice and Budget, issued after approval by a commission whose com-

<sup>45</sup> **Art. 19 CPP [police judiciaire]** Les officiers de police judiciaire sont tenus d'informer sans délai le procureur de la République des crimes, délits et contraventions dont ils ont connaissance. Dès la clôture de leurs opérations, ils doivent lui faire parvenir directement l'original ainsi qu'une copie des procès-verbaux qu'ils ont dressés ; tous actes et documents y relatifs lui sont en même temps adressés ; les objets saisis sont mis à sa disposition.

Les procès-verbaux doivent énoncer la qualité d'officier de police judiciaire de leur rédacteur.

Le procureur de la République peut autoriser que les procès-verbaux, actes et documents lui soient transmis sous forme électronique.

<sup>46</sup> **Art. 28-2 I.** - Des agents des services fiscaux de catégories A et B, spécialement désignés par arrêté des ministres chargés de la justice et du budget, pris après avis conforme d'une commission dont la composition et le fonctionnement sont déterminés par décret en Conseil d'Etat, peuvent être habilités à effectuer des enquêtes judiciaires sur réquisition du procureur de la République ou sur commission rogatoire du juge d'instruction.

Ces agents ont compétence pour rechercher et constater, sur l'ensemble du territoire national, les infractions prévues par les articles 1741 et 1743 du code général des impôts et le blanchiment de ces infractions lorsqu'il existe des présomptions caractérisées que les infractions prévues par ces articles résultent d'une des conditions prévues aux 1<sup>o</sup> à 5<sup>o</sup> du II de l'article L. 228 du livre des procédures fiscales, ainsi que les infractions qui leur sont connexes.

II. - Les agents des services fiscaux désignés dans les conditions prévues au I doivent, pour mener des enquêtes judiciaires et recevoir des commissions rogatoires, y être habilités personnellement en vertu d'une décision du procureur général.

La décision d'habilitation est prise par le procureur général près la cour d'appel du siège de leur fonction. Elle est accordée, suspendue ou retirée dans des conditions fixées par décret en Conseil d'Etat.

Dans le mois qui suit la notification de la décision de suspension ou de retrait de l'habilitation, l'agent concerné peut demander au procureur général de rapporter cette décision. Le procureur général doit statuer dans un délai d'un mois. A défaut, son silence vaut rejet de la demande. Dans un délai d'un mois à partir du rejet de la demande, l'agent concerné peut former un recours devant la commission prévue à l'article 16-2 du présent code. La procédure applicable devant cette commission est celle prévue par l'article 16-3 et ses textes d'application.

III. - Les agents des services fiscaux habilités dans les conditions prévues au II sont placés exclusivement sous la direction du procureur de la République, sous la surveillance du procureur général et sous le contrôle de la chambre de l'instruction dans les conditions prévues par les articles 224 à 230.

IV. - Lorsque, sur réquisition du procureur de la République ou sur commission rogatoire d'un juge d'instruction, les agents des services fiscaux habilités dans les conditions prévues au II du présent article procèdent à des enquêtes judiciaires, ils disposent des mêmes prérogatives et obligations que celles attribuées aux officiers de police judiciaire, y compris lorsque ces prérogatives et obligations sont confiées à des services ou unités de police ou de gendarmerie spécialement désignés.

Ces agents sont autorisés à déclarer comme domicile l'adresse du siège du service dont ils dépendent.

V. - Les agents des services fiscaux habilités dans les conditions prévues au II du présent article ne peuvent, à peine de nullité, exercer d'autres attributions ou accomplir d'autres actes que ceux prévus par le présent code dans le cadre des faits dont ils sont saisis par le procureur de la République ou toute autre autorité judiciaire.

position and operation are determined by decree in the Council of State, may be authorised to carry out judicial investigations at the request of the public prosecutor or on the basis of a letter of request from the investigating judge.

These agents are competent to investigate and record, throughout the national territory, the offences provided for by Articles 1741 and 1743 of the General Tax Code and the laundering of these offences when there is a strong presumption that the offences provided for by these articles result from one of the conditions provided for in 1° to 5° of II of Article L. 228 of the Book of Tax Procedures<sup>47</sup>, as well as offences related to them.

II. - The tax service agents designated under the conditions provided for in I must, in order to conduct judicial investigations and receive letters rogatory, be personally authorised by virtue of a decision by the public prosecutor.

The authorisation decision shall be taken by the public prosecutor at the court of appeal of their place of work. It shall be granted, suspended or withdrawn under conditions laid down by decree in the Council of State.

Within one month of being notified of the decision to suspend or withdraw the authorisation, the official concerned may ask the public prosecutor to revoke the decision. The public prosecutor must give a ruling within one month. Failing this, his silence is deemed to be a rejection of the request. Within one month of the rejection of the request, the official concerned may lodge an appeal with the committee provided for in Article 16-2 of this Code. The procedure applicable before this committee shall be that laid down in Article 16-3 and its implementing provisions.

III. - Tax officials authorised under the conditions set out in II shall be placed exclusively under the direction of the public prosecutor, under the supervision of the public prosecutor and under the control of the investigating chamber under the conditions set out in Articles 224 to 230.

IV. - When, at the request of the public prosecutor or on the basis of a rogatory commission from an investigating judge, tax agents authorised under the conditions provided for in II of this article carry out judicial investigations, they shall have the same prerogatives and obligations as those attributed to officers of the judicial police, including when these prerogatives and obligations are entrusted to specially designated police or gendarmerie services or units.

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VI. - Les agents des services fiscaux habilités dans les conditions prévues au II ne peuvent participer à une procédure de contrôle de l'impôt prévue par le livre des procédures fiscales pendant la durée de leur habilitation. Ils ne peuvent effectuer des enquêtes judiciaires dans le cadre de faits pour lesquels ils ont participé à une procédure de contrôle de l'impôt avant d'être habilités à effectuer des enquêtes. Ils ne peuvent, même après la fin de leur habilitation, participer à une procédure de contrôle de l'impôt dans le cadre de faits dont ils avaient été saisis par le procureur de la République ou toute autre autorité judiciaire au titre de leur habilitation.

<sup>47</sup> Conseil constitutionnel, Décision n° 2016-555 QPC du 22 juillet 2016.

These officers are authorised to declare as their domicile the address of the headquarters of the service to which they belong.

V. - The tax agents authorised under the conditions provided for in II of this article may not, on pain of nullity, exercise other powers or perform other acts than those provided for by this code in the context of the facts referred to them by the public prosecutor or any other judicial authority.

VI. - Tax officials authorised under the conditions set out in II may not take part in any tax inspection procedure provided for in the Book of Tax Procedures during the period of their authorisation. They may not carry out judicial investigations into matters in respect of which they have participated in a tax audit procedure before being authorised to carry out investigations. They may not, even after the end of their authorisation, take part in a tax audit procedure in relation to facts which were referred to them by the public prosecutor or any other judicial authority under their authorisation.

**Art. 40 CPC**<sup>48</sup> The public prosecutor shall receive complaints and denunciations and shall assess the action to be taken in accordance with the provisions of Article 40-1.

Any constituted authority, public officer or civil servant who, in the performance of his duties, acquires knowledge of a crime or offence shall be required to notify the public prosecutor without delay and to transmit to this magistrate all information, reports and acts relating thereto

**Art. 80 CPC**<sup>49</sup> I.- The examining magistrate can only inform by virtue of an indictment from the public prosecutor.

<sup>48</sup> **Art. 40** Le procureur de la République reçoit les plaintes et les dénonciations et apprécie la suite à leur donner conformément aux dispositions de l'article 40-1.

Toute autorité constituée, tout officier public ou fonctionnaire qui, dans l'exercice de ses fonctions, acquiert la connaissance d'un crime ou d'un délit est tenu d'en donner avis sans délai au procureur de la République et de transmettre à ce magistrat tous les renseignements, procès-verbaux et actes qui y sont relatifs.

<sup>49</sup> **Art. 80 CPP**

I.-Le juge d'instruction ne peut informer qu'en vertu d'un réquisitoire du procureur de la République.

Le réquisitoire peut être pris contre personne dénommée ou non dénommée.

Lorsque des faits, non visés au réquisitoire, sont portés à la connaissance du juge d'instruction, celui-ci doit immédiatement communiquer au procureur de la République les plaintes ou les procès-verbaux qui les constatent. Le procureur de la République peut alors soit requérir du juge d'instruction, par réquisitoire supplétif, qu'il informe sur ces nouveaux faits, soit requérir l'ouverture d'une information distincte, soit saisir la juridiction de jugement, soit ordonner une enquête, soit décider d'un classement sans suite ou de procéder à l'une des mesures prévues aux articles 41-1 à 41-3, soit transmettre les plaintes ou les procès-verbaux au procureur de la République territorialement compétent. Si le procureur de la République requiert l'ouverture d'une information distincte, celle-ci peut être confiée au même juge d'instruction, désigné dans les conditions prévues au premier alinéa de l'article 83.

En cas de plainte avec constitution de partie civile, il est procédé comme il est dit à l'article 86. Toutefois, lorsque de nouveaux faits sont dénoncés au juge d'instruction par la partie civile en cours d'information, il est fait application des dispositions de l'alinéa qui précède.

II.-En matière criminelle, lorsque la gravité ou la complexité de l'affaire le justifie ainsi que lorsqu'il requiert une cosaisine, le procureur de la République près le tribunal judiciaire au sein duquel il n'y a pas de pôle de l'instruction



The indictment can be taken against a named or unnamed person.

When facts not referred to in the indictment are brought to the attention of the investigating judge, the latter must immediately communicate to the public prosecutor the complaints or the official reports establishing them. The public prosecutor can then either require the investigating judge, by supplementary indictment, to provide information on these new facts, or request the opening of separate information, or seize the trial court, or order an investigation, either to decide on a classification without further action or to proceed with one of the measures provided for in articles 41-1 to 41-3, or send complaints or reports to the territorially competent public prosecutor. If the public prosecutor requires the opening of a separate investigation, this may be entrusted to the same investigating judge, appointed under the conditions provided for in the first paragraph of Article 83.

In the event of a complaint with the constitution of a civil party, the procedure is as stated in article 86. However, when new facts are reported to the investigating judge by the civil party in the process of being informed, of the provisions of the preceding paragraph.

II.- In criminal matters, when the seriousness or the complexity of the case justifies it as well as when it requires a cosaisine, the public prosecutor at the judicial court within

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est compétent pour requérir l'ouverture d'une information devant les magistrats du pôle territorialement compétents pour les infractions relevant de sa compétence en application de l'article 43, y compris en faisant déférer devant eux les personnes concernées.

Dans les cas prévus au premier alinéa, le réquisitoire introductif peut également être pris par le procureur de la République près le tribunal judiciaire au sein duquel se trouve le pôle, qui est à cette fin territorialement compétent sur l'ensemble du ressort de compétence de ce pôle, y compris pour diriger et contrôler les enquêtes de police judiciaire.

Le procureur de la République près ce tribunal judiciaire est seul compétent pour suivre le déroulement des informations visées aux alinéas précédents jusqu'à leur règlement.

En cas de renvoi devant la juridiction de jugement, l'affaire est renvoyée, selon le cas, le tribunal de police, le tribunal correctionnel, le tribunal pour enfants ou la cour d'assises initialement compétents.

II bis.-Le procureur de la République près le tribunal judiciaire dans lequel il n'y a pas de juge d'instruction est compétent pour requérir l'ouverture d'une information devant le ou les juges d'instruction du tribunal judiciaire compétents en application du deuxième alinéa ou des quatrième et avant-dernier alinéas de l'article 52-1, y compris en faisant déférer devant eux les personnes concernées.

Dans les cas prévus au premier alinéa du présent II bis, le réquisitoire introductif peut également être pris par le procureur de la République près le tribunal judiciaire au sein duquel se trouvent le ou les juges d'instruction et qui est à cette fin territorialement compétent sur l'ensemble du ressort de compétence de sa juridiction en matière d'information, y compris pour diriger et contrôler les enquêtes de police judiciaire.

Le procureur de la République près ce tribunal judiciaire est seul compétent pour suivre le déroulement des informations mentionnées aux deux premiers alinéas du présent II bis jusqu'à leur règlement.

En cas de renvoi devant la juridiction de jugement, l'affaire est renvoyée, selon le cas, devant le tribunal de police, le tribunal correctionnel, le tribunal pour enfants ou la cour d'assises initialement compétents.

III.-Si le procureur de la République près le tribunal judiciaire dans lequel il y a un ou plusieurs juges d'instruction ou dans lequel il y a un pôle de l'instruction constate qu'une personne est déférée devant lui en vue de l'ouverture d'une information en application du deuxième alinéa du II ou en application du deuxième alinéa du II bis et qu'il estime que ne doit être ouverte aucune information ou que ne doit être ouverte aucune information relevant de la compétence du pôle ne doit être ouverte, il peut, avant de transmettre le dossier de la procédure au procureur de la République territorialement compétent, requérir le placement sous contrôle judiciaire ou en détention provisoire de la personne selon les modalités prévues par le dernier alinéa de l'article 394 et l'article 396. Si la personne est placée en détention provisoire, elle doit comparaître devant le procureur de la République territorialement compétent au plus tard le cinquième jour ouvrable suivant. A défaut, elle est mise d'office en liberté.

which there is no pole of the The instruction is competent to request the opening of an investigation before the magistrates of the pole territorially competent for the offenses falling within its competence pursuant to article 43, including by bringing before them the persons concerned.

In the cases provided for in the first paragraph, the introductory indictment may also be taken by the public prosecutor at the judicial court within which the centre is located, which is for this purpose territorially competent over the entire jurisdiction of this pole, including to direct and control judicial police investigations.

The public prosecutor attached to this judicial court is solely competent to follow the progress of the information referred to in the preceding paragraphs until their settlement. In the event of referral to the trial court, the case is referred, as the case may be, to the police court, the criminal court, the juvenile court or the assize court initially competent. II bis. - The public prosecutor at the judicial court in which there is no investigating judge is competent to request the opening of an investigation before the investigating judge or judges of the judicial court competent in application of the second paragraph or the fourth and penultimate paragraphs of Article 52-1, including by having the persons concerned brought before them.

In the cases provided for in the first paragraph of this II bis, the introductory indictment may also be taken by the public prosecutor at the judicial court within which the investigating judge or judges are located and which for this purpose is territorially competent over the entire jurisdiction of its jurisdiction in terms of information, including to direct and control investigations by the judicial police.

The public prosecutor attached to this judicial court is solely competent to follow the progress of the information mentioned in the first two paragraphs of this II bis until their settlement.

In the event of referral to the trial court, the case is referred, as the case may be, to the police court, the criminal court, the juvenile court or the assize court initially competent. If the person is placed in pre-trial detention, he must appear before the territorially competent public prosecutor no later than the fifth following working day. Otherwise, she is automatically released.

**bb. The framework of Investigations in the French System/ *Le cadre des enquêtes des PEDs en France***

**(1) Investigations under ordinary, common law**

12 The following investigations are investigations that are generally applicable according to the *droit commun*.

**(a) The *flagrante delicto* investigation**

13 The *flagrante delicto* investigation is distinguished from the preliminary investigation by the binding and coercive means that the law provides to police officers in the search

for evidence of the offence. The flagrante delicto investigation is governed by Articles 53 to 74-2 of the CPC, while the preliminary investigation is subject to Articles 75 to 78 of the CPC.

Article 53 of the CPC determines the **scope of the flagrante delicto** investigation. In this case it must be checked whether the criteria for *flagrante delicto* are eventually met. Three criteria are necessary to open an investigation in flagrante delicto. **14**

There are two **main legal criteria** (the *time criterion* and criterion relating to seriousness) and a jurisprudential criterion (*criterion of appearance*). **15**

With regard to the **time criterion**, an investigation in flagrante delicto can only be opened if either the offence is being committed or has just been committed (flagrant offence), or, in the immediate vicinity of the action, the suspected person is pursued by public clamour or is found in possession of objects or presents traces or evidence suggesting that he or she has taken part in the crime or misdemeanour punishable by imprisonment (deemed flagrant offence). **16**

With regard to the **criterion of seriousness**, according to Article 67 of the Criminal Procedure Code “the provisions of Articles 54 to 66 are applicable in the case of a flagrant offence in all cases where the law provides for a prison sentence”, which means that there must be a crime or an offence punishable by imprisonment. **17**

Regarding the criterion of appearance, the Court requires that judicial police officers be aware of apparent indications of criminal behaviour revealing the offence (*Cass. crim. 22 Jan. 1953 Isnard*). **18**

If the three criteria are met, a flagrante delicto investigation can be opened. It may last 8 days and the acts must be carried out without interruption (art. 53 al 2 CPP). **19**

Art. 53 al. 3 CPP states that „[w]hen investigations [are] necessary to establish the truth about a crime or an offence punishable by a sentence of five years or more of imprisonment cannot be deferred, the public prosecutor may decide to extend the investigation, under the same conditions, for a maximum period of eight days. **20**

If the three criteria are not or no longer met, a preliminary investigation must be opened. The preliminary investigation will be described next. **21**

### **(b) The preliminary investigation**

The part of the CPC, which relates to the preliminary investigation is enshrined in art. 75 to 78 CPC. If the criteria of a flagrance investigation are not met (see above), a preliminary investigation must be opened. **22**

Information from the national expert: Art. 75-3 CPP limits the duration of the preliminary investigation since the reform of the law for confidence in the judicial institution (loi du 22 December 2021). **23**

**(2) The specialized procedure for organized crime/*La procédure dérogatoire liée à la criminalité organisée***

**24** If the offence is considered as organised crime, i.e. if it falls within the lists of 706-73 CPP or 706-73-1 CPP or 706-74 CPP, the special i.e. derogatory rules may also apply. These rules can be counted from the French point-of-view to common law investigations, but also to the normal investigation.

**(a) Rules on the derogatory investigation in organised crime/*Les règles dérogatoires en matière de criminalité organisée***

**25** The Application of these specific provisions is exclusively **limited to organised crime**. It is a specialized investigation. The definition of organized crime is presented by the French legislator.-There is organised crime if the offence belongs to one of the three lists in the CPC/*Si l'infraction relève de la criminalité organisée, des règles dérogatoires peuvent être mises en œuvre. Le législateur français les a listées:*

- 26**
- Art. 706-73 CPP: application of the entire derogatory regime,
  - Art. 706-73-1 CPP: application of the entire derogatory regime except for derogatory police custody (Art. 706-88 CPP).
  - Art. 706-74 CPP: application of the derogatory rules only to surveillance and protective measures.

**(b) The lists of Art. 706-73, 706-73-1 et 706-74 CPC**

The lists contain important clarifications for the procedures in PIF cases.

27

**(c) Relevant PIF offences**

- organized gang fraud,
- breach of trust in an organized gang,
- embezzlement and diversion of goods in an organized gang,
- corruption in organized gangs,
- (organized money laundering with PIF money)<sup>50</sup>

28

**Art. 706-73<sup>51</sup>**

The procedure applicable to the investigation, prosecution, investigation and judgment of the following crimes and misdemeanours is that provided for by this code, subject to the provisions of this title:

1°–8° [...]

9° Crime of destruction, degradation and deterioration of property committed in an organized gang provided for by article 322-8 of the penal code;

[...]

14° Offenses of money laundering provided for by articles 324-1 and 324-2 of the criminal code, or concealment provided for by articles 321-1 and 321-2 of the same code, of the proceeds, income, things resulting from the offenses mentioned at 1° to 13°;

15° Offenses of association of criminals provided for by article 450-1 of the penal code, when their object is the preparation of one of the offenses mentioned in 1° to 14° and 17°;

[...]

29

<sup>50</sup> See Thierry 2021: “Nous avons également consacré nos premiers mois à rencontrer nos nouveaux interlocuteurs: la Direction générale des finances publiques, les douanes, *Tracfin [Traitement du renseignement action contre les circuits financiers clandestins]*, la Cour des comptes, et bien sûr tous les services d’enquête judiciaire. Et nous avons enfin commencé à nous constituer un portefeuille de dossiers et à ouvrir nos premières enquêtes. »

<sup>51</sup> **Art. 706-73 CPP**

La procédure applicable à l'enquête, la poursuite, l'instruction et le jugement des crimes et des délits suivants est celle prévue par le présent code, sous réserve des dispositions du présent titre:

1°–8° [...]

9° Crime de destruction, dégradation et détérioration d'un bien commis en bande organisée prévu par l'article 322-8 du code pénal ; 10° Crimes en matière de fausse monnaie prévus par les articles 442-1 et 442-2 du code pénal ; [...]

14° Délits de blanchiment prévus par les articles 324-1 et 324-2 du code pénal, ou de recel prévus par les articles 321-1 et 321-2 du même code, du produit, des revenus, des choses provenant des infractions mentionnées aux 1° à 13° ;

15° Délits d'association de malfaiteurs prévus par l'article 450-1 du code pénal, lorsqu'ils ont pour objet la préparation de l'une des infractions mentionnées aux 1° à 14° et 17° ;

16°–20° [...].

**Art. 706-73-1 CPC<sup>52</sup>**

This Title, with the exception of Article 706-88, is also applicable to the investigation, prosecution, investigation and judgment of the following offences:

1° Offense of fraud in an organized gang, provided for in the last paragraph of Article 313-2 of the Criminal Code, offense of attacking the automated processing systems of personal data implemented by the State committed in an organized gang, provided for in article 323-4-1 of the same code and crime of escape committed in an organized gang provided for in the second paragraph of article 434-30 of the said code;

2° [...]

3° Offenses of money laundering, provided for in article 324-1 of the penal code, or concealment, provided for in articles 321-1 and 321-2 of the same code, of the proceeds, income or things resulting from the offenses mentioned in 1° and 2° of this article;

3° bis Money laundering offenses provided for in Article 324-2 of the Criminal Code, with the exception of those mentioned in 14° of Article 706-73 of this Code;

4° Offenses of criminal association, provided for in Article 450-1 of the Penal Code, when their object is the preparation of one of the offenses mentioned in 1° to 3° of this article;

5°–11° [...]

**Art. 706-74 CPC<sup>53</sup>**

Where provided by law, the provisions of this title also apply:

1° Crimes and misdemeanours committed by an organized gang, other than those falling under articles 706-73 and 706-73-1;

<sup>52</sup> Le présent titre, à l'exception de l'article 706-88, est également applicable à l'enquête, à la poursuite, à l'instruction et au jugement des délits suivants:

1° Délit d'escroquerie en bande organisée, prévu au dernier alinéa de l'article 313-2 du code pénal, délit d'atteinte aux systèmes de traitement automatisé de données à caractère personnel mis en œuvre par l'Etat commis en bande organisée, prévu à l'article 323-4-1 du même code et délit d'évasion commis en bande organisée prévu au second alinéa de l'article 434-30 dudit code ;

2° [...]

3° Délits de blanchiment, prévus à l'article 324-1 du code pénal, ou de recel, prévus aux articles 321-1 et 321-2 du même code, du produit, des revenus ou des choses provenant des infractions mentionnées aux 1° et 2° du présent article ;

3° bis Délits de blanchiment prévus à l'article 324-2 du code pénal, à l'exception de ceux mentionnés au 14° de l'article 706-73 du présent code ;

4° Délits d'association de malfaiteurs, prévus à l'article 450-1 du code pénal, lorsqu'ils ont pour objet la préparation de l'une des infractions mentionnées aux 1° à 3° du présent article ;

5° –11° [...].

<sup>53</sup> **Article 706-74 CPP**

Lorsque la loi le prévoit, les dispositions du présent titre sont également applicables:

1° Aux crimes et délits commis en bande organisée, autres que ceux relevant des articles 706-73 et 706-73-1 ;


2° Aux délits d'association de malfaiteurs prévus par le deuxième alinéa de l'article 450-1 du code pénal autres que ceux relevant du 15° de l'article 706-73 ou du 4° de l'article 706-73-1 du présent code.

2° Offenses of criminal association provided for by the second paragraph of Article 450-1 of the Criminal Code other than those falling under 15° of Article 706-73 or 4° of Article 706-73- 1 of this code.

### (3) Preparatory Instruction/*L'instruction préparatoire*

#### Art. 79<sup>54</sup>

Preparatory instruction is obligatory in matters of crime; except for special provisions, it is optional in matters of offence; it may also take place in respect of contraventions if the public prosecutor so requires pursuant to Article 44.

*Nota bene:* This provisions is not applicable in case of the actions of the French PED. They may investigate under a specific-investigation, the so-called *l'enquête hybride*. 

The previous presentation was limited to the familiar forms of the investigation in France. However, the legislature has passed an EPPO adaptation law (see → Sources of Law), which will be explained below. 30

This new investigation framework mechanism is decisive in everyday use for the EDPs and is also very interesting in terms of legal academic dogma for criminal law. 31

Compared to other EPPO participating countries, France has introduced a kind of new investigative procedure category. Basically, investigations in France are called *l'enquête*. There are different types of this procedure, each of which is required. 32

### (4) The new hybrid investigation/*L'enquête hybride (création d'une enquête hybride pour le parquet européen)*

Derogatory investigation and prosecution with the EDP i.e. **hybrid investigation** is initiated when the prosecutor wants to use the powers of the investigating judge and it is not only in matters of organized crime: 33

**Art. 696-114.**<sup>55</sup> However, when it is necessary either to indict a person or to place the person under the status of an assisted witness, or to have recourse to acts of investigation which can only be ordered during an investigation, because of their duration or their nature, the European Delegated Prosecutor conducts the investigations in accordance with the provisions applicable to the investigation, subject to the provisions of section 3 of this chapter.

<sup>54</sup> Art. 79 CPP L'instruction préparatoire est obligatoire en matière de crime ; sauf dispositions spéciales, elle est facultative en matière de délit ; elle peut également avoir lieu en matière de contravention si le procureur de la République le requiert en application de l'article 44.

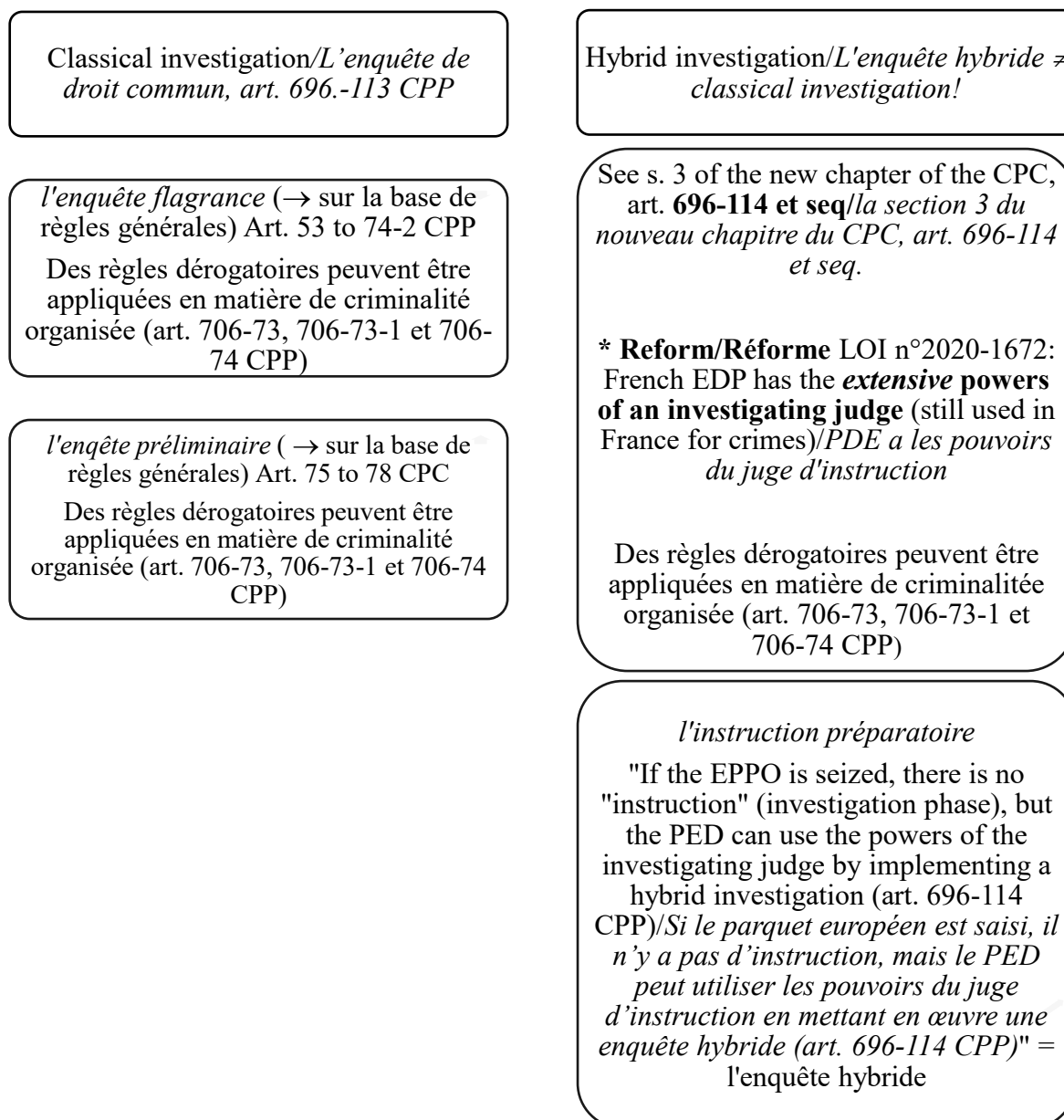
<sup>55</sup> Art. 696-114.-Toutefois, lorsqu'il est nécessaire soit de mettre en examen une personne ou de la placer sous le statut de témoin assisté, soit de recourir à des actes d'investigation qui ne peuvent être ordonnés qu'au cours d'une instruction, en raison de leur durée ou de leur nature, le procureur européen délégué conduit les investigations conformément aux dispositions applicables à l'instruction, sous réserve des dispositions de la section 3 du présent chapitre .

**(5) Visualization of the French system/*Visualisation du système français schématiquement***

- 34** Summarizing this whole situation again the following figure can help to deduce the French peculiarities for the question on how to start an EPPO investigation:
- 35** The diagram below contains several boxes that distinguish and differentiate between the **various types of investigation procedure(s)**. The change initialized by the establishment of the EPPO is illustrated graphically so that it can be categorised within the existing systems and the intermediate position becomes clear.
- 36** The French legislator has amended and supplemented the existing system without changing it completely.
- 37** The following frameworks are distinguished:
- Classical investigation/L'enquête de droit commun, art. 696.-113 CPP
  - l'enquête flagrante (sur la base de règles générales)
  - l'enquête préliminaire ( sur la base de règles générales)
  - l'instruction préparatoire
  - Hybrid investigation/L'enquête hybride classical investigation.



*Figure 3 France: Overview for Art. 26 EPPO Regulation – The distinction between the different criminal investigation options/phases/La distinction entre les différentes options/phases d'enquête*



Source: The authors.

**cc. Determination of the competent European Public Prosecutor/A: *La détermination du procureur européen compétent***

**(1) The Union law standards/*Les critères européens***

**38** First of all, it must be determined whether the French EDPs are competent at all. This depends on the criteria of the regulation. In addition, there are rules issued by the EPPO Chamber (e.g. → for Art. 27:Right of evocation).

**(2) The reassignment of the case by the competent permanent chamber/*La réattribution de l'affaire par la chambre permanente compétente***

**39** If the EDP has not initiated an investigation the permanent chamber to which the case has been allocated shall by virtue of Art. 26 para 3 EPPO Regulation, under the conditions set out in paragraph 1, instruct a European Delegated Prosecutor to initiate an investigation.

**(3) Information to the competent authorities by the European Public Prosecutor's Office/*L'information des autorités compétentes par le parquet européen***

**40** In a standard situation the EDP must examine the following details, for example in an expert opinion or a conceptual preliminary examination in his division or office: the material criminal provisions, his/her jurisdiction (e.g. territory), the Regulation thresholds i.e. « €-transition thresholds » of the Regulation and special orders for the procedure of the Luxembourg Chamber. Art. 26 stipulates that the EDPs shall initiate an investigation « without prejudice to the rules set out in Article 25(2) and (3), [...] and note this in the case management system ». Either way the general rules follow from the Union legal area, see art. 24 et seq. EPPO Regulation and apply for Art. 26 para 2.

The EDP must check the following conditions:

Article 22 Compétence matérielle du Parquet européen

41

*Sources and national sections 2 PIF Directive Implementation Navigator/ Navigateur de mise en œuvre de la directive PIF*



Source: The authors.

Furthermore the territorial competence needs to be provided:

42

Article 23 Compétences territoriale et personnelle du Parquet européen

**SECTION 2 Exercice de la compétence du parquet européen**

Article 24 **Communication, enregistrement et vérification d'informations**

43

Art. 24 describes the flow of information that is necessary for investigations to start at all.

Article 25 Exercice de sa compétence par le Parquet européen

44

Art. 25 deals with certain limits and values that must be met for the EPPO to actually be able to exercise its competence. Therefore, Art. 26, 27 and other articles regularly refer to Art. 25.

It is important as an EDP to always look at the EPPO's working arrangements that the Secretariat and the Legal Department as well as the Chief Prosecutor conclude together with state authorities. France has the following: European Public Prosecutor's Office (EPPO) Working Arrangement with the Tracfin, France's financial intelligence unit (FIU), 26 October 2023<sup>56</sup> and working arrangement with France's Treasury and Inter-ministerial Anti-Fraud Coordination Mission.<sup>57</sup>

45

<sup>56</sup> See [https://www.eppo.europa.eu/sites/default/files/2023-10/WA\\_EPPO\\_TRACFIN\\_EN.pdf](https://www.eppo.europa.eu/sites/default/files/2023-10/WA_EPPO_TRACFIN_EN.pdf).

<sup>57</sup> See [https://www.eppo.europa.eu/sites/default/files/2024-01/Working\\_Arrangement\\_Version\\_EN.pdf](https://www.eppo.europa.eu/sites/default/files/2024-01/Working_Arrangement_Version_EN.pdf).

**(4) Competence of the EPPO, Art. 22 and 23 of the Regulation****(a) The PIF offences in French criminal law**

46 *Figure 4 The offences in national law by virtue of the French PIF offences Acquis (examples)*

CC offences	Custom Code offences
<ul style="list-style-type: none"> <li>• Book 3: Title I: Fraudulent appropriations (Articles 311-1 to 314-13), Chapter III: Fraud and related offenses (Articles 313-1 to 313-9)               <ul style="list-style-type: none"> <li>• Section 1: Fraud (Articles 313-1 to 313-3)</li> <li>• Section 2: Fraud-related offenses (Articles 313-5 to 313-6-2)</li> <li>• Section 3: Additional penalties applicable to natural persons and liability of legal persons (Articles 313-7 to 313-9)</li> </ul> </li> <li>• Book 3: Chapter IV: Diversion (Articles 314-1 to 314-13), Section 1: Breach of trust (Articles 314-1 to 314-4)               <ul style="list-style-type: none"> <li>• Art. 432-15</li> <li>• Art. 433-4</li> </ul> </li> <li>• Corruption offences: Art. 432-11, Art. 433-1, Art 435-1, Art. 435-3</li> <li>• Book 3: Title 2 Chapter IV: Money laundering (Articles 324-1 to 324-9)</li> </ul>	<ul style="list-style-type: none"> <li>• Offences of smuggling, fraudulent importation or exportation provided for in article 414-2 of the code of customs/Infractions de contrebande, d'importation ou d'exportation frauduleuse prévues à l'article 414-2 du code des douanes</li> </ul>

Source: The authors.

**(b) Art. 23 EPPO Regulation**

The EPPO is competent if:

47

- the criminal offenses were committed, in whole or in part, on the territory of one or more participating EU Member States;
- the criminal offenses were committed by a national of a participating EU Member State,
- the criminal offenses were committed by a person subject to the Staff Regulations or rules applicable to EU officials.<sup>58</sup>

**dd. The common law investigation initiated by a French EDP/ *L'enquête de droit commun ouverte par un PED français* (art. 696-113 CPP)**

**Art. 696-113 CPC [*l'enquête de droit commun*]<sup>59</sup>**

48

In proceedings within his competence, the Delegated European Public Prosecutor shall conduct investigations in accordance with the provisions applicable to the **investigation in flagrante delicto** or the **preliminary investigation** and the provisions of the Customs Code.

The prosecutor is the director of the investigation/*Le procureur est ici le directeur de l'enquête.*

49

*Sources and national sections 3 Art. 26 – The normal investigation*

50

→ Art. 696-13 CPP: <i>l'enquête de droit commun</i>		
<i>l'enquête de flagrance</i> [in flagrante delicto situation]	<i>l'enquête préliminaire</i> [preliminary investigation]	Special situation code des douanes [Customs Code]
Art. 53–74-2 CPP  EDP investigates together with the police judiciaire and conducts the concrete investigation.	Art. 75 <sup>1</sup> –to 78 CPC are Applicable.	Art. 28, 28-1, 28-2 CPC indicate and introduce special investigators in custom and tax matters.

<sup>58</sup> **Article 23 EPPO Regulation Compétences territoriale et personnelle du Parquet européen**

Le Parquet européen est compétent à l'égard des infractions visées à l'article 22, lorsque ces infractions:

- a) ont été commises en totalité ou en partie sur le territoire d'un ou de plusieurs États membres;
- b) ont été commises par un ressortissant d'un État membre, pour autant qu'un État membre soit compétent à l'égard de ces infractions lorsqu'elles sont commises en dehors de son territoire; ou
- c) ont été commises en dehors des territoires visés au point a) par une personne qui, au moment de l'infraction, était soumise au statut des fonctionnaires ou au régime applicable aux autres agents, pour autant qu'un État membre soit compétent à l'égard de ces infractions lorsqu'elles sont commises en dehors de son territoire.

<sup>59</sup> **Art. 696-113 CPP**

Dans les procédures relevant de sa compétence, le procureur européen délégué conduit les investigations conformément aux dispositions applicables à l'enquête de flagrance ou à l'enquête préliminaire et aux dispositions du code des douanes.

<p><b>Art. 17 al. 2<sup>60</sup></b> In the event of flagrant crimes and misdemeanours, they exercise the powers conferred on them by articles 53 to 67 .</p> <p><b>Art. 53 CPC<sup>61</sup></b> A crime or misdemeanour that is currently being committed or has just been committed shall be deemed to be flagrant. A crime or misdemeanour is also flagrant when, in the immediate vicinity of the action, the suspected person is pursued by public clamour, or is found in possession of objects, or presents traces or clues, suggesting that he has participated in the crime or misdemeanour.</p> <p>Following the observation of a crime or a flagrant offence, the investigation carried out under</p>	<p><b>Art. 17 al. 1<sup>64</sup></b> Judicial police officers exercise the powers defined in article 14; they receive complaints and denunciations; they carry out preliminary inquiries under the conditions provided for in Articles 75 to 78 .</p> <p><b>Art. 75 CPC<sup>65</sup></b> The judicial police officers and, under their supervision, the judicial police officers designated in Article 20 shall carry out preliminary investigations either on the instructions of the public prosecutor or on their own initiative.</p>	<p>They “may be empowered to carry out judicial inquiries at the request of the public prosecutor or on the request of the investigating judge.”</p> <p><b>Art. 344-2 Customs Code<sup>66</sup></b></p> <p>Pursuant to Article 696-113 of the Code of Criminal Procedure [<i>see above</i>], when the European Public Prosecutor’s Office decides to exercise its jurisdiction over offenses provided for in this code, the Delegated European Public Prosecutor may conduct the investigations in accordance</p>
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<sup>60</sup> **Art. 17 CPP** [...] En cas de crimes et délits flagrants, ils exercent les pouvoirs qui leur sont conférés par les articles 53 à 67.

<sup>61</sup> **Art. 53** Est qualifié crime ou délit flagrant le crime ou le délit qui se commet actuellement, ou qui vient de se commettre. Il y a aussi crime ou délit flagrant lorsque, dans un temps très voisin de l'action, la personne soupçonnée est poursuivie par la clameur publique, ou est trouvée en possession d'objets, ou présente des traces ou indices, laissant penser qu'elle a participé au crime ou au délit.

A la suite de la constatation d'un crime ou d'un délit flagrant, l'enquête menée sous le contrôle du procureur de la République dans les conditions prévues par le présent chapitre peut se poursuivre sans discontinuer pendant une durée de huit jours.

Lorsque des investigations nécessaires à la manifestation de la vérité pour un crime ou un délit puni d'une peine supérieure ou égale à cinq ans d'emprisonnement ne peuvent être différées, le procureur de la République peut décider la prolongation, dans les mêmes conditions, de l'enquête pour une durée maximale de huit jours.

<sup>64</sup> **Article 17 CPP** Les officiers de police judiciaire exercent les pouvoirs définis à l'article 14 ; ils reçoivent les plaintes et dénonciations ; ils procèdent à des enquêtes préliminaires dans les conditions prévues par les articles 75 à 78. En cas de crimes et délits flagrants, ils exercent les pouvoirs qui leur sont conférés par les articles 53 à 67. Ils ont le droit de requérir directement le concours de la force publique pour l'exécution de leur mission.

<sup>65</sup> **Art. 75** Les officiers de police judiciaire et, sous le contrôle de ceux-ci, les agents de police judiciaire désignés à l'article 20 procèdent à des enquêtes préliminaires soit sur les instructions du procureur de la République, soit d'office.

Ces opérations relèvent de la surveillance du procureur général.

<sup>66</sup> **Article 344-2 Codes des douanes** [Création LOI n°2020-1672 du 24 décembre 2020 - art. 4]

En application de l'article 696-113 du code de procédure pénale, lorsque le Parquet européen décide d'exercer sa compétence sur des infractions prévues par le présent code, le procureur européen délégué peut conduire les investigations conformément aux dispositions du présent code.

the supervision of the public prosecutor under the conditions provided for in this chapter may continue without interruption for a period of eight days.

Where investigations necessary to establish the truth of a crime or misdemeanour punishable by five years' imprisonment or more cannot be deferred, the public prosecutor may decide to extend the investigation, under the same conditions, for a maximum period of eight days.

**Art. 54 CPC<sup>62</sup>**

In the event of a flagrant crime, the judicial police officer who is notified of it, shall immediately inform the public prosecutor, go without delay to the scene of the crime and make all useful observations.

He or she shall ensure that any evidence that may disappear and anything that may help to establish the truth is preserved. He or she shall seize the weapons and instruments which were used to commit the crime or which were intended to be used to commit the crime as well as anything which appears to have been the

These operations shall be subject to the supervision of the public prosecutor.

with the provisions of this code.

<sup>62</sup> **Art. 54** En cas de crime flagrant, l'officier de police judiciaire qui en est avisé, informe immédiatement le procureur de la République, se transporte sans délai sur le lieu du crime et procède à toutes constatations utiles. Il veille à la conservation des indices susceptibles de disparaître et de tout ce qui peut servir à la manifestation de la vérité. Il saisit les armes et instruments qui ont servi à commettre le crime ou qui étaient destinés à le commettre ainsi que tout ce qui paraît avoir été le produit direct ou indirect de ce crime. Il représente les objets saisis, pour reconnaissance, aux personnes qui paraissent avoir participé au crime, si elles sont présentes.

<p>direct or indirect product of the crime.</p> <p>He or she shall represent the objects seized, for recognition, to the persons who appear to have participated in the crime, if they are present.</p> <p><b>Art. 68 CPC</b><sup>63</sup></p> <p>The arrival of the public prosecutor at the scene shall relieve the judicial police officer of his duties.</p> <p>The public prosecutor shall then carry out all the acts of judicial police provided for in this chapter.</p> <p>The public prosecutor may also instruct any judicial police officer to continue the operations.</p>		
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**ee. The hybrid investigation opened by a French EDP (art. 696-114 CPP)/L'enquête hybride ouverte par un PED français (art. 696-114 CPP)**



*Example* At this stage, the European prosecutor is also only the formal director of the investigation, but he has **more powers than his national counterpart**.<sup>67</sup>

<sup>63</sup> **Art. 68** L'arrivée du procureur de la République sur les lieux dessaisit l'officier de police judiciaire. Le procureur de la République accomplit alors tous actes de police judiciaire prévus au présent chapitre. Il peut aussi prescrire à tous officiers de police judiciaire de poursuivre les opérations.

<sup>67</sup> Le procureur est aussi ici le directeur de l'enquête, mais il a plus de pouvoirs que son homologue national. Cf. Dornier 2019, p. 264 et seq. § 1. Le modèle tripartite français: Un procureur et un juge d'instruction enquêteur sous le contrôle ponctuel du juge des libertés et de la détention avec des information pour le système nationale qui s'applique normalement sans l'action en matière des crimes PIF [dans le system normale le procureur est un magistrat comme les autre, cf. Dornier 2019, p. 198 et seq.], 284 et seq. pour le rôle du procureur en Allemagne, le procureur comme institution « *sui generis* [p. 207 et seq.]» et p. 721 et seq. pour le rôle du *juge d'instruction* en France/Translation: Cf. Dornier 2019, p. 264 et seq. § 1. The French tripartite model: A prosecutor and an investigating judge under the punctual control of the judge of freedoms and detention with information for the national system which normally applies without the action in matters of PIF crimes [in the normal system the prosecutor is a magistrate like the others, cf. Dornier 2019, p. 198 et seq.], 284 et seq. for the role of the prosecutor in Germany, the prosecutor as a "sui generis" institution [p. 207 et seq.] and p. 721 et seq. for the special powerful role of the investigating judge in France.



**Art. 696-114 CPC<sup>68</sup>**

However, when it is **necessary either to indict a person or to place him under the status of assisted witness, or to resort to investigative acts which can only be ordered during of an investigation**, due to their duration or nature, the European Delegated Prosecutor conducts the investigations in accordance with the provisions applicable to the [special hybrid] investigation, subject to the provisions of section 3 of this chapter.

**Powers of the examining magistrate (*juge d'instruction*): → Chapitre III: Du juge d'instruction (Articles 49 à 52-1)**

**Art. 49 CPC<sup>69</sup>**

The investigating judge shall be responsible for carrying out the information as set out in Chapter I of Title III.

The court may not, on pain of nullity, participate in the judgment of criminal cases which he or she has heard in his or her capacity as an investigating judge.

The investigating judge shall perform his duties at the seat of the judicial court to which he belongs.

**Art. 51 CPC<sup>70</sup>**

The examining magistrate may only inform the public after having been seized by an indictment of the public prosecutor or by a complaint with civil party status, under the conditions provided for in Articles 80 and 86.

In the case of flagrant crimes or offences, he shall exercise the powers attributed to him by Article 72.

The examining magistrate shall, in the exercise of his functions, have the right to directly request the force publique.

51

<sup>68</sup> « **Art. 696-114.** – Toutefois, lorsqu'il est nécessaire soit de mettre en examen une personne ou de la placer sous le statut de témoin assisté, soit de recourir à des actes d'investigation qui ne peuvent être ordonnés qu'au cours d'une instruction, en raison de leur durée ou de leur nature, le procureur européen délégué **conduit les investigations conformément aux dispositions applicables à l'instruction, sous réserve des dispositions de la section 3 du présent chapitre** [scil. Art. 696-115 et seq.].

<sup>69</sup> **Art. 49** Le juge d'instruction est chargé de procéder aux informations, ainsi qu'il est dit au chapitre Ier du titre III. Il ne peut, à peine de nullité, participer au jugement des affaires pénales dont il a connu en sa qualité de juge d'instruction.

Le juge d'instruction exerce ses fonctions au siège du tribunal judiciaire auquel il appartient.

<sup>70</sup> **Art. 51** Le juge d'instruction ne peut informer qu'après avoir été saisi par un réquisitoire du procureur de la République ou par une plainte avec constitution de partie civile, dans les conditions prévues aux articles 80 et 86. En cas de crimes ou délits flagrants, il exerce les pouvoirs qui lui sont attribués par l'article 72.

Le juge d'instruction a, dans l'exercice de ses fonctions, le droit de requérir directement la force publique.

**Art. 52 CPC<sup>71</sup>**

The investigating judge of the place of the offense, that of the residence of one of the persons suspected of having participated in the offense, that of the place of arrest of one of these persons, even when this arrest was made for another reason and that of the place of detention of one of these persons, even when this detention is carried out for another reason. For the offenses mentioned in article 113-2-1 of the penal code, the investigating judge is also competent, depending on the case, of the place of residence or the registered office of the natural or legal persons mentioned in the same article 113-2- 1.

- 52** The presented provisions can be summarized as follows: The investigating judge is in charge of carrying out the investigations described in Chapter I of Title III, according to Article 49 of the Code of Criminal Procedure. As an investigative judge, the judge is prohibited from taking part in the decision-making process in criminal cases they have heard in order to prevent the proceedings from ending immediately.
- 53** They are assigned to a judicial court where they must perform their duties. According to Article 51, an examining magistrate may only provide information to the public after being contacted by a civil party complainant or the public prosecutor after l'acte d'accusation. Under Article 72, they have particular authority in circumstances of severe offenses. According to Article 52, the investigating judge's jurisdiction is determined by the criminal scene, the suspects' house, the site of arrest, and the place of detention.

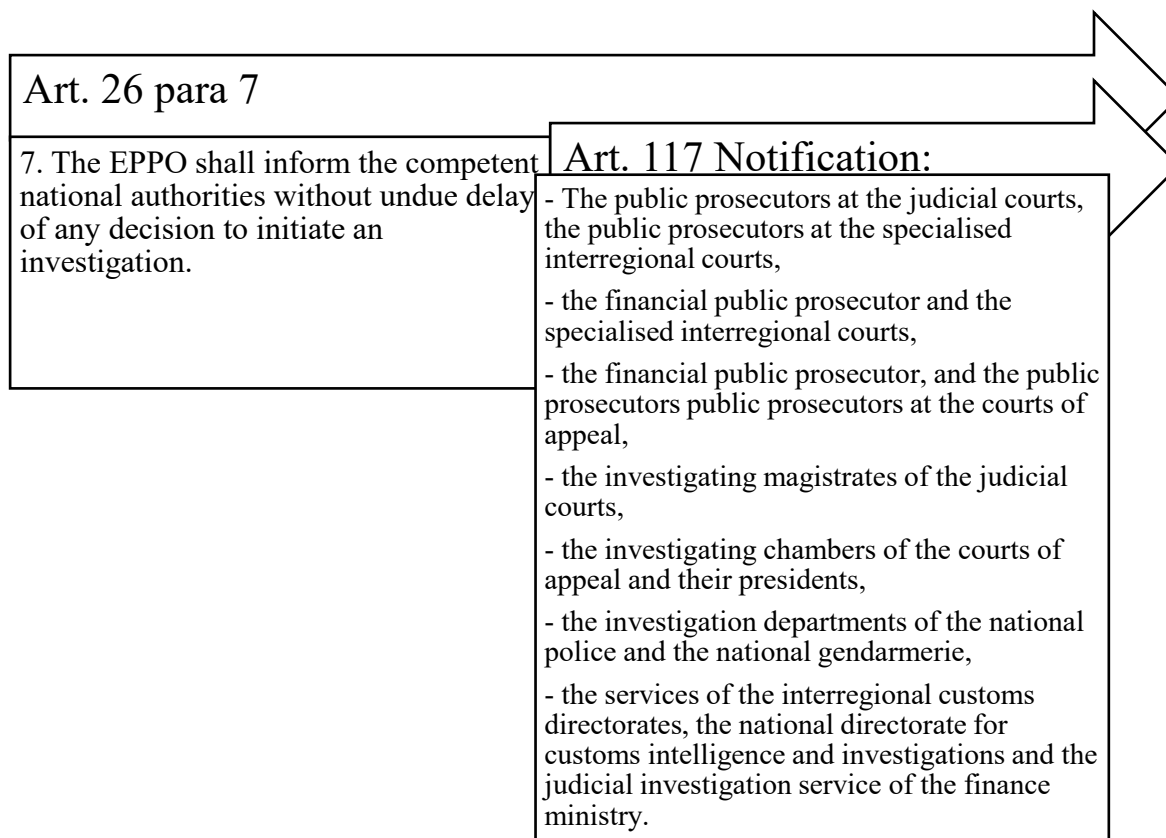
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<sup>71</sup> **Art. 52**

Sont compétents le juge d'instruction du lieu de l'infraction, celui de la résidence de l'une des personnes soupçonnées d'avoir participé à l'infraction, celui du lieu d'arrestation d'une de ces personnes, même lorsque cette arrestation a été opérée pour une autre cause et celui du lieu de détention d'une de ces personnes, même lorsque cette détention est effectuée pour une autre cause. Pour les infractions mentionnées à l'article 113-2-1 du code pénal, est également compétent le juge d'instruction, selon le cas, du lieu de résidence ou du siège des personnes physiques ou morales mentionnées au même article 113-2-1.


#### d) Art. 26 Para 7 EPPO Regulation

Figure 5 *L'information des autorités compétentes par le parquet européen, Art. 26 Para 7 EPPO Regulation – Overview for France* 54



Source: The authors.

Caption: The information for Art. 26 Para 7 EPPO stem from the French Government.<sup>72</sup>

*Nota bene:* It all depends on the case. /Everything depends on the case, which the EDPs handle. 

#### e) Examples and precedents for the (French) PIF offences

The following page shall present some examples i.e. cases from the national PIF Acquis 55 offences area but it is relevant to mention, what *Vervaele* noticed already in 2002: “*It is noteworthy that the CPP does not contain any clear definition of what constitutes suspicion or reasonable suspicion.*”<sup>73</sup>

<sup>72</sup> See <https://www.eppo.europa.eu/sites/default/files/2021-11/10-FR.pdf>.

“- les procureurs de la République près les tribunaux judiciaires, les procureurs de la République près les juridictions interrégionales spécialisées, le procureur de la République financier, et les procureurs généraux près les cours d’appel,  
 - les magistrats instructeurs des tribunaux judiciaires,  
 - les chambres de l’instruction des cours d’appel et leurs présidents,  
 - les services d’enquêtes de la police nationale et de la gendarmerie nationale,  
 - les services des directions interrégionales des douanes, la direction nationale du renseignement et des enquêtes douanières et le service d’enquêtes judiciaires des finances.”

<sup>73</sup> Vervaele 2002, 181 (200).

- 56 Suspicion is thus always strictly tied to the various offences and the different investigative frameworks. In the area of customs fraud it is noteworthy to take a look at the different categories of customs offences and the other areas of the criminal code offences:
- 57 **Code des douanes: *Offenses of smuggling, fraudulent importation or exportation provided for in article 414-2 of the code of customs/Infractions de contrebande, d'importation ou d'exportation frauduleuse prévues à l'article 414-2 du code des douanes***

Newly introduced Art. 414-2<sup>74</sup>

There are no decisions by a French court for this offence as of 2022.

Reasoning of the legislator: “[The PIF Implementation Act] creates an offense punishing intentional customs fraud at the export and import stage. This new offense punishable by 5 years’ imprisonment will concern intentional acts of smuggling, importing and exporting without declaration and with false declaration. It thus unifies within a single article intentional fraudulent behaviour hitherto suppressed in scattered texts.

- 58 It also modifies the offense of customs money laundering to bring it into line with the requirements of the Directive 2017/1371. On the one hand, it establishes for this offense an aggravating circumstance of organized gang smuggling. On the other hand, it provides for the applicability of this offense when the predicate offense harms the financial interests of the Union. This last point will make it possible to sanction acts of laundering of the proceeds of fraud against the interests of the Union committed abroad when it damages the financial interests of the Union.”<sup>75</sup>

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<sup>74</sup> Art. 414-2 Code des douanes « Est puni de cinq ans d'emprisonnement et d'une amende comprise entre une et deux fois la valeur de l'objet de fraude, lorsqu'il est commis intentionnellement et qu'il se rapporte à des marchandises qui ne sont pas mentionnées à l'article 414, tout fait de contrebande ainsi que tout fait d'importation ou d'exportation sans déclaration.

Est puni des peines prévues au premier alinéa du présent article tout fait intentionnel de fausse déclaration, d'utilisation d'un document faux, inexact ou incomplet ou de non-communication d'un document, ayant pour but ou pour résultat, en tout ou partie, d'obtenir un remboursement, une exonération, un droit réduit ou un avantage financier attachés à l'importation ou à l'exportation.

Les délits réprimés au présent article sont punis de dix ans d'emprisonnement et d'une amende pouvant aller jusqu'à dix fois la valeur de l'objet de la fraude lorsqu'ils sont commis en bande organisée.

Les délits réprimés au présent article sont également passibles de la confiscation de l'objet de fraude, de la confiscation des moyens de transport, de la confiscation des objets servant à masquer la fraude, de la confiscation des biens ayant servi à commettre l'infraction ou qui étaient destinés à la commettre et dont le condamné est propriétaire ou, sous réserve des droits du propriétaire de bonne foi, dont il a la libre disposition, de la confiscation des biens et avoirs qui sont le produit direct ou indirect de l'infraction. »

<sup>75</sup> Il crée un délit réprimant la fraude douanière intentionnelle à l'exportation et à l'importation. Ce nouveau délit puni de 5 ans d'emprisonnement concernera les faits intentionnels de contrebande, d'importation et d'exportation sans déclaration et avec fausse déclaration. Il unifie ainsi au sein d'un même article les comportements intentionnels frauduleux jusqu'ici réprimés dans des textes épars.

Il modifie également le délit de blanchiment douanier pour le mettre en conformité avec les exigences de la directive. D'une part, il instaure pour ce délit une circonstance aggravante de bande organisée. D'autre part, il prévoit l'applicabilité de cette infraction lorsque l'infraction d'origine porte atteinte aux intérêts financiers de l'Union. Ce dernier point permettra de sanctionner des faits de blanchiment du produit d'une fraude aux intérêts de l'Union commise à l'étranger dès lors qu'elle porte atteinte aux intérêts financiers de l'Union.”

**Code penal Fraud offences: *Book 3: Title I: Fraudulent appropriations (Articles 311-1 to 314-13), Chapter III: Fraud and related offenses (Articles 313-1 to 313-9)***



- Section 1: Fraud (Articles 313-1 to 313-3)
- Art. 313-1 (fraud)<sup>76</sup>
- Art. 313-2 (aggravated fraud)
- Art. 313-3 (attempted fraud)
- Section 2: Fraud-related offenses (Articles 313-5 to 313-6-2)
- Section 3: Additional penalties applicable to natural persons and liability of legal persons (Articles 313-7<sup>77</sup> to 313-9)

**Embezzlement offences: *Book 3: Chapter IV: Diversion (Articles 314-1 to 314-13), Section 1: Breach of trust (Articles 314-1 to 314-4)***



- Art. 314-1 (*abus de confiance*/breach of trust)<sup>78</sup>
- Art. 314-1-1 (*abus de confiance en bande organisée*/breach of trust by a gang)
- Art. 314-2 (aggravated breach of trust)<sup>79</sup>
- Art. 432-15<sup>80</sup>
- Art. 433-4<sup>81</sup>

**Corruption offences: *Section 3: Breaches of the duty of probity (Articles 432-10 to 432-16) Paragraph 2: Passive corruption and influence peddling committed by persons exercising a public function (Articles 432-11 to 432-11-1)***



- Art. 432-11 (passive corruption)<sup>82</sup>

<sup>76</sup> Cour de cassation, criminelle, Chambre criminelle, 18 janvier 2017, 16-80.200, Publié au bulletin [False name or false capacity - False capacity - President of an association - Purchase of furniture - Dissolution of an association]; Cour de cassation, criminelle, Chambre criminelle, 11 juillet 2017, 16-84.828, Publié au bulletin

<sup>77</sup> By decision n°2021-932 QPC of September 23, 2021, the Constitutional Council declared unconstitutional 4° of article 313-7 of the penal code, in its wording resulting from law n° 2009-1437 of the 24 November 2009 relating to lifelong vocational guidance and training. The repeal of these provisions is, however, postponed to March 31, 2022. Measures taken before this date in application of provisions declared unconstitutional cannot be challenged on the basis of this unconstitutionality.

<sup>78</sup> Cour de Cassation, Chambre criminelle, du 14 novembre 2000, 99-84.522; = Bulletin criminel 2000 N° 338 p. 1003 [Détournement - Chose détournée - Bien quelconque - Bien incorporel - Numéro de carte bancaire]; Cour de cassation, criminelle, Chambre criminelle, 7 mars 2012, 11-82.070, Inédit; Cass. crim., 16 oct. 2013, n° 12-86241, ECLI:FR:CCASS:2013:CR04161; Cour de cassation, criminelle, Chambre criminelle, 9 September 2020, n° 19-84.914, ECLI:FR:CCASS:2020:CR0152.

<sup>79</sup> Cour de cassation, criminelle, Chambre criminelle, 24 mars 2015, 14-84.904, Inédit = ECLI:FR:CCASS:2015:CR00899; Cour de cassation, criminelle, Chambre criminelle, 20 décembre 2017, 17-84.235, Inédit = ECLI:FR:CCASS:2017:CR03431.

<sup>80</sup> Cour de cassation, criminelle, Chambre criminelle, 16 mars 2022, 21-82.254 = ECLI:FR:CCASS:2022:CR00254, Publié au bulletin [Misappropriation of public funds by a person holding public authority or charged with a mission of public service]; Cour de cassation, criminelle, Chambre criminelle, 18 décembre 2019, 18-85.856, Publié au bulletin = ECLI:EN:CCASS:2019:CR02739.

<sup>81</sup> Cour de cassation, Criminal, Criminal Division, February 22, 2017, 15-87.328, Published in the bulletin = ECLI:EN:CCASS:2017:CR00078.

<sup>82</sup> Cour de cassation, criminelle, Commission de révision, 6 juin 2011, 10-REV097, Publié au bulletin

Chapter III: Offenses against public administration committed by individuals (Articles 433-1 to 433-26) Section 1: Active corruption and influence peddling committed by individuals (Articles 433-1 to 433-2-1):

- Art. 433-1

Chapter V: Offenses against public administration and the action of justice of the European Communities, Member States of the European Union, other foreign States and other public international organizations (Articles 435-1 to 435-15 )

Section 1: Offenses against public administration (Articles 435-1 to 435-6-2)

- Art 435-1<sup>83</sup> [Sub-section 1: Passive corruption and influence peddling (Articles 435-1 to 435-2)] with special provisions in the CPC, cf. Art. 689<sup>84</sup>CPC, Art. 689-8<sup>85</sup> CPC.
- Art. 435-3<sup>86</sup> [Sub-section 2: Active corruption and influence peddling (Articles 435-3 to 435-4)]
- cf. “*Circulaire du 2 juin 2020 de politique pénale en matière de lutte contre la corruption internationale*”<sup>87</sup>

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<sup>83</sup> Cour de cassation, criminelle, Chambre criminelle, 1 avril 2020, 19-80.877, Inédit = ECLI:FR:CCASS:2020:CR00488.

<sup>84</sup> **Art. 689 CPP** Perpetrators or accomplices of offenses committed outside the territory of the Republic may be prosecuted and tried by French courts either when, in accordance with the provisions of Book I of the Criminal Code or another legislative text, French law is applicable, or when an international convention or an act taken pursuant to the Treaty establishing the European Communities gives jurisdiction to the French courts to hear the offence.

<sup>85</sup> **Art. 689-8 CPP** For the application 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 and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union made in Brussels on 26 May 1997, may be prosecuted and judged under the conditions provided for in article 689-1:

1° Any Community official in the service of an institution of the European Communities or of a body created in accordance with the treaties establishing the European Communities and having its registered office in France, guilty of the offense provided for in Articles 435-1 and 435-7 of the Criminal Code or an offense affecting the financial interests of the European Union within the meaning 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 European Union through criminal law;

2° Any French national or any person belonging to the French public service guilty of one of the offenses provided for in articles 435-1 , 435-3 , 435-7 and 435-9 of the penal code or of an offense affecting financial interests of the European Union within the meaning 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;

3° Any person guilty of the offense provided for in Articles 435-3 and 435-9 of the Criminal Code or of an offense affecting the financial interests of the European Union within the meaning of Directive (EU) 2017/1371 of the European Parliament and of 5 July 2017 on the fight against fraud affecting the financial interests of the Union by means of criminal law, when these offenses are committed against a French national.

<sup>86</sup> Cour de cassation, criminelle, Chambre criminelle, 11 octobre 2017, 17-80.258, Inédit = ECLI:FR:CCASS:2017:CR02574; Cour de cassation, criminelle, Chambre criminelle, 14 mars 2018, 16-82.117, Publié au bulletin = ECLI:FR:CCASS:2018:CR00173.

<sup>87</sup> See <https://www.legifrance.gouv.fr/download/pdf/circ?id=44989>.

Related secondary French legislation for Art. 435-3:

**Article D47-1-30 CPC**

*Established by Decree n°2021-694 of May 31, 2021 – Art. 2*

For the application of Articles 696-108 and 696-111, the offenses committed after 20 November 2017 falling within the competence of the European Public Prosecutor's Office and for which the reports provided for by Article 696-111 must be made are those provided for by articles D. 47-1-31 to D. 47-1-34.

**Article D47-1-31 Version in force from February 22, 2022**

I.-The following offenses must be reported: they affect the revenue collected, the expenditure incurred or the assets which come under the budget of the European Union, the budgets of the institutions, bodies and agencies of the European Union or budgets managed and controlled directly by them, and if the amount of damage caused to the European Union is likely to be at least equal to 10,000 euros:

1° Fraud offenses provided for in section 1 of chapter III of title I of book III of the penal code;

2° Offenses of breach of trust provided for in section 1 of chapter IV of title I of book III of the penal code;

3° Offenses of embezzlement, misappropriation or destruction of property provided for in paragraph 5 of section 3 of chapter II of title III of book IV of the penal code;

4° Corruption offenses provided for in Articles 432-11, 433-1, 435-1 and 435-3 of the Criminal Code;

5° Offenses of smuggling, fraudulent import or export provided for in Article 414-2 of the Customs Code;

6° Money laundering offenses provided for in Article 415 of the Customs Code, when they relate to funds derived from the offenses mentioned in 1° to 5° of this I;

7° Money laundering offenses provided for in section 1 of chapter IV of title II of book III of the penal code, when they concern funds derived from offenses mentioned in 1° to 5° of this I.

II.-When the offenses mentioned in I have caused or are likely to have caused damage in an amount of less than 10,000 euros, the report must only be made if at least one of the following conditions is met:

1° the repercussions of the case at the at Union level are such as to make it necessary to conduct an investigation by the European Public Prosecutor's Office;

2° Civil servants or other agents of the Union, or members of the institutions of the Union could be suspected of having committed the offence. The report must however also intervene when it is not possible to determine whether the criteria provided for in 1° and 2° above are met.

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**Article D47-1-32** When the offense relates to value added tax, the offenses mentioned in I of Article D. 47-1-31 must only be reported if the following conditions are met:

1° the amount of the damage resulting total amounts to at least ten million euros;  
 2° the offense has a link *with the territory of at least two States* mentioned below, which participate in the enhanced cooperation concerning the creation of the European Public Prosecutor’s Office:

-Germany,  
 -Austria, -Belgium, Bulgaria,  
 -Cyprus, -Croatia, -Spain, -Estonia, -Italy, -Finland, -France, -La Greece, -Latvia, -Lithuania, -Luxembourg, -Malta, -the Netherlands, -Portugal, -the Czech Republic, -Romania, -Slovakia, -Slovenia .”

60 Article 2 of Decree No. 2021-694 of May 31, 2021, prescribes that offenses that come under the jurisdiction of the EPPO after November 20, 2017, needed to be reported in accordance with D.47-1-31 to D. 47-1-34. Financial crimes that impact the EU budget and cause harm of at least 10,000 euros are required to be reported. These crimes include money laundering, smuggling, embezzlement, fraud, and breach of trust. Reports are also needed if there are consequences at the EU level or if EU authorities are involved, even if the damages are under 10,000 euros. In terms of VAT-related violations, there must be two or more particular states involved in intensified collaboration and harm totaling at least ten million euros. The EPPO zone countries are among these states. The collaboration intends to establish the best contact, which is possible.

61 Book 3 CC: Title 2  
 Chapter IV: Money laundering (Articles 324-1 to 324-9)  
 Section 1: Simple money laundering and aggravated money laundering (Articles 324-1 to 324-6-1) Section 2: Additional penalties applicable to natural persons and criminal liability of legal persons (Articles 324-7 to 324-9)

- Articles 324-1 to 324-9
- Art. 324-1 (money laundering offence)<sup>88</sup>
- Art. 324-2 (penalties for money laundering)
- Art. 324-6 (attempting money laundering)
- Art. 324-6-1 (reducing the penalty in case of an attempted offence)

<sup>88</sup> Cour de cassation, criminelle, Chambre criminelle, 18 mars 2020, 18-86.491, Publié au bulletin = ECLI:EN:CCASS:2020:CR00294 [The transfer of funds, without having complied with the declaration obligation resulting from articles 464 of the customs code and L. 152-1 of the Monetary and Financial Code: “customs officers discovered several wads of banknotes concealed under the rear seat and in the right rear light of the vehicle,...”]; Cour de cassation, criminelle, Chambre criminelle, 9 avril 2015, 14-87.660, Publié au bulletin [“article 1791 of the general tax code can be considered as an offense within the meaning of article324-1of the penal code”]; Cour de cassation, criminelle, Chambre criminelle, 20 février 2008, 07-82.977, Publié au bulletin [tax fraud].



### 3. Article 27 Right of evocation

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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.

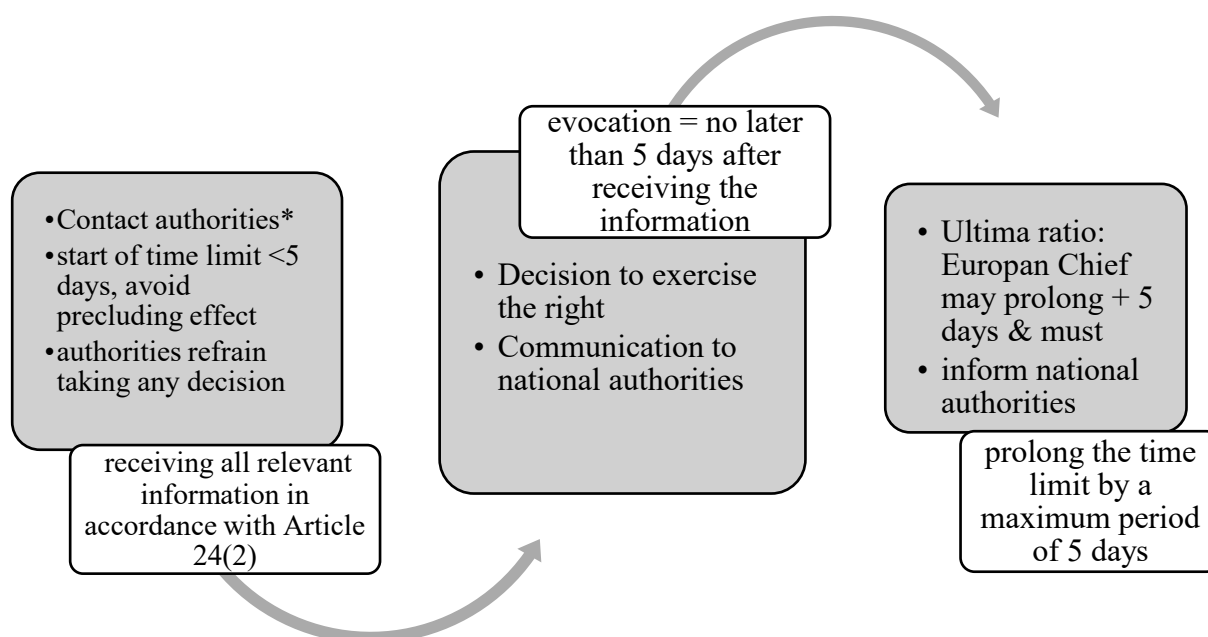
9. To ensure coherent application of the guidelines, a European Delegated Prosecutor shall inform the competent Permanent Chamber of each decision taken in accordance with paragraph 8 and each Permanent Chamber shall report annually to the College on the application of the guidelines.

1 If the national prosecutor has already started investigating or he/she has taken any steps applying national law after informing the EPPO of its right of evocation, these actions may have a precluding effect on the right of evocation of the EPPO (cf. para 2 of Art.

27 EPPO Regulation). *De jure* the prosecutor is ordered to “**stand still**” for the **time period** established by para 1 of Art. 27 EPPO Regulation. Therefore, it is especially important to reconsider the national provisions in this area prior to each investigation task:

a) **The implementation of the right of evocation II/ *La mise en œuvre du droit d'évocation***

*Figure 6 Right of evocation/time limits/refrain taking decisions that have a precluding effect – Overview for France*



Source: The authors. Caption (*auteurs des signalements*): French Authorities<sup>89</sup>:

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- **Art. 27 § 1:** judicial authorities, any constituted authority, public officer or official who, in the course of his or her duties acquires knowledge of an offence within the meaning of Article 24(1)<sup>90</sup>
- **Art. 27 § 2:** Authorities that may provide further information:
  - the public prosecutors at the judicial courts,
  - the public prosecutors at the specialised interregional courts,
  - the financial public prosecutor and the interregional specialised courts,
  - the financial public prosecutor,

<sup>89</sup> See *Notifications imposées en application de l'article 117 du règlement constitutif*: « autorités qui sont compétentes aux fins de l'application du présent règlement », à transmettre à la Cheffe du Parquet européen, au Conseil et à la Commission européenne: <https://www.eppo.europa.eu/sites/default/files/2021-11/10-FR.pdf>. les procureurs de la République près les tribunaux judiciaires, les procureurs de la République près les juridictions interrégionales spécialisées, le procureur de la République financier, et les procureurs généraux près les cours d'appel, - les magistrats instructeurs des tribunaux judiciaires, - les chambres de l'instruction des cours d'appel et leurs présidents, - les services d'enquêtes de la police nationale et de la gendarmerie nationale, - les services des directions interrégionales des douanes, la direction nationale du renseignement et des enquêtes douanières et le service d'enquêtes judiciaires des finances.

<sup>90</sup> Les autorités judiciaires, - toute autorité constituée, tout officier public ou fonctionnaire qui, dans l'exercice de ses fonctions, acquiert la connaissance d'une infraction au sens de l'article 24, paragraphe 1.

- and the public prosecutors at the courts of appeal,
- the investigating magistrates of the judicial courts,
- the investigating chambers of the courts of appeal and their presidents,
- the investigation departments of the national police and the national gendarmerie,
- the services of the interregional customs directorates,
- the national directorate for customs intelligence and investigations
- and the judicial investigation service of the finance ministry.

**! Be aware that Working Arrangements contain further information.**<sup>91</sup>

**3 Art. 696-115 CPP.**<sup>92</sup>

Where the public prosecutor relinquishes jurisdiction to the European Public Prosecutor's Office, investigations shall continue under Article 696-113 or, where applicable, Article 696-114.

When the investigating judge issues an order to relinquish jurisdiction to the European Public Prosecutor's Office, the investigations shall continue under the same Article 696-114.

**Art. 344-3**<sup>93</sup> **Customs Code**

As soon as the European Public Prosecutor's Office exercises its jurisdiction, or during the periods provided for in Article 27(1) of the abovementioned Council Regulation (EU) 2017/1939 of 12 October 2017:

1° By way of derogation from Article 343(2) of this Code, the action for the application of tax penalties shall not be exercised by the customs administration, but by the Delegated European Public Prosecutor;

2° The customs administration may only settle, pursuant to Article 350, if the European Public Prosecutor accepts the principle of a settlement.

<sup>91</sup> See e.g. "Article 7 Transmission of reports without undue delay" <https://bit.ly/3xvaeIK>.

<sup>92</sup> **Art. 696-115. CPP**

Lorsque le procureur de la République se dessaisit au profit du parquet européen, les investigations se poursuivent en application de l'article 696-113 ou, le cas échéant, de l'article 696-114.

Lorsque le juge d'instruction rend une ordonnance de dessaisissement au profit du parquet européen, les recherches se poursuivent sur la base du même article 696-114.

<sup>93</sup> **Art. 344-3 Code des douanes**

Dès lors que le Parquet européen exerce sa compétence, ou pendant les délais prévus au 1 de l'article 27 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 précité:

1° Par dérogation au 2 de l'article 343 du présent code, l'action pour l'application des sanctions fiscales n'est pas exercée par l'administration des douanes, mais par le procureur européen délégué ;

2° L'administration des douanes ne peut transiger, en application de l'article 350, que si le Parquet européen admet le principe d'une transaction.

**b) Provisions with a precluding effect for the right of evocation of the EPPO**

**aa. The prescription of public action/*La prescription de l'action publique***

The duration and starting point of the delay is important.

**(1) The crimes / *Les crimes* Art. 7 CPP**

The crimes are stated in Art. 7 CPP.

4

**Art. 7 CPP<sup>94</sup>**

Public action for crimes shall be barred after twenty years from the day on which the offence was committed.

Public action for the crimes mentioned in Articles 706-16, 706-26 and 706-167 of this Code, Articles 214-1 to 214-4 and 221-12 of the Criminal Code and Book IV bis of the same Code shall be barred after thirty years have elapsed from the day on which the offence was committed.

The public prosecution of the crimes mentioned in Article 706-47 of this Code, when committed against minors, shall be barred after thirty years have elapsed since the latter came of age; however, in the case of rape, if another rape, sexual assault or sexual molestation is committed against another minor by the same person before the expiry of this time limit, the time limit for this rape shall be extended, where applicable, until the date of prescription of the new offence.

The public prosecution of the crimes mentioned in Articles 211-1 to 212-3 of the Criminal Code is not subject to any statute of limitations.

<sup>94</sup> **Art. 7** L'action publique des crimes se prescrit par vingt années révolues à compter du jour où l'infraction a été commise.

L'action publique des crimes mentionnés aux articles 706-16,706-26 et 706-167 du présent code, aux articles 214-1 à 214-4 et 221-12 du code pénal et au livre IV bis du même code se prescrit par trente années révolues à compter du jour où l'infraction a été commise.

L'action publique des crimes mentionnés à l'article 706-47 du présent code, lorsqu'ils sont commis sur des mineurs, se prescrit par trente années révolues à compter de la majorité de ces derniers ; toutefois, s'il s'agit d'un viol, en cas de commission sur un autre mineur par la même personne, avant l'expiration de ce délai, d'un nouveau viol, d'une agression sexuelle ou d'une atteinte sexuelle, le délai de prescription de ce viol est prolongé, le cas échéant, jusqu'à la date de prescription de la nouvelle infraction.

L'action publique des crimes mentionnés aux articles 211-1 à 212-3 du code pénal est imprescriptible.

**(2) The misdemeanours /Les délits Art. 8 CPP****5 Art. 8 CPP<sup>95</sup>**

Public action for offences shall be barred after six years have elapsed from the day on which the offence was committed.

The public prosecution of the offences referred to in Article 706-47 of this Code, when committed against minors, with the exception of those referred to in Articles 222-29-1 and 227-26 of the Criminal Code, shall be barred after ten years have elapsed since the latter came of age.

Public action for the offences mentioned in Articles 222-12, 222-29-1 and 227-26 of the same code, when committed against minors, shall be barred after twenty years have elapsed since the latter came of age.

However, in the case of sexual assault or sexual molestation committed against a minor, if another minor is sexually assaulted or sexually molested by the same person before the expiry of the periods provided for in the second and third paragraphs of this article, the limitation period for the first offence shall be extended, where appropriate, until the date of limitation of the new offence.

The public prosecution of the offence referred to in Article 434-3 of the Criminal Code shall be statute-barred, where the failure to provide information concerns sexual assault or sexual molestation committed against a minor, by ten years from the date on which the victim came of age and, where the failure to provide information concerns rape committed against a minor, by twenty years from the date on which the victim came of age. The public prosecution of the offences mentioned in Article 706-167 of this Code, when they are punishable by ten years' imprisonment, as well as that of the offences mentioned in Article 706-16 of this Code, excluding those defined in Articles 421-2-5 to 421-2-5-2 of the Criminal Code, and 706-26 of this Code and in Book IV bis of the

**<sup>95</sup>Art. 8 CPP**

L'action publique des délits se prescrit par six années révolues à compter du jour où l'infraction a été commise. L'action publique des délits mentionnés à l'article 706-47 du présent code, lorsqu'ils sont commis sur des mineurs, à l'exception de ceux mentionnés aux articles 222-29-1 et 227-26 du code pénal, se prescrit par dix années révolues à compter de la majorité de ces derniers.

L'action publique des délits mentionnés aux articles 222-12, 222-29-1 et 227-26 du même code, lorsqu'ils sont commis sur des mineurs, se prescrit par vingt années révolues à compter de la majorité de ces derniers.

Toutefois, s'il s'agit d'une agression sexuelle ou d'une atteinte sexuelle commise sur un mineur, en cas de commission sur un autre mineur par la même personne, avant l'expiration des délais prévus aux deuxième et troisième alinéas du présent article, d'une agression sexuelle ou d'une atteinte sexuelle, le délai de prescription de la première infraction est prolongé, le cas échéant, jusqu'à la date de prescription de la nouvelle infraction.

L'action publique du délit mentionné à l'article 434-3 du code pénal se prescrit, lorsque le défaut d'information concerne une agression ou un atteinte sexuelle commise sur un mineur, par dix années révolues à compter de la majorité de la victime et, lorsque le défaut d'information concerne un viol commis sur un mineur, par vingt années révolues à compter de la majorité de la victime.

L'action publique des délits mentionnés à l'article 706-167 du présent code, lorsqu'ils sont punis de dix ans d'emprisonnement, ainsi que celle des délits mentionnés aux articles 706-16 du présent code, à l'exclusion de ceux définis aux articles 421-2-5 à 421-2-5-2 du code pénal, et 706-26 du présent code et au livre IV bis du code pénal se prescrivent par vingt années révolues à compter du jour où l'infraction a été commise.

Criminal Code, shall be barred by a period of twenty years from the day on which the offence was committed.

**(3) Covert or concealed offence: art. 9-1 CPP/*Les infractions occultes ou dissimulées: art. 9-1 CPP.***

**Art. 9-1<sup>96</sup>**

The period of limitation for public prosecution of the crime provided for in Article 214-2 of the Criminal Code, when it has led to the birth of a child, shall run from the date of the child's majority.

By way of derogation from the first paragraph of Articles 7 and 8 of this Code, the limitation period for public action in respect of a concealed or hidden offence shall run from the day on which the offence came to light and could be ascertained under conditions allowing public action to be initiated or exercised, but the limitation period may not exceed twelve completed years in the case of misdemeanours and thirty completed years in the case of felonies from the day on which the offence was committed.

A concealed offence is one which, because of its constituent elements, cannot be known either to the victim or to the judicial authority.

An offence is concealed if the perpetrator deliberately carries out any serious manoeuvre to prevent its discovery.

6

**bb. Rules modifying the prescription/*Les règles venant modifier la prescription***

**(1) The hypotheses of interruption of public action /*Les hypothèses d'interruption de l'action publique: art. 9-2 CPP***

**Art. 9-2 CPP<sup>97</sup>**

The limitation period for public action is interrupted by:

1° Any act by the Public Prosecutor's Office or the civil party, aimed at initiating public proceedings, as provided for in Articles 80, 82, 87, 88, 388, 531 and 532 of this Code and in Article 65 of the Law of 29 July 1881 on the freedom of the press;

7

<sup>96</sup> **Art. 9-1 CPP**

Le délai de prescription de l'action publique du crime prévu à l'article 214-2 du code pénal, lorsqu'il a conduit à la naissance d'un enfant, court à compter de la majorité de ce dernier.

Par dérogation au premier alinéa des articles 7 et 8 du présent code, le délai de prescription de l'action publique de l'infraction occulte ou dissimulée court à compter du jour où l'infraction est apparue et a pu être constatée dans des conditions permettant la mise en mouvement ou l'exercice de l'action publique, sans toutefois que le délai de prescription puisse excéder douze années révolues pour les délits et trente années révolues pour les crimes à compter du jour où l'infraction a été commise.

Est occulte l'infraction qui, en raison de ses éléments constitutifs, ne peut être connue ni de la victime ni de l'autorité judiciaire.

Est dissimulée l'infraction dont l'auteur accomplit délibérément toute manoeuvre caractérisée tendant à en empêcher la découverte.

<sup>97</sup> **Art. 9-2 CPP**

Le délai de prescription de l'action publique est interrompu par:

2<sup>o98</sup> Any investigative act emanating from the Public Prosecutor's Office, any report drawn up by a judicial police officer or an authorised agent exercising judicial police powers effectively aimed at finding and prosecuting the perpetrators of an offence;

3° Any investigative act provided for in Articles 79 to 230 of this Code, carried out by an investigating judge, an investigating chamber or magistrates and judicial police officers delegated by them, effectively aimed at the investigation and prosecution of offenders;

4° Any judgment or ruling, even if not final, if it is not null and void.

Any act, judgement or ruling mentioned in 1° to 4° shall start a limitation period equal to the initial period.

This article shall apply to related offences and to perpetrators or accomplices not covered by one of these acts, judgments or orders.

The limitation period for rape, sexual assault or sexual abuse committed against a minor shall be interrupted by one of the acts or decisions mentioned in 1° to 4° in proceedings in which the same person is accused of one of these same offences committed against another minor.

**(2) Hypotheses for suspension of public action: art. 6 al. 2 CPP art. 9-3 CPP/Les hypothèses de suspension de l'action publique: art. 6 al. 2 CPP art. 9-3 CPP**

8 **Art. 6 CPP al. 2** <sup>99</sup> [...] However, if the proceedings which led to a conviction revealed the falsity of the judgment or ruling which declared the public action extinguished, the public action may be resumed; the statute of limitations must then be considered suspended from the day on which the judgment or ruling became final until the day on which the person guilty of forgery or use of forgeries was convicted.

<sup>98</sup> 1° Tout acte, émanant du ministère public ou de la partie civile, tendant à la mise en mouvement de l'action publique, prévu aux articles 80, 82, 87, 88, 388, 531 et 532 du présent code et à l'article 65 de la loi du 29 juillet 1881 sur la liberté de la presse ;

2° Tout acte d'enquête émanant du ministère public, tout procès-verbal dressé par un officier de police judiciaire ou un agent habilité exerçant des pouvoirs de police judiciaire tendant effectivement à la recherche et à la poursuite des auteurs d'une infraction ;

3° Tout acte d'instruction prévu aux articles 79 à 230 du présent code, accompli par un juge d'instruction, une chambre de l'instruction ou des magistrats et officiers de police judiciaire par eux délégués, tendant effectivement à la recherche et à la poursuite des auteurs d'une infraction ;

4° Tout jugement ou arrêt, même non définitif, s'il n'est pas entaché de nullité.

Tout acte, jugement ou arrêt mentionné aux 1° à 4° fait courir un délai de prescription d'une durée égale au délai initial.

Le présent article est applicable aux infractions connexes ainsi qu'aux auteurs ou complices non visés par l'un de ces mêmes acte, jugement ou arrêt.

Le délai de prescription d'un viol, d'une agression sexuelle ou d'une atteinte sexuelle commis sur un mineur est interrompu par l'un des actes ou l'une des décisions mentionnés aux 1° à 4° intervenus dans une procédure dans laquelle est reprochée à la même personne une de ces mêmes infractions commises sur un autre mineur.

<sup>99</sup>**Art. 6 ali. 2** [...] CPP

Toutefois, si des poursuites ayant entraîné condamnation ont révélé la fausseté du jugement ou de l'arrêt qui a déclaré l'action publique éteinte, l'action publique pourra être reprise ; la prescription doit alors être considérée comme suspendue depuis le jour où le jugement ou arrêt était devenu définitif jusqu'à celui de la condamnation du coupable de faux ou usage de faux.



*Il y en a d'autres attention. Par exemple, pendant le temps d'exécution de la Convention judiciaire d'intérêt public, la prescription est suspendue (art. 41-1-2, IV CPP).*

**Art. 9-3 CPP<sup>100</sup>**

Any legal obstacle, provided for by law, or any insurmountable factual obstacle comparable to *force majeure*, which makes it impossible to initiate or exercise public action, shall suspend the statute of limitations.

**cc. Termination of the public action/ Presidential pardon (*Cessation de l'action publique/La grâce présidentielle*)**

**Constitution**

**Art. 17 French Constitution<sup>101</sup>**

The President of the Republic is vested with the power to grant pardons in an individual capacity.

9

**dd. Urgent measures of national authorities for securing an investigation and prosecution, Art. 27 Para 2 EPPO Regulation**

The following measures are examples for urgent measures by national authorities (such as public prosecutors at judicial courts, public prosecutors at specialised interregional courts, the financial public prosecutor, and public prosecutors at courts of appeal, the investigating magistrates of the judicial courts, the investigation departments of the national police and the national gendarmerie, the services of the interregional customs directorates, the national directorate for customs intelligence and investigations and the financial judicial investigation services) for securing an investigation and the prosecution of PIF-Acquis offences by virtue of 27 para 2 EPPO Regulation.<sup>102</sup> The measures will not be equally available to all national authorities as the financial judicial investigation services act under a different regime than the national magistrates.

10

It is not always the police, which will take urgent measures<sup>103</sup> but it can be the customs authorities and for the most intrusive acts the judge will intervene.

11

It can be said that the national authorities can apply all the measures provided for by the CPP. It can therefore be referred to the CPC and its measures (as well as the different investigation phases in France, see above → Art. 26).

12

<sup>100</sup> Art. 9-3 CPP

Tout obstacle de droit, prévu par la loi, ou tout obstacle de fait insurmontable et assimilable à la force majeure, qui rend impossible la mise en mouvement ou l'exercice de l'action publique, suspend la prescription.

<sup>101</sup> Art. 17 Le Président de la République a le droit de faire grâce à titre individuel.

<sup>102</sup> See <https://www.eppo.europa.eu/sites/default/files/2021-11/10-FR.pdf>.

<sup>103</sup> See Art. 64 Code des douanes, which contains investigative powers en matière des fraudes en douanes.

### c) Competent national authorities in paras 3 to 7 of Art. 27

13

#### Criminal Procedure Code

##### Art. 696-112 CPC<sup>104</sup>

When the European Public Prosecutor's Office decides to exercise its jurisdiction, the public prosecutor or the examining magistrate "seized" of/for an investigation or information relating to facts falling under article 696-108 is required to relinquish jurisdiction of the procedure for the benefit of the European Public Prosecutor's Office in application of para 1 of article 25 and para 5 of article 27 of the aforementioned Council Regulation (EU) 2017/1939 of 12th October 2017. "The public prosecutor requests the investigating judge (*juge d'instruction*), which was initially seized, to relinquish/repeal jurisdiction in favour of the EPPO. The investigating judge notifies the parties of his discharge order.

14

#### Customs Code

Art. 344-2. – Pursuant to article 696-113 of the Code of Criminal Procedure, when the European Public Prosecutor's Office decides to exercise jurisdiction over offenses provided for by this code, the European Delegated Prosecutor may conduct investigations in accordance with the provisions of this code.



#### Notification pursuant Art. 117 EPPO<sup>105</sup>

public prosecutors at judicial courts, public prosecutors at specialised interregional courts, the financial public prosecutor, and public prosecutors at courts of appeal, the investigating magistrates of the judicial courts, the investigating chambers of the courts of appeal and their presidents, the investigation departments of the national police and the national gendarmerie, the services of the interregional customs directorates, the national directorate for customs intelligence and investigations and the financial judicial investigation service.

<sup>104</sup> Art. 696-112. CPP

Lorsque le Parquet euro-péen décide d'exercer sa compétence, le procureur de la République ou le juge d'instruction saisi d'une enquête ou d'une information portant sur des faits relevant de l'article 696-108 est tenu de se dessaisir de la procédure au profit du Parquet européen en application du 1 de l'article 25 et du 5 de l'article 27 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 précité. « Le procureur de la République requiert le juge d'instruction initialement saisi de se dessaisir au profit du Parquet européen. Le juge d'instruction notifie son ordonnance de des-saisissement aux parties.

<sup>105</sup> See NOTE DES AUTORITÉS FRANÇAISES, <https://www.eppo.europa.eu/sites/default/files/2021-11/10-FR.pdf> - les procureurs de la République près les tribunaux judiciaires, les procureurs de la République près les juridictions interrégionales spécialisées, le procureur de la République financier, et les procureurs généraux près les cours d'appel,

- les magistrats instructeurs des tribunaux judiciaires,
- les chambres de l'instruction des cours d'appel et leurs présidents,
- les services d'enquêtes de la police nationale et de la gendarmerie nationale,
- les services des directions interrégionales des douanes, la direction nationale du renseignement et des enquêtes douanières et le service d'enquêtes judiciaires des finances.

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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.

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.

### Art. 28 Conduite de l'enquête

- 1 Art. 28 distinguishes between a normal case and a special case (para. 4). The conducting of the investigation depends on national law and national authorities. The handling EDP can either undertake or instruct/assign the national authorities. The last case was discussed in a Court de Cassation based Colloques in May 2022 by *Thomas de Ricolfis* and *Christophe Perruau*.<sup>106</sup>
- 2 The necessity of a close cooperation of the police in daily actions « *coopération policière au quotidien* » was emphasised. The cooperation with Europol and Eurojust was taken into consideration as well, which is important for the assignment or instruction of actions to the *police nationale* (especially the judicial police, see below → b)). The cooperation between tax and customs authorities in France was already analysed in 2002 by the *Vervaele*.<sup>107</sup>

#### a) The EDPs conducting the investigation/*La direction par les PED*

- 3 The EDPs may be responsible for carrying out the investigations.

<sup>106</sup> “14H50: Les enquêtes menées par le Parquet européen, Thomas de RICOLFIS, chef de l’Office central de lutte contre la délinquance financière (OCLCIFI), Christophe PERRUAUX, directeur du Service d’enquêtes judiciaires des finances (SEJF)”, see <https://youtu.be/n9bbC6KajXQ>. Accessed 31 March 2024.

<sup>107</sup> Vervaele 2002, 181–218.

**aa. The classical hypothesis/ *L'hypothèse classique*****(1) The handling EDP carrying out the investigative measures, Para 1/ *Le PED chargé de l'exécution des mesures d'enquête, paragraphe 1****Sources and national sections 4 Overview for France – Art. 28 EPPO Regulation*

4

- Cf. Art. 26 mainly and see Art. 696-113:

**Art. 696-113 CPC<sup>108</sup>**

In proceedings within his competence, the Delegated European Public Prosecutor shall conduct investigations in accordance with the provisions applicable to the investigation *in flagrante delicto* or the preliminary investigation and the provisions of the Customs Code.

***Powers of the European Public Prosecutor:***

5

The powers depend on the procedural framework in which the European Public Prosecutor's Office acts (police investigation (*flagrante delicto*/preliminary), hybrid investigation (instruction) derogatory or not) → see above p. 96)<sup>109</sup>

**Art. 696-108 CPC<sup>110</sup>**

Delegated European Public Prosecutors shall have jurisdiction throughout the national territory to investigate, prosecute and refer for trial the perpetrators and accomplices of the criminal offences affecting the financial interests of the European Union referred to in Articles 4, 22, 23 and 25 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation regarding the establishment of the European Public Prosecutor's Office, which are committed after 20 November 2017.

<sup>108</sup> **Art. 696-113**

Dans les procédures relevant de sa compétence, le procureur européen délégué conduit les investigations conformément aux dispositions applicables à l'enquête de flagrance ou à l'enquête préliminaire et aux dispositions du code des douanes.

<sup>109</sup> Tout dépend du cadre procédural dans lequel agit le parquet européen (enquête de police (flagrance/préliminaire), enquête hybride (instruction) dérogatoire ou non).<sup>110</sup> **Art. 696-108** Les procureurs européens délégués sont compétents sur l'ensemble du territoire national pour rechercher, poursuivre et renvoyer en jugement les auteurs et complices des infractions pénales portant atteinte aux intérêts financiers de l'Union européenne mentionnées aux articles 4, 22, 23 et 25 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen, qui sont commises après le 20 novembre 2017.

**Art. 696-109 CPC<sup>111</sup>**

For offences falling within their jurisdiction, the Delegated European Public Prosecutors shall, pursuant to Articles 4 and 13 of the abovementioned Council Regulation (EU) 2017/1939 of 12 October 2017, exercise the powers of the public prosecutor and the public prosecutor at the court of appeal, including for the application of Articles 12, 12-1, 225 and 229-1 of this Code and for the exercise of appeal procedures.

Article 30, the first sentence of Article 33, the first four paragraphs of Article 35, Articles 36, 37, 39-1, 39-2 and 40-3, the third paragraph of Article 41 and Article 44 shall not apply. For the purposes of Article 695-2, the Delegated European Public Prosecutor may set up a joint investigation team with the consent of the other Member State(s) concerned, after informing the Minister for Justice.

**Art. 696-118 CPC<sup>112</sup> [= specific case if using the powers of the investigating judge]**

During the procedure provided for in Article 696-114, the European Delegated Prosecutor carries out acts and takes decisions in matters of:

- 1<sup>o</sup> of indictment;
- 2<sup>o</sup> interrogation and confrontation;
- 3<sup>o</sup> hearing witnesses, including assisted witnesses;
- 4<sup>o</sup> Admissibility of the constitution of civil party and hearing of the civil party;
- 5<sup>o</sup> of transport;
- 6<sup>o</sup> rogatory commission;
- 7<sup>o</sup> Expertise;
- 8<sup>o</sup> of a search warrant, appearance before the investigator or bringing before an investigative organ.

<sup>111</sup> **Art. 696-109** Pour les infractions relevant de leur compétence, les procureurs européens délégués exercent, en application des articles 4 et 13 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 précité, les attributions du procureur de la République et du procureur général près la cour d'appel, y compris pour l'application des articles 12, 12-1, 225 et 229-1 du présent code et pour l'exercice des voies de recours.

L'article 30, la première phrase de l'article 33, les quatre premiers alinéas de l'article 35, les articles 36, 37, 39-1, 39-2 et 40-3, le troisième alinéa de l'article 41 et l'article 44 ne sont pas applicables. Pour l'application de l'article 695-2, le procureur européen délégué peut constituer une équipe commune d'enquête avec le consentement du ou des autres Etats membres concernés, après en avoir informé le ministre de la justice.

<sup>112</sup> **Art. 696-118. CPP**

Au cours de la procédure prévue à l'article 696-114, le procureur européen délégué accomplit les actes et prend les décisions en matière:

- « 1<sup>o</sup> De mise en examen ;
- « 2<sup>o</sup> D'interrogatoire et de confrontation ;
- « 3<sup>o</sup> D'audition de témoins, y compris du témoin assisté ;
- « 4<sup>o</sup> De recevabilité de la constitution de partie civile et d'audition de la partie civile ;
- « 5<sup>o</sup> De transport ;
- « 6<sup>o</sup> De commission rogatoire ;
- « 7<sup>o</sup> D'expertise ;
- « 8<sup>o</sup> De mandat de recherche, de comparution ou d'amener.

The complete Code of Criminal Procedure can be applied by the EDP (PED), i.e. the specific sections, art. 696-118 et seq. on the power of the PED in France is only *lex specialis*, but otherwise the power depends on the different stages of the investigation. 6

**Art. 696-119 CPC<sup>113</sup>**

Article 696-119 Version in force since 01 June 2021

Creation LOI n°2020-1672 of 24 December 2020 – Art. 1

Decisions on the placement, maintenance and modification of judicial supervision shall be taken by the Delegated European Public Prosecutor. These decisions may be taken both in the context of the procedure provided for in Article 696-114 and in the context of the summons to appear by official notice or delayed appearance procedures provided for in Articles 394 and 397-1-1.

The person placed under judicial supervision by the Delegated European Public Prosecutor may immediately challenge this decision before the liberty and custody judge, who shall rule on this challenge within a maximum of seventy-two hours during an adversarial debate. If the judge confirms the placement under judicial supervision, the person may appeal this decision to the investigating chamber.

**Art. 696-120 CPC<sup>114</sup>**

Decisions on the placement, extension and modification of house arrest with electronic monitoring are taken by the liberty and detention judge, seized by written and reasoned requests from the European Delegated Prosecutor and afterwards, if necessary, a contradictory debate organized in accordance with articles 142-6 and 142-7.

<sup>113</sup> **Article 696-119 CPP** Version en vigueur depuis le 01 juin 2021

Les décisions en matière de placement, de maintien et de modification du contrôle judiciaire sont prises par le procureur européen délégué. Ces décisions peuvent être prises tant dans le cadre de la procédure prévue à l'article 696-114 que dans le cadre des procédures de convocation par procès-verbal ou de comparution à délai différé prévues aux articles 394 et 397-1-1.

La personne placée sous contrôle judiciaire par le procureur européen délégué peut immédiatement contester cette décision devant le juge des libertés et de la détention, qui statue dans un délai maximal de soixante-douze heures sur cette contestation lors d'un débat contradictoire. Si le juge confirme le placement sous contrôle judiciaire, la personne peut faire appel de cette décision devant la chambre de l'instruction.

<sup>114</sup> **Art. 696-120 CPP**

Les décisions en matière de placement, de prolongation et de modification de l'assignation à résidence avec surveillance électronique sont prises par le juge des libertés et de la détention, saisi par réquisitions écrites et motivées du procureur européen délégué et après, le cas échéant, un débat contradictoire organisé conformément aux articles 142-6 et 142-7.

**Art. 696-121 CPC<sup>115</sup>**

Decisions on the placement and extension of pre-trial detention are taken by the liberty and detention judge who, after being seized by written and reasoned requests from the European Delegated Prosecutor, rules after a contradictory debate. organized in accordance with the provisions of Article 145.

**Art. 696-122 CPC<sup>116</sup>**

However, the Delegated European Public Prosecutor shall be competent to order the following measures, ex officio or at the request of the person under investigation

1° Remove all or part of the obligations included in the house arrest with electronic surveillance or grant an occasional or temporary exemption from them;

2° Order the release from house arrest with electronic surveillance;

3° Modify or authorise, pursuant to Article 142-9, the head of the prison or the director of the prison integration and probation service to modify the hours of presence of the accused at home or in the places where he or she has been assigned when the modifications are favourable to the accused and do not affect the balance of the supervision measure;

4° Order the release of a person placed in pre-trial detention, if necessary subject to judicial supervision.

If the Delegated European Public Prosecutor does not grant the person's request within five days, he or she shall forward the file, together with his or her reasoned opinion, to the liberty and custody judge, who shall give a ruling within three working days of this forwarding, in accordance with the procedures set out in Articles 140 and 148.

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<sup>115</sup> **Art. 696-120 CPP**

Les décisions en matière de placement et de prolongation de la détention provisoire sont prises par le juge des libertés et de la détention qui, après avoir été saisi par réquisitions écrites et motivées du procureur européen délégué, statue à l'issue d'un débat contradictoire organisé conformément aux dispositions de l'article 145.

<sup>116</sup> **Art. 696-122 CPP**

Toutefois, le procureur européen délégué est compétent pour ordonner les mesures suivantes, d'office ou à la demande de la personne mise en examen:

1° Supprimer tout ou partie des obligations comprises dans l'assignation à résidence avec surveillance électronique ou accorder une dispense occasionnelle ou temporaire de les observer ;

2° Ordonner la mainlevée de l'assignation à résidence avec surveillance électronique ;

3° Modifier ou autoriser, en application de l'article 142-9, le chef d'établissement pénitentiaire ou le directeur du service pénitentiaire d'insertion et de probation à modifier les horaires de présence de la personne mise en examen au domicile ou dans les lieux d'assignation lorsqu'il s'agit de modifications favorables à cette dernière ne touchant pas à l'équilibre de la mesure de contrôle ;

4° Ordonner la mise en liberté, le cas échéant assortie d'un contrôle judiciaire, d'une personne placée en détention provisoire.

Si le procureur européen délégué ne fait pas droit à la demande de la personne dans les cinq jours, il transmet le dossier, assorti de son avis motivé, au juge des libertés et de la détention, qui statue dans les trois jours ouvrables à compter de cette transmission, selon les modalités prévues aux articles 140 et 148.



**Art. 696-123 CPC**<sup>117</sup>

The European Delegated Public Prosecutor is also competent to take decisions relating to the procedures for the execution of pre-trial detention or the exercise of his rights by a person placed in pre-trial detention pursuant to Articles 145-4 to 145-4-2. and 148-5 of this code and articles L. 341-1 to L. 341-5, L. 341-7, L. 341-8 and L. 345-1 to L. 345-6 of the prison code.

**Art. 696-124**<sup>118</sup>

The decision to issue an arrest warrant is taken by the liberty and detention judge, seized by written and reasoned requests from the European Delegated Prosecutor.

**Art. 696-125 CPP**<sup>119</sup>

The European Delegated Public Prosecutor shall execute the arrest warrant in the form of a European arrest warrant in accordance with Article 695-16.

**Art. 696-126 CPP**<sup>120</sup>

Searches, home visits and seizures must, in the absence of flagrante delicto or express consent of the person in whose home they take place, be carried out with the authorization of the judge of freedoms and detention seized by written and reasoned requisitions of the European Delegated Public Prosecutor under the conditions provided for in Article 76.

**Art. 696-127 CPC**<sup>121</sup>

Decisions ordering the interception of correspondence sent by telecommunications, geolocation, an investigation under a pseudonym or a special investigation technique provided for in section 6 of chapter II of title XXV of this book are taken by the judge of freedoms and of detention, seized by written and reasoned requests from the European

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<sup>117</sup> **Art. 696-123 CPP**

Le procureur européen délégué est également compétent pour prendre les décisions relatives aux modalités d'exécution d'une détention provisoire ou à l'exercice de ses droits par une personne placée en détention provisoire en application des articles 145-4 à 145-4-2 et 148-5 du présent code et des articles L. 341-1 à L. 341-5, L. 341-7, L. 341-8 et L. 345-1 à L. 345-6 du code pénitentiaire.

<sup>118</sup> **Art. 696-124 CPP**

La décision de décerner un mandat d'arrêt est prise par le juge des libertés et de la détention, saisi par réquisitions écrites et motivées du procureur européen délégué.

<sup>119</sup> **Art. 696-125 CPP**

Le procureur européen délégué met le mandat d'arrêt à exécution sous la forme d'un mandat d'arrêt européen conformément à l'article 695-16.

<sup>120</sup> **Art 696-126 CPP**

Les perquisitions, visites domiciliaires et saisies doivent, en l'absence de flagrance ou d'assentiment exprès de la personne chez laquelle elles ont lieu, être effectuées avec l'autorisation du juge des libertés et de la détention saisi par réquisitions écrites et motivées du procureur européen délégué dans les conditions prévues à l'article 76.

<sup>121</sup> **Art. 696-127 CPP**

Les décisions ordonnant une interception de correspondance émise par la voie des télécommunications, une géolocalisation, une enquête sous pseudonyme ou une technique spéciale d'enquête prévue à la section 6 du chapitre II du titre XXV du présent livre sont prises par le juge des libertés et de la détention, saisi par réquisitions écrites et motivées du procureur européen délégué, sauf si ces mesures sont ordonnées dans des conditions d'utilisation et de durée permettant au procureur de la République d'y recourir dans le cadre de l'enquête de flagrance ou de l'enquête préliminaire.

Delegated Public Prosecutor, unless these measures are ordered under conditions of use and duration allowing the public prosecutor to resort to them in the context of the flagrance investigation or of the preliminary investigation.

**Art- 696-128 CPC**<sup>122</sup>

The decisions ordering the special seizures provided for in Title XXIX of this book and the precautionary measures provided for in Article 706-166 are taken by the judge of freedoms and detention, seized by written and reasoned requisitions of the Delegated European Prosecutor, subject to specific powers of the prosecutor provided for in the first paragraph of article 706-154.

**Art. 696-130 CPC**<sup>123</sup>

As soon as the European Delegated Public Prosecutor has indicted a person or placed him under the status of assisted witness, or as soon as the liberty and detention judge has authorized one of the acts provided for in Articles 696-124 or 696-127 under conditions that do not allow it to be used in the context of the flagrance investigation or the preliminary investigation, the European Delegated Prosecutor:

1° Applies the provisions of Article 105 to all persons against whom there are serious and concordant indications of having participated in the facts;

2° Notifies the victim of the offense of his right to bring a civil action under the conditions provided for in article 80-3.

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<sup>122</sup> **Art- 696-128 CPP**

Les décisions ordonnant les saisies spéciales prévues au titre XXIX du présent livre et les mesures conservatoires prévues à l'article 706-166 sont prises par le juge des libertés et de la détention, saisi par réquisitions écrites et motivées du procureur européen délégué, sous réserve des pouvoirs propres du procureur prévus au premier alinéa de l'article 706-154.

<sup>123</sup> **Art. 696-130 CPP**

Dès lors que le procureur européen délégué a procédé à la mise en examen d'une personne ou l'a placée sous le statut de témoin assisté, ou dès lors que le juge des libertés et de la détention a autorisé l'un des actes prévus aux articles 696-124 ou 696-127 dans des conditions ne permettant pas d'y recourir dans le cadre de l'enquête de flagrance ou de l'enquête préliminaire, le procureur européen délégué:

1° Applique les dispositions de l'article 105 à l'ensemble des personnes à l'encontre desquelles il existe des indices graves et concordants d'avoir participé aux faits ;

2° Avise la victime de l'infraction de son droit de se constituer partie civile dans les conditions prévues à l'article 80-3.

**Art- 696-132 CPC<sup>124</sup>**

As soon as the procedure provided for in Article 696-114 appears to him to have been completed, the Delegated European Public Prosecutor notifies the parties and their lawyers in accordance with I of Article 175.

If the parties have made the request in accordance with III of the same article 175, they have a period of one month, if a person under investigation is detained, or three months, in other cases, to send him observations according to the procedures provided for in the penultimate paragraph of Article 81 or to formulate requests or submit requests on the basis of the ninth paragraph of the same Article 81, Articles 82-1 and 82-3, of the first paragraph of Article 156 and the third paragraph of Article 173, provided that these requests or requests are not inadmissible pursuant to Articles 82-3 and 173-1. At the end of this period, the parties may no longer make such observations or formulate or submit such requests or requests.

At the end of the period, the European Delegated Prosecutor then settles the case in the light of any observations from the parties. He makes his order in accordance with Articles 176 to 184, subject to the competence of the judge of freedoms and detention to, on written and reasoned requisitions of the delegated European public prosecutor, order the maintenance of the person under house arrest with electronic surveillance or in pre-trial detention.

In correctional matters, if he does not refer the person under investigation to the correctional court and if the conditions provided for in Article 180-1 are met, the European Delegated Prosecutor may propose to him to apply the procedure of appearance on prior admission of guilt, which he pronounces the implementation by order.

If the conditions provided for in Article 180-2 are met, the Delegated European Public Prosecutor may order, by order, the implementation of the procedure provided for in

<sup>124</sup> **Art. 696-132 CPP**

Aussitôt que la procédure prévue à l'article 696-114 lui paraît terminée, le procureur européen délégué en avise les parties et leurs avocats conformément au I de l'article 175.

Si les parties en ont fait la demande conformément au III du même article 175, elles disposent d'un délai d'un mois, si une personne mise en examen est détenue, ou de trois mois, dans les autres cas, pour lui adresser des observations selon les modalités prévues à l'avant-dernier alinéa de l'article 81 ou pour formuler des demandes ou présenter des requêtes sur le fondement du neuvième alinéa du même article 81, des articles 82-1 et 82-3, du premier alinéa de l'article 156 et du troisième alinéa de l'article 173, sous réserve que ces demandes ou requêtes ne soient pas irrecevables en application des articles 82-3 et 173-1. A l'expiration de ce délai, les parties ne peuvent plus adresser de telles observations ni formuler ou présenter de telles demandes ou requêtes.

A l'issue du délai, le procureur européen délégué procède alors au règlement du dossier au vu des observations éventuelles des parties. Il rend son ordonnance conformément aux articles 176 à 184, sous réserve de la compétence du juge des libertés et de la détention pour, sur réquisitions écrites et motivées du procureur européen délégué, ordonner le maintien de la personne sous assignation à résidence avec surveillance électronique ou en détention provisoire.

En matière correctionnelle, s'il ne renvoie pas la personne mise en examen devant le tribunal correctionnel et si les conditions prévues à l'article 180-1 sont réunies, le procureur européen délégué peut lui proposer de faire application de la procédure de comparution sur reconnaissance préalable de culpabilité, dont il prononce la mise en œuvre par ordonnance.

Si les conditions prévues à l'article 180-2 sont réunies, le procureur européen délégué peut prononcer, par ordonnance, la mise en œuvre de la procédure prévue à l'article 41-1-2. Dans les cas mentionnés au dernier alinéa de l'article 180-2, la procédure prévue à l'article 696-114 est reprise à l'égard de la personne morale.

Les dispositions des deux premiers alinéas du présent article sont également applicables au témoin assisté.

Article 41-1-2. In the cases mentioned in the last paragraph of Article 180-2, the procedure provided for in Article 696-114 is repeated with regard to the legal person. The provisions of the first two paragraphs of this article are also applicable to assisted witnesses.

**(2) The exceptional case (Art. 28 § 4 of the Regulation)/L'hypothèse exceptionnelle (art. 28 § 4 Règlement) quand le procureur européen intervient directement**

7 Art. 28 para 4 is represented in national law:

**Art. 696-133. CPC<sup>125</sup>**

When the European Public Prosecutor personally conducts the investigation in application of 4 of Article 28 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced co-operation concerning the creation of the European Public Prosecutor's Office, he exercises the powers of the European Delegated Prosecutor.

**b) Instructions and assignment of investigative measures for “those national authorities”/ Instructions et attribution de mesures d'enquête pour ces autorités nationales“**

- 8 The EDPs can instruct and assign special national authorities. This depends on the phase of investigation and the severeness of the suspected offence i.e. suspected PIF fraud offence. If conducting the new hybrid investigation, the French EDP has more powers than the national homologue and he/she can therefore also make use of Art. 151 CPC.<sup>126</sup>
- 9 Firstly the National Police (*Police nationale*) with its specific subdivisions and specialized anti-fraud units can be mentioned. The Unit of the Judicial Police („*Direction Centrale de la Police Judiciaire*”) plays a major role in the fight against organized and serious crime such as frauds to the EU budget.<sup>127</sup> Inside the *Direction Centrale de la Police*

<sup>125</sup> Art. 696-133. CPP

Lorsque le procureur européen conduit personnellement l'enquête en application du 4 de l'article 28 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen, il exerce les pouvoirs du Procureur européen délégué.

<sup>126</sup> Art. 151 CPP

Le juge d'instruction peut requérir par commission rogatoire tout juge de son tribunal, tout juge d'instruction ou tout officier de police judiciaire, qui en avise dans ce cas le procureur de la République, de procéder aux actes d'information qu'il estime nécessaires dans les lieux où chacun d'eux est territorialement compétent.

La commission rogatoire indique la nature de l'infraction, objet des poursuites. Elle est datée et signée par le magistrat qui la délivre et revêtue de son sceau.

Elle ne peut prescrire que des actes d'instruction se rattachant directement à la répression de l'infraction visée aux poursuites.

Le juge d'instruction fixe le délai dans lequel la commission rogatoire doit lui être retournée avec les procès-verbaux dressés pour son exécution par l'officier de police judiciaire. A défaut d'une telle fixation, la commission rogatoire et les procès-verbaux doivent lui être transmis dans les huit jours de la fin des opérations exécutées en vertu de celle-ci.

<sup>127</sup> The Police Judiciaire has a history dating back more than 100 years. It represents the Interpol office, the „Prüm“ units and communicates with Europol as well, cf. <https://www.police-nationale.interieur.gouv.fr/Organisation/Direction-Centrale-de-la-Police-Judiciaire/Histoire-de-la-police-judiciaire>. For a comparative approach to the role of the judicial police in criminal investigations cf. Sénat, Étude de législation comparée n°

*Judiciaire* the “Central Office for the Fight against Corruption and Financial and Tax Offences (OCLCIFF)” may be competent to investigate.

Even inside the OCLCIFF police structure the competence for certain kinds of fraud typologies is further separated between different brigades i.e. ultimately specialized units: 10

- **MTIC frauds (revenue-related):** Central Brigade for the repression of community fraud/*Brigade centrale pour la répression des fraudes communautaires*
- **Tax frauds (mainly revenue-related)<sup>128</sup>:** National Financial Research and Intervention Brigade/*Brigade de recherche et d'intervention financière nationale* 11

Most tax frauds will be detected during tax audits (see below → OLAF, Part C). Tax audits are carried out by the Direction Générale des Finances Publiques by virtue of administrative law. It must then be assessed whether an EU dimension i.e. an EU fraud is present.

Thus the Direction Générale des Finances Publiques will indicate or submit information about potential irregularities or fraud to a judicial authority. Before it can file a criminal complaint it needs to draft a complaint to the “Commission des Infractions Fiscales”, a special body, which assesses the offence and the complaint and finally decides to submit it to a judicial (i.e. prosecuting authority).<sup>129</sup> 12

- **Money laundering (predicate offences)<sup>130</sup>:** National Asset Recovery Office within the European Union/*Bureau national de recouvrement des avoirs au sein de l'Union européenne* 13

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198 - juillet 2009 - Le rôle de la police judiciaire dans l'instruction des affaires pénales, 2009; Gaby and Woerth 2016, 105 et seq; Janet 2020; Cahn 2017, 57 et seq.; Roussel, 2016, Chapitre 2, Mn. 478 et seq.; Brigaud and Uher et al. 2021: Épisode 4 - L'implication des agents de l'administration fiscale dans l'enquête en matière d'infractions fiscales. Information on fraud typologies can also be found at the European Financial and Economic Crime Centre – EFCEC.

<sup>128</sup> Code des douanes: Offenses of smuggling, fraudulent importation or exportation provided for in article 414-2 of the code of customs/Infractions de contrebande, d'importation ou d'exportation frauduleuse prévues à l'article 414-2 du code des douanes

Code pénal Fraud offences: Book 3: Title I: Fraudulent appropriations (Articles 311-1 to 314-13), Chapter III: Fraud and related offenses (Articles 313-1 to 313-9), Section 1: Fraud (Articles 313-1 to 313-3), Art. 313-1 (fraud), Art. 313-2 (aggravated fraud), Art. 313-3 (attempted fraud) Section 2: Fraud-related offenses (Articles 313-5 to 313-6-2), Section 3: Additional penalties applicable to natural persons and liability of legal persons (Articles 313-7 to 313-9, Embezzlement offences: Book 3: Chapter IV: Diversion (Articles 314-1 to 314-13), Section 1: Breach of trust (Articles 314-1 to 314-4), Art. 314-1 (abus de confiance/breach of trust), Art. 314-1-1 (abus de confiance en bande organisée/breach of trust by a gang), Art. 314-2 (aggravated breach of trust), Art. 432-15, Art. 433-4

<sup>129</sup> See OECD 2021, 140–148.

<sup>130</sup> Chapter IV: Money laundering (Articles 324-1 to 324-9), Section 1: Simple money laundering and aggravated money laundering (Articles 324-1 to 324-6-1), Section 2: Additional penalties applicable to natural persons and criminal liability of legal persons (Articles 324-7 to 324-9), Articles 324-1 to 324-9, Art. 324-1 (money laundering offence), Art. 324-2 (penalties for money laundering, Art. 324-6 (attempting money laundering), Art. 324-6-1 (reducing the penalty in case of an attempted offence).

- Corruption offences<sup>131</sup>: other OCLCIFF offices, staff concentrate on corruption
  - Subsidy frauds: no specialized units.
  - Procurement frauds: no specialized units.
- 14 Next to be mentioned are the **French customs units** supervised by the General Directions of Customs and Excise (DGDDI), which have competences for the special area of **customs revenue fraud (duties frauds, etc.)** and also already play a role in OLAF investigations (i.e. for the detection of irregularities).<sup>132</sup> The fight against customs fraud has been centralized in 2018–2019 in the Judicial Investigations Department of Finance (*Service d’Enquêtes Judiciaires des Finances*, SEFJ, see below).
- 15 In **VAT fraud matters** the EPPO shares the competence with national authorities like the PNF, which would be competent in similar national cases as well as the JIRS and the JUNALCO. If a case above the threshold occurs the EPPO is competent and can make use of the authorities that are normally working for the PNF instead.<sup>133</sup> The PNF can ask the newly created Tax Police (SEJF)<sup>134</sup> to take actions. Thus the EDPs should be able to work together with the SEFJ in evocated cases or cases by virtue of Art. 26 § 1 EPPO Regulation. The CPC enshrines these special authorities in Art. 28-1 and Art. 28-2 CPC.
- 16 In the **area of tax (fraud) crimes** the civil servants that may work for the EDPs are either civil servants class A or class B (“*fonctionnaires de catégorie A ou B*”). The civil servants can be in the category specialized assistant or judicial tax officer (“*assistants spécialisés ou officiers fiscaux judiciaires*”).<sup>135</sup> The Minister of Justice has the power to issue circulars, which contain information on how to enforce the law, cf. e.g. *Direction des affaires criminelles et des grâces, Circulaire relative à la lutte contre la fraude fiscale*.<sup>136</sup>

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<sup>131</sup> Corruption offences: Section 3: Breaches of the duty of probity (Articles 432-10 to 432-16) , Paragraph 2: Passive corruption and influence peddling committed by persons exercising a public function (Articles 432-11 to 432-11-1) Art. 432-11 (passive corruption) , Chapter III: Offenses against public administration committed by individuals (Articles 433-1 to 433-26) Section 1: Active corruption and influence peddling committed by individuals (Articles 433-1 to 433-2-1): Art. 433-1, , Chapter V: Offenses against public administration and the action of justice of the European Communities, Member States of the European Union, other foreign States and other public international organizations (Articles 435-1 to 435-15 , Section 1: Offenses against public administration (Articles 435-1 to 435-6-2), Art 435-1 [Sub-section 1: Passive corruption and influence peddling (Articles 435-1 to 435-2)] with special provisions in the CPC, cf. Art. 689 CPC, Art. 689-8 CPC, Art. 435-3 [Sub-section 2: Active corruption and influence peddling (Articles 435-3 to 435-4)].

<sup>132</sup> The Direction Nationale du Renseignement et des Enquêtes Douanières (DNRED), which translates to the National Directorate of Intelligence and Customs Investigations is the primary French customs agency responsible for investigating fraud and other irregularities related to customs duties and taxes.

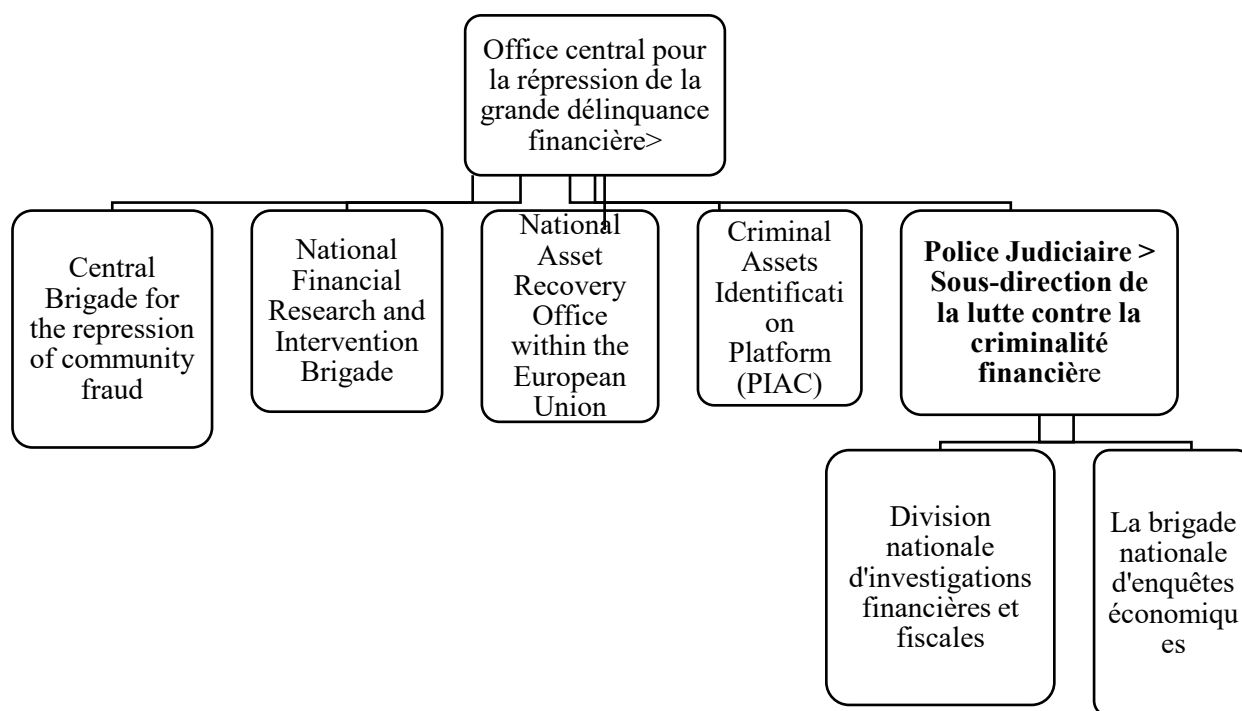
<sup>133</sup> Ministère de la Justice, ° NOR: JUSD2129778C, N° CIRCULAIRE: CRIM »2021 », p. 6: “La compétence du PNF en matière d’escroquerie à la TVA pourra en revanche trouver à s’exercer de façon plus résiduelle, en raison du partage de celle-ci avec les JIRS, la JUNALCO et le parquet européen.”

<sup>134</sup> It is attached to the General Directorate of Customs and Indirect Rights and to the Public Finances Department.

<sup>135</sup> Daoud and Valentin Rigamonti 2021: Épisode 4 - L’implication des agents de l’administration fiscale dans l’enquête en matière d’infractions fiscales, DALLOZ Actualité, 22 novembre 2021, <https://www.dalloz-actualite.fr/flash/circulaire-du-4-octobre-2021-episode-4-l-implication-des-agents-de-l-administration-fiscale-da#.YpT7Y1TP1EY>.

<sup>136</sup> Ministère de la Justice 2021.

Figure 7 Assignment of “those national authorities” in France, Art. 28 EPPO Regulation



Source: The authors.

Caption:

- The National Division of Financial and Tax Investigations/*Division Nationale des Enquêtes Financières et Fiscales (DNIFF)*
- The central office for the repression of major financial crime/*L'office central pour la répression de la grande délinquance financière (OCRGDF)*
- Central Brigade for the repression of community fraud/*Brigade centrale pour la répression des fraudes communautaires*
- National Financial Research and Intervention Brigade/*Brigade de recherche et d'intervention financière nationale*
- National Asset Recovery Office within the European Union/*Bureau national de recouvrement des avoirs au sein de l'Union européenne*

If the EDPs are responsible for carrying out the investigations they can make use of national authorities who are competent for PIF investigations or who can be used as investigators. As the cases are highly complex the EDPs can, like the PNF prosecutors make use of specialists in this area: 17

- specialized assistants recruited for their expertise in taxation, stock market law, accounting, public markets, financial analysis or even IT
- in-house-lawyers for special tasks (like drafting seizure documents)
- civil servants supervised by a Director of Judicial Registry Services

**18** In comparison to e.g. Germany, there is not simply a special office of a tax office responsible, but separate authorities for the different forms of fraud against the Union and criminal and tax proceedings can be initiated at the same time.<sup>137</sup> In most cases the judicial police will play an important role but it is obligatory to mention as well that the area of VAT fraud on the revenue side has different competent authorities than the area of the expenditure side, e.g. subsidies to French farmers and the agricultural sector.

**aa. The police authorities/*Les autorités policières***

**19** Even if the EDPs oversee the investigations, they do not act alone but supported – not as heavily as Italian EDPs – but a lot by judicial police officers.

**(1) Judicial Police officers/*Les officiers de police judiciaire* (art. 13 à 19-1 CPP)**

**20** **Art. 13 CPC**<sup>138</sup>

The judicial police are placed, in each jurisdiction of the court of appeal, under the supervision of the public prosecutor and under the control of the investigating chamber in accordance with Articles 224 et seq.

**21** The tasks of judicial police officers are highly important for the EPPO in France. Therefore the next provisions explore their tasks:

**Art. 14 CPC**<sup>139</sup>

It shall be responsible, in accordance with the distinctions set out in this Title, for recording offences against the criminal law, gathering evidence and seeking out the perpetrators of such offences until an investigation is opened.

When an investigation is opened, it shall carry out the delegations of the investigating courts and comply with their requisitions.

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<sup>137</sup> Turksen et al. 2021, p. 200 et seq.

<sup>138</sup> **Art. 13** La police judiciaire est placée, dans chaque ressort de cour d'appel, sous la surveillance du procureur général et sous le contrôle de la chambre de l'instruction conformément aux articles 224 et suivants.

<sup>139</sup> **Art. 14** Elle est chargée, suivant les distinctions établies au présent titre, de constater les infractions à la loi pénale, d'en rassembler les preuves et d'en rechercher les auteurs tant qu'une information n'est pas ouverte. Lorsqu'une information est ouverte, elle exécute les délégations des juridictions d'instruction et défère à leurs réquisitions.



**Art. 15 CPC**<sup>140</sup>

The judicial police includes:

- 1° Officers of the judicial police;
- 2° Judicial police officers and delegated judicial police officers;
- 3° Civil servants and agents to whom certain judicial police functions are assigned by law.

**Art. 17 CPC**<sup>141</sup>

The judicial police officers shall exercise the powers defined in Article 14; they shall receive complaints and denunciations; they shall conduct preliminary investigations under the conditions provided for in Articles 75 to 78.

In the case of flagrant crimes and offences, they shall exercise the powers conferred on them by Articles 53 to 67.

They have the right to directly request the assistance of the public force for the execution of their mission.

In the following part the chapter deals with the judicial staff. All staff acting on behalf of the EPPO or with the Paris office needs to know who is part of the police judiciaire: **22**

<sup>140</sup> **Art. 15** La police judiciaire comprend:

- 1° Les officiers de police judiciaire ;
- 2° Les agents de police judiciaire et les agents de police judiciaire adjoints ;
- 3° Les fonctionnaires et agents auxquels sont attribuées par la loi certaines fonctions de police judiciaire.

<sup>141</sup> **Art. 17** Les officiers de police judiciaire exercent les pouvoirs définis à l'article 14 ; ils reçoivent les plaintes et dénonciations ; ils procèdent à des enquêtes préliminaires dans les conditions prévues par les articles 75 à 78. En cas de crimes et délits flagrants, ils exercent les pouvoirs qui leur sont conférés par les articles 53 à 67. Ils ont le droit de requérir directement le concours de la force publique pour l'exécution de leur mission.

**(2) Judicial police officers (art. 20 to 21-2 CPP)/ *Les agents de police judiciaire* (art. 20 à 21-2 CPP)**

23 The enumeration of the following persons helps to understand, who might carry out tasks for an EDP in France. The enumeration is not exhaustive as tax and customs officers are not part of the police judiciaire:

24 **Art. 20 CPC<sup>142</sup>**

The following are judicial police officers:

1° Student gendarmes assigned to an operational unit and gendarmes who are not judicial police officers;

2° Civil servants in the active services of the national police force, both permanent and probationary, who are not judicial police officers;

[3.-4]

5° (Repealed).the civil servants and military personnel mentioned in 1° and 2° may not effectively exercise the powers attached to their status as judicial police officers and may not avail themselves of this status unless they are assigned to a post involving such exercise; the exercise of these powers shall be temporarily suspended during the time when they are participating, as a formed unit, in a law enforcement operation.

The judicial police officers have the following mission:

To assist, in the exercise of their duties, the judicial police officers;

To record crimes, misdemeanours or infractions and to draw up a report;

To receive statements made to them by all persons likely to provide them with clues, evidence and information on the perpetrators and accomplices of these offences.judicial police officers do not have the authority to decide on measures of custody.

<sup>142</sup> **Art. 20 Code de procédure pénale**

Sont agents de police judiciaire:

1° Les élèves-gendarmes affectés en unité opérationnelle et les gendarmes n'ayant pas la qualité d'officier de police judiciaire ;

2° Les fonctionnaires des services actifs de la police nationale, titulaires et stagiaires, n'ayant pas la qualité d'officier de police judiciaire ;

3° (Abrogé) ;

4° (Abrogé) ;

5° (Abrogé).

Toutefois, les fonctionnaires et militaires mentionnés aux 1° et 2° ne peuvent exercer effectivement les attributions attachées à leur qualité d'agent de police judiciaire et se prévaloir de cette qualité que s'ils sont affectés à un emploi comportant cet exercice ; l'exercice de ces attributions est momentanément suspendu pendant le temps où ils participent, en unité constituée, à une opération de maintien de l'ordre.

Les agents de police judiciaire ont pour mission:

De seconder, dans l'exercice de leurs fonctions, les officiers de police judiciaire ;

De constater les crimes, délits ou contraventions et d'en dresser procès-verbal ;

De recevoir par procès-verbal les déclarations qui leur sont faites par toutes personnes susceptibles de leur fournir des indices, preuves et renseignements sur les auteurs et complices de ces infractions.

Les agents de police judiciaire n'ont pas qualité pour décider des mesures de garde à vue.

**Art. 20-1 CPC<sup>143</sup>**

When they do not have the status of judicial police officer pursuant to Article 16-1 A, active or retired civil servants of the national police and military personnel of the national gendarmerie who have had the status of judicial police officer or agent during their activity may benefit from the status of judicial police officer when they serve in the operational reserve of the national police or in the operational reserve of the national gendarmerie. A decree in the Council of State sets the conditions for the application of this article. It specifies the conditions of experience and the qualities required to qualify as a judicial police officer under this article.

**Art. 21 CPC<sup>144</sup>**

The following are deputy judicial police officers:

1° Civil servants of the active national police force who do not meet the conditions set out in article 20;

1° bis Volunteers serving as military personnel in the gendarmerie and military personnel serving in the operational reserve of the national gendarmerie who do not meet the conditions set out in Article 20-1;

**<sup>143</sup> Art. 20-12 Code de procédure pénale**

Lorsqu'ils n'ont pas la qualité d'officier de police judiciaire en application de l'article 16-1 A, les fonctionnaires de la police nationale et les militaires de la gendarmerie nationale actifs ou à la retraite ayant eu durant leur activité la qualité d'officier ou d'agent de police judiciaire peuvent bénéficier de la qualité d'agent de police judiciaire lorsqu'ils servent dans la réserve opérationnelle de la police nationale ou dans la réserve opérationnelle de la gendarmerie nationale. Un décret en Conseil d'Etat fixe les conditions d'application du présent article. Il précise les conditions d'expérience et les qualités requises pour bénéficier de la qualité d'agent de police judiciaire au titre du présent article.

**<sup>144</sup> Art. 21 Code de procédure pénale**

Sont agents de police judiciaire adjoints:

1° Les fonctionnaires des services actifs de police nationale ne remplissant pas les conditions prévues par l'article 20 ;

1° bis Les volontaires servant en qualité de militaire dans la gendarmerie et les militaires servant au titre de la réserve opérationnelle de la gendarmerie nationale ne remplissant pas les conditions prévues par l'article 20-1 ;

1° ter Les policiers adjoints mentionnés à l'article L. 411-5 du code de la sécurité intérieure et les membres de la réserve opérationnelle de la police nationale qui ne remplissent pas les conditions prévues aux articles 16-1 A ou 20-1 du présent code ;

1° quater Les contrôleurs relevant du statut des administrations parisiennes exerçant leurs fonctions dans la spécialité voie publique et les agents de surveillance de Paris ;

1° quinquies (Abrogé) ;

1° sexies (Abrogé) ;

2° Les agents de police municipale ;

3° Les gardes champêtres, lorsqu'ils agissent pour l'exercice des attributions fixées au dernier alinéa de l'article L. 521-1 du code de la sécurité intérieure.

Ils ont pour mission:

De seconder, dans l'exercice de leurs fonctions, les officiers de police judiciaire ;

De rendre compte à leurs chefs hiérarchiques de tous crimes, délits ou contraventions dont ils ont connaissance ;

De constater, en se conformant aux ordres de leurs chefs, les infractions à la loi pénale et de recueillir tous les renseignements en vue de découvrir les auteurs de ces infractions, le tout dans le cadre et dans les formes prévues par les lois organiques ou spéciales qui leur sont propres ;

De constater par procès-verbal les contraventions aux dispositions du code de la route dont la liste est fixée par décret en Conseil d'Etat ainsi que les contraventions prévues à l'article 621-1 du code pénal.

Lorsqu'ils constatent une infraction par procès-verbal, les agents de police judiciaire adjoints peuvent recueillir les éventuelles observations du contrevenant.

1° ter Deputy police officers mentioned in article L. 411-5 of the Internal Security Code and members of the operational reserve of the national police who do not meet the conditions provided for in articles 16-1 A or 20-1 of the present code;

1° quater Controllers under the status of Parisian administrations exercising their functions in the speciality of public thoroughfares and Paris surveillance agents;

1° quinquies (Repealed);

1° sexies (Repealed);

2° Municipal police officers;

(3) The rural wardens, when they act in the exercise of the powers set out in the last paragraph of Article L. 521-1 of the Code of Internal Security.

Their mission is:

To assist, in the exercise of their functions, the judicial police officers;

To report to their hierarchical superiors all crimes, offenses or contraventions of which they are aware;

To note, in compliance with the orders of their chiefs, the infringements of the penal law and to collect all the information in order to discover the authors of these infringements, the whole within the framework and in the forms envisaged by the organic or special laws which are appropriate to them;

To establish by official report the contraventions to the provisions of the Highway Code, the list of which is fixed by decree in the Council of State, as well as the contraventions provided for in Article 621-1 of the Penal Code.

When they note an offence by official report, the deputy judicial police officers can collect the possible observations of the offender.

#### **Art. 21-1 CPC<sup>145</sup>**

The judicial police officers and deputy judicial police officers have jurisdiction within the territorial limits where they exercise their usual duties as well as within those where the judicial police officer in charge of the national police department or gendarmerie unit to which they have been temporarily assigned exercises his duties. When they assist a judicial police officer, they have jurisdiction within the territorial limits where the latter exercises his or her powers in application of the provisions of article 18.

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<sup>145</sup> **Art. 21-1 Code de procédure pénale**

Les agents de police judiciaire et agents de police judiciaire adjoints ont compétence dans les limites territoriales où ils exercent leurs fonctions habituelles ainsi que dans celles où l'officier de police judiciaire responsable du service de la police nationale ou de l'unité de gendarmerie auprès duquel ils ont été nominativement mis à disposition temporaire exerce ses fonctions. Lorsqu'ils secondent un officier de police judiciaire, ils ont compétence dans les limites territoriales où ce dernier exerce ses attributions en application des dispositions de l'article 18.

**Art. 21-2 CPC**<sup>146</sup>

Without prejudice to their obligation to report to the mayor under article 21, municipal police officers shall immediately report to any judicial police officer of the national police or the national gendarmerie who is territorially competent, all crimes, misdemeanours or infractions of which they have knowledge.

They shall send their reports and minutes simultaneously to the mayor and, through the intermediary of the judicial police officers mentioned in the preceding paragraph, to the public prosecutor.

**bb. Custom officers/Les agents des douanes**

The customs officers conduct functions in the area of customs irregularities and fraud as well as in the area of tax matters.<sup>147</sup> 25

**(1) In the area of customs matters*****Powers in customs matters (enquêtes fraude douanes)*****Art. 344-1 Customs code (Code des douanes)**<sup>148</sup>

In accordance with the provisions of Article 696-111 of the Code of Criminal Procedure, when they concern offences provided for in this Code, the alerts provided for in Article 24 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation regarding the establishment of the European Public Prosecutor's Office shall be sent to the Delegated European Public Prosecutor either directly or via the competent public prosecutor, who shall be informed by the customs officers on the basis of the second paragraph of Article 40 of the Code of Criminal Procedure. 26

<sup>146</sup> **Art. 21-2 Code de procédure pénale**

Sans préjudice de l'obligation de rendre compte au maire qu'ils tiennent de l'article 21, les agents de police municipale rendent compte immédiatement à tout officier de police judiciaire de la police nationale ou de la gendarmerie nationale territorialement compétent de tous crimes, délits ou contraventions dont ils ont connaissance. Ils adressent sans délai leurs rapports et procès-verbaux simultanément au maire et, par l'intermédiaire des officiers de police judiciaire mentionnés à l'alinéa précédent, au procureur de la République. And see Siam 2020 with more information on custom inspectors and officers.

<sup>147</sup> Vervaele 2002, 181 (186 et seq.).

<sup>148</sup> **Art. 344-1** Conformément aux dispositions de l'article 696-111 du code de procédure pénale, lorsqu'ils portent sur des infractions prévues par le présent code, les signalements prévus à l'article 24 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen sont adressés au procureur européen délégué soit directement, soit par l'intermédiaire du procureur de la République compétent, lui-même informé par les agents des douanes sur le fondement du second alinéa de l'article 40 du code de procédure pénale.

**Art. 344-2 Customs code (Code des douanes)<sup>149</sup>**

Pursuant to Article 696-113 of the Code of Criminal Procedure, where the European Public Prosecutor's Office decides to exercise jurisdiction over offences under this Code, the Delegated European Public Prosecutor may conduct investigations in accordance with the provisions of this Code.

**(2) In the area of tax matters**

They have been granted powers by the General Tax Code:

***Powers in tax matters (enquêtes fraude fiscale)***

**Art. 1825 G General Tax Code (Code général des impôts)<sup>150</sup>** officers are competent to investigate, record and prosecute offences relating to indirect taxes, duties, taxes, fees and charges subject to the same rules. Article shall not apply to infringements of the provisions of article 290c.

**Art. 1825 H General Tax Code (Code général des impôts)<sup>151</sup>**

Customs officers are competent to investigate, record and prosecute, as in matters of indirect taxation, offences in the following matters, insofar as they are governed by this Code or the Book of Tax Procedures:

1° Guarantee of gold, silver and platinum materials;

2° Non-fiscal regulations in the field of viticulture, cereals, tobacco and alcohol.

**cc. Involvement of the liberty and custody judge /*Le juge des libertés et de la détention***

27 The liberty and custody judge (*le juge des libertés et de la détention*) frequently intervenes when the investigative acts are the most prejudicial to individual liberties. The liberty and custody judge is a special institution by virtue of French law. The specific EPPO Adoption Law for France there are specific provisions:



E.g. search in a preliminary investigation if the individual does not consent to the measure: art. 76 al. 4 CPC/*Ex de la perquisition en préliminaire si l'individu ne consent pas à la mesure: art. 76 al. 4*

<sup>149</sup> **Art. 344-2** En application de l'article 696-113 du code de procédure pénale, lorsque le Parquet européen décide d'exercer sa compétence sur des infractions prévues par le présent code, le procureur européen délégué peut conduire les investigations conformément aux dispositions du présent code.

<sup>150</sup> **Art. 1825 G Code général des impôts**

Les agents des douanes sont compétents pour rechercher, constater et poursuivre les infractions en matière de contributions indirectes, droits, taxes, redevances et impositions obéissant aux mêmes règles.

Le présent article ne s'applique pas aux infractions aux dispositions de l'article 290 quater.

<sup>151</sup> **Art. 1825 H Code général des impôts**

Les agents des douanes sont compétents pour rechercher, constater et poursuivre, comme en matière de contributions indirectes, les infractions dans les matières suivantes, dans la mesure où elles sont régies par le présent code ou le livre des procédures fiscales:

1° Garantie des matières d'or, d'argent et de platine ;

2° Réglementation non fiscale dans le domaine de la viticulture, des céréales, des tabacs et des alcools.

**Article 696-117 CPC**<sup>152</sup>

Within the framework of the procedure provided for in Article 696-114, the acts and decisions mentioned in this section shall be taken, according to the distinctions set out in subsections 1 to 3:

- 1° either by the Delegated European Public Prosecutor;
- 2° or by the judge responsible for liberties and detention, to whom the Delegated European Public Prosecutor makes written and reasoned submissions.

As a rule, it can be said that the JLD intervenes (only) when the acts are most damaging to individual freedoms. **28**

**Instructions under Title III (Courts of instruction) concerning the investigating judge (juge d'instruction):**

**Art. 81 CPC**<sup>153</sup>

The investigating judge shall, in accordance with the law, carry out all acts of information that he or she deems useful for establishing the truth. He or she shall conduct an investigation on the basis of the evidence against him or her and the evidence against him or her. [...]

**Nota bene:** Attention does not apply when the European Public Prosecutor's Office is competent. */Attention ne s'applique pas quand le parquet européen est compétent.* **29**

**c) Ensuring compliance with national law**

Vervaele stated already in 2002 that the first circular, an administrative document within the French Ministries was directed at the fight against fraud asking the relevant organs to work closely together.<sup>154</sup> **30**

**aa. National administrative decrees/Partie réglementaire: décrets, arrêtés**

**bb. Provisions in French Criminal Procedure**

**Art. D47-1-30 Regulatory Part of the CPC (Simple Orders)**<sup>155</sup>

For the purposes of Articles 696-108 and 696-111, the offences committed after 20 November 2017 falling within the jurisdiction of the European Public Prosecutor's Office and for which the alerts provided for in Article 696-111 must be issued are those provided for in Articles D. 47-1-31 to D. 47-1-34. **31**

<sup>152</sup> **Article 696-117 CPP**

Dans le cadre de la procédure prévue à l'article 696-114, les actes et décisions mentionnés à la présente section sont pris, selon les distinctions prévues aux sous-sections 1 à 3:

- 1° Soit par le procureur européen délégué ;
- 2° Soit par le juge des libertés et de la détention saisi par réquisitions écrites et motivées du procureur européen délégué.

<sup>153</sup> **Art. 81** Le juge d'instruction procède, conformément à la loi, à tous les actes d'information qu'il juge utiles à la manifestation de la vérité. Il instruit à charge et à décharge. [...]

<sup>154</sup> See Vervaele 2002, 181 (190 et seq.).

<sup>155</sup> **Art. D47-1-30** Pour l'application des articles 696-108 et 696-111, les infractions commises après le 20 novembre 2017 relevant de la compétence du Parquet européen et pour lesquelles il doit être procédé aux signalements prévus par l'article 696-111 sont celles prévues par les articles D. 47-1-31 à D. 47-1-34.

**Art. D47-1-39 Regulatory Part of the CPC (Simple Orders)<sup>156</sup>**

For the application of Article 696-135, the public prosecutor competent to decide whether the investigations will be pursued by the public prosecutor who refused to relinquish jurisdiction or by the delegated European public prosecutor shall be the public prosecutor at the court of appeal within whose jurisdiction the specialised inter-regional court for economic and financial matters provided for in Article 704 is located, or, if the public prosecutor who refused to relinquish jurisdiction is the public prosecutor for financial matters, the public prosecutor at the court of appeal in Paris.

The public prosecutor instructed by the competent public prosecutor to continue the investigation may decide that the investigation shall be continued by the customs administration, in accordance with the provisions of the Customs Code, where the offence concerned falls within the scope of that Code.

The decision of the Public Prosecutor, which constitutes a measure of judicial administration not subject to appeal, shall be sent by any means and as soon as possible to the Public Prosecutor and the Delegated European Public Prosecutor.

**Art. D47-1-42 Regulatory Part of the CPC (Simple Orders)<sup>157</sup>**

When conducting investigations in accordance with the procedure laid down in Article 696-114, the Delegated European Public Prosecutor shall be assisted by a registrar under the same conditions as the investigating judge.

Orders made by the liberty and custody judge in the context of this procedure may be appealed by the Delegated European Public Prosecutor under the conditions laid down in Article 185. Orders made by the liberty and custody judge in relation to judicial review, house arrest with electronic surveillance or pre-trial detention may be appealed by

<sup>156</sup> **Art. D47-1-39** Pour l'application de l'article 696-135, le procureur général compétent pour décider si les investigations seront poursuivies par le procureur de la République ayant refusé de se dessaisir ou par le procureur européen délégué est le procureur général près la cour d'appel dans le ressort de laquelle se trouve la juridiction interrégionale spécialisée en matière économique et financière prévue par l'article 704 dans le ressort de laquelle se trouve ce procureur de la République, ou, si ce procureur ayant refusé de se dessaisir est le procureur de la République financier, le procureur général près la cour d'appel de Paris.

Le procureur de la République chargé par le procureur général compétent de poursuivre les investigations peut décider que celles-ci seront poursuivies par l'administration des douanes, conformément aux dispositions du code des douanes, lorsque l'infraction concernée relève dudit code.

La décision du procureur général, qui constitue une mesure d'administration judiciaire insusceptible de recours, est adressée par tout moyen et dans les meilleurs délais au procureur de la République et au procureur européen délégué.

<sup>157</sup> **Art. 47-1-42** Lorsqu'il procède à des investigations selon la procédure prévue par l'article 696-114, le procureur européen délégué est assisté d'un greffier dans les mêmes conditions que le juge d'instruction. Les ordonnances prises par le juge des libertés et de la détention dans le cadre de cette procédure peuvent faire l'objet d'un appel de la part du procureur européen délégué dans les conditions prévues à l'article 185. Les ordonnances prises par le juge des libertés et de la détention en matière de contrôle judiciaire, d'assignation à résidence avec surveillance électronique ou de détention provisoire peuvent faire l'objet d'un appel, de la part de la personne mise en examen par le procureur européen délégué, dans les conditions prévues à l'article 186, en faisant le cas échéant application des articles 187-1 et 187-2. Les ordonnances prises par le procureur européen délégué en application des articles 80-1-1, 87, 139 et 140 ainsi que du quatrième alinéa de l'article 167 peuvent faire l'objet d'un appel de la part de la personne mise en examen dans les conditions prévues à l'article 186. Les ordonnances prises par le procureur européen délégué en application de l'article 87 peuvent faire l'objet d'un appel de la partie civile dans les conditions prévues à l'article 186. Les parties peuvent également former appel des ordonnances mentionnées à l'article 186-1, lorsqu'elles sont rendues par le procureur européen délégué, dans les conditions prévues par cet article.



the person under investigation to the Delegated European Public Prosecutor under the conditions laid down in Article 186, where applicable applying Articles 187-1 and 187-2.

Orders made by the Delegated European Public Prosecutor pursuant to Articles 80(1)(1), 87, 139 and 140 and the fourth paragraph of Article 167 may be appealed against by the accused person under the conditions laid down in Article 186.

Orders made by the Delegated European Public Prosecutor pursuant to Article 87 may be appealed by the civil party under the conditions laid down in Article 186.

The parties may also appeal against the orders referred to in Article 186(1), where the Delegated European Public Prosecutor make them, under the conditions laid down in that Article.

#### **Art. D47-1-45 Regulatory Part of the CPC (Simple Orders)<sup>158</sup>**

Where, in accordance with the provisions of the first paragraph of Article 696-109, the Delegated European Public Prosecutor performs the duties of public prosecutor before the Investigation Chamber or the Criminal Appeals Chamber, he or she may lodge an appeal in cassation against the decisions handed down by these courts, under the conditions laid down in Articles 567, 568 and 585-2.

- Ministère de la Justice, Décret no 2021-694 du 31 mai 2021 relatif au Parquet européen.

#### **Special articles that may be applicable are/*Dipositions règlementaires applicables au parquet européen:***

Titre Ier: Des autorités chargées de l'action publique et de l'instruction (Articles D1-13 à D15-4-7)

Article D1-13

Chapitre Ier: De la police judiciaire (Articles D2 à D15-1-7)

Section 1: Dispositions générales (Articles D2 à D8-2)

Section 1 bis: Des plaintes adressées par voie électronique (Articles D8-2-1 à D8-2-10)

Section 1 ter: De la protection de l'identité de certains agents intervenant dans les procédures pénales (Articles D8-3 à D8-6)

Section 2: Des officiers de police judiciaire (Articles D9 à D12)

Section 3: Des agents de police judiciaire (Articles D13 à D14-1)

Section 4: Des fonctionnaires et agents chargés de certaines missions de police judiciaire (Articles D14-2 à D15)

Section 5: Des procédures d'infiltration, des sonorisations et fixations d'images de certains lieux ou véhicules (Articles D15-1-1 à D15-1-5)

<sup>158</sup> **Art. D47-1-45** Lorsque, conformément aux dispositions du premier alinéa de l'article 696-109, le procureur européen délégué exerce les fonctions de procureur général devant la chambre de l'instruction ou devant la chambres des appels correctionnels, il peut former un pourvoi en cassation contre les décisions rendues par ces juridictions, dans les conditions prévues par articles 567,568 et 585-2

Section 6: Des interceptions de correspondances émises par la voie des communications électroniques et du recueil des données techniques de connexion (Article D15-1-5-1)  
Section 7: De la captation des données informatiques (Article D15-1-6)  
Section 8: De la géolocalisation (Article D15-1-7)

32 Last but not least, the orders (*Arrêtes*) may apply:

Livre Ier: De l'exercice de l'action publique et de l'instruction (Articles A1 à A36-11-1)  
Titre Ier: Des autorités chargées de l'action publique et de l'instruction (Articles A1 à A36-10-12)  
Article A1  
Chapitre Ier: De la police judiciaire (Articles A 1er à A36-10-12)

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.

33 **Code de procédure pénale** : Special articles that may be applicable are:

Titre Ier: Des autorités chargées de l'action publique et de l'instruction (Articles D1-13 à D15-4-7)  
Article D1-13  
Chapitre Ier: De la police judiciaire (Articles D2 à D15-1-7)  
Section 1: Dispositions générales (Articles D2 à D8-2)  
Section 1 bis: Des plaintes adressées par voie électronique (Articles D8-2-1 à D8-2-10)  
Section 1 ter: De la protection de l'identité de certains agents intervenant dans les procédures pénales (Articles D8-3 à D8-6)  
Section 2: Des officiers de police judiciaire (Articles D9 à D12)  
Section 3: Des agents de police judiciaire (Articles D13 à D14-1)  
Section 4: Des fonctionnaires et agents chargés de certaines missions de police judiciaire (Articles D14-2 à D15)  
Section 5: Des procédures d'infiltration, des sonorisations et fixations d'images de certains lieux ou véhicules (Articles D15-1-1 à D15-1-5)  
Section 6: Des interceptions de correspondances émises par la voie des communications électroniques et du recueil des données techniques de connexion (Article D15-1-5-1)  
Section 7: De la captation des données informatiques (Article D15-1-6)  
Section 8: De la géolocalisation (Article D15-1-7)

Last but not least, the orders (*Arrêtes*) may apply:

Livre Ier: De l'exercice de l'action publique et de l'instruction (Articles A1 à A36-11-1)  
 Titre Ier: Des autorités chargées de l'action publique et de l'instruction (Articles A1 à A36-10-12)  
 Article A1  
 Chapitre Ier: De la police judiciaire (Articles A 1er à A36-10-12)

Customs officers have special coercive powers, which are equal to those of normal police officers in certain situations: 34

**Art. 323-1 Customs code**<sup>159</sup>

Customs officers may only arrest and detain a person in cases of flagrante delicto punishable by imprisonment and where this measure is justified by the needs of the customs investigation.

**Art. 323-3 Customs code**<sup>160</sup>

As soon as the customs detention begins, the public prosecutor in whose jurisdiction the flagrante delicto is established shall be informed by any means.

He or she shall be informed of the description of the offence that has been notified to the person. The public prosecutor may modify this classification; in this case, the new classification shall be notified to the person under the conditions set out in Article 323-6.

If the measure is to be carried out in a jurisdiction other than that of the public prosecutor where the offence was committed, the latter shall be informed.

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<sup>159</sup> **Art. 323-1** Les agents des douanes ne peuvent procéder à l'arrestation et au placement en retenue douanière d'une personne qu'en cas de flagrant délit douanier puni d'une peine d'emprisonnement et lorsque cette mesure est justifiée par les nécessités de l'enquête douanière.

<sup>160</sup> **Art. 323-3** Dès le début de la retenue douanière, le procureur de la République dans le ressort duquel est constaté le flagrant délit en est informé par tout moyen.

Il est avisé de la qualification des faits qui a été notifiée à la personne. Le procureur de la République peut modifier cette qualification ; dans ce cas, la nouvelle qualification est notifiée à la personne dans les conditions prévues à l'article 323-6.

Si la mesure doit être exécutée dans un autre ressort que celui du procureur de la République où l'infraction a été constatée, ce dernier en est informé.

**5. Article 29 Privileges and Immunities**

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a) National privilege and immunity provisions, Para 1 .....	155	(bb) Real Parliamentary immunity/L'immunité parlementaire (art. 26 § 2 de la Constitution) .....
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**Art. 29 Levée des privilèges ou des immunités**

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.

1 The **following part** of the chapter displays the privileges and immunities that might be an obstacle to an investigation of the EDPs in France. In connection to the display of the national provisions the procedure of lifting or waiving these national privileges and immunities (para 1) are dealt with:

**a) National privilege and immunity provisions, Para 1**

They can be found mainly in the Constitution. 2

**aa. Parliamentary privilege and immunity provisions**

Generally speaking, the parliamentary privilege or immunity provisions follow the telos to protect the member of government from being criminally liable. 3

**(1) Parliamentary privilege or immunity**

The French doctrine is that members of government are not protected by a privilege or immunity in certain cases. The process and competent authorities are stipulated by the Articles. 4

**(a) Enshrinement in national law**

Art. 68-1 and Art. 68-2 of the Constitution apply. 5

**(aa) Privilege of jurisdiction of members of the government/ *Le privilège de juridiction des membres du gouvernement* (art. 68-1 et 68-2 de la Constitution)****Constitution of October 4, 1958****Title X: Criminal liability of members of the Government (Articles 68-1 to 68-3)****Article 68-1 Constitution**<sup>161</sup>

Members of the Government are criminally responsible for acts carried out in the exercise of their functions and qualified as crimes or offences at the time they were committed.

The Court of Justice of the Republic shall try them.

The Court of Justice of the Republic is bound by the definition of crimes and offences and by the determination of penalties as they result from the law.

**Article 68-2 Constitution**<sup>162</sup> The Court of Justice of the Republic shall comprise fifteen judges: twelve members of Parliament elected in equal numbers from among their number by the National Assembly and by the Senate after each general or partial renewal of

<sup>161</sup> **Titre X: De la responsabilité pénale des membres du Gouvernement (Articles 68-1 à 68-3)**

**Article 68-1 Constitution** Les membres du Gouvernement sont pénalement responsables des actes accomplis dans l'exercice de leurs fonctions et qualifiés crimes ou délits au moment où ils ont été commis.

Ils sont jugés par la Cour de justice de la République.

La Cour de justice de la République est liée par la définition des crimes et délits ainsi que par la détermination des peines telles qu'elles résultent de la loi.

<sup>162</sup> **Article 68-2 Constitution** La Cour de justice de la République comprend quinze juges: douze parlementaires élus, en leur sein et en nombre égal, par l'Assemblée nationale et par le Sénat après chaque renouvellement général ou partiel de ces assemblées et trois magistrats du siège à la Cour de cassation, dont l'un préside la Cour de justice de la République.

Toute personne qui se prétend lésée par un crime ou un délit commis par un membre du Gouvernement dans l'exercice de ses fonctions peut porter plainte auprès d'une commission des requêtes.

Cette commission ordonne soit le classement de la procédure, soit sa transmission au procureur général près la Cour de cassation aux fins de saisine de la Cour de justice de la République.

Le procureur général près la Cour de cassation peut aussi saisir d'office la Cour de justice de la République sur avis conforme de la commission des requêtes.

Une loi organique détermine les conditions d'application du présent article.

these assemblies and three judges of the Court of Cassation, one of whom shall preside over the Court of Justice of the Republic.

Any person who claims to have been injured by a crime or misdemeanour committed by a member of the Government in the exercise of his or her duties may lodge a complaint with a commission of enquiry.

This committee orders either that the proceedings be closed or that they be referred to the public prosecutor at the Court of Cassation for referral to the Court of Justice of the Republic.

prosecutor at the Court of Cassation may also refer the case to the Court of Justice of the Republic on his or her own initiative, with the assent of the petitions committee.

An Institutional Act shall determine the conditions of application of this article.

**(bb) Real Parliamentary immunity/L'immunité parlementaire (art. 26 § 2 de la Constitution)**

**6 Article 26 Constitution<sup>163</sup>**

No member of Parliament may be prosecuted, sought after, arrested, detained, or tried in respect of opinions expressed or votes cast by him in the exercise of his functions.

**No member of Parliament may be arrested or subjected to any other measure involving deprivation or restriction of liberty in criminal or correctional matters without the authorisation of the Bureau of the assembly to which he or she belongs. Such authorisation is not required in the case of a flagrant crime or misdemeanour or a final conviction.**

The detention, deprivation or restriction of liberty or prosecution of a Member of Parliament shall be suspended for the duration of the session if the assembly of which he or she is a member so requests.

The assembly concerned shall be convened as of right for additional sittings to allow, if necessary, the application of the above paragraph.

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<sup>163</sup> **Article 26 Constitution** Aucun membre du Parlement ne peut être poursuivi, recherché, arrêté, détenu ou jugé à l'occasion des opinions ou votes émis par lui dans l'exercice de ses fonctions.

Aucun membre du Parlement ne peut faire l'objet, en matière criminelle ou correctionnelle, d'une arrestation ou de toute autre mesure privative ou restrictive de liberté qu'avec l'autorisation du Bureau de l'assemblée dont il fait partie. Cette autorisation n'est pas requise en cas de crime ou délit flagrant ou de condamnation définitive.

La détention, les mesures privatives ou restrictives de liberté ou la poursuite d'un membre du Parlement sont suspendues pour la durée de la session si l'assemblée dont il fait partie le requiert.

L'assemblée intéressée est réunie de plein droit pour des séances supplémentaires pour permettre, le cas échéant, l'application de l'alinéa ci-dessus.

**(cc) Interception of communications (Senators, Lawyers, office of a magistrate)/  
*Interception de communications (sénateurs, avocats, magistrat)***

**Art. 107 CPC<sup>164</sup>**

No interception may take place on the line of a Delegated or senator without the president of the assembly to which he or she belongs being informed by the investigating judge.

No interception may take place on a line depending on a lawyer's office or home without the president of the bar being informed by the examining magistrate.

No interception may take place on a line depending on the office of a magistrate or his residence without the first president or the public prosecutor of the court where he resides being informed.

The formalities provided for in this article shall be prescribed on pain of nullity.

**(b) Further national rules**

In addition, the rules of procedure of the National Assembly and the Senate apply, as these rules of procedure contain further provisions on the privileges and immunity of members of parliament. 7

The case law also applies with its decisions of the Conseil constitutionnel, which, as the highest court in France, has set out the interpretation of Articles 26 and 68 of the Constitution on the immunity of members of parliament in several decisions. *Cf.* as well → Art. 56-4 CP. 8

**(2) National Legislation**

France provides for equivalent legislation that can be relied upon by the European Chief Prosecutor in any case involving French politicians (senators, etc.). 9

**b) Immunities and Privileges under union law, Para 2**

*Cf.* → Art. 29 EPPO Regulation and the subsequent analysis above for the telos of these provisions. Be aware that Union law differs from national law and is not researched here in-depth. **Union law contains a protocol**, which will apply if the immunity or a privilege of a Union official needs to be lifted. It is enshrined in the consolidated version of the Treaty on the Functioning of the European Union **Protocol (No 7) on the privileges and immunities of the European Union (OJ C 326, 26.10.2012, p. 266–272)**.<sup>165</sup> 10

<sup>164</sup> **Art. 107 CCP** Aucune interception ne peut avoir lieu sur la ligne d'un député ou d'un sénateur sans que le président de l'assemblée à laquelle il appartient en soit informé par le juge d'instruction.

Aucune interception ne peut avoir lieu sur une ligne dépendant du cabinet d'un avocat ou de son domicile sans que le bâtonnier en soit informé par le juge d'instruction.

Aucune interception ne peut avoir lieu sur une ligne dépendant du cabinet d'un magistrat ou de son domicile sans que le premier président ou le procureur général de la juridiction où il réside en soit informé.

Les formalités prévues par le présent article sont prescrites à peine de nullité.

<sup>165</sup> *Cf.* <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12012E/PRO/07>.

## II. National law applicable in EPPO Investigation with special focus on investigation measures

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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**.

Article 30 holds **paramount significance** for the European Delegated Prosecutors (EDPs), as it bestows upon them a **range of powers** as delineated in national legislation, empowering them to **undertake investigations** into suspected (PIF) misconduct ie crimes against the financial interests of the European Union (see above → Article 26 Initiation of investigations and allocation of competences). The **subsequent analysis** comprehensively delineates all **pertinent national measures**, precisely identifying them by their respective codes, laws, and sections.

**a) Investigation measures/*La liste des mesures exigées par le règlement***

**aa. Searches, home visits and seizures for evidentiary purposes and to ensure confiscation (elements will be detailed in point 30 §1 d) /*Les perquisitions, les visites domiciliaires, les fouilles et les saisies à des fins probatoires et pour en assurer la confiscation (des éléments seront détaillés au point 30 §1 d)***

Primarily, the pertinent sections from Union law, specifically Regulation 2017/1939, are presented beforehand to facilitate a coherent comprehension of the subsequent analysis and presentation of the relevant French measures.

📖 RÈGLEMENT (UE) 2017/1939 DU CONSEIL → SECTION 2 Rules on investigation measures and other measures / Article 30 / Investigation measures and other 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.**

**(1) The investigation in the act of flagrante delicto/*L'enquête de flagrance***

**Art. 54 CPP<sup>166</sup> [Initial detections and seizures at the scene of the crime]**

In the event of a flagrant crime, the judicial police officer who is notified, immediately informs the public prosecutor, goes to the scene of the crime without delay and makes all necessary findings.

He takes care of the conservation of the clues and any other evidence likely to disappear and of all that can be used for the manifestation of the truth. He /seizes the weapons and instruments which were used to commit the crime or which were intended to commit it, as well as anything which appears to have been the direct or indirect product of this crime.

<sup>166</sup> **Art. 54 CPP Les premières constatations et saisies sur les lieux du crime/ Initial detections and seizures at the scene of the crime**

En cas de crime flagrant, l'officier de police judiciaire qui en est avisé, informe immédiatement le procureur de la République, se transporte sans délai sur le lieu du crime et procède à toutes constatations utiles.

(*L. n° 2010-768 du 9 juill. 2010, art. 1<sup>er</sup>*) Il veille à la conservation des indices susceptibles de disparaître et de tout ce qui peut servir à la manifestation de la vérité. Il saisit les armes et instruments qui ont servi à commettre le crime ou qui étaient destinés à le commettre ainsi que tout ce qui paraît avoir été le produit direct ou indirect de ce crime.

Il représente les objets saisis, pour reconnaissance, aux personnes qui paraissent avoir participé au crime, si elles sont présentes.

It represents the objects seized, for recognition, to people who appear to have participated in the crime, if they are present.

**Art. 56 CPC<sup>167</sup> [The general provisions]**

**[Probative seizures and to ensure confiscation, searches (para. 1)]** If the nature of the crime is such that proof can be obtained by seizing papers, documents, computer data or other objects in the possession of persons who appear to have participated in the crime or to hold documents, information or objects relating to the incriminating facts, the judicial police officer shall go without delay to the home of the latter in order to carry out a search, for which he or she shall draw up a report. The criminal investigation police officer may also go to any place where property liable to confiscation under Article 131-21 of the Criminal Code may be found in order to carry out a search for the purpose of seizing such property; if the search is carried out solely for the purpose of searching for and seizing property whose confiscation is provided for in the fifth and sixth paragraphs of the same Article, it must be authorised in advance by the public prosecutor. Where the investigation relates to offences of violence, the judicial police officer may, of his own motion or on the instructions of the public prosecutor, seize weapons held by the suspected person or of which he has free disposal, regardless of where the weapons are located.

**[Persons present on the premises (para. 2)]** He alone, together with the persons designated in Article 57 of this Code, the officials and agents acting under the conditions provided for in the third paragraph of Article 28 and those to whom he may have recourse pursuant to Article 60, shall have the right to examine the papers, documents or computer data before seizing them.

<sup>167</sup> **Art. 56 CPP Les dispositions principaux/ The general provisions**

Si la nature du crime est telle que la preuve en puisse être acquise par la saisie des papiers, documents, données informatiques ou autres objets en la possession des personnes qui paraissent avoir participé au crime ou détenir des pièces, informations ou objets relatifs aux faits incriminés, l'officier de police judiciaire se transporte sans désemparer au domicile de ces derniers pour y procéder à une perquisition dont il dresse procès-verbal. L'officier de police judiciaire peut également se transporter en tous lieux dans lesquels sont susceptibles de se trouver des biens dont la confiscation est prévue à l'article 131-21 du code pénal, pour y procéder à une perquisition aux fins de saisie de ces biens ; si la perquisition est effectuée aux seules fins de rechercher et de saisir des biens dont la confiscation est prévue par les cinquième et sixième alinéas de ce même article, elle doit être préalablement autorisée par le procureur de la République. Lorsque l'enquête porte sur des infractions de violences, l'officier de police judiciaire peut, d'office ou sur instructions du procureur de la République, procéder à la saisie des armes qui sont détenues par la personne suspectée ou dont celle-ci a la libre disposition, quel que soit le lieu où se trouvent ces armes. **Les saisies probatoires et pour en assurer la confiscation, les perquisitions (al. 1)**

Il a seul, avec les personnes désignées à l'article 57 du présent code, les fonctionnaires et agents agissant dans les conditions prévues au troisième alinéa de l'article 28 et celles auxquelles il a éventuellement recours en application de l'article 60, le droit de prendre connaissance des papiers, documents ou données informatiques avant de procéder à leur saisie. **Les personnes présentes sur les lieux (al. 2).**

Toutefois, sans préjudice de l'application des articles 56-1 à 56-5, il a l'obligation de provoquer préalablement toutes mesures utiles pour que soit assuré le respect du secret professionnel et des droits de la défense. **Le secret professionnel et les droits de la défense (al. 3)**

Tous objets et documents saisis sont immédiatement inventoriés et placés sous scellés. Cependant, si leur inventaire sur place présente des difficultés, ils font l'objet de scellés fermés provisoires jusqu'au moment de leur inventaire et de leur mise sous scellés définitifs et ce, en présence des personnes qui ont assisté à la perquisition suivant les modalités prévues à l'article 57. **Le placement sous scellés (al. 4).**

**[Professional secrecy and the rights of the defence (para. 3)]** However, without prejudice to the application of Articles 56-1 to 56-5, he or she shall be obliged to take all appropriate measures in advance to ensure that professional secrecy and the rights of the defence are respected.

**[Placing under seal (Para 4).]** All objects and documents seized shall be immediately inventoried and placed under seal. However, if their inventory on the spot presents difficulties, they shall be subject to temporary closed seals until the moment of their inventory and final sealing, in the presence of the persons who witnessed the search in accordance with the procedures laid down in Article 57. Placing under seal (para 4).

**[Gathering of Computer data (para. 5).]** Computer data necessary to establish the truth shall be seized by placing either the physical medium of the data or a copy made in the presence of the persons who witnessed the search under judicial supervision.<sup>168</sup>

**[Copying of computer data (para. 6).]** If a copy is made, it may be proceeded with, on the instructions of the public prosecutor, to the definitive deletion, on the physical medium which has not been placed in the hands of justice, of the computer data whose possession or use is illegal or dangerous for the safety of persons or property.

**[Keeping seizures useful for the demonstration of the truth (para. 7)]** With the agreement of the public prosecutor, the judicial police officer shall only maintain the seizure of objects, documents and computer data useful for establishing the truth, as well as property whose confiscation is provided for in Article 131-21 of the Criminal Code.

**[Seizures of cash, banknotes, stocks and shares (para. 8)]** The public prosecutor may also, when the seizure concerns cash, ingots, effects or values whose conservation in

<sup>168</sup> [Art. 56 para 5 et seq. CPP:] Il est procédé à la saisie des données informatiques nécessaires à la manifestation de la vérité en plaçant sous main de justice soit le support physique de ces données, soit une copie réalisée en présence des personnes qui assistent à la perquisition. **La saisie des données informatiques (al. 5).**

Si une copie est réalisée, il peut être procédé, sur instruction du procureur de la République, à l'effacement définitif, sur le support physique qui n'a pas été placé sous main de justice, des données informatiques dont la détention ou l'usage est illégal ou dangereux pour la sécurité des personnes ou des biens. **La copie des données informatiques (al. 6).**

Avec l'accord du procureur de la République, l'officier de police judiciaire ne maintient que la saisie des objets, documents et données informatiques utiles à la manifestation de la vérité, ainsi que des biens dont la confiscation est prévue à l'article 131-21 du code pénal. **Le maintien des saisies utiles à la manifestation de la vérité (al. 7)**

Le procureur de la République peut également, lorsque la saisie porte sur des espèces, lingots, effets ou valeurs dont la conservation en nature n'est pas nécessaire à la manifestation de la vérité ou à la sauvegarde des droits des personnes intéressées, autoriser leur dépôt à la Caisse des dépôts et consignations ou à la Banque de France ou sur un compte ouvert auprès d'un établissement bancaire par l'Agence de gestion et de recouvrement des avoirs saisis et confisqués. **Les saisies sur des espèces, lingots, effets ou valeurs (al. 8)**

Lorsque la saisie porte sur des billets de banque ou pièces de monnaie libellés en euros contrefaisants, l'officier de police judiciaire doit transmettre, pour analyse et identification, au moins un exemplaire de chaque type de billets ou pièces suspectés faux au centre d'analyse national habilité à cette fin. Le centre d'analyse national peut procéder à l'ouverture des scellés. Il en dresse inventaire dans un rapport qui doit mentionner toute ouverture ou réouverture des scellés. Lorsque les opérations sont terminées, le rapport et les scellés sont déposés entre les mains du greffier de la juridiction compétente. Ce dépôt est constaté par procès-verbal.

Les dispositions du précédent alinéa ne sont pas applicables lorsqu'il n'existe qu'un seul exemplaire d'un type de billets ou de pièces suspectés faux, tant que celui-ci est nécessaire à la manifestation de la vérité. **La saisie des billets de banque ou monnaie en euros contrefaits (al. 9 et al. 10).**

Si elles sont susceptibles de fournir des renseignements sur les objets, documents et données informatiques saisis, les personnes présentes lors de la perquisition peuvent être retenues sur place par l'officier de police judiciaire le temps strictement nécessaire à l'accomplissement de ces opérations. **La retenue des personnes présentes lors de la perquisition (al. 11).**

kind is not necessary for the demonstration of the truth or the safeguarding of the rights of the persons concerned, authorise their deposit at the Caisse des dépôts et consignations or at the Banque de France or in an account opened with a banking institution by the Agency for the Management and Recovery of Seized and Confiscated Assets.

Where the seizure involves counterfeit euro banknotes or coins, the judicial police officer must send at least one copy of each type of suspected counterfeit banknote or coin to the national analysis centre authorised for this purpose for analysis and identification. The national analysis centre may open the seals. It shall draw up an inventory in a report which shall mention any opening or reopening of the seals. When the operations are completed, the report and the seals shall be deposited with the clerk of the competent court. This deposit shall be recorded in a report.

**[Seizure of counterfeit euro banknotes or coins (paragraph 9 and paragraph 10).]** The provisions of the preceding paragraph shall not apply where there is only one copy of a type of suspected counterfeit banknote or coin, as long as it is necessary for the determination of the truth.

**[Detention of persons present during the search (para. 11).]** If they are likely to provide information on the objects, documents and computer data seized, the persons present at the time of the search may be held on the spot by the judicial police officer for the time strictly necessary to carry out these operations.

#### **Art. 57 CPC<sup>169</sup> [The formal requirements for a search]**

Subject to Articles 56-1 to 56-5 and the respect of legal professional privilege and the rights of defense mentioned in Article 56, the operations prescribed by said article are carried out in the presence of the person at whose residence the search takes place.

In case of impossibility<sup>170</sup>, the judicial police officer shall be obligated to invite the person to designate a representative of their choice; in the absence of this, the judicial police officer will choose two witnesses required for this purpose, excluding individuals under their administrative authority.

The minutes of these operations, drawn up as provided for in Article 66, are signed by the individuals referred to in this article; in case of refusal, it is noted in the minutes.

<sup>169</sup> **Art 57 CCP Les conditions de forme de la perquisition**

Sous réserve des articles 56-1 à 56-5 et du respect du secret professionnel et des droits de la défense mentionnés à l'article 56, les opérations prescrites par ledit article sont faites en présence de la personne au domicile de laquelle la perquisition a lieu.

<sup>170</sup> En cas d'impossibilité, l'officier de police judiciaire aura l'obligation de l'inviter à désigner un représentant de son choix ; à défaut, l'officier de police judiciaire choisira deux témoins requis à cet effet par lui, en dehors des personnes relevant de son autorité administrative.

Le procès-verbal de ces opérations, dressé ainsi qu'il est dit à l'article 66, est signé par les personnes visées au présent article ; au cas de refus, il en est fait mention au procès-verbal.



**Art. 59 CPC<sup>171</sup> [The temporal conditions of the search]**

Unless a complaint is made from inside the house or exceptions are provided for by law, searches and home visits may not be commenced before 6 a.m. and after 9 p.m. The formalities mentioned in Articles 56, 56-1, 57 and in this Article are prescribed on pain of nullity.

**Art. 59-1<sup>172</sup> [Night-time searches for offences against the person]** (this provision will come into force on 30 September 2024)

If the needs of the flagrante delicto investigation relating to one of the crimes provided for in Book II of the Criminal Code, other than those covered by articles 706-73 and 706-73-1 of this Code, so require, the liberty and custody judge of the judicial court may, at the request of the public prosecutor and in accordance with the procedures provided for in the first and last paragraphs of article 706-92, by specially reasoned order in the light of the conditions set out in 1° to 3° of this article, authorise searches, home visits and seizures of exhibits to be carried out outside the hours set out in article 59:

1° When they are necessary to prevent an imminent risk to life or limb;

2° When there is an immediate risk of the disappearance of evidence and clues relating to the crime that has just been committed;

3° To enable the suspect to be questioned if it is necessary to do so outside the hours specified in Article 59 in order to prevent the suspect from endangering himself or the investigators.

These operations may not, on pain of nullity, have any purpose other than the investigation and recording of the offences mentioned in the decision of the liberty and custody judge. The fact that these operations reveal offences other than those mentioned in the

<sup>171</sup> **Art. 59 CPP Les conditions temporelles de la perquisition**

Sauf réclamation faite de l'intérieur de la maison ou exceptions prévues par la loi, les perquisitions et les visites domiciliaires ne peuvent être commencées avant 6 heures et après 21 heures.

Les formalités mentionnées aux articles 56, 56-1, 57 et au présent article sont prescrites à peine de nullité.

<sup>172</sup> **Art. 59-1 CPP** Le perquisitions de nuit concernant les atteintes aux personnes (cette disposition rentrera en vigueur le 30 septembre 2024)

Si les nécessités de l'enquête de flagrante relative à l'un des crimes prévus au livre II du code pénal, autres que ceux relevant des articles 706-73 et 706-73-1 du présent code, l'exigent, le juge des libertés et de la détention du tribunal judiciaire peut, à la requête du procureur de la République et selon les modalités prévues aux premier et dernier alinéas de l'article 706-92, par ordonnance spécialement motivée au regard des conditions prévues aux 1° à 3° du présent article, autoriser que les perquisitions, les visites domiciliaires et les saisies de pièces à conviction soient opérées en dehors des heures prévues à l'article 59:

1° Lorsque leur réalisation est nécessaire pour prévenir un risque imminent d'atteinte à la vie ou à l'intégrité physique ;

2° Lorsqu'il existe un risque immédiat de disparition des preuves et des indices du crime qui vient d'être commis ;

3° Pour permettre l'interpellation de la personne soupçonnée s'il est nécessaire de procéder à cette interpellation en dehors des heures prévues au même article 59 afin d'empêcher cette personne de porter atteinte à sa vie ou à celle des enquêteurs.

Ces opérations ne peuvent, à peine de nullité, avoir un autre objet que la recherche et la constatation des infractions mentionnées dans la décision du juge des libertés et de la détention. Le fait que ces opérations révèlent des infractions autres que celles mentionnées dans la décision du juge des libertés et de la détention ne constitue pas une cause de nullité des procédures incidentes.

decision of the liberty and custody judge does not constitute grounds for invalidity of the incidental proceedings.

- 4 Computer and IT-searches become more and more useful in any investigations as people tend to store any information on **digital items with a storage**. Criminals in the fraud area use computers for invoicing and bills etc. The access to computers is regulated as follows:

**Art. 57-1 CPC<sup>173</sup> may apply. [Computer/IT searches]**

(a) The court may, in the course of a search carried out under the conditions provided for in this Code, access, through a computer system located on the premises where the search is taking place, data relevant to the investigation in progress and stored in the said system or in another computer system, provided that such data is accessible from the initial system or available to the initial system.

They may also, under the conditions of search provided for in this Code, access data relevant to the current investigation and stored in another computer system via a computer system located on the premises of a police or gendarmerie service or unit, if such data is accessible from the initial system.

If it is first established that such data, accessible from the initial system or available to the initial system, is stored in another computer system located outside the national territory, it shall be collected by the criminal investigation police officer, subject to the conditions of access provided for by the international commitments in force.

The data to which access has been granted under the conditions laid down in this article may be copied onto any medium. Computer storage media may be seized and placed under seal under the conditions provided for in this Code.

<sup>173</sup> **Art. 57-1 CPP Les Perquisitions informatiques**

Les officiers de police judiciaire ou, sous leur responsabilité, les agents de police judiciaire peuvent, au cours d'une perquisition effectuée dans les conditions prévues par le présent code, accéder par un système informatique implanté sur les lieux où se déroule la perquisition à des données intéressant l'enquête en cours et stockées dans ledit système ou dans un autre système informatique, dès lors que ces données sont accessibles à partir du système initial ou disponibles pour le système initial.

Ils peuvent également, dans les conditions de perquisition prévues au présent code, accéder par un système informatique implanté dans les locaux d'un service ou d'une unité de police ou de gendarmerie à des données intéressant l'enquête en cours et stockées dans un autre système informatique, si ces données sont accessibles à partir du système initial.

S'il est préalablement avéré que ces données, accessibles à partir du système initial ou disponibles pour le système initial, sont stockées dans un autre système informatique situé en dehors du territoire national, elles sont recueillies par l'officier de police judiciaire, sous réserve des conditions d'accès prévues par les engagements internationaux en vigueur.

Les données auxquelles il aura été permis d'accéder dans les conditions prévues par le présent article peuvent être copiées sur tout support. Les supports de stockage informatique peuvent être saisis et placés sous scellés dans les conditions prévues par le présent code.

Les officiers de police judiciaire peuvent, par tout moyen, requérir toute personne susceptible:

1° D'avoir connaissance des mesures appliquées pour protéger les données auxquelles il est permis d'accéder dans le cadre de la perquisition ;

2° De leur remettre les informations permettant d'accéder aux données mentionnées au 1°.

A l'exception des personnes mentionnées aux articles 56-1 à 56-5, le fait de s'abstenir de répondre dans les meilleurs délais à cette réquisition est puni d'une amende de 3 750 €.

Judicial police officers may, by any means, request any person likely to:

1° To have knowledge of the measures applied to protect the data to which access is permitted in the context of the search;

2° To provide them with the information enabling access to the data mentioned in 1°.

With the exception of the persons mentioned in Articles 56-1 to 56-5, failure to respond as soon as possible to this request is punishable by a fine of €3,750.

## (2) The special flagrante delicto investigation/*L'enquête de flagrance dérogatoire*

### **Art. 706-89 CPC<sup>174</sup> [Extraordinary search hours in the special flagrante investigation phase]**

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If the needs of the flagrante delicto investigation relating to one of the offences falling within the scope of Articles 706-73 and 706-73-1 so require, the liberty and custody judge of the judicial court may, at the request of the public prosecutor, authorise searches, home visits and seizures of exhibits to be carried out outside the hours provided for in Article 59.

### **Art. 706-94 al. 1 CPP<sup>175</sup> [Formal requirements for a non-standard, special search]**

Where, in the course of a flagrante delicto investigation or an investigation relating to one of the offences falling within the scope of Articles 706-73 and 706-73-1, the person whose home is to be searched is in police custody or being held in another place and it appears that his or her transport to the place should be avoided because of the serious risk of either disturbing public order or escape (b) the person who has been arrested or detained in custody or in another place and it seems necessary to avoid transporting him there because of the serious risk of either disturbing the peace or escaping, or of the disappearance of evidence during the time necessary for transport, the search may be carried out, with the prior agreement of the public prosecutor or the investigating judge, in the presence of two witnesses required under the conditions laid down in the second paragraph of Article 57, or of a representative designated by the person whose home is in question.

#### <sup>174</sup> **Art. 706-89 CPP Les heures de perquisitions dérogatoires**

Si les nécessités de l'enquête de flagrance relative à l'une des infractions entrant dans le champ d'application des articles 706-73 et 706-73-1 l'exigent, le juge des libertés et de la détention du tribunal judiciaire peut, à la requête du procureur de la République, autoriser que les perquisitions, visites domiciliaires et saisies de pièces à conviction soient opérées en dehors des heures prévues par l'article 59.

#### <sup>175</sup> **Art. 706-94 CPP Les conditions de forme de la perquisition dérogatoire**

Lorsque, au cours d'une enquête de flagrance ou d'une instruction relative à l'une des infractions entrant dans le champ d'application des articles 706-73 et 706-73-1, la personne au domicile de laquelle est faite une perquisition est en garde à vue ou détenue en un autre lieu et que son transport sur place paraît devoir être évité en raison des risques graves soit de troubles à l'ordre public ou d'évasion, soit de disparition des preuves pendant le temps nécessaire au transport, la perquisition peut être faite, avec l'accord préalable du procureur de la République ou du juge d'instruction, en présence de deux témoins requis dans les conditions prévues au deuxième alinéa de l'article 57, ou d'un représentant désigné par celui dont le domicile est en cause.

Les dispositions du présent article sont également applicables aux enquêtes préliminaires, lorsque la perquisition est faite sans l'assentiment de la personne dans les conditions prévues aux articles 76 et 706-90. L'accord est alors donné par le juge des libertés et de la détention.

**(3) Preliminary Investigation/L'enquête préliminaire**

✍ **Nota bene:** Ø Art. 76 CPP which refers to the rules of flagrante delicto with the additional condition of consent + rule specific to EDP/PED art. 696-126 CPP.

**Art. 76 CPP<sup>176</sup> [General provision for searches, home visits and seizures for evidentiary purposes and to ensure confiscation]**

**[Consent (para 1 and para 2)]**

Searches, home visits and seizures of evidence or property whose confiscation is provided for in Article 131-21 of the Criminal Code cannot be carried out without the express consent of the person at whose premises the operation takes place.

This assent/consent must be the subject of a written statement by the person concerned or, if the latter cannot write, it is mentioned in the minutes as well as his assent.

**[The reference to the provisions on flagrante delicto (para. 3)]<sup>177</sup>**

The provisions provided for in articles 56 and 59 of this code are applicable.

**[The possibility of circumventing consent under conditions (para. 4 and para. 5)]** If the requirements of the investigation relating to a crime or misdemeanour punishable by a prison sentence of three years or more so require or if the search for property whose confiscation is provided for in Article 131-21 of the Criminal Code justifies it, the judge

<sup>176</sup> **Art. 76 CPP Disposition générale des perquisitions, visites domiciliaires et saisies à des fins probatoires et pour en assurer la confiscation**

Les perquisitions, visites domiciliaires et saisies de pièces à conviction ou de biens dont la confiscation est prévue à l'article 131-21 du code pénal ne peuvent être effectuées sans l'assentiment exprès de la personne chez laquelle l'opération a lieu.

Cet assentiment doit faire l'objet d'une déclaration écrite de la main de l'intéressé ou, si celui-ci ne sait écrire, il en est fait mention au procès-verbal ainsi que de son assentiment. **Le consentement (al. 1 et al. 2)**

Les dispositions prévues par les articles 56 et 59 du présent code sont applicables. **Le renvoi aux dispositions de la flagrance (al. 3)**

<sup>177</sup> Si les nécessités de l'enquête relative à un crime ou à un délit puni d'une peine d'emprisonnement d'une durée égale ou supérieure à trois ans l'exigent ou si la recherche de biens dont la confiscation est prévue à l'article 131-21 du code pénal le justifie, le juge des libertés et de la détention du tribunal judiciaire peut, à la requête du procureur de la République, décider, par une décision écrite et motivée, que les opérations prévues au présent article seront effectuées sans l'assentiment de la personne chez qui elles ont lieu. A peine de nullité, la décision du juge des libertés et de la détention précise la qualification de l'infraction dont la preuve est recherchée ainsi que l'adresse des lieux dans lesquels ces opérations peuvent être effectuées ; cette décision est motivée par référence aux éléments de fait et de droit justifiant que ces opérations sont nécessaires. Les opérations sont effectuées sous le contrôle du magistrat qui les a autorisées, et qui peut se déplacer sur les lieux pour veiller au respect des dispositions légales. Ces opérations ne peuvent, à peine de nullité, avoir un autre objet que la recherche et la constatation des infractions visées dans la décision du juge des libertés et de la détention ou la saisie des biens dont la confiscation est prévue à l'article 131-21 du code pénal. Toutefois, le fait que ces opérations révèlent des infractions autres que celles visées dans la décision ne constitue pas une cause de nullité des procédures incidentes. Pour l'application des dispositions de l'alinéa précédent, est compétent le juge des libertés et de la détention du tribunal judiciaire dont le procureur de la République dirige l'enquête, quelle que soit la juridiction dans le ressort de laquelle la perquisition doit avoir lieu. Le juge des libertés et de la détention peut alors se déplacer sur les lieux quelle que soit leur localisation sur le territoire national. Le procureur de la République peut également saisir le juge des libertés et de la détention du tribunal judiciaire dans le ressort duquel la perquisition doit avoir lieu, par l'intermédiaire du procureur de la République de cette juridiction. **La possibilité de passer outre le consentement sous conditions (al. 4 et al. 5)**

of freedoms and detention of the judicial court may, at the request of the public prosecutor, decide, by a written and reasoned decision, that the operations provided for in this article will be carried out without the consent of the person in whose home they take place. On pain of nullity, the decision of the judge of freedoms and detention specifies the qualification of the offense whose proof is sought as well as the address of the places in which these operations can be carried out; this decision is substantiated by reference to the factual and legal elements justifying that these operations are necessary. The operations are carried out under the control of the magistrate who authorized them, and who can travel to the premises to ensure compliance with the legal provisions. These operations may not, on pain of nullity, have any purpose other than the investigation and observation of the offenses referred to in the decision of the judge of freedoms and detention or the seizure of property whose confiscation is provided for in article 131- 21 of the Penal Code.

However, the fact that these operations reveal infringements other than those referred to in the decision does not constitute a cause of nullity of the incidental proceedings. The operations are carried out under the supervision of the magistrate who authorized them, and who may visit the premises to ensure compliance with the legal provisions.

These operations may not, on pain of nullity, have any purpose other than the investigation and observation of the offenses referred to in the decision of the judge of freedoms and detention or the seizure of property whose confiscation is provided for in article 131- 21 of the Penal Code.

For the application of the provisions of the preceding paragraph, the liberty and detention judge of the judicial court whose public prosecutor is leading the investigation is competent, regardless of the jurisdiction in whose jurisdiction the search must have taken place. place.

The liberties and detention judge can then travel to the premises regardless of their location on national territory. The public prosecutor may also seize the judge of freedoms and detention of the judicial court in whose jurisdiction the search is to take place, through the public prosecutor of this jurisdiction.

#### **Art. 76-3 CPP<sup>178</sup> [Computer searches]**

The police officer may, for the purposes of the investigation, under the conditions laid down in Article 76, have recourse to the operations provided for in Article 57-1.

#### **Art. 696-126 CPC<sup>179</sup> [The conditions specific to DPEs if there is a lack of consent]**

Searches, home visits and seizures must, in the absence of flagrante delicto or the express consent of the person at whose premises they are carried out, be carried out with

<sup>178</sup> **Art. 76-3 CPP Les perquisitions informatiques**

L'officier de police peut, pour les nécessités de l'enquête, dans les conditions prévues à l'article 76, recourir aux opérations prévues par l'article 57-1.

<sup>179</sup> **Art. 696-126 CPP Les conditions propres aux PED s'il y a absence de consentement**

Les perquisitions, visites domiciliaires et saisies doivent, en l'absence de flagrante ou d'assentiment exprès de la personne chez laquelle elles ont lieu, être effectuées avec l'autorisation du juge des libertés et de la détention saisi par réquisitions écrites et motivées du procureur européen délégué dans les conditions prévues à l'article 76.

the authorisation of the liberty and custody judge to whom the matter has been referred by means of a reasoned written request from the Delegated European Public Prosecutor under the conditions laid down in Article 76.

**(4) The special preliminary investigation/L'enquête préliminaire dérogatoire**

**6 Art. 706-90 al. 1 CPC<sup>180</sup> [The hours of the searches by virtue of a special preliminary investigation]**

If the needs of the preliminary investigation relating to one of the offences falling within the scope of Articles 706-73 and 706-73-1 so require, the liberty and custody judge of the judicial court may, at the request of the public prosecutor, decide that searches, home visits and seizures of exhibits may be carried out outside the hours provided for in Article 59, where these operations do not concern residential premises.

**Art. 706-94 al. 2 CPP<sup>181</sup> [Formal requirements for special searches]**

The provisions of this article shall also apply to preliminary investigations, where the search is carried out without the consent of the person under the conditions provided for in Articles 76 and 706-90. The liberty and custody judge shall then give the consent.

**(5) Hybrid investigation (when the prosecutor has the powers of the investigating judge) /L'enquête hybride (quand le procureur dispose des pouvoirs du juge d'instruction)**

**7** Next, the chapter on Art. 30 EPPO Regulation takes a closer look at the conventional search, which refers to the conditions of a flagrance investigation/ *Perquisition classique*, thus the following articles might apply: Art. 92 CPP, art. 94 CPP, art. 95 CPP (*qui renvoie aux conditions de la flagrance*), art. 96 CPP.

<sup>180</sup> **Art. 706-90 CPP Les heures des perquisitions dérogatoires**

Si les nécessités de l'enquête préliminaire relative à l'une des infractions entrant dans le champ d'application des articles 706-73 et 706-73-1 l'exigent, le juge des libertés et de la détention du tribunal judiciaire peut, à la requête du procureur de la République, décider que les perquisitions, visites domiciliaires et saisies de pièces à conviction pourront être effectuées en dehors des heures prévues à l'article 59, lorsque ces opérations ne concernent pas des locaux d'habitation.

<sup>181</sup> **Art. 706-94 CPP Les conditions de forme des perquisitions dérogatoires**

Lorsque, au cours d'une enquête de flagrance ou d'une instruction relative à l'une des infractions entrant dans le champ d'application des articles 706-73 et 706-73-1, la personne au domicile de laquelle est faite une perquisition est en garde à vue ou détenue en un autre lieu et que son transport sur place paraît devoir être évité en raison des risques graves soit de troubles à l'ordre public ou d'évasion, soit de disparition des preuves pendant le temps nécessaire au transport, la perquisition peut être faite, avec l'accord préalable du procureur de la République ou du juge d'instruction, en présence de deux témoins requis dans les conditions prévues au deuxième alinéa de l'article 57, ou d'un représentant désigné par celui dont le domicile est en cause.

Les dispositions du présent article sont également applicables aux enquêtes préliminaires, lorsque la perquisition est faite sans l'assentiment de la personne dans les conditions prévues aux articles 76 et 706-90. L'accord est alors donné par le juge des libertés et de la détention.

**Art. 92 CPC<sup>182</sup> [Initial findings and searches]**

The investigating judge may go to the scene to make any useful observations or carry out searches. He shall notify the public prosecutor, who may accompany him.

The examining magistrate is always assisted by a clerk.

He draws up a report of his operations.

**Art. 93 CPP<sup>183</sup> [Nationwide transport]**

Where the needs of the investigation so require, the investigating judge may, after giving notice to the public prosecutor of his or her court, travel with his or her clerk throughout the national territory in order to carry out all investigative acts, provided that he or she gives prior notice to the public prosecutor of the court within whose jurisdiction he or she is travelling. He shall mention in his report the reasons for his transport.

**Art. 93-1 CPC<sup>184</sup> [Transport to another Member State]**

If the needs of the investigation so require, the investigating judge may, in the context of a letter rogatory addressed to a foreign State or a European investigation order addressed to a Member State of the European Union and with the agreement of the competent authorities of the State concerned, travel with his clerk to the territory of that State for the purpose of conducting hearings.

He shall give prior notice to the public prosecutor of his court.

**<sup>182</sup> Art. 92 CPP Les premières constatations et les perquisitions**

Le juge d'instruction peut se transporter sur les lieux pour y effectuer toutes constatations utiles ou procéder à des perquisitions. Il en donne avis au procureur de la République, qui a la faculté de l'accompagner.

Le juge d'instruction est toujours assisté d'un greffier.

Il dresse un procès-verbal de ses opérations.

**<sup>183</sup> Art. 93-1 CPP Le transport sur les lieux d'un autre État membre**

Le transport sur les lieux d'un autre État membre

Si les nécessités de l'instruction l'exigent, le juge d'instruction peut, dans le cadre d'une commission rogatoire adressée à un Etat étranger ou d'une décision d'enquête européenne adressée à un Etat membre de l'Union européenne et avec l'accord des autorités compétentes de l'Etat concerné, se transporter avec son greffier sur le territoire de cet Etat aux fins de procéder à des auditions.

Il en donne préalablement avis au procureur de la République de son tribunal.

**<sup>184</sup> Art. 93 CPP Le transport sur toute l'étendue du territoire national**

Si les nécessités de l'information l'exigent, le juge d'instruction peut, après en avoir donné avis au procureur de la République de son tribunal, se transporter avec son greffier dans toute l'étendue du territoire national, à effet d'y procéder à tous actes d'instruction, à charge par lui d'aviser, au préalable, le procureur de la République du tribunal dans le ressort duquel il se transporte. Il mentionne sur son procès-verbal les motifs de son transport.

**Art. 94 CPC<sup>185</sup> [Location of the searches]**

Searches shall be carried out in all places where there may be objects or computer data, the discovery of which would be useful for establishing the truth, or property the confiscation of which is provided for in Article 131-21 of the Criminal Code.

**Art. 95 CPC<sup>186</sup> [Home searches of the accused (reference to the provisions of flagrante delicto)]**

If the search takes place at the home of the accused, the investigating judge must comply with the provisions of Articles 57 and 59.

**Art. 96 CPC<sup>187</sup> [Searches of the home of a person other than the defendant]**

If the search takes place in a home other than that of the person under investigation, the person whose home it is to visit shall be invited to attend. (b) the court may, in the absence of a court order, order that a person who has been convicted of an offence under Paragraph 1(a)(i) of the Code of Criminal Procedure be sentenced to a term of imprisonment of up to three years.

The investigating judge must comply with the provisions of Articles 57 (paragraph 2) and 59.

However, he or she shall be obliged to take all appropriate measures in advance to ensure that professional secrecy and the rights of the defence are respected.

The provisions of Articles 56 and 56(1) to (5) shall apply to searches carried out by the investigating judge.

- 8 Recent changes to the CPC have inserted the following new provisions, which will apply as of 2024:

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<sup>185</sup> **Art. 94 CPP Lieu des perquisitions**

Les perquisitions sont effectuées dans tous les lieux où peuvent se trouver des objets ou des données informatiques dont la découverte serait utile à la manifestation de la vérité, ou des biens dont la confiscation est prévue à l'article 131-21 du code pénal.

<sup>186</sup> **Art. 95 CPP Les perquisitions domiciliaires de la personne mise en examen (renvoi aux dispositions de la flagrance)**

Si la perquisition a lieu au domicile de la personne mise en examen, le juge d'instruction doit se conformer aux dispositions des articles 57 et 59.

<sup>187</sup> **Art. 96 CPP Les perquisitions domiciliaires d'une personne autre que celle mise en examen**

Si la perquisition a lieu dans un domicile autre que celui de la personne mise en examen, la personne chez laquelle elle doit s'effectuer est invitée à y assister. Si cette personne est absente ou refuse d'y assister, la perquisition a lieu en présence de deux de ses parents ou alliés présents sur les lieux, ou à défaut, en présence de deux témoins. Le juge d'instruction doit se conformer aux dispositions des articles 57 (alinéa 2) et 59.



**Art. 97-2 CPC<sup>188</sup> [Night-time searches in relation to offences against the person – provision applicable from 30 September 2024]**

If the needs of the investigation relating to one of the crimes provided for in Book II of the Criminal Code, other than those covered by articles 706-73 and 706-73-1 of this Code, so require, the investigating judge may, in the case of a flagrant crime and in accordance with the procedures provided for in the first and last paragraphs of article 706-92, authorise, by specially reasoned order, searches, home visits and seizures of exhibits to be carried out outside the hours provided for in article 59 in the cases provided for in 1° to 3° of article 59-1.

These operations may not, on pain of nullity, have any purpose other than the investigation and establishment of the offences mentioned in the investigating judge's decision. The fact that these operations reveal offences other than those mentioned in the investigating judge's decision does not constitute a ground for invalidity of the incidental proceedings.

**Art. 97 CPC<sup>189</sup> [Computer searches and seizures]**

Where, in the course of an investigation, it is necessary to search for documents or computer data, and subject to the requirements of the investigation and compliance, where applicable, with the obligation stipulated in paragraph 3 of the preceding article, the investigating judge or the judicial police officer appointed by him or her shall have the sole right to examine them before seizing them.

All objects, documents or computer data placed in the hands of the court shall be immediately inventoried and placed under seal. However, if their inventory on the spot presents difficulties, the judicial police officer shall proceed as provided in the fourth paragraph of Article 56.

The computer data necessary to establish the truth shall be seized by placing the physical medium of the data or a copy made in the presence of the persons who are present at the search under judicial supervision.

<sup>188</sup> Art. 97-2 CPP (Les perquisitions de nuit en matière d'atteinte aux personnes - disposition applicable à partir du 30 septembre 2024).

Si les nécessités de l'information relative à l'un des crimes prévus au livre II du code pénal, autres que ceux relevant des articles 706-73 et 706-73-1 du présent code, l'exigent, le juge d'instruction peut, lorsqu'il s'agit d'un crime flagrant et selon les modalités prévues aux premier et dernier alinéas de l'article 706-92, autoriser par ordonnance spécialement motivée que les perquisitions, les visites domiciliaires et les saisies de pièces à conviction soient opérées en dehors des heures prévues à l'article 59 dans les cas prévus aux 1° à 3° de l'article 59-1.

Ces opérations ne peuvent, à peine de nullité, avoir un autre objet que la recherche et la constatation des infractions mentionnées dans la décision du juge d'instruction. Le fait que ces opérations révèlent des infractions autres que celles mentionnées dans la décision du juge d'instruction ne constitue pas une cause de nullité des procédures incidentes.

<sup>189</sup> **Art. 97 CPP [Les perquisitions et les saisies informatiques]**

Lorsqu'il y a lieu, en cours d'information, de rechercher des documents ou des données informatiques et sous réserve des nécessités de l'information et du respect, le cas échéant, de l'obligation stipulée par l'alinéa 3 de l'article précédent, le juge d'instruction ou l'officier de police judiciaire par lui commis a seul le droit d'en prendre connaissance avant de procéder à la saisie. [...]

If a copy is made in the context of this procedure, the computer data whose possession or use is illegal or dangerous to the safety of persons or property may be permanently erased from the physical medium that has not been placed in the hands of the court, by order of the investigating judge.

With the agreement of the investigating judge, the judicial police officer shall only maintain the seizure of objects, documents and computer data that are useful for establishing the truth, as well as property whose confiscation is provided for in Article 131-21 of the Criminal Code.

When these seals are closed, they may only be opened and the documents removed in the presence of the accused, assisted by his or her lawyer, or in the presence of the accused duly summoned. However, where the opening and reconstruction of the closed seal does not require the accused to be questioned about its contents, they may be carried out by the investigating judge assisted by his or her clerk in the absence of the accused, in the presence of his or her lawyer or the latter duly summoned.

If the needs of the investigation do not prevent it, copies or photocopies of documents or computer data placed in the hands of the court may be delivered at their expense, as soon as possible, to the interested parties who so request.

If the seizure concerns cash, ingots, effects or securities whose conservation in kind is not necessary for the demonstration of the truth or the safeguarding of the rights of the parties, it may authorise their deposit at the Caisse des dépôts et consignations or at the Banque de France or in an account opened with a banking institution by the Agency for the Management and Recovery of Seized and Confiscated Assets.

Where the seizure involves counterfeit euro banknotes or coins, the investigating judge or the judicial police officer appointed by him or her must send at least one copy of each type of suspected counterfeit banknote or coin to the national analysis centre authorised for this purpose for analysis and identification. The national analysis centre may open the seals. It shall draw up an inventory in a report which shall mention any opening or reopening of the seals. When the operations are completed, the report and the seals shall be deposited with the clerk of the competent court. This deposit shall be recorded in a report.

The provisions of the previous paragraph shall not apply where there is only one copy of a type of suspected counterfeit banknote or coin, as long as it is necessary for the determination of the truth.

**(6) The exceptional i.e. special hybrid investigation/L'enquête hybride dérogatoire****Art. 706-91 CPP<sup>190</sup> [Exceptions to the (normal) search hours]**

If the needs of the investigation relating to one of the offences falling within the scope of Articles 706-73 and 706-73-1 so require, the investigating judge may authorise judicial police officers acting on a letter rogatory to carry out searches, home visits and seizures of exhibits outside the hours provided for in Article 59, where these operations do not concern residential premises.

In urgent cases, the investigating judge may also authorise judicial police officers to conduct such operations in residential premises:

- 1° When it concerns a crime or a flagrant offence;
- 2° When there is an immediate risk of evidence or material clues disappearing;
- 3° When there are one or more plausible reasons to suspect that one or more persons in the premises where the search is to take place are committing crimes or offences falling within the scope of Articles 706-73 and 706-73-1;
- 4° When their performance, in the context of an investigation into one or more of the offences referred to in 11° of Article 706-73, is necessary to prevent a risk to life or limb.

**Art. 706-94 al. 1 CPP<sup>191</sup> [Requirements for a non-standard i.e. special search]**

Where, in the course of a flagrante delicto investigation or an investigation relating to one of the offences falling within the scope of Articles 706-73 and 706-73-1, the person whose home is to be searched is in police custody or being held in another place and it appears that his or her transport to the place should be avoided because of the serious

**<sup>190</sup> Art. 706-91 CPP Les heures de perquisition dérogatoires**

Si les nécessités de l'information relative à l'une des infractions entrant dans le champ d'application des articles 706-73 et 706-73-1 l'exigent, le juge d'instruction peut autoriser les officiers de police judiciaire agissant sur commission rogatoire à procéder à des perquisitions, visites domiciliaires et saisies de pièces à conviction en dehors des heures prévues à l'article 59, lorsque ces opérations ne concernent pas des locaux d'habitation.

En cas d'urgence, le juge d'instruction peut également autoriser les officiers de police judiciaire à procéder à ces opérations dans les locaux d'habitation:

- 1° Lorsqu'il s'agit d'un crime ou d'un délit flagrant ;
- 2° Lorsqu'il existe un risque immédiat de disparition des preuves ou des indices matériels ;
- 3° Lorsqu'il existe une ou plusieurs raisons plausibles de soupçonner qu'une ou plusieurs personnes se trouvant dans les locaux où la perquisition doit avoir lieu sont en train de commettre des crimes ou des délits entrant dans le champ d'application des articles 706-73 et 706-73-1 ;
- 4° Lorsque leur réalisation, dans le cadre d'une information relative à une ou plusieurs infractions mentionnées au 11° de l'article 706-73, est nécessaire afin de prévenir un risque d'atteinte à la vie ou à l'intégrité physique.

**<sup>191</sup> Art. 706-94 CPP Les conditions de forme de la perquisition dérogatoire**


Lorsque, au cours d'une enquête de flagrance ou d'une instruction relative à l'une des infractions entrant dans le champ d'application des articles 706-73 et 706-73-1, la personne au domicile de laquelle est faite une perquisition est en garde à vue ou détenue en un autre lieu et que son transport sur place paraît devoir être évité en raison des risques graves soit de troubles à l'ordre public ou d'évasion, soit de disparition des preuves pendant le temps nécessaire au transport, la perquisition peut être faite, avec l'accord préalable du procureur de la République ou du juge d'instruction, en présence de deux témoins requis dans les conditions prévues au deuxième alinéa de l'article 57, ou d'un représentant désigné par celui dont le domicile est en cause.

Les dispositions du présent article sont également applicables aux enquêtes préliminaires, lorsque la perquisition est faite sans l'assentiment de la personne dans les conditions prévues aux articles 76 et 706-90. L'accord est alors donné par le juge des libertés et de la détention.

risk of either disturbing public order or escape (b) the person who has been arrested or detained in custody or in another place and it seems necessary to avoid transporting him there because of the serious risk of either disturbing the peace or escaping, or of the disappearance of evidence during the time necessary for transport, the search may be carried out, with the prior agreement of the public prosecutor or the investigating judge, in the presence of two witnesses required under the conditions laid down in the second paragraph of Article 57, or of a representative designated by the person whose home is in question.

The provisions of this article shall also apply to preliminary investigations, where the search is carried out without the consent of the person under the conditions provided for in Articles 76 and 706-90. The consent shall then be given by the liberty and custody judge.

9 In the following part, the chapter deals with para **2) of Art. 30** (§ 2 Dispositions spécifiques pour certains professionnels applicable à la flagrance, préliminaire et instruction):

10  **RÈGLEMENT (UE) 2017/1939 DU CONSEIL** → 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.



**! Nota bene:**

Art. 56-1, 56-1-1 et 56-1-2 CPP [displayed below]

**[Searches in a lawyer's office/Les perquisitions dans un cabinet d'avocat]**

**Art. 56-1-1 CPP**<sup>192</sup>

When, during a search in a place other than those mentioned in Article 56-1, a document mentioned in the second paragraph of the same Article 56-1 is discovered, the person at whose premises the operations may oppose the seizure of this document. The document must then be placed under closed seal and be the subject of a report separate from that provided for in Article 57. This report as well as the document placed under closed seal are transmitted without delay to the judge of freedoms and detention, with the original or a copy of the case file. The fourth to ninth paragraphs of article 56-1 are then applicable.

<sup>192</sup> **Art. 56-1-1-CPP Les perquisitions dans un cabinet d'avocat**

Lorsque, à l'occasion d'une perquisition dans un lieu autre que ceux mentionnés à l'article 56-1, il est découvert un document mentionné au deuxième alinéa du même article 56-1, la personne chez qui il est procédé à ces opérations peut s'opposer à la saisie de ce document. Le document doit alors être placé sous scellé fermé et faire l'objet d'un procès-verbal distinct de celui prévu à l'article 57. Ce procès-verbal ainsi que le document placé sous scellé fermé sont transmis sans délai au juge des libertés et de la détention, avec l'original ou une copie du dossier de la procédure. Les quatrième à neuvième alinéas de l'article 56-1 sont alors applicables

**Art. 56-1-2<sup>193</sup>** In the cases provided for in Articles 56-1 and 56-1-1, without prejudice to the prerogatives of the President of the Bar or his or her delegate provided for in Article 56-1 and to the rights of the person searched provided for in Article 56-1-1, the professional secrecy of counsel shall not apply to investigation or inquiry measures when these relate to the offences referred to in Articles 1741 and 1743 of the General Tax Code and in Articles 421-2-2, 433-1, 433-2 and 435-1 to 435-10 of the Criminal Code as well as the laundering of these offences, provided that the consultations, correspondence or documents held or transmitted by the lawyer or his client establish proof of their use for the purpose of committing or facilitating the commission of the said offences.

**Art. 56-2 CPP<sup>194</sup>** The premises of a press company, an audio-visual communication company, an online public communication company, a press agency, in the professional vehicles of these companies or agencies or at the home of a journalist when the investigations are linked to his or her professional activity.

**Art. 56-3 CPP<sup>195</sup> [The search in an office of a doctor, notary or bailiff]**

Searches in a doctor's, notary's or bailiff's office shall be carried out by a magistrate and in the presence of the person in charge of the professional order or organisation to which the person concerned belongs or his representative.

**Art. 56-4 CPP<sup>196</sup> [Searches in a precisely identified place containing items covered by national defence secrets]** I. - When a search is envisaged in a precisely identified

<sup>193</sup> **Art. 56-1-2 CPP Les perquisitions dans un cabinet d'avocat**

Dans les cas prévus aux articles 56-1 et 56-1-1, sans préjudice des prérogatives du bâtonnier ou de son délégué prévues à l'article 56-1 et des droits de la personne perquisitionnée prévus à l'article 56-1-1, le secret professionnel du conseil n'est pas opposable aux mesures d'enquête ou d'instruction lorsque celles-ci sont relatives aux infractions mentionnées aux articles 1741 et 1743 du code général des impôts et aux articles 421-2-2, 433-1, 433-2 et 435-1 à 435-10 du code pénal ainsi qu'au blanchiment de ces délits, sous réserve que les consultations, correspondances ou pièces détenues ou transmises par l'avocat ou son client établissent la preuve de leur utilisation aux fins de commettre ou de faciliter la commission desdites infractions/Modifié par LOI n°2021-1729 du 22 décembre 2021 - art. 3

<sup>194</sup> **Art. 56-2 CPP Les perquisitions dans lieux spéciaux (press/en ligne/audio)**

Les perquisitions dans les locaux d'une entreprise de presse, d'une entreprise de communication audiovisuelle, d'une entreprise de communication au public en ligne, d'une agence de presse, dans les véhicules professionnels de ces entreprises ou agences ou au domicile d'un journaliste lorsque les investigations sont liées à son activité professionnelle.

<sup>195</sup> **Art. 56-3 CPP Les perquisitions dans le cabinet d'un médecin, d'un notaire ou d'un huissier/**

Les perquisitions dans le cabinet d'un médecin, d'un notaire ou d'un huissier sont effectuées par un magistrat et en présence de la personne responsable de l'ordre ou de l'organisation professionnelle à laquelle appartient l'intéressé ou de son représentant.

<sup>196</sup> **Article 56-4 CPP Les perquisitions dans un lieu précisément identifié abritant des éléments couverts par le secret de la défense nationale**

I.-Lorsqu'une perquisition est envisagée dans un lieu précisément identifié, abritant des éléments couverts par le secret de la défense nationale, la perquisition ne peut être réalisée que par un magistrat en présence du président de la Commission du secret de la défense nationale. Ce dernier peut être représenté par un membre de la commission ou par des délégués, dûment habilités au secret de la défense nationale, qu'il désigne selon des modalités déterminées par décret en Conseil d'Etat. Le président ou son représentant peut être assisté de toute personne habilitée à cet effet.

place, housing elements covered by the secrecy of national defense, the search can only be carried out by a magistrate in the presence of the president of the Commission of the secrecy of the national defense. The latter may be represented by a member of the commission or by delegates, duly authorized to the secrecy of national defense, whom he designates according to procedures determined by decree in the Council of State. The President or his representative may be assisted by any person authorized to do so.

The list of places referred to in the first paragraph shall be drawn up in a precise and exhaustive manner by order of the Prime Minister. This list, which is regularly updated, is communicated to the National Defence Secrecy Commission and the Minister of Justice, who make it accessible to judges in a secure manner. The magistrate checks whether the place in which he wishes to carry out a search is on this list

The conditions for the delimitation of places housing elements covered by the secrecy of national defense are determined by decree in the Council of State.

La liste des lieux visés au premier alinéa est établie de façon précise et limitative par arrêté du Premier ministre. Cette liste, régulièrement actualisée, est communiquée à la Commission du secret de la défense nationale ainsi qu'au ministre de la justice, qui la rendent accessible aux magistrats de façon sécurisée. Le magistrat vérifie si le lieu dans lequel il souhaite effectuer une perquisition figure sur cette liste.

Les conditions de délimitation des lieux abritant des éléments couverts par le secret de la défense nationale sont déterminées par décret en Conseil d'Etat.

Le fait de dissimuler dans les lieux visés à l'alinéa précédent des procédés, objets, documents, informations, réseaux informatiques, données informatisées ou fichiers non classifiés, en tentant de les faire bénéficier de la protection attachée au secret de la défense nationale, expose son auteur aux sanctions prévues à l'article 434-4 du code pénal.

La perquisition ne peut être effectuée qu'en vertu d'une décision écrite du magistrat qui indique au président de la Commission du secret de la défense nationale les informations utiles à l'accomplissement de sa mission. Le président de la commission ou son représentant se transporte sur les lieux sans délai. Au commencement de la perquisition, le magistrat porte à la connaissance du président de la commission ou de son représentant, ainsi qu'à celle du chef d'établissement ou de son délégué, ou du responsable du lieu, la nature de l'infraction ou des infractions sur lesquelles portent les investigations, les raisons justifiant la perquisition, son objet et les lieux visés par cette perquisition.

Seul le président de la Commission du secret de la défense nationale, son représentant et, s'il y a lieu, les personnes qui l'assistent peuvent prendre connaissance d'éléments classifiés découverts sur les lieux. Le magistrat ne peut saisir, parmi les éléments classifiés, que ceux relatifs aux infractions sur lesquelles portent les investigations. Si les nécessités de l'enquête justifient que les éléments classifiés soient saisis en original, des copies sont laissées à leur détenteur.

Chaque élément classifié saisi est, après inventaire par le président de la commission, placé sous scellé. Les scellés sont remis au président de la Commission du secret de la défense nationale qui en devient gardien. Les opérations relatives aux éléments classifiés saisis ainsi que l'inventaire de ces éléments font l'objet d'un procès-verbal qui n'est pas joint au dossier de la procédure et qui est conservé par le président de la commission.

La déclassification et la communication des éléments mentionnés dans l'inventaire relèvent de la procédure prévue par les articles L. 2312-4 et suivants du code de la défense.

II.-Lorsqu'à l'occasion d'une perquisition un lieu se révèle abriter des éléments couverts par le secret de la défense nationale, le magistrat présent sur le lieu ou immédiatement avisé par l'officier de police judiciaire en informe le président de la Commission du secret de la défense nationale. Les éléments classifiés sont placés sous scellés, sans en prendre connaissance, par le magistrat ou l'officier de police judiciaire qui les a découverts, puis sont remis ou transmis, par tout moyen en conformité avec la réglementation applicable aux secrets de la défense nationale, au président de la commission afin qu'il en assure la garde. Les opérations relatives aux éléments classifiés font l'objet d'un procès-verbal qui n'est pas joint au dossier de la procédure. La déclassification et la communication des éléments ainsi placés sous scellés relèvent de la procédure prévue par les articles L. 2312-4 et suivants du code de la défense.

III (Supprimé).

IV.-Les dispositions du présent article sont édictées à peine de nullité

The fact of concealing in the places referred to in the preceding paragraph processes, objects, documents, information, computer networks, computerized data or unclassified files, by attempting to make them benefit from the protection attached to the secrecy of national defense, exposes its author to the sanctions provided for in article 434-4 of the penal code.

The search may be carried out only by virtue of a written decision of the magistrate who shall inform the President of the National Defence Secrecy Commission of the information useful for the performance of his mission. The chairman of the commission or his representative shall be transported to the scene without delay. At the beginning of the search, the magistrate shall inform the chairman of the commission or his representative, as well as the head of the establishment or his delegate, or the person in charge of the place, of the nature of the offence or offences to which the investigations relate, the reasons justifying the search, its purpose and the places covered by the search.

Only the Chairman of the National Defence Secrecy Commission, his representative and, where appropriate, the persons assisting him may examine classified material discovered at the scene. The magistrate may refer to classified evidence only those relating to the offences to which the investigations relate. If the needs of the investigation justify the seizure of classified material in original, copies shall be left to the holder.

Each classified item seized shall, after inventory by the chairman of the commission, be placed under seal. The seals are handed over to the Chairman of the National Defence Secrecy Commission, who becomes their custodian. The operations relating to the classified elements seized and the inventory of such elements shall be the subject of a report which shall not be attached to the file of the procedure and which shall be kept by the chairman of the committee.

The declassification and communication of the elements mentioned in the inventory fall under the procedure provided for in Articles L. 2312-4 et seq. of the Defence Code.

II.-When, on the occasion of a search, a place is found to harbour elements covered by the secrecy of national defense, the magistrate present at the scene or immediately notified by the judicial police officer informs the president of the Commission for the secrecy of national defense. Classified items are placed under seal, without becoming acquainted with them, by the magistrate or judicial police officer who discovered them, and then handed over or transmitted, by any means in accordance with the regulations applicable to national defence secrets, to the chairman of the commission for custody. Transactions relating to classified elements shall be the subject of a report which shall not be attached to the file of the procedure. The declassification and communication of the elements thus placed under seal are subject to the procedure provided for in Articles L. 2312-4 et seq. of the Defence Code.

IV.-The provisions of this article shall be enacted on pain of nullity.

Special restrictions exist for the home of a person exercising judicial functions:

11

**Art. 56-5 CPP<sup>197</sup> [Searches in the premises of a court or the home of a person exercising judicial functions]**

Searches of the premises of a court or of the home of a person exercising judicial functions and which tend to seize documents likely to be covered by the secrecy of the deliberations may be carried out only by a magistrate, by written and reasoned decision of the latter, in the presence of the first president of the Court of Appeal or the first president of the Court of Cassation or his delegate. That decision shall indicate the nature of the offence to which the investigations relate, the reasons justifying the search and the purpose of the search. The content of the decision shall be brought to the attention of the first president or his delegate by the magistrate from the beginning of the search. The latter, the first president or his delegate alone have the right to consult or take cognizance of the documents or objects on the premises prior to their possible seizure. No seizure may concern documents or objects relating to offences other than those mentioned in the abovementioned decision. The provisions of this paragraph shall be provided for on pain of nullity.

The magistrate carrying out the search shall ensure that the investigations carried out do not affect the independence of the judiciary.

The first president or his delegate may oppose the seizure of a document or object if he considers such seizure to be irregular. The document or object is then placed under a

**<sup>197</sup> Article 56-5 CPP Les perquisitions dans les locaux d'une juridiction ou au domicile d'une personne exerçant des fonctions juridictionnelles**

Les perquisitions dans les locaux d'une juridiction ou au domicile d'une personne exerçant des fonctions juridictionnelles et qui tendent à la saisie de documents susceptibles d'être couverts par le secret du délibéré ne peuvent être effectuées que par un magistrat, sur décision écrite et motivée de celui-ci, en présence du premier président de la cour d'appel ou du premier président de la Cour de cassation ou de son délégué. Cette décision indique la nature de l'infraction sur laquelle portent les investigations, les raisons justifiant la perquisition et l'objet de celle-ci. Le contenu de la décision est porté dès le début de la perquisition à la connaissance du premier président ou de son délégué par le magistrat. Celui-ci, le premier président ou son délégué ont seuls le droit de consulter ou de prendre connaissance des documents ou des objets se trouvant sur les lieux préalablement à leur éventuelle saisie. Aucune saisie ne peut concerner des documents ou des objets relatifs à d'autres infractions que celles mentionnées dans la décision précitée. Les dispositions du présent alinéa sont prévues à peine de nullité.

Le magistrat qui effectue la perquisition veille à ce que les investigations conduites ne portent pas atteinte à l'indépendance de la justice.

Le premier président ou son délégué peut s'opposer à la saisie d'un document ou d'un objet s'il estime cette saisie irrégulière. Le document ou l'objet est alors placé sous scellé fermé. Ces opérations font l'objet d'un procès-verbal, qui n'est pas joint au dossier de la procédure, mentionnant les objections du premier président ou de son délégué. Si d'autres documents ou objets ont été saisis au cours de la perquisition sans soulever d'opposition, ce procès-verbal est distinct de celui prévu à l'article 57. Le procès-verbal mentionné au troisième alinéa du présent article ainsi que le document ou l'objet placé sous scellé fermé sont transmis sans délai au juge des libertés et de la détention, avec l'original ou une copie du dossier de la procédure.

Dans un délai de cinq jours à compter de la réception de ces pièces, le juge des libertés et de la détention statue sur l'opposition par ordonnance motivée non susceptible de recours.

A cette fin, il entend le magistrat qui a procédé à la perquisition et, le cas échéant, le procureur de la République, ainsi que le premier président ou son délégué. Il ouvre le scellé en présence de ces personnes. S'il estime qu'il n'y a pas lieu à saisir le document ou l'objet, le juge des libertés et de la détention ordonne sa restitution immédiate, ainsi que la destruction du procès-verbal mentionné au même troisième alinéa et, le cas échéant, la cancellation de toute référence à ce document ou à son contenu ou à cet objet figurant dans le dossier de la procédure.

Dans le cas contraire, il ordonne le versement du scellé et du procès-verbal au dossier de la procédure. Cette décision n'exclut pas la possibilité ultérieure pour les parties de demander la nullité de la saisie devant, selon les cas, la juridiction de jugement ou la chambre de l'instruction.



closed seal. These operations shall be the subject of a report, which shall not be attached to the file of the procedure, mentioning the objections of the first president or his delegate.

If other documents or objects have been seized during the search without raising any objection, the minutes shall be separate from those provided for in article 57. The report referred to in the third paragraph of this article and the document or object placed under a closed seal shall be transmitted without delay to the judge of liberty and detention, together with the original or a copy of the file of the proceedings.

Within five days of receipt of these documents, the liberty and detention judge shall rule on the opposition by reasoned order not subject to appeal.

To this end, it hears the magistrate who carried out the search and, where appropriate, the public prosecutor, as well as the first president or his delegate. He opens the seal in the presence of these people.

If he considers that there is no need to seize the document or object, the judge of liberty and detention shall order its immediate return, as well as the destruction of the report referred to in the same third paragraph and, where appropriate, the cancellation of any reference to that document or its content or object in the file of the proceedings.

Otherwise, he shall order the seal and the report to be placed in the file of the proceedings. This decision does not exclude the possibility for the parties to request the nullity of the seizure before, as the case may be, the trial court or the investigating chamber.

#### **(7) Vehicle/luggage searches/*Les fouilles de véhicules/ bagages***

During an investigation or instruction: inspections and searches of luggage are governed by the common law of searches (Crim., October 15, 1984). This rule does not apply to vehicle searches.

12

**Article 78-2-2 II** of the Code of Criminal Procedure (repressive): pertains to vehicle searches (subject to several conditions, including a list of offenses). This provision applies automatically unless the vehicle is considered as a residence (in which case, it becomes a search – see → Crim., September 11, 1933).

This rule is specifically mentioned in Article 78-2-2 II: „However, searches of vehicles specially adapted for residential use and actually used as such can only be conducted in accordance with the provisions related to searches and home searches.“ If the offense is not on the list, Article 78-2-3 of the Code of Criminal Procedure should be applied when the offense is flagrant.

13


**Article 78-2-2 III** of the Code of Criminal Procedure (repressive): provides for a visual inspection or luggage search by a judicial police officer for the purpose of investigation and prosecution of certain specifically enumerated offenses, provided there are written requisitions from the prosecutor in specified locations and for a renewable duration of 24 hours.

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**Article 78-2-4 CPP** supplemented by article 78-2-2 II (= preventive with regard to vehicles)/ III CPP (= preventive with regard to luggage): in order to prevent a serious threat to the safety of persons or property, either with the consent of the owner, or on instructions communicated by any means by the public prosecutor (in the latter case, pending these instructions, the owner of the luggage may be detained for a maximum of 30 minutes).<sup>198</sup>

**(8) In the field of customs/En matière douanière**

**15 Customs Investigations Measures 1**

	<b>Investigation powers</b>
<p>→ Right to inspect goods, means of transport and persons: Articles 61, 62, 63 of the Customs Code.<sup>199</sup></p> <p>→ Right of access to premises and places of business and home visits: 63b, 64 of the Customs Code.<sup>200</sup></p> <p>→ Seizures: Articles 329 to 332 of the Customs Code.<sup>201</sup></p> <p style="text-align: center;"><b>A. Seizures relating to forgery and the alteration of shipments.</b></p> <p><b>Art. 329 Code des douanes</b><sup>202</sup> 1. If the reason for the seizure relates to the forgery or alteration of shipments, the report shall state the type of forgery, alterations, or overloads.</p> <p>2. The said copies, signed and initialled ne varietur by the seizing parties, are annexed to the report which contains the summons given to the defendant to sign them and his reply.</p> <p style="text-align: center;"><b>B. Seizures at home</b></p> <p><b>Art. 330 Code des douanes</b><sup>203</sup></p> <p>1. In the event of seizure at home, the non-prohibited goods are not moved, provided that the defendant gives solvent guarantee of their value. If the defendant does not provide security, or if it concerns prohibited objects, the goods are transported to the</p>	

<sup>198</sup> Complété par l'article 78-2-2 II (= préventif concernant les véhicules)/ III CPP (= préventif concernant les bagages): afin de prévenir une atteinte grave à la sécurité des personnes ou des biens soit avec l'assentiment du propriétaire, soit sur instructions communiquées par tout moyen du procureur de la République (dans ce dernier cas, dans l'attente de ces instructions, le propriétaire du bagage peut être retenu pendant 30 minutes maximum).

<sup>199</sup> Droit de visite des marchandises, des moyens de transport et des personnes: art. 61, 62, 63 du code des douanes.

<sup>200</sup> Droit d'accès aux locaux et lieux à usage professionnel et visites domiciliaires: 63 ter, 64 du code des douanes.

<sup>201</sup> Saisies: art. 329 à 332 du code des douanes.

<sup>202</sup> **Art. 329 Code des douanes**

1. Si le motif de la saisie porte sur le faux ou l'altération des expéditions, le procès-verbal énonce le genre de faux, les altérations ou surcharges.

2. Lesdites expéditions, signées et paraphées ne varietur par les saisissants, sont annexées au procès-verbal qui contient la sommation faite au prévenu de les signer et sa réponse.

<sup>203</sup> **Art. 330 Code des douanes**

nearest office or entrusted to a third-party<sup>204</sup> custodian constituted either on the premises of the seizure, or in another locality.

2. The judicial police officer, who intervened under the conditions provided for in article 64 above, must attend the drafting of the report; in the event of refusal, it is sufficient, for the regularity of the operations, that the report contains the mention of the requisition and the refusal.

### **C. Seizures on ships and decked boats.**

#### **Art. 331 Code des douanes<sup>205</sup>**

With regard to seizures made on ships and decked boats, when unloading cannot take place immediately, the seizing officers affix seals to the panels and hatches of the buildings. The report, which is drawn up as the unloading progresses, mentions the number, brands and numbers of the bales, boxes and barrels. The detailed description is only made in the office, in the presence of the defendant or after summons to attend; he is given a copy at each session.

#### **Art. 332 Code des douanes<sup>206</sup>**

1. Outside the radius, the provisions of the preceding articles are applicable to offenses noted in offices, warehouses, and other places subject to the supervision of the customs service.

2. Seizures may also be made anywhere in the case of pursuit at sight, flagrant infringement, infringement of Article 215 above or unexpected discovery of goods whose fraudulent origin is clearly apparent from the declarations of their holder or of supporting documents found in his possession.

<sup>204</sup> 1. En cas de saisie à domicile, les marchandises non prohibées ne sont pas déplacées, sous réserve que le prévenu donne caution solvable de leur valeur. Si le prévenu ne fournit pas de caution, ou s'il s'agit d'objets prohibés, les marchandises sont transportées au plus prochain bureau ou confiées à un tiers gardien constitué soit sur les lieux de la saisie, soit dans une autre localité.

2. L'officier de police judiciaire, intervenu dans les conditions prévues à l'article 64 ci-dessus, doit assister à la rédaction du procès-verbal ; en cas de refus, il suffit, pour la régularité des opérations, que le procès-verbal contienne la mention de la réquisition et du refus.

<sup>205</sup> **Art. 331 Code des douanes**

A l'égard des saisies faites sur les navires et bateaux pontés, lorsque le déchargement ne peut avoir lieu tout de suite, les saisissants apposent les scellés sur les panneaux et écoutilles des bâtiments. Le procès-verbal, qui est dressé au fur et à mesure du déchargement, fait mention du nombre, des marques et des numéros des ballots, caisses et tonneaux. La description en détail n'est faite qu'au bureau, en présence du prévenu ou après sommation d'y assister ; il lui est donné copie à chaque vacation.

<sup>206</sup> **Art. 332 Code des douanes**

1. En dehors du rayon, les dispositions des articles précédents sont applicables aux infractions relevées dans les bureaux, entrepôts et autres lieux soumis à la surveillance du service des douanes.

2. Des saisies peuvent également être pratiquées en tous lieux dans le cas de poursuite à vue, d'infraction flagrante, d'infraction à l'article 215 ci-dessus ou de découverte inopinée de marchandises dont l'origine frauduleuse ressort manifestement des déclarations de leur détenteur ou de documents probants trouvés en sa possession.

**bb. Art. 30 § 1 b) and c) production of any object, document, and computer data (= requisitions)/Art. 30 § 1 b) et c) production de tout objet, document et des données informatiques (= les réquisitions)**

📖 RÈGLEMENT (UE) 2017/1939 DU CONSEIL/SECTION 2 → *Rules on investigation measures and other measures Article 30* → **Investigation measures and other measures**  
 (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 Council.

**(1) The different measures/Les différentes mesures**

**(a) Flagrancy Investigation /L'enquête de flagrance**

16

**Art. 55-1 CPP<sup>207</sup> [external sampling/ prélèvements externs]**

The judicial police officer may proceed, or cause to be proceeded under his control, on any person likely to provide information on the facts in question or on any person against whom there are one or more plausible reasons to suspect that it has committed or attempted to commit the offence, to external sampling operations necessary to carry out technical and scientific examinations of comparison with the traces and clues taken for the purposes of the investigation.

He<sup>208</sup> carries out, or has carried out under his control, the operations of identification records and in particular the taking of fingerprints, palm prints or photographs necessary

<sup>207</sup> **Art. 55-1 CPP** external sampling/ prélèvements externes

<sup>208</sup> L'officier de police judiciaire peut procéder, ou faire procéder sous son contrôle, sur toute personne susceptible de fournir des renseignements sur les faits en cause ou sur toute personne à l'encontre de laquelle il existe une ou plusieurs raisons plausibles de soupçonner qu'elle a commis ou tenté de commettre l'infraction, aux opérations de prélèvements externes nécessaires à la réalisation d'examen techniques et scientifiques de comparaison avec les traces et indices prélevés pour les nécessités de l'enquête.

Il procède, ou fait procéder sous son contrôle, aux opérations de relevés signalétiques et notamment de prise d'empreintes digitales, palmaires ou de photographies nécessaires à l'alimentation et à la consultation des fichiers de police selon les règles propres à chacun de ces fichiers.

Le refus, par une personne à l'encontre de laquelle il existe une ou plusieurs raisons plausibles de soupçonner qu'elle a commis ou tenté de commettre une infraction, de se soumettre aux opérations de prélèvement, mentionnées aux premier et deuxième alinéas ordonnées par l'officier de police judiciaire est puni d'un an d'emprisonnement et de 15 000 euros d'amende.

Sans préjudice de l'application du troisième alinéa, lorsque la prise d'empreintes digitales ou palmaires ou d'une photographie constitue l'unique moyen d'identifier une personne qui est entendue en application des articles 61-1 ou 62-2 pour un crime ou un délit puni d'au moins trois ans d'emprisonnement et qui refuse de justifier de son identité ou qui fournit des éléments d'identité manifestement inexacts, cette opération peut être effectuée sans le consentement de cette personne, sur autorisation écrite du procureur de la République saisi d'une demande motivée par l'officier de police judiciaire. L'officier de police judiciaire ou, sous son contrôle, un agent de police judiciaire recourt à la contrainte dans la mesure strictement nécessaire et de manière proportionnée. Il tient compte, s'il y a lieu, de la vulnérabilité de la personne. Cette opération fait l'objet d'un procès-verbal, qui mentionne les raisons pour lesquelles elle constitue l'unique moyen d'identifier la personne ainsi que le jour et l'heure auxquels il y est procédé. Le procès-verbal est transmis au procureur de la République, copie en ayant été remise à l'intéressé.

for the supply and consultation of the police files according to the rules specific to each of these files.

The refusal, by a person against whom there are one or more plausible reasons to suspect that he has committed or attempted to commit an offence, to submit to the direct debit operations mentioned in the first and second paragraphs ordered by the judicial police officer is punished by one year's imprisonment and a fine of 15,000 euros.

Without prejudice to the application of the third paragraph, when taking fingerprints or palm prints or a photograph constitutes the only means of identifying a person who is heard pursuant to Articles 61-1 or 62-2 for a crime or misdemeanour punishable by at least three years' imprisonment and who refuses to prove his identity or who provides manifestly inaccurate elements of identity, this operation may be carried out without the consent of this person, with the written authorization of the public prosecutor of the Republic seized of a reasoned request by the judicial police officer. The judicial police officer or, under his control, a judicial police officer uses coercion to the extent strictly necessary and in a proportionate manner. It takes into account, if where appropriate, the vulnerability of the person. This operation is the subject of a report, which mentions the reasons for which it constitutes the only means of identifying the person as well as the day and time at which it is carried out. The report is sent to the public prosecutor, a copy of which has been given to the person concerned.

**Art. 60 CPC<sup>209</sup> [Technical and scientific examinations]**

If it is necessary to carry out findings or technical or scientific examinations, the judicial police officer or, under the control of the latter, the judicial police officer has recourse to all qualified persons.

Unless they are registered on one of the lists provided for in article 157, the persons thus called take an oath, in writing, to bring their assistance to justice in their honor and in their conscience.

The persons designated to carry out the technical or scientific examinations may open the seals. They draw up an inventory of them and mention them in a report drawn up in accordance with the provisions of Articles 163 and 166 . These persons may also, by mentioning it in their report, replace under seal the objects examined and place under seal the objects resulting from their examination; in particular, the doctors required to

<sup>209</sup> **Art. 60 CPP examens techniques et scientifiques**

S'il y a lieu de procéder à des constatations ou à des examens techniques ou scientifiques, l'officier de police judiciaire a recours à toutes personnes qualifiées.

Sauf si elles sont inscrites sur une des listes prévues à l'article 157, les personnes ainsi appelées prêtent, par écrit, serment d'apporter leur concours à la justice en leur honneur et en leur conscience.

Les personnes désignées pour procéder aux examens techniques ou scientifiques peuvent procéder à l'ouverture des scellés. Elles en dressent inventaire et en font mention dans un rapport établi conformément aux dispositions des articles 163 et 166. Elles peuvent communiquer oralement leurs conclusions aux enquêteurs en cas d'urgence. Sur instructions du procureur de la République, l'officier de police judiciaire donne connaissance des résultats des examens techniques et scientifiques aux personnes à l'encontre desquelles il existe des indices faisant présumer qu'elles ont commis ou tenté de commettre une infraction, ainsi qu'aux victimes.

carry out an autopsy or a medical examination may place the samples taken under seal. They can communicate their conclusions orally to the investigators in an emergency. On the instructions of the public prosecutor, the judicial police officer or, under the control of the latter, the judicial police agent informs of the results of the technical and scientific examinations to persons against whom there are indications presume that they have committed or attempted to commit an offence, as well as to the victims.

**Art. 60-1 CPC<sup>210</sup> [Requisitions from any person, private or public establishment or body or public administration likely to hold information relevant to the investigation]**

The public prosecutor or the judicial police officer or, under the control of the latter, the judicial police officer may, by any means, require any person, any establishment or private or public body or any administration who are likely to hold information of interest to the investigation, including, subject to article 60-1-2, that resulting from a computer system or from the processing of personal data, to provide it with this information, in particular in digital form, if necessary according to standards fixed by regulation, without being able to oppose it, without legitimate reason, the obligation of professional secrecy. When the requisitions concern persons mentioned in articles 56-1 to 56-5, the handing over of information can only take place with their agreement.

With the exception of the persons mentioned in Articles 56-1 to 56-5, failure to respond to this requisition as soon as possible and, if necessary, according to the required standards is punishable by a fine of €3,750.

On pain of nullity, the elements obtained by a requisition taken in violation of article 2 of the law of July 29, 1881 on the freedom of the press cannot be added to the file.

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<sup>210</sup> **Article 60-1 CPP Les demandes de remise d'informations notamment sous forme numérique**

Le procureur de la République ou l'officier de police judiciaire ou, sous le contrôle de ce dernier, l'agent de police judiciaire peut, par tout moyen, requérir de toute personne, de tout établissement ou organisme privé ou public ou de toute administration publique qui sont susceptibles de détenir des informations intéressant l'enquête, y compris, sous réserve de l'article 60-1-2, celles issues d'un système informatique ou d'un traitement de données nominatives, de lui remettre ces informations, notamment sous forme numérique, le cas échéant selon des normes fixées par voie réglementaire, sans que puisse lui être opposée, sans motif légitime, l'obligation au secret professionnel. Lorsque les réquisitions concernent des personnes mentionnées aux articles 56-1 à 56-5, la remise des informations ne peut intervenir qu'avec leur accord.

A l'exception des personnes mentionnées aux articles 56-1 à 56-5, le fait de s'abstenir de répondre à cette réquisition dans les meilleurs délais et s'il y a lieu selon les normes exigées est puni d'une amende de 3 750 euros.

A peine de nullité, ne peuvent être versés au dossier les éléments obtenus par une réquisition prise en violation de l'article 2 de la loi du 29 juillet 1881 sur la liberté de la presse.

**Art. 60-2 CPC<sup>211</sup> [Requests for delivery of information contained in a computer system or processing of personal data carried out by telematic or computer means and for the purpose of data retention]**

At the request of the judicial police officer, or under the latter's control, the judicial police officer, intervening by telematic or computerized means, public bodies or legal persons governed by private law, with the exception of those referred to in Article 9(2)(d) of the aforementioned Regulation (EU) 2016/679 of 27 April 2016 and in Article 80(2) of Law No. 78-17 of 6 January 1978 relating to information technology, files and freedoms, shall make available to the police officer any information useful for establishing the truth, with the exception of information protected by a secret provided for by law, contained in the computer system(s) or processing of personal data that they administer.

The judicial police officer or, under the control of the latter, the judicial police officer, acting on the requisition of the public prosecutor previously computerized by an order of the judge of freedoms and detention, may require telecommunications operators, and in particular those mentioned in Article 6(1) of Law 2004-575 of 21 June 2004 on confidence in the digital economy, to take, without delay, all appropriate measures to ensure that the content of the information consulted by the users of the services provided by the operators is preserved for a period not exceeding one year.

The bodies or persons referred to in this Article shall make the information requested available by telematic or computerized means as soon as possible.

Refusal to respond to these requests without a legitimate reason shall be punishable by a fine of 3 750 euros.

A decree in the Council of State, issued after consultation with the National Commission for Information Technology and Civil Liberties, shall determine the categories of bodies referred to in the first paragraph as well as the procedures for requesting, transmitting, and processing the information required.

<sup>211</sup> **Article 60-2 CPP Les demandes de remise d'informations contenus dans un système informatique ou traitement de données nominatives effectuée par la voie télématique ou informatique et tendant aux fins de conservation de données** Sur demande de l'officier de police judiciaire, ou sous le contrôle de ce dernier, de l'agent de police judiciaire, intervenant par voie télématique ou informatique, les organismes publics ou les personnes morales de droit privé, à l'exception de ceux visés au d du 2 de l'article 9 du règlement (UE) 2016/679 du 27 avril 2016 précité et au 2° de l'article 80 de la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, mettent à sa disposition les informations utiles à la manifestation de la vérité, à l'exception de celles protégées par un secret prévu par la loi et sous réserve de l'article 60-1-2 du présent code, contenues dans le ou les systèmes informatiques ou traitements de données nominatives qu'ils administrent.

**Art. 60-1-2 CPC<sup>212</sup> [Requisitions relating to technical data making it possible to identify the source of the connection or those relating to terminal equipment]**

On pain of nullity, requisitions relating to the technical data making it possible to identify the source of the connection or those relating to the terminal equipment used mentioned in 3° of II bis of Article L. 34-1 of the Post and electronic communications or on the traffic and location data mentioned in III of the same article L. 34-1 are only possible, if the necessities of the procedure so require, in the following cases:

- 1° The procedure relates to a crime or on a misdemeanour punishable by at least three years' imprisonment;
- 2° The procedure relates to an offense punishable by at least one year of imprisonment committed by the use of an electronic communications network and these requisitions have the sole purpose of identifying the author of the
- 3° These requisitions relate to the terminal equipment of the victim and intervene at the latter's request in the event of an offense punishable by imprisonment;
- 4° These requisitions tend to find a missing person within the framework of the procedures provided for in articles 74-1 or 80-4 of this code or are carried out within the framework of the procedure provided for in article 706-106-4.

**Art. 60-3 CPC<sup>213</sup> [Opening of seals on objects that are the medium of computer data]**

When objects that are the medium of computer data have been placed under seal, the public prosecutor or the judicial police officer or, under the latter's supervision, the judicial police officer may, by any means, request any qualified person registered on one of the lists provided for in Article 157 or who has taken the written oath provided for in Article 60 to open the seals in order to make one or more copies of the data, so as to enable them to be exploited without affecting their integrity. The person requested shall

<sup>212</sup> **Art. 60-1-2 CPP Les réquisitions relatives aux données techniques permettant d'identifier la source de la connexion ou celles relatives aux équipements terminaux**

A peine de nullité, les réquisitions portant sur les données techniques permettant d'identifier la source de la connexion ou celles relatives aux équipements terminaux utilisés mentionnées au 3° du II bis de l'article L. 34-1 du code des postes et des communications électroniques ou sur les données de trafic et de localisation mentionnées au III du même article L. 34-1 ne sont possibles, si les nécessités de la procédure l'exigent, que dans les cas suivants:

- 1° La procédure porte sur un crime ou sur un délit puni d'au moins trois ans d'emprisonnement ;
- 2° La procédure porte sur un délit puni d'au moins un an d'emprisonnement commis par l'utilisation d'un réseau de communications électroniques et ces réquisitions ont pour seul objet d'identifier l'auteur de l'infraction ;
- 3° Ces réquisitions concernent les équipements terminaux de la victime et interviennent à la demande de celle-ci en cas de délit puni d'une peine d'emprisonnement ;
- 4° Ces réquisitions tendent à retrouver une personne disparue dans le cadre des procédures prévues aux articles 74-1 ou 80-4 du présent code ou sont effectuées dans le cadre de la procédure prévue à l'article 706-106-4.

<sup>213</sup> **Article 60-3 CPP Ouverture de scellés sur des objets qui sont le support de données informatiques**  
Lorsqu'ont été placés sous scellés des objets qui sont le support de données informatiques, le procureur de la République ou l'officier de police judiciaire ou, sous le contrôle de ce dernier, l'agent de police judiciaire peut, par tout moyen, requérir toute personne qualifiée inscrite sur une des listes prévues à l'article 157 ou ayant prêté par écrit le serment prévu à l'article 60 de procéder à l'ouverture des scellés pour réaliser une ou plusieurs copies de ces données, afin de permettre leur exploitation sans porter atteinte à leur intégrité. La personne requise fait mention des opérations effectuées dans un rapport établi conformément aux articles 163 et 166.



record the operations carried out in a report drawn up in accordance with Articles 163 and 166.

**(b) Preliminary Investigation/L'enquête préliminaire**

**Art. 76-2 CPP<sup>214</sup> [External sampling (art. 76-2 CPP refers to the conditions of article 55-1 CPP)]**

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The public prosecutor or, on his authorisation, the judicial police officer or agent may carry out the external sampling operations provided for in Article 55-1.

The provisions of the second, third and last paragraphs of Article 55-1 shall apply.

**Art. 77-1 CPP<sup>215</sup> [Technical and scientific examinations]**

If it is necessary to carry out technical or scientific findings or examinations, the public prosecutor or, with his or her authorisation, the officer or agent of the judicial police, shall have recourse to all qualified persons.

The provisions of the second, third and fourth paragraphs of Article 60 shall apply.

The public prosecutor may, by means of general instructions issued pursuant to Article 39-3, authorise officers or agents of the judicial police to request any qualified persons to carry out medical or psychological examinations of the victim or to carry out medical examinations of the person suspected of having committed one of the offences mentioned in Article 706-47 or required pursuant to Article 706-115. The public prosecutor<sup>216</sup> shall be notified without delay of these instructions. These general instructions shall be for a period not exceeding six months. They may be renewed.

No authorisation shall be required where the judicial police officer has recourse to a qualified person for the purposes of

<sup>214</sup> **Article 76-2 CPP Opérations de prélèvements externes** Modifié par LOI n°2022-52 du 24 janvier 2022 - art. 30 Le procureur de la République ou, sur autorisation de celui-ci, l'officier ou l'agent de police judiciaire peut faire procéder aux opérations de prélèvements externes prévues par l'article 55-1.

Les dispositions des deuxième, troisième et dernier alinéas de l'article 55-1 sont applicables.

<sup>215</sup> **Article 77-1 CPP Examens techniques ou scientifiques** S'il y a lieu de procéder à des constatations ou à des examens techniques ou scientifiques, le procureur de la République ou, sur autorisation de celui-ci, l'officier ou l'agent de police judiciaire, a recours à toutes personnes qualifiées.

Les dispositions des deuxième, troisième et quatrième alinéas de l'article 60 sont applicables.

Le procureur de la République peut, par la voie d'instructions générales prises en application de l'article 39-3, autoriser les officiers ou agents de police judiciaire à requérir toutes personnes qualifiées afin de procéder à des examens médicaux ou psychologiques de la victime ou de procéder à des examens médicaux de la personne suspectée d'avoir commis une des infractions mentionnées à l'article 706-47 ou exigés en application de l'article 706-115.

<sup>216</sup> Le procureur est avisé sans délai de ces réquisitions. Ces instructions générales ont une durée qui ne peut excéder six mois. Elles peuvent être renouvelées.

Aucune autorisation n'est nécessaire lorsque l'officier de police judiciaire a recours à une personne qualifiée aux fins:

1° De procéder à la comparaison entre une empreinte génétique issue de trace biologique et l'empreinte génétique d'une personne à l'encontre de laquelle il existe une ou plusieurs raisons plausibles de soupçonner qu'elle a commis l'une des infractions mentionnées à l'article 706-55, ou à la comparaison entre plusieurs traces biologiques ;

2° De procéder à la comparaison entre une trace digitale ou palmaire et l'empreinte digitale ou palmaire d'une personne à l'encontre de laquelle il existe une ou plusieurs raisons plausibles de soupçonner qu'elle a commis un crime ou un délit, ou à la comparaison entre plusieurs traces digitales ou palmaires.

1° To compare a genetic fingerprint from a biological trace with the genetic fingerprint of a person against whom there are one or more plausible reasons to suspect that he or she has committed one of the offences mentioned in Article 706-55, or to compare several biological traces;

2° To compare a fingerprint or palm print with the fingerprint or palm print of a person against whom there are one or more plausible reasons to suspect that he or she has committed a crime or an offence, or to compare several fingerprints or palm prints.

**Art. 77-1-1 CPP<sup>217</sup> [Requisitions from any person, private or public establishment or body or public administration likely to hold information relevant to the investigation]** The public prosecutor or, with his authorization, the judicial police officer or agent, may, by any means, require any person, any establishment or private or public body or any public administration are likely to hold information relevant to the investigation, including, subject to article 60-1-2, those resulting from a computer system or from the processing of personal data, to provide him with this information, in particular in digital form, if necessary according to standards set by regulation, without being able to oppose him, without legitimate reason, the obligation of professional secrecy. When the requisitions concern persons mentioned in Articles 56-1 to 56-5, the information can only be given with their agreement.

In the event of the person's failure to respond to the requisitions, the provisions of the second paragraph of Article 60-1 shall apply.

The last paragraph of article 60-1 and article 60-1-1 are also applicable. The public prosecutor may, by means of general instructions issued pursuant to article 39-3, authorize the officers or agents of the judicial police, for categories of offenses that he determines, to require of any person, of any private or public institution or organization or of any public administration, to provide them with information relevant to the investigation which comes from a video protection system. The prosecutor is informed without delay

<sup>217</sup> **Article 77-1-1 CPP Réquisitions auprès de toute personne, établissement ou organisme privé ou public ou administration publique susceptible de détenir des informations utiles à l'enquête.** *Modifié par LOI n°2022-299 du 2 mars 2022 - art. 12* Le procureur de la République ou, sur autorisation de celui-ci, l'officier ou l'agent de police judiciaire, peut, par tout moyen, requérir de toute personne, de tout établissement ou organisme privé ou public ou de toute administration publique qui sont susceptibles de détenir des informations intéressant l'enquête, y compris, sous réserve de l'article 60-1-2, celles issues d'un système informatique ou d'un traitement de données nominatives, de lui remettre ces informations, notamment sous forme numérique, le cas échéant selon des normes fixées par voie réglementaire, sans que puisse lui être opposée, sans motif légitime, l'obligation au secret professionnel. Lorsque les réquisitions concernent des personnes mentionnées aux articles 56-1 à 56-5, la remise des informations ne peut intervenir qu'avec leur accord.

En cas d'absence de réponse de la personne aux réquisitions, les dispositions du second alinéa de l'article 60-1 sont applicables.

Le dernier alinéa de l'article 60-1 et l'article 60-1-1 sont également applicables.

Le procureur de la République peut, par la voie d'instructions générales prises en application de l'article 39-3, autoriser les officiers ou agents de police judiciaire, pour des catégories d'infractions qu'il détermine, à requérir de toute personne, de tout établissement ou organisme privé ou public ou de toute administration publique, de leur remettre des informations intéressant l'enquête qui sont issues d'un système de vidéoprotection. Le procureur est avisé sans délai de ces réquisitions. Ces instructions générales ont une durée qui ne peut excéder six mois. Elles peuvent être renouvelées.

of these requisitions. These general instructions have a duration which cannot exceed six months. They can be renewed.

**Art. 77-1-2 al. 1 CPC<sup>218</sup> [Requests for the delivery of information contained in a computer system or processing of personal data carried out by telematic or computer means and for the purpose of data retention.]**

Upon authorisation of the public prosecutor, the judicial police officer or agent may make the requisitions provided for in the first paragraph of Article 60-2 subject to Article 60-1-2.

**Art. 77-1-3 CPC [Opening of seals on objects that are the carrier of computer data]**

Upon authorisation of the public prosecutor, the judicial police officer or agent may make the requisitions provided for in Article 60-3.

**(c) Hybrid Investigation/L'enquête hybride**

If the EDP opens a hybrid investigation (see above → Art. 26) the following measures **18** can be adopted:

**Art. 99-3 CPP<sup>219</sup> Requests to provide information, particularly in digital form**

The investigating judge or the judicial police officer assigned by him or her may, by any means, request any person, private or public establishment or body or public administration likely to hold documents relevant to the investigation, including, subject to Article 60-1-2, those from a computer system or personal data processing, to hand over such documents, in particular in digital form, without being able to oppose the obligation of professional secrecy without legitimate reason. Where the requests concern persons mentioned in Articles 56-1 to 56-3 and Article 56-5, the documents may only be handed over with their agreement.

<sup>218</sup> **Art. 77-1-2 al. 1 CPC Les demandes de remise d'informations contenus dans un système informatique ou traitement de données nominatives effectuée par la voie télématique ou informatique et tendant à la conservation de données**

Sur autorisation du procureur de la République, l'officier ou l'agent de police judiciaire peut procéder aux réquisitions prévues par le premier alinéa de l'article 60-2 sous réserve de l'article 60-1-2.

<sup>219</sup> **Article 99-3 CPP Les demandes de remise d'informations notamment sous forme numérique**

Le juge d'instruction ou l'officier de police judiciaire par lui commis peut, par tout moyen, requérir de toute personne, de tout établissement ou organisme privé ou public ou de toute administration publique qui sont susceptibles de détenir des documents intéressant l'instruction, y compris, sous réserve de l'article 60-1-2, ceux issus d'un système informatique ou d'un traitement de données nominatives, de lui remettre ces documents, notamment sous forme numérique, sans que puisse lui être opposée, sans motif légitime, l'obligation au secret professionnel. Lorsque les réquisitions concernent des personnes mentionnées aux articles 56-1 à 56-3 et à l'article 56-5, la remise des documents ne peut intervenir qu'avec leur accord.

En l'absence de réponse de la personne aux réquisitions, les dispositions du deuxième alinéa de l'article 60-1 sont applicables.

Le dernier alinéa de l'article 60-1 est également applicable.

Lorsque les réquisitions portent sur des données mentionnées à l'article 60-1-1 et émises par un avocat, elles ne peuvent être faites que sur ordonnance motivée du juge des libertés et de la détention, saisi à cette fin par le juge d'instruction, et les trois derniers alinéas du même article 60-1-1 sont applicables.

If the person fails to respond to the requisitions, the provisions of the second paragraph of Article 60-1 shall apply.

The last paragraph of Article 60-1 shall also apply.

When the requisitions concern data mentioned in Article 60-1-1 and issued by a lawyer, they may only be made by reasoned order of the liberty and custody judge, referred to for this purpose by the investigating judge, and the last three paragraphs of the same Article 60-1-1 shall apply.

**Art. 99-4 para 1 CPP<sup>220</sup> [Requests for delivery of information contained in a computer system or processing of personal data made by telematic or computer means and for data storage purposes]**

For the purposes of executing the rogatory commission, the judicial police officer may make the requisitions provided for in the first paragraph of article 60-2. [...]

**Art. 154-1 CPP<sup>221</sup> External sampling**

*Amended by Law n°2022-52 of 24 January 2022 - art. 30*

For the purposes of executing the letter rogatory, the judicial police officer may carry out the external sampling operations provided for by Article 55-1.

The provisions of the second, third and last paragraphs of Article 55-1 shall apply. The authorisation provided for in the last paragraph of the same Article 55-1 shall then be given by the investigating judge.

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<sup>220</sup> Art. 99-4 al. 1 CPP **Les demandes de remise d'informations contenues dans un système informatique ou traitement de données nominatives effectuées par la voie télématique ou informatique et à fin de conservation**

Pour les nécessités de l'exécution de la commission rogatoire, l'officier de police judiciaire peut procéder aux réquisitions prévues par le premier alinéa de l'article 60-2. [...]

<sup>221</sup> **Article 154-1 CPP Prélèvement externe** Pour les nécessités de l'exécution de la commission rogatoire, l'officier de police judiciaire peut faire procéder aux opérations de prélèvements externes prévues par l'article 55-1. Les dispositions des deuxième, troisième et dernier alinéas de l'article 55-1 sont applicables. L'autorisation prévue au dernier alinéa du même article 55-1 est alors donnée par le juge d'instruction.

(aa) **Art. 30 § 2 Specific provisions for certain professionals (applicable to flagrance, preliminary and investigation)/Art. 30 § 2 Dispositions spécifiques pour certains professionnels (applicable à la flagrance, préliminaire et instruction)**

**Flagrancy and preliminary investigation /En enquête de flagrance et préliminaire Art. 60-1-1 CPP (preliminary art. 77-1-1 CPP) (lawyer/avocat)**

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Subject to Article 60-1-2, when the requisitions provided for in Article 60-1 relate to connection data issued by a lawyer and related to the use of a network or a communication service electronic, whether traffic data or location data, they can only be made on the reasoned order of the judge of freedoms and detention, seized for this purpose by the public prosecutor.


This order sets out the plausible grounds for suspecting that the lawyer has committed or attempted to commit, as perpetrator or accomplice, the offense which is the subject of the proceedings or a related offense within the meaning of Article 203as well as the proportionality of the measure with regard to the nature and seriousness of the facts.

**Hybride Investigation/L'enquête hybride:** (see above → Art. 99-3 CPP).

(bb) **In customs matters/En matière douanière**

*Customs Investigation measures 1*

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	<p><b>Investigation powers &amp; measures</b></p>
<p><b>Art. 65quater<sup>222</sup> Customs Code</b></p> <p>Persons who design or publish management or accounting software or cash systems or who intervene technically in the functionalities of these products directly or indirectly affecting the keeping of records, the conservation or the integrity of the original documents necessary for the controls of the customs administration shall be obliged to present to the agents of this administration, at their request, all codes, data, processing or documentation relating thereto.</p> <p>For the application of the first paragraph, the codes, data, processing, and documentation must be kept until the end of the third year following the year during which the software or cash register system ceased to be distributed.</p>	

<sup>222</sup> Les personnes qui conçoivent ou éditent des logiciels de gestion, de comptabilité ou de trésorerie ou qui interviennent techniquement dans les fonctionnalités de ces produits affectant directement ou indirectement la tenue des registres, la conservation ou l'intégrité des documents originaux nécessaires aux contrôles des L'administration douanière est tenue de présenter aux agents de cette administration, à leur demande, tous codes, données, traitements ou documents s'y rapportant.

Pour l'application du premier alinéa, les codes, données, traitements et documentations doivent être conservés jusqu'à la fin de la troisième année suivant celle au cours de laquelle le logiciel ou le système de caisse a cessé d'être distribué.

**Art. 65 quinquies<sup>223</sup> Customs Code**

In order to establish the offences mentioned in Articles 414, 414-2, 415 and 459, to gather evidence and to search for the perpetrators, accomplices and those who participated as interested parties within the meaning of Article 399, customs officers with at least the rank of controller and specially authorised by the director of the department to which they are assigned may obtain communication of the data kept and processed by electronic communications operators within the framework of Article L. 34-1 of the French Post and Electronic Communications Code as well as by the service providers mentioned in Articles 1 and 2 of I of Article 6 of Act No. 2004-575 of 21 June 2004 on confidence in the digital economy. 34-1 of the French Post and Electronic Communications Code as well as by the service providers mentioned in Articles 1 and 2 of I of Article 6 of Law 2004-575 of 21 June 2004 on confidence in the digital economy.

The implementation of the right of communication provided for in the first paragraph of this article shall be authorised in advance by the public prosecutor at the judicial court of the place of the customs directorate to which the service responsible for the procedure belongs.

The authorisation of the public prosecutor, which may be given by any means, shall be mentioned, or placed in the file of the proceedings.

The communication of the data referred to in the first subparagraph shall be the subject of an official report, which shall be placed in the file of the proceedings. A copy of this report shall be sent to the public prosecutor who authorised the implementation of the right of communication as well as to the operators and service providers mentioned in the same paragraph, at the latest within five days of its establishment.

The data communicated shall be destroyed when the action for the application of tax penalties is terminated.

A decree in the Council of State shall set out the terms and conditions for the application of this article

<sup>223</sup> **Art. 65quinquies Code des douanes** Dans le but de constater les délits mentionnés aux articles 414, 414-2, 415 et 459, d'en rassembler les preuves et d'en rechercher les auteurs, les complices ainsi que ceux qui y ont participé comme intéressés au sens de l'article 399, les agents des douanes ayant au moins le grade de contrôleur et spécialement habilités par le directeur du service auquel ils sont affectés peuvent se faire communiquer les données conservées et traitées par les opérateurs de communications électroniques dans le cadre de l'article L. 34-1 du code des postes et des communications électroniques ainsi que par les prestataires mentionnés aux 1 et 2 du I de l'article 6 de la loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique.

La mise en œuvre du droit de communication prévu au premier alinéa du présent article est préalablement autorisée par le procureur de la République près le tribunal judiciaire du lieu de la direction des douanes dont dépend le service chargé de la procédure.

L'autorisation du procureur de la République, qui peut être donnée par tout moyen, est mentionnée ou versée au dossier de la procédure.

La communication des données mentionnées au premier alinéa fait l'objet d'un procès-verbal de constat, qui est versé au dossier de la procédure. Une copie de ce procès-verbal est transmise au procureur de la République qui a autorisé la mise en œuvre du droit de communication ainsi qu'aux opérateurs et prestataires mentionnés au même premier alinéa, au plus tard dans les cinq jours suivant son établissement.

Les données communiquées sont détruites à l'extinction de l'action pour l'application des sanctions fiscales. Un décret en Conseil d'Etat fixe les modalités d'application du présent article.


Special Regulations for the European Union in the French Customs Code/*Spécificités européennes*: see Art. 65 A à 65 C du Code des douanes.

**(2) Summary to the different measures/*Les différentes mesures***

The different investigation frameworks need to be distinguished in order to conduct the different investigation measures requested by Art. 30 para 1 (b) and (c) EPPO Regulation.

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**cc. Art. 30 §1 d) Freezing and seizures guaranteeing confiscation (= special seizures)/*Le gel et les saisies garantissant la confiscation* (= saisies spéciales)**

 **Art. 30 1d)** 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.

**(1) Seizures guaranteeing confiscation/*Les saisies garantissant la confiscation***

**Art. 131-21 CP<sup>224</sup> [Seizures for the purpose of confiscation ensure the execution of the complementary penalty of this article]**

22

The supplementary penalty of confiscation is incurred in the cases provided for by law or regulation. It is also incurred as of right for crimes and offences punishable by a prison sentence of more than one year, except for press offences.

Confiscation shall apply to all movable or immovable property, whatever its nature, whether divided or undivided, which was used to commit the offence or which was intended to commit the offence, and of which the convicted person is the owner or, subject to the rights of the owner in good faith, of which he or she has free disposal.

It shall also apply to all property that is the object or direct or indirect product of the offence, apart from property that may be returned to the victim, and subject to the last paragraph. If the proceeds of the offence have been mixed with funds of lawful origin for the acquisition of one or more items of property, confiscation may relate to such property only up to the estimated value of the proceeds.

Confiscation may also be imposed on any movable or immovable property defined by the law or regulation which punishes the offence.

In the case of a felony or misdemeanour punishable by at least five years' imprisonment and having procured a direct or indirect profit, confiscation shall also apply to movable or immovable property, whatever its nature, whether divided or undivided, belonging to the convicted person or, subject to the rights of the owner in good faith, of which he or she is free to dispose, where neither the convicted person nor the owner, when given the

<sup>224</sup> For the French text see → Art. 131-21 CPP. Les saisies ayant pour but la confiscation permettent de garantir l'exécution de la peine complémentaire de cet article.

opportunity to explain the property for which confiscation is envisaged, has been able to justify its origin.

Where the law punishing the crime or offence so provides, confiscation may also relate to all or part of the property belonging to the convicted person or, subject to the rights of the owner in good faith, of which he or she has free disposal, regardless of its nature, whether movable or immovable, divided, or undivided.

Confiscation is compulsory for objects classified as dangerous or harmful by law or regulation, or whose possession is unlawful, whether or not they are the property of the convicted person.

The complementary penalty of confiscation applies under the same conditions to all intangible rights, whatever their nature, whether divided or undivided.

Confiscation may be ordered in value. Confiscation in value may be carried out on any property, whatever its nature, belonging to the convicted person or, subject to the rights of the owner in good faith and the same last paragraph, of which he has free disposal. For the recovery of the sum representing the value of the confiscated property, the provisions relating to judicial constraint shall apply.

The confiscated thing is, except in the case of a specific provision providing for its destruction or allocation, vested in the State, but it remains encumbered, up to its value, by rights in rem lawfully constituted in favour of third parties.

Where the thing confiscated is a vehicle which has not been seized or impounded in the course of the proceedings, the convicted person must, on being ordered to do so by the Public Prosecutor's Office, surrender the vehicle to the service or body responsible for its destruction or disposal.

Where the confiscation penalty relates to property over which a third party other than the convicted person has a right of ownership, it may not be pronounced if this third party, whose title is known or who has claimed this status during the proceedings, has not been given the opportunity to present his observations on the confiscation measure envisaged by the court of judgement for the purpose, in particular, of asserting the right which he claims and his good faith.



**(a) Seizures under ordinary law (ordinary law investigation)/*Les saisies de droit commun (enquête de droit commun)***

**Art. 56 para. 1 CPP<sup>225</sup> (in flagrante delicto)**

23

If the nature of the crime is such that proof can be obtained by seizing papers, documents, computer data or other objects in the possession of persons who appear to have participated in the crime or to hold documents, information or objects relating to the incriminating facts, the judicial police officer shall go without delay to the home of the latter to carry out a search, for which he shall draw up a report. The judicial police officer may also go to any place in which there is likely to be property the confiscation of which is provided for in Article 131-21 of the Criminal Code, in order to carry out a search for the purpose of seizing such property; if the search is carried out solely for the purpose of searching for and seizing property the confiscation of which is provided for in the fifth and sixth paragraphs of the same Article, it must be authorised in advance by the public prosecutor. Where the investigation relates to offences of violence, the judicial police officer may, of his own motion or at the instigation of the public prosecutor, seize weapons held by the suspected person or of which the latter has free disposal, regardless of where the weapons are located.

**Art. 76 para 1 CPP<sup>226</sup> (preliminary proceedings)**

Searches, home visits and seizures of exhibits or property whose confiscation is provided for in Article 131-21 of the Criminal Code may not be carried out without the express consent of the person at whose premises the operation is being carried out

**(b) Special seizures (provisions common to all stages of the proceedings)/*Les saisies spéciales (dispositions communes à tous les stades de la procédure)***

**Art. 706-141 CPP<sup>227</sup> [General rules]**

24

This title applies, in order to guarantee the execution of the additional penalty of confiscation according to the conditions defined in article 131-21 of the penal code, to seizures

<sup>225</sup> **Art. 56 al. 1 CPP (en flagrance)**

Si la nature du crime est telle que la preuve en puisse être acquise par la saisie des papiers, documents, données informatiques ou autres objets en la possession des personnes qui paraissent avoir participé au crime ou détenir des pièces, informations ou objets relatifs aux faits incriminés, l'officier de police judiciaire se transporte sans désemparer au domicile de ces derniers pour y procéder à une perquisition dont il dresse procès-verbal. L'officier de police judiciaire peut également se transporter en tous lieux dans lesquels sont susceptibles de se trouver des biens dont la confiscation est prévue à l'article 131-21 du code pénal, pour y procéder à une perquisition aux fins de saisie de ces biens ; si la perquisition est effectuée aux seules fins de rechercher et de saisir des biens dont la confiscation est prévue par les cinquième et sixième alinéas de ce même article, elle doit être préalablement autorisée par le procureur de la République. Lorsque l'enquête porte sur des infractions de violences, l'officier de police judiciaire peut, d'office ou sur instructions du procureur de la République, procéder à la saisie des armes qui sont détenues par la personne suspectée ou dont celle-ci a la libre disposition, quel que soit le lieu où se trouvent ces armes.

<sup>226</sup> **Art. 76 al. 1 CPP (en préliminaire)**

Les perquisitions, visites domiciliaires et saisies de pièces à conviction ou de biens dont la confiscation est prévue à l'article 131-21 du code pénal ne peuvent être effectuées sans l'assentiment exprès de la personne chez laquelle l'opération a lieu

<sup>227</sup> **Art. 706-141 Dispositions générales.**

carried out in application of this code when they relate to all or part property of a person, on real estate, on property or an incorporeal movable right or a debt as well as seizures which do not entail dispossession of the property.

The French text of the following provisions can be retrieved on the internet.

**Art. 706-141-1 CPP [Formal requirements]**

The input can also be ordered by value. The rules specific to certain types of property provided for in Chapters III and IV of this Title apply to the property on which seizure in value is carried out.

**Art. 706-142 CPP [Formal requirements]**

The public prosecutor, the investigating judge or, with their authorization, the judicial police officer may request the assistance of any qualified person to perform the acts necessary for the seizure of the assets referred to in this title and their preservation.

**Art. 706-143 CPP [Formal requirements]**

Until the release of the seizure or the confiscation of the seized property, the owner or, failing that, the holder of the property is responsible for its maintenance and conservation. He bears the cost, with the exception of costs which may be borne by the State. In the event of default or unavailability of the owner or holder of the property, and subject to the rights of third parties acting in good faith, the public prosecutor or the examining magistrate may authorize the delivery to the Management and recovery of the seized and confiscated assets of the seized property whose advance sale is not envisaged so that this agency carries out, within the limits of the mandate entrusted to it, all the legal and material acts necessary for the conservation, maintenance and the valuation of this property.

Any act having the effect of transforming, substantially modifying the property or reducing its value is subject to the prior authorization of the judge of freedoms and detention, at the request of the public prosecutor who ordered or authorized the seizure., of the investigating judge who ordered or authorized the seizure or of the investigating judge in the event of the opening of a judicial inquiry after the seizure.

**Art. 706-144 CPP [Formal requirements]**

The magistrate who ordered or authorised the seizure of property or the investigating judge in the event of the opening of a judicial investigation subsequent to the seizure shall be competent to rule on all requests relating to the execution of the seizure, without prejudice to the provisions relating to the destruction and disposal of property seized in the course of the investigation or enquiry provided for in Articles 41-5 and 99-2.

Where the decision is not taken by the public prosecutor, his or her opinion shall be sought beforehand.

The applicant and the public prosecutor may, within ten days of being notified of the decision, appeal the decision to the Investigating Chamber. This appeal shall have suspensive effect.

**Art. 706-145 CPP [Formal requirements]**

No one may validly dispose of property seized in the context of criminal proceedings except in the cases provided for in articles 41-5 and 99-2 and in this chapter.

From the date on which it becomes enforceable and until its release or the confiscation of the seized property, the criminal seizure suspends or prohibits any civil enforcement proceedings on the property subject to the criminal seizure.

For the purposes of this title, the creditor who initiated an enforcement procedure prior to the criminal seizure is automatically considered to be the holder of a security interest in the property, ranking on the date on which this enforcement procedure is become enforceable.

**Art. 706-146 CPP [Formal requirements]**

If it is not necessary to maintain the seizure of the asset in due form, a creditor with an enforceable title evidencing a liquid and payable debt may be authorized, under the conditions provided for in article 706-144, to initiate or resume civil enforcement proceedings on the property, in accordance with the rules applicable to such proceedings. However, an amicable sale of the property cannot then be conducted and the criminal seizure may be deferred to the balance of the transfer price, after satisfaction of the creditors holding a security having rank prior to the date on which the criminal seizure has become enforceable. The balance of the sale proceeds is recorded. In the event of dismissal, or acquittal, or when the penalty of confiscation is not pronounced,

In the event of the resumption of civil enforcement proceedings suspended by criminal seizure, the formalities which have been duly completed do not have to be repeated.

**Art. 706-147 CPP [Formal requirements]**

The measures ordered pursuant to this title are applicable even when they are ordered after the date of cessation of payments and notwithstanding the provisions of Article L. 632-1 of the Commercial Code.

**Art. 706-148 CPP<sup>228</sup> [Formal requirements for serious offences (punishable by 5 years imprisonment)]**

If the investigation relates to an offense punishable by at least five years of imprisonment, the judge of freedoms and detention can, on request of the public prosecutor, order by reasoned decision the seizure, at the advanced expenses of the Treasury, property whose confiscation is provided for in application of the fifth and sixth paragraphs of

<sup>228</sup> Art. 706-148 CPP: Les conditions de forme concernant les infractions graves (punies de 5 ans d'emprisonnement).

article 131-21 of the penal code when the law which punishes the crime or misdemeanour so provides or when the origin of this property cannot be established. The investigating judge may, at the request of the public prosecutor or ex officio after consulting the public prosecutor, order this seizure under the same conditions.

The decision taken pursuant to the first paragraph is notified to the public prosecutor, to the owner of the property seized and, if they are known, to third parties having rights over this property, who may refer it to the investigating chamber by declaration to the court registry within ten days of notification of the decision. This appeal is not suspensive. In this context, the appellant can only claim access to the procedural documents relating to the seizure that he is contesting. If they are not appellants, the owner of the property and third parties may nevertheless be heard by the investigating chamber, without however being able to claim the availability of the procedure.

**Art. 706-149 CPP Formal requirements**

The rules specific to certain types of property provided for by this title, with the exception of those relating to the seizure decision, apply to the property included in whole or in part in the seized assets.

**Art. 706-150 CPP/ Art. 706-151/ Art. 706-152<sup>229</sup>** Real estate foreclosures Les saisies immobilières

**Art. 706-153 à 706-157 CPP<sup>230</sup>** Seizures of certain intangible property or rights (Article 706-154 of the Criminal Procedure Code relates specifically to a sum of money paid into an account opened with an institution authorised by law to keep deposit accounts).

**Art. 706-158 CPP<sup>231</sup> [Seizures without dispossession]**

During the investigation of flagrance or the preliminary investigation, the judge of freedoms and detention, seized by request of the public prosecutor, can order by reasoned decision the seizure, at the advanced expenses of the Treasury, of the goods of which confiscation is provided for by article 131-21 of the penal code without disposing of the owner or holder. The investigating judge may, during the investigation, order this seizure under the same conditions.

<sup>229</sup> Art. 706-150 CPP/ Art. 706-151/ Art. 706-152 Les saisies immobilières.

<sup>230</sup> **Art. 706-153 à 706-157 CPP** Les saisies portant sur certains biens ou droits mobiliers incorporels (l'article 706-154 CPP porte spécifiquement sur une somme d'argent versée sur un compte ouvert auprès d'un établissement habilité par la loi à tenir des comptes de dépôts).

<sup>231</sup> **Art. 706-158 CPP Les saisies sans dépossession**

Au cours de l'enquête de flagrance ou de l'enquête préliminaire, le juge des libertés et de la détention, saisi par requête du procureur de la République, peut ordonner par décision motivée la saisie, aux frais avancés du Trésor, des biens dont la confiscation est prévue par l'article 131-21 du code pénal sans en dessaisir le propriétaire ou le détenteur. Le juge d'instruction peut, au cours de l'information, ordonner cette saisie dans les mêmes conditions.

The decision<sup>232</sup> taken pursuant to the first paragraph is notified to the public prosecutor, to the owner of the property seized and, if they are known, to third parties having rights over this property, who may refer it to the investigating chamber by declaration to the court registry within ten days of notification of the decision. This appeal is not suspensive. In this context, the appellant can only claim access to the procedural documents relating to the seizure that he is contesting. If they are not appellants, the owner of the property and third parties may nevertheless be heard by the investigating chamber, without however being able to claim the availability of the procedure.

The magistrate who orders the seizure without dispossession designates the person to whom the custody of the property is entrusted and who must ensure its maintenance and conservation, at the expense, if any, of the owner or holder of the property who is liable for it in accordance with the article 706-143 of this code.

Apart from acts of maintenance and preservation, the custodian of the seized property may only use them if the seizure decision expressly provides for it.

#### (aa) Hybrid/Investigation/*Enquête hybride*

##### **Art. 708-166 CPP<sup>233</sup>**

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In the event of an investigation opened for one of the offences, punishable by a sentence of three years' imprisonment or more, listed in Title I of Book III of the Criminal Code, the liberty and custody judge, at the request of the public prosecutor, may, under the conditions and in accordance with the procedures set out in Article 706-103 of this Code, order protective measures on the property, whether movable or immovable, divided or undivided, of the person under investigation in order to guarantee payment of the fines incurred and, where applicable, compensation for victims.

<sup>232</sup> La décision prise en application du premier alinéa est notifiée au ministère public, au propriétaire du bien saisi et, s'ils sont connus, aux tiers ayant des droits sur ce bien, qui peuvent la déférer à la chambre de l'instruction par déclaration au greffe du tribunal dans un délai de dix jours à compter de la notification de la décision. Cet appel n'est pas suspensif. L'appellant ne peut prétendre dans ce cadre qu'à la mise à disposition des seules pièces de la procédure se rapportant à la saisie qu'il conteste. S'ils ne sont pas appelants, le propriétaire du bien et les tiers peuvent néanmoins être entendus par la chambre de l'instruction, sans toutefois pouvoir prétendre à la mise à disposition de la procédure.

Le magistrat qui ordonne la saisie sans dépossession désigne la personne à laquelle la garde du bien est confiée et qui doit en assurer l'entretien et la conservation, aux frais le cas échéant du propriétaire ou du détenteur du bien qui en est redevable conformément à l'article 706-143 du présent code.

En dehors des actes d'entretien et de conservation, le gardien du bien saisi ne peut en user que si la décision de saisie le prévoit expressément

<sup>233</sup> **Article 706-166 CPP** En cas d'information ouverte pour l'une des infractions, punie d'une peine égale ou supérieure à trois ans d'emprisonnement, figurant au sein du titre Ier du livre III du code pénal, le juge des libertés et de la détention, sur requête du procureur de la République, peut, dans les conditions et selon les modalités prévues à l'article 706-103 du présent code, ordonner des mesures conservatoires sur les biens, meubles ou immeubles, divis ou indivis, de la personne mise en examen afin de garantir le paiement des amendes encourues ainsi que, le cas échéant, l'indemnisation des victimes.

La condamnation vaut validation des mesures conservatoires et permet l'inscription définitive des sûretés.

La décision de non-lieu, de relaxe ou d'acquiescement emporte de plein droit, aux frais du Trésor, mainlevée des mesures ordonnées. Il en est de même en cas d'extinction de l'action publique et de l'action civile.

Pour l'application du présent article, le juge des libertés et de la détention est compétent sur l'ensemble du territoire national. Le présent article s'applique sans préjudice des dispositions du titre XXIX du présent livre.

The conviction validates the precautionary measures and allows the final registration of the securities.

A decision to dismiss, discharge or acquit shall automatically entail, at the expense of the Treasury, the release of the measures ordered. The same shall apply in the event of the termination of the public prosecution and the civil action.

For the application of this article, the liberty and custody judge shall have jurisdiction throughout the national territory.

This article shall apply without prejudice to the provisions of Title XXIX of this Book.

**Art. 696-128 CPP<sup>234</sup>**

Decisions ordering the special seizures provided for in Title XXIX of this Book and the precautionary measures provided for in Article 706-166 shall be taken by the liberty and custody judge, on the basis of a written and reasoned request from the Delegated European Public Prosecutor, subject to the Prosecutor's own powers as provided for in the first paragraph of Article 706-154.

**Art. 706-103 CPP [In the framework of the OC – derogatory]**


Not displayed

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<sup>234</sup> See above → Synopsis for the translation.

**(bb) In customs matters: Art. 323 of the Customs Code/En matière douanière: Art. 323 du code des douanes***Customs Investigation measures 2*

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	<b>Investigation powers</b>
<b>Art. 323<sup>235</sup> Customs Code</b> 1. Infringements of customs laws and regulations may be observed by a customs officer or any other administration. 2. Those who find a customs offense have the right to seize all objects liable to confiscation, to retain the shipments and all other documents relating to the seized objects and to proceed to the preventive detention of the objects assigned to the security of the penalties.	

**(2) Summary to Art. 30 §1 d) Freezing and seizures guaranteeing confiscation (= special seizures)**

The French legislator gives the EDPs and national prosecutors numerous powers, thus enabling effective investigations by quickly deploying means that make confiscation possible.

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**dd. Art. 30 §1 e) Interception of electronic communications and remote access (only by way of derogation)/Art. 30 §1 e) L'interception des communications électroniques et l'accès à distance (uniquement en dérogatoire)**

To collect means that the investigator has gained access to something or has gained entry somewhere, whereas to intercept refers to the idea that the investigator is going to capture something that is not intended for him or her by interposing himself or herself between the correspondents. Moreover, the collection to stored correspondence allows access to correspondence prior to the operation, whereas interception captures correspondence in progress. In short, what differentiates the two techniques is a question of temporal aspects.<sup>236</sup>

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 RÈGLEMENT (UE) 2017/1939 DU CONSEIL **SECTION 2 → Rules on investigation measures and other measures Article 30 → Investigation measures and**

<sup>235</sup> **Art. 323 Codes des doanes**

1. Les infractions aux lois et règlements douaniers peuvent être constatées par un agent des douanes ou de toute autre administration.

2. Ceux qui constatent une infraction douanière ont le droit de saisir tous objets passibles de confiscation, de retenir les expéditions et tous autres documents relatifs aux objets saisis et de procéder à la retenue préventive des objets affectés à la sûreté des pénalités.

<sup>236</sup> Note from the expert: "Receuil signifie que l'enquêteur a atteint quelque chose ou est entré quelque part, alors qu'intercepter "un flux actif de données" renvoie à l'idée que l'enquêteur va capter quelque chose qui ne lui est pas destinée en s'interposant entre les correspondants. De plus, le recueil des correspondances stockées permet d'accéder à des correspondances antérieures à la technique alors que l'interception capte des correspondances en cours. En somme, ce qui différencie les deux techniques est une question de temporalité." And see Viennet 2018.

**other measures** → (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;

**(1) The measures/***Les mesures*

**(a) The flagrante delicto and preliminary investigation/***L'enquête de flagrance et préliminaire dérogatoire*

**Art. 706-95 CPP<sup>237</sup> [Interception, recording and transcription of correspondence sent by electronic communications]**

If the needs of the flagrante delicto investigation or the preliminary investigation into one of the offences falling within the scope of Articles 706-73 and 706-73-1 so require, the liberty and custody judge of the judicial court may, at the request of the public prosecutor, authorise the interception, the recording and transcription of correspondence sent by electronic communications in accordance with the procedures set out in Articles 100, second paragraph, 100-1 and 100-3 to 100-7, for a maximum period of one month, renewable once under the same conditions of form and duration. These operations shall be carried out under the supervision of the liberty and custody judge provisions of Article 100-8 shall apply to interceptions ordered pursuant to this Article.

(b) the person who is the subject of the investigation is a person who is not a national of a Member State of the European Union and who is not a national of a Member State of the European Union; and (c) the person who is the subject of the investigation is a person who is not a national of a Member State of the European Union.

The liberty and custody judge who authorised the interception shall be informed without delay by the public prosecutor of the acts carried out in application of the preceding paragraph, in particular the reports drawn up in execution of his authorisation, in application of Articles 100-4 and 100-5

**Art. 706-95-1 CPC<sup>238</sup> [Remote access, without the knowledge of the person concerned, to correspondence stored by means of electronic communications accessible by means of a computer identifier] (to collect)**

In the needs of the investigation into a crime or one of the offences falling within the scope of Articles 706-73 and 706-73-1 so require, the liberty and custody judge may, at the request of the public prosecutor, authorise by reasoned order remote access, without the knowledge of the person concerned, to correspondence stored by electronic communications accessible by means of a computer identifier. The data to which access has been granted may be seized and recorded or copied onto any medium.

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<sup>237</sup> Art. 706-95 CPP L'interception, l'enregistrement et la transcription de correspondances émises par la voie des communications électroniques.

<sup>238</sup> 706-95-1 CPC L'accès, à distance et à l'insu de la personne visée, aux correspondances stockées par la voie des communications électroniques accessibles au moyen d'un identifiant informatique



**(b) Hybrid Investigation, Art. 100 to 100-8 CPC/L'enquête hybride Art. 100 à 100-8 CPP**

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**Art. 100 CPC<sup>239</sup> [The interception, recording and transcription of correspondence sent by electronic communications]**

In criminal and correctional cases, if the penalty incurred is equal to or greater than three years' imprisonment, the investigating judge may, where the needs of the information so require, order the interception, recording and transcription of correspondence transmitted by electronic communications. These operations shall be conducted under his authority and control.

The interception decision shall be in writing. It has no jurisdictional character and is not subject to appeal.

In the case of an offence punishable by imprisonment committed via electronic communications on the victim's line, interception may also be authorised, in accordance with the same procedures, if it is carried out on this line at the victim's request.

**Art. 100-1 CPC<sup>240</sup> [Motivation of the measure]**

The decision taken in application of article one hundred is motivated by reference to the elements of fact and of law justifying that these operations are necessary. It includes all the identification elements of the link to be intercepted, the offense which motivates the use of the interception as well as the duration of the latter.

**Art. 100-2 CPP<sup>241</sup> [Duration of the measure]**

This decision is taken for a maximum period of four months. It can only be renewed under the same conditions of form and duration, without the total duration of the interception being able to exceed one year or, if it is an offense provided for in articles 706-73 and 706-73-1, two years.

**Art. 100-3 CPC<sup>242</sup> [The implementation of the mechanism]**

The investigating judge or the judicial police officer appointed by him may request any qualified agent of a service or body placed under the authority or supervision of the minister responsible for electronic communications or any qualified agent of a network operator. or authorized electronic communications service provider, in order to install an interception device.

<sup>239</sup> Art. 100 CPP l'interception, l'enregistrement et la transcription de correspondances émises par la voie des communications électroniques.

<sup>240</sup> Art. 100-1 CPP La motivation de la mesure.

<sup>241</sup> Art. 100-2 CPP la durée de la mesure.

<sup>242</sup> Art. 100-3 CPC La mise en place du dispositif.

**Art. 100-4 CPC<sup>243</sup> [The formal requirements of the measure]**

The investigating judge or the judicial police officer appointed by him draws up a report on each of the interception and recording operations. This report mentions the date and time when the operation began and those at which it ended.

**Art. 100-6 CPC<sup>244</sup> [The destruction of recordings]**

The recordings are destroyed, at the behest of the public prosecutor or the general prosecutor, at the expiration of the limitation period for public action.

A report of the destruction operation is drawn up.

**Art. 100-8 CPC<sup>245</sup> [Conditions in the presence of a foreign element]**

When an interception of correspondence sent by electronic communications concerns a communication address that is used on the territory of a Member State of the European Union, and that it is not carried out within the framework of a European investigation decision, the investigating judge or judicial police officer appointed by him shall notify this interception to the competent authority of that State if the person targeted by this interception is in its territory.

This notification takes place either before the interception when it emerges from the elements of the record of the proceedings at the time when the interception is ordered, that the person concerned is or will be in the territory of that State, or during the interception or after its realization, as soon as it is established that that person is or was in the territory of that State at the time of the interception.

At the request of the competent authority of the Member State formed within ninety-six hours of receipt of the notification and justified by the fact that such an interception could not be authorized, within the framework of a procedure similar national law, under the law of that State, either the interception cannot be carried out or must be interrupted, or the data intercepted while the person was in its territory cannot be used and must be removed from the file of the procedure or can only be used under the conditions that that authority specifies and for the reasons that it specifies.

The lack of notification provided for in the first and second paragraphs only constitutes a ground for nullity of the procedure if it is established that such an interception could not be authorized, within the framework of a similar national procedure, in application of the law of the Member State in whose territory the person is located.

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<sup>243</sup> Art. 100-4 CPP Les conditions de forme de la mesure.

<sup>244</sup> Art. 100-6 CPP La destruction des enregistrements

<sup>245</sup> Art. 100-8 CPP Les conditions en presence d'un élément d'extranéité.

**Art. 706-95-2 CPC<sup>246</sup> [The access, at a distance and without the knowledge of the person concerned, to correspondence stored by means of electronic communications accessible by means of a computer identifier] (to collect)**

If the requirements of the information relating to a crime or to one of the offenses falling within the scope of articles 706-73 and 706-73-1 so require, the investigating judge may authorize by reasoned order access, remotely and without the knowledge of the person concerned, to correspondence stored by means of electronic communications accessible by means of a computer identifier. The data to which access has been granted may be entered and saved or copied to any medium.

**(c) Derogatory pre-trial, flagrante delicto and derogatory investigation (special investigation techniques) *En préliminaire, flagrante et instruction dérogatoires (techniques spéciales d'enquête)***

**Article 706-95-20<sup>247</sup> The collection of technical connection data and interceptions of correspondence emitted by electronic communications: derogatory investigations + derogatory pre-trial and flagrante delicto (= IMSI-Catcher)**

*Nota bene:* There are common rules for special investigative techniques in Art. 706-95-11 et seq. *CPP/Il existe des règles communes aux techniques spéciales d'enquête aux art. 706-95-11 et s. CPP*

I - The installation and use of an apparatus or technical device mentioned in Article 226-3 of the Criminal Code may be resorted to in order to collect technical connection data allowing the identification of terminal equipment or the subscription number of its user, as well as data relating to the location of a terminal equipment used.

II - The installation or use of this apparatus or device may be used to intercept correspondence transmitted or received by terminal equipment. The procedures set out in

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<sup>246</sup> **Art. 706-95-2 CPC l'accès, à distance et à l'insu de la personne visée, aux correspondances stockées par la voie des communications électroniques accessibles au moyen d'un identifiant informatique.**

Si les nécessités de l'information relative à un crime ou à l'une des infractions entrant dans le champ d'application des articles 706-73 et 706-73-1 l'exigent, le juge d'instruction peut autoriser par ordonnance motivée l'accès, à distance et à l'insu de la personne visée, aux correspondances stockées par la voie des communications électroniques accessibles au moyen d'un identifiant informatique. Les données auxquelles il a été permis d'accéder peuvent être saisies et enregistrées ou copiées sur tout support.

<sup>247</sup> **Art. 706-95-20 CPP L'interception des données techniques de connexion et des interceptions de correspondances émises par la voie des communications électroniques: enquêtes + instruction dérogatoires (IMSI Catcher)**

I.- Il peut être recouru à la mise en place et à l'utilisation d'un appareil ou d'un dispositif technique mentionné au 1° de l'article 226-3 du code pénal afin de recueillir les données techniques de connexion permettant l'identification d'un équipement terminal ou du numéro d'abonnement de son utilisateur, ainsi que les données relatives à la localisation d'un équipement terminal utilisé.

II.- Il peut être recouru à la mise en place ou à l'utilisation de cet appareil ou de ce dispositif afin d'intercepter des correspondances émises ou reçues par un équipement terminal. Les modalités prévues aux articles 100-3 à 100-7 du présent code sont alors applicables et, lorsque ces interceptions sont autorisées par le juge des libertés et de la détention à la requête du procureur de la République, les attributions confiées au juge d'instruction ou à l'officier de police judiciaire commis par lui sont exercées par le procureur de la République ou l'officier de police judiciaire requis par ce magistrat. Les correspondances interceptées en application du présent II ne peuvent concerner que la personne ou la liaison visée par l'autorisation d'interception. Par dérogation à l'article 706-95-16, les durées maximales d'autorisation de l'interception des correspondances prévue au présent II sont de quarante-huit heures renouvelables une fois.

Articles 100-3 to 100-7 of this Code shall then apply and, where such interceptions are authorised by the liberty and custody judge at the request of the public prosecutor, the powers entrusted to the examining magistrate or to the judicial police officer appointed by him shall be exercised by the public prosecutor or the judicial police officer requested by this magistrate. Correspondence intercepted pursuant to this II may only concern the person or the link covered by the interception authorisation. By way of derogation from Article 706-95-16, the maximum duration of authorisation for the interception of correspondence under this II shall be forty-eight hours, renewable once.

- 32 **The capture of computer data: derogatory pre-trial and flagrance delicto + derogatory investigation** (special investigation techniques) /*Accès, transmission et conservation de données informatiques (=La captation des données informatiques): enquêtes dérogatoires + instruction dérogatoires* (techniques spéciales d'enquête)
- 33 There are common rules for special investigative techniques in Art. 706-95-11 et seq. CPP /*Il existe des règles communes aux techniques spéciales d'enquête aux art. 706-95-11 et s. CPP:*

**Art. 706-102-1<sup>248</sup> [The measure] (to collect and intercept)**

A technical device may be set up to access, record, preserve and transmit computer data in any place, without the consent of the persons concerned, as stored in a computer system, as displayed on a screen for the user of an automated data processing system, as entered by the user by typing characters or as received and transmitted by peripheral devices.

The public prosecutor or investigating judge may designate any authorised natural or legal person registered on one of the lists provided for in Article 157 to carry out the technical operations required to implement the technical device referred to in the first paragraph of this Article. The public prosecutor or the investigating judge may also prescribe the use of State resources subject to national defence secrecy in the manner provided for in Chapter I of Title IV of Book I.

<sup>248</sup> **Art. 706-102-2 CPP La mesure**

Il peut être recouru à la mise en place d'un dispositif technique ayant pour objet, sans le consentement des intéressés, d'accéder, en tous lieux, à des données informatiques, de les enregistrer, de les conserver et de les transmettre, telles qu'elles sont stockées dans un système informatique, telles qu'elles s'affichent sur un écran pour l'utilisateur d'un système de traitement automatisé de données, telles qu'il les y introduit par saisie de caractères ou telles qu'elles sont reçues et émises par des périphériques.

Le procureur de la République ou le juge d'instruction peut désigner toute personne physique ou morale habilitée et inscrite sur l'une des listes prévues à l'article 157, en vue d'effectuer les opérations techniques permettant la réalisation du dispositif technique mentionné au premier alinéa du présent article. Le procureur de la République ou le juge d'instruction peut également prescrire le recours aux moyens de l'Etat soumis au secret de la défense nationale selon les formes prévues au chapitre Ier du titre IV du livre Ier.

**Art. 706-102-3<sup>249</sup> [The formal requirements]**

On pain of nullity, the decision authorizing the use of the device mentioned in article 706-102-1 specifies the offense which motivates the use of these operations, the exact location, or the detailed description of the automated data processing systems as well as the duration of operations.

**Art. 706-102-5 CPP<sup>250</sup> [The implementation of the technical device]**

In order to set up the technical device mentioned in Article 706-102-1, the liberty and custody judge, at the request of the public prosecutor, or the investigating judge may authorise the entry into a vehicle or a private place, including outside the hours provided for in Article 59, without the knowledge or consent of the owner or possessor of the vehicle or the occupant of the premises or any person with a right to it. If it is a place of residence and the operation must take place outside the hours provided for in Article 59, this authorisation shall be issued by the liberty and custody judge to whom the public prosecutor or the investigating judge has referred the matter. These operations, which may have no other purpose than the installation of the technical device, shall be carried out under the authority and control of the liberty and custody judge or the investigating judge. The present paragraph shall also apply to operations aimed at de-installing the technical device that has been set up.

In order to set up the technical device referred to in Article 706-102-1, the liberty and custody judge, at the request of the public prosecutor, or the investigating judge may also authorise the transmission of this device via an electronic communications network. These operations shall be carried out under the authority and control of the liberty and

**<sup>249</sup> Art. 706-102-3 CPP Les conditions de forme**

A peine de nullité, la décision autorisant le recours au dispositif mentionné à l'article 706-102-1 précise l'infraction qui motive le recours à ces opérations, la localisation exacte ou la description détaillée des systèmes de traitement automatisé de données ainsi que la durée des opérations.

**<sup>250</sup> 706-102-5 CPP La mise en place du dispositif technique**

En vue de mettre en place le dispositif technique mentionné à l'article 706-102-1, le juge des libertés et de la détention, à la requête du procureur de la République, ou le juge d'instruction peut autoriser l'introduction dans un véhicule ou dans un lieu privé, y compris hors des heures prévues à l'article 59, à l'insu ou sans le consentement du propriétaire ou du possesseur du véhicule ou de l'occupant des lieux ou de toute personne titulaire d'un droit sur celui-ci. S'il s'agit d'un lieu d'habitation et que l'opération doit intervenir hors des heures prévues à l'article 59, cette autorisation est délivrée par le juge des libertés et de la détention saisi à cette fin par le procureur de la République ou par le juge d'instruction. Ces opérations, qui ne peuvent avoir d'autre fin que la mise en place du dispositif technique, sont effectuées sous l'autorité et le contrôle du juge des libertés et de la détention ou du juge d'instruction. Le présent alinéa est également applicable aux opérations ayant pour objet la désinstallation du dispositif technique ayant été mis en place.

En vue de mettre en place le dispositif technique mentionné à l'article 706-102-1, le juge des libertés et de la détention, à la requête du procureur de la République, ou le juge d'instruction peut également autoriser la transmission par un réseau de communications électroniques de ce dispositif. Ces opérations sont effectuées sous l'autorité et le contrôle du juge des libertés et de la détention ou du juge d'instruction. Le présent alinéa est également applicable aux opérations ayant pour objet la désinstallation du dispositif technique ayant été mis en place.

La mise en place du dispositif technique mentionné à l'article 706-102-1 ne peut concerner les systèmes automatisés de traitement des données se trouvant dans les lieux visés aux articles 56-1, 56-2, 56-3 et 56-5 ni être réalisée dans le véhicule, le bureau ou le domicile des personnes visées à l'article 100-7.

custody judge or the investigating judge. The present paragraph shall also apply to operations aimed at de-installing the technical device that has been put in place.

The installation of the technical device referred to in Article 706-102-1 may not concern automated data processing systems located in the places referred to in Articles 56-1, 56-2, 56-3 and 56-5, nor may it be carried out in the vehicle, office or home of the persons referred to in Article 100-7.

**2) Art. 30 § 2 Specific provisions for certain professionals and categories of persons (applicable to flagrante delicto, pre-trial and investigation) / Art. 30 § 2 Dispositions spécifiques pour certains professionnels et certaines catégories de personnes (applicable à la flagrance, préliminaire et instruction)**

**Art. 100-5 CPC<sup>251</sup>**

The examining magistrate or the judicial police officer appointed by him transcribes the correspondence useful for the manifestation of the truth. A report is drawn up. This transcript is on file.

**[Para 2 Concerning Foreign nationals]** Correspondence in a foreign language is transcribed into French with the assistance of an interpreter required for this purpose.

**[Para 3 Non transcription of defence lawyer correspondence]** Under penalty of nullity, correspondence with a lawyer relating to the exercise of the rights of the defense cannot be transcribed.

**[Para 4 Non transcription of journalist correspondence]** Under penalty of nullity, cannot be transcribed the correspondence with a journalist allowing to identify a source in violation of article 2 of the law of July 29, 1881 on the freedom of the press.

<sup>251</sup> **Art. 100-5 CPP**

Le juge d'instruction ou l'officier de police judiciaire commis par lui transcrit la correspondance utile à la manifestation de la vérité. Il en est dressé procès-verbal. Cette transcription est versée au dossier.

Les correspondances en langue étrangère sont transcrites en français avec l'assistance d'un interprète requis à cette fin. **Les étrangers (al. 2)**

A peine de nullité, ne peuvent être transcrites les correspondances avec un avocat relevant de l'exercice des droits de la défense et couvertes par le secret professionnel de la défense et du conseil, prévu à l'article 66-5 de la loi n° 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques, hors les cas prévus à l'article 56-1-2 du présent code. **Les avocats (al. 3)**


A peine de nullité, ne peuvent être transcrites les correspondances avec un journaliste permettant d'identifier une source en violation de l'article 2 de la loi du 29 juillet 1881 sur la liberté de la presse. **Les journalistes (al. 4)**

**Art. 100-7 CPP**<sup>252</sup>

**[Para 1 Deputies and Senators]** No interception can take place on the line of a Delegated or a senator without the president of the assembly to which he belongs being informed by the examining magistrate.

**[Para 2 The lawyers]** No interception may take place on a line depending on a lawyer's office or his domicile without the president being informed by the examining magistrate.

**[Para 3 The Magistrates]** No interception can take place on a line depending on a magistrate's office or his domicile without the first president or the attorney general of the jurisdiction where he resides being informed. The formalities provided for in this article are prescribed under penalty of nullity.

*Nota bene:* Article 696-127 CPC (For the text of this provision, see above → Synopsis prior to Art. 26 EPPO Reg.), which is a special provision for the EDP (*propre aux PED*) applies and grants powers to the EDP. 

**(2) Summary to Art. 30 §1 e) Interception of electronic communications and remote access (only by way of derogation)**

In general, a distinction must be made between the different forms of investigative procedure (see → Introduction, and Art. 26/27 EPPO above). Surveillance and access to telecommunication data is strictly regulated in France and provides in Art. 706-95 CPC that the judge of freedoms and arrest must be involved when an in flagrante investigation is launched or a preliminary investigation, whereby these investigations must constitute a catalogue offence, i.e. fall within the list according to Art. 706-73(-1) CPC. 34

In the case of a hybrid investigation, the investigating judge pursuant to Art. 100 CPC, thus also the EDP, may order access to data in the case of an offence punishable by a sentence of three or more years. According to 100-2 CPC, this access may last 4 months. Art. 103-108 CPC contain formal provisions and concrete implementation instructions as well as the responsible and trained persons. 35

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<sup>252</sup> **Art. 107 CPP** Aucune interception ne peut avoir lieu sur la ligne d'un député ou d'un sénateur sans que le président de l'assemblée à laquelle il appartient en soit informé par le juge d'instruction. **Les députés et les sénateurs (al. 1)**

Aucune interception ne peut avoir lieu sur une ligne dépendant du cabinet d'un avocat ou de son domicile sans que le bâtonnier en soit informé par le juge d'instruction. **Les avocats (al. 2)**

Aucune interception ne peut avoir lieu sur une ligne dépendant du cabinet d'un magistrat ou de son domicile sans que le premier président ou le procureur général de la juridiction où il réside en soit informé. **Les magistrats (al. 3).**

Les formalités prévues par le présent article sont prescrites à peine de nullité.

- ee. **Art. 30 §1 f) Geolocation (a measure common to all procedural stages) and surveillance of persons or property (only in the case of organised crime)/Art. 30 §1 f) La géolocalisation (mesure commune à toutes les phases procédurales) et la surveillance de personnes ou de biens (qu'en matière de criminalité organisée)**

 track and trace an object by technical means, including controlled deliveries of goods.

**(1) Geolocation measure/La géolocalisation**

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**Art. 230-32 CPP<sup>253</sup> [Main provision]**

Any technical means may be used to locate, in real time, throughout the national territory, a person, without the person's knowledge, a vehicle or any other object, without the consent of its owner or possessor, if this operation is required by the needs of:

**[Gravity criteria]** 1° An investigation or enquiry into a crime or offence punishable by at least three years' imprisonment;

2° An investigation or enquiry into the causes of death or disappearance provided for in Articles 74, 74-1 and 80-4;

3° A procedure to search for a fugitive as provided for in Article 74-2.

Geolocation shall be set up by the judicial police officer or, under his responsibility, by the judicial police officer, or prescribed at the request of the judicial police officer, under the conditions and in accordance with the procedures set out in this chapter.

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<sup>253</sup> **Article 230-32 CPP Disposition principale**

Il peut être recouru à tout moyen technique destiné à la localisation en temps réel, sur l'ensemble du territoire national, d'une personne, à l'insu de celle-ci, d'un véhicule ou de tout autre objet, sans le consentement de son propriétaire ou de son possesseur, si cette opération est exigée par les nécessités:

1° D'une enquête ou d'une instruction portant sur un crime ou sur un délit puni d'au moins trois ans d'emprisonnement ; (critère de gravité)

2° D'une procédure d'enquête ou d'instruction de recherche des causes de la mort ou de la disparition prévue aux articles 74, 74-1 et 80-4 ;

3° D'une procédure de recherche d'une personne en fuite prévue à l'article 74-2.

La géolocalisation est mise en place par l'officier de police judiciaire ou, sous sa responsabilité, par l'agent de police judiciaire, ou prescrite sur réquisitions de l'officier de police judiciaire, dans les conditions et selon les modalités prévues au présent chapitre.



**Art. 230-33 CPC<sup>254</sup> [Duration of geolocation depending on the investigation framework]** The operation referred to in Article 230-32 shall be authorised:

1° In the context of a flagrante delicto investigation, a preliminary investigation or a procedure provided for in Articles 74 to 74-2, by the public prosecutor, for a maximum period of fifteen consecutive days in the cases provided for in Articles 74 to 74-2 or when the investigation concerns a crime or an offence mentioned in Articles 706-73 or 706-73-1, or for a maximum period of eight consecutive days in other cases. At the end of these periods, this operation is authorised by the liberty and custody judge at the request of the public prosecutor, for a maximum period of one month, renewable under the same conditions of form and duration;

2° In the context of an investigation or an inquiry into the causes of death or disappearance mentioned in Articles 74, 74-1 and 80-4, by the investigating judge, for a maximum period of four months, renewable under the same conditions of form and duration.

The total duration of this operation may not exceed one year or, in the case of an offence under Articles 706-73 or 706-73-1, two years.

The decision of the public prosecutor, the liberty and custody judge or the investigating judge shall be in writing and reasoned by reference to the factual and legal elements justifying the need for these operations. It shall not have a judicial character and shall not be subject to appeal.

<sup>254</sup> **Art. 230-33 CPP Durée de la géolocalisation en fonction du cadre d'investigation**

L'opération mentionnée à l'article 230-32 est autorisée:

1° Dans le cadre d'une enquête de flagrance, d'une enquête préliminaire ou d'une procédure prévue aux articles 74 à 74-2, par le procureur de la République, pour une durée maximale de quinze jours consécutifs dans les cas prévus aux articles 74 à 74-2 ou lorsque l'enquête porte sur un crime ou sur une infraction mentionnée aux articles 706-73 ou 706-73-1, ou pour une durée maximale de huit jours consécutifs dans les autres cas. A l'issue de ces délais, cette opération est autorisée par le juge des libertés et de la détention à la requête du procureur de la République, pour une durée maximale d'un mois renouvelable dans les mêmes conditions de forme et de durée ;

2° Dans le cadre d'une instruction ou d'une information pour recherche des causes de la mort ou des causes de la disparition mentionnées aux articles 74, 74-1 et 80-4, par le juge d'instruction, pour une durée maximale de quatre mois renouvelable dans les mêmes conditions de forme et de durée.

La durée totale de cette opération ne peut pas excéder un an ou, s'il s'agit d'une infraction prévue aux articles 706-73 ou 706-73-1, deux ans.

La décision du procureur de la République, du juge des libertés et de la détention ou du juge d'instruction est écrite et motivée par référence aux éléments de fait et de droit justifiant que ces opérations sont nécessaires. Elle n'a pas de caractère juridictionnel et n'est susceptible d'aucun recours.

**Art. 230-34 CPP<sup>255</sup> [Formal requirements concerning geolocation]**

In the cases mentioned in 1° and 2° of article 230-33, when the needs of the investigation or inquiry so require, the public prosecutor or the investigating judge may, for the sole purpose of installing or removing the technical means mentioned in article 230-32, authorize by written decision the introduction including outside the hours provided for in article 59, into private premises intended or used for the storage of vehicles, funds, valuables, goods or equipment, or into a vehicle located on the public highway or in such premises, without the knowledge or consent of the owner or occupant of the premises or vehicle or of any person holding a right over them.

If it is about a private place other than those mentioned in the first paragraph of the present article, this operation can intervene only in the cases mentioned in the 2° and 3° of the article 230-32 or when the investigation or the instruction is relative to a crime or a misdemeanour punished by at least five years of imprisonment. If this private place is a dwelling, the authorization is issued by written decision:

1° In the cases provided for in 1° of article 230-33, by the liberty and custody judge, referred to for this purpose by the public prosecutor ;

2° In the cases provided for in 2° of the same article 230-33, by the investigating judge or, if the operation must take place outside the hours provided for in article 59, by the liberty and custody judge, referred to for this purpose by the investigating judge.

The installation of the technical means mentioned in article 230-32 may not concern the places mentioned in articles 56-1 to 56-5, nor the office or home of the persons mentioned in article 100-7.

**Art. 230-34-1 CPP<sup>256</sup> [Remote activation of an electronic device for the purpose of geolocation].** When the needs of the investigation or enquiry into a crime or offence

<sup>255</sup> Art. 230-34 CPP **Les conditions de forme**

Dans les cas mentionnés aux 1° et 2° de l'article 230-33, lorsque les nécessités de l'enquête ou de l'instruction l'exigent, le procureur de la République ou le juge d'instruction peut, aux seules fins de mettre en place ou de retirer le moyen technique mentionné à l'article 230-32, autoriser par décision écrite l'introduction, y compris en dehors des heures prévues à l'article 59, dans des lieux privés destinés ou utilisés à l'entrepôt de véhicules, fonds, valeurs, marchandises ou matériel, ou dans un véhicule situé sur la voie publique ou dans de tels lieux, à l'insu ou sans le consentement du propriétaire ou de l'occupant des lieux ou du véhicule ou de toute personne titulaire d'un droit sur ceux-ci.

S'il s'agit d'un lieu privé autre que ceux mentionnés au premier alinéa du présent article, cette opération ne peut intervenir que dans les cas mentionnés aux 2° et 3° de l'article 230-32 ou lorsque l'enquête ou l'instruction est relative à un crime ou à un délit puni d'au moins cinq ans d'emprisonnement. Si ce lieu privé est un lieu d'habitation, l'autorisation est délivrée par décision écrite:

1° Dans les cas prévus au 1° de l'article 230-33, du juge des libertés et de la détention, saisi à cette fin par le procureur de la République ;

2° Dans les cas prévus au 2° du même article 230-33, du juge d'instruction ou, si l'opération doit intervenir en dehors des heures prévues à l'article 59, du juge des libertés et de la détention, saisi à cette fin par le juge d'instruction.

La mise en place du moyen technique mentionné à l'article 230-32 ne peut concerner ni les lieux mentionnés aux articles 56-1 à 56-5, ni le bureau ou le domicile des personnes mentionnées à l'article 100-7.

<sup>256</sup> Art. 230-34-1 CPP **[L'activation à distance d'un appareil électronique dans le but de la géolocaliser]**

punishable by at least five years' imprisonment so require, the liberty and custody judge, at the request of the public prosecutor, or the investigating judge may authorise, under the conditions set out in article 230-33, the remote activation of an electronic device, without the knowledge or consent of its owner or possessor, for the sole purpose of locating it in real time. The decision shall be taken in the manner provided for in the last paragraph of the same article 230-33 and shall include all information enabling the device to be identified.

The remote activation of an electronic device referred to in the first paragraph of this article may not concern electronic devices used by the persons referred to in articles 56-3 and 100-7 of this code or by those referred to in the second paragraph of article 2 of the law of 29 July 1881 on freedom of the press. The provisions of this paragraph are prescribed on pain of nullity.

#### **Art. 230-35 CPP<sup>257</sup> [More flexible conditions in case of emergency]**

In case of emergency resulting from an imminent risk of loss of evidence or serious harm to persons or property, the operations mentioned in article 230-32 may be set up or prescribed by a judicial police officer. The latter shall immediately inform, by any means, the public prosecutor or the investigating judge in the cases mentioned in articles 230-33 and 230-34. This magistrate may then order the release of the geolocation.

However, if the introduction into a dwelling place is necessary, the judicial police officer must obtain the prior agreement, given by any means:

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Lorsque les nécessités de l'enquête ou de l'instruction relative à un crime ou à un délit puni d'au moins cinq ans d'emprisonnement l'exigent, le juge des libertés et de la détention, à la requête du procureur de la République, ou le juge d'instruction peut autoriser, dans les conditions prévues à l'article 230-33, l'activation à distance d'un appareil électronique, à l'insu ou sans le consentement de son propriétaire ou de son possesseur, aux seules fins de procéder à sa localisation en temps réel. La décision est prise dans les formes prévues au dernier alinéa du même article 230-33 et comporte alors tous les éléments permettant d'identifier cet appareil.

L'activation à distance d'un appareil électronique mentionnée au premier alinéa du présent article ne peut concerner les appareils électroniques utilisés par les personnes mentionnées aux articles 56-3 et 100-7 du présent code ou par celles mentionnées au deuxième alinéa de l'article 2 de la loi du 29 juillet 1881 sur la liberté de la presse. Les dispositions du présent alinéa sont prescrites à peine de nullité.

#### <sup>257</sup> **Art. 230-35 CPP [Les conditions assouplies en cas d'urgence]**

En cas d'urgence résultant d'un risque imminent de dépérissement des preuves ou d'atteinte grave aux personnes ou aux biens, les opérations mentionnées à l'article 230-32 peuvent être mises en place ou prescrites par un officier de police judiciaire. Celui-ci en informe immédiatement, par tout moyen, le procureur de la République ou le juge d'instruction dans les cas mentionnés aux articles 230-33 et 230-34. Ce magistrat peut alors ordonner la mainlevée de la géolocalisation.

Toutefois, si l'introduction dans un lieu d'habitation est nécessaire, l'officier de police judiciaire doit recueillir l'accord préalable, donné par tout moyen:

1° Dans les cas prévus au 1° de l'article 230-33, du juge des libertés et de la détention, saisi à cette fin par le procureur de la République ;

2° Dans les cas prévus au 2° du même article 230-33, du juge d'instruction ou, si l'introduction doit avoir lieu en dehors des heures prévues à l'article 59, du juge des libertés et de la détention, saisi à cette fin par le juge d'instruction.

Ces magistrats disposent d'un délai de vingt-quatre heures pour prescrire, par décision écrite, la poursuite des opérations. A défaut d'une telle autorisation dans ce délai, il est mis fin à la géolocalisation. Dans les cas prévus au premier alinéa du présent article, l'autorisation comporte l'énoncé des circonstances de fait établissant l'existence du risque imminent mentionné à ce même alinéa.

1° In the cases provided for in 1° of article 230-33, the judge of freedoms and detention, referred to this end by the public prosecutor ;

2° In the cases provided for in 2° of the same article 230-33, by the investigating judge or, if the introduction must take place outside the hours provided for in article 59, by the liberty and custody judge, referred for this purpose by the investigating judge

These magistrates have a period of twenty-four hours to prescribe, by written decision, the continuation of the operations. In the absence of such authorization within this time limit, the geolocation is terminated. In the cases provided for in the first paragraph of this article, the authorization shall include a statement of the factual circumstances establishing the existence of the imminent risk referred to in the same paragraph.

**Art. 230-36 CPP<sup>258</sup> [Formal requirements]**

The investigating judge or the judicial police officer appointed by him or authorized by the public prosecutor may request any qualified agent of a service, unit or organization placed under the authority of the Minister of the Interior, the list of which shall be determined by decree, to install and remove the technical means referred to in article 230-32

In order to remotely activate the electronic device referred to in Article 230-34-1, the public prosecutor or investigating judge may designate any authorised natural or legal person from one of the lists provided for in Article 157. The public prosecutor or investigating judge may also order the use of State resources subject to national defence secrecy, in accordance with the procedures set out in Chapter I of this Title.

<sup>258</sup> **Art. 230-36 CPP Les conditions de forme**

Le juge d'instruction ou l'officier de police judiciaire commis par lui ou autorisé par le procureur de la République peut requérir tout agent qualifié d'un service, d'une unité ou d'un organisme placé sous l'autorité du ministre de l'intérieur et dont la liste est fixée par décret, en vue de procéder à l'installation et au retrait du moyen technique mentionné à l'article 230-32.

En vue d'effectuer l'activation à distance de l'appareil électronique mentionnée à l'article 230-34-1, le procureur de la République ou le juge d'instruction peut désigner toute personne physique ou morale habilitée et inscrite sur l'une des listes prévues à l'article 157. Le procureur de la République ou le juge d'instruction peut également prescrire le recours aux moyens de l'Etat soumis au secret de la défense nationale, selon les formes prévues au chapitre Ier du présent titre.

**Art. 230-37 CPP<sup>259</sup> [Formal requirements]**

The operations provided for in this chapter shall be conducted under the supervision of the magistrate who authorized them or who authorized their continuation.

The fact that these operations reveal offenses other than those referred to in the decision of that magistrate shall not constitute a cause of nullity of the incidental proceedings.

**Art. 230-38 CPP<sup>260</sup> [Formal requirements]**

The judicial police officer or agent acting under his or her responsibility shall draw up a report of each of the operations of setting up the technical means referred to in Article 230-32 and of the operations of recording the location data. This report shall mention the date and time when the operation began and when it ended.

The recordings shall be placed under closed seals

**Art. 230-39 CPP<sup>261</sup> [Formal requirements]**

The judicial police officer or agent acting under his or her responsibility shall describe or transcribe, in a report which shall be placed in the file, the recorded data that are useful for establishing the truth.

<sup>259</sup> **Art. 230-37 CPP Les conditions de forme**

Les opérations prévues au présent chapitre sont conduites sous le contrôle du magistrat qui les a autorisées ou qui a autorisé leur poursuite.

Le fait que ces opérations révèlent des infractions autres que celles visées dans la décision de ce magistrat ne constitue pas une cause de nullité des procédures incidentes.

<sup>260</sup> **Art. 230-38 CPP Les conditions de forme**

L'officier de police judiciaire ou l'agent de police judiciaire agissant sous sa responsabilité dresse procès-verbal de chacune des opérations de mise en place du moyen technique mentionné à l'article 230-32 et des opérations d'enregistrement des données de localisation. Ce procès-verbal mentionne la date et l'heure auxquelles l'opération a commencé et celles auxquelles elle s'est terminée.

Les enregistrements sont placés sous scellés fermés.

<sup>261</sup> **Art. 230-39 CPP Les conditions de forme**

L'officier de police judiciaire ou l'agent de police judiciaire agissant sous sa responsabilité décrit ou transcrit, dans un procès-verbal qui est versé au dossier, les données enregistrées qui sont utiles à la manifestation de la vérité.

**Art. 230-40 CPP<sup>262</sup> [applicable to the derogatory instruction - formal requirements]**

Where, in an investigation concerning one of the crimes or offenses falling within the scope of Articles 706-73 and 706-73-1, knowledge of such information is likely to seriously endanger the life or physical integrity of a person, members of his family or his close relatives and that it is neither useful for the determination of the truth nor essential for the exercise of the rights of the defense, the liberty and custody judge, seized at any time by reasoned request of the investigating judge, may, by reasoned decision, authorize that the information not appear in the record of the proceedings

1° The date, time and place where the technical means mentioned in article 230-32 was installed or removed;

2° The recording of location data and the elements that allow the identification of a person who participated in the installation or removal of the technical means mentioned in the same article

The decision of the liberty and custody judge referred to in the first paragraph of this article shall be attached to the file of the proceedings. The information referred to in 1° and 2° shall be recorded in another report, which shall be placed in a file separate from the proceedings file, which shall also contain the request of the investigating judge referred to in the first paragraph. The information shall be entered in a register, which shall be opened for this purpose at the judicial court and which shall be marked and initialled.

<sup>262</sup> **Art. 230-40 CPP applicable à l'instruction dérogatoire – les conditions de forme**

Lorsque, dans une instruction concernant l'un des crimes ou délits entrant dans le champ d'application des articles 706-73 et 706-73-1, la connaissance de ces informations est susceptible de mettre gravement en danger la vie ou l'intégrité physique d'une personne, des membres de sa famille ou de ses proches et qu'elle n'est ni utile à la manifestation de la vérité, ni indispensable à l'exercice des droits de la défense, le juge des libertés et de la détention, saisi à tout moment par requête motivée du juge d'instruction, peut, par décision motivée, autoriser que n'apparaissent pas dans le dossier de la procédure:

1° La date, l'heure et le lieu où le moyen technique mentionné à l'article 230-32 a été installé ou retiré ;

2° L'enregistrement des données de localisation et les éléments permettant d'identifier une personne ayant concouru à l'installation ou au retrait du moyen technique mentionné à ce même article.

La décision du juge des libertés et de la détention mentionnée au premier alinéa du présent article est jointe au dossier de la procédure. Les informations mentionnées aux 1° et 2° sont inscrites dans un autre procès-verbal, qui est versé dans un dossier distinct du dossier de la procédure, dans lequel figure également la requête du juge d'instruction prévue au premier alinéa. Ces informations sont inscrites sur un registre coté et paraphé, qui est ouvert à cet effet au tribunal judiciaire.

**Art. 230-41 CPC<sup>263</sup> [applicable to the derogatory instruction – appeals]**

The accused person or the witness may, within ten days from the date on which he or she was informed of the content of the geolocation operations carried out within the framework provided for in article 230-40, contest, before the president of the investigating chamber, the use of the procedure provided for in that same article. If he considers that the geolocation operations were not carried out in a regular manner, that the conditions provided for in the said article are not fulfilled or that the information mentioned in the said article is essential for the exercise of the rights of the defense, the president of the investigating chamber shall order the cancellation of the geolocation. However, if he considers that knowledge of this information is not or is no longer likely to seriously endanger the life or physical integrity of a person, members of his family or his close relations, he may also order that the request and the report mentioned in the last paragraph of the same article be placed in the file. The president of the investigating chamber shall give a reasoned decision, which may not be appealed, in the light of the documents in the proceedings and those in the file mentioned in the same paragraph.

**Art. 230-42 CPP<sup>264</sup> [applicable to the derogatory investigation - the handling of evidence]**

No sentence may be pronounced on the basis of the elements gathered under the conditions provided for in Article 230-40, unless the request and the report mentioned in the last paragraph of the same article have been added to the file pursuant to Article 230-41.

**<sup>263</sup> Art. 230-41 CPP applicable à l'instruction dérogatoire - recours**

La personne mise en examen ou le témoin assisté peut, dans les dix jours à compter de la date à laquelle il lui a été donné connaissance du contenu des opérations de géolocalisation réalisées dans le cadre prévu à l'article 230-40, contester, devant le président de la chambre de l'instruction, le recours à la procédure prévue à ce même article. S'il estime que les opérations de géolocalisation n'ont pas été réalisées de façon régulière, que les conditions prévues audit article ne sont pas remplies ou que les informations mentionnées à ce même article sont indispensables à l'exercice des droits de la défense, le président de la chambre de l'instruction ordonne l'annulation de la géolocalisation. Toutefois, s'il estime que la connaissance de ces informations n'est pas ou n'est plus susceptible de mettre gravement en danger la vie ou l'intégrité physique d'une personne, des membres de sa famille ou de ses proches, il peut également ordonner le versement au dossier de la requête et du procès-verbal mentionnés au dernier alinéa du même article. Le président de la chambre de l'instruction statue par décision motivée, qui n'est pas susceptible de recours, au vu des pièces de la procédure et de celles figurant dans le dossier mentionné au même alinéa.

**<sup>264</sup> Art. 230-42 CPP applicable à l'instruction dérogatoire – l'utilisation des preuves**

Aucune condamnation ne peut être prononcée sur le fondement des éléments recueillis dans les conditions prévues à l'article 230-40, sauf si la requête et le procès-verbal mentionnés au dernier alinéa de ce même article ont été versés au dossier en application de l'article 230-41.

**Art. 230-43 CPP<sup>265</sup> [Description of the data]**

Recordings of location data shall be destroyed, at the request of the public prosecutor or the public prosecutor, on the expiry of the period of limitation of public action.

A record of the destruction operation shall be drawn up.

**Art. 230-44 CPP<sup>266</sup> [Geolocation not applicable to the victim]**

This chapter does not apply when real-time geolocation operations are aimed at locating terminal electronic communication equipment, a vehicle or any other object whose owner or lawful possessor is the victim of the offense to which the investigation or investigation relates or the missing person within the meaning of Articles 74-1 or 80-4, when the purpose of these operations is to find the victim, the object that was stolen from him or the missing person.

In the cases provided for in this article, real-time geolocation operations are subject to requisitions in accordance with articles 60-1, 60-2, 77-1-1, 77-1-2, 99-3 or 99-4.

✍ *Nota bene:* For the special powers and special rules for EDPs, see → Article 696-127 (propre aux PED). In customs matters another Article is of relevance, see Art. 67bis Customs Code.

→ En matière douanière: Art. 67 bis - 2 code des douanes.

**(2) Surveillance of property and persons (exclusively in derogation: 706-73, 706-73-1 and 706-74)/La surveillance de biens et de personnes (exclusivement en dérogatoire: 706-73, 706-73-1 et 706-74)**

**(a) In criminal procedure matters/En matière de procédure pénale**

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**Art. 706-80 CPC<sup>[1]</sup>**

The judicial police officers and, under their authority, the judicial police agents, after informing the public prosecutor and unless this magistrate objects may extend to the whole of the national territory the surveillance of persons against whom there are one or more plausible grounds for suspecting them of having committed one of the crimes and offences falling within the scope of Articles 706-73, 706-73-1 or 706-74, or the surveillance of the routing or transport of objects, goods or products derived from the commission of these offences or used to commit them.

<sup>265</sup> **Art. 230-43 CPP La destruction des données**

Les enregistrements de données de localisation sont détruits, à la diligence du procureur de la République ou du procureur général, à l'expiration du délai de prescription de l'action publique.

Il est dressé procès-verbal de l'opération de destruction.

<sup>266</sup> **Art. 230-44 CPP La géolocalisation inapplicable à la victime**

Le présent chapitre n'est pas applicable lorsque les opérations de géolocalisation en temps réel ont pour objet la localisation d'un équipement terminal de communication électronique, d'un véhicule ou de tout autre objet dont le propriétaire ou le possesseur légitime est la victime de l'infraction sur laquelle porte l'enquête ou l'instruction ou la personne disparue au sens des articles 74-1 ou 80-4, dès lors que ces opérations ont pour objet de retrouver la victime, l'objet qui lui a été dérobé ou la personne disparue.

Dans les cas prévus au présent article, les opérations de géolocalisation en temps réel font l'objet de réquisitions conformément aux articles 60-1, 60-2, 77-1-1, 77-1-2, 99-3 ou 99-4.



The information prior to the extension of jurisdiction provided for in the first paragraph must be given, by any means, to the public prosecutor already seized and to the public prosecutor at the judicial court in whose jurisdiction the surveillance operations are likely to begin.

**Art. 706-80-1 CPC<sup>[2]</sup>**

Where there are one or more plausible grounds for suspecting persons of having committed one of the offences falling within the scope of Articles 706-73, 706-73-1 or 706-74, in the context of a surveillance operation, and where the needs of the investigation or enquiry so require, the judicial police officers and, under their authority the judicial police officers in charge of the investigation may, with the authorisation of the public prosecutor in charge of the investigation or the investigating judge, who shall give prior notice to the public prosecutor, ask any civil servant or public agent not to proceed with the control and questioning of these persons in order not to compromise the continuation of the investigation.

In the context of an operation to monitor the transport of objects, goods or products derived from the commission of one of the offences falling within the scope of Articles 706-73, 706-73-1 or 706-74 or used to commit them, and when the needs of the investigation or enquiry so require, the judicial police officers and, under their authority the judicial police officers in charge of investigations may, with the authorisation of the public prosecutor in charge of the investigation or the investigating judge, who shall give prior notice to the public prosecutor's office, ask any public official or agent not to proceed with the control and seizure of these objects, goods or products so as not to compromise the continuation of the investigations.

The authorisation of the public prosecutor or investigating judge, which may be given by any means, shall be mentioned, or placed in the file of the proceedings. The public prosecutor shall inform the public prosecutor at the Paris judicial court without delay of the granting of such authorisation.

**Art. 706-80-2 CPC<sup>[3]</sup>**


In the context of an operation to monitor the routing or transport of objects, goods or products derived from the commission of one of the offences falling within the scope of Articles 706-73, 706-73-1 or 706-74 or used to commit them, and when the needs of the investigation or inquiry so require, the judicial police officers and, under their authority, the judicial police officers in charge of investigations may, with the authorisation of the public prosecutor or investigating judge hearing the case, who shall give prior notice to the public prosecutor, deliver or issue these objects, goods or products in place of the postal service providers and freight operators, without being criminally liable.

On pain of nullity, the authorisation of the public prosecutor or the investigating judge shall be in writing and substantiated. This authorisation shall be placed in the file of

the proceedings and the authorised acts may not constitute incitement to commit an offence.

**(b) In customs matters/En matière douanière**

**38** *Customs Investigation measures 3*

	<p><b>Investigation powers</b></p>
<p><i>Procédure spéciale d'enquête:</i> Articles 67bis I and VIII of the Customs Code and Article 67bis-, 67bis-4 of the Customs Code. A</p> <p><b>Art. 67bis<sup>267</sup> Customs Code</b></p> <p>I.- Without prejudice to the application of the provisions of Articles 60, 61, 62, 63, 63a, 63b and 64, in order to establish customs offences, if the penalty incurred is equal to or greater than two years' imprisonment, customs officers authorised by the Minister responsible for customs under conditions laid down by decree may carry out surveillance throughout the national territory, after informing the public prosecutor and unless this magistrate objects, to the surveillance of persons against whom there are one or more plausible reasons to suspect them of being the perpetrators of a customs offence or of having participated as accomplices or interested parties in the fraud within the meaning of Article 399.</p> <p>[...]</p> <p>VIII.- When the surveillance provided for in I must be continued in a foreign State, it is authorized by the public prosecutor. The minutes of execution of the observation or</p>	

<sup>267</sup> **Art. 67bis Code des douanes**

I.- Sans préjudice de l'application des dispositions des articles 60,61,62,63,63 bis, 63 ter et 64, afin de constater les délits douaniers, si la peine encourue est égale ou supérieure à deux ans d'emprisonnement, les agents des douanes habilités par le ministre chargé des douanes dans des conditions fixées par décret peuvent procéder sur l'ensemble du territoire national, après en avoir informé le procureur de la République et sauf opposition de ce magistrat, *à la surveillance de personnes* contre lesquelles il existe une ou plusieurs raisons plausibles de les soupçonner d'être les auteurs d'un délit douanier ou d'y avoir participé comme complices ou intéressés à la fraude au sens de l'article 399.

[...]

VIII.- Lorsque *la surveillance prévue au I doit être poursuivie dans un Etat étranger*, elle est autorisée par le procureur de la République. Les procès-verbaux d'exécution de l'observation ou rapports y afférents ainsi que l'autorisation d'en poursuivre l'exécution sur le territoire d'un Etat étranger sont versés au dossier de la procédure. Avec l'accord préalable du ministre de la justice saisi d'une demande d'entraide judiciaire à cette fin, les agents des douanes étrangers peuvent poursuivre sur le territoire de la République, sous la direction d'agents des douanes français, des opérations d'infiltration conformément aux dispositions du présent article. L'accord du ministre de la justice peut être assorti de conditions. L'opération doit ensuite être autorisée par le procureur de la République près le tribunal judiciaire de Paris, dans les conditions prévues au II.

Le ministre de la justice ne peut donner son accord que si les agents étrangers sont affectés dans leur pays à un service spécialisé et exercent des missions similaires à celles des agents nationaux spécialement habilités mentionnés au II.

Avec l'accord des autorités judiciaires étrangères, les agents des douanes étrangers mentionnés au deuxième alinéa du présent VIII peuvent également, conformément aux dispositions du présent article, participer sous la direction d'agents des douanes français à des opérations d'infiltration conduites sur le territoire de la République dans le cadre d'une procédure douanière nationale. [...]

related reports as well as the authorization to continue the execution on the territory of a foreign State are placed in the file of the procedure.

With the prior agreement of the Minister of Justice seized of a request for mutual legal assistance for this purpose, foreign customs officers may pursue on the territory of the Republic, under the direction of French customs officers, operations of infiltration in accordance with the provisions of this article. The consent of the Minister of Justice may be subject to conditions. The operation must then be authorized by the public prosecutor at the Paris court, under the conditions provided for in II.

The Minister of Justice can only give his consent if the foreign agents are assigned to a specialized service in their country and carry out missions similar to those of the specially authorized national agents mentioned in II.

With the agreement of the foreign judicial authorities, the foreign customs officers mentioned in the second paragraph of this VIII may also, in accordance with the provisions of this article, participate under the direction of French customs officers in undercover operations conducted on the territory of the Republic within the framework of a national customs procedure.

#### **Art. 67bis-3<sup>268</sup> Customs Code**

When there are one or more plausible reasons to suspect persons of having committed a customs offense for which the penalty of imprisonment incurred is equal to or greater than two years or of having participated therein as accomplices or interested parties in the fraud within the meaning of article 399, within the *framework of a surveillance operation*, and when the necessities of the investigation require it, the customs agents authorized by the minister in charge of customs under the conditions fixed by decree may, on the whole of the national territory, with the authorization of the public prosecutor at the judicial court in whose jurisdiction the surveillance operations are likely to begin, to ask any civil servant or public agent not to carry out the control and arresting these people so as not to compromise the continuation of the investigations.

<sup>268</sup> **Art. 67bis-3 Codes des douanes**

Lorsqu'il existe une ou plusieurs raisons plausibles de soupçonner des personnes d'avoir commis un délit douanier dont la peine d'emprisonnement encourue est égale ou supérieure à deux ans ou d'y avoir participé comme complices ou intéressées à la fraude au sens de l'article 399, dans le cadre d'une opération de surveillance, et lorsque les nécessités de l'enquête l'exigent, les agents des douanes habilités par le ministre chargé des douanes dans des conditions fixées par décret peuvent, sur l'ensemble du territoire national, avec l'autorisation du procureur de la République près le tribunal judiciaire dans le ressort duquel les opérations de surveillance sont susceptibles de débiter, demander à tout fonctionnaire ou agent public de ne pas procéder au contrôle et à l'interpellation de ces personnes afin de ne pas compromettre la poursuite des investigations.

Dans le cadre d'une opération de surveillance de l'acheminement ou du transport des objets, biens ou produits tirés de la commission d'un délit douanier ou servant à le commettre, lorsque la peine d'emprisonnement encourue est égale ou supérieure à deux ans, et lorsque les nécessités de l'enquête l'exigent, les agents des douanes habilités par le ministre chargé des douanes dans des conditions fixées par décret peuvent, sur l'ensemble du territoire national, avec l'autorisation du procureur de la République près le tribunal judiciaire dans le ressort duquel les opérations de surveillance sont susceptibles de débiter, demander à tout fonctionnaire ou agent public de ne pas procéder au contrôle et à la saisie de ces objets, biens ou produits afin de ne pas compromettre la poursuite des investigations. L'autorisation du procureur de la République, qui peut être donnée par tout moyen, est mentionnée ou versée au dossier de la procédure. Le procureur de la République informe sans délai le procureur de la République près le tribunal judiciaire de Paris de la délivrance de cette autorisation.

As part of an operation to monitor the delivery or transport of objects, goods or products derived from the commission of a customs offense or used to commit it, when the prison sentence incurred is equal to or greater than two years, and when the necessities of the investigation require it, the customs agents authorized by the minister in charge of customs under conditions fixed by decree can, on the whole of the national territory, with the authorization of the public prosecutor near the judicial court in whose jurisdiction the surveillance operations are likely to begin, ask any civil servant or public agent not to carry out the control and seizure of these objects, goods or products in order not to compromise the pursuit of the investigations .


The authorization of the public prosecutor, which can be given by any means, is mentioned, or placed in the file of the procedure. The public prosecutor immediately informs the public prosecutor at the Paris court of the issue of this authorization.

**Art. 67-bis-4<sup>269</sup> Customs Code**

As part of an operation to monitor the delivery or transport of objects, goods or products derived from the commission of a customs offense or used to commit it, when the prison sentence incurred is equal to or greater than two years, and when the necessities of the investigation require it, the customs agents authorized by the minister in charge of customs under conditions fixed by decree can, on the whole of the national territory, with the authorization of the public prosecutor near the judicial court within the jurisdiction of which surveillance operations are likely to begin, deliver or deliver in place of postal service providers and freight operators these objects, goods or products, without being criminally liable.

On pain of nullity, the authorization of the public prosecutor is written and motivated. This authorization is placed in the file of the procedure and the authorized acts cannot constitute an incitement to commit an offence.

**ff. Any other measure(s) in the EDP's Member State/*Les mesures nationales supplémentaires/ Art. 30 § 4***

 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.

<sup>269</sup> **Art. 67-bis-4 Code des douanes**

Dans le cadre d'une opération de surveillance de l'acheminement ou du transport des objets, biens ou produits tirés de la commission d'un délit douanier ou servant à le commettre, lorsque la peine d'emprisonnement encourue est égale ou supérieure à deux ans, et lorsque les nécessités de l'enquête l'exigent, les agents des douanes habilités par le ministre chargé des douanes dans des conditions fixées par décret peuvent, sur l'ensemble du territoire national, avec l'autorisation du procureur de la République près le tribunal judiciaire dans le ressort duquel les opérations de surveillance sont susceptibles de débiter, livrer ou délivrer à la place des prestataires de services postaux et des opérateurs de fret ces objets, biens ou produits, sans être pénalement responsables.

A peine de nullité, l'autorisation du procureur de la République est écrite et motivée. Cette autorisation est versée au dossier de la procédure et les actes autorisés ne peuvent constituer une incitation à commettre une infraction.

**(1) Checks, verifications and identity records (art. 78-1 to 78-7 CPP)/*Des contrôles, des vérifications et des relevés d'identité (art. 78-1 à 78-7 CPP)***

**(aa) In criminal procedure matters/*en matière de procédure pénale***

Applicable before the opening or during a preliminary or flagrante investigation/*Appliquable avant l'ouverture ou pendant une enquête préliminaire ou de flagrance.* 39

**Art. 78-1 CPC<sup>270</sup> [Basic conditions for the following measures]**

The application of the rules laid down in this Chapter shall be subject to review by the judicial authorities referred to in Articles 12 and 13.

**Art. 78-2 CPC<sup>271</sup> [Substantive conditions and requirements]**

Any person in the national territory must agree to undergo an identity check carried out under the conditions and by the police authorities referred to in the following articles.

Judicial police officers and, on the order and under their responsibility, the judicial police officers and deputy judicial police officers mentioned in articles 20 and 21-1 ° may invite to justify, by any means, of his identity any person in respect of whom there are one or more plausible reasons to suspect:

- that he has committed or attempted to commit an offence;
- or that it is preparing to commit a crime or misdemeanour;
- or that it is likely to provide information useful to the investigation in the event of a crime or misdemeanour;
- or that he has violated the obligations or prohibitions to which he is subject in the context of a judicial review, a measure of house arrest with electronic surveillance, a sentence or a measure followed by the judge responsible for the enforcement of sentences;

*[Judicial police control when there is a suspicion para 2 to 6)/(Contrôle de police judiciaire quand il y a soupçon al. 2 à 6)]* or that it is the subject of investigations ordered by a judicial authority.

*[(Judicial police control at the request of the public prosecutor - operations coup de poing al. 7) /(Contrôle de police judiciaire sur requisition du procureur – opérations coup de poing al. 7)]* Upon written requisitions of the public prosecutor for the purpose of investigating and prosecuting offences specified by him, the identity of any person may also be checked, in the same manner, in the places and for a period of time determined by that magistrate. The fact that the identity check reveals offences other than those referred to in the requisitions of the public prosecutor does not constitute a ground for nullity of the incidental proceedings.

<sup>270</sup> Art. 78-1 CPC Les conditions organiques.

<sup>271</sup> Art. 78-2 CPP Les conditions du fond.

*[(Preventive police control para. 8) / (Contrôle de police préventif al. 8)]* The identity of any person, whatever his conduct, may also be checked, in accordance with the procedures laid down in the first subparagraph, to prevent a breach of public order, in particular the security of persons or property.

In an area between the land border of France with the States Parties to the Convention signed in Schengen on 19 June 1990 and a line drawn 20 kilometres below, as well as in the areas accessible to the public of ports, airports and railway or bus stations open to international traffic and designated by decree and in the vicinity of such stations, for the prevention and investigation of offences related to cross-border crime, the identity of any person may also be checked, in accordance with the procedures laid down in the first subparagraph, in order to verify compliance with the obligations to hold, carry and present documents and documents laid down by law. Where such checks take place on board a train operating on an international route, it may be carried out on the portion of the journey between the border and the first stop which is beyond twenty kilometres of the border. However, on those railway lines operating an international link and having particular service characteristics, the check may also be carried out between that stop and a stop situated within the limit of the following fifty kilometres. These lines and stops are designated by ministerial order. Where there is a motorway section starting in the area referred to in the first sentence of this subparagraph and the first motorway toll is beyond the 20-kilometre line, the check may also take place until that first toll on the parking areas as well as at the place of that toll and the adjoining parking areas. The tolls concerned by this provision are designated by decree. The fact that the identity check reveals an offence other than that of non-compliance with the abovementioned obligations does not constitute a ground for nullity of the incidental proceedings. For the purposes of this paragraph, the control of the obligations to hold, carry and present the documents and documents provided for by law may be carried out only for a period not exceeding twelve consecutive hours in the same place and may not consist in a systematic control of the persons present or circulating in the zones or places mentioned in the same paragraph.

Within a maximum radius of ten kilometres around ports and airports constituting border crossing points within the meaning of Article 2 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), designated by order on account of the importance of their attendance and their vulnerability, the identity of any person may be checked, for the purpose of investigating and preventing offences related to cross-border crime, in accordance with the procedures laid down in the first paragraph of this Article, with a view to verifying compliance with the obligations to hold, carry and present documents and documents laid down by law. The order referred to in the first sentence of this subparagraph shall fix the radius around the border crossing point within the limit of which checks may be carried out. Where there

is a motorway section starting in the area referred to in the same first sentence and the first motorway toll is beyond the limits of that zone, control may also take place until that first toll on the parking areas as well as at the place of that toll and the adjoining parking areas. The tolls concerned by this provision are designated by decree. The fact that the identity check reveals an offence other than that of non-compliance with the above-mentioned obligations does not constitute a ground for nullity of the incidental proceedings. For the purposes of this paragraph, the control of the obligations to hold, carry and present the documents and documents provided for by law may be carried out only for a period not exceeding twelve consecutive hours in the same place and may not consist in a systematic control of the persons present or circulating in the areas mentioned in this paragraph.

In an area between the land borders or the coastline of the department of French Guiana and a line drawn twenty kilometres below, and on a line drawn five kilometres on either side, as well as on national road 2 in the territory of the municipality of Regina, the identity of any person may be checked, in accordance with the procedures laid down in the first paragraph, in order to verify compliance with the obligations to hold, carry and present the documents and documents provided for by law.

The identity of any person may also be checked, in accordance with the procedures provided for in the first paragraph of this article, in order to verify compliance with the obligations to hold, carry and present the documents and documents provided for by law:

1 ° In Guadeloupe, in an area between the coast and a line drawn one kilometer below, as well as on the territory of the municipalities crossed by the national roads 1, 2, 4, 5, 6, 9, 10 and 11;


2 ° In Mayotte throughout the territory;

3 ° In Saint-Martin, in an area between the coast and a line drawn one kilometer below;

4 ° In Saint-Barthélemy, in an area between the coast and a line drawn one kilometer below;

***[(Transnational control paras 9-17) / (Contrôle transnational al. 9 à 17)]*** 5 ° In Martinique, in an area between the coast and a line drawn one kilometer below, as well as in an area of one kilometer on either side of the national road 1 which crosses the communes of Sainte-Marie, La Trinité, Le Robert and Le Lamentin, of the national road 2 which crosses the communes of Saint-Pierre, Le Carbet, Le Morne-Rouge, L'Ajoupa-Bouillon and Basse-Pointe, of the national road 3 which crosses the communes of Le Morne-Rouge, L'Ajoupa-Bouillon, Basse-Pointe, Fonds-Saint-Denis and Fort-de-France, of the national road 5 which crosses the communes of Le Lamentin, Ducos, Rivière-Salée, Sainte-Luce, Rivière-Pilote and Le Marin, of the national road 6 which crosses the communes of Ducos, Le Lamentin, Le Robert, Le François and Le Vauclin, Rivière-Salée, Sainte-Luce, Rivière-Pilote and Le Marin and the departmental road 1 which crosses the communes of Le Robert, Le François and Le Vauclin.

**(bb) In customs matters/En matière douanière****40 Customs Investigation measures 4**

	<b>Investigation powers → (Special customs investigation procedure/ Section 6: Présentation des titres et documents d'identité (Articles 67 à 67-1 + 67c) Codes des douanes</b>
<p>→ In customs matters: presentation of identity papers and documents (Art. 67 to 67-1) and control of documents Art. 67c.<sup>272</sup></p>	
<p><b>Art. 67<sup>273</sup> Customs Code</b>  Customs officers can check the identity of persons entering or leaving the customs territory, or circulating within the customs radius.</p>	
<p><b>Art. 67-1<sup>274</sup> Customs Code</b>  Customs officers are empowered to identify the identity of persons in order to write the reports provided for by this code.  <sup>275</sup>If the person refuses or finds it impossible to prove his identity, the customs officers vested with the functions of head of post or the officials designated by them holding the grade of controller or a higher grade may report it to any judicial police officer of the national police or the national gendarmerie with territorial jurisdiction, who can then order them without delay to present the offender to him immediately for the purpose of identity verification under the conditions provided for in article 78 -3 of the criminal procedure code. The period provided for in the third paragraph of this article runs from the statement of identity mentioned in the first paragraph of this article.  The results of this identity verification are communicated without delay to the customs officers.</p>	

<sup>272</sup> En matière douanière: présentation des titres et documents d'identité (art. 67 à 67-1) et les contrôle des titres Art. 67 quater.

<sup>273</sup> **Art. 67 Codes des douanes**

Les agents des douanes peuvent contrôler l'identité des personnes qui entrent dans le territoire douanier ou qui en sortent, ou qui circulent dans le rayon des douanes.

<sup>274</sup> **Art. 67-1 Codes des douanes**

Les agents des douanes sont habilités à relever l'identité des personnes afin de rédiger les procès-verbaux prévus par le présent code.

<sup>275</sup> Si la personne refuse ou se trouve dans l'impossibilité de justifier de son identité, les agents des douanes investis des fonctions de chef de poste ou les fonctionnaires désignés par eux titulaires du grade de contrôleur ou d'un grade supérieur peuvent en rendre compte à tout officier de police judiciaire de la police nationale ou de la gendarmerie nationale territorialement compétent, qui peut alors leur ordonner sans délai de lui présenter sur-le-champ le contrevenant aux fins de vérification d'identité dans les conditions prévues à l'article 78-3 du code de procédure pénale. Le délai prévu au troisième alinéa de cet article court à compter du relevé d'identité mentionné au premier alinéa du présent article.

Les résultats de cette vérification d'identité sont communiqués sans délai aux agents des douanes.



(2) **Examinations, hearings and confrontations /*Les interrogatoires, auditions et confrontations***

(a) **The measures/*Les mesures***

(aa) **Preliminary investigation/*Enquête préliminaire***

**Art. 77 CPP<sup>276</sup> [Free hearing, simple hearing, GAV (refers to flagrancy texts)]**

The provisions of articles 61-1 and 61-2 relating to the hearing of a suspected person or a victim as well as those of articles 62-2 to 64-1 relating to police custody are applicable during the Preliminary investigation.

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(bb) **Flagrancy Investigation/*Enquête de flagrancy***

**Art. 62 CPP<sup>277</sup> Simple hearing (witness, no suspicion)**

Persons against whom there is no plausible reason to suspect that they have committed or attempted to commit an offence shall be heard by investigators without being subject to a measure of coercion.

However, if the needs of the investigation so warrant, such persons may be held under duress for the time strictly necessary for their hearing, without this duration exceeding four hours.

If, during the hearing of a person freely heard pursuant to the first paragraph of this article, it appears that there are reasonable grounds to suspect that he has committed or attempted to commit an offence, that person must be heard pursuant to article 61-1 and the information provided for in 1 ° to 6 ° of the same article are then notified to him without delay, unless his detention in police custody is necessary pursuant to article 62-2.

If, during the hearing of a person detained pursuant to the second paragraph of this article, it appears that there are reasonable grounds to suspect that he has committed or attempted to commit a crime or offence punishable by imprisonment, he may be kept under duress at the disposal of investigators only under the regime of police custody. His placement in police custody shall then be notified to him under the conditions laid down in article 63-1.

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**Art. 61-1 CPP<sup>278</sup> [Free hearing]** („Any person in respect of whom there are one or more plausible reasons for suspecting that he or she has participated, as a perpetrator or accomplice, in the commission of a crime or an offence punishable by imprisonment“, no coercion)

<sup>276</sup> **Art. 77 CPP** Audition libre, audition simple, GAV (renvoie aux textes de la flagrancy)

Les dispositions des articles 61-1 et 61-2 relatives à l'audition d'une personne soupçonnée ou d'une victime ainsi que celles des articles 62-2 à 64-1 relatives à la garde à vue sont applicables lors de l'enquête préliminaire.

<sup>277</sup> **Art. 62 CPP Audition simple (témoin, pas de suspicion)**

<sup>278</sup> **Art. 61-1 CPP Audition libre** (« Toute personne à l'égard de laquelle existent une ou plusieurs raisons plausibles de soupçonner qu'elle a participé, en tant qu'auteur ou complice, à la commission d'un crime ou d'un délit puni d'emprisonnement », pas de coercion)

Without prejudice to the specific guarantees applicable to minors, a person in respect of whom there are reasonable grounds to suspect that he has committed or attempted to commit an offence may be heard freely on these facts only after having been informed:

1° Of the alleged classification, date and place of the offence he is suspected of having committed or attempted to commit;

2° The right to leave at any time the premises where it is heard;

3° Where applicable, the right to be assisted by an interpreter;

4° The right to make statements, to answer questions put to him or to remain silent;

5° If the offence for which he is heard is a crime or misdemeanour punishable by a prison sentence, the right to be assisted during his hearing or confrontation, according to the modalities provided for in articles 63-4-3 and 63-4-4, by a lawyer chosen by him or, at his request, appointed ex officio by the President of the Bar Association; he is informed that the costs will be borne by him unless he meets the conditions for access to legal aid, which are reminded to him by any means; he may expressly agree to continue the hearing without the presence of his lawyer;

6° The possibility of benefiting, if necessary free of charge, from legal advice in a structure of access to the law.

The notification of the information given pursuant to this Article shall be recorded in the minutes.

If the conduct of the investigation so permits, where a written summons is sent to the person with a view to his hearing, that summons shall indicate the offence of which he is suspected, his right to be assisted by a lawyer and the conditions for access to assistance in the intervention of the lawyer in non-judicial proceedings and to legal aid, the procedures for appointing a lawyer of his own motion and the places where he can obtain advice. legal before this hearing.

This article shall not apply if the person has been brought under duress by the police before the judicial police officer.

**Art. 61- 2 CPP**

If the victim is confronted with a person heard under the conditions provided for in article 61-1 for a crime or misdemeanour punishable by imprisonment, he may also request to be assisted, in accordance with the procedures provided for in article 63-4-3, by a lawyer chosen by him or by his legal representative if he is a minor, or, at his request, designated by the President of the Bar.

The victim is informed of this right before the confrontation takes place. She is also informed that the costs will be borne by her unless she fulfils the conditions for access to legal aid.

**Art. 62-2 CPP *opportunité de la garde à vue* / **Police custody**** („A person against whom there are one or more plausible reasons to suspect that he has committed or attempted to commit a crime or an offence punishable by imprisonment“ + coercion): /*Garde à vue* (« *Une personne à l'encontre de laquelle il existe une ou plusieurs raisons plausibles de soupçonner qu'elle a commis ou tenté de commettre un crime ou un délit puni d'une peine d'emprisonnement* » + coercion):

Police custody is a coercive measure decided by a judicial police officer, under the supervision of the judicial authority, by which a person against whom there are one or more plausible grounds for suspecting that he has committed or attempted to commit a crime or misdemeanour punishable by imprisonment is kept at the disposal of investigators.

This measure must be the only means of achieving at least one of the following objectives:

- 1 ° Allow the execution of investigations involving the presence or participation of the person;
- 2 ° Guarantee the presentation of the person before the public prosecutor so that this magistrate can assess the follow-up to be given to the investigation;
- 3 ° Prevent the person from modifying the evidence or material clues;
- 4 ° Prevent the person from putting pressure on witnesses or victims as well as on their family or relatives;
- 5 ° Prevent the person from consulting with other persons likely to be his co-perpetrators or accomplices;
- 6° Guarantee the implementation of measures to put an end to the crime or offence.

**Art. 62-3 CPP The formal conditions of the GAV/ *Les conditions de forme de la GAV***

Police custody shall be carried out under the supervision of the public prosecutor, without prejudice to the prerogatives of the judge of liberty and detention provided for in articles 63-4-2 and 706-88 to 706-88-2 concerning the extension of the measure beyond the forty-eighth hour and the postponement of the intervention of the lawyer.

The public prosecutor shall assess whether the person's continued detention and, if necessary, the extension of this measure are necessary for the investigation and proportionate to the seriousness of the acts that the person is suspected of having committed or attempted to commit.

It ensures the safeguarding of the rights recognized by law to the person in police custody.

He may at any time order that the person in police custody be brought before him or released.

**Art. 63 CPP The form conditions / The duration of the GAV/ *Les conditions de forme/ La durée de la GAV***

I. Only a judicial authority may, ex officio or on the instructions of the public prosecutor, place a person in police custody.

From the beginning of the measure, the judicial police officer informs the public prosecutor, by any means, of the placement of the person in police custody. He shall inform him of the reasons justifying, pursuant to article 62-2, such placement and shall inform him of the classification of the facts which he has notified to the person pursuant to 2° of article 63-1. The public prosecutor may modify this classification; in this case, the new qualification shall be notified to the person under the conditions laid down in the same Article 63-1.

II. The duration of police custody may not exceed twenty-four hours.

However, police custody may be extended for a further period of not more than twenty-four hours, with the written and reasoned authorisation of the public prosecutor, if the offence which the person is suspected of having committed or attempted to commit is a crime or offence punishable by a term of imprisonment of one year or more and if the extension of the measure is the only means of achieving at least one of the objectives mentioned. 1° to 6° of article 62-2 or to allow, in cases where there is no premises in the court falling under article 803-3, the presentation of the person before the judicial authority.

The public prosecutor may make his authorization subject to the presentation of the person before him. This presentation may be made by the use of an audiovisual means of telecommunication.

III. If, before being placed in police custody, the person has been apprehended or has been the subject of any other measure of constraint for these same acts, the time of the beginning of police custody shall be fixed, for compliance with the periods provided for in II of this article, at the time from which the person was deprived of liberty. If the person has not been the subject of a prior measure of constraint, but his detention in police custody is carried out in the immediate extension of a hearing, this time shall be fixed at the time of the beginning of the hearing.

If a person has already been taken into custody for the same acts, the duration of previous periods of police custody is deducted from the duration of the measure.

**(cc) If a hybrid investigation is opened (IJ powers)/*Si ouverture d'une enquête hybride*****Art. 102 CPP [The hearings of witnesses alone or in the context of a confrontation (no suspicions)] /*Les auditions des témoins seuls ou dans le cadre d'une confrontation (pas de soupçons)***

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Witnesses shall be heard, either separately and without the presence of the parties, or during confrontations between them or with one or other of the parties, by the investigating judge, assisted by his or her clerk; a record shall be made of their statements.

The investigating judge may call upon an interpreter of full age, excluding his clerk and the witnesses. The interpreter, if not sworn in, shall take an oath to assist in the administration of justice in his honour and conscience.

(b) the court may, in accordance with the law of the country in which the court is sitting, order the execution of a judgment of the court of first instance or of a decision of the court of first instance. The interpreter, if not sworn in, shall take an oath to assist in the administration of justice in honour and conscience. Any technical device may also be used to communicate with the witness. If the deaf witness can read and write, the investigating judge may also communicate with him or her in writing.

**Art. 103 CPP [The oath of the witnesses heard] *Le serment des témoins auditionnés***

The witnesses take an oath to tell the whole truth and nothing but the truth. The judge asks them for their surname, first names, age, status, profession, residence, whether they are relatives or allies of the parties and to what degree or whether they are in their service. The request and the answer are mentioned.

**Art. 109 al. 3 CPP [The possibility of compelling the witness to come]/*La possibilité de contraindre le témoin à venir***

If the witness does not appear or refuses to appear, the investigating judge may, on the request of the public prosecutor, force him or her to do so.

Assisted witness hearings (Any person named in a complaint, implicated by the victim or a witness, or against whom there is evidence making it likely that he or she may have participated, as a perpetrator or accomplice, in the commission of offences): (art. 113-1 to 113-8 CPP)

**Art. 113-1 CPP** Any person referred to by name by an introductory indictment or by a supplementary indictment and who is not indicted can only be heard as an assisted witness.

**Art. 113-2** Any person named in a complaint or questioned by the victim may be heard as an assisted witness. When she appears before the investigating judge, she must be heard in this capacity if she so requests; if the person is specifically targeted by a complaint with civil action, he is advised of this right when he appears before the investigating judge.

Any person implicated by a witness or against whom there are indications making it likely that he or she may have participated, as a perpetrator or accomplice, in the commission of the offenses referred to the investigating judge may be heard as an assisted witness.

**Art. 113-3** The assisted witness benefits from the right to be assisted by a lawyer who is informed in advance of the hearings and has access to the file of the procedure, in accordance with the provisions of Articles 114 and 114-1 . This lawyer is chosen by the assisted witness or appointed ex officio by the President of the Bar if the person concerned so requests.

The assisted witness also benefits, where applicable, from the right to interpretation and translation of the essential documents in the file.

The assisted witness may ask the investigating judge, in accordance with the procedures provided for in article 82-1, to be confronted with the person or persons who implicate him or make requests for annulment on the basis of article 173.

**Art. 113-4** During the first hearing of the assisted witness, the investigating judge establishes his identity, informs him of the introductory indictment, the complaint or the denunciation, informs him of his right to make statements, to answer the questions which are asked or to remain silent as well as the rights mentioned in Article 113-3 and proceed with the formalities provided for in the last two paragraphs of Article 116 Mention of this information is made in the minutes.

The investigating judge may, by sending a registered letter, inform a person that he will be heard as an assisted witness. This letter includes the information provided for in the previous paragraph. It specifies that the name of the lawyer chosen or the request for appointment of a court-appointed lawyer must be communicated to the clerk of the investigating judge.

**Art. 113-5** The assisted witness cannot be placed under judicial control, under house arrest with electronic monitoring or in pre-trial detention, nor be the subject of a dismissal order or an indictment.

**Art. 113-6** At any time during the procedure, the assisted witness may, during his hearing or by registered letter with acknowledgment of receipt, ask the investigating judge to be placed under examination; the person is then considered to be under investigation and benefits from all the rights of defense as soon as he requests it or sends the registered letter with acknowledgment of receipt.

The provisions of article 105 are not applicable to assisted witnesses.

**Art. 113-7** The assisted witness does not take an oath.

**Art. 113-8** If he considers that serious or concordant indications have arisen during the proceedings justifying the indictment of the assisted witness, the investigating judge proceeds with this indictment by applying the provisions of the eighth and ninth paragraphs of the article 116 during an interrogation carried out in the forms provided for in article 114.

He can also proceed with this indictment by sending the person a registered letter specifying each of the facts of which he is accused, as well as their legal qualification, and informing him of his right to make requests for acts or requests for cancellation, as well as the foreseeable deadline for completion of the procedure, in accordance with the provisions of the eighth and ninth paragraphs of Article 116.

This registered letter may be sent at the same time as the notice of end of information provided for in article 175. It then informs the person of his right to formulate requests for acts or requests for cancellation within a period of one month if a person under investigation is detained and three months in other cases.

In the cases referred to in the second and third paragraphs of this article, the person is also informed that if he asks to be heard again by the investigating judge, the latter is required to proceed with his interrogation.

**Nota bene:** First appearance of the accused (*première comparution du mis en examen*) (art. 80-1 CPP, the examining magistrate may only examine persons against whom there are serious or concordant evidence making it likely that they may have participated, as perpetrator or accomplice, in the commission of the offences referred to him): art. 80-2 CPP + art. 116 CPP and 116-1 CPP

**Art. 80-1 CPP** On pain of nullity, the examining magistrate may only examine persons against whom there is serious or corroborating evidence making it likely that they may have participated, as perpetrator or accomplice, in the commission of the offences referred to him.

The investigating judge may not proceed with the examination unless he or she has first heard the person's observations or given him or her the opportunity to make them, assisted by his or her lawyer, either under the conditions provided for in Article 116 relating to the first appearance examination, or as an assisted witness in accordance with the provisions of **Articles 113-1 to 113-8**.

The examining magistrate may only proceed with the examination of the person if he or she considers that he or she cannot resort to the assisted witness procedure.

**Art. 80-2 CPP**<sup>279</sup>

The investigating judge may inform a person by registered letter that he is summoned, within a period which may not be less than ten days or more than two months, for his first appearance to be made under the conditions laid down in Article 116. This letter indicates the date and time of the convocation. It informs the person of each of the facts before the magistrate and for which the indictment is envisaged, while specifying their legal classification. It shall inform the person that he has the right to choose a lawyer or to request that one be appointed to him of his own motion, such choice or request to be addressed to the registry of the investigating judge. It specifies that the indictment can only take place after the first appearance of the person before the investigating judge.

The investigating judge may also have the summons notified by a judicial police officer. This notification shall include the particulars provided for in the preceding paragraph; it shall be evidenced by a report signed by the person who receives a copy of it.

The lawyer chosen or appointed shall be summoned under the conditions laid down in Article 114; he shall have access to the file of the procedure under the conditions laid down in that Article.

**Art. 116 CPP**<sup>280</sup>

When considering indicting a person who has not already been heard as an assisted witness, the investigating judge shall make his first appearance in accordance with the procedures laid down in this Article.

After informing him, if necessary, of his right to be assisted by an interpreter, the investigating judge shall ascertain the identity of the person and expressly inform him, specifying their legal classification, of each of the facts before him and for which indictment is envisaged. Mention of these facts and their legal classification shall be recorded in the minutes.

<sup>279</sup> Art. 80-2 CPP.

<sup>280</sup> Art. 116 CPP.



The person shall also be informed, where appropriate, of his or her right to the translation of the essential documents in the file.

When the provisions of article 80-2 have been applied and the person is assisted by a lawyer, the investigating judge, after informing him of his right to make statements, to answer questions put to him or to remain silent, shall conduct his interrogation; the person's lawyer may submit his observations to the investigating judge.

In other cases, the investigating judge shall inform the person of his right to choose a lawyer or to request that one be appointed to him *ex officio*. The lawyer chosen or, in the case of a request for a commission of office, the President of the Bar Association shall be informed thereof by any means and without delay. If the chosen lawyer cannot be contacted or cannot travel, the person is advised of his or her right to request that one be appointed *ex officio* to assist him or her during the first appearance. The lawyer may consult the file immediately and communicate freely with the person. The investigating judge then informs the person that he has the right either to make statements, to answer questions put to him, or to remain silent. This warning shall be mentioned in the minutes. The agreement to be questioned can only be given in the presence of a lawyer. The person's lawyer may also submit his observations to the investigating judge.

After having, where appropriate, taken the statements of the person or proceeded to his interrogation and heard the observations of his lawyer, the investigating judge notifies him:

-either that she is not indicted; the investigating judge then informs the person that he or she has the rights of the assisted witness;

-either that she is indicted; the investigating judge shall then inform the person of the facts or the legal classification of the acts of which he is accused, if these facts or qualifications differ from those already notified to him; he shall inform him of his rights to make requests for documents or applications for annulment on the basis of Articles 81, 82-1, 82-2, 156 and 173 during the course of the investigation and, if he has so requested, within one month or three months of sending the notice provided for in I of Article 175, subject to the provisions of article 173 (1).

If he considers that the foreseeable period for completion of the information is less than one year in correctional matters or eighteen months in criminal matters, the investigating judge shall inform the person of this foreseeable period and inform him that, at the end of the said period, he may request the closure of the proceedings in accordance with the provisions of article 175-1. Otherwise, it shall inform the person that he may request, pursuant to the same article, the closure of the proceedings on the expiry of a period of one year in correctional matters or eighteen months in criminal matters.

At the end of the first appearance, the person must declare to the investigating judge his personal address. It may, however, replace it with the address of a third party responsible for receiving the documents intended for it if it produces the latter's agreement. The declared address must be located, if the information takes place in metropolitan France,

in a metropolitan department or, if the information takes place in an overseas department, in that department. This declaration is made before the judge of liberty and detention when this magistrate, seized by the investigating judge, decides not to place the person in detention

The person is informed that he must report to the investigating judge until the payment of the information, by new declaration or by registered letter with acknowledgment of receipt, any change in the declared address. It is also advised that any service made at the last declared address will be deemed to have been made to itself. Mention of this notice, as well as of the declaration of address, shall be recorded in the minutes. These opinions are given by the liberty and detention judge when the latter decides not to place the person in detention.

**Art. 116-1 CPC**

In criminal matters, the interrogations of the persons under investigation carried out in the office of the investigating judge, including the interrogation at first appearance and the confrontations, are the subject of an audiovisual recording.

The recording may only be consulted, during the investigation or before the trial court, in the event of a dispute over the scope of the statements taken, by decision of the investigating judge or the trial court, at the request of the public prosecutor or of one of the parties. The last eight paragraphs of article 114 are not applicable. When a party requests consultation of the recording, this request is made and the investigating judge rules in accordance with the first two paragraphs of article 82-1 .

The fact, for any person, of broadcasting a recording made pursuant to this article is punishable by one year's imprisonment and a fine of 15,000 euros.

At the end of a period of five years from the date of the extinction of the public action, the recording is destroyed within a period of one month.

When the number of persons under investigation who must be questioned simultaneously, during the same procedure or in separate procedures, prevents the recording of all the interrogations, the investigating judge decides, with regard to the requirements of the investigation, which interrogations will not be recorded.

When the recording cannot be made due to a technical impossibility, this is mentioned in the interrogation report which specifies the nature of this impossibility.

A decree specifies, as necessary, the methods of application of this article.

- (b) **There are specific provisions regarding the „*témoign assisté*“ in Articles 113-1 to 113-8 of the French Code of Criminal Procedure**
- (c) **Specificity of police custody in matters of organised crime (only art. 706-73 CPP)/*Spécificité de la garde à vue en matière de criminalité organisée (seulement art. 706-73 CPP)***

**Nota bene:** Ø Derogatory investigations and appraisals: */Enquêtes et instruction dérogatoires*

**Art. 706-88 CPP<sup>281</sup>** (only for 706-73 CPP): The derogation i.e. special rules of police custody

For the application of Articles 63, 77 and 154, if the requirements of the investigation or inquiry relating to one of the offences falling within the scope of Article 706-73 so require, a person's custody may, exceptionally, be extended by two additional twenty-four-hour periods each.

These extensions shall be authorised, by a written and reasoned decision, either by the liberty and custody judge, at the request of the public prosecutor, or by the investigating judge.

The person in custody must be presented to the magistrate who rules on the extension prior to this decision. The second extension may, however, exceptionally be authorised without prior presentation of the person because of the requirements of the investigations in progress or to be carried out.

When the first extension is decided, the person in custody is examined by a doctor appointed by the public prosecutor, the investigating judge, or the judicial police officer. The doctor shall issue a medical certificate in which he or she shall, inter alia, state whether the person is fit to remain in police custody, which shall be placed in the file. The person is informed by the judicial police officer of the right to request a further medical examination. These medical examinations are legal. (b) a person who has been arrested or detained by the police for a period of at least one year shall be entitled to a fine of at least one hundred francs.

The court may, in accordance with the provisions of the first paragraph, decide that a single additional forty-eight-hour extension of the custody period shall be granted if the foreseeable duration of the investigations remaining to be carried out at the end of the first forty-eight hours of custody so warrants.

In the event of a dispute between the parties, the court may decide to extend the period of custody by one additional forty-eight hours, in accordance with the procedure laid down in the second paragraph, either to enable evidence to be collected or preserved, or to prevent a serious attack on the life, liberty or physical integrity of a person, for a maximum period of forty-eight hours or, in the case of an offence mentioned in 3° or 11° of the same article 706-73, for a maximum period of seventy-two hours.

<sup>281</sup> Art. 706-88 CPP (only for 706-73 CPP): la garde à vue dérogatoire.

The postponement of the lawyer's intervention until the end of the twenty-fourth hour is decided by the public prosecutor, ex officio or at the request of the judicial police officer. (b) the court may, in accordance with the law, order that a person who has been arrested or detained by the court be released from custody, or that a person who has been arrested or detained by the court be released from custody, or that a person who has been arrested or detained by the court be released from custody. (b) the person who is to be tried by the court of first instance shall be informed of the reasons for his or her decision. In all cases, the magistrate's decision, which shall be written and reasoned, shall specify the period for which the lawyer's intervention is deferred.

Where the sixth and seventh paragraphs of this article are applied, the lawyer shall have the rights provided for in Articles 63-4 and 63-4-1, the first paragraph of Article 63-4-2 and Article 63-4-3 from the moment he or she is authorised to intervene in police custody.

**! 2) Art. 30 § 2 Specific provisions for certain professionals (applicable to flagrante delicto, pre-trial and investigation)/Art. 30 § 2 Dispositions spécifiques pour certains professionnels (applicable à la flagrante, préliminaire et instruction)**

**Art. 109 al. 2 CPP<sup>282</sup> The confidentiality of journalists' sources**

Any journalist, heard as a witness on information gathered in the exercise of his or her activity, is free not to reveal its origin.

**(d) Infiltration/L'infiltration (Criminalité organisée)**

**Ø Derogatory investigations + instruction only (if the offence falls within these lists 706-73 CPP, 706-73-1 CPP): art. 706-81 to 706-87 CPP**

**(aa) In criminal procedure matters/En matière procédure pénale**

44 **Art. 706-81<sup>283</sup>**

When the requirements of the investigation or investigation concerning one of the crimes or misdemeanours falling within the scope of Articles 706-73 and 706-73-1 justify it, the public prosecutor or, after consulting of this magistrate, the examining magistrate seized may authorize that an undercover operation be carried out, under their respective supervision, under the conditions provided for in this section.

<sup>282</sup> **Art. 109 CPP Le secret des sources des journalistes**

Toute personne citée pour être entendue comme témoin est tenue de comparaître, de prêter serment et de déposer sous réserve des dispositions des articles 226-13 et 226-14 du code pénal

Tout journaliste, entendu comme témoin sur des informations recueillies dans l'exercice de son activité, est libre de ne pas en révéler l'origine.

<sup>283</sup> Art. 706-81 CPP.

Lorsque les nécessités de l'enquête ou de l'instruction concernant l'un des crimes ou délits entrant dans le champ d'application des articles 706-73 et 706-73-1 le justifient, le procureur de la République ou, après avis de ce magistrat, le juge d'instruction saisi peuvent autoriser qu'il soit procédé, sous leur contrôle respectif, à une opération d'infiltration dans les conditions prévues par la présente section.

Infiltration consists, for an officer or agent of the judicial police specially authorized under conditions fixed by decree and acting under the responsibility of a judicial police officer in charge of coordinating the operation, to monitor persons suspected of committing a crime or an offense by posing to these persons as one of their co-authors, accomplices or receivers. For this purpose, the judicial police officer or agent is authorized to use an assumed identity and to commit, if necessary, the acts mentioned in article 706-82. On pain of nullity, these acts cannot constitute an incitement to commit offences.

The infiltration is the subject of a report drawn up by the judicial police officer who coordinated the operation, which includes the elements strictly necessary for the observation of the offenses and which does not endanger the safety of the infiltrated agent and required persons within the meaning of article 706-82.

**Art. 706-82<sup>284</sup>**

Judicial police officers or agents authorized to carry out an infiltration operation may, throughout the national territory, without being criminally liable for these acts:

1° Acquire, hold, transport, deliver or deliver substances, goods, products, documents or information derived from the commission of offenses or used in the commission of these offences;

2° Use or make available to persons committing these offenses means of a legal or financial nature as well as means of transport, storage, accommodation, storage and telecommunications.

The exemption from liability provided for in the first paragraph is also applicable, for acts committed for the sole purpose of carrying out the infiltration operation, to the persons required by the officers or agents of the judicial police to allow this operation to be carried out.

**Art. 706-83<sup>285</sup>**

On pain of nullity, the authorization given pursuant to article 706-81 is issued in writing and must be specifically motivated.

It mentions the offense or offenses which justify the use of this procedure and the identity of the judicial police officer under whose responsibility the operation takes place.

This authorization sets the duration of the infiltration operation, which cannot exceed four months. The operation can be renewed under the same conditions of form and duration. The magistrate who authorized the operation may, at any time, order its interruption before the expiry of the fixed period.

The authorization is placed in the file of the procedure after completion of the infiltration operation.

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<sup>284</sup> Art. 706-82 CPP.

<sup>285</sup> Art. 706-83 CPP.

**Art. 706-84<sup>286</sup>**

The real identity of the officers or agents of the judicial police who carried out the infiltration under an assumed identity must not appear at any stage of the procedure.

Revealing the identity of these officers or agents of the judicial police is punishable by five years' imprisonment and a fine of 75,000 euros.

When this revelation has caused violence, blows and injuries against these people or their spouses, children and direct ascendants, the penalties are increased to seven years' imprisonment and a fine of 100,000 euros.

When this disclosure has caused the death of these persons or their spouses, children and direct ascendants, the penalties are increased to ten years' imprisonment and a fine of 150,000 euros, without prejudice, where applicable, to the application the provisions of Chapter I of Title II of Book II of the Penal Code.

**Art. 706-85<sup>287</sup>**

In the event of a decision to interrupt the operation or at the end of the period set by the decision authorizing the infiltration and in the absence of an extension, the undercover agent may continue the activities mentioned in article 706-82, without being criminally liable, for the time strictly necessary to allow him to cease his surveillance under conditions ensuring his safety, without this duration exceeding four months. The magistrate who issued the authorization provided for in article 706-81 is informed as soon as possible. If, at the end of the four-month period, the undercover agent cannot cease his operation under conditions ensuring his safety, this magistrate authorizes the extension for a maximum period of four months.

**Art. 706-86<sup>288</sup>**

Only the judicial police officer under whose responsibility the infiltration operation takes place can be heard as a witness to the operation. However, if it emerges from the report mentioned in the third paragraph of Article 706-81 that the person under investigation or appearing before the trial court is directly implicated by findings made by an agent who personally carried out the operations of infiltration, this person can ask to be confronted with this agent under the conditions provided for by article 706-61. The questions put to the undercover agent during this confrontation must not have the purpose or the effect of revealing, directly or indirectly, his true identity.

<sup>286</sup> Art. 706-84 CPP.

<sup>287</sup> **Art. 706-85 CPP**

En cas de décision d'interruption de l'opération ou à l'issue du délai fixé par la décision autorisant l'infiltration et en l'absence de prolongation, l'agent infiltré peut poursuivre les activités mentionnées à l'article 706-82, sans en être pénalement responsable, le temps strictement nécessaire pour lui permettre de cesser sa surveillance dans des conditions assurant sa sécurité sans que cette durée puisse excéder quatre mois. Le magistrat ayant délivré l'autorisation prévue à l'article 706-81 en est informé dans les meilleurs délais. Si, à l'issue du délai de quatre mois, l'agent infiltré ne peut cesser son opération dans des conditions assurant sa sécurité, ce magistrat en autorise la prolongation pour une durée de quatre mois au plus..

<sup>288</sup> Art. 706-86 CPP.

**Art. 706-87<sup>289</sup>**

No conviction may be pronounced on the sole basis of declarations made by the officers or agents of the judicial police who carried out an infiltration operation.

The provisions of this article are however not applicable when the officers or agents of the judicial police testify under their true identity.

**(bb) In custom matter/*En matière douanière****Customs Investigation measures 5*

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**Investigation powers** → Section 7: Special customs investigation procedures (Articles 67 bis to 67 bis-4)<sup>290</sup>

**Art. 67bis Customs Code<sup>291</sup>**

[...]

II.- When the investigations justify it, the public prosecutor may authorize the carrying out, under his control, of an infiltration operation under the conditions provided for by this article in order to:

1° To record the following offences:

- customs offenses of import, export or possession of substances or plants classified as narcotics, contraband of manufactured tobacco, alcohol and spirits;
- the offenses mentioned in article 414 when they relate to counterfeit goods, weapons or their parts, ammunition or explosives;
- the offenses provided for in article 415 ;

<sup>289</sup> Art. 706-87 CPP.

<sup>290</sup> En matière douanière infiltration, Procédure spéciale d'enquête: art. 67 II, III, IV, V, VI, VII, IX du code des douanes.

<sup>291</sup> **Art- 67bis Code des douanes**

[...] II.-Lorsque les investigations le justifient, le procureur de la République peut autoriser qu'il soit procédé, sous son contrôle, à une opération d'infiltration dans les conditions prévues par le présent article afin:

1° De constater les infractions suivantes:

- les infractions douanières d'importation, d'exportation ou de détention de substances ou plantes classées comme stupéfiants, de contrebande de tabac manufacturé, d'alcool et spiritueux ;
- les infractions mentionnées à l'article 414 lorsqu'elles portent sur des marchandises contrefaisantes, des armes ou leurs éléments, des munitions ou des explosifs ;
- les infractions prévues à l'article 415 ;

2° D'identifier les auteurs et complices de ces infractions ainsi que ceux qui y ont participé comme intéressés au sens de l'article 399 ;

3° D'effectuer les saisies prévues par le présent code.

L'infiltration consiste, pour un agent des douanes spécialement habilité dans des conditions fixées par décret, agissant sous la responsabilité d'un agent de catégorie A chargé de coordonner l'opération, à surveiller des personnes suspectées de commettre un délit douanier en se faisant passer, auprès de ces personnes, comme un de leurs coauteurs, complices ou intéressés à la fraude. L'agent des douanes est à cette fin autorisé à faire usage d'une identité d'emprunt et à commettre si nécessaire les actes mentionnés ci-après. A peine de nullité, ces actes ne peuvent constituer une incitation à commettre des infractions.

L'infiltration fait l'objet d'un rapport rédigé par l'agent de catégorie A ayant coordonné l'opération qui comprend les éléments strictement nécessaires à la constatation des infractions et ne mettant pas en danger la sécurité de l'agent infiltré et des personnes requises au sens du III.

2° To identify the perpetrators and accomplices of these offenses as well as those who participated in them as interested parties within the meaning of Article 399;

3° To carry out the seizures provided for by this code.

Infiltration consists, for a specially authorized customs agent under conditions fixed by decree, acting under the responsibility of a category A agent responsible for coordinating the operation, in monitoring persons suspected of committing a customs offense by being pass, to these people, as one of their co-authors, accomplices or interested parties in the fraud. For this purpose, the customs officer is authorized to use an assumed identity and to commit, if necessary, the acts mentioned below. On pain of nullity, these acts cannot constitute an incitement to commit offences.

The infiltration is the subject of a report drawn up by the category A agent who coordinated the operation, which includes the elements strictly necessary for the observation of the offenses and does not endanger the safety of the infiltrated agent and the required persons within the meaning of III.

III.<sup>292</sup>- Customs officers authorized to carry out an infiltration operation may, without being criminally liable for these acts and throughout the national territory:

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<sup>292</sup> III.-Les agents des douanes autorisés à procéder à une opération d'infiltration peuvent, sans être pénalement responsables de ces actes et sur l'ensemble du territoire national:

a) Acquérir, détenir, transporter, livrer ou délivrer des substances, biens, produits, documents ou informations tirés de la commission des infractions ;

b) Utiliser ou mettre à disposition des personnes se livrant à ces infractions des moyens de caractère juridique ainsi que des moyens de transport, de dépôt, d'hébergement, de conservation et de télécommunication.

L'exonération de responsabilité prévue au premier alinéa est également applicable, pour les actes commis à seule fin de procéder à l'opération d'infiltration, aux personnes requises par les agents des douanes pour permettre la réalisation de cette opération.

IV.-A peine de nullité, l'autorisation donnée en application du II est délivrée par écrit et doit être spécialement motivée.

Elle mentionne la ou les infractions qui justifient le recours à cette procédure et l'identité de l'agent des douanes sous la responsabilité duquel se déroule l'opération.

Cette autorisation fixe la durée de l'opération d'infiltration, qui ne peut excéder quatre mois. L'opération peut être renouvelée dans les mêmes conditions de forme et de durée. Le magistrat qui a autorisé l'opération peut, à tout moment, ordonner son interruption avant l'expiration de la durée fixée.

L'autorisation est versée au dossier de la procédure après achèvement de l'opération d'infiltration.

V.-L'identité réelle des agents des douanes ayant effectué l'infiltration sous une identité d'emprunt ne doit apparaître à aucun stade de la procédure.

La révélation de l'identité de ces agents est punie de cinq ans d'emprisonnement et de 75 000 euros d'amende.

Lorsque cette révélation a causé des violences, coups et blessures à l'encontre de ces personnes ou de leurs conjoints, enfants et ascendants directs, les peines sont portées à sept ans d'emprisonnement et à 100 000 euros d'amende.

Lorsque cette révélation a causé la mort de ces personnes ou de leurs conjoints, enfants et ascendants directs, les peines sont portées à dix ans d'emprisonnement et à 150 000 euros d'amende, sans préjudice, le cas échéant, de l'application des dispositions du chapitre Ier du titre II du livre II du code pénal.

VI.-En cas de décision d'interruption de l'opération ou à l'issue du délai fixé par la décision autorisant l'opération et en l'absence de prolongation, l'agent infiltré peut poursuivre les activités mentionnées au III, sans en être pénalement responsable, afin de lui permettre de cesser sa surveillance dans des conditions assurant sa sécurité sans que cette durée puisse excéder quatre mois. Le magistrat ayant délivré l'autorisation prévue au II en est informé dans les meilleurs délais. Si, à l'issue du délai de quatre mois, l'agent infiltré ne peut cesser sa surveillance dans des conditions assurant sa sécurité, ce magistrat en autorise la prolongation pour une durée de quatre mois au plus.



a) Acquiring, possessing, transporting, delivering or delivering substances, goods, products, documents or information derived from the commission of offences;

b) Use or make available to persons committing these offenses means of a legal nature as well as means of transport, deposit, accommodation, storage and telecommunication. The exemption from liability provided for in the first paragraph is also applicable, for acts committed for the sole purpose of carrying out the infiltration operation, to persons required by customs officers to enable this operation to be carried out

IV.-Under penalty of nullity, the authorization given pursuant to II is issued in writing and must be specifically motivated.

It mentions the offense or offenses which justify the use of this procedure and the identity of the customs officer under whose responsibility the operation takes place.

This authorization fixes the duration of the infiltration operation, which cannot exceed four months. The operation can be renewed under the same conditions of form and duration. The magistrate who authorized the operation may, at any time, order its interruption before the expiry of the fixed period.

The authorization is placed in the file of the procedure after completion of the infiltration operation.

V.-The real identity of the customs agents who carried out the infiltration under an assumed identity must not appear at any stage of the procedure.

Revealing the identity of these agents is punishable by five years' imprisonment and a fine of 75,000 euros.

When this revelation has caused violence, blows and injuries against these people or their spouses, children and direct ascendants, the penalties are increased to seven years' imprisonment and a fine of 100,000 euros.

When this disclosure has caused the death of these persons or their spouses, children and direct ascendants, the penalties are increased to ten years' imprisonment and a fine of 150,000 euros, without prejudice, where applicable, to the application the provisions of Chapter I of Title II of Book II of the Penal Code

VI.- In the event of a decision to interrupt the operation or at the end of the period set by the decision authorizing the operation and in the absence of an extension, the undercover agent may continue the activities mentioned in III, without be criminally liable, in order to allow him to cease his surveillance under conditions ensuring his safety without this duration exceeding four months. The magistrate who issued the authorization provided for in II is informed as soon as possible. If, at the end of the four-month period, the

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VII.-L'agent des douanes sous la responsabilité duquel se déroule l'opération d'infiltration peut seul être entendu en qualité de témoin sur l'opération.

Toutefois, s'il ressort du rapport mentionné au II que la personne mise en examen ou comparaisant devant la juridiction de jugement est directement mise en cause par des constatations effectuées par un agent ayant personnellement réalisé les opérations d'infiltration, cette personne peut demander à être confrontée avec cet agent dans les conditions prévues par l'article 706-61 du code de procédure pénale.

Les questions posées à l'agent infiltré à l'occasion de cette confrontation ne doivent pas avoir pour objet ni pour effet de révéler, directement ou indirectement, sa véritable identité.


undercover agent cannot cease his surveillance under conditions ensuring his safety, this magistrate authorizes its extension for a maximum period of four months

VII.- The customs agent under whose responsibility the infiltration operation takes place can only be heard as a witness to the operation.

However, if it emerges from the report mentioned in II that the person under investigation or appearing before the trial court is directly implicated by findings made by an agent who personally carried out the infiltration operations, this person may request be confronted with this agent under the conditions provided for by article 706-61 of the code of criminal procedure:

The questions put to the undercover agent during this confrontation must not have the purpose or effect of revealing, directly or indirectly, his true identity.

**(e) Special investigation techniques (only in the context of organised crime)/*Les techniques spéciales d'enquête (que dans le cadre de la criminalité organisée: 706-73 et 706-73-1 CPP)***

 **Nota bene:** For EDPs exist special rules → Article 696-127 CPC (propre aux PED ).  
Sound and image recordings of certain places or vehicles: derogatory investigations + derogatory instruction/*La captation, fixation, transmission et enregistrement des paroles et de l'image d'une personne: enquêtes dérogatoires + instruction dérogatoires:*

**Art. 706-96<sup>293</sup>**

It may be used to set up a technical device whose purpose, without the consent of the interested parties, is to capture, fix, transmit and record words spoken by one or more people on a private or confidential basis, in private or public places or vehicles, or the image of one or more people in a private place.

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<sup>293</sup> **Art. 706-96 CPP**

Il peut être recouru à la mise en place d'un dispositif technique ayant pour objet, sans le consentement des intéressés, la captation, la fixation, la transmission et l'enregistrement de paroles prononcées par une ou plusieurs personnes à titre privé ou confidentiel, dans des lieux ou véhicules privés ou publics, ou de l'image d'une ou de plusieurs personnes se trouvant dans un lieu privé.

**Art. 706-96-1 CPP**<sup>294</sup>

**[Para 1= Flagrancy/Preliminary investigation]** During the investigation, with a view to setting up the technical device mentioned in article 706-96, the liberty and detention judge may authorize the entry into a vehicle or a private place, including outside the hours provided for in section 59, without the knowledge or consent of the owner or possessor of the vehicle or of the occupant of the premises or of any person holding a right thereon. These operations, which can have no other purpose than the implementation of the technical device, are carried out under its control. This paragraph also applies to operations aimed at uninstalling the technical device that has been put in place.

**[Para 2. Instruction Investigation framework]** During the investigation, with a view to setting up the technical device mentioned in article 706-96, the investigating judge may authorize the entry into a vehicle or a private place, including outside the hours provided for in section 59, without the knowledge or consent of the owner or possessor of the vehicle or of the occupant of the premises or of any person having a right therein. If it is a place of residence and that the operation must take place outside the hours provided for in the same article 59, this authorization is issued by the judge of freedoms and detention seized for this purpose by the judge of 'instruction. These operations, which can have no other purpose than the installation of the technical device, are carried out under the authority and control of the investigating judge. This paragraph is also applicable to operations aimed at uninstalling the technical device that has been put in place.

The installation of the technical device mentioned in article 706-96 cannot concern the places mentioned in articles 56-1, 56-2, 56-3 and 56-5 nor be implemented in the vehicle, the office or the domicile of the persons mentioned in Article 100-7.

<sup>294</sup> **Art. 706-96-1 CPP** Au cours de l'enquête, en vue de mettre en place le dispositif technique mentionné à l'article 706-96, le juge des libertés et de la détention peut autoriser l'introduction dans un véhicule ou un lieu privé, y compris hors des heures prévues à l'article 59, à l'insu ou sans le consentement du propriétaire ou du possesseur du véhicule ou de l'occupant des lieux ou de toute personne titulaire d'un droit sur ceux-ci. Ces opérations, qui ne peuvent avoir d'autre fin que la mise en place du dispositif technique, sont effectuées sous son contrôle. Le présent alinéa s'applique également aux opérations ayant pour objet la désinstallation du dispositif technique ayant été mis en place. **al. 1 = enquête flagrante/ préliminaire**

Au cours de l'information, en vue de mettre en place le dispositif technique mentionné à l'article 706-96, le juge d'instruction peut autoriser l'introduction dans un véhicule ou un lieu privé, y compris hors des heures prévues à l'article 59, à l'insu ou sans le consentement du propriétaire ou du possesseur du véhicule ou de l'occupant des lieux ou de toute personne titulaire d'un droit sur ceux-ci. S'il s'agit d'un lieu d'habitation et que l'opération doit intervenir hors des heures prévues au même article 59, cette autorisation est délivrée par le juge des libertés et de la détention saisi à cette fin par le juge d'instruction. Ces opérations, qui ne peuvent avoir d'autre fin que la mise en place du dispositif technique, sont effectuées sous l'autorité et le contrôle du juge d'instruction. Le présent alinéa est également applicable aux opérations ayant pour objet la désinstallation du dispositif technique ayant été mis en place. **Al. 2 = instruction**

La mise en place du dispositif technique mentionné à l'article 706-96 ne peut concerner les lieux mentionnés aux articles 56-1,56-2,56-3 et 56-5 ni être mise en œuvre dans le véhicule, le bureau ou le domicile des personnes mentionnées à l'article 100-7.

**Art. 706-97 CPC<sup>295</sup>**

The decision authorising the use of the device referred to in Article 706-96 shall include all the information needed to identify the vehicles or the private or public places targeted, the offence for which the measures are being used and the duration of the measures.

**Art. 706-98 CPC<sup>296</sup>**

Judicial police officers or agents or qualified agents responsible for carrying out the operations provided for in article 706-96 are authorized to hold for this purpose devices covered by the provisions of article 226-3 of the penal code.

**(f) Investigation under a pseudonym (in cybercrime)/L'enquête sous pseudonyme (en matière de cybercriminalité)**

**(aa) In general criminal procedural matters/En matière de procédure pénale**

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**Art. 230-46 CPC [Digital infiltration]**

For the sole purpose of ascertaining crimes and offences punishable by imprisonment committed via electronic communications, and where justified by the requirements of the investigation or enquiry, officers or agents of the judicial police acting in the course of the investigation or on a rogatory commission may, if they are assigned to a specialised service and specially authorised for this purpose under conditions specified by order of the Minister of Justice and the Minister of the Interior, carry out the following acts under a pseudonym without being criminally liable for them

1° Participate in electronic exchanges, including with persons likely to be the perpetrators of these offences.

2° Extracting or preserving by this means data on persons likely to be the perpetrators of these offences and any evidence.

3° After authorisation from the public prosecutor or investigating judge hearing the case, acquire any content, product, substance, sample, or service, including illegal content, or transmit illegal content in response to an express request.

On pain of nullity, the authorisation provided for in 3°, which may be given by any means, shall be mentioned, or placed in the file of the proceedings and the authorised acts may not constitute incitement to commit these offences.

The acts referred to in this article shall be conducted under the supervision of the public prosecutor or the investigating judge.

<sup>295</sup> **Art. 706-97 CPP**

La décision autorisant le recours au dispositif mentionné à l'article 706-96 comporte tous les éléments permettant d'identifier les véhicules ou les lieux privés ou publics visés, l'infraction qui motive le recours à ces mesures ainsi que la durée de celles-ci. See Putz 2019 with a good monograph on cybercriminality (*modus operandi*) in general.

<sup>296</sup> **Art. 706-98 CPP**


Les officiers ou agents de police judiciaire ou les agents qualifiés chargés de procéder aux opérations prévues à l'article 706-96 sont autorisés à détenir à cette fin des appareils relevant des dispositions de l'article 226-3 du code pénal.

Article 696-127 CPC stipulates special rules for EDPs (propre aux PED ).

**(bb) In customs matters/En matière douanière**

*Customs Investigation measures 6*

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	<p><b>Investigation powers</b> → <i>Section 7: Procédures spéciales d'enquête douanière (Articles 67 bis à 67 bis-4)</i></p>
<p>→ In customs matters/En matière douanière: Art. 67 bis 1 A du code des douanes  <b>Art. 67bis 1-A<sup>297</sup> Customs Code</b>  In order to record the offenses mentioned in articles 414, 414-2, 415 and 459 and, when these are committed by means of electronic communication, to gather the evidence and to seek the perpetrators, the accomplices as well as those who participated as interested parties within the meaning of Article 399, customs officers authorized by the Minister responsible for customs under conditions set by decree may, after informing the public prosecutor and unless this magistrate objects, carry out the following acts without being criminally liable:  1° Participate under a pseudonym in electronic exchanges  2° To be in contact by the means mentioned in 1° of this article with persons likely to be the perpetrators, accomplices or interested parties in the fraud of these offences  3° Extract, acquire or store by this means evidence and data on persons likely to be the perpetrators, accomplices or persons interested in the fraud of these offences  If the requirements of the customs investigation so require, authorized customs officers may use an assumed identity. Revealing the identity of these agents is liable to the penalties provided for in V of Article 67 bis  On pain of nullity, these acts cannot constitute an incitement to commit these offences.</p>	

<sup>297</sup> **Art. 67bis-1-A Code des douanes**

Dans le but de constater les délits mentionnés aux articles 414, 414-2, 415 et 459 et, lorsque ceux-ci sont commis par un moyen de communication électronique, d'en rassembler les preuves et d'en rechercher les auteurs, les complices ainsi que ceux qui y ont participé comme intéressés au sens de l'article 399, les agents des douanes habilités par le ministre chargé des douanes dans des conditions fixées par décret peuvent, après information du procureur de la République et sauf opposition de ce magistrat, procéder aux actes suivants sans être pénalement responsables:

- 1° Participer sous un pseudonyme aux échanges électroniques ;
- 2° Etre en contact par le moyen mentionné au 1° du présent article avec les personnes susceptibles d'être les auteurs, les complices ou les intéressés à la fraude de ces infractions ;
- 3° Extraire, acquérir ou conserver par ce moyen les éléments de preuve et les données sur les personnes susceptibles d'être les auteurs, les complices ou les intéressés à la fraude de ces infractions.

Si les nécessités de l'enquête douanière l'exigent, les agents des douanes habilités peuvent faire usage d'une identité d'emprunt. La révélation de l'identité de ces agents est passible des peines prévues au V de l'article 67 bis.

A peine de nullité, ces actes ne peuvent constituer une incitation à commettre ces infractions.

**(g) Image capturing of a person by drone (at all stages of the procedure)/*La captation de l'image d'une personne par drone (à tous les stades de la procédure)***

**48 Art. 230-47<sup>298</sup> [Application conditions]**

„A technical device may be used, by means of airborne cameras, to capture, fix, transmit and record the image of one or more persons in a public place without their consent, if this operation is required by the needs of:

1° An investigation or enquiry into a crime or an offence punishable by at least three years' imprisonment;

2° An investigation or enquiry into the causes of death or disappearance provided for in Articles 74, 74-1 and 80-4;

3° A procedure to search for a person who has absconded as provided for in Article 74-2.

**49 Further restrictions are stipulated by the following provisions:**

**Art. 230-48<sup>299</sup> [conditions of application and time limits]**

„The technical device mentioned in Article 230-47 is authorised:

1° In the context of a flagrante delicto investigation, a preliminary investigation or a procedure provided for in Articles 74 to 74-2, by the public prosecutor, for a maximum period of one month, renewable once ;

2° In the context of an investigation or an inquiry into the causes of death or the causes of disappearance mentioned in Articles 74, 74-1 and 80-4, by the investigating judge, for a maximum period of four months, renewable, without the total duration of the operations exceeding two years.

2° In the context of an investigation or an inquiry into the causes of death or disappearance mentioned in Articles 74, 74-1 and 80-4, by the investigating judge, for a maximum period of four months, renewable, without the total duration of the operations exceeding two years.

<sup>298</sup> **Art. 230-47 (conditions d'application):** “Il peut être recouru, au moyen de caméras aéroportées, à la mise en place d'un dispositif technique ayant pour objet la captation, la fixation, la transmission et l'enregistrement sans leur consentement de l'image d'une ou de plusieurs personnes se trouvant dans un lieu public, si cette opération est exigée par les nécessités:

1° D'une enquête ou d'une instruction portant sur un crime ou sur un délit puni d'au moins trois ans d'emprisonnement ;

2° D'une procédure d'enquête ou d'instruction de recherche des causes de la mort ou de la disparition prévue aux articles 74, 74-1 et 80-4 ;

3° D'une procédure de recherche d'une personne en fuite prévue à l'article 74-2 ».

<sup>299</sup> **Art. 230-48 (conditions d'application et de délais):** “Le dispositif technique mentionné à l'article 230-47 est autorisé:

1° Dans le cadre d'une enquête de flagrance, d'une enquête préliminaire ou d'une procédure prévue aux articles 74 à 74-2, par le procureur de la République, pour une durée maximale d'un mois renouvelable une fois ;

2° Dans le cadre d'une instruction ou d'une information pour recherche des causes de la mort ou des causes de la disparition mentionnées aux articles 74, 74-1 et 80-4, par le juge d'instruction, pour une durée maximale de quatre mois renouvelable, sans que la durée totale des opérations puisse excéder deux ans »

**Art. 230-49<sup>300</sup> (organic conditions)**

The decision authorising the use of the device referred to in Article 230-47 shall include all the information needed to identify the places concerned and shall specify its duration. The authorisation of the public prosecutor or investigating judge, which may be given by any means, shall be mentioned or placed in the file of the proceedings. It has no jurisdictional character and is not subject to appeal.

**Art. 230-50<sup>301</sup> (Control of the measure)**

The operations provided for in this chapter shall be conducted under the authority and control of the magistrate who authorised them. This magistrate may order their interruption at any time.

The operations may not, on pain of nullity, have a purpose other than that for which they were authorised. The fact that these operations reveal other offences shall not constitute a cause of nullity of the incidental proceedings.

**Art. 230-51<sup>302</sup> (actual implementation of the device):** The technical device is implemented by the judicial police officer appointed by the investigating judge or requested by the public prosecutor or, under his responsibility, by the judicial police officer.

**Art. 230-52 (requirement of a report)<sup>303</sup>**

The public prosecutor, the investigating judge or the judicial police officer appointed by him or requested by the public prosecutor, or the judicial police officer acting under his responsibility, shall draw up a report of the capturing, fixing and recording operations. This report shall mention the date and time of the beginning and end of the operations.

<sup>300</sup> **Art. 230-49 (conditions organiques):** “La décision autorisant le recours au dispositif mentionné à l'article 230-47 comporte tous les éléments permettant d'identifier les lieux concernés et précise sa durée.

L'autorisation du procureur de la République ou du juge d'instruction, qui peut être donnée par tout moyen, est mentionnée ou versée au dossier de la procédure. Elle n'a pas de caractère juridictionnel et n'est susceptible d'aucun recours »

<sup>301</sup> **Art. 230-50 (contrôle de la mesure):** “Les opérations prévues au présent chapitre se déroulent sous l'autorité et le contrôle du magistrat qui les a autorisées. Ce magistrat peut ordonner à tout moment leur interruption.

Les opérations ne peuvent, à peine de nullité, avoir un autre objet que celui pour lequel elles ont été autorisées. Le fait que ces opérations révèlent d'autres infractions ne constitue pas une cause de nullité des procédures incidentes ».

<sup>302</sup> **Art. 230-51 (mise en place effective du dispositif):** “Le dispositif technique est mis en place par l'officier de police judiciaire commis par le juge d'instruction ou requis par le procureur de la République ou, sous sa responsabilité, par l'agent de police judiciaire ».

<sup>303</sup> **Art. 230-52 (exigence d'un procès verbal):** “Le procureur de la République, le juge d'instruction ou l'officier de police judiciaire commis par lui ou requis par le procureur de la République, ou l'agent de police judiciaire agissant sous sa responsabilité, dresse procès-verbal des opérations de captation, de fixation et d'enregistrement. Ce procès-verbal mentionne la date et l'heure du début et de la fin des opérations.

Les enregistrements sont placés sous scellés fermés.

L'officier de police judiciaire ou l'agent de police judiciaire agissant sous sa responsabilité décrit, dans un procès-verbal versé au dossier, les données enregistrées qui sont utiles à la manifestation de la vérité. Aucune séquence relative à la vie privée étrangère à l'objet pour lequel les opérations ont été autorisées ne peut être conservée dans le dossier de la procédure ».

**Art. 230-53<sup>304</sup> (Destruction of data)**

The recordings and data collected during the operations carried out pursuant to this chapter shall be destroyed, at the request of the public prosecutor or the public prosecutor, on expiry of the period of limitation of public action.

A record of the destruction operation shall be drawn up.

**(f) Use of expert advice/*Recours aux expertises*: Art. 156 à 169-1 CPP (seulement en instruction)**

- 50 In general, the CPC describes the processes for expert reports, guaranteeing openness, correspondence, and chances for interested parties to offer input or, if required, seek more investigation. In addition to making sure that everyone is informed and given the chance to take part in the expert assessment process, the investigating judge is essential in managing the proceedings.
- 51 According to Art. 163 of the CPC, the investigating judge or designated magistrate shall inventory the seals in accordance with Art. 97 and include them in a trial record before forwarding them to experts. Without violating Art. 97's rules, experts are free to recondition objects, open or reseal seals, and include any appropriate steps in their report.
- 52 For the sole purpose of carrying out their mandate, experts are permitted by Art. 164 of the CPC to get information from anyone other than the accused, assisting witnesses, or civil parties. With the consent of all parties, they can also ask questions of people without a judge or attorney present and get statements from those who are directly engaged. Art. 165 provides parties the right to request further research or interviews with specific individuals for the expert report. Upon completion of the report, experts must describe their operations, conclusions, and any differing opinions or reservations among them. The report, seals, or residues are deposited with the court, and experts may communicate their findings to relevant authorities with the investigating judge's approval.
- 53 Art. 167 requires the investigating judge to inform parties and their lawyers of expert conclusions, and provide them with copies upon request. The entire report can be delivered by registered mail, electronically, or to detainees by the prison supervisor. Parties have a deadline to submit observations or requests for additional expertise, which cannot exceed certain time limits to avoid unnecessary delays.

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<sup>304</sup> Art. 230-53 (destruction des données): “Les enregistrements et les données recueillis lors des opérations effectuées en application du présent chapitre sont détruits, à la diligence du procureur de la République ou du procureur général, à l'expiration du délai de prescription de l'action publique. Il est dressé procès-verbal de l'opération de destruction ».



The use of expert advice is regulated by *Art. 156 et seq. CPC*:

**Art. 156 CPC<sup>305</sup> [General rules]**

Any court of instruction or judgment, in the event that a question of a technical nature arises, may, either at the request of the public prosecutor, or *ex officio*, or at the request of the parties, order an expert report. The public prosecutor or the party requesting an expertise may specify in its request the questions it would like the expert to ask.

When the investigating judge considers that he should not grant a request for an expert report, he must issue a reasoned order at the latest within one month of receipt of the request. The provisions of the penultimate and last paragraphs of article 81 are applicable. The experts carry out their mission under the control of the examining magistrate or the magistrate who must appoint the court ordering the expertise.

**Art. 157 CPC**

The experts are chosen from among the natural or legal persons who appear on the national list drawn up by the Court of Cassation or on one of the lists drawn up by the courts of appeal under the conditions provided for by law n ° 71-498 of June 29, 1971 relating to judicial experts.

Exceptionally, the courts may, by reasoned decision, choose experts who do not appear on any of these lists.

<sup>305</sup> **Art. 156 CPP Disposition Générale**

Toute juridiction d'instruction ou de jugement, dans le cas où se pose une question d'ordre technique, peut, soit à la demande du ministère public, soit d'office, ou à la demande des parties, ordonner une expertise. Le ministère public ou la partie qui demande une expertise peut préciser dans sa demande les questions qu'il voudrait voir poser à l'expert.

Lorsque le juge d'instruction estime ne pas devoir faire droit à une demande d'expertise, il doit rendre une ordonnance motivée au plus tard dans un délai d'un mois à compter de la réception de la demande. Les dispositions des avant-dernier et dernier alinéas de l'article 81 sont applicables.

Les experts procèdent à leur mission sous le contrôle du juge d'instruction ou du magistrat que doit désigner la juridiction ordonnant l'expertise.

**Art. 157-1 CPC**

If the appointed expert is a legal person, his legal representative submits for the approval of the court the name of the natural person(s) who, within it and in its name, will carry out the expertise.

**Art. 157-2 CPC**

Expertise may also be requested from technical and scientific police services or organizations of the national police and the national gendarmerie, the list of which is fixed by joint order of the Minister of Justice and the Minister of the Interior. In this case, the person in charge of the department or of the designated organization submits the names of the persons who will carry out the expertise to the approval of the court.

- 54 Appointing an expert has a huge relevance for EPPO investigations theoretical, as eg tax clerks in particular can provide information in VAT fraud carousel cases:

**Art. 158 CPC**

The mission of the experts, which can only have as its object the examination of questions of a technical nature, is specified in the decision which orders the expertise.

**Art. 159 CPC**

The investigating judge appoints the expert responsible for carrying out the expertise. If the circumstances justify it, he appoints several experts.

**Art. 160 CPC**

Experts not appearing on any of the lists mentioned in article 157 take, each time they are committed, the oath provided for by law no. 71-498 of June 29, 1971 relating to judicial experts before the the magistrate appointed by the court. The swearing-in report is signed by the competent magistrate, the expert and the clerk. In the event of impediment, the reasons for which must be specified, the oath may be received in writing and the letter of oath is attached to the file of the procedure.

**Art. 161 CPC**

Any decision appointing experts must set a deadline for them to fulfill their mission. If particular reasons so require, this period may be extended at the request of the experts and by reasoned decision rendered by the magistrate or the court which appointed them. Experts who do not file their report within the time limit allocated to them may be replaced immediately and must report on the investigations they have already carried out. They must also return within forty-eight hours the objects, items and documents entrusted to them for the accomplishment of their mission. They may also be subject to disciplinary measures going as far as removal from one or other of the lists provided for in article 157.

The experts must fulfill their mission in liaison with the investigating judge or the delegated magistrate; they must keep him informed of the development of their operations and put him in a position to take all useful measures at any time.

The investigating judge, during his operations, can always, if he considers it useful, be assisted by experts.

#### **Art. 161-1 CPC**

A copy of the decision ordering an expert report is sent without delay to the public prosecutor and to the parties, who have a period of ten days to request the investigating judge, according to the procedures provided for in the penultimate paragraph of the article 81, to modify or supplement the questions put to the expert or to add to the expert or experts already appointed an expert of their choice appearing on one of the lists mentioned in article 157 .

If the judge does not grant, within ten days of their receipt, the requests provided for in the first paragraph, he issues a reasoned order. This order or the absence of an order may be challenged within ten days before the president of the investigating chamber. The latter rules by reasoned decision which is not subject to appeal.

This article does not apply when the expertise operations and the filing of conclusions by the expert must take place urgently and cannot be deferred for the period of ten days provided for in the first paragraph or when the communication provided for in the first paragraph risk of hindering the completion of the investigations.

It is also not applicable to the categories of expertise whose conclusions have no impact on the determination of the guilt of the person under investigation and whose list is fixed by decree.

#### **Art. 161-2 CPC**

If the period provided for in Article 161 exceeds one year, the investigating judge may request that a progress report be filed beforehand, which is notified to the parties in accordance with the procedures provided for in Article 167. The parties may then send in same time to the expert and to the judge their observations for the final report.

#### **Art. 162 CPC**

If the experts ask to be clarified on a question beyond their speciality, the judge may authorize them to associate themselves with persons designated by name, specially qualified by their competence.

The persons thus designated take the oath under the conditions provided for in Article 160.

Their report will be annexed in full to the report mentioned in article 166.

**Art. 163 CPC**

Before sending the seals to the experts, the investigating judge or the magistrate designated by the court proceeds, if necessary, to their inventory under the conditions provided for by article 97. He lists these seals in a trial -verbal.

For the application of their mission, the experts are authorized to proceed with the opening or reopening of the seals, and to make new seals after having, if necessary, carried out the reconditioning of the objects which they were responsible for examine ; in this case, they mention it in their report, after having, if necessary, drawn up an inventory of the seals; the provisions of the sixth paragraph of article 97 are not applicable.

**Art. 164 CPC**

The experts may receive, for information and for the sole accomplishment of their mission, the statements of any person other than the person charged, the assisted witness or the civil party.

However, if the investigating judge or the magistrate designated by the court has authorized them to do so, they may for this purpose receive, with the agreement of the parties concerned, the statements of the person under investigation, the assisted witness or the party civilians necessary for the execution of their mission. These declarations are taken in the presence of their lawyer or the latter duly summoned under the conditions provided for in the second paragraph of Article 114, unless there is a written waiver given to the experts. These statements may also be collected during an interrogation or a deposition before the investigating judge in the presence of the expert.

The expert doctors or psychologists in charge of examining the person charged, the assisted witness or the civil party may in all cases ask them questions for the accomplishment of their mission without the presence of the judge and the lawyers.

**Art. 165 CPC**

During the expert report, the parties may ask the court which ordered it to order the experts to carry out certain research or to hear any person named who is likely to provide them with information of an technical.

**Art. 166 CPC**

When the expertise operations are completed, the experts write a report which must contain the description of the said operations as well as their conclusions. The experts sign their report and mention the names and qualities of the people who assisted them, under their control and their responsibility, for the realization of the operations deemed by them necessary for the execution of the mission entrusted to them.

When several experts have been appointed and if they have different opinions or if they have reservations to express on common conclusions, each of them indicates their opinion or their reservations, giving reasons.

The report and the seals, or their residues, are deposited in the hands of the clerk of the court which ordered the expertise; this deposit is recorded in the minutes.

With the agreement of the investigating judge, the experts may, directly and by any means, communicate the conclusions of their report to the judicial police officers in charge of the execution of the letters rogatory, to the public prosecutor or to the lawyers of the parts.

#### **Art. 167 CPC**

The investigating judge informs the parties and their lawyers of the conclusions of the experts after having summoned them in accordance with the provisions of the second paragraph of Article 114 . He also informs them, if necessary, of the conclusions of the reports of the persons requested pursuant to Articles 60 and 77-1, when the provisions of the fourth paragraph of Article 60 have not been applied. A copy of the entire report is then given, at their request, to the parties' lawyers or to the parties if they are not assisted by a lawyer.

The conclusions may also be notified by registered letter or, when the person is detained, by the head of the penitentiary establishment who sends, without delay, to the investigating judge the original or the copy of the receipt signed by the interested. The entire report may also be notified by registered letter, at their request, to the parties' lawyers or to the parties if they are not assisted by a lawyer. If the lawyers for the parties have informed the investigating judge that they have an electronic address, the entire report may be sent to them by this means, in accordance with the procedures provided for in I of Article 803-1 .

In the case of a psychiatric expert's report, a copy of the entire report is given or sent to the lawyers for the parties or to the parties if they are not assisted by a lawyer, even in the absence of request from them.

In all cases, the investigating judge sets a deadline for the parties to present observations or formulate a request, in particular for the purposes of additional expertise or counter-expertise. This request must be made in accordance with the provisions of the tenth paragraph of Article 81 . During this period, the file of the procedure is made available to the counsel for the parties. The deadline set by the investigating judge, which takes into account the complexity of the expertise, cannot be less than fifteen days or, in the case of an accounting or financial expertise, one month. After this period, it can no longer be requested for a counter-expertise, additional expertise or new expertise relating to the same subject, including on the basis of, subject to the occurrence of a new element.

When he rejects a request, the investigating judge renders a reasoned decision which must be made within one month of receipt of the request. The same applies if he appoints a single expert when the party has requested that several be appointed. If the examining magistrate fails to have ruled within one month, the party may refer the matter directly to the investigating chamber.

The investigating judge may also notify the assisted witness, in accordance with the procedures provided for in this article, of the conclusions of the expert reports which concern him by setting a deadline for him to present a request for additional expert testimony or a second expert opinion. However, the judge is not required to issue a reasoned order if he considers that the request is not justified, unless the assisted witness requests to be placed under examination pursuant to article 113-6 .

**Art. 167-1 CPC**

When the conclusions of the expert's report are such as to lead to the application of the provisions of the first paragraph of Article 122-1 of the Criminal Code providing for the person's criminal irresponsibility on account of a mental disorder, their notification to the civil part is carried out under the conditions provided for by the first paragraph of article 167, if necessary in the presence of the expert or experts. In criminal matters, this presence is compulsory if the lawyer for the civil party requests it. The plaintiff then has a period of fifteen days to present observations or make a request for additional expertise or counter-expertise. The counter-expertise requested by the civil party is by right.

**Art. 167-2 CPC**

The investigating judge may ask the expert to file a provisional report before his final report. The public prosecutor and the parties then have a time limit set by the investigating judge, which may not be less than fifteen days or, in the case of an accounting or financial expertise, one month, to address in at the same time to the expert and to the judge the written observations that this provisional report calls for on their part. In view of these observations, the expert submits his final report. If no comments are made, the interim report is considered the final report.

The filing of an interim report is mandatory if the public prosecutor so requires or if a party has requested one in accordance with the procedures provided for in the penultimate paragraph of Article 81 when informed of the decision ordering the expertise pursuant to article 161-1.

**Art. 168 CPC**

The experts present to the hearing, if necessary, the result of the technical operations which they have carried out, after having taken an oath to bring their assistance to justice in their honor and in their conscience. During their hearing, they can consult their report and its annexes.

The president may either ex officio or at the request of the public prosecutor, the parties or their counsel, ask them any questions falling within the scope of the mission entrusted to them. The public prosecutor and the lawyers for the parties may also put questions directly to the experts in accordance with the procedures provided for in articles 312 and 442-1.

After their presentation, the experts attend the debates, unless the president authorizes them to withdraw.

#### **Art. 169 CPC**

If, at the hearing of a trial court, a person heard as a witness or for information contradicts the conclusions of an expert report or provides new information from a technical point of view, the president asks the experts, the public prosecutor, the defense and, if necessary, the civil party, to present their observations. This court, by reasoned decision, declares either that the proceedings will be disregarded, or that the case will be referred to a later date. In the latter case, this court may prescribe any measure it deems useful with regard to the expert's report.

#### **Art. 169-1 CPC**

The provisions of Articles 168 and 169 are applicable to persons called upon either to make findings or to assess the nature of the circumstances of a death, in accordance with Articles 60 and 74.

#### **(g) Letters rogatory/*Les commissions rogatoires***

The letter rogatory is an act that allows the investigating judge to delegate the performance of certain procedural acts (*acte qui permet au juge d'instruction de déléguer la réalisation de certains actes procéduraux*).

55

**Art. 151 CPC**<sup>306</sup> The examining magistrate may request any judge of his court, any examining magistrate or any judicial police officer, who shall in this case notify the public prosecutor, to carry out the acts of information which he considers necessary in the places where each of them has territorial jurisdiction.

The letter rogatory shall indicate the nature of the offence to be prosecuted. It shall be dated and signed by the magistrate issuing it and sealed with his or her seal.

It may only prescribe investigative acts related to the prosecution of the offence in question.

The investigating judge shall set the time limit within which the letter rogatory must be returned to him or her with the reports drawn up for its execution by the judicial police

<sup>306</sup> **Art. 151 CPP**

Le juge d'instruction peut requérir par commission rogatoire tout juge de son tribunal, tout juge d'instruction ou tout officier de police judiciaire, qui en avise dans ce cas le procureur de la République, de procéder aux actes d'information qu'il estime nécessaires dans les lieux où chacun d'eux est territorialement compétent.

La commission rogatoire indique la nature de l'infraction, objet des poursuites. Elle est datée et signée par le magistrat qui la délivre et revêtue de son sceau.

Elle ne peut prescrire que des actes d'instruction se rattachant directement à la répression de l'infraction visée aux poursuites.

Le juge d'instruction fixe le délai dans lequel la commission rogatoire doit lui être retournée avec les procès-verbaux dressés pour son exécution par l'officier de police judiciaire. A défaut d'une telle fixation, la commission rogatoire et les procès-verbaux doivent lui être transmis dans les huit jours de la fin des opérations exécutées en vertu de celle-ci.

officer. In the absence of such a time limit, the letter rogatory and the reports must be sent to him within eight days of the end of the operations carried out under it.

- 56 With the exception of questioning suspects, magistrates and judicial police officers operating under a rogatory commission possess the same authority as investigative judges. They are only permitted to interview witnesses or civil parties upon request. The investigating judge cannot carry out investigations on their own, although they can supervise the execution of rogatory letters without help. When called upon, witnesses are required to show up, swear, and provide testimony. If people do not follow the rules, they might face fines and other legal consequences. People who are detained, however, are not subject to the oath obligation. The judge has the authority to prolong police custody in order to carry out rogatory commissions during transportation. This provisions contains information on the transfer of rights and powers:

**Art. 152 CPC<sup>307</sup>** The magistrates or judicial police officers appointed for the execution exercise, within the limits of the rogatory commission, all the powers of the investigating judge.

However, the judicial police officers cannot carry out the interrogations and confrontations of the persons under investigation. They can only hear civil parties or assisted witnesses at their request.

The investigating judge may travel, without being assisted by his clerk or having to draw up a report, to direct and control the execution of the letters rogatory, provided that he does not himself carry out acts of ‘instruction. On the occasion of this transport, he may order the extension of the police custody ordered within the framework of the letters rogatory. In all cases, mention of this transport is made on the execution documents of the rogatory commission.

**Art. 153 CPC<sup>308</sup>** Any witness summoned to be heard during the execution of a letter rogatory is required to appear, take an oath and testify. When there is no plausible reason

<sup>307</sup> **Art. 152 CPP** Les magistrats ou officiers de police judiciaire commis pour l'exécution exercent, dans les limites de la commission rogatoire, tous les pouvoirs du juge d'instruction.

Toutefois, les officiers de police judiciaire ne peuvent pas procéder aux interrogatoires et confrontations des personnes mises en examen. Ils ne peuvent procéder à l'audition des parties civiles ou du témoin assisté qu'à la demande de ceux-ci.

Le juge d'instruction peut se transporter, sans être assisté de son greffier ni devoir en dresser procès-verbal, pour diriger et contrôler l'exécution de la commission rogatoire, dès lors qu'il ne procède pas lui-même à des actes d'instruction. A l'occasion de ce transport, il peut ordonner la prolongation des gardes à vue prononcées dans le cadre de la commission rogatoire. Dans tous les cas, mention de ce transport est faite sur les pièces d'exécution de la commission rogatoire.

<sup>308</sup> **Art. 153 CPP** Tout témoin cité pour être entendu au cours de l'exécution d'une commission rogatoire est tenu de comparaître, de prêter serment et de déposer. Lorsqu'il n'existe aucune raison plausible de soupçonner qu'il a commis ou tenté de commettre une infraction, il ne peut être retenu que le temps strictement nécessaire à son audition.

S'il ne satisfait pas à cette obligation, avis en est donné au magistrat mandant qui peut le contraindre à comparaître par la force publique. Le témoin qui ne comparaît pas encourt l'amende prévue par l'article 434-15-1 du code pénal. L'obligation de prêter serment et de déposer n'est pas applicable aux personnes gardées à vue en application des dispositions de l'article 154.



to suspect that he has committed or attempted to commit an offence, he may only be detained for the time strictly necessary for his hearing.

If he does not meet this obligation, notice is given to the mandating magistrate who may compel him to appear by force of law. A witness who does not appear incurs the fine provided for in article 434-15-1 of the penal code.

The obligation to take an oath and give evidence does not apply to persons in custody pursuant to the provisions of article 154.

**Art- 154 CPC<sup>309</sup>**

The provisions of articles 61-1 and 61-2 relating to the hearing of a suspected person or a victim as well as articles 61-3 and 62-2 to 64-1 are applicable during the execution of commissions rogatory.

The powers conferred on the public prosecutor by these articles are then exercised by the investigating judge. When the information provided for in Articles 61-1 and 63-1 is issued, it is specified that the hearing or police custody takes place within the framework of a letter rogatory.

**Art. 154-1 CPC<sup>310</sup>**

For the purposes of executing the letters rogatory, the judicial police officer may carry out the external debit operations provided for in article 55-1 .

The provisions of the second, third and last paragraphs of article 55-1 are applicable. The authorization provided for in the last paragraph of the same article 55-1 is then given by the investigating judge.

**Art. 154-2 CPC<sup>311</sup>** The investigating judge who plans to indict a person who has not already been heard as an assisted witness may request by letter rogatory, in accordance

<sup>309</sup> **Art. 154 CPP**

Les dispositions des articles 61-1 et 61-2 relatives à l'audition d'une personne soupçonnée ou d'une victime ainsi que les articles 61-3 et 62-2 à 64-1 sont applicables lors de l'exécution des commissions rogatoires.

Les attributions conférées au procureur de la République par ces articles sont alors exercées par le juge d'instruction. Lors de la délivrance de l'information prévue aux articles 61-1 et 63-1, il est précisé que l'audition ou la garde à vue intervient dans le cadre d'une commission rogatoire.

<sup>310</sup> **Art. 154-1 CPP**

Pour les nécessités de l'exécution de la commission rogatoire, l'officier de police judiciaire peut faire procéder aux opérations de prélèvements externes prévues par l'article 55-1.

Les dispositions des deuxième, troisième et dernier alinéas de l'article 55-1 sont applicables. L'autorisation prévue au dernier alinéa du même article 55-1 est alors donnée par le juge d'instruction.

<sup>311</sup> **Art. 154-2 CPP**

Le juge d'instruction qui envisage de mettre en examen une personne qui n'a pas déjà été entendue comme témoin assisté peut requérir par commission rogatoire, selon les modalités prévues par l'article 151, tout juge d'instruction de procéder à la mise en examen de cette personne conformément aux dispositions de l'article 116.

Le juge d'instruction chargé d'exécuter la commission rogatoire procède alors à la mise en examen de la personne conformément aux dispositions de l'article 116, sauf s'il estime, au vu de ses observations ou celles de son avocat, qu'il n'existe pas contre elle d'indices graves ou concordants rendant vraisemblable sa culpabilité, auquel cas ce magistrat l'informe qu'elle bénéficie des droits du témoin assisté.

Lorsqu'une personne a déjà été entendue comme témoin assisté, le juge d'instruction peut requérir par commission rogatoire tout juge d'instruction de procéder à la mise en examen de cette personne.

with the procedures provided for in article 151, any investigating judge to proceed with the examination of that person in accordance with the provisions of Article 116.

The investigating judge responsible for executing the letter rogatory then proceeds to indict the person in accordance with the provisions of Article 116, unless he considers, in view of his observations or those of his lawyer, that there is no serious or concordant evidence against her making her guilt likely, in which case this magistrate informs her that she benefits from the rights of assisted witness.

When a person has already been heard as an assisted witness, the investigating judge may request by letter rogatory any investigating judge to proceed with the indictment of this person.

**(h) Reconstructions and identification/*Les reconstitutions et l'identification***

- 57 Although they are not specifically defined in the CPC, they are mentioned in Article 61-3 CPC in relation to the right to a lawyer.

Any person in respect of whom there are one or more plausible grounds for suspecting that he has participated, as a perpetrator or accomplice, in the commission of a crime or offence punishable by imprisonment may request that a lawyer of his choice or, if he is unable to appoint one, that a lawyer appointed by the President of the Bar:

- 1 ° Assists him when he participates in an operation to reconstruct the offence;
- 2 ° Be present at an identification session of the suspects of which he is a part.

The person shall be informed of this right before such operations are carried out.

The designated counsel may, at the end of the transactions, submit written observations which are attached to the proceedings. He may directly address these observations or copies thereof to the public prosecutor.

When the victim or complainant participates in these operations, a lawyer may also assist him under the conditions provided for in article 61-2.

## SECTION 2

## Rules on investigation measures and other measures

## 2. Article 31 Cross-border investigations

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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 applicable in cross border-cases**

**[Excerpt] Book IV: Certain special procedures**

**Title X: International mutual legal assistance**

**Chapter II: Provisions specific to mutual assistance between France and the other Member States of the European Union**

**Section 1: European investigation decisions provided for by Directive 2014/41/EU of 3 April 2014**

Art. 694-15 et seq.

**Subsection 1: Provisions relating to the issuing of a European Investigation Order by the French judicial authorities**

**Paragraph 2: Special provisions for certain investigative measures**

Art. 694-25 (extradition)

- 1 First it needs to be assessed whether „a measure needs to be undertaken in a Member State other than the Member State of the handling European Delegated Prosecutor”. If this is not denied, the handling of EDP must be active and start preparations of an investigation in a foreign MS.

All measures of Art. 30 due to the wording of Art. 31 („may assign any measures, which are available to him/her in accordance with Article 30” in the national code. Thus the EDP needs to take a closer look into the **CPC, Customs Code, Tax Code and Tax Procedures Code and verify**, what kind of measure he/she wants to exercise in order to conduct the investigation properly. Next he/she will need to assign this measure to the assisting EDP. In order to find out who the assisting EDP is, he/she will need to trace the crime/offence and the MS („where the measure needs to be carried out.”). The EPPO has headquarters in 22 MS, thus these states have presented own EDPS, which were appointed by the EPPO. 2

See above for all measures, which can be exercised by a French EDP → Art. 30 EPPO Regulation.

**b) Para 2: Assignment of measures by a handling EDP to an assisting EDP in another, foreign MS**

FR (handling EDP) → all EPPO member states (assisting EDP)  
Assignment → measure → transfer to foreign EDP → acceptance and receipt by foreign EDP

*Figure 8 Assignment of measures by handling EDP to assisting EDP (scheme) © P.H.*

In the following this part of the CPM explores the most common measures in an EPPO investigation with regard to Art. 31 and assignment of measures from the French EDP to an assisting EDP. 3

It is first of all useful to concentrate on the provisions of **house search** as house searches are amongst all measures, which could potentially be assigned the most common and most effective investigative measure<sup>312</sup>, secondly **seizure measures** and last but not least a very intrusive measures such as i.e. **telecommunications surveillance** or **digital evidence gathering methods**. 4

The next table shall help to understand the different regime of requirements in Art. 31 and 32 of the EPPO Regulation which is special for its part and has been already part of discussions before the ECJ in 2022 and 2023: 5

<sup>312</sup> See Tsambikakis, in Jörg-Peter Becker, Volker Erb, Robert Esser, Kirsten Graalman-Scheerer, Hans Hilger, Alexander Ignor (eds.), Löwe-Rosenberg Die Strafprozeßordnung und das Gerichtsverfassungsgesetz, 27 edn, s. 102 StPO, Margin Number 7 et seq.

<p>* “The <b>handling EDP</b> may assign any measures, which are available to him/her [the <b>handling EDP</b>] in accordance with Article 30<sup>291</sup>...” (Art. 31 para 2) EPPO Regulation</p>	<p>Perspective and list of provisions of measures that are available in the MS of the <b>handling EDP</b> [France in this Chapter of the CPM] according to Art. 30 EPPO Regulation:</p>	<p>Assigned Measure (Art. 31 para 1 and 2) “Where a measure needs to be undertaken in a Member State other than the Member State of the handling [scil. <i>le all participating MS</i>] European Delegated Prosecutor, the latter [handling] Euro-Delegated Prosecutor shall decide on the adoption of the necessary measure and assign it to [a foreign, assisting EDP]”</p>	<p><b>Assisting Member State Perspective:</b> Existence of the assigned measure and Execution in conformity with the <b>law of the assisting Member State</b> - Are there any peculiarities? - Fundamental principles of law of the assisting MS e.g. Judges’ reservations, reservations for an investigating judge, special thresholds for measures according to Art. 30 (intrusive investigation of privacy) <i>Follow-up:</i> If judicial authorisation for the assigned measure is refused, the <b>handling European Delegated Prosecutor shall withdraw the assignment.</b></p>	<p><b>Art. 31 para 3 EPPO Regulation</b> Art. 31 para 3: “the assisting European Delegated Prosecutor shall obtain that <b>authorisation in accordance with the law of that Member State.</b>”</p>	<p><b>Art. 31 para 4 EPPO Regulation</b> Art. 31 para 4: “The assisting European Delegated Prosecutor shall undertake the assigned measure, or instruct the competent national authority to do so.”</p>	<p><b>Art. 32 EPPO Regulation (Enforcement of assigned measures)</b> “shall be carried out in accordance with this Regulation and the law of the Member State of the assisting European Delegated Prosecutor. Formalities and procedures expressly indicated by the <b>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.</b>”</p>
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Table 4 for France Art. 31 and 32 EPPO – Comparative overview of the investigative „sui-generis” scheme in Art. 31 and 32 EPPO Regulation <sup>\*313</sup>

<sup>313</sup> In this comparative table all depends on who is the handling and who is the assisting EDP. In an EPPO investigation this will be clear as the handling will contact the assisting EDP via mail/telephone/videoconferencing systems, etc. and tell him/her what he/she is dealing with at the moment. The words do not indicate a form of subordination in any way. Both EDPs are colleagues who reside in two foreign MS, which are part of the Union and the EPPO (territory, cf. → Art. 23 EPPO Regulation). If not otherwise indicated, referring to codes, we refer mainly to ss/Artt. of the Criminal Procedure Codes of the concerned MS. Cf. the Bulgarian Volume for a comparative overview on all national investigation measures.

**aa. Justification and adoption of such measures governed by the law of the MS' of the handling EDP**

The French EDP needs to assess and prove if the measure, which he/she wants to carry out in a foreign MS is justified. The justification and the concrete adoption of e.g. a house search (cf. → Art. 54 et seq. CPC) will then be governed by the law of France, which means that he/she needs to assess the measure according to the thresholds, that the legislator implemented e.g. in the Criminal Procedure Code, the Customs Code, the Tax Code and the Tax Procedures Code. 6

**bb. Applicability of general national investigative measures according to national provisions in relevant codes [*Code des douanes, Code general d'impôts, Livre des procedures fiscales*] and the CPC**

Applicability means the formal and substantive requirements that restrict a certain measure e.g. aa house search to thresholds that the legislator has decided, e.g.: 7

<i>Code des douanes</i>	<i>Livre des procedures fiscales</i>	<i>CPC</i>
Art. 64 (for the crimes enshrined (des délits douaniers) 414–429 et 459	Art. L16B, Art. L-80F, Art. L-80K, Art. L-80L	Art. 696-113, Art. 696-114

Source: The authors.

**c) Paras 3–8: Decision by the Chamber concerning the execution of an assigned measure needed, or a substitute measure by the assisting EDP**

Article 31 of the Regulation establishing the European Public Prosecutor's Office relates to cross-border investigations. 8

Article 31(3) states: „If the measure requires judicial authorisation under the law of the Member State of the Delegated European Public Prosecutor, the assisting European Public Prosecutor shall obtain such authorisation in accordance with the law of that Member State“.

The Delegated European Public Prosecutor will therefore have to obtain a „judicial authorisation“. In reality, the Regulation seems to refer only to the judicial authorization, i.e. whether or not a judge is involved upstream, since the request comes directly from a Delegated European Public Prosecutor in charge of the case to an Assistant Delegated European Public Prosecutor. In this respect, the „European Public Prosecutor's Office“ law provides, in certain cases, for the upstream intervention of the judge of freedoms and detention (JLD). 9

The question is then to know, since the Assistant European Public Prosecutor will be French, when the JLD will have to intervene in case of the realization of the various 10

investigation measures? We summarize it according to the investigation framework (the categories) in France<sup>314</sup>:



1. **Enquête de flagrante de droit commun**/Investigation of flagrante of common law
2. **Enquête de flagrante dérogatoire**/Investigation of flagrante delicto
3. **Enquête préliminaire de droit commun**/Common Law Preliminary Investigation
4. **Enquête préliminaire dérogatoire**/Special Preliminary investigation
5. **Enquête hybride (art. 696-114 CPP)**/Hybride (new) Investigation
6. **Enquête hybride dérogatoire (art. 696-114 CPP)**/Special hybrid investigation (art. 696-114 CPP)

11 The details for each investigation framework<sup>315</sup>/category are summarized on the following pages:

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1. → **Investigation of flagrante of common law, the JLD intervenes for:**

- Special seizures (art. 706-148 et s. CPP),
- Geolocation beyond the first fifteen consecutive days (art. 230-33 1° CPP), but a relaxation is provided for if there is an emergency (art. 230-35 CPP).
- Control of the police custody (= *garde a vue* = GAV) after the first 48 hours (art. 62-2 CPP, art. 62-3 CPP).<sup>316</sup>

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2. → **Investigation of flagrante delicto derogatory** (*if there is no precision in the derogatory regime, the gap i.e. regulatory void must be filled with the rules derived of common law*)

- Searches and seizures for evidentiary purposes (art. 706-89 CPP)
- Interception, recording and transcription of correspondence sent by electronic communication (706-95 CPP)
- Remote access, without the knowledge of the person concerned, to correspondence stored by electronic communication accessible by means of a computer identifier (art. 706-95-1 CPP)

<sup>314</sup> L'article 31 du règlement portant création du parquet européen est relatif aux enquêtes transfrontières. À ce titre le § 3 dudit article précise: « Si la mesure requiert une autorisation judiciaire en vertu du droit de l'État membre du procureur européen délégué assistant, ce dernier se charge de l'obtention de cette autorisation conformément au droit de cet État membre ».

Le procureur européen délégué devra donc obtenir une « autorisation judiciaire ». En réalité, le règlement semble viser la seule autorisation juridictionnelle à savoir l'intervention ou non d'un juge en amont, car la demande émane directement d'un procureur européen délégué en charge de l'affaire vers un procureur européen délégué assistant. À ce titre, la loi « parquet européen » prévoit, dans certaines hypothèses, l'intervention en amont du juge des libertés et de la détention (JLD).

Il s'agit alors de savoir, dès lors que le procureur européen délégué assistant sera français, quand le JLD devra intervenir en amont de la réalisation des différentes mesures d'enquête ? Nous le résumons en fonction du cadre d'investigation:

[We cordially thank Ms. Christodoulou for her annotations, discussions and the help concerning the overviews.]

<sup>315</sup> We kindly thank the expert for her help and research input.

<sup>316</sup> **Enquête de flagrante de droit commun**, le JLD intervient pour:

- Les saisies spéciales (art. 148 et s. CPP),
- La géolocalisation au-delà des quinze premiers jours consécutifs (art. 230-33 1° CPP), mais un assouplissement est prévu s'il y a urgence (art. 230-35 CPP).
- Le contrôle de la GAV après les premières 48h (art. 62-2 CPP, art. 62-3 CPP).



- The collection of technical data of connection and interceptions of correspondences emitted by the way of electronic communications (art. 706-95-20 CPP, art. 706-95-12 1°)
- The capture of computer data (art. 706-102-1 CPP, 706-95-12 1°)
- During the police custody for the two additional extensions of 24 hours each (Art. 706-88 CPP)
- The sound recordings and the fixing of images of certain places or vehicles (Art. 706-96-1 al. 1 CPP, Art. 706-95-12, 1° CPP)<sup>317</sup>

### 3. → **Common Law Preliminary Investigation:**

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- Searches and seizures for evidentiary purposes require authorization if there is a combination of: absence of consent + a sentence of more than three years of imprisonment (art. 76 al. 3 CPP + 696-126 CPP)
- Special seizures (art. 706-148 et s. CPP),
- Geolocation beyond the first fifteen consecutive days (art. 230-33 1° CPP), but a relaxation is provided for if there is an emergency (art. 230-35 CPP).
- Control of the police custody (GAV) after the first 48 hours (art. 77 CPP, art. 62-2 CPP, art. 62-3 CPP)<sup>318</sup>

### 4. → **Derogatory Preliminary investigation** (*applies if no details in the special regime, the regulatory gap must be filled with the rules of common law*):

15

- Searches and seizures for evidentiary purposes (art. 706-8-90 al. 1 CPP)
- Interception, recording and transcription of correspondence sent by electronic means (706-95 CPP)
- Remote access, without the knowledge of the person concerned, to correspondence stored by electronic communication accessible by means of a computer identifier (art. 706-95-1 CPP)

<sup>317</sup> **Enquête de flagrance dérogatoire** (si aucune précision dans le régime dérogatoire, il faut combler le vide avec les règles de droit commun):

- Les perquisitions et les saisies à des fins probatoires (art. 706-89 CPP)
- L'interception, l'enregistrement et la transcription de correspondances émises par la voie des communication électroniques (706-95 CPP)
- L'accès à distance et à l'insu de la personne visée aux correspondances stockées par la voie des communications électroniques accessibles au moyen d'un identifiant informatique (art. 706-95-1 CPP)
- Le recueil des données techniques de connexion et des interceptions de correspondances émises par la voie des communication électroniques (art. 706-95-20 CPP, art. 706-95-12 1°)
- La captation de données informatiques (art. 706-102-1 CPP, 706-95-12 1°)
- Durant la GAV pour les deux prolongations supplémentaires de 24h chacune (Art. 706-88 CPP)
- Les sonorisations et les fixations d'images de certains lieux ou véhicules (art. 706-96-1 al. 1 CPP, art. 706-95-12, 1° CPP)

<sup>318</sup> **Enquête préliminaire de droit commun:**

- Les perquisitions et les saisies à des fins probatoires il faut une autorisation s'il y cumulativement: absence de consentement + une peine encourue supérieure à trois ans d'emprisonnement (art. 76 al. 3 CPP + 696-126 CPP)
- Les saisies spéciales (art. 148 et s. CPP),
- La géolocalisation au-delà des quinze premiers jours consécutifs (art. 230-33 1° CPP), mais un assouplissement est prévu s'il y a urgence (art. 230-35 CPP).
- Le contrôle de la GAV après les premières 48h (art. 77 CPP, art. 62-2 CPP, art. 62-3 CPP)

- The collection of technical data of connection and interceptions of correspondences emitted by the way of electronic communications (art. 706-95-20 CPP, art. 706-95-12 1°)
- Capture of computer data (art. 706-102-1 CPP, 706-95-12 1°)
- GAV an authorization is required for the two additional extensions of 24 hours each (Art. 706-88 CPP)
- Sound and image recordings of certain places or vehicles (Art. 706-96-1 al. 1 CPP, Art. 706-95-12, 1° CPP)<sup>319</sup>

16      **5. → Hybrid (new) Investigation:**

- Searches and seizures for evidentiary purposes: if there is no consent (art. 92 CPP, art. 696-126 CPP)
- Special seizures for confiscation purposes (art. 696-128 CPP and 148 et seq. CPP)
- Interception, recording and transcription of correspondence sent by electronic communication (Art. 100 CPP + Art. 696-127 CPP).
- Geolocation (Art. 230-33 2°, Art. 696-127 CPP), a relaxation is provided for if there is an emergency
- Police custody (GAV) on rogatory commission (art. 154 CPP, art. 696-118 CPP) an authorization is required after the first 48 hours (art. 62-2 CPP, art. 62-3 CPP)
- Investigation under pseudonym (art. 696-127 CPP)<sup>320</sup>

17      **6. → Derogatory hybrid investigation** (art. 696-114 CPP) (*applies if no precision in the special regime, this regulatory gap must be filled with the rules of common law*):

- Searches and seizures for evidentiary purposes: if no consent is given (art. 706-91 CPP, art. 696-126 CPP)

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<sup>319</sup> **Enquête préliminaire dérogatoire** (si aucune précision dans le régime dérogatoire, il faut combler le vide avec les règles de droit commun):

Les perquisitions et les saisies à des fins probatoires (art. 706-8-90 al. 1 CPP)

-L'interception, l'enregistrement et la transcription de correspondances émises par la voie des communication électroniques (706-95 CPP)

-L'accès à distance et à l'insu de la personne visée aux correspondances stockées par la voie des communications électroniques accessibles au moyen d'un identifiant informatique (art. 706-95-1 CPP)

-Le recueil des données techniques de connexion et des interceptions de correspondances émises par la voie des communication électroniques (art. 706-95-20 CPP, art. 706-95-12 1°)

-La captation de données informatiques (art. 706-102-1 CPP, 706-95-12 1°)

-GAV une autorisation est nécessaire pour les deux prolongations supplémentaires de 24h chacune (Art. 706-88 CPP)

-Les sonorisations et les fixations d'images de certains lieux ou véhicules (art. 706-96-1 al. 1 CPP, art. 706-95-12, 1° CPP)

<sup>320</sup> **Enquête hybride (art. 696-114 CPP):**

-Les perquisitions et les saisies à des fins probatoires: si absence de consentement (art. 92 CPP, art. 696-126 CPP)

-Les saisies spéciales à des fins de confiscation (art. 696-128 CPP et 148 et s. CPP)

-L'interception, l'enregistrement et la transcription de correspondances émises par la voie des communications électroniques (Art 100 CPP + Art. 696-127 CPP).

-La géolocalisation (art. 230-33 2°, art. 696-127 CPP), un assouplissement est prévu s'il y a urgence

- GAV sur commission rogatoire (art. 154 CPP, art. 696-118 CPP) une autorisation est nécessaire après les premières 48h (art. 62-2 CPP, art. 62-3 CPP)

-L'enquête sous pseudonyme (art. 696-127 CPP)

- Special seizures for confiscation purposes (art. 706-103 CPP)
- Remote access, without the knowledge of the person concerned, to correspondence stored by electronic communications accessible by means of a computer identifier (art. 706-95-1 CPP + Art. 696-127 CPP)
- The collection of technical data of connection and interceptions of correspondences emitted by the way of electronic communications (art. 706-95-20 CPP, Art. 696-127 CPP)
- Capture of computer data (art. 706-102-1 CPP, Art. 696-127 CPP)
- Police custody (GAV) on rogatory commission (Art. 154 CPP, Art. 696-118 CPP) an authorization is required for the two additional extensions of 24 hours each (Art. 706-88 CPP)
- Sound and image recordings of certain places or vehicles (art. 706-96-1 al. 2 CPP, art. 696-127 CPP)<sup>321</sup>

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<sup>321</sup> **Enquête hybride dérogatoire** (art. 696-114 CPP) (si aucune précision dans le régime dérogatoire, il faut combler le vide avec les règles de droit commun):

- Les perquisitions et les saisies à des fins probatoires: si absence de consentement (art. 706-91 CPP, art. 696-126 CPP)
- Les saisies spéciales à des fins de confiscation (art. 706-103 CPP)
- L'accès à distance et à l'insu de la personne visée aux correspondances stockées par la voie des communications électroniques accessibles au moyen d'un identifiant informatique (art. 706-95-1 CPP + Art. 696-127 CPP)
- Le recueil des données techniques de connexion et des interceptions de correspondances émises par la voie des communication électroniques (art. 706-95-20 CPP, Art. 696-127 CPP)
- La captation de données informatiques (art. 706-102-1 CPP, Art. 696-127 CPP)
- GAV sur commission rogatoire (art. 154 CPP, art. 696-118 CPP) une autorisation est nécessaire pour les deux prolongations supplémentaires de 24h chacune (Art. 706-88 CPP)
- Les sonorisations et les fixations d'images de certains lieux ou véhicules (art. 706-96-1 al. 2 CPP, art. 696-127 CPP)

Summary for JLD authorizations in tables & overviews:

\* If we refer to „common law” this means „*droit commun*”.

\*\* If we refer to „GAV”, this means the police custody (abbreviation).

\*\*\* Referring to „JLD”, describes the *Juge des libertés et de la détention* i.e. Judge of freedoms and detention.



Sources & national sections 1: Art. 31 Overview for France: Searches and seizures for evidentiary purposes/computer searches/ Vehicle searches

Measures From the CPP	Authorization or not depending on the investigation framework					
	Flairance investi- gation		Preliminary investiga- tion		Hybrid investigation (Art. 696-114)	
	Common law ( <i>droit commun</i> )	deroga- tory ( art. 706-73, 706-73-1 CPP)	<b>Common law</b>	deroga- tory ( art. 706- 73, 706- 73-1 CPP)	Common law	deroga- tory ( art. 706- 73, 706- 73-1 CPP)
Searches and sei- zures for eviden- tiary pur- poses	No need for the authoriza- tion of a judge (art. 56 CPP)	<b>Authori- zation of the JLD</b> (art. 706- 89 CPP)	<b>JLD author- ization</b> if: -Lack of con- sent -The penalty incurred is more than three years’ imprison- ment (art. 76 al. 3 CPP + 696-126 CPP)	<b>JLD au- thoriza- tion</b> (art. 706-8-90 al. 1 CPP)	<b>Authori- zation of the JLD</b> if no con- sent (art. 92 CPP, art. 696- 126 CPP)	<b>Authori- zation of the JLD</b> if no con- sent (art. 706-91 CPP, art. 696-126 CPP)

computer searches	No need for the authorization of a judge (art. 57-1 CPP)		No need for the authorization of a judge (art. 76-3 CPP)		No need for the authorization of a judge (art. 97 CPP)	
Vehicle searches			No need for the authorization of a judge (art. 78-2-3 CPP)			

*Sources & national sections 2: Art. 31 Overview for France: requisitions/External direct debits/Technical and scientific examinations/Requests for the delivery of information, including in digital form/Requests for the delivery of information contained in a computer system or processing of personal data carried out by telematic or computer means/Copies of computer data* **18**

Measures	Authorization or not depending on the investigation framework					
	requisitions	Flagrance investigation		Preliminary investigation		Hybrid <i>investigation</i> (Art. 696-114)
	Common law (droit commun)	Application of common law	Common law	Application of common law	Common law	Application of common law
External direct debits	No need for a judge's permission		No need for a judge's permission		No need for the authorization of a judge (art. 154-1 CPP)	

Technical and scientific examinations	( art. 55-1 CPC)  No need for the authorization of a judge (art. 60 CPP)		( art. 76-2 CPC)  No need for the authorization of a judge (art. 77-1 CPP)		Disposition of the expertise (see below, no authorization from a judge)	
Requests for the delivery of information, including in digital form	No need for the authorization of a judge (art. 60-1 CPP)		No need for the authorization of a judge (art. 77-1-1 CPP)		No need for the authorization of a judge (art. 99-3 CPP)	
Requests for the delivery of information contained in a computer system or processing of personal data carried out by telematic or computer means	No need for the authorization of a judge (art. 60-2 CPP)		No need for the authorization of a judge (art. 77-1-2 CPP)		No need for the authorization of a judge (art. 99-4 CPP)	
Copies of computer data	No need for the authorization of a judge (art. 60-3 CPP)		No need for the authorization of a judge (art. 77-1-3 CPP)		No need for the authorization of a judge (art. 99-5 CPP)	
Requisitions relating to technical data making it possible to identify the source of the connection or those relating to terminal equipment	No need for the authorization of a judge (art. 61-1-2 CPP)		No need for the authorization of a judge (art. 77-1-1 CPP)		No need for the authorization of a judge (art. 99-3 CPP)	

*Sources & national sections 3: Art. 31 – Overview for France: Seizures guaranteeing confiscation (art. 131-21 PC)* 19

Measures	Authorization or not depending on the investigation framework				
	Flagrance investigation		Preliminary investigation		Hybrid <i>investigation</i> (Art. 696-114)
	common law		Common law		Common law ( <i>droit commun</i> ) derogatory (article 706-73, 706-73-1 and 706-74 CPP)
Seizures guaranteeing confiscation (art. 131-21 PC)	<p>→Common law seizures: no authorization from a judge (art. 56 CPP)</p> <p>→Special entries:</p> <p>-Movable or immovable property belonging to the convicted person: authorization from the JLD if the offense is punishable by at least 5 years' imprisonment (art. 706-148 CPP)</p> <p>-Immovable property: authorization of the</p>		<p>→Common law seizures: <b>JLD authorization</b> subject to:</p> <p>-If no consent</p> <p>-if the penalty incurred is more than three years' imprisonment (art. 76 al. 3 CPP + 696-126 CPP)</p> <p>→Special entries:</p> <p>-Movable or immovable property belonging to the convicted person if the offense is punishable by at least 5 years of impris-</p>		<p>property, movable or immovable, divided or undivided, of the person under investigation: authorization of the JLD (art. 696-128 CPP)</p> <p>-Movable or immovable property belonging to the convicted person if the offense is punishable by at least 5 years of imprisonment: authorization of the JLD (art. 706-148 CPP)</p> <p>property, movable or immovable, divided, or undivided, of the person under investigation: authorization of the JLD (art. 706-103 CPP).</p>

<p>JLD (art. 706-150 CPP).</p> <ul style="list-style-type: none"> <li>- Assets or intangible rights: authorization of the JLD (art. 706-153 CPP)</li> <li>- A sum of money paid into an account opened with an institution authorized by law to hold deposit accounts: no authorization upstream from the judge. The JLD decides a posteriori by a reasoned order on the maintenance or the release of the seizure within ten days from its realization (art. 706-154 CPP)</li> <li>- Seizures without dispossession: authorization of the JLD (art. 706-158 CPP)</li> </ul>	<p>onment: authorization of the JLD (art. 706-148 CPP)</p> <ul style="list-style-type: none"> <li>-Immovable property: authorization of the JLD (art. 706-150 CPP).</li> <li>- Assets or intangible rights: authorization of the JLD (art. 706-153 CPP)</li> <li>- A sum of money paid into an account opened with an institution authorized by law to hold deposit accounts: no authorization upstream from the judge. The JLD decides a posteriori by a reasoned order on the maintenance or the release of the seizure within ten days from its realization (art. 706-154 CPP)</li> <li>- Seizures without disposses-</li> </ul>	<ul style="list-style-type: none"> <li>-Immovable property: authorization of the JLD (art. 706-150 CPP).</li> <li>- Assets or intangible rights: authorization of the JLD (art. 706-153 CPP)</li> <li>- A sum of money paid into an account opened with an institution authorized by law to hold deposit accounts: no authorization upstream from the judge. The JLD decides a posteriori by a reasoned order on the maintenance or the release of the seizure within ten days from its realization (art. 706-154 CPP)</li> <li>- Seizures without dispossession: authorization of the JLD (art. 706-158 CPP)</li> </ul>	
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		<p>sion: authoriza- tion of the JLD (art. 706-158 CPP)</p>		
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*Sources & national sections 4: Art. 31 Overview for France:* The interception, recording and transcription of correspondence sent by means of electronic communication/Remote access and without the knowledge of the person concerned to the correspondence stored by means of electronic communications accessible by means of a computer identifier/The collection of technical connection data and interceptions of correspondence sent by means of electronic communication/Computer data capture 20

Measures	Authorization or not depending on the investigation framework			
	Flagrance investigation	Preliminary investigation	Hybrid <i>investigation</i> (Art. 696-114)	
	derogatory (706-73 and 706-73-1 CPC)	derogatory (706-73 and 706-73-1 CPC)	Common law	derogatory (706-73 and 706-73-1 CPC)
The interception, recording and transcription of correspondence sent by means of electronic communication	<b>JLD authorization</b> for a maximum duration of one month, renewable once under the same conditions of form and duration (706-95 CPP)	<b>JLD authorization</b> for a maximum duration of one month, renewable once under the same conditions of form and duration (706-95 CPP)	<b>Authorization of the JLD</b> for offenses which are punishable by at least three years of imprisonment (Art 100 CPP + Art.	Application of common law

<p>Remote access and without the knowledge of the person concerned to the correspondence stored by means of electronic communications accessible by means of a computer identifier</p> <p>The collection of technical connection data and interceptions of correspondence sent by means of electronic communication</p>	<p><b>Authorization of the JLD</b> (art. 706-95-1 CPP)</p> <p><b>Authorization of the JLD</b> (art. 706-95-20 CPP, art. 706-95-12 1°)</p>	<p><b>Authorization of the JLD</b> (art. 706-95-1 CPP)</p> <p><b>Authorization of the JLD</b> (art. 706-95-20 CPP, art. 706-95-12 1°)</p>	<p>696-127 CPP)</p>	<p><b>Authorization of the JLD</b> (art. 706-95-2 CPP + art. 696-127 CPP).</p> <p><b>Authorization of the JLD</b> (art. 706-95-20 CPP and art. 696-127 CPP)</p>
<p>Computer data capture</p>	<p><b>Authorization of the JLD</b> (art. 706-102-1 CPP, 706-95-12 1°)</p>	<p><b>Authorization of the JLD</b> (art. 706-102-1 CPP, 706-95-12 1°)</p>		<p><b>Authorization of the JLD</b> (art. 706-102-1 CPP and art. 696-127 CPP)</p>

Measures	Authorization or not depending on the investigation framework					
	Flagrance investigation		Preliminary investigation		Hybrid <i>investigation</i> (Art. 696-114)	
	Common law	derogatory (706-73 and 706-73-1 CPC)	Common law	derogatory (706-73 and 706-73-1 CPC)	Common law	derogatory (706-73 and 706-73-1 CPC)
Geolocation	Offense punishable by at least three years of imprisonment: no authorization for fifteen consecutive days, beyond intervention of the JLD for a maximum duration of one month renewable under the same conditions of form and duration, cannot exceed one year (art. 230-33 1° CPP)	<i>Idem</i> , cannot exceed two years (art. 230-33 al. 4 CPP)	Offense punishable by at least three years of imprisonment: no authorization for fifteen consecutive days, beyond intervention of the JLD for a maximum duration of one month renewable under the same conditions of form and duration cannot exceed one year (art. 230-33 1° CPP)	<i>Idem</i> , cannot exceed two years (art. 230-33 al. 4 CPP)	Offense punishable by at least three years' imprisonment: authorization by the JLD for a maximum period of four months, renewable under the same conditions of form and duration, cannot exceed one year (art. 230-33 2°, art. 696-127 CPC) Relaxation if urgent (art. 230-35 CPP).	<i>Idem</i> , cannot exceed two years (art. 230-33 al. 4 CPP)

	Relaxation if urgent (art. 230-35 CPP).		Relaxation if urgent (art. 230-35 CPP).			
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**22** *Sources & national sections 6: Art. 31 Overview for France: Surveillance of property or people*

Measures	Authorization or not depending on the investigation framework		
	Flagrance investigation	Preliminary investigation	Hybrid <i>investigation</i> (Art. 696-114)
	derogatory ( art. 706-73, 706-73-1 and 706-74 CPP)	derogatory ( art. 706-73, 706-73-1 and 706-74 CPP)	derogatory ( art. 706-73, 706-73-1 and 706-74 CPP)
Surveillance of property or people	Not the authorization of a judge (art. 706-80 CPP)	Not the authorization of a judge (art. 706-80 CPP)	Not the authorization of a judge (art. 706-80 CPP)

**23** *Sources & national sections 7: Art. 31 Overview for France: Checks, verifications and identity records*

Measures	Authorization or not depending on the investigation framework	
	Flagrance investigation	Preliminary investigation
	Common law	Common law
Checks, verifications and identity records	No authorization from a judge (art. 78-2 CPP)	No authorization from a judge (art. 78-2 CPP)

*Sources & national sections 8: Simple hearing / witness hearing/Free hearing/ Police custody (GAV)/Hearing of assisted witness/MEE hearing* **24**

Measures	Authorization or not depending on the investigation framework					
	Flagrance investigation		Preliminary investigation		Hybrid <i>investigation</i> (Art. 696-114)	
	Common law	derogatory ( art. 706-73)	Common law	derogatory ( art. 706-73)	Common law	derogatory ( art. 706-73)
Simple hearing / witness hearing	No authorization from a judge (art. 62 CPP)		No authorization from a judge (art. 77 CPP, art. 62 CPP)		Decision taken by the PED (art. 153 CPP, art. 102 CPP, art. 696-118 CPP)	
Free hearing	No authorization from a judge (art. 61-1 CPP)		No authorization from a judge (art. 77 CPP, art. 61-1 CPP)		Decision taken by the PED (art. 154 CPP, art. 696-118 CPP)	
GAV	Control by the JLD after the first 48 hours (art. 62-2 CPP, art. 62-3 CPP)	Two additional extensions of 24 hours each by the JLD (Art. 706-88 CPP)	Control by the JLD after the first 48 hours (art. 77 CPP, art. 62-3 CPP)	Two additional extensions of 24 hours each by the JLD (Art. 706-88 CPP)	Decision taken by the PED (art. 154 CPP, art. 696-118 CPP), the rules of the GAV apply. Control by the JLD after the first	Two additional extensions of 24 hours each by the JLD (Art. 706-88 CPP)

Hearing of assisted witness					48 hours (art. 62-2 CPP, art. 62-3 CPP) Decision taken by the PED (art 113-1 CPP, 696-118 CPP)
MEE hearing					Decision taken by the PED (art 116 CPP, 696-118 CPP)

25 Sources & national sections 9: Art. 31 – Overview for France: Infiltration

Measures	Authorization or not depending on the investigation framework			
		Flagrance investigation	Preliminary investigation	Hybrid <i>investigation</i> (Art. 696-114)
		derogatory (art. 706-73, 706-73-1 CPP)	derogatory (art. 706-73, 706-73-1 CPP)	derogatory (art. 706-73, 706-73-1 CPP)
Infiltration		No permission from a judge	No permission from a judge	No permission from a judge

*Sources & national sections 10: Art. 31 – Overview for France: The sound and image fixations of certain places or vehicles* 26

Measures	Authorization or not depending on the investigation framework		
	Flagrance investigation	Preliminary investigation	Hybrid <i>investigation</i> (Art. 696-114)
	derogatory (art. 706-73, 706-73-1 CPP)	derogatory (art. 706-73, 706-73-1 CPP)	derogatory (art. 706-73, 706-73-1 CPP)
The sound and image fixations of certain places or vehicles	<b>Authorization of the JLD</b> (art. 706-96-1 al. 1 CPP, art. 706-95-12, 1° CPP)	<b>Authorization of the JLD</b> (art. 706-96-1 al. 1 CPP, art. 706-95-12, 1° CPP)	<b>Authorization of the JLD</b> (art. 706-96-1 al. 2 CPP, art. 696-127 CPP)

*Sources & national sections 11: Art. 31 – Overview for France: The investigation under a pseudonym* 27

Measures	Authorization or not depending on the investigation framework					
	Flagrance investigation		Preliminary investigation		Hybrid <i>investigation</i> (Art. 696-114)	
	Common law crimes and misdemeanours punishable by imprisonment committed by means of electronic communication	Application of common law	Right Common crimes and misdemeanours punishable by imprisonment committed by means of electronic communication	Application of common law	Right Common crimes and misdemeanours punishable by imprisonment committed by means of electronic communication	Application of common law

The <i>investigation</i> under a pseudonym	No authorization from a judge (art. 230-46 CPP)	No authorization from a judge (art. 230-46 CPP)	<b>Authorization of the JLD</b> (art. 696-127 CPP)
Image capture by drone (2022)	No authorization from a judge (art. 230-48 1° CPP)	No authorization from a judge (art. 230-48 1° CPP)	Authorization of the JI (art. 230-48 2° CPP)

**28** *Sources & national sections 12: Art. 31 – Overview for France: Expertise/Letters of Request*


Measures	Authorization or not depending on the investigation framework		
	Flagrance investigation	Preliminary investigation	Hybrid <i>investigation</i> (Art. 696-114)
Expertise (measure applicable only to hybrid investigation/investigation for the European Public Prosecutor’s Office) Letters of Request (measure applicable only to the hybrid investigation/investigation for the European Public Prosecutor’s Office)			Right common By the PED – no authorization from a judge (art. 156 CPP et seq. and art. 696-118 CPP)  By the PED – no authorization from a judge (art. 151 CPP et seq. and art. 696-118 CPP)

**29** If for example the assigned EDP resides in Germany and shall adopt a search measure in Germany, he/she needs to answer the question if this measure requires a judicial authorisation.

A search measure in Germany requires judicial authorisation by a judge:



- **DE**= ss. 102–107<sup>322</sup>, 162 CPC (investigating judge „*Ermittlungsrichter*“ who is competent to allow searches, seizures [...]).
- **BE**=<sup>323</sup> = Art. 28ter, 39bis, Art. 56 § 3 (*juge d’instruction*), Art. 62 § 2, Art. 88ter


*Nota bene:* For more measures or other MS and their measures, see below PART 2 of this Manual (overviews of all sections, see Art. 28 and 30). 

In the case that a certain measure is not available to the EDP (in our example the German EDP assigned by the handling French EDP) para 6 may apply. Thus the handling EDP needs to ask the assisting what kind of procedure would „be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation”. **30**

The European Delegated Prosecutors concerned may then in agreement with the supervising European Prosecutors concerned, have recourse to such instruments. **31**

In our example this would be the **32**

Act on International Mutual Assistance in Criminal Matters [Germany], (IRG)<sup>324</sup>.

*Nota bene:* All Member states have such agreements and instruments and adopt new ones from time to time under the EIO Regulation and the European Arrest Warrant regime. 

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<sup>322</sup> Not identical with an online search. The online-search is available under s. 100b German CPC. See the German CNP volume.

<sup>323</sup> See Yves Van Den Berge, eucrim 2021, pp 63–64.

<sup>324</sup> See Gesetz über die internationale Rechtshilfe in Strafsachen.

### 3. Article 32 Enforcement of assigned measures

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The assigned measures shall be conducted in accordance with this Regulation and **the law of the Member State of the assisting European Delegated Prosecutor**. Formalities and procedures expressly indicated by the handling European Delegated Prosecutor shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.

#### a) Assigned measures according to Para 2 of Art. 31

##### aa. Special provisions in the handling EDP’s state that govern this situation

###### (1) French EDP is the assisting EDP

- 1 In the case that French EDPs are contacted by other EDPs they must be aware of the formalities and procedures expressly indicated by the handling EDP. This requires assessing whether the formalities and procedures are contrary to the established rules in the homeland state, i.e. in this case France.

###### (2) French EDP is the “handling EDP”

- 2 The enforcement of an assigned measure will not take place in France in a cross-border investigation but in the assigned, foreign Member State if the French EDPs investigate. Thus the law of this assigned, foreign Member State (e.g. Germany, Italy) will govern

the enforcement of the assigned measure. The law that is referred to in Art. 32 *in abstracto* will mainly be the CPC of the assigned Member State (thus in Germany the *Strafprozessordnung*, in Italy the *Codice di Procedura Penale* and in Czech Republic the *Zákon č. 141/1961 Sb. Zákon o trestním řízení soudním (trestní řád)*). These laws are in normal circumstances not known to the EDP of the handling Member State but they are the homeland law of the assigned EDP. Still, it is useful if the handling EDP has at least some knowledge about the foreign Member State and its law (see above → Art. 30).

### (3) Formalities and procedures in France

The formalities and procedures apply to both cases identified above. Delegated measures shall be implemented in accordance with the Regulation and the law of the Member State of the Delegated European Public Prosecutor. As such, the formalities and procedures expressly indicated by the Delegated European Public Prosecutor in charge of the case shall be complied with unless they are contrary to the fundamental principles of the law of the Member State of the Assistant European Public Prosecutor. 3

If the Member State of the Assistant Delegated European Public Prosecutor is France, the fundamental principles of that country must therefore be respected. What are they? It is possible to identify three main sources (one national and two European): 4

The 1958 Constitution of France does not expressly refer to the notion of “fundamental rights”, unlike other countries such as Spain or Italy. In fact, many fundamental rights and freedoms are guaranteed by the preamble to the constitution, which refers to three main sources: 5

- The Declaration of the Rights of Man and the Citizen of 1789,
- The preamble of the Constitution of 1946
- The Charter of the Environment.
- The Charter of Fundamental Rights of the European Union adopted in 2000,
- The European Convention for the Protection of Human Rights adopted in 1950 by the Council of Europe.<sup>325</sup>

<sup>325</sup> Les mesures déléguées sont mises en œuvre au regard du règlement et du droit de l'État membre du procureur européen délégué assistant.

À ce titre, les formalités et les procédures expressément indiquées par le procureur européen délégué chargé de l'affaire sont respectées à moins qu'elles ne soient contraires aux principes fondamentaux du droit de l'État membre du procureur européen délégué assistant.

Si l'État membre du procureur européen délégué assistant est la France, il faut donc respecter les principes fondamentaux de ce pays. Quels sont-ils ? Il est possible de relever trois sources principales (une nationale et deux européennes):

- La constitution de 1958 ne fait pas expressément référence à la notion de « droits fondamentaux », contrairement à d'autres pays comme l'Espagne ou l'Italie. En réalité, de nombreuses libertés et droits fondamentaux sont garanties par le préambule de la Constitution, lequel fait référence à trois sources principales:

- -La Déclaration des droits de l'Homme et du citoyen de 1789,
- -Le préambule de la Constitution de 1946

- 6 The procedures and formalities in the state of the handling EDP depend on the assigned measure and the comparison with the measure in the MS of the handling EDP. House searches by virtue of s. 54 et seq. CPC e.g. will be governed by the formal requirements of the Criminal Procedure Code. Any other measure that is not stipulated by the CPC will be governed by the law it stems from or is enshrined in. Thus for Art. 32 para 1 in connection with Art. 31 para 2 EPPO Regulation it can be concluded that the special provisions in the handling EDP's state that govern the situation of the assigned measure mainly depend on the formal requirements that the relevant Code (CPC, tax code, customs code, e.g. Art. 66) stipulates for the adoption of this measure in an investigation.

**bb. Availability of measures to the EDP according to Art. 31 and 30 in combination with the national measures**

**b) Examples for difficulties assigning & handling MS and the assisting MS**

- 7 Difficulties might especially occur if it is unclear which "formalities and procedures the handling [French] European Delegated Prosecutor will expressly indicate. This may relate to the comparison with the own national standard (is there a judicial approval requirement? Are there times to be observed for a search? Can a lawyer be present? Are fundamental rights to be observed?).
- 8 In the end the French EDP can only indicate or wish these formalities and procedures to be executed if "such formalities and procedures are [not] contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor." This requires that the EDP at least roughly pre-compares both states (see above comparative table → Availability of measures to the EDP according to Art. 31 and 30 in combination with the national measures).

**aa. EDP misses knowledge about "the other country"**

- 9 If the EDP must investigate in a participating country and it misses knowledge about the country he/she may refer to different authorities and (EU-)networks (such as primarily the EDP in the other country, secondly Eurojust, thirdly the Chamber and the EP and furthermore the European Judicial Network (EJN), Europol and external organizations like e.g. the International Association of Prosecutors (IAP)) and he/she might refer to manuals and academic information's like the present ones. He/she is obliged to acquire the information in order to achieve the *ratio* of Art. 32 EPPO Regulation and secure the success of the investigation into conduct detrimental to the Union's financial interest.

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· -La charte de l'environnement.  
 · La charte des droits fondamentaux de l'Union européenne adoptée en 2000,  
 · La Convention européenne de sauvegarde des droits de l'Homme adoptée en 1950 par le Conseil de l'Europe.

**bb. The role of mutual legal assistance in cases involving non participating or non-EU countries.**

The old mutual legal assistance has a potential influence on the knowledge of the investigation measures in another country. If the EDP must investigate in a non-participating or non-EU country and it misses knowledge about the country he/she may refer to different authorities (such as the EDP in the other country, Eurojust, the Chamber, the EP) and might consult different legal instruments such as the European Investigation Order, mutual legal assistance requests or the setting-up of a Joint-Investigation Team with the help of Eurojust.<sup>326</sup> **10**

**cc. Contact points between the MS**

A police cooperation code does not yet exist<sup>327</sup>, but there are contact points already today. **11**

**Contact Points:**

- Ministry of Justice of the concerned country
- Prosecutor Agreements
- The EJM Communication
- The role of Eurojust

This list is not exhaustive. The EPPO and OLAF host more information within their internal contact information systems.



<sup>326</sup> See Eurojust, Joint Investigation Teams Practical Guide, Luxembourg: Publications Office of the European Union, 2021, 16–17.

<sup>327</sup> See the EU Commission proposed one in December 2021, Police Cooperation Code [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_6646](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_6646).

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### Art. 33 Détention provisoire et remise transfrontière

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).

In the following the main French provisions i.e. **national law applicable in similar domestic cases** shall be presented, explained and underpinned with judgements of French (criminal) courts. 1

#### a) General relation to national law: applicable Codes

*Sources and national sections 5 Overview for France – Art. 33 EPPO Regulation* 2

- Tax Code/*Code d'impôts*,
- CPC/*Code de procédure pénale*,
- Code for the organization of the judiciary/*Code de l'organisation judiciaire*,
- Customs Code/*Codes des douanes*

#### b) Para 1: Provisions for arrest and pre-trial detention

##### aa. The mandates during the investigation/*Les mandats durant l'enquête*

##### (1) Flagrant investigation/*En enquête de flagrance*

Prosecutor's search warrant: for offences punishable by 3 years imprisonment/*Mandat de recherche du procureur: pour les infractions punies de 3 ans d'emprisonnement* 3

#### Art. 70 CPC<sup>328</sup>

If the needs of the investigation into a flagrant crime or offence punishable by at least three years' imprisonment so require, the public prosecutor may, without prejudice to the application of the provisions of Article 73, issue a search warrant for any person against whom there are one or more plausible grounds for suspecting that he or she has committed or attempted to commit the offence execution of this warrant, the provisions of Article 134 shall apply. The person discovered by virtue of this warrant shall be placed in custody by the judicial police officer of the place of discovery, who may proceed to interview him or her, without prejudice to the application of Article 43<sup>329</sup> and

<sup>328</sup> Art. 70 CPP

Si les nécessités de l'enquête portant sur un crime flagrant ou un délit flagrant puni d'au moins trois ans d'emprisonnement l'exigent, le procureur de la République peut, sans préjudice de l'application des dispositions de l'article 73, décerner mandat de recherche contre toute personne à l'encontre de laquelle il existe une ou plusieurs raisons plausibles de soupçonner qu'elle a commis ou tenté de commettre l'infraction.

<sup>329</sup> Pour l'exécution de ce mandat, les dispositions de l'article 134 sont applicables. La personne découverte en vertu de ce mandat est placée en garde à vue par l'officier de police judiciaire du lieu de la découverte, qui peut

the possibility for investigators already seized of the facts to go to the scene in order to do so themselves, after having, if necessary, benefited from an extension of jurisdiction pursuant to Article 18. The public prosecutor who issued the search warrant shall be informed as soon as the measure begins; this magistrate may order that, for the duration of the custody, the person be taken to the premises of the investigating department seized of the facts.

If the person who was the subject of the search warrant is not discovered in the course of the investigation and if the public prosecutor requests the opening of an investigation against an unnamed person, the search warrant remains valid for the duration of the investigation, unless it is revoked by the investigating judge.

- Apprehension by all: for offences punishable by a one-year sentence/*Appréhension par tout le monde: pour les infractions punies d'une peine d'un an*
- Art. 73 CPP

## (2) Preliminary Investigation/*En enquête préliminaire*

- 4 - Prosecutor's search warrant: for offences punishable by 3 years imprisonment (art. 77-4 CPP)/*Mandat de recherche du procureur: pour les infractions punies de 3 ans d'emprisonnement*

### **Art. 77-4 CPP**<sup>330</sup>

If the needs of the investigation into a crime or offence punishable by at least three years' imprisonment so require, the public prosecutor may issue a search warrant for any person against whom there are one or more plausible grounds for suspecting that he or she has committed or attempted to commit the offence.

The provisions of the second and third paragraphs of Article 70 shall then apply.

- 5 - Summons by a judicial police officer to appear (art. 78 CPP)/*Convocation par un officier de police judiciaire à comparaître*

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procéder à son audition, sans préjudice de l'application de l'article 43 et de la possibilité pour les enquêteurs déjà saisis des faits de se transporter sur place afin d'y procéder eux-mêmes, après avoir si nécessaire bénéficié d'une extension de compétence en application de l'article 18. Le procureur de la République ayant délivré le mandat de recherche en est informé dès le début de la mesure ; ce magistrat peut ordonner que, pendant la durée de la garde à vue, la personne soit conduite dans les locaux du service d'enquête saisi des faits.

Si la personne ayant fait l'objet du mandat de recherche n'est pas découverte au cours de l'enquête et si le procureur de la République requiert l'ouverture d'une information contre personne non dénommée, le mandat de recherche demeure valable pour le déroulement de l'information, sauf s'il est rapporté par le juge d'instruction.

### <sup>330</sup> **Art. 77-4 CPP**

Si les nécessités de l'enquête portant sur un crime ou un délit puni d'au moins trois ans d'emprisonnement l'exigent, le procureur de la République peut décerner mandat de recherche contre toute personne à l'encontre de laquelle il existe une ou plusieurs raisons plausibles de soupçonner qu'elle a commis ou tenté de commettre l'infraction. Les dispositions des deuxième et troisième alinéas de l'article 70 sont alors applicables.



**Art. 78 CPP**<sup>331</sup>

Persons summoned by a judicial police officer for the purposes of the investigation shall be required to appear. The criminal investigation police officer may, with the prior authorisation of the public prosecutor, compel the appearance of persons who have not responded to a summons to appear or who may be expected not to respond to such a summons. The public prosecutor may also authorise the appearance by the police without prior summons in cases where there is a risk of tampering with material evidence or clues, pressure on witnesses or victims and their families or relatives, or consultation between the co-perpetrators or accomplices of the offence.

Article 62 shall apply.

The judicial police officer shall draw up a record of their statements. The judicial police officers designated in Article 20 may also, under the supervision of a judicial police officer, hear the persons summoned.

The minutes shall be drawn up under the conditions laid down in Articles 61 and 62-1.

**bb. Warrants and their execution (during the hybrid investigation)/II Les mandats et leur exécution (durant l'enquête hybride)**

Art. 122 CPP définitions + conditions communes art. 123 et 124 CPP

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**Art. 122 CPC**<sup>332</sup> The examining magistrate may, depending on the case, issue a search warrant, an appearance warrant, or an arrest warrant. The liberty and custody judge may issue a detention order.

<sup>331</sup> **Art. 78 CPP**

Les personnes convoquées par un officier de police judiciaire pour les nécessités de l'enquête sont tenues de comparaître. L'officier de police judiciaire peut contraindre à comparaître par la force publique, avec l'autorisation préalable du procureur de la République, les personnes qui n'ont pas répondu à une convocation à comparaître ou dont on peut craindre qu'elles ne répondent pas à une telle convocation. Le procureur de la République peut également autoriser la comparution par la force publique sans convocation préalable en cas de risque de modification des preuves ou indices matériels, de pressions sur les témoins ou les victimes ainsi que sur leur famille ou leurs proches, ou de concertation entre les coauteurs ou complices de l'infraction.

L'article 62 est applicable.

L'officier de police judiciaire dresse procès-verbal de leurs déclarations. Les agents de police judiciaire désignés à l'article 20 peuvent également, sous le contrôle d'un officier de police judiciaire, entendre les personnes convoquées.

Les procès-verbaux sont dressés dans les conditions prévues par les articles 61 et 62-1.

<sup>332</sup> **Art. 122** Le juge d'instruction peut, selon les cas, décerner mandat de recherche, de comparution, d'amener ou d'arrêt. Le juge des libertés et de la détention peut décerner mandat de dépôt.

Le mandat de recherche peut être décerné à l'égard d'une personne à l'encontre de laquelle il existe une ou plusieurs raisons plausibles de soupçonner qu'elle a commis ou tenté de commettre une infraction. Il ne peut être décerné à l'égard d'une personne ayant fait l'objet d'un réquisitoire nominatif, d'un témoin assisté ou d'une personne mise en examen. Il est l'ordre donné à la force publique de rechercher la personne à l'encontre de laquelle il est décerné et de la placer en garde à vue.

Le mandat de comparution, d'amener ou d'arrêt peut être décerné à l'égard d'une personne à l'égard de laquelle il existe des indices graves ou concordants rendant vraisemblable qu'elle ait pu participer, comme auteur ou complice, à la commission d'une infraction, y compris si cette personne est témoin assisté ou mise en examen.

Le mandat de comparution a pour objet de mettre en demeure la personne à l'encontre de laquelle il est décerné de se présenter devant le juge à la date et à l'heure indiquées par ce mandat.

A search warrant may be issued for a person against whom there are one or more plausible grounds for suspecting that he or she has committed or attempted to commit an offence. It may not be issued in respect of a person who has been the subject of a formal accusation, an assisted witness or a person under investigation. It is the order given to the police to search for the person against whom it is issued and to place him or her in police custody.

A warrant to appear, bring or arrest may be issued for a person in respect of whom there is serious or corroborating evidence making it likely that he or she may have participated, as a perpetrator or accomplice, in the commission of an offence, including if that person is an assisted witness or is under investigation.

The purpose of the appearance warrant is to give notice to the person against whom it is issued to appear before the judge on the date and at the time indicated in the warrant.

The warrant to bring is an order to the police to immediately bring before them the person against whom it is issued.

The arrest warrant is the order given to the police to search for the person against whom it is issued and to bring him before him after having, if necessary, taken him to the prison indicated in the warrant, where he will be received and detained.

The investigating judge shall be obliged to hear as assisted witnesses the persons against whom a warrant for appearance, bringing in or arrest has been issued, unless they are to be placed under investigation in accordance with the provisions of Article 116. Such persons may not be taken into custody for the acts for which the warrant was issued.

A committal order may be issued against an accused person who has been remanded in custody. It is the order given to the head of the prison to receive and detain the person against whom it is issued. The warrant also allows for the search or transfer of the person when previously served.

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Le mandat d'amener est l'ordre donné à la force publique de conduire immédiatement devant lui la personne à l'encontre de laquelle il est décerné.

Le mandat d'arrêt est l'ordre donné à la force publique de rechercher la personne à l'encontre de laquelle il est décerné et de la conduire devant lui après l'avoir, le cas échéant, conduite à la maison d'arrêt indiquée sur le mandat, où elle sera reçue et détenue.

Le juge d'instruction est tenu d'entendre comme témoins assistés les personnes contre lesquelles il a été décerné un mandat de comparution, d'amener ou d'arrêt, sauf à les mettre en examen conformément aux dispositions de l'article 116. Ces personnes ne peuvent pas être mises en garde à vue pour les faits ayant donné lieu à la délivrance du mandat.

Le mandat de dépôt peut être décerné à l'encontre d'une personne mise en examen et ayant fait l'objet d'une ordonnance de placement en détention provisoire. Il est l'ordre donné au chef de l'établissement pénitentiaire de recevoir et de détenir la personne à l'encontre de laquelle il est décerné. Ce mandat permet également de rechercher ou de transférer la personne lorsqu'il lui a été précédemment notifié.

**Art. 123 CPC<sup>333</sup> [Conditions common to the different mandates]**

All warrants shall specify the identity of the person against whom they are issued; they shall be dated and signed by the magistrate who issued them and shall bear his seal.

Warrants of appearance, detention, arrest and search shall also mention the nature of the acts attributed to the person, their legal qualification and the applicable articles of law.

The warrant for appearance shall be served by a bailiff on the person who is the subject of it or shall be notified to him or her by an officer or agent of the judicial police, or by an agent of the police force, who shall deliver a copy to him or her.

The warrant for bringing in, arresting or searching shall be served and executed by an officer or agent of the judicial police or by an agent of the police force, who shall show it to the person and deliver a copy to him.

If the person is already detained for another reason, the notification shall be made to him or her as stated in the preceding paragraph, or, on the instructions of the public prosecutor, by the head of the prison, who shall also issue a copy.

The summons, arrest and search warrants may, in urgent cases, be disseminated by any means.

In this case, the essential details of the original warrant, especially the identity of the person against whom it is issued, the nature of the acts attributed to him or her and their legal classification, and the name and capacity of the magistrate issuing the warrant must be specified. The original or copy of the warrant shall be transmitted to the officer responsible for its execution as soon as possible.

**Art. 124 CPC<sup>334</sup> [Conditions common to the different mandates]**

The warrants are enforceable throughout the territory of the Republic.

**<sup>333</sup> Art. 123 CPP Conditions communes aux différents mandats**

Tout mandat précise l'identité de la personne à l'encontre de laquelle il est décerné ; il est daté et signé par le magistrat qui l'a décerné et est revêtu de son sceau.

Les mandats d'amener, de dépôt, d'arrêt et de recherche mentionnent en outre la nature des faits imputés à la personne, leur qualification juridique et les articles de loi applicables.

Le mandat de comparution est signifié par huissier à celui qui en est l'objet ou est notifié à celui-ci par un officier ou agent de la police judiciaire, ou par un agent de la force publique, lequel lui en délivre copie.

Le mandat d'amener, d'arrêt ou de recherche est notifié et exécuté par un officier ou agent de la police judiciaire ou par un agent de la force publique, lequel en fait l'exhibition à la personne et lui en délivre copie.

Si la personne est déjà détenue pour une autre cause, la notification lui est faite comme il est dit à l'alinéa précédent, ou, sur instructions du procureur de la République, par le chef de l'établissement pénitentiaire qui en délivre également une copie.

Les mandats d'amener, d'arrêt et de recherche peuvent, en cas d'urgence être diffusés par tous moyens.

Dans ce cas, les mentions essentielles de l'original et spécialement l'identité de la personne à l'encontre de laquelle il est décerné, la nature des faits qui lui sont imputés et leur qualification juridique, le nom et la qualité du magistrat mandant doivent être précisés. L'original ou la copie du mandat est transmis à l'agent chargé d'en assurer l'exécution dans les délais les plus brefs.

**<sup>334</sup> Art. 124 CPP Conditions communes aux différents mandats**

Les mandats sont exécutoires dans toute l'étendue du territoire de la République.

**(1) The search warrant/Le mandat de recherche: art. 134 CPP**

7

**Art. 134 CPC<sup>335</sup>**

The officer responsible for executing a warrant for the arrest of a person may not enter a citizen's home before 6 a.m. or after 9 p.m. The same applies if the officer is responsible for the arrest of a person who is the subject of an extradition request or a European arrest warrant. The same applies if the officer is responsible for the arrest of a person who is the subject of an extradition request or a European arrest warrant. He may be accompanied by sufficient force to ensure that the person cannot evade the law. The force shall be taken from the place nearest to where the warrant is to be executed and shall be required to comply with the demands contained in the warrant. If the person cannot be seized, a report on the unsuccessful search is sent to the magistrate who issued the warrant. The person is then considered to be under investigation for the purposes of Article 176.

**(2) The warrant of appearance/Le mandat de comparution: art. 125 CPP**

8

**Art. 125 CPC<sup>336</sup>**

The investigating judge shall immediately question the person who is the subject of an appearance warrant.

A person arrested under an arrest warrant shall be questioned under the same conditions. However, if the questioning cannot be immediate, the person may be held by the police or gendarmerie for a maximum of twenty-four hours following his or her arrest before the examining magistrate or, failing that, the president of the court or a judge designated by the latter, who shall immediately proceed with his or her questioning; failing that, the person shall be released.

<sup>335</sup> **Art. 134 CPP**

L'agent chargé de l'exécution d'un mandat d'amener, d'arrêt et de recherche ne peut s'introduire dans le domicile d'un citoyen avant 6 heures ni après 21 heures. Il en est de même lorsque l'agent est chargé de l'arrestation d'une personne faisant l'objet d'une demande d'extradition ou d'un mandat d'arrêt européen.

Il peut se faire accompagner d'une force suffisante pour que la personne ne puisse se soustraire à la loi. La force est prise dans le lieu le plus proche de celui où le mandat doit s'exécuter et elle est tenue de déférer aux réquisitions contenues dans ce mandat.

Si la personne ne peut être saisie, un procès-verbal de perquisition et de recherches infructueuses est adressé au magistrat qui a délivré le mandat. La personne est alors considérée comme mise en examen pour l'application de l'article 176.

<sup>336</sup> **Art. 125 CPP**

Le juge d'instruction interroge immédiatement la personne qui fait l'objet d'un mandat de comparution.

Il est procédé dans les mêmes conditions à l'interrogatoire de la personne arrêtée en vertu d'un mandat d'amener. Toutefois, si l'interrogatoire ne peut être immédiat, la personne peut être retenue par les services de police ou de gendarmerie pendant une durée maximum de vingt-quatre heures suivant son arrestation avant d'être présentée devant le juge d'instruction ou à défaut le président du tribunal ou un juge désigné par celui-ci, qui procède immédiatement à son interrogatoire ; à défaut, la personne est mise en liberté.

**(3) The summons order (warrant)/Le mandat d'amener: art. 126, 127, 128, 130, 130-1, 134 CPP****Art. 126 CPP<sup>337</sup>**

Any person arrested by virtue of an arrest warrant who has been held for more than twenty-four hours without being questioned shall be considered to be arbitrarily detained.

Articles 432-4 to 432-6 of the Criminal Code are applicable to magistrates or civil servants who have ordered or knowingly tolerated such arbitrary detention.

**Art. 127 CPP<sup>338</sup>**

If the person sought under a warrant is found more than two hundred kilometres from the seat of the investigating judge who issued the warrant, and it is not possible to bring him or her before that judge within twenty-four hours, he or she shall be brought before the liberty and custody judge of the place of arrest.

**Art. 128 CPP<sup>339</sup>**

This magistrate questions the person on his identity, receives his statements, after having warned him that he is free not to make any, and asks him whether he agrees to be transferred or whether he prefers to extend the effects of the warrant to bring him to the place where he is, while awaiting the decision of the investigating judge hearing the case. If the person declares that he or she opposes the transfer, he or she shall be taken to the remand centre and immediate notice shall be given to the competent investigating judge. The original or a copy of the record of the appearance containing a full description shall be sent without delay to the investigating judge, together with any information that may facilitate recognition of identity.

The report shall state that the person has been informed that he or she is free not to make a statement.

<sup>337</sup> **Art. 126 CPP**

Toute personne arrêtée en vertu d'un mandat d'amener, qui a été retenue pendant plus de vingt-quatre heures sans avoir été interrogée, est considérée comme arbitrairement détenue.

Les articles 432-4 à 432-6 du code pénal sont applicables aux magistrats ou fonctionnaires qui ont ordonné ou sciemment toléré cette rétention arbitraire.

<sup>338</sup> **Art. 127 CPP**

Si la personne recherchée en vertu d'un mandat d'amener est trouvée à plus de deux cents kilomètres du siège du juge d'instruction qui a délivré le mandat, et qu'il n'est pas possible de la conduire dans le délai de vingt-quatre heures devant ce magistrat, elle est conduite devant le juge des libertés et de la détention du lieu de l'arrestation.

<sup>339</sup> **Art. 128 CPP**

Ce magistrat l'interroge sur son identité, reçoit ses déclarations, après l'avoir avertie qu'elle est libre de ne pas en faire, l'interpelle afin de savoir si elle consent à être transférée ou si elle préfère prolonger les effets du mandat d'amener, en attendant, au lieu où elle se trouve, la décision du juge d'instruction saisi de l'affaire. Si la personne déclare s'opposer au transfèrement, elle est conduite dans la maison d'arrêt et avis immédiat est donné au juge d'instruction compétent. L'original ou la copie du procès-verbal de la comparution contenant un signalement complet est transmis sans délai à ce magistrat, avec toutes les indications propres à faciliter la reconnaissance d'identité.

Ce procès-verbal doit mentionner que la personne a reçu avis qu'elle est libre de ne pas faire de déclaration.

**Art. 130 CPP<sup>340</sup>**

Where a transfer is required under the conditions set out in Articles 128 and 129, the person must be brought before the investigating judge who issued the warrant within four days of notification of the warrant.

However, this time limit shall be extended to six days in the event of transfer from an overseas department to another department or from metropolitan France to an overseas department.

**Art. 130-1 CPP<sup>341</sup>**

In the event of failure to comply with the time limits set out in Articles 127 and 130, the person shall be released, by order of the investigating judge hearing the case, unless his or her conduct has been delayed by insurmountable circumstances.

**Art. 134 CPC<sup>342</sup>**

The officer responsible for executing a warrant for the arrest of a person may not enter a citizen's home before 6 a.m. or after 9 p.m. The same applies if the officer is responsible for the arrest of a person who is the subject of an extradition request or a European arrest warrant. The same applies if the officer is responsible for the arrest of a person who is the subject of an extradition request or a European arrest warrant. He may be accompanied by sufficient force to ensure that the person cannot evade the law. The force shall be taken from the place nearest to where the warrant is to be executed and shall be required to comply with the demands contained in the warrant.

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<sup>340</sup> **Art. 130 CPP**

Lorsqu'il y a lieu à transfèrement dans les conditions prévues par les articles 128 et 129, la personne doit être conduite devant le juge d'instruction qui a délivré le mandat dans les quatre jours de la notification du mandat. Toutefois, ce délai est porté à six jours en cas de transfèrement d'un département d'outre-mer vers un autre département ou de la France métropolitaine vers un département d'outre-mer.

<sup>341</sup> **Art. 130-1 CPP**

En cas de non-respect des délais fixés par les articles 127 et 130, la personne est libérée, sur ordre du juge d'instruction saisi de l'affaire, à moins que sa conduite ait été retardée par des circonstances insurmontables.

<sup>342</sup> **Art. 134 CPP**

L'agent chargé de l'exécution d'un mandat d'amener, d'arrêt et de recherche ne peut s'introduire dans le domicile d'un citoyen avant 6 heures ni après 21 heures. Il en est de même lorsque l'agent est chargé de l'arrestation d'une personne faisant l'objet d'une demande d'extradition ou d'un mandat d'arrêt européen.

Il peut se faire accompagner d'une force suffisante pour que la personne ne puisse se soustraire à la loi. La force est prise dans le lieu le plus proche de celui où le mandat doit s'exécuter et elle est tenue de déférer aux réquisitions contenues dans ce mandat.

Si la personne ne peut être saisie, un procès-verbal de perquisition et de recherches infructueuses est adressé au magistrat qui a délivré le mandat. La personne est alors considérée comme mise en examen pour l'application de l'article 176.

**(4) Arrest warrant and special rules for the French EDP/Le mandat d'arrêt: art. 131 CPP et seq. CPC + règle propre au PED**

10

**Art. 131 CPP<sup>343</sup>**

If the person is a fugitive or resides outside the territory of the Republic, the investigating judge, after consulting the public prosecutor, may issue an arrest warrant against him or her if the offence carries a penalty of correctional imprisonment or a more serious penalty.

**Art. 133 CPP<sup>344</sup>**

The person seized by virtue of an arrest warrant shall be brought before the examining magistrate or, failing that, the president of the court or the judge designated by the latter within twenty-four hours of his or her arrest for questioning and, if necessary, a decision on remand in custody under the conditions laid down in Article 145. Failing this, the person shall be released. The provisions of Article 126 shall apply.

If the person is arrested more than two hundred kilometres from the seat of the investigating judge who issued the warrant and it is not possible to bring him or her before the investigating judge within twenty-four hours, he or she shall be brought before the liberty and custody judge of the place of arrest within twenty-four hours of the arrest, who shall receive the person's statements after warning him or her that he or she is free not to make them. A note of this notice shall be made in the record.

The liberty and custody judge shall immediately inform the magistrate who issued the warrant and order the transfer. If the transfer cannot be carried out immediately, the liberty and custody judge shall notify the mandating judge.

Where there is reason to transfer, the person must be taken to the prison indicated in the warrant within the time limits laid down in Article 130. The provisions of Article 130-1 shall apply.

<sup>343</sup> **Art. 131 CPP**

Si la personne est en fuite ou si elle réside hors du territoire de la République, le juge d'instruction, après avis du procureur de la République, peut décerner contre elle un mandat d'arrêt si le fait comporte une peine d'emprisonnement correctionnelle ou une peine plus grave.

<sup>344</sup> **Art. 133 CPP**

La personne saisie en vertu d'un mandat d'arrêt est présentée dans les vingt-quatre heures suivant son arrestation devant le juge d'instruction ou à défaut le président du tribunal ou le juge désigné par celui-ci pour qu'il soit procédé à son interrogatoire et qu'il soit le cas échéant statué sur son placement en détention provisoire dans les conditions prévues par l'article 145. A défaut, la personne est remise en liberté. Les dispositions de l'article 126 sont applicables.

Si la personne est arrêtée à plus de deux cents kilomètres du siège du juge d'instruction qui a délivré le mandat et qu'il n'est pas possible de la conduire dans un délai de vingt-quatre heures devant ce magistrat, elle est conduite dans les vingt-quatre heures suivant son arrestation devant le juge des libertés et de la détention du lieu de l'arrestation qui reçoit ses déclarations après l'avoir avertie qu'elle est libre de ne pas en faire. Mention est faite de cet avis au procès-verbal.

Le juge des libertés et de la détention informe sans délai le magistrat qui a délivré le mandat et ordonne le transfèrement. Si celui-ci ne peut être effectué immédiatement, le juge des libertés et de la détention en avise le juge mandant.

Lorsqu'il y a lieu à transfèrement, la personne doit être conduite à la maison d'arrêt indiquée sur le mandat dans les délais prévus à l'article 130. Les dispositions de l'article 130-1 sont applicables.

**Art. 134 CPC**<sup>345</sup>

The officer responsible for executing a warrant for the arrest of a person may not enter a citizen's home before 6 a.m. or after 9 p.m. The same applies if the officer is responsible for the arrest of a person who is the subject of an extradition request or a European arrest warrant. The same applies if the officer is responsible for the arrest of a person who is the subject of an extradition request or a European arrest warrant. He may be accompanied by sufficient force to ensure that the person cannot evade the law. The force shall be taken from the place nearest to where the warrant is to be executed and shall be required to comply with the demands contained in the warrant.

11 Rules applicable for the action of the French EDP/+ *règles propre au PED*

12 **Art. 696-124 CPC**<sup>346</sup> The decision to issue an arrest warrant is taken by the liberty and detention judge, seized by written and motivated requisitions from the European Delegated Prosecutor.

**Art. 696-125 CPC**<sup>347</sup> The European Delegated Prosecutor executes the arrest warrant in the form of a warrant judgment in accordance with Article 695-16.

**(5) The committal order by the JLD/Le mandat de dépôt par le JLD: art. 135 CPP**

13 **Art. 135 CPC**

In criminal and correctional cases, detention orders may only be issued in execution of the order provided for in Article 145.

The officer responsible for executing the committal order shall hand over the person concerned to the head of the prison, who shall issue an acknowledgement of such handover.

<sup>345</sup> **Art. 134 CPP**

L'agent chargé de l'exécution d'un mandat d'amener, d'arrêt et de recherche ne peut s'introduire dans le domicile d'un citoyen avant 6 heures ni après 21 heures. Il en est de même lorsque l'agent est chargé de l'arrestation d'une personne faisant l'objet d'une demande d'extradition ou d'un mandat d'arrêt européen.

Il peut se faire accompagner d'une force suffisante pour que la personne ne puisse se soustraire à la loi. La force est prise dans le lieu le plus proche de celui où le mandat doit s'exécuter et elle est tenue de déférer aux réquisitions contenues dans ce mandat.

Si la personne ne peut être saisie, un procès-verbal de perquisition et de recherches infructueuses est adressé au magistrat qui a délivré le mandat. La personne est alors considérée comme mise en examen pour l'application de l'article 176.

<sup>346</sup> **Art. 696-124. CPP**

La décision de décerner un mandat d'arrêt est prise par le juge des libertés et de la détention, saisi par réquisitions écrites et motivées du procureur européen délégué.

<sup>347</sup> **Art. 696-125. CPP**

Le procureur européen délégué met le mandat d'arrêt à exécution sous la forme d'un mandat d'arrêt européen conformément à l'article 695-16.



**dd. Restrictions or even deprivation of liberty (art. 137–150 CPP only in the hybrid investigation)/ *Les restrictions voire la privation de liberté (art. 137 à 150 CPP que dans l'enquête hybride)***

**(1) The Judicial control/*Le contrôle judiciaire (art. 138 à 142-4 CPP)* + règle propre au PED art. 696-119 CPP**

14

**Art. 138 CPC**

Judicial supervision may be ordered by the investigating judge or the liberty and custody judge if the person under investigation is liable to a correctional prison sentence or a more serious penalty.

This supervision requires the person concerned to submit to one or more of the following obligations, depending on the decision of the investigating judge or the liberty and custody judge

1° Not to leave the territorial limits determined by the investigating judge or the liberty and custody judge;

2° Not to leave his home or the residence determined by the investigating judge or the liberty and custody judge except under the conditions and for the reasons determined by this magistrate;

3° Not to go to certain places or only to places determined by the investigating judge or the liberty and custody judge;

3° bis Not to take part in demonstrations on the public highway in places determined by the investigating judge or the liberty and custody judge;

4° To inform the investigating judge or the liberty and custody judge of any travel beyond specified limits;

5° Present themselves periodically to the services, authorised associations or authorities designated by the investigating judge or the liberty and custody judge, who are required to observe the strictest discretion regarding the facts of which the person under investigation is accused;

6° Respond to summonses from any authority, association or qualified person designated by the investigating judge or the liberty and custody judge and submit, where applicable, to control measures relating to their professional activities or their attendance at school as well as socio-educational measures designed to promote their social integration and prevent the offence being repeated;

7° Hand over to the court registry, a police department or a gendarmerie station all documents proving identity, and in particular the passport, in exchange for a receipt valid as proof of identity;

8° Refrain from driving all vehicles, certain vehicles or a vehicle that is not equipped, by an approved professional or by construction, with an approved electronic alcohol ignition interlock device and, where applicable, hand over their driving licence to the court clerk's office in exchange for a receipt; however, the examining magistrate or the liberty and custody judge may decide that the person under investigation may use his or her driving licence to carry out his or her professional activity;

9° Refrain from receiving or meeting with certain persons specially designated by the investigating judge or the liberty and custody judge, and from entering into relations with them in any way whatsoever;

10° Submit to examination, treatment or care measures, even under the hospitalization regime, particularly for detoxification purposes. A copy of the order to place the person under judicial supervision shall be sent by the investigating judge to the doctor or psychologist who is to follow the person under investigation. The reports of the expert reports carried out during the investigation or enquiry shall be sent to the doctor or psychologist, at their request or at the initiative of the investigating judge. The judge may also send them any other useful document from the file;

11° To provide a bond, the amount of which and the deadlines for payment, in one or more instalments, are set by the investigating judge or the liberty and custody judge, taking into account in particular the resources and expenses of the person under investigation;

12° Not to engage in certain professional or social activities, excluding the exercise of elected office and trade union responsibilities, when the offence was committed in the exercise or on the occasion of the exercise of these activities and when there is a risk that a new offence may be committed. When the activity concerned is that of a lawyer, the Council of the Bar, referred to by the examining magistrate or the liberty and custody judge, has the sole power to pronounce this measure, subject to appeal, under the conditions provided for in Article 24 of Law No. 71-1130 of 31 December 1971 on the reform of certain judicial and legal professions; the Council of the Bar shall give its decision within fifteen days ;

12° bis Not to carry out an activity involving habitual contact with minors when there is a risk that a new offence will be committed;

13° Not issuing cheques other than those that allow the drawer to withdraw funds from the drawee or those that are certified and, where applicable, handing over to the court clerk's office the cheque forms whose use is thus prohibited

14° Not to hold or carry a weapon and, where applicable, to hand over to the court clerk's office the weapons that he or she holds against a receipt;

15° Provide, within a time limit, for a period and an amount determined by the investigating judge or the liberty and custody judge, personal or real securities;

16° Prove that he or she contributes to family expenses or regularly pays the maintenance that he or she has been ordered to pay in accordance with judicial decisions and agreements that have been judicially approved and that require the payment of benefits, subsidies or contributions to the costs of the marriage;

17° In the event of an offence committed against either their spouse, cohabitant or partner in a civil solidarity pact, or against their children or those of their spouse, cohabitant or partner, reside outside the couple's home or residence and, where applicable, refrain from appearing in this home or residence or in the immediate vicinity thereof, and, if necessary, receive health, social or psychological care; the provisions of this 17° are also

applicable when the offence is committed by the victim's former spouse or partner, or by the person who was linked to him or her by a civil solidarity pact, in which case the home concerned is that of the victim. For the application of this 17°, the investigating judge shall obtain or have obtained, as soon as possible and by any means, the opinion of the victim on the advisability of requiring the perpetrator to reside outside the couple's home. Except in exceptional circumstances, this measure is taken when acts of violence likely to be repeated are involved and the victim requests it. The investigating judge may specify the terms and conditions for covering the costs of this accommodation. When one of the obligations provided for in 9°, this 17° or 17° bis is imposed, the investigating judge or the liberty and custody judge shall decide, in a reasoned decision, on the suspension of the right of access and accommodation of the minor child of which the accused person is the holder;

17° bis Comply with the prohibition on approaching a victim of domestic violence provided for in Article 138-3 and controlled by a mobile electronic anti-seizure device;

18° Comply with the conditions of health, social, educational or psychological care, intended to enable his or her reintegration and the acquisition of the values of citizenship; this care may, where appropriate, take place within an appropriate reception facility in which the person is required to reside.

The procedures for applying this article, particularly with regard to the authorisation of persons contributing to judicial supervision, shall be determined as necessary by a decree of the Council of State.

#### **Art. 139 CPC<sup>348</sup>**

The accused person is placed under judicial supervision by an order of the investigating judge which may be made at any stage of the investigation.

The investigating judge may, at any time, impose one or more new obligations on the person placed under judicial supervision, cancel all or part of the obligations included in the supervision, modify one or more of these obligations or grant occasional or temporary exemption from some of them.

<sup>348</sup> **Art. 139 CPP**

La personne mise en examen est placée sous contrôle judiciaire par une ordonnance du juge d'instruction qui peut être prise en tout état de l'instruction.

Le juge d'instruction peut, à tout moment, imposer à la personne placée sous contrôle judiciaire une ou plusieurs obligations nouvelles, supprimer tout ou partie des obligations comprises dans le contrôle, modifier une ou plusieurs de ces obligations ou accorder une dispense occasionnelle ou temporaire d'observer certaines d'entre elles.

**Art. 140 CPC<sup>349</sup>**

The lifting of judicial supervision may be ordered at any time by the investigating judge, either *ex officio* or on the instructions of the public prosecutor, or at the request of the person after the public prosecutor has given an opinion.

The investigating judge shall decide on the person's request within five days, by reasoned order.

If the examining magistrate fails to rule within this time limit, the person may submit his or her request directly to the examining chamber which, on the written and reasoned application of the public prosecutor, shall rule within twenty days of the referral. Failing this, the judicial supervision is automatically lifted, unless verifications concerning the person's application have been ordered.

**Art. 141 CPC<sup>350</sup>**

The powers conferred on the investigating judge by Articles 139 and 140 belong, in any event, to the competent court according to the distinctions in Article 148-1.

**Art. 142 CPC<sup>351</sup>**

Where the accused is required to provide security or surety, such security or surety shall guarantee

1° The representation of the accused person in all the acts of the proceedings and for the execution of the judgment, as well as, if necessary, the execution of other obligations imposed on him or her;

2° Payment in the following order:

(a) Compensation for damage caused by the offence and restitution, as well as the maintenance debt when the accused is prosecuted for failure to pay this debt;

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<sup>349</sup> **Art. 140 CPP**

La mainlevée du contrôle judiciaire peut être ordonnée à tout moment par le juge d'instruction, soit d'office, soit sur les réquisitions du procureur de la République, soit sur la demande de la personne après avis du procureur de la République.

Le juge d'instruction statue sur la demande de la personne dans un délai de cinq jours, par ordonnance motivée.

Faute par le juge d'instruction d'avoir statué dans ce délai, la personne peut saisir directement de sa demande la chambre de l'instruction qui, sur les réquisitions écrites et motivées du procureur général, se prononce dans les vingt jours de sa saisine. A défaut, la mainlevée du contrôle judiciaire est acquise de plein droit, sauf si des vérifications concernant la demande de la personne ont été ordonnées.

<sup>350</sup> **Art. 141 CPP**

Les pouvoirs conférés au juge d'instruction par les articles 139 et 140 appartiennent, en tout état de cause, à la juridiction compétente selon les distinctions de l'article 148-1.

<sup>351</sup> **Art. 142 CPP**

Lorsque la personne mise en examen est astreinte à fournir un cautionnement ou à constituer des sûretés, ce cautionnement ou ces sûretés garantissent:

1° La représentation de la personne mise en examen, du prévenu ou de l'accusé à tous les actes de la procédure et pour l'exécution du jugement, ainsi que, le cas échéant, l'exécution des autres obligations qui lui ont été imposées

2° Le paiement dans l'ordre suivant:

a) De la réparation des dommages causés par l'infraction et des restitutions, ainsi que de la dette alimentaire lorsque la personne mise en examen est poursuivie pour le défaut de paiement de cette dette ;

**(b) Fines.**<sup>352</sup>

The decision of the investigating judge or the liberty and custody judge shall determine the sums allocated to each of the two parts of the bond or sureties. The investigating judge or the liberty and custody judge may, however, decide that the securities shall guarantee in their entirety the payment of the sums provided for in 2° or either of these sums.

Where the securities guarantee, in part or in full, the rights of one or more victims who have not yet been identified or who have not yet been made civil parties, they shall be established, under conditions specified by decree in the Council of State, in the name of a provisional beneficiary acting on behalf of these victims and, where applicable, the Treasury.

A decree of the Council of State shall set the amount above which the bond may not be paid in cash, unless otherwise decided by the liberty and custody judge or the investigating judge.

**Art. 142-1 CPC**<sup>353</sup>

The investigating judge or the liberty and custody judge may, with the consent of the person under investigation, order or decide that the part of the bond allocated to guarantee the rights of the victim or the creditor of a maintenance debt be paid to them in advance, at their request.

Such payment may also be ordered or decided, even without the consent of the person under investigation, where an enforceable court decision has granted the victim or the creditor an advance on the facts which are the subject of the proceedings.

<sup>352</sup> b) Des amendes.

La décision du juge d'instruction ou du juge des libertés et de la détention, détermine les sommes affectées à chacune des deux parties du cautionnement ou des sûretés. Le juge d'instruction ou le juge des libertés et de la détention peut toutefois décider que les sûretés garantiront dans leur totalité le paiement des sommes prévues au 2° ou l'une ou l'autre de ces sommes.

Lorsque les sûretés garantissent, en partie ou en totalité, les droits d'une ou plusieurs victimes qui ne sont pas encore identifiées ou qui ne sont pas encore constituées parties civiles, elles sont établies, dans des conditions précisées par décret en Conseil d'Etat, au nom d'un bénéficiaire provisoire agissant pour le compte de ces victimes et, le cas échéant, du Trésor.

Un décret en Conseil d'Etat fixe le montant au-delà duquel le cautionnement ne peut être effectué en espèces, sauf décision contraire du juge des libertés et de la détention ou du juge d'instruction.

<sup>353</sup> **Art. 142-1 CPP**

Le juge d'instruction ou le juge des libertés et de la détention peut, avec le consentement de la personne mise en examen, ordonner, ou décider, que la partie du cautionnement affectée à la garantie des droits de la victime ou du créancier d'une dette alimentaire soit versée à ceux-ci par provision, sur leur demande.

Ce versement peut aussi être ordonné, ou décidé, même sans le consentement de la personne mise en examen, lorsqu'une décision de justice exécutoire a accordé à la victime ou au créancier une provision à l'occasion des faits qui sont l'objet des poursuites.

**Art. 142-2 CPC<sup>354</sup>**

The first part of the bond shall be returned or the first part of the security shall be released if the accused or defendant has appeared for all the proceedings, fulfilled the obligations of judicial supervision and submitted to the execution of the judgment.

If this is not the case, unless there is a legitimate excuse or a decision to dismiss the case, discharge, acquit or exempt the defendant from punishment, the first part of the security shall be forfeited to the State, or the claim guaranteed by the first part of the security shall be recovered.

**Art. 142-3 CPC<sup>355</sup>**

The amount allocated to the second part of the bond which has not been paid to the victim of the offence or to the creditor of a maintenance debt shall be returned in the event of dismissal and, except where Article 372 is applied, in the event of absolution or acquittal.

In the event of a conviction, it shall be used in accordance with the provisions of Article 142(2). The surplus is returned when the conviction is final.

The second part of the securities shall be released or the claims guaranteed by this part shall be recovered according to the distinctions provided for in the two preceding paragraphs.

The conditions of application of this article shall be determined by a decree of the Council of State.

**Art. 142-4 CPC<sup>356</sup>**

Where a trial court is called upon to rule in the cases provided for in this sub-section, it shall do so under the conditions determined by Article 148-2.

<sup>354</sup> **Art. 142-2 CPP**

La première partie du cautionnement est restituée ou la première partie des sûretés est levée si la personne mise en examen, le prévenu ou l'accusé s'est présenté à tous les actes de la procédure, a satisfait aux obligations du contrôle judiciaire et s'est soumis à l'exécution du jugement.

Dans le cas contraire, sauf motif légitime d'excuse ou décision de non-lieu, de relaxe, d'acquiescement ou d'exemption de peine, la première partie du cautionnement est acquise à l'Etat, ou il est procédé au recouvrement de la créance garantie par la première partie des sûretés.

<sup>355</sup> **Art. 142-3 CPP**

Le montant affecté à la deuxième partie du cautionnement qui n'a pas été versé à la victime de l'infraction ou au créancier d'une dette alimentaire est restitué en cas de non-lieu et, sauf s'il est fait application de l'article 372, en cas d'absolution ou d'acquiescement.

En cas de condamnation, il est employé conformément aux dispositions du 2° de l'article 142. Le surplus est restitué lorsque la condamnation est définitive.

La deuxième partie des sûretés est levée ou il est procédé au recouvrement des créances que cette partie garantit selon les distinctions prévues aux deux alinéas précédents.

Les conditions d'application du présent article sont fixées par un décret en Conseil d'Etat.

<sup>356</sup> **Art. 142-4 CPP**

Lorsqu'une juridiction de jugement est appelée à statuer dans les cas prévus à la présente sous-section, elle le fait dans les conditions déterminées par l'article 148-2.

Special Rules for the French EDPs/+ *règles propres au PED*:**Art. 696-119 CPC**<sup>357</sup>

Decisions on the placement, maintenance and modification of judicial supervision shall be taken by the Delegated European Public Prosecutor. These decisions may be taken under the procedure provided for in Article 696-114 as well as under the procedures for summonses to appear by official report or appearance at a later date provided for in Articles 394 and 397-1-1.

The person placed under judicial supervision by the Delegated European Public Prosecutor may immediately challenge this decision before the liberty and custody judge, who shall rule on this challenge within a maximum of seventy-two hours during an adversarial debate. If the judge confirms the placement under judicial supervision, the person may appeal this decision to the investigating chamber.

**(2) House arrest with electronic surveillance/De l'assignation à résidence avec surveillance électronique****Art. 142-5 CPC**<sup>358</sup>

House arrest with electronic surveillance may be ordered, ex officio or at the request of the person concerned, by the investigating judge or by the liberty and custody judge if the person under investigation is liable to a prison sentence of at least two years or a more serious penalty.

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<sup>357</sup> **Art. 696-119 CPP**

Les décisions en matière de placement, de maintien et de modification du contrôle judiciaire sont prises par le procureur européen délégué. Ces décisions peuvent être prises tant dans le cadre de la procédure prévue à l'article 696-114 que dans le cadre des procédures de convocation par procès-verbal ou de comparution à délai différé prévues aux articles 394 et 397-1-1.

La personne placée sous contrôle judiciaire par le procureur européen délégué peut immédiatement contester cette décision devant le juge des libertés et de la détention, qui statue dans un délai maximal de soixante-douze heures sur cette contestation lors d'un débat contradictoire. Si le juge confirme le placement sous contrôle judiciaire, la personne peut faire appel de cette décision devant la chambre de l'instruction.

<sup>358</sup> **Art. 142-5 CPP**

L'assignation à résidence avec surveillance électronique peut être ordonnée, d'office ou à la demande de l'intéressé, par le juge d'instruction ou par le juge des libertés et de la détention si la personne mise en examen encourt une peine d'emprisonnement correctionnel d'au moins deux ans ou une peine plus grave.

Cette mesure oblige la personne à demeurer à son domicile ou dans une résidence fixée par le juge d'instruction ou le juge des libertés et de la détention et de ne s'en absenter qu'aux conditions et pour les motifs déterminés par ce magistrat.

Cette obligation est exécutée sous le régime du placement sous surveillance électronique, à l'aide du procédé prévu par l'article 723-8. Elle peut également être exécutée sous le régime du placement sous surveillance électronique mobile, à l'aide du procédé prévu par l'article 763-12, si la personne est mise en examen pour une infraction punie de plus de sept ans d'emprisonnement et pour laquelle le suivi socio-judiciaire est encouru. Les articles 723-9 et 723-12 ainsi que, le cas échéant, les articles 763-12 et 763-13 sont applicables, le juge d'instruction exerçant les compétences attribuées au juge de l'application des peines.

La personne peut être en outre astreinte aux obligations et interdictions prévues par l'article 138.

La personne mise en examen est avisée que l'installation du dispositif prévu à l'article 723-8 ne peut être effectuée sans son consentement mais que le fait de refuser cette installation constitue une violation des obligations qui lui incombent et peut donner lieu à la révocation de l'assignation à résidence avec surveillance électronique et à son placement en détention provisoire.

This measure obliges the person to remain at his or her home or at a residence determined by the investigating judge or the liberty and custody judge and to leave it only under the conditions and for the reasons determined by this magistrate.

This obligation shall be carried out under the regime of electronic surveillance, using the procedure provided for in Article 723-8. It may also be carried out under the regime of placement under mobile electronic surveillance, using the process provided for in Article 763-12, if the person is charged with an offence punishable by more than seven years' imprisonment and for which socio-judicial monitoring is incurred. Articles 723-9 and 723-12 and, where applicable, Articles 763-12 and 763-13 are applicable, with the investigating judge exercising the powers attributed to the sentence enforcement judge. The person may also be subject to the obligations and prohibitions provided for in Article 138.

The accused shall be informed that the installation of the device provided for in Article 723-8 may not be carried out without his or her consent, but that refusal to install the device shall constitute a breach of his or her obligations and may result in the revocation of the house arrest with electronic monitoring and his or her placement in pre-trial detention.

#### **Art 142-6 CPC<sup>359</sup>**

The decision to place a person under house arrest with electronic surveillance shall be made by a reasoned order of the investigating judge or the liberty and custody judge, who shall decide after a hearing of the parties in accordance with Article 145 or in the light of the written submissions of the public prosecutor, which shall be read to the person under investigation, and after hearing his or her observations and those of his or her lawyer.

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#### <sup>359</sup> **Art. 142-6 CPP**

L'assignation à résidence avec surveillance électronique est décidée par ordonnance motivée du juge d'instruction ou du juge des libertés et de la détention, qui statue après un débat contradictoire conformément à l'article 145 ou au vu des réquisitions écrites du procureur de la République, dont il est donné lecture à la personne mise en examen, et après avoir entendu ses observations et celles de son avocat.

Elle peut également être décidée, sans débat contradictoire ou recueil préalable des observations de la personne et de son avocat, par ordonnance statuant sur une demande de mise en liberté ou décidant d'une mise en liberté d'office.

Le juge statue après avoir fait vérifier la faisabilité technique de la mesure par le service pénitentiaire d'insertion et de probation, qui peut être saisi à cette fin à tout moment de l'instruction.

En matière correctionnelle, cette saisine est obligatoire dans les cas suivants:

1° Si elle est demandée par une personne détenue ou son avocat un mois avant la date à laquelle la détention peut être prolongée, sauf décision de refus spécialement motivée du juge d'instruction ;

2° Avant la date à laquelle la détention peut être prolongée lorsque la personne encourt une peine d'emprisonnement inférieure ou égale à cinq ans, sauf décision de refus spécialement motivée du juge ;

3° Avant la date de la seconde prolongation de la détention lorsque la personne encourt une peine d'emprisonnement inférieure ou égale à cinq ans. Sauf s'il envisage un placement sous contrôle judiciaire, le juge ne peut refuser le placement de la personne sous assignation à résidence sous surveillance électronique qu'en cas d'impossibilité liée à la personnalité ou à la situation matérielle de la personne.

S'il est interjeté appel d'une ordonnance prolongeant la détention provisoire sans que les dispositions des quatrième à avant-dernier alinéas aient été respectées, le service pénitentiaire d'insertion et de probation doit être saisi par le président de la chambre de l'instruction.



The court may also decide, without a hearing or prior collection of the observations of the person and his or her lawyer, by an order ruling on a request for release or deciding on release on its own initiative.

The judge decides after having the technical feasibility of the measure verified by the prison integration and probation service, which may be consulted for this purpose at any time during the investigation.

In criminal matters, this referral is mandatory in the following cases

1° If it is requested by a detained person or his or her lawyer one month before the date on which detention may be extended, unless the investigating judge gives a specially reasoned decision to refuse;

2° Before the date on which the detention may be extended when the person is facing a prison sentence of up to five years, unless the judge gives a specially reasoned decision to refuse;

3° Before the date of the second extension of the detention when the person is facing a prison sentence of five years or less. Unless he or she is considering placement under judicial supervision, the judge may refuse to place the person under electronically monitored house arrest only if this is impossible due to the person's personality or material situation.

If an appeal is lodged against an order extending pre-trial detention without the provisions of the fourth to penultimate paragraphs having been complied with, the integration and probation service must be referred to the president of the investigating chamber.

**Art. 142-7 CPC**<sup>360</sup> House arrest shall be ordered for a period that may not exceed six months. During the investigation, it may be extended for the same period in accordance with the procedures set out in the first paragraph of Article 142-6, without the total duration of the placement exceeding two years.

Where the person referred to the criminal court or the assize court is maintained or remains under house arrest in accordance with Articles 179 and 181, the total duration of the measure, taking into account that executed during the investigation, may not exceed two years, without it being necessary to order its extension every six months and subject to the possibility for the person concerned to request its release.

<sup>360</sup> **Art. 142-7 CPP**

L'assignation à résidence est ordonnée pour une durée qui ne peut excéder six mois. Au cours de l'instruction, elle peut être prolongée pour une même durée selon les modalités prévues au premier alinéa de l'article 142-6, sans que la durée totale du placement dépasse deux ans.

Lorsque la personne renvoyée devant le tribunal correctionnel ou la cour d'assises est maintenue ou demeure sous assignation à résidence conformément aux articles 179 et 181, la durée totale de la mesure, compte tenu de celle exécutée au cours de l'instruction, ne peut excéder deux ans, sans qu'il soit nécessaire d'en ordonner la prolongation tous les six mois et sous réserve de la possibilité pour l'intéressé d'en demander la mainlevée.

**Art. 142-8 CPC<sup>361</sup>**

The second paragraph of Article 139 and Articles 140 and 141-3 are applicable to electronically monitored house arrest.

A person who fails to comply with the obligations resulting from electronically monitored house arrest may be the subject of an arrest warrant or a warrant to bring him or her to court and be placed in pre-trial detention, in accordance with Article 141-2.

**Art. 142-9 CPC<sup>362</sup>** prior agreement of the investigating judge, the hours of presence at home or in the places of assignment may be modified by the head of the prison or the director of the prison integration and probation service, who shall inform the investigating judge, if the modifications are favourable to the defendant and do not affect the balance of the supervision measure.

**Art. 142-10 CPC<sup>363</sup>**

In the event of a final decision to dismiss, discharge or acquit, the person placed under house arrest with electronic surveillance shall be entitled to compensation for the harm suffered in accordance with the procedures laid down in Articles 149 to 150.

**Art. 142-11 CPC<sup>364</sup>**

Electronically monitored house arrest is treated as pre-trial detention for the purpose of counting its full duration against a custodial sentence, in accordance with Article 716-4.

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<sup>361</sup> **Art. 142-8 CPP**

Le deuxième alinéa de l'article 139 et les articles 140 et 141-3 sont applicables à l'assignation à résidence avec surveillance électronique.

La personne qui ne respecte pas les obligations résultant de l'assignation à résidence avec surveillance électronique peut faire l'objet d'un mandat d'arrêt ou d'amener et être placée en détention provisoire, conformément à l'article 141-2.

<sup>362</sup> **Art. 142-9 CPP**

Avec l'accord préalable du juge d'instruction, les horaires de présence au domicile ou dans les lieux d'assignation peuvent, lorsqu'il s'agit de modifications favorables à la personne mise en examen ne touchant pas à l'équilibre de la mesure de contrôle, être modifiés par le chef d'établissement pénitentiaire ou le directeur du service pénitentiaire d'insertion et de probation qui en informe le juge d'instruction.

<sup>363</sup> **Art. 142-10 CPP**

En cas de décision de non-lieu, relaxe ou acquittement devenue définitive, la personne placée sous assignation à résidence avec surveillance électronique a droit à la réparation du préjudice subi selon les modalités prévues par les articles 149 à 150.

<sup>364</sup> **Art. 142-11 CPP**

L'assignation à résidence avec surveillance électronique est assimilée à une détention provisoire pour l'imputation intégrale de sa durée sur celle d'une peine privative de liberté, conformément à l'article 716-4.

**Art. 142-12 CPC**<sup>365</sup>

The investigating and trial courts may order, as an alternative measure to pre-trial detention, house arrest with electronic monitoring in the cases provided for by Articles 135-2, 145, 148, 201, 221-3, 272-1, 397-3, 695-34 and 696-19.

This measure may be lifted, maintained, modified or revoked by the investigating and trial courts in the same way as judicial supervision pursuant to Articles 148-2, 148-6, 213, 272-1, 695-35, 695-36, 696-20 and 696-21.

**Art. 142-13 CPC**<sup>366</sup>

A decree shall determine the conditions of application of this subsection.

Rules to carry out these measures for the French EDPs/+ *règles propre au PED*

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**Art. 696-120 CPP** *See above.*

**Art. 696-122 CPC [Modification/removal/release from pre-trial detention by EDP]**<sup>367</sup> However, the European Delegated Prosecutor is competent to order the following measures, *ex officio* or at the request of the person under investigation:

- 1° Remove all or part of the obligations included in the house arrest with surveillance electronic or grant occasional or temporary dispensation from observing them;
- 2° Order the release of the house arrest with electronic surveillance;
- 3° Modify or authorize, in application of article 142-9, the head of the penitentiary establishment or the director of the integration and probation prison service to modify

<sup>365</sup> **Art. 142-12 CPP**

Les juridictions d'instruction et de jugement peuvent prononcer, comme mesure alternative à la détention provisoire, une assignation à résidence avec surveillance électronique dans les cas prévus par les articles 135-2, 145, 148, 201, 221-3, 272-1, 397-3, 695-34 et 696-19.

Cette mesure peut être levée, maintenue, modifiée ou révoquée par les juridictions d'instruction et de jugement selon les mêmes modalités que le contrôle judiciaire en application des articles 148-2, 148-6, 213, 272-1, 695-35, 695-36, 696-20 et 696-21.

<sup>366</sup> **Art. 142-13 CPP**

Un décret détermine les modalités d'application de la présente sous-section.

<sup>367</sup> **Art. 696-122. CPP**

Toutefois, le procureur européen délégué est compétent pour ordonner les mesures suivantes, d'office ou à la demande de la personne mise en examen:

- « 1° Supprimer tout ou partie des obligations comprises dans l'assignation à résidence avec surveillance électronique ou accorder une dispense occasionnelle ou temporaire de les observer ;
- « 2° Ordonner la mainlevée de l'assignation à résidence avec surveillance électronique ;
- « 3° Modifier ou autoriser, en application de l'article 142-9, le chef d'établissement pénitentiaire ou le directeur du service pénitentiaire d'insertion et de probation à modifier les horaires de présence de la personne mise en examen au domicile ou dans les lieux d'assignation lorsqu'il s'agit de modifications favorables à cette dernière ne touchant pas à l'équilibre de la mesure de contrôle ;
- « 4° Ordonner la mise en liberté, le cas échéant assortie d'un contrôle judiciaire, d'une personne placée en détention provisoire.

« Si le procureur européen délégué ne fait pas droit à la demande de la personne dans les cinq jours, il transmet le dossier, assorti de son avis motivé, au juge des libertés et de la détention, qui statue dans les trois jours ouvrables à compter de cette transmission, selon les modalités prévues aux articles 140 et 148.

the hours of presence of the person placed in examination at home or in places of assignment when there are changes favorable to the latter not affecting the balance of the control measure;

- 4° Order the release, if necessary with judicial supervision, of a person placed in custody. If the European Delegated Prosecutor does not grant the person's request within five days, he transmits the file, together with its reasoned opinion, to the liberties and detention judge, who rules within three working days from the date of this transmission, in accordance with the procedures provided for in Articles 140 and 148.

**(3) Pre-trial detention + Special rules for French EDPs/C: *De la détention provisoire (art. 137 et seq., art. 143-1 à 148-8 CPP) + règles propres au PED.***

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**Special provisions on pre-trial detention requested by the EDP**

**Art. 696-121 CPC<sup>368</sup>**

Decisions on the placement and extension of pre-trial detention shall be taken by the liberty and custody judge who, after receiving a written and reasoned request from the Delegated European Public Prosecutor, shall give a ruling following an adversarial debate organised in accordance with the provisions of Article 145 CPC.

**Art. 696-122 CPC [modification/removal/release from pre-trial detention by EDP]<sup>369</sup>** See above.

**Art. 696-123. CPC [modalities for the execution of pre-trial detention]<sup>370</sup>**

The (French) European Delegated Prosecutor is also competent to take decisions relating to the modalities for the execution of pre-trial detention or the exercise of their rights

<sup>368</sup> **Art. 696-121. CPP**

Les décisions en matière de placement et de prolongation de la détention provisoire sont prises par le juge des libertés et de la détention qui, après avoir été saisi par réquisitions écrites et motivées du procureur européen délégué, statue à l'issue d'un débat contradictoire organisé conformément aux dispositions de l'article 145.

<sup>369</sup> **Art. 696-122. CPP**

Toutefois, le procureur européen délégué est compétent pour ordonner les mesures suivantes, d'office ou à la demande de la personne mise en examen:

« 1° Supprimer tout ou partie des obligations comprises dans l'assignation à résidence avec surveillance électronique ou accorder une dispense occasionnelle ou temporaire de les observer ;

« 2° Ordonner la mainlevée de l'assignation à résidence avec surveillance électronique ;

« 3° Modifier ou autoriser, en application de l'article 142-9, le chef d'établissement pénitentiaire ou le directeur du service pénitentiaire d'insertion et de probation à modifier les horaires de présence de la personne mise en examen au domicile ou dans les lieux d'assignation lorsqu'il s'agit de modifications favorables à cette dernière ne touchant pas à l'équilibre de la mesure de contrôle ;

« 4° Ordonner la mise en liberté, le cas échéant assortie d'un contrôle judiciaire, d'une personne placée en détention provisoire.

« Si le procureur européen délégué ne fait pas droit à la demande de la personne dans les cinq jours, il transmet le dossier, assorti de son avis motivé, au juge des libertés et de la détention, qui statue dans les trois jours ouvrables à compter de cette transmission, selon les modalités prévues aux articles 140 et 148.

<sup>370</sup> **Art. 696-123. CPP**

Le procureur européen délégué est également compétent pour prendre les décisions relatives aux modalités d'exécution d'une détention provisoire ou à l'exercice de ses droits par une personne placée en détention provisoire en application des articles 145-4 à 145-4-2 et 148-5 du présent code et des articles 35,36,39 et 40 de la loi n° 2009-1436 du 24 novembre 2009 pénitentiaire.

by a person placed in pre-trial detention in application of articles 145-4 to 145-4-2 and 148-5 of this code (*see below, General provisions*) and of articles 35, 36, 39 and 40 of Law No. 2009-1436 of November 24, 2009 on prisons.

### **General provisions on pre-trial detention in the French system**

#### **Art. 137 CPC<sup>371</sup>**

Any indicted person, presumed innocent, remains free.

However, due to the requirements of the investigation or as a security measure, she may be subject to one or more obligations of judicial control or, if these prove to be insufficient, be placed under house arrest with electronic surveillance.

Exceptionally, if the obligations of judicial control or house arrest with electronic surveillance do not allow these objectives to be achieved, she may be remanded in custody.

The ordering and extension of pre-trial detention is limited to the custody judge:

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#### **Art. 137-1<sup>372</sup> [Ordering and extending Pre-Trial Detention]**

Pre-trial detention is ordered or extended by the liberties and detention/custody judge. Applications for release are also submitted to him.

When the liberty and detention judge rules after an adversarial debate, he is assisted by a clerk. He can then apply section 93.

He may not, on pain of nullity, participate in the judgment of criminal cases of which he has heard.

Except in the case provided for by the second paragraph of article 137-4, it is referred to it by a reasoned order from the examining magistrate, who sends him the file of the procedure accompanied by the requisitions of the public prosecutor. When the liberty

<sup>371</sup> Partie législative (Articles préliminaire à 937)

Article préliminaire

Livre Ier: De la conduite de la politique pénale, de l'exercice de l'action publique et de l'instruction (Articles 11 à 230-46)

Titre III: Des juridictions d'instruction (Articles 79 à 230)

Chapitre Ier: Du juge d'instruction: juridiction d'instruction du premier degré (Articles 79 à 190)

#### **Art. 137 CPP**

Toute personne mise en examen, présumée innocente, demeure libre.

Toutefois, en raison des nécessités de l'instruction ou à titre de mesure de sûreté, elle peut être astreinte à une ou plusieurs obligations du contrôle judiciaire ou, si celles-ci se révèlent insuffisantes, être assignée à résidence avec surveillance électronique.

A titre exceptionnel, si les obligations du contrôle judiciaire ou de l'assignation à résidence avec surveillance électronique ne permettent pas d'atteindre ces objectifs, elle peut être placée en détention provisoire.

#### <sup>372</sup> **Art. 137-1 CPP**

La détention provisoire est ordonnée ou prolongée par le juge des libertés et de la détention. Les demandes de mise en liberté lui sont également soumises.

Lorsque le juge des libertés et de la détention statue à l'issue d'un débat contradictoire, il est assisté d'un greffier. Il peut alors faire application de l'article 93.

Il ne peut, à peine de nullité, participer au jugement des affaires pénales dont il a connu.

Hors le cas prévu par le deuxième alinéa de l'article 137-4, il est saisi par une ordonnance motivée du juge d'instruction, qui lui transmet le dossier de la procédure accompagné des requisitions du procureur de la République. Lorsque le juge des libertés et de la détention doit statuer en application de l'article 145, le juge d'instruction peut indiquer dans son ordonnance si la publicité de ce débat lui paraît devoir être écartée au regard d'une ou plusieurs des raisons mentionnées au sixième alinéa de cet article.

and detention judge must rule in application of article 145, the investigating judge may indicate in his order whether the publicity of this debate seems to him to be excluded in the light of one or more of the reasons mentioned. in the sixth paragraph of this article.

**Art. 137-1-1 CPC**<sup>373</sup> The judge of freedoms and detention can be replaced in the event of vacancy, absence or impediment, by a magistrate of the seat of the first grade or out of hierarchy appointed by the president of the judicial tribunal. If these magistrates are unable to attend, the president of the judicial tribunal may appoint a second grade magistrate.

For the organization of the weekend service or the daylight service during the period during which the magistrates benefit from their annual leave, the judge of freedoms and detention of a judicial tribunal may be appointed to exercise concurrently these functions in, at most, two other courts of law within the jurisdiction of the court of appeal; this appointment is decided by order of the first president taken at the request of the presidents of these courts and after opinion of the president of the court concerned; it specifies the reason and the duration, as well as the courts to which it applies; the total duration of the concurrent exercise of these functions of the judge of freedoms and detention in several courts may not exceed forty days during the judicial year.

The designation provided for in the preceding paragraph may also be ordered, in the same manner and for a total period, intermittent or continuous, which may not exceed forty days, when, due to vacancy or incapacity, no magistrate is not likely, within a jurisdiction, to exercise the functions of judge of freedoms and detention.

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<sup>373</sup> **Art. 137-1-1 CPP**

Le juge des libertés et de la détention peut être suppléé en cas de vacance d'emploi, d'absence ou d'empêchement, par un magistrat du siège du premier grade ou hors hiérarchie désigné par le président du tribunal judiciaire. En cas d'empêchement de ces magistrats, le président du tribunal judiciaire peut désigner un magistrat du second grade.

Pour l'organisation du service de fin de semaine ou du service allégé pendant la période au cours de laquelle les magistrats bénéficient de leurs congés annuels, le juge des libertés et de la détention d'un tribunal judiciaire peut être désigné afin d'exercer concurremment ces fonctions dans, au plus, deux autres tribunaux judiciaires du ressort de la cour d'appel ; cette désignation est décidée par ordonnance du premier président prise à la demande des présidents de ces juridictions et après avis du président du tribunal judiciaire concerné ; elle en précise le motif et la durée, ainsi que les tribunaux pour lesquels elle s'applique ; la durée totale d'exercice concurrent des fonctions de juge des libertés et de la détention dans plusieurs tribunaux judiciaires ne peut excéder quarante jours au cours de l'année judiciaire.

La désignation prévue à l'alinéa précédent peut également être ordonnée, selon les mêmes modalités et pour une durée totale, intermittente ou continue, qui ne peut excéder quarante jours, lorsque, pour cause de vacance d'emploi ou d'empêchement, aucun magistrat n'est susceptible, au sein d'une juridiction, d'exercer les fonctions de juge des libertés et de la détention.

**Art. 137-2 CPC**<sup>374</sup>

Judicial control is ordered by the examining magistrate, who rules after having received the requisitions from the public prosecutor.

Judicial control can also be ordered by the judge of freedoms and detention, when seized.

**Art. 137-3 CPC**<sup>375</sup>

The liberty and detention judge rules by reasoned order. When ordering or prolonging the pre-trial detention or rejecting a request for release, the order must include legal and factual considerations on the inadequacy of the obligations of judicial review or assignment to stay under residence with electronic surveillance and it must include the reason for detention by reference to the sole provisions of Articles 143-1 and 144.

**Art. 137-4 CPC**<sup>376</sup>

In all cases, the order is notified to the person under examination who receives a full copy of it against signature in the proceedings file.

Where the investigating judge, on receiving a request from the public prosecutor to remand a person in custody, considers that such detention is not justified and decides not to transmit the case file to the liberty and custody judge, he or she shall rule without delay by means of a reasoned order, which shall immediately be brought to the attention of the public prosecutor.

In criminal cases or for offenses punishable by ten years' imprisonment, the public prosecutor may then, if the requisitions are motivated, in whole or in part, by the reasons provided for in 4° to 7° of Article 144 and they specify that he or she intends to apply the provisions of this paragraph, refer the matter directly to the liberty and custody judge by bringing the accused before him or her without delay; The order issued by the liberty and custody judge shall, where applicable, cause the order of the investigating judge

<sup>374</sup> **Art. 137-2 CPP** Le contrôle judiciaire est ordonné par le juge d'instruction, qui statue après avoir recueilli les réquisitions du procureur de la République.

Le contrôle judiciaire peut être également ordonné par le juge des libertés et de la détention, lorsqu'il est saisi.

<sup>375</sup> **Art. 137-3 CPP** Le juge des libertés et de la détention statue par ordonnance motivée. Lorsqu'il ordonne ou prolonge une détention provisoire ou qu'il rejette une demande de mise en liberté, l'ordonnance doit comporter l'énoncé des considérations de droit et de fait sur le caractère insuffisant des obligations du contrôle judiciaire ou de l'assignation à résidence avec surveillance électronique et le motif de la détention par référence aux seules dispositions des articles 143-1 et 144.

<sup>376</sup> **Art. 137-4 CPP** Dans tous les cas, l'ordonnance est notifiée à la personne mise en examen qui en reçoit copie intégrale contre émargement au dossier de la procédure. Lorsque, saisi de réquisitions du procureur de la République tendant au placement en détention provisoire, le juge d'instruction estime que cette détention n'est pas justifiée et qu'il décide de ne pas transmettre le dossier de la procédure au juge des libertés et de la détention, il est tenu de statuer sans délai par ordonnance motivée, qui est immédiatement portée à la connaissance du procureur de la République.

En matière criminelle ou pour les délits punis de dix ans d'emprisonnement, le procureur de la République peut alors, si les réquisitions sont motivées, en tout ou partie, par les motifs prévus aux 4° à 7° de l'article 144 et qu'elles précisent qu'il envisage de faire application des dispositions du présent alinéa, saisir directement le juge des libertés et de la détention en déférant sans délai devant lui la personne mise en examen ; l'ordonnance rendue par le juge des libertés et de la détention entraîne le cas échéant la caducité de l'ordonnance du juge d'instruction ayant placé la personne sous contrôle judiciaire. S'il renonce à saisir directement le juge des libertés et de la détention, le procureur de la République en avise le juge d'instruction et la personne peut être laissée en liberté.

who placed the person under judicial supervision to lapse. If the public prosecutor decides not to refer the matter directly to the liberty and custody judge, he or she notifies the investigating judge and the person may be released.

### **Subsection-1 Judicial control (Articles 138 to 142-4)**

**Art. 138 CPC** <sup>377</sup> **[Judicial control]** Judicial supervision may be ordered by the investigating judge or by the liberty and custody judge if the person under investigation is facing a correctional prison sentence or a more serious sentence.

<sup>377</sup> **Art. 138 CPP** Le contrôle judiciaire peut être ordonné par le juge d'instruction ou par le juge des libertés et de la détention si la personne mise en examen encourt une peine d'emprisonnement correctionnel ou une peine plus grave. Ce contrôle astreint la personne concernée à se soumettre, selon la décision du juge d'instruction ou du juge des libertés et de la détention, à une ou plusieurs des obligations ci-après énumérées:

1° Ne pas sortir des limites territoriales déterminées par le juge d'instruction ou le juge des libertés et de la détention

2° Ne s'absenter de son domicile ou de la résidence fixée par le juge d'instruction ou le juge des libertés et de la détention qu'aux conditions et pour les motifs déterminés par ce magistrat ;

3° Ne pas se rendre en certains lieux ou ne se rendre que dans les lieux déterminés par le juge d'instruction ou le juge des libertés et de la détention ;

3° bis Ne pas participer à des manifestations sur la voie publique dans des lieux déterminés par le juge d'instruction ou le juge des libertés et de la détention ;

4° Informer le juge d'instruction ou le juge des libertés et de la détention de tout déplacement au-delà de limites déterminées ;

5° Se présenter périodiquement aux services, associations habilitées ou autorités désignés par le juge d'instruction ou le juge des libertés et de la détention qui sont tenus d'observer la plus stricte discrétion sur les faits reprochés à la personne mise en examen ;

6° Répondre aux convocations de toute autorité, de toute association ou de toute personne qualifiée désignée par le juge d'instruction ou le juge des libertés et de la détention et se soumettre, le cas échéant, aux mesures de contrôle portant sur ses activités professionnelles ou sur son assiduité à un enseignement ainsi qu'aux mesures socio-éducatives destinées à favoriser son insertion sociale et à prévenir le renouvellement de l'infraction ;

7° Remettre soit au greffe, soit à un service de police ou à une brigade de gendarmerie tous documents justificatifs de l'identité, et notamment le passeport, en échange d'un récépissé valant justification de l'identité ;

8° S'abstenir de conduire tous les véhicules, certains véhicules ou un véhicule qui ne soit pas équipé, par un professionnel agréé ou par construction, d'un dispositif homologué d'antidémarrage par éthylotest électronique et, le cas échéant, remettre au greffe son permis de conduire contre récépissé ; toutefois, le juge d'instruction ou le juge des libertés et de la détention peut décider que la personne mise en examen pourra faire usage de son permis de conduire pour l'exercice de son activité professionnelle ;

9° S'abstenir de recevoir ou de rencontrer certaines personnes spécialement désignées par le juge d'instruction ou le juge des libertés et de la détention, ainsi que d'entrer en relation avec elles, de quelque façon que ce soit ;

10° Se soumettre à des mesures d'examen, de traitement ou de soins, même sous le régime de l'hospitalisation, notamment aux fins de désintoxication. Une copie de l'ordonnance de placement sous contrôle judiciaire est adressée par le juge d'instruction au médecin ou au psychologue qui doit suivre la personne mise en examen. Les rapports des expertises réalisées pendant l'enquête ou l'instruction sont adressés au médecin ou au psychologue, à leur demande ou à l'initiative du juge d'instruction. Celui-ci peut également leur adresser toute autre pièce utile du dossier ;

11° Fournir un cautionnement dont le montant et les délais de versement, en une ou plusieurs fois, sont fixés par le juge d'instruction ou le juge des libertés et de la détention, compte tenu notamment des ressources et des charges de la personne mise en examen ;

12° Ne pas se livrer à certaines activités de nature professionnelle ou sociale, à l'exclusion de l'exercice des mandats électifs et des responsabilités syndicales, lorsque l'infraction a été commise dans l'exercice ou à l'occasion de l'exercice de ces activités et lorsqu'il est à redouter qu'une nouvelle infraction soit commise. Lorsque l'activité concernée est celle d'un avocat, le conseil de l'ordre, saisi par le juge d'instruction ou le juge des libertés et de la détention, a seul le pouvoir de prononcer cette mesure à charge d'appel, dans les conditions prévues à l'article 24 de la loi n° 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques ; le conseil de l'ordre statue dans les quinze jours ;



This supervision requires the person concerned to submit, depending on the decision of the investigating judge or the liberty and custody judge, to one or more of the following obligations

1° Not to leave the territorial limits determined by the investigating judge or the liberty and custody judge ;

2° Not to leave his home or the residence determined by the investigating judge or the judge in charge of liberties and detention except under the conditions and for the reasons determined by this magistrate;

3° Not to go to certain places or to go only to places determined by the investigating judge or the liberty and custody judge;

3° bis Not to take part in demonstrations on the public highway in places determined by the investigating judge or the liberty and custody judge;

4° To inform the investigating judge or the judge in charge of liberties and detention of any travel beyond the limits determined;

5° Report periodically to the services, authorized associations or authorities designated by the investigating judge or the liberty and custody judge, who are obliged to observe the strictest discretion regarding the facts of which the person under investigation is accused;

12° bis Ne pas exercer une activité impliquant un contact habituel avec des mineurs lorsqu'il est à redouter qu'une nouvelle infraction soit commise ;

13° Ne pas émettre de chèques autres que ceux qui permettent exclusivement le retrait de fonds par le tireur auprès du tiré ou ceux qui sont certifiés et, le cas échéant, remettre au greffe les formules de chèques dont l'usage est ainsi prohibé ;

14° Ne pas détenir ou porter une arme et, le cas échéant, remettre au greffe contre récépissé les armes dont elle est détentrice ;

15° Constituer, dans un délai, pour une période et un montant déterminés par le juge d'instruction ou le juge des libertés et de la détention, des sûretés personnelles ou réelles ;

16° Justifier qu'elle contribue aux charges familiales ou acquitte régulièrement les aliments qu'elle a été condamnée à payer conformément aux décisions judiciaires et aux conventions judiciairement homologuées portant obligation de verser des prestations, subsides ou contributions aux charges du mariage ;

17° En cas d'infraction commise soit contre son conjoint, son concubin ou son partenaire lié par un pacte civil de solidarité, soit contre ses enfants ou ceux de son conjoint, concubin ou partenaire, résider hors du domicile ou de la résidence du couple et, le cas échéant, s'abstenir de paraître dans ce domicile ou cette résidence ou aux abords immédiats de celui-ci, ainsi que, si nécessaire, faire l'objet d'une prise en charge sanitaire, sociale ou psychologique ; les dispositions du présent 17° sont également applicables lorsque l'infraction est commise par l'ancien conjoint ou concubin de la victime, ou par la personne ayant été liée à elle par un pacte civil de solidarité, le domicile concerné étant alors celui de la victime. Pour l'application du présent 17°, le juge d'instruction recueille ou fait recueillir, dans les meilleurs délais et par tous moyens, l'avis de la victime sur l'opportunité d'astreindre l'auteur des faits à résider hors du logement du couple. Sauf circonstances particulières, cette mesure est prise lorsque sont en cause des faits de violences susceptibles d'être renouvelés et que la victime la sollicite. Le juge d'instruction peut préciser les modalités de prise en charge des frais afférents à ce logement. Lorsqu'est prononcée l'une des obligations prévues au 9°, au présent 17° ou au 17° bis, le juge d'instruction ou le juge des libertés et de la détention se prononce, par une décision motivée, sur la suspension du droit de visite et d'hébergement de l'enfant mineur dont la personne mise en examen est titulaire ;

17° bis Respecter l'interdiction de se rapprocher d'une victime de violences commises au sein du couple prévue à l'article 138-3 et contrôlée par un dispositif électronique mobile anti-rapprochement ;

18° Respecter les conditions d'une prise en charge sanitaire, sociale, éducative ou psychologique, destinée à permettre sa réinsertion et l'acquisition des valeurs de la citoyenneté ; cette prise en charge peut, le cas échéant, intervenir au sein d'un établissement d'accueil adapté dans lequel la personne est tenue de résider.

Les modalités d'application du présent article, en ce qui concerne notamment l'habilitation des personnes contribuant au contrôle judiciaire sont déterminées en tant que de besoin par un décret en Conseil d'Etat.

6° Respond to the summonses of any authority, association or qualified person designated by the investigating judge or the liberty and custody judge and submit, where applicable, to the control measures relating to his professional activities or his attendance at school as well as to the socio-educational measures intended to promote his social integration and prevent the repetition of the offence;

7° To hand over to the clerk's office, a police department or a gendarmerie station all documents proving identity, and in particular the passport, in exchange for a receipt valid as proof of identity;

8° Refrain from driving all vehicles, certain vehicles or a vehicle that is not equipped, by an approved professional or by construction, with an approved electronic alcohol ignition interlock device and, where applicable, hand over his or her driving license to the court clerk's office in exchange for a receipt; however, the examining magistrate or the liberty and custody judge may decide that the person under investigation may use his or her driving license to carry out his or her professional activity;

9° Refrain from receiving or meeting with certain persons specially designated by the investigating judge or the liberty and custody judge, as well as from entering into relations with them in any way whatsoever;

10° Submit to examination, treatment or care measures, even under the hospitalization regime, particularly for detoxification purposes. A copy of the order of placement under judicial supervision is sent by the investigating judge to the doctor or psychologist who is to follow the person under investigation. The reports of the expert examinations carried out during the investigation or inquiry are sent to the doctor or psychologist, at their request or at the initiative of the investigating judge. The judge may also send them any other useful document from the file;

11° To provide a bond, the amount of which and the deadlines for payment, in one or more instalments, are set by the investigating judge or the liberty and custody judge, taking into account in particular the resources and expenses of the person under investigation;

12° Not to engage in certain professional or social activities, with the exception of holding elected office and union responsibilities, when the offence was committed in the exercise or during the exercise of these activities and when there is a risk that a new offence may be committed. When the activity concerned is that of a lawyer, the council of the Bar, referred to by the examining magistrate or the judge in charge of liberties and detention, has the sole power to pronounce this measure, subject to appeal, under the conditions provided for in article 24 of law n° 71-1130 of 31<sup>st</sup> December 1971 on the reform of certain judicial and legal professions; the council of the Bar shall give its decision within fifteen days;

12° bis Not to exercise an activity involving habitual contact with minors when there is a risk that a new offence will be committed;

13° Not to issue checks other than those that allow exclusively the withdrawal of funds by the drawer from the drawee or those that are certified and, where applicable, to remit to the clerk's office the check forms whose use is thus prohibited;

14° Not to possess or carry a weapon and, if necessary, to hand over to the clerk of the court against a receipt the weapons that he or she possesses;

15° To provide, within a period of time and for an amount determined by the investigating judge or the judge in charge of liberties and detention, personal or real securities;

16° Justify that he or she contributes to the family expenses or regularly pays the maintenance that he or she has been ordered to pay in accordance with judicial decisions and agreements that have been judicially approved and that oblige him or her to pay benefits, subsidies or contributions to the expenses of the marriage;

17° In the event of an offence committed either against his or her spouse, cohabitant or partner bound by a civil solidarity pact, or against his or her children or those of his or her spouse, cohabitant or partner, reside outside the couple's home or residence and, where applicable, abstain from appearing in that home or residence or in the immediate vicinity of it, as well as, if necessary, receive health, social or psychological care; the provisions of this 17° are also applicable when the offence is committed by the victim's former spouse or cohabitant, or by the person who was linked to him or her by a civil solidarity pact, the home concerned being that of the victim. For the application of this 17°, the investigating judge shall obtain or have obtained, as soon as possible and by any means, the opinion of the victim on the advisability of requiring the perpetrator to reside outside the couple's home. Except in exceptional circumstances, this measure is taken when acts of violence likely to be repeated are involved and the victim requests it. The investigating judge may specify the terms and conditions for covering the costs of this accommodation. The court may also order that a person who is a victim of a crime of violence or who has been convicted of a crime of violence against the person be given the opportunity to present his or her case to the court for the purpose of determining whether the crime of violence against the person has been committed;

17° bis Respect the prohibition to approach a victim of violence committed within the couple provided for in Article 138-3 and controlled by a mobile electronic anti-seizure device;

18° To respect the conditions of a sanitary, social, educational or psychological care, intended to allow his reintegration and the acquisition of the values of the citizenship; this care can, if necessary, intervene within an adapted reception establishment in which the person is held to reside.

The terms and conditions for the application of this article, particularly with regard to the authorization of persons contributing to the judicial supervision, shall be determined as necessary by a decree of the Council of State.

**Sub-section 3: Pre-trial detention (Articles 143-1 to 148-8)**

**Art. 143 CPC<sup>378</sup>**

Subject to the provisions of article 137, pre-trial detention may be ordered or prolonged only in one of the cases listed below:

- 1 ° The charged person incurs a criminal penalty;
- 2 ° The charged person incurs a correctional sentence of a duration equal to or greater than three years of imprisonment.

Pre-trial detention may also be ordered under the conditions provided for in article 141-2 when the charged person voluntarily evades the obligations of judicial review or of house arrest with electronic surveillance.

**Art. 143-1 CPC<sup>379</sup>**

Subject to the provisions of Article 137, pre-trial detention may only be ordered or extended in one of the following cases

- 1° The person under investigation is facing a criminal sentence;
- 2° The person under investigation is facing a correctional sentence of three years' imprisonment or more.

Pre-trial detention may also be ordered under the conditions set out in Article 141-2 when the person under investigation voluntarily evades the obligations of judicial supervision or house arrest with electronic surveillance.

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<sup>378</sup> **Art. 143 CPP**

Sous réserve des dispositions de l'article 137, la détention provisoire ne peut être ordonnée ou prolongée que dans l'un des cas ci-après énumérés:

- 1° La personne mise en examen encourt une peine criminelle ;
- 2° La personne mise en examen encourt une peine correctionnelle d'une durée égale ou supérieure à trois ans d'emprisonnement.

La détention provisoire peut également être ordonnée dans les conditions prévues à l'article 141-2 lorsque la personne mise en examen se soustrait volontairement aux obligations du contrôle judiciaire ou d'une assignation à résidence avec surveillance électronique.

<sup>379</sup> **Art. 143-1** Sous réserve des dispositions de l'article 137, la détention provisoire ne peut être ordonnée ou prolongée que dans l'un des cas ci-après énumérés:

- 1° La personne mise en examen encourt une peine criminelle ;
- 2° La personne mise en examen encourt une peine correctionnelle d'une durée égale ou supérieure à trois ans d'emprisonnement.

La détention provisoire peut également être ordonnée dans les conditions prévues à l'article 141-2 lorsque la personne mise en examen se soustrait volontairement aux obligations du contrôle judiciaire ou d'une assignation à résidence avec surveillance électronique.

**Art. 144 CPC<sup>380</sup>**

Pre-trial detention may be ordered or extended only if it becomes clear, in the light of the precise and detailed elements resulting from the proceedings, that it is the only means of achieving one or more of the following objectives and that these cannot be achieved by placing the accused under judicial supervision or under house arrest with electronic surveillance

- 1° To preserve evidence or material clues that are necessary for the determination of the truth;
- 2° To prevent pressure on witnesses or victims and their families;
- 3° To prevent fraudulent consultation between the accused and his co-conspirators or accomplices;
- 4° To protect the person under investigation;
- 5° Guarantee that the person under investigation remains at the disposal of the justice system;
- 6° Put an end to the offence or prevent its recurrence;
- 7° Put an end to the exceptional and persistent disturbance of public order caused by the seriousness of the offence, the circumstances of its commission or the extent of the harm it has caused. This disturbance may not result solely from the media coverage of the case. However, this paragraph shall not apply in criminal cases.

<sup>380</sup> **Art. 144 CPP**

La détention provisoire ne peut être ordonnée ou prolongée que s'il est démontré, au regard des éléments précis et circonstanciés résultant de la procédure, qu'elle constitue l'unique moyen de parvenir à l'un ou plusieurs des objectifs suivants et que ceux-ci ne sauraient être atteints en cas de placement sous contrôle judiciaire ou d'assignation à résidence avec surveillance électronique:

- 1° Conserver les preuves ou les indices matériels qui sont nécessaires à la manifestation de la vérité ;
- 2° Empêcher une pression sur les témoins ou les victimes ainsi que sur leur famille ;
- 3° Empêcher une concertation frauduleuse entre la personne mise en examen et ses coauteurs ou complices ;
- 4° Protéger la personne mise en examen ;
- 5° Garantir le maintien de la personne mise en examen à la disposition de la justice ;
- 6° Mettre fin à l'infraction ou prévenir son renouvellement ;
- 7° Mettre fin au trouble exceptionnel et persistant à l'ordre public provoqué par la gravité de l'infraction, les circonstances de sa commission ou l'importance du préjudice qu'elle a causé. Ce trouble ne peut résulter du seul retentissement médiatique de l'affaire. Toutefois, le présent alinéa n'est pas applicable en matière correctionnelle.

**Art. 144-1 CPC [time/length]<sup>381</sup>**

The period of pre-trial detention may not exceed a reasonable length of time, having regard to the seriousness of the acts of which the person under investigation is accused and the complexity of the investigations necessary to establish the truth.

Without prejudice to the provisions of Article 803-8 guaranteeing the right of the person to be detained in conditions that respect his or her dignity, the investigating judge or, if the matter is referred to him or her, the liberty and custody judge shall order the immediate release of the person placed in pre-trial detention, in accordance with the procedures provided for in Article 147, as soon as the conditions provided for in Article 144 and this Article are no longer met.

**Art. 144-2 CPC [release from pre-trial detention and follow-up supervision]<sup>382</sup>**

Where release is ordered on the basis of the provisions of Articles 143-1, 144, 144-1, 145-2, 145-3 or 706-24-3, but is likely to put the victim at risk, the court shall place the person under investigation under judicial supervision and subject him or her to a ban on receiving or meeting the victim or having any contact with him or her whatsoever pursuant to the provisions of Article 138(9). The victim shall be notified in accordance with the provisions of Article 138-1.

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<sup>381</sup> **Art. 144-1 CPP**

La détention provisoire ne peut excéder une durée raisonnable, au regard de la gravité des faits reprochés à la personne mise en examen et de la complexité des investigations nécessaires à la manifestation de la vérité.

Sans préjudice des dispositions de l'article 803-8 garantissant le droit de la personne d'être détenue dans des conditions respectant sa dignité, le juge d'instruction ou, s'il est saisi, le juge des libertés et de la détention doit ordonner la mise en liberté immédiate de la personne placée en détention provisoire, selon les modalités prévues à l'article 147, dès que les conditions prévues à l'article 144 et au présent article ne sont plus remplies.

<sup>382</sup> **Art. 144-2 CPP**

Lorsqu'une mise en liberté est ordonnée en raison des dispositions des articles 143-1, 144, 144-1, 145-2, 145-3 ou 706-24-3, mais qu'elle est susceptible de faire courir un risque à la victime, la juridiction place la personne mise en examen sous contrôle judiciaire en la soumettant à l'interdiction de recevoir ou rencontrer la victime ou d'entrer en relation de quelque façon que ce soit avec elle en application des dispositions du 9° de l'article 138. Cette dernière en est avisée conformément aux dispositions de l'article 138-1.

**Art. 145 CPC<sup>383</sup> [pre-trial debate by the freedom and detention judge]**

The liberty and detention judge seized by an order of the investigating judge tending to the placement in detention of the person under examination calls this person to appear before him, assisted by his lawyer if this one has already been appointed, and proceeds in accordance with the provisions of this article.

In view of the information in the file and after having, if he considers it useful, gathered the observations of the person concerned, this magistrate informs the person under examination whether he intends to place him in pre-trial detention.

If he does not plan to place him in pre-trial detention, this magistrate, after having ordered the placement of the person under judicial supervision, if necessary, proceeds in

<sup>383</sup> **Art. 145 CPP**

Le juge des libertés et de la détention saisi par une ordonnance du juge d'instruction tendant au placement en détention de la personne mise en examen fait comparaître cette personne devant lui, assistée de son avocat si celui-ci a déjà été désigné, et procède conformément aux dispositions du présent article.

Au vu des éléments du dossier et après avoir, s'il l'estime utile, recueilli les observations de l'intéressé, ce magistrat fait connaître à la personne mise en examen s'il envisage de la placer en détention provisoire.

S'il n'envisage pas de la placer en détention provisoire, ce magistrat, après avoir le cas échéant ordonné le placement de la personne sous contrôle judiciaire, procède conformément aux deux derniers alinéas de l'article 116 relatifs à la déclaration d'adresse.

S'il envisage d'ordonner la détention provisoire de la personne, il l'informe que sa décision ne pourra intervenir qu'à l'issue d'un débat contradictoire et qu'elle a le droit de demander un délai pour préparer sa défense.

Si cette personne n'est pas déjà assistée d'un avocat, le juge l'avise qu'elle sera défendue lors du débat par un avocat de son choix ou, si elle ne choisit pas d'avocat, par un avocat commis d'office. L'avocat choisi ou, dans le cas d'une commission d'office, le bâtonnier de l'ordre des avocats en est avisé par tout moyen et sans délai. Si l'avocat choisi ne peut se déplacer, il est remplacé par un avocat commis d'office. Mention de ces formalités est faite au procès-verbal.

Le juge des libertés et de la détention statue après un débat contradictoire au cours duquel il entend le ministère public qui développe ses réquisitions prises conformément au troisième alinéa de l'article 82 puis les observations de la personne mise en examen et, le cas échéant, celles de son avocat. Si la personne mise en examen est majeure, le débat contradictoire a lieu et le juge statue en audience publique. Toutefois, le ministère public, la personne mise en examen ou son avocat peuvent s'opposer à cette publicité si l'enquête porte sur des faits mentionnés aux articles 706-73 et 706-73-1 ou si celle-ci est de nature à entraver les investigations spécifiques nécessitées par l'instruction, à porter atteinte à la présomption d'innocence ou à la sérénité des débats ou à nuire à la dignité de la personne ou aux intérêts d'un tiers. Le juge statue sur cette opposition en audience de cabinet par ordonnance motivée, après avoir recueilli les observations du ministère public, de la personne mise en examen et de son avocat. S'il fait droit à cette opposition ou si la personne mise en examen est mineure, le débat a lieu et le juge statue en audience de cabinet.

Toutefois, le juge des libertés et de la détention ne peut ordonner immédiatement le placement en détention lorsque la personne mise en examen ou son avocat sollicite un délai pour préparer sa défense.

Dans ce cas, il peut, au moyen d'une ordonnance motivée par référence aux dispositions de l'alinéa précédent et non susceptible d'appel, prescrire l'incarcération de la personne pour une durée déterminée qui ne peut en aucun cas excéder quatre jours ouvrables. Dans ce délai, il fait comparaître à nouveau la personne et, que celle-ci soit ou non assistée d'un avocat, procède comme il est dit au sixième alinéa. S'il n'ordonne pas le placement de la personne en détention provisoire, celle-ci est mise en liberté d'office.

Pour permettre au juge d'instruction de procéder à des vérifications relatives à la situation personnelle du mis en examen ou aux faits qui lui sont reprochés, lorsque ces vérifications sont susceptibles de permettre le placement de l'intéressé sous contrôle judiciaire ou sous assignation à résidence avec surveillance électronique, le juge des libertés et de la détention peut également décider d'office de prescrire par ordonnance motivée l'incarcération provisoire du mis en examen pendant une durée déterminée qui ne saurait excéder quatre jours ouvrables jusqu'à la tenue du débat contradictoire. A défaut de débat dans ce délai, la personne est mise en liberté d'office. L'ordonnance mentionnée au présent alinéa peut faire l'objet du recours prévu à l'article 187-1.

L'incarcération provisoire est, le cas échéant, imputée sur la durée de la détention provisoire pour l'application des articles 145-1 et 145-2. Elle est assimilée à une détention provisoire au sens de l'article 149 du présent code et de l'article 24 du code pénal (article abrogé, cf. article 716-4 du code de procédure pénale).

accordance with the last two paragraphs of article 116 relating to the declaration of address.

If he plans to order the person's pre-trial detention, he informs him that his decision can only be taken after an adversarial debate and that he has the right to request a period of time to prepare his defense.

If this person is not already assisted by a lawyer, the judge advises him that he will be defended during the debate by a lawyer of his choice or, if he does not choose a lawyer, by a lawyer appointed to office. The lawyer chosen or, in the case of an ex officio commission, the president of the bar association is notified by any means and without delay. If the chosen lawyer cannot come, he is replaced by an officially appointed lawyer. These formalities are mentioned in the minutes.

The judge of freedoms and detention rules after an adversarial debate during which he hears the public prosecutor who develops his requisitions taken in accordance with the third paragraph of article 82 then the observations of the person under examination and, if applicable, those of his lawyer. If the person under examination is of full age, the adversarial debate takes place and the judge rules in open court. However, the public prosecutor, the person under investigation or his lawyer may oppose this publicity if the investigation relates to the facts mentioned in articles 706-73 and 706-73-1 or if it is likely to hinder the specific investigations required by the investigation, undermine the presumption of innocence or the serenity of the proceedings or harm the dignity of the person or the interests of a third party. The judge rules on this opposition in a cabinet hearing by reasoned order, after having collected the observations of the public prosecutor, the person under investigation and his lawyer. If he upholds this opposition or if the charged person is a minor, the debate takes place and the judge decides in a cabinet hearing.

However, the judge of freedoms and detention cannot immediately order the placement in detention when the person under examination or his lawyer requests a period of time to prepare his defense.

In this case, he may, by means of an order motivated by reference to the provisions of the preceding paragraph and not subject to appeal, prescribe the person's imprisonment for a fixed period which may in no case exceed four days (working days). Within this period, he summons the person again and, whether or not he is assisted by a lawyer, proceeds as stated in the sixth paragraph. If he does not order the placement of the person in pre-trial detention, he is released automatically.

To enable the examining magistrate to carry out checks relating to the personal situation of the accused or the facts alleged against him, when these checks are likely to allow the person concerned to be placed under judicial supervision or under house arrest with electronic surveillance, the judge of freedoms and detention can also decide of his own motion to prescribe by reasoned order the provisional imprisonment of the accused for a fixed period which may not exceed four working days until the adversarial debate is held. . If there is no debate within this period, the person is automatically released. The



ordinance mentioned in this paragraph may be the subject of the appeal provided for in article 187-1.

Provisional imprisonment is, where applicable, charged to the duration of the provisional detention for the application of Articles 145-1 and 145-2. It is assimilated to pre-trial detention within the meaning of article 149 of this code and article 24 of the penal code (article repealed, cf. article 716-4 of the code of penal procedure).

### **Subsection-2 House arrest with electronic surveillance (Articles 142-5 to 142-13)**

#### **Art. 142-5 CPC<sup>384</sup>**

House arrest with electronic surveillance may be ordered, ex officio or at the request of the person concerned, by the investigating judge or by the judge of freedoms and detention if the indicted person incurs a sentence of correctional imprisonment of at least two years or a more serious sentence.

This measure obliges the person to remain at his home or in a residence fixed by the examining magistrate or the judge of freedoms and detention and to be absent only under the conditions and for the reasons determined by this magistrate.

This obligation is carried out under the regime of placement under electronic surveillance, using the process provided for in article 723-8 . It can also be carried out under the regime of placement under mobile electronic surveillance, using the procedure provided for in article 763-12, if the person is indicted for an offense punishable by more than seven years' imprisonment and for which socio-judicial monitoring is incurred. The Articles 723-9 and 723-12 and, where appropriate, Articles 763-12 and 763-13 are applicable, the investigating judge exercising the powers of the judge in the enforcement of sentences.

The person may also be subject to the obligations and prohibitions provided for in article 138.

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#### <sup>384</sup> **Art. 142-5 CPP**

L'assignation à résidence avec surveillance électronique peut être ordonnée, d'office ou à la demande de l'intéressé, par le juge d'instruction ou par le juge des libertés et de la détention si la personne mise en examen encourt une peine d'emprisonnement correctionnel d'au moins deux ans ou une peine plus grave.

Cette mesure oblige la personne à demeurer à son domicile ou dans une résidence fixée par le juge d'instruction ou le juge des libertés et de la détention et de ne s'en absenter qu'aux conditions et pour les motifs déterminés par ce magistrat.

Cette obligation est exécutée sous le régime du placement sous surveillance électronique, à l'aide du procédé prévu par l'article 723-8. Elle peut également être exécutée sous le régime du placement sous surveillance électronique mobile, à l'aide du procédé prévu par l'article 763-12, si la personne est mise en examen pour une infraction punie de plus de sept ans d'emprisonnement et pour laquelle le suivi socio-judiciaire est encouru. Les articles 723-9 et 723-12 ainsi que, le cas échéant, les articles 763-12 et 763-13 sont applicables, le juge d'instruction exerçant les compétences attribuées au juge de l'application des peines.

La personne peut être en outre astreinte aux obligations et interdictions prévues par l'article 138.

La personne mise en examen est avisée que l'installation du dispositif prévu à l'article 723-8 ne peut être effectuée sans son consentement mais que le fait de refuser cette installation constitue une violation des obligations qui lui incombent et peut donner lieu à la révocation de l'assignation à résidence avec surveillance électronique et à son placement en détention provisoire.

The charged person is informed that the installation of the device provided for in article 723-8 cannot be carried out without his consent but that the fact of refusing this installation constitutes a violation of the obligations incumbent on him and may give rise to the revocation of house arrest with electronic surveillance and his placement in pre-trial detention.

**Art. 145-4 CPC [prohibition on communication]** <sup>385</sup>

When the Person, which is investigated is placed in pre-trial detention, the examining magistrate may order a ban on communication for a period of ten days. This measure can be renewed, but for a further period of ten days only. In no case does the prohibition on communication apply to the lawyer of the person under investigation.

Subject to the foregoing provisions, any person placed in pre-trial detention may, with the authorization of the examining magistrate, receive visits to his place of detention or telephone a third party.

At the end of a period of one month from the placement in pre-trial detention, the examining magistrate may refuse to issue a visit permit or to authorize the use of the telephone only by a written decision and especially motivated with regard to the requirements of instruction, the maintenance of good order and security or the prevention of infringements.

This decision is notified by any means and without delay to the applicant. The latter can refer it to the president of the investigating chamber, who decides within five days by a written and reasoned decision that cannot be appealed. When he reverses the decision of the investigating judge, the president of the investigating chamber issues the visit permit or the authorization to telephone.

<sup>385</sup> **Art. 145-4 CPP**

Lorsque la personne mise en examen est placée en détention provisoire, le juge d'instruction peut prescrire à son encontre l'interdiction de communiquer pour une période de dix jours. Cette mesure peut être renouvelée, mais pour une nouvelle période de dix jours seulement. En aucun cas l'interdiction de communiquer ne s'applique à l'avocat de la personne mise en examen.

Sous réserve des dispositions qui précèdent, toute personne placée en détention provisoire peut, avec l'autorisation du juge d'instruction, recevoir des visites sur son lieu de détention ou téléphoner à un tiers.

A l'expiration d'un délai d'un mois à compter du placement en détention provisoire, le juge d'instruction ne peut refuser de délivrer un permis de visite ou d'autoriser l'usage du téléphone que par une décision écrite et spécialement motivée au regard des nécessités de l'instruction, du maintien du bon ordre et de la sécurité ou de la prévention des infractions.

Cette décision est notifiée par tout moyen et sans délai au demandeur. Ce dernier peut la déférer au président de la chambre de l'instruction, qui statue dans un délai de cinq jours par une décision écrite et motivée non susceptible de recours. Lorsqu'il infirme la décision du juge d'instruction, le président de la chambre de l'instruction délivre le permis de visite ou l'autorisation de téléphoner.

Après la clôture de l'instruction, les attributions du juge d'instruction sont exercées par le procureur de la République selon les formes et conditions prévues au présent article. Il en est de même dans tous les autres cas où une personne est placée en détention provisoire.

A défaut de réponse du juge d'instruction ou du procureur de la République à la demande de permis de visite ou de téléphoner dans un délai de vingt jours, la personne peut également saisir le président de la chambre de l'instruction.

Lorsque la procédure est en instance d'appel, les attributions du procureur de la République sont confiées au procureur général.

After the closure of the investigation, the powers of the investigating judge are exercised by the public prosecutor in accordance with the forms and conditions provided for in this article. The same is true in all other cases where a person is remanded in custody.

In the absence of a response from the examining magistrate or the public prosecutor to the request for a visit or telephone permit within twenty days, the person may also refer the matter to the president of the investigating chamber.

When the procedure is pending appeal, the powers of the (normal) public prosecutor are entrusted to the general public prosecutor.

**Art. 145-4-2 CPC [further restrictions on pre-trial detainees i.e. ban on receiving and sending mails]<sup>386</sup>**

When the Person, which is investigated is placed in pre-trial detention, the investigating judge may decide to prohibit him from writing correspondence with one or more persons he designates, in view of the needs of the investigation, the maintenance of good order and security or the prevention of infringements. For the same reasons, he may decide to withhold a letter written by the detained person or addressed to him.

The decisions mentioned in the first paragraph are motivated and notified by any means and without delay to the detained person. The latter can refer them to the president of the investigative chamber, who decides within one month by a written and reasoned decision that cannot be appealed.

After the closure of the investigation, the powers of the investigating judge are exercised by the public prosecutor in accordance with the forms and conditions provided for in this article. The same is true in all other cases where a person is remanded in custody.

When the procedure is pending appeal, the powers of the public prosecutor are entrusted to the public prosecutor.

The other decisions or conforming opinions emanating from the judicial authority provided for by the regulatory provisions of this code or by the penitentiary law n ° 2009-1436 of November 24, 2009 and relating to the modalities of execution of a provisional

<sup>386</sup> **Art. 145-4-2 CPP**

Lorsque la personne mise en examen est placée en détention provisoire, le juge d'instruction peut décider de prescrire à son encontre l'interdiction de correspondre par écrit avec une ou plusieurs personnes qu'il désigne, au regard des nécessités de l'instruction, du maintien du bon ordre et de la sécurité ou de la prévention des infractions. Il peut pour les mêmes motifs décider de retenir un courrier écrit par la personne détenue ou qui lui est adressé.

Les décisions mentionnées au premier alinéa sont motivées et notifiées par tout moyen et sans délai à la personne détenue. Celle-ci peut les déférer au président de la chambre de l'instruction, qui statue dans un délai d'un mois par une décision écrite et motivée non susceptible de recours.

Après la clôture de l'instruction, les attributions du juge d'instruction sont exercées par le procureur de la République selon les formes et conditions prévues au présent article. Il en est de même dans tous les autres cas où une personne est placée en détention provisoire.

Lorsque la procédure est en instance d'appel, les attributions du procureur de la République sont confiées au procureur général.

Les autres décisions ou avis conformes émanant de l'autorité judiciaire prévus par les dispositions réglementaires du présent code ou par la loi n° 2009-1436 du 24 novembre 2009 pénitentiaire et relatifs aux modalités d'exécution d'une détention provisoire ou à l'exercice de ses droits par une personne placée en détention provisoire peuvent, conformément aux dispositions du présent article, faire l'objet d'un recours du détenu ou du ministère public devant le président de la chambre de l'instruction.

detention or the exercise of his rights by a person placed in pre-trial detention may, in accordance with the provisions of this article, be the subject of an appeal by the detainee or the public prosecutor before the president of the investigating chamber.

- 19 The next provisions deal with compensation with the pre-trial detention after dismissal:

**148-5 CPC**<sup>387</sup>

In all matters and in all stages of the procedure, any person placed in pre-trial detention may, exceptionally, be authorized to leave under escort in accordance with the terms provided for by decree. Decisions granting or refusing these authorizations may be the subject of the appeal provided for in the last paragraph of article 145-4-2.

**Subsection-4 Compensation for a detention (Art. 149-150)**

**Art. 149 CPC [compensation for pre-trial detention after dismissal]**<sup>388</sup>

Without prejudice to the application of the provisions of Articles L. 141-2 and L. 141-3 of the Code of Judicial Organisation, a person who has been remanded in custody during proceedings which have ended with a decision to dismiss the case, acquit or discharge him or her shall be entitled, at his or her request, to full compensation for the moral and material damage caused by this detention. However, no compensation is due when this decision is based solely on the recognition of his or her lack of responsibility within the meaning of Article 122-1 of the Criminal Code, an amnesty subsequent to the remand in custody, or the prescription of the public prosecution after the person's release, when the person was at the same time detained for another reason, or when the person was remanded in custody because he or she freely and voluntarily made an accusation or allowed an accusation to be made with a view to escaping prosecution of the perpetrator. At the request of the person concerned, the damage shall be assessed by an expert opinion carried out under the conditions of Articles 156 et seq.

<sup>387</sup> **Art. 148-5 CPP**

En toute matière et en tout état de la procédure, toute personne placée en détention provisoire peut, à titre exceptionnel, faire l'objet d'une autorisation de sortie sous escorte selon des modalités prévues par décret. Les décisions accordant ou refusant ces autorisations peuvent faire l'objet du recours prévu au dernier alinéa de l'article 145-4-2.

<sup>388</sup> **Art. 149 CPP**

Sans préjudice de l'application des dispositions des articles L. 141-2 et L. 141-3 du code de l'organisation judiciaire, la personne qui a fait l'objet d'une détention provisoire au cours d'une procédure terminée à son égard par une décision de non-lieu, de relaxe ou d'acquiescement devenue définitive a droit, à sa demande, à réparation intégrale du préjudice moral et matériel que lui a causé cette détention. Toutefois, aucune réparation n'est due lorsque cette décision a pour seul fondement la reconnaissance de son irresponsabilité au sens de l'article 122-1 du code pénal, une amnistie postérieure à la mise en détention provisoire, ou la prescription de l'action publique intervenue après la libération de la personne, lorsque la personne était dans le même temps détenue pour une autre cause, ou lorsque la personne a fait l'objet d'une détention provisoire pour s'être librement et volontairement accusée ou laissé accuser à tort en vue de faire échapper l'auteur des faits aux poursuites. A la demande de l'intéressé, le préjudice est évalué par expertise contradictoire réalisée dans les conditions des articles 156 et suivants.

Lorsque la décision de non-lieu, de relaxe ou d'acquiescement lui est notifiée, la personne est avisée de son droit de demander réparation, ainsi que des dispositions des articles 149-1 à 149-3 (premier alinéa).

When the person is notified of the decision to dismiss, acquit or discharge, he or she shall be informed of his or her right to claim compensation and of the provisions of Articles 149-1 to 149-3 (first paragraph).

**Art. 150 CPC [Compensation on account of the French state]<sup>389</sup>**

The compensation granted in application of this sub-section is payable by the State, except for recourse by the latter against the denouncer in bad faith or the false witness whose fault would have caused his detention or his prolongation. It is paid as criminal justice costs.

**Customs Code**

**Art. 67-ter<sup>390</sup>**

On the occasion of the checks that fall within their remit, customs officers, when they have consulted the processing of personal data relating to individuals, objects or vehicles reported governed by Article 31 of the Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms, may, for the purpose of making a judicial police officer available, proceed to the provisional detention of persons who are the subject of a report or who are holders of a reported object.

The customs officers immediately inform the public prosecutor of the provisional detention. During the provisional detention, the person is brought before the territorially competent judicial police officer or kept at his disposal. The duration of the provisional detention is limited to the time strictly necessary for the accomplishment of these diligences, without being able to exceed three hours from the request of the judicial police officer. At the end of this period, the person is left free if he could not be handed over to the territorially competent judicial police officer.

<sup>389</sup> **Art. 150 CPP**

La réparation allouée en application de la présente sous-section est à la charge de l'Etat, sauf le recours de celui-ci contre le dénonciateur de mauvaise foi ou le faux témoin dont la faute aurait provoqué la détention ou sa prolongation. Elle est payée comme frais de justice criminelle.

<sup>390</sup> **Article 67 ter Codes des douanes**

A l'occasion des contrôles qui relèvent de leurs attributions, les agents des douanes, lorsqu'ils ont procédé à la consultation des traitements de données à caractère personnel relatifs aux individus, aux objets ou aux véhicules signalés régis par l'article 31 de la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, peuvent, aux fins de mise à disposition d'un officier de police judiciaire, procéder à la retenue provisoire des personnes qui font l'objet d'un signalement ou qui sont détentrices d'un objet signalé.

Les agents des douanes informent sans délai le procureur de la République de la retenue provisoire. Au cours de la retenue provisoire, la personne est conduite devant l'officier de police judiciaire territorialement compétent ou maintenue à sa disposition. La durée de la retenue provisoire est limitée au temps strictement nécessaire à l'accomplissement de ces diligences, sans pouvoir excéder trois heures à compter de la demande de l'officier de police judiciaire. A l'expiration de ce délai, la personne est laissée libre si elle n'a pu être remise à l'officier de police judiciaire territorialement compétent.

Lorsque la personne retenue est placée en garde à vue au terme de la retenue provisoire, la durée de la retenue provisoire s'impute sur celle de la garde à vue.

Lorsque la personne retenue fait l'objet par ailleurs d'une retenue douanière dans les conditions prévues aux articles 323-1 à 323-10 du présent code, la durée de la retenue provisoire s'impute sur celle de la retenue douanière.

Les agents des douanes mentionnent, par procès-verbal de constat, dont un double est remis à l'officier de police judiciaire, le jour et l'heure du début et de la fin de la retenue provisoire ; ces mentions figurent également sur le registre mentionné à l'article 323-8.

When the detained person is placed in police custody at the end of the provisional detention, the duration of the provisional detention is deducted from that of the police custody.

When the detained person is also the subject of a customs deduction under the conditions provided for in articles 323-1 to 323-10 of this code, the duration of the provisional deduction is deducted from that of the customs deduction.

The customs agents mention, by official report, of which a duplicate is given to the judicial police officer, the day and the hour of the beginning and the end of the provisional detention; these particulars also appear in the register mentioned in article 323-8.

**Law No. 2009-1436 of November 24, 2009 on prisons.**<sup>391</sup>

**Art. 35 Law on prisons**<sup>392</sup>

The right of detainees to maintain relations with their family members is exercised either through visits by family members or, in the case of convicted persons and if their penal situation so permits, through leave from prison. Remand prisoners may be visited by family members or other persons at least three times a week, and convicted prisoners at least once a week.

The administrative authority may refuse to issue a visiting permit to the family members of a convicted person, or suspend or withdraw such a permit, only on grounds relating to the maintenance of good order and security or the prevention of crime.

The administrative authority may also, on the same grounds or if it appears that the visits are an obstacle to the convicted person's rehabilitation, refuse to issue a visiting permit to persons other than family members, suspend or withdraw the permit.

Visiting permits for untried prisoners shall be issued by the judicial authority.

Reasons shall be given for decisions to refuse to issue a visiting permit.

<sup>391</sup> Loi n° 2009-1436 du 24 novembre 2009 pénitentiaire.

<sup>392</sup> **Art. 35 Loi n° 2009-1436**

Le droit des personnes détenues au maintien des relations avec les membres de leur famille s'exerce soit par les visites que ceux-ci leur rendent, soit, pour les condamnés et si leur situation pénale l'autorise, par les permissions de sortir des établissements pénitentiaires. Les prévenus peuvent être visités par les membres de leur famille ou d'autres personnes, au moins trois fois par semaine, et les condamnés au moins une fois par semaine.

L'autorité administrative ne peut refuser de délivrer un permis de visite aux membres de la famille d'un condamné, suspendre ou retirer ce permis que pour des motifs liés au maintien du bon ordre et de la sécurité ou à la prévention des infractions.

L'autorité administrative peut également, pour les mêmes motifs ou s'il apparaît que les visites font obstacle à la réinsertion du condamné, refuser de délivrer un permis de visite à d'autres personnes que les membres de la famille, suspendre ce permis ou le retirer.

Les permis de visite des prévenus sont délivrés par l'autorité judiciaire.

Les décisions de refus de délivrer un permis de visite sont motivées.

The law on prisons contains further important provisions:

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**Art. 36 Law on prisons**<sup>393</sup>

Family life units or family visiting rooms within prisons may accommodate any detained person.

Any detainee may, at his or her request, be granted at least one quarterly visit to a family life unit or family visiting room, the duration of which shall be determined taking into account the remoteness of the visitor. In the case of remand prisoners, this right shall be exercised subject to the agreement of the competent judicial authority.

**Art. 39 Law on prisons**<sup>394</sup>

Detainees have the right to telephone their family members. They may be allowed to telephone others in preparation for their reintegration. In all cases, remand prisoners must obtain permission from the judicial authority.

Access to the telephone may be refused, suspended or withdrawn for reasons relating to the maintenance of good order and security or the prevention of offences and, in the case of remand prisoners, for the purposes of information.

Monitoring of telephone communications is carried out in accordance with Article 727-1 of the Code of Criminal Procedure.

<sup>393</sup> **Art. 36 Loi n° 2009-1436**

Les unités de vie familiale ou les parloirs familiaux implantés au sein des établissements pénitentiaires peuvent accueillir toute personne détenue.

Toute personne détenue peut bénéficier à sa demande d'au moins une visite trimestrielle dans une unité de vie familiale ou un parloir familial, dont la durée est fixée en tenant compte de l'éloignement du visiteur. Pour les prévenus, ce droit s'exerce sous réserve de l'accord de l'autorité judiciaire compétente.

<sup>394</sup> **Art. 39 Loi n° 2009-1436**

Les personnes détenues ont le droit de téléphoner aux membres de leur famille. Elles peuvent être autorisées à téléphoner à d'autres personnes pour préparer leur réinsertion. Dans tous les cas, les prévenus doivent obtenir l'autorisation de l'autorité judiciaire.

L'accès au téléphone peut être refusé, suspendu ou retiré, pour des motifs liés au maintien du bon ordre et de la sécurité ou à la prévention des infractions et, en ce qui concerne les prévenus, aux nécessités de l'information.

Le contrôle des communications téléphoniques est effectué conformément à l'article 727-1 du code de procédure pénale.

**Art. 40 Law on prisons**<sup>395</sup>

Detainees have the right to telephone their family members. They may be allowed to telephone others in preparation for their reintegration. In all cases, remand prisoners must obtain permission from the judicial authority.

Access to the telephone may be refused, suspended or withdrawn for reasons relating to the maintenance of good order and security or the prevention of offences and, in the case of remand prisoners, for the purposes of information.

Monitoring of telephone communications is carried out in accordance with Article 727-1 of the Code of Criminal Procedure.

**21 Competent authorities**

- The liberty and detention judge/*juge des libertés et de la détention*
- judicial police/*police judiciaire*
- Public prosecutor/*procureur de la République*
- Attorney General/*procureur général*
- Investigative judge/*le juge d'instruction*

**c) Para 2: Cross-border surrender**

- 22** The judge of liberty or freedoms and detention is one of the magistrates who intervenes when people's rights are at stake. The JLD's territorial jurisdiction is, in principle, that of the regional court. The judge of liberty and detention
- 23** Furthermore the provisions for the EAW [European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA] apply. Art. 694 et seq. CPC contain rules on the international cross-border surrender procedure. Art. 694-14 et seq. contain specific provisions for the internal EU procedure e.g. cross-border investigations.
- 24** The EAW procedure is regulated by Art. 695-11–695-98. Article 695-22 et seq. CPC contain reasons for refusing to issue an EAW. Art. 695-25 and Art. 695-26 are very important as they describe the execution of an EAW. For example, any person arrested on the basis of a European arrest warrant needs to be brought before the territorially responsible public prosecutor's office within 48 hours. During this period, the provisions of Articles 63-1 to 63-7 apply.

<sup>395</sup> **Art. 40 Loi n° 2009-1436**

Les personnes condamnées et, sous réserve de l'article 145-4-2 du code de procédure pénale, les personnes prévenues peuvent correspondre par écrit avec toute personne de leur choix.

Le courrier adressé ou reçu par les personnes détenues peut être contrôlé et retenu par l'administration pénitentiaire lorsque cette correspondance paraît compromettre gravement leur réinsertion ou le maintien du bon ordre et la sécurité. En outre, le courrier adressé ou reçu par les prévenus est communiqué à l'autorité judiciaire selon les modalités qu'elle détermine.

Ne peuvent être ni contrôlées ni retenues les correspondances échangées entre les personnes détenues et leur défenseur, les autorités administratives et judiciaires françaises et internationales, dont la liste est fixée par décret, et les aumôniers agréés auprès de l'établissement.

Lorsque l'administration pénitentiaire décide de retenir le courrier d'une personne détenue, elle lui notifie sa décision.



**Article 695-16** Cited by LOI No. 2009-526 of May 12, 2009 - Art. 130 The public prosecutor's office attached to the court with investigation, trial or execution of sentences that has issued an arrest warrant shall carry it out either at the request of the court or of its own law in accordance with the rules and under the provisions of Articles 695-12 bis 695-15.

In the absence of a waiver of the principle of specialty, where the wanted person is already wanted for an act other than that for which he is wanted again, the public prosecutor's office to the court, the investigation or the execution of sentences, which has issued an arrest warrant to bring it into force in the form of a European arrest warrant. The Public Prosecutor's Office is also competent, if it considers it necessary, to authorize, in the form of a European Arrest Warrant, the execution by the trial courts of prison sentences of four months or more, in accordance with the rules and under the conditions laid down in Articles 695-12 to 695-15 guarantee.

The cross-border surrender procedure is regulated by Art. 696-1 et seq. CPC. Surrender is not granted in the following cases: **25**

**Article 696-2**

The French government may surrender, at their request, to foreign governments, any person not having French nationality who, being the subject of a prosecution brought in the name of the requesting State or of a conviction pronounced by its courts, is found on the territory of the Republic. **26**

**Article 696-4** Creation of Law No. 2004-204 of March 9, 2004

Extradition is not granted:

- (1) If the requested person is a French national, he will be assessed at the time of the offense for which extradition is requested;
- (2) If the crime or offense is of a political nature or if circumstances arise therefrom that extradition is sought for political purposes;
- (3) For crimes committed within the territory of the Republic
- (4) If the crimes or offenses, although committed outside the territory of the Republic, were prosecuted and finally brought to justice;
- (5) Thus, according to the law of the required state or French law, the limitation period for the action was generally taken earlier when the extradition request was made, or the limitation period for the punishment was set before the arrest of the wanted person and, as a rule, when the prosecution of the required state was released ;
- (6) If the act for which extradition was requested is punishable under the law of the requiring State with a sentence or security contrary to French public policy;
- (7) If the requested person is tried in the required State by a court that does not provide fundamental guarantees of the procedure and the protection of the rights of the defense;
- (8) If the crime or offense constitutes a military offense provided for in Book III of the Code of Military Justice.



## C. OLAF-Regulation

### I. Material rules on investigations by OLAF – relations to national law

#### 1. The role of OLAF and its task

The European Anti-fraud Office is well accommodated in the Union anti-fraud architecture and in France as well and the academic research in this area is extensive and long lasting since the 2000s.<sup>396</sup> Last decade's **landmark judgement** “*Sigma Orionis SA vs European Commission*”, decided by the European General Court<sup>397</sup>, clarified the application of national law and Union law<sup>398</sup> in relation to external investigations of OLAF.<sup>399</sup> 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).

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.<sup>400</sup> More and more questions are raised if the analogue society in law enforcement and the area of justice in general is a problem of the digital age and presents obstacles to effective investigations. The access to bank accounts and registers e.g. is incredibly important for OLAF investigators as well as their national homologues. The relationship of OLAF to the EPPO, especially the regional centres of the EDPs in France should be close.

In addition to that the **external investigations** require a good coordination, which shall be governed by the relevant AFCOS (see below → Art. 12a OLAF Regulation)<sup>401</sup>, which has been part of the analysis and study. The team of MICAF answered a questionnaire and in other compendium parts other AFCOS even 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 of this compendium part.

Another question and debate have ever since existed concerning the Reports of OLAF (cf. → Art. 11), which can and shall constitute **evidence** – even – in national criminal

<sup>396</sup> Cf. first the general and outstanding literature eg *Brüner* 2001 17–26; *Brüner* 2009; *Brüner* 2008, 859–872; *Gellert* 2009, 85–88; next see the country-specific literature (e.g. *Ntziouni-Doumas* 2017, 85 et seq. for France) and reports by the national AFCOS bodies.

<sup>397</sup> 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.

<sup>398</sup> See *De Bellis* 2021, 431 et seq.; *Herrnfeld* 2021, p. 426 et seq.; recently *Wouters* 2020, 132 et seq.

<sup>399</sup> *De Bellis* 2021, 431 et seq.; see OLAF Website, List of rulings of the Court of Justice of the EU concerning OLAF, <https://shorturl.at/goqAI> (last consulted 31.3.2024).

<sup>400</sup> See *Carrera and Mitsilegas et al.* 2021.

<sup>401</sup> See Ministry of Interior, The competencies of the Bulgarian AFCOS in order to check EU funds, The Bulgarian experience in the anti-fraud area, NAFS and best practices in the operational cooperation with OLAF and AFCOSs, online: <https://www.gdf.gov.it/eventi/anno-2018/conferenza-internazionale-cooperation-project-2/interventi/interventi-7-giugno/intervento-afcos-bulgaria.pdf>. Accessed 31 May 2024.

trials. These reports 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 professionally researched by *Luchtman/Vervaele/Ligeti* in OLAF studies from the last decade, which we can refer to.<sup>402</sup>

- 5 Part C, quasi-equal to Part B on the EPPO and its investigative powers, contains a bilingual collection of the **relevant French laws** in relation to OLAF’s investigations and investigative powers as well as examples from case law and trials, which relied upon evidence gathered by OLAF (selected case studies). In addition to the analysis parts of this chapter the national authorities and the role of the *AFCOS* is explained below (see → Art. 12a).

## 2. 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

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<sup>402</sup> See Luchtman and Vervaele 2017.

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.

Art. 2 of the OLAF Regulation contains definitions, which apply for e.g. for all assessments of seconded national experts, investigators, AFCOS staff or national authorities managing structural funds or other EU programmes. The definitions might be cited e.g. for an OLAF Report (see → Art. 11 below) in order to subsume and assess a conduct, which was investigated. 6

### 3. 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

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[...] 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.**

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.**

Here are the rules of the Regulations mentioned in para. 4 which shall apply in case of resistance insofar as they require compliance with national law (arg. Ex para. 4):

*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.

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.

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.

**a) Paras 2, 4: On the spot-checks and inspections – Renouncing the applicable national law**

The following is a fundamental rule: In case of compliance and cooperation, the compliant person concerned e.g. an economic operator decides that the supranational law of these Regulations applies and that thereby also no compliance with national law is necessary. By complying, the person concerned submits himself under the supranational law and simultaneously renounces the national law. 1

**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.). 2

**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/can apply in the case of resistance**, which means that the investigations need to be in **conformity with the national law** applicable in similar national investigations. 3

**d) The basic principle of conformity to Regulations 2185/96 and 883/2013**

**aa. Submission: Compliance with Union law**

In the case of compliance of an economic operator, Union law applies, thus the Regulation allows OLAF officials to conduct on-the-spot checks without prior information of national authorities. 4

**bb. Resistance: Assistance in conformity with national procedural rules applicable**

Para. 6 rules on the opposite as para 4: In case of resistance, the person concerned automatically chooses the applicability of national law. Does the participant, the personal or Economic operator concerned resist, the Regulation indicates that OLAF has to follow 5

national law and inform national authorities that can provide assistance in conformity with national procedural rules applicable.<sup>403</sup>

**e) Competent authorities**

**6 Table 5 Art. 3 OLAF Regulation Competent authorities**

<p><b>Douane française<sup>404</sup></b>  <b>Services de la douane française ouverts au public</b>  <b>Direction Générale des Douanes et des Droits Indirects (DGDDI)</b>  <b>Direction Nationale du Renseignement et des Enquêtes Douanières (DNRED)</b>  <b>Centres Régionaux de Documentation et de Contrôle (CERDOC)</b></p>	<p>Controls in the area of income and in the area of the common agricultural policy from the current policy funds</p> <hr/> <p>Managing EU revenue (preventing and investigating revenue frauds)</p>
<p><b>Commission for the certification of the accounts of the agencies paying for expenditure financed by the European Agricultural Funds (CCCOP)/Commission de certification des comptes des organismes payeurs (CCCOP)</b></p>	<p>The CCCOP is the French organization responsible for auditing, on behalf of the European Union, the four national paying agencies (ASP, FranceAgriMer, ODEADOM, ODARC) which pay aid under the common agricultural policy to farmers, exporters or processors, local communities.</p> <p>Relevant legislation:          Decree No. 2007-805 of May 11, 2007 establishing a certification commission for the accounts of bodies paying for expenditure financed by European agricultural funds<sup>405</sup>          Order of 9 April 2021 appointing the members and the chairman of the commission for the certification of the accounts of the agencies paying for the expenditure financed by the European agricultural funds<sup>406</sup></p>

<sup>403</sup> 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.“

<sup>404</sup> See <https://shorturl.at/tyNPT>.

<sup>405</sup> Décret n°2007-805 du 11 mai 2007 instituant une commission de certification des comptes des organismes payeurs des dépenses financées par les fonds européens agricoles.

<sup>406</sup> Arrêté du 9 avril 2021 portant nomination de membres et du président de la commission de certification des comptes des organismes payeurs des dépenses financées par les fonds européens agricoles.

<p><b>Interministerial commission for the coordination of inspections aka Interministerial commission for the coordination of controls – Audit authority for European funds in France /<i>Commission interministérielle de coordination des contrôles</i></b></p>	<p>Managing EU expenditure (preventing and investigating expenditure irregularities, suspected expenditure frauds), Immeuble Atrium 5 place des Vins-de-France, 75573 Paris Cedex 12.</p>
<p><b>French Ministries (competent to manage the allocation of European funds, shared management area as well as indirect management area)</b></p>	<p>Managing authorities in the area of EU expenditure</p>
<p><b>French Ministry of Justice</b></p>	<p>Special questions related to legal issues, legality checks of national measures, new legislative proposals etc.</p>
<p><b>Formerly ACOFA („<i>Agence centrale des organismes d’intervention dans le secteur agricole</i>“), today mainly FranceAgriMer</b>  <b>ODEADOM = Overseas Agricultural Economy Development/Office /<i>Office de développement de l’économie agricole d’outre-mer</i></b>  <b>ODARC = Agricultural and Rural Development Office of Corsica /<i>Office du Développement Agricole et Rural de Corse</i></b>  <b>ASP = Service and payment agency/<i>Agence de services et de paiement</i></b></p>	<p>French “paying agencies” with monitoring function, administrative tasks, verification of applications, funding notifications and granting of payments, paying beneficiaries</p> <p>In more detail it can be said, that paying agencies in France, as in other EU states, manage e.g. agricultural funds in cooperation with the Ministry of Agriculture and European Commission. They oversee distribution, eligibility checks, payments, audits, and controls. They implement control systems to ensure payments are accurate, complete, and comply with EU regulations. This might involve on-site inspections or data verification. In case of irregularities, they report information to the EU Commission and the respective French ministry.</p>

**MICAF = special mission in the French Republic to fight frauds (including EU frauds), established by the “Decree No. 2020-872 of July 15, 2020 relating to interministerial coordination in the fight against fraud and the creation of an interministerial anti-fraud coordination mission”**

**Art. 1**<sup>407</sup>

An inter-ministerial mission is created, called the "inter-ministerial anti-fraud coordination mission", responsible for ensuring the proper coordination of all the partners involved in the fight against fraud in public finances, whether it relates to compulsory levies taxes and social levies as well as other public authority receipts or social benefits. It also contributes to the fight against fraud affecting the financial interests of the European Union.

This mission is placed, by delegation of the Prime Minister, under the authority of the Minister responsible for the budget. It is attached to the General Secretariat of the Economic and Financial Ministries for its administrative and financial management. It can call, for the exercise of its attributions, on the services of the ministries and the organizations concerned with the fight against the fraud, and in particular of the organizations of social protection.

**Art. 3**<sup>408</sup>

The mission is in particular responsible for:

- ensure active monitoring of national anti-fraud operational groups which periodically bring together around a lead directorate the administrations and bodies concerned by priority fraud themes.

<sup>407</sup> **Art. 1 Décret n° 2020-872 du 15 juillet 2020**

Il est créé une mission interministérielle, dénommée « mission interministérielle de coordination anti-fraude », chargée de veiller à la bonne coordination de l'ensemble des partenaires engagés dans la lutte contre la fraude aux finances publiques, qu'elle se rapporte aux prélèvements obligatoires fiscaux et prélèvements sociaux ainsi qu'aux autres recettes des collectivités publiques ou aux prestations sociales. Elle contribue également à la lutte contre la fraude portant atteinte aux intérêts financiers de l'Union européenne.

Cette mission est placée, par délégation du Premier ministre, sous l'autorité du ministre chargé du budget. Elle est rattachée au secrétariat général des ministères économiques et financiers pour sa gestion administrative et financière. Elle peut faire appel, pour l'exercice de ses attributions, aux services des ministères et des organismes concernés par la lutte contre la fraude, et notamment des organismes de protection sociale.

<sup>408</sup> **Art: 3 Décret n° 2020-872 du 15 juillet 2020**

La mission est notamment chargée:

- d'assurer un suivi actif de groupes opérationnels nationaux anti-fraude qui réunissent périodiquement autour d'une direction chef de file les administrations et organismes concernés par des thématiques de fraude prioritaires. Ces groupes ont pour missions de promouvoir les échanges opérationnels entre partenaires et de définir des stratégies communes d'action. Les thématiques prioritaires sont arrêtées par le comité interministériel anti-fraude mentionné à l'article 4 sur la base des propositions de la mission, après concertation avec l'ensemble des partenaires concernés;

These<sup>409</sup> groups are tasked with promoting operational exchanges between partners and defining common action strategies. The priority themes are determined by the inter-ministerial anti-fraud committee mentioned in article 4 on the basis of the mission's proposals, after consultation with all the partners concerned;

- to coordinate the activity of the departmental anti-fraud operational committees mentioned in article 8 whose priorities for action are determined by the interministerial anti-fraud committee on the basis of the mission's proposals, after consultation with all the relevant partners;
- to facilitate cooperation with the European bodies responsible for protecting the financial interests of the European Union, and in particular operational exchanges with the European Anti-Fraud Office, within the framework of Parliament's (EU, EURATOM) regulation and of the Board of September 11, 2013 referred to above;
- to inform the Prime Minister and the Minister in charge of the budget, at least once a year, of the activity of the national anti-fraud operational groups, that of the departmental anti-fraud operational committees, as well as relations with the authorities European Unions responsible for the fight against fraud and more particularly with the European Anti-

<sup>409</sup> - de coordonner l'activité des comités opérationnels départementaux anti-fraude mentionnés à l'article 8 dont les priorités d'action sont arrêtées par le comité interministériel anti-fraude sur la base des propositions de la mission, après concertation avec l'ensemble des partenaires concernés ;

- de faciliter la coopération avec les instances européennes chargées de la protection des intérêts financiers de l'Union européenne, et notamment les échanges opérationnels avec l'Office européen de lutte anti-fraude, dans le cadre du règlement (UE, EURATOM) du Parlement et du Conseil du 11 septembre 2013 susvisé ;

- d'informer le Premier ministre et le ministre chargé du budget, au moins une fois par an, de l'activité des groupes opérationnels nationaux anti-fraude, de celle des comités opérationnels départementaux anti-fraude, ainsi que des relations avec les instances européennes chargées de la lutte contre la fraude et plus particulièrement avec l'Office européen de lutte anti-fraude. Elle propose, le cas échéant, d'éventuelles évolutions ;

- d'impulser de nouvelles synergies en matière d'échanges d'informations entre partenaires, notamment en matière d'interconnexion des données dans le respect de la loi du 6 janvier 1978 susvisée ;

- de proposer toute réforme visant à favoriser une plus grande efficacité et une meilleure articulation des moyens d'investigation et de sanction ainsi qu'un meilleur recouvrement en matière de lutte contre la fraude aux finances publiques ;

- de contribuer à une meilleure connaissance de cette fraude en élaborant tous les ans un document de politique transversale dans le cadre du projet de loi de finances et en favorisant les actions de formation à destination des partenaires.

Fraud Office. It proposes, where appropriate, any changes;

- to stimulate new synergies in terms of information exchange between partners, in particular in terms of data interconnection in compliance with the law of January 6, 1978 referred to above;
- to propose any reform aimed at promoting greater efficiency and a better articulation of the means of investigation and sanction as well as better recovery in the fight against fraud in public finances;
- to contribute to a better understanding of this fraud by drawing up a cross-cutting policy document every year within the framework of the finance bill and by promoting training actions for partners.

**Art. 7**

Coordination in the fight against fraud at the local level is organized around the departmental anti-fraud operational committee whose missions, according to the orientations of the priority actions and taking into account the specificities of each territory:

- to determine the coordinated actions to be put in place between partners in the fight against fraud affecting compulsory tax deductions and social security contributions or other revenue from public authorities as well as social benefits. It is also competent in matters of illegal work. These actions are decided on the basis of proposals from heads or agents of State services and social protection bodies. The committee may also be informed by the head of the interministerial anti-fraud coordination mission of any situation likely to justify the organization of coordinated action;
- to ensure the operational exchange of information between the State services concerned, on the one hand, and between the latter and the social protection bodies, on the other hand;

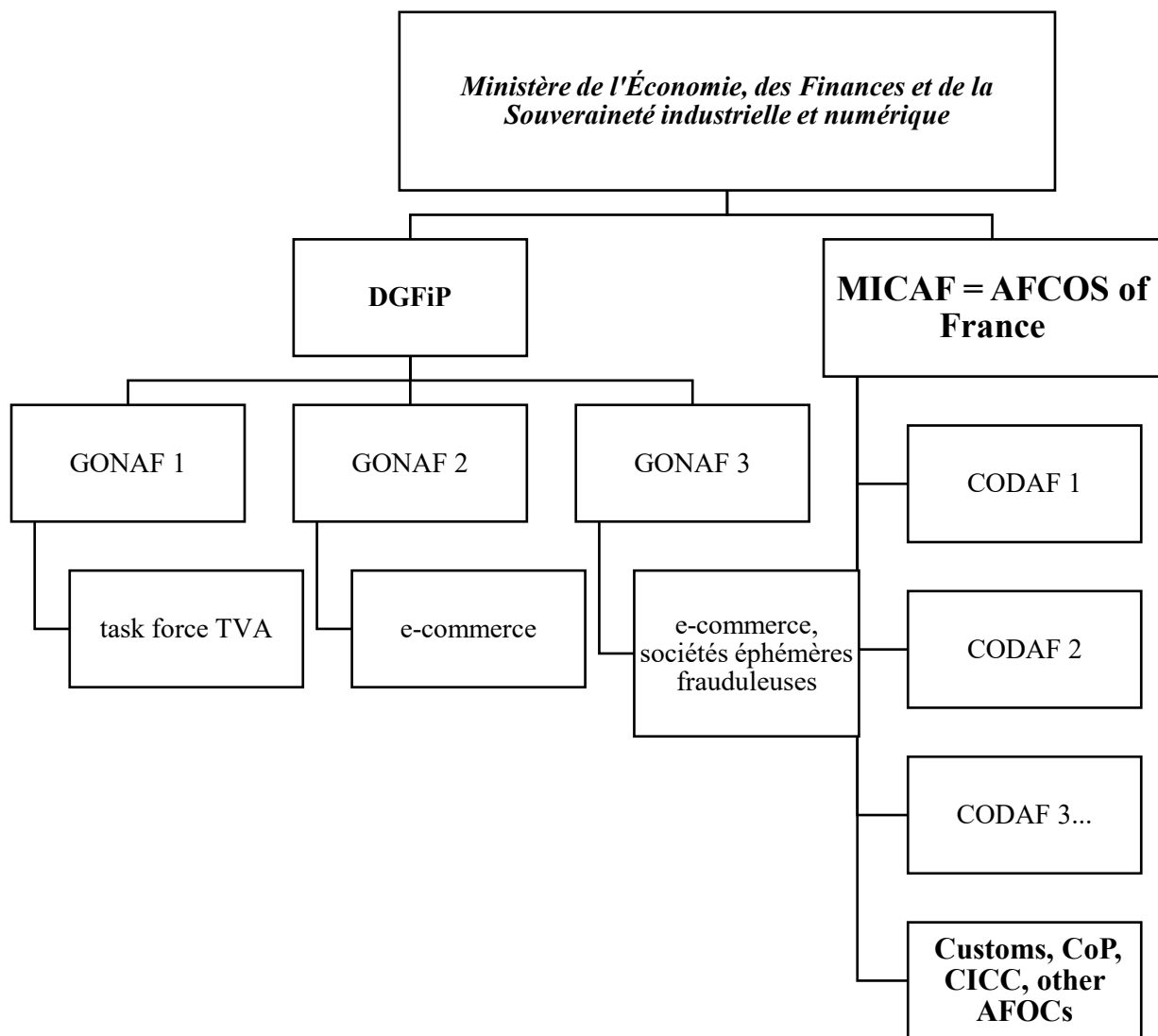


	<ul style="list-style-type: none"> <li>- to report periodically on its action to the mission by ensuring the periodic transmission of balance sheet items.</li> </ul>
<p><b>OCAFs = special anti-fraud “units” in each <i>Département</i> of the French Republic established by the “Order of 12 October 2020 establishing the composition in each department of the departmental anti-fraud operational committees” related to the</b></p>	<p><b>Article 1 <i>Arrêté du 12 octobre 2020 fixant la composition dans chaque département des comités opérationnels départementaux antifraude</i></b></p> <p>The members of the departmental anti-fraud operational committees mentioned in Articles 7 to 9 of the aforementioned decree of 15 July 2020, in each department are:</p> <ul style="list-style-type: none"> <li>- the public prosecutors of the department or their representatives;</li> <li>- the heads of the prefectural services responsible for combating fraud or their representatives;</li> <li>- the competent authorities of the national police;</li> <li>- the competent authorities of the national gendarmerie;</li> <li>- the competent authorities of the Directorate-General for Public Finance;</li> <li>- the competent authorities of the Directorate-General for Customs and Excise</li> <li>- the competent authorities in the fields of competition, consumption and fraud and fraud prevention;</li> <li>- the regional director of enterprises, competition, consumption, labour and employment or his and employment or his representative, in his capacity as the competent authority in the field of and employment;</li> <li>- the regional director of the environment, planning and housing or his representative representative;</li> <li>- the director general of the regional health agency or his representative</li> <li>- the directors of the local social security bodies of the general and agricultural agricultural scheme or their representatives;</li> </ul>

<b>Special other bodies and institutions</b>	<p>- a regional coordinator appointed by the Caisse nationale de l'assurance sociale (CNES) or its representative</p> <p>Eg managing authorities<sup>410</sup></p>
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Source: The authors.

7 Figure 9 Ministry, MICAF (national AFCOS), Tax administration (GONAF, TVA task force) etc. Structure



**Caption:** MICAF = Interministerial anti-fraud coordination mission (replaces the DNLF) = national AFOCS and part of COCOLAF (! No investigative powers, just supervision), cf. *Décret n°2020-872 du 15 juillet 2020*.

<sup>410</sup> Information can be obtained and retrieved from the MICAF Info Website, cf. read: <https://www.economie.gouv.fr/?url=https%3A%2F%2Fwww.economie.gouv.fr%2Fmicaf%2Fdocumentation>.

CODAF = departmental anti-fraud operational committees (e.g. the fight against infringements of the tobacco monopoly and counterfeits) France is divided into 101 departments. They are divided into 343 districts („arrondissements“), 4 058 townships („cantons“) and 36 699 towns („communes“). Each department has a capital city or prefecture department which includes its institutions, see <https://www.map-france.com/departments/>.

GONAF = national anti-fraud operational groups under the Directory of the Directorate-General for Public Finance (specialized on national taxes and national tax fraud)

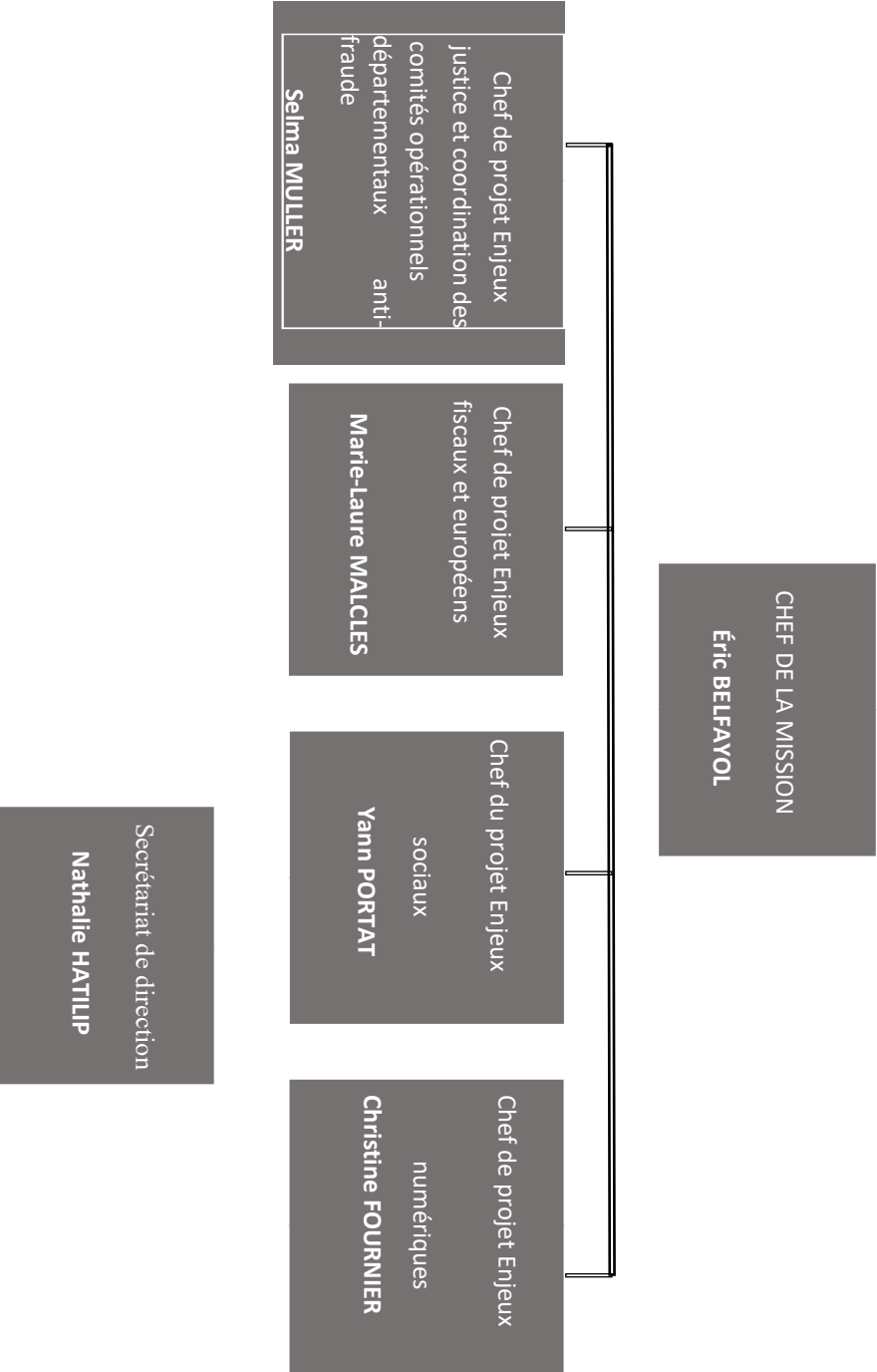
MICAF has a communication channel: MICAF facilitates communication and collaboration between these agencies, ensuring a unified approach to tackling fraud. This might involve: It can help sharing best practices, coordinating investigations and developing joint anti-fraud strategies. It might identify trends: MILCAF likely plays a role in analyzing fraud trends across different sectors. This helps them understand emerging threats and prioritize resources effectively. It will eventually issue policy recommendations: based on their analysis, MICAF might recommend new anti-fraud policies and strategies to the relevant ministries. This could involve:

- Legislative changes to strengthen existing laws against fraud.
- Developing new regulations for specific sectors.
- Implementing preventative measures to reduce vulnerabilities.

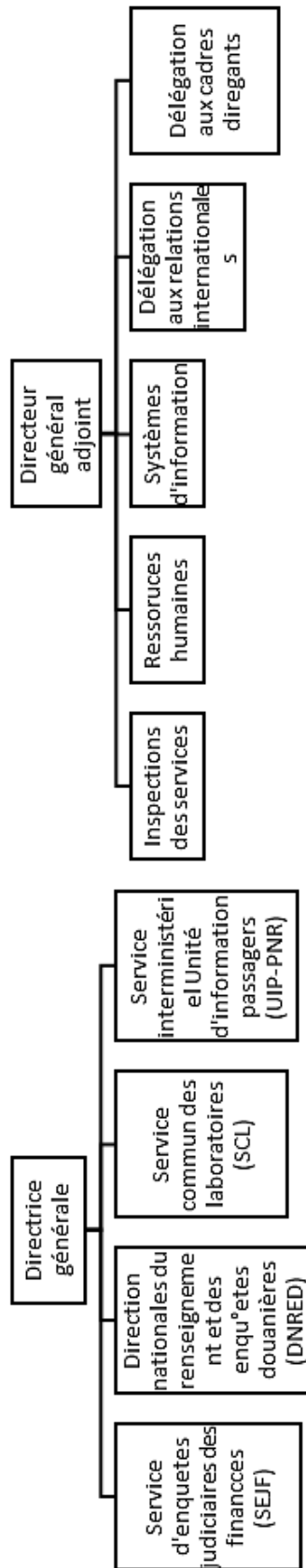
For more details see below → Art. 12a OLAF Regulation.



Organization chart of MICAF (2021/2022)



Cf. République française, Douanes & droits indirects, Organigramme, 2022, online: <https://www.douane.gouv.fr/sites/default/files/2020-12/15/organigramme-de-la-direction-generale-des-douanes-et-droits-indirects.pdf> and <https://www.douane.gouv.fr/sites/default/files/2021-11/03/competences-siege-direction-generale-des-douanes-droits-indirects.pdf>.



A demarcation must be made. The criminal police (*police judiciaire*) is mainly responsible for the detection of criminal offenses according to Art. 14 CPC. This means that it can mainly be used in the area of the EPPO (cf. → Art. 28 EPPO Regulation, above in

this chapter). There are therefore many reasons to suggest that investigations and controls by other French authorities are characterized by administrative law and thus the term (which should not be confused with an institution) „*police administrative*“, a type of police action by the administration to uncover violations of accounting regulations, etc.<sup>411</sup>

**f) National law and „checks and inspections” of OLAF**

**10** According to research the following French codes and decrees represent the national law for „checks and inspections” of OLAF in France.<sup>412</sup>

„[...] [D]i.e. nationalen französischen Kontrollen [werden] von verschiedenen Behörden durchgeführt werden, denen jeweils sehr spezielle Kontrollbefugnisse zur Verfügung stehen.”<sup>413</sup>

**11** Checks and inspections may become increasingly relevant in the 2020s as heavy financing via funds, grants and debts is under way due to the plan to reduce the costs of the pandemic in the post-pandemic years to come. The French Republic has issued many programs such as e.g. the „*FRANCE RELANCE* plan”<sup>414</sup> and the „plan France 2030”. The relevant codes that might apply in national inspections are:

- Code des Douanes
- Tax Procedures Code
- Criminal Procedure Code

*Table 6 Art. 3 OLAF Determining national law for „checks and inspections”*

<i>Service public</i>	<i>Police administrative (administrative police powers)</i>	<i>Police judiciaire (criminal police)</i>
E.g. formerly controls of the ACOFA <sup>415</sup>	Not an institution, but a generic term for investigative powers of control bodies (customs, agricultural fraud agency, subsidy agencies, etc.), which cannot be equated with the detection of suspicions regarding PIF crimes.	Institution, Art. 14 CPC responsible for detecting criminal (PIF-)offenses and determining the degree of suspicion in relation to criminal (PIF-) offenses; powers are governed by the Code of Criminal Procedure

<sup>411</sup> Frese 2003, p. 91 et seq.

<sup>412</sup> Frese 2003, p. 87 et seq.

<sup>413</sup> Frese 2003, p. 87 et seq.

<sup>414</sup> See <[www.gouvernement.fr/france-relance](http://www.gouvernement.fr/france-relance)> accessed 17 July 2021; cf. LOI n° 2020-1721 du 29 décembre 2020 de finances pour 2021 (1).

<sup>415</sup> Frese 2003, p. 97. *Nota bene*: The ACOFA was abolished in 2006, see Décret n° 2006-1822 portant suppression de l'Agence centrale des organismes d'intervention dans le secteur agricole et modifiant le code rural. 2006-12-23.

	<p>It is about regular controls, which are usual for administrative controls...</p> <p>Powers are governed by special laws and not by the Code of Criminal Procedure (see below, next heading)</p> <p>In individual cases, the special laws also refer to the French Code of Criminal Procedure and grant the administrative authorities investigative powers that are actually reserved for determining the degree of suspicion of criminal offenses</p>	
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Source: The authors.

#### aa. Administrative procedure in general/Le droit et l'enquête de l'administration

The administrative procedure in France is regulated by various laws, which are applicable in a *lex generalis–lex specialis* relationship. A recent study outlined that the powers of administrative investigators in France is very vast (*très étendus*) and it therefore proposed reforms.<sup>416</sup> The study outlines the historic development, which started in the 16<sup>th</sup> century and had major turning points in 1789 and 1791.<sup>417</sup> The protection of the financial interests of the State has been fostered more since the beginning of the 20<sup>th</sup> century. With the the Finance Act of 15 July 1914, which introduced a general income tax („*la loi de finances du 15 juillet 1914 de l'impôt général sur le revenu a Marqué*”) a new area of tax stability started. The state of this area is called “the welfare state” period (“*L'Etat providence*”)<sup>418</sup>. Today France is part of the european administrative law area.<sup>419</sup> The administrative procedure in general is regulated by the following codes:

##### Lex generalis:

- *Code général des impôts*/General Tax Code
- *Code des impositions sur les biens et services*/Goods and services Tax Code
- *Code général des collectivités territoriales*/General Code of Local Authorities
- *Code des douanes*/Customs Code

<sup>416</sup> See Conseil d'État, Etude réalisée à la demande du Premier ministre, Les pouvoirs d'enquête de l'administration, Etude adoptée par l'assemblée générale du Conseil d'Etat du 15 avril 2021, Paris, 2021.

<sup>417</sup> Conseil d'État, Etude réalisée à la demande du Premier ministre, Les pouvoirs d'enquête de l'administration, Etude adoptée par l'assemblée générale du Conseil d'Etat du 15 avril 2021, Paris, 2021, p. 21.

<sup>418</sup> Conseil d'État, Etude réalisée à la demande du Premier ministre, Les pouvoirs d'enquête de l'administration, Etude adoptée par l'assemblée générale du Conseil d'Etat du 15 avril 2021, Paris, 2021, p. 30.

<sup>419</sup> For further references on the term and its evolution since 1994 Mendes 2024.

### **Code of administrative justice**

Legislative part (Articles L1 to L911-10)

Book I: The Council of State (Articles L111-1 to L137-1)

Book II: Administrative tribunals and administrative courts of appeal (Articles L211-1 to L236-7)

Book III: Jurisdiction (Articles L311-1 to L331-1)

Book V: The summary procedure (Articles L511-1 to L555-2)

Book VI: Education (Article L611-1)

Book VII: Judgment (Articles L721-1 to L781-1)

Book VIII: Remedies (Articles L811-1 to L822-1)

Book IX: Execution of decisions (Articles L911-1 to L911-10)

Regulatory part - Decrees in Council of State (Articles R112-1 to R931-8)

Book I: The Council of State (Articles R112-1 to R137-4)

Book II: Administrative tribunals and administrative courts of appeal (Articles R212-1 to R237-1)

Book III: Jurisdiction (Articles R311-1 to R351-9)

Book IV: The introduction of the instance of first resort (Articles R411-1 to R441-1)

Book V: Referral (Articles R511-1 to R559-2)

Book VI: Instruction (Articles R611-1 to R636-1)

Book VII: The Judgment (Articles R711-1 to R781-3)

Book VIII: Remedies. (R811-1 to R834-4)

Book IX: Execution of decisions (Articles R911-1 to R931-8)

### **14 Lex specialis:**

- *Code de l'énergie*/Energy Code
- *Code de l'environnement*/Environmental Code
- *Code des juridictions financières*/Code of Financial Jurisdictions (especially: Contrôle des comptes et de la gestion (Articles LO262-5 à L262-11-2))
- *Code monétaire et financier*/Monetary and Financial Code
- *Code commerce*/Trade code
- *Code rurale et de la pêche maritime*/Rural and maritime fisheries Code
- *Code des transports*/Transports Code
- *Code la sécurité sociale*/Social Security Code
- *Code du tourisme*/Tourism Code
- Ordonnance n° 2021-1843 du 22 décembre 2021 portant partie législative du code des impositions sur les biens et services et transposant diverses normes du droit de l'Union européenne




## 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

VAT revenue fraud and non-VAT revenue fraud can be distinguished. For the non-VAT fraud, it is especially the anti-dumping and customs fraud<sup>420</sup> area, which can cause damage to the EU's financial interests and which should therefore be closely monitored and scanned for irregularities.<sup>421</sup> 15

#### (aa) VAT-fraud area

**Examples of VAT-fraud:** Missing-trader intracommunity fraud, carousels/Fraude intracommunautaire de défaillant, carousels ( → from a certain threshold on the EPPO is competent, see below Art. 12g OLAF Regulation) 

**Examples of non-VAT Fraud:** tobacco related customs fraud<sup>422</sup>, anti-dumping duties fraud, smuggling, illicit trade, under evaluation of custom products<sup>423</sup>, avoiding customs duties etc/fraude douanière liée au tabac, fraude aux droits antidumping, contrebande, commerce illicite, sous-évaluation des produits douaniers, évitement des droits de douane 

It is worth taking a look into the French General Tax Code: 16

<b>French General Tax Code</b>
<i>First book: Base and liquidation of the tax (Articles 1 A to 1656 quater)</i>
Part One: State Taxes (Articles 1 A to 1378h)
<i>Title II: Turnover taxes and similar taxes (Articles 256-0 to 302 bis ZO)</i>
<i>Chapter One: Value Added Tax (Articles 256-0 to 298 octodecies)</i> <sup>424</sup>

<sup>420</sup> See [https://anti-fraud.ec.europa.eu/policy/policies-prevent-and-deter-fraud/customs-fraud\\_en](https://anti-fraud.ec.europa.eu/policy/policies-prevent-and-deter-fraud/customs-fraud_en): „Customs duties are based on the origin and value of the goods and their classification (the customs tariff to be applied). Falsifying any of these factors when importing or exporting products is fraud. This includes: falsely declaring the origin of the goods, declaring a lower value on the goods (‘undervaluing’), misclassifying the goods (incorrect commodity code/‘CN code’) smuggling goods (i.e. import/export without a customs declaration). To ensure that EU customs rules are applied correctly, the EU and national customs authorities work together closely and share information.“

<sup>421</sup> See Regulation (EU) 2016/1037 on protection against subsidised imports from non-EU countries.

<sup>422</sup> Council Directive 2011/64/EU — structure and rates of excise duty applied to manufactured tobacco.

<sup>423</sup> Mikel Erkoreka, The European Union Customs Administration and the Fight Against Fraud, European Papers Vol. 5, 2020, No 3, pp. 1425 (1430): “Fraudsters tend to under declare the value of the goods when lodging their customs declaration thus affecting severely the collection of customs duties and VAT.”

<sup>424</sup> Chapitre premier: Taxe sur la valeur ajoutée (Articles 256-0 à 298 octodecies).

*Sources and national sections 6 Overview for France – Art. 3 OLAF Regulation (Administrative provisions in the area of customs duties and value added tax (VAT) = revenue)*

Art. 256 (VAT), Art. 256bis in combination with Art. 99, 100, 100bis, Art. 257, 257ter, Art. 261–Art. 263 (not subject to VAT), Art. 287 (collecting method)

**Art. 287 General Tax Code**

*Modified by LAW n°2021-1900 of December 30, 2021 - art. 30 (V)*

1. Any person liable for value added tax identified in accordance with the combined provisions of Articles 286 ter and 286 ter A **is required to submit to the tax department on which he depends and within the time limit set by decree, a declaration in accordance with the model prescribed by law and the tax administration.**

2. Taxpayers subject to the normal real tax regime file the declaration referred to in 1 on a monthly basis indicating, on the one hand, the total amount of the transactions carried out, and on the other hand, the details of the taxable transactions. The tax payable is paid monthly.

These taxpayers may, at their request, be authorized, under conditions which are set by order of the Minister for the Economy and Finance, to have an additional period of one month.

When the tax payable annually is less than €4,000, they are allowed to submit their declarations by calendar quarter.

3. Taxpayers placed under the simplified tax regime provided for in Article 302 septies A, with the exception of those mentioned in 3 bis and 3 ter, file for each financial year a declaration which determines the tax due for of the period and the amount of the half-yearly installments for the subsequent period.

Half-yearly installments are paid in July and December. They are equal, respectively, to 55% and 40% of the tax due for the previous budget year before deduction of value added tax relating to assets constituting fixed assets. Any additional tax payable is paid when filing the annual declaration mentioned in the first paragraph.

If he considers that the amount of the installments already paid for the financial year is equal to or greater than the amount of the tax which will ultimately be due, the person liable may dispense with new payments by submitting to the accountant responsible for collecting the said tax, before the due date of the next payment to be made, a dated and signed declaration.

If he considers that the tax due as a result of the operations carried out during a half-year, after deduction of the value added tax relating to the goods constituting fixed assets, is lower by at least 10% of the amount of the deposit corresponding, calculated according to the methods provided for in the second paragraph, the person liable may reduce the amount of this advance by the same amount, by submitting to the accountant responsible for collection, at the latest on the due date of the advance, a declaration dated and signed. If these operations were carried out during a period of less than six months,

modulation is only permitted if the tax actually due is at least 10% lower than the installment reduced in proportion to the time.

If he considers that the tax will be at least 10% higher than that which served as the basis for the installments, he may modify the amount of the latter.

Taxpayers are exempted from paying installments when the tax due for the previous budget year, before deduction of value added tax relating to assets constituting fixed assets, is less than €1,000. In this case, the total amount of tax due is paid when filing the annual declaration mentioned in the first paragraph.

New taxpayers are authorized, during their first tax year, to pay the value added tax by half-yearly installments, the amount of which they determine themselves, but each of which must represent at least 80% of the tax actually due for the corresponding semester. The conditions of application of this 3, in particular the methods of payment and reimbursement of installments, are fixed by decree in Council of State.

3a. Taxpayers whose turnover is below the thresholds provided for in 1° and 2° of Article L. 162-4 of the goods and services tax code and whose amount of tax payable under the previous year is greater than €15,000 file the monthly declaration mentioned in 1 of this article.

3b. Taxpayers placed under the simplified tax regime provided for in Article 302 septies A file the declaration mentioned in 1 of this article on a monthly basis as soon as they carry out intra-Community acquisitions, imports or exits from the suspensive regimes mentioned in 2° of I of Article 277 A. The first of these declarations summarizes all the transactions for which the tax has become payable since the beginning of the current budget year.

However, when the tax payable annually is less than €4,000, they are allowed to submit their declarations by calendar quarter.

4. In the event of transfer or cessation of a professional activity, the taxpayers are required to sign within thirty days the declaration provided for in 1. However, this period is extended to sixty days for companies placed under the simplified regime of taxation.

5. In the statement provided in 1, must in particular be identified:

a) The total amount, excluding value added tax, of supplies of goods exempt under I of Article 262 ter, of supplies of goods installed or assembled on the territory of another Member State of the European Union, deliveries of natural gas, electricity, heat or cold taxable on the territory of another Member State of the European Union and deliveries whose place is not located in France pursuant to the provisions of 1 ° of I of article 258 A;

b) The total amount, excluding value added tax, of the intra-Community acquisitions mentioned in I of Article 256 bis, and, where applicable, of the deliveries of goods dispatched or transported from another Member State of the European Union and installed or assembled in France, deliveries of goods whose location is located in France pursuant to the provisions of 2° of I of Article 258 A deliveries of goods made in France for which the recipient of the delivery is designated as liable for the tax pursuant to the provisions

of 2 ter of Article 283 and deliveries of natural gas, electricity, heat or cold for which the purchaser is designated as liable for the tax in accordance with the provisions of 2 quinquies of this last article;

b bis) The amount excluding tax of the transactions mentioned in 2 sexes of Article 283 carried out or acquired by the taxable person;

b ter) The total amount, excluding value added tax, of the services for which the lessee is liable for the tax in application, on the one hand, of the second paragraph of 1, on the other hand and separately, of 2 of 1 283;

b quater) The total amount, excluding value added tax, of imports and exits from the regimes mentioned in I of Article 277 A, other than those falling under b quinquies of this 5, distinguishing between those which are taxable and those which are not, as well as the amount of tax due relating to these operations;

b quinquies) The total base relating to imports of the petroleum products defined in 1° of 1 of Article 298 and the removal of these same products from the suspensive regime provided for in a of 2° of I of Article 277 A;

c) The total amount, excluding taxes, of the transmissions mentioned in Article 257 bis, from which the taxable person has benefited or which he has carried out.

6. Notwithstanding 2 and 5, are not indicated in the declaration mentioned in 1:

a) The operations mentioned in 2° to 4° of II of Article 286 ter A;

b) Transactions subject to the special regime provided for in Article 298 sexdecies G.

7. For each of its members made up of a sector of activity, the single taxable person communicates the information appearing on the declaration mentioned in 1 as well as information on the transactions carried out for the other members, according to the procedures set by order of the Minister. budget manager.

### **(bb) Customs (duties) fraud area**

- 17 The administrative provisions and legal acts in the area of customs irregularities and fraud are the *Code des douanes* and the *Loi fiscale 2002* as well as the *Code général des impôts/* the General Tax Code. The customs authorities publish a Report for each year, which presents insights and date on the actions, which were carried out in the past.<sup>425</sup> This report can be used to get an insight view of typical actions and new scenarios.
- 18 Typical cases deal with „false origin” of goods imported, false or falsified documents or anti-dumping cases.



Case Study 1 Products declared „Thai origin” suspected of „Chinese origin” (customs duty evasion, VAT duty evasion, revenue case)

**Products declared „Thai origin” suspected of „Chinese origin” (customs duty evasion, VAT duty evasion, revenue case)**

The Commercial Chamber of the *Cour de Cassation* had to deal with a case involving „imported hand pallet trucks from Thailand, under cover of certificates of preferential

<sup>425</sup> See [https://www.economie.gouv.fr/files/files/directions\\_services/micaf/douane-resultats\\_2019.pdf?v=1608649428](https://www.economie.gouv.fr/files/files/directions_services/micaf/douane-resultats_2019.pdf?v=1608649428).

origin of the 'Form A', endorsed by Thai customs, attesting that these goods were of Thai origin, which allowed them to benefit from an exemption from customs duties when imported into the European Union".

In the following OLAF conducted investigations on the premises of the suspected company „Stock-Man" and even visited the Thai customs authorities in Thailand.

As OLAF had herewith finally revealed that the goods came from reality of China and led the Thai authorities to cancel the disputed certificates, the customs administration „notified the company „Stock Man", on March 16, 2009, of an offense of false declaration of origin having enabled it to evade the payment of certain amounts of customs duties, anti-dumping duties and tax on the value added (VAT)".

In September 2010, the customs administration issued a notice of collection of sums unpaid (total sum of 147,560 euros). The company tried to assign the administration to cancel the notice of collection, called MAR.

The Court of Appeal ruled that the notice for recovery of the sums was irregular with regard to the principle of respect for the rights of the defence as the manager of the company was never really informed about the proceedings, which were mainly based on the OLAF report.

„[...] The investigators studied the flow of parts making up these pallet trucks imported from China by several Thai companies including GT MOVER and indicated that, apart from the chassis, the parts of imported pallet trucks constitute complete sets for mounting the pallet trucks; that they drew up a detailed list of these batches (appendix 29); that this same appendix also includes, according to this report, the calculation of the added value which makes it possible in particular to determine whether or not a product originates in a country; that the OLAF report specifies on page 20 that „each Member State is urged to seek out the corresponding imported consignments on the basis of the information provided in this report (see in particular appendix 29)"; that it follows from a letter sent by customs on 9 December 2009 to the lawyer for the company STOCK MAN in response to the challenge from the first AMR that the OLAF report was then communicated to him; whereas, on the other hand, it is undisputed that the annexes to this report, including annex 29, which is referred to several times in the report of the OLAF serving as the basis for the proceedings were never communicated to him; that it follows from the foregoing that if contradictory exchanges took place in the phase prior to the notification of infringement, none allowed the company STOCK MAN to be able to engage with the customs any discussion on the envisaged taxation ; that indeed, with regard to the hearings collected by the customs during the inspection, during which the manager should have been able to put forward his observations, he was not aware of all the elements founding the proceedings since only extracts from the OLAF report are transcribed in the minutes and no appendix appears there, whereas these documents are those on which the customs administration to consider that the pallet trucks imported by the company STOCK MAN were mainly of Chinese origin; that therefore, in view of the only extracts from the OLAF report which were communicated to him on the day of the check, he was unable to make useful statements; that subsequently, before the issuance of both the first AMR and the second, no debate could take place insofar as the customs administration had the first AMR issued two

days after notifying the company STOCK MAN its refusal to communicate the OLAF report to it, then hastened, thirteen days after the cancellation on 8 September 2010 by the BAYONNE District Court of the first AMR for reasons of pure form, to issue a new AMR, subject of this dispute, while she had not communicated the annexes to the report on which she based her prosecution; that it appears therefore that *the customs administration took its decision without leaving prior to the company STOCK MAN the possibility of being heard usefully in its explanations*; that those which were provided a posteriori in the context of the first challenge were not really examined, since as soon as the first AMR was cancelled, a second AMR was issued and one of the essential elements which constitutes the appendix 29 of the OLAF report was never communicated to STOCK MAN despite its request; that the customs administration cannot hide from the volume of these annexes and their content to refuse to communicate them when they relate to the company subject to the control; that it *thus appears that the customs administration did not respect the general principle of the rights of the defense by not allowing the company STOCK MAN to put forward its explanations before being taken against it by the authority public a decision adversely affecting him*; that the judgment referred must therefore be reversed.”<sup>426</sup>

<sup>426</sup> Cour de cassation, civile, Chambre commerciale, 25 novembre 2014, 13-26.240, Inédit, ECLI:FR:CCASS:2014:CO01029: „[L]es enquêteurs ont étudié les flux de pièces composant ces transpalette importées de Chine par plusieurs sociétés thaïlandaises dont GT MOVER et ont indiqué que, hormis les châssis, les parties de transpalettes importées constituent des ensembles complets permettant de monter les transpalettes ; qu'ils ont établi une liste détaillée de ces lots (annexe 29) ; que cette même annexe comprend également d'après ce rapport, le calcul de la valeur ajoutée qui permet notamment de déterminer si un produit est ou non originaire d'un pays ; que le rapport de l'OLAF précise en page 20 que « chaque Etat membre est instamment invité à rechercher les lots importés correspondants sur la base des informations fournies dans ce rapport (voir notamment annexe 29) » ; qu'il résulte d'un courrier adressé par les douanes le 9 décembre 2009 à l'avocat de la société STOCK MAN en réponse à la contestation du premier AMR que le rapport de l'OLAF lui a alors été communiqué ; qu'en revanche, il n'est pas contesté que les annexes à ce rapport dont l'annexe 29 qui est plusieurs fois visée dans le rapport de l'OLAF servant de base aux poursuites ne lui ont jamais été communiquées ; qu'il résulte de ce qui précède que si des échanges contradictoires ont eu lieu dans la phase préalable à la notification d'infraction, aucun n'a permis à la société STOCK MAN de pouvoir engager avec la douane une quelconque discussion sur la taxation envisagée ; qu'en effet, s'agissant des auditions recueillies par les douanes lors du contrôle, au cours desquelles le gérant aurait dû pouvoir faire valoir ses observations, il n'a pas eu connaissance de l'intégralité des éléments fondant les poursuites puisque seuls des extraits du rapport de l'OLAF sont retranscrits dans le procès-verbal et aucune annexe n'y figure, alors que ces documents sont ceux sur lesquels s'appuie l'administration des douanes pour considérer que les transpalettes importées par la société STOCK MAN étaient majoritairement d'origine chinoise ; que dès lors, au regard des seuls extraits du rapport de l'OLAF qui lui ont été communiqués au jour du contrôle, il n'a pu faire des déclarations utiles ; que par la suite, avant l'émission tant du premier AMR que du second, aucun débat n'a pu avoir lieu dans la mesure où l'administration des douanes a fait délivrer le premier AMR deux jours après avoir notifié à la société STOCK MAN son refus de lui communiquer le rapport de l'OLAF, puis s'est empressée treize jours après l'annulation le 8 septembre 2010 par le Tribunal d'instance de BAYONNE du premier AMR pour des raisons de pure forme, d'émettre un nouvel AMR, objet de la présente contestation, alors qu'elle n'avait pas communiqué les annexes au rapport sur lesquelles elle fondait sa poursuite ; qu'il apparaît dès lors que l'administration des douanes a pris sa décision sans laisser préalablement à la société STOCK MAN la possibilité d'être entendue utilement en ses explications ; que celles qui ont été fournies a posteriori dans le cadre de la première contestation n'ont pas été réellement examinées, puisque dès l'annulation du premier AMR, un second AMR a été émis et qu'un des éléments essentiels que constitue l'annexe 29 du rapport de l'OLAF n'a jamais été communiqué à la société STOCK MAN malgré sa demande ; que l'administration des douanes ne peut s'abriter devant le volume de ces annexes et sur leur contenu pour refuser de les communiquer dès lors qu'elles concernent la société objet du contrôle ; qu'il apparaît ainsi que l'administration des douanes n'a pas respecté le principe général des droits de la défense en ne permettant pas à la société STOCK MAN de faire valoir ses explications avant que ne soit prise à son encontre par l'autorité publique une décision lui faisant grief ; que le jugement déféré doit dès lors être infirmé ;[...].“

In all these matters, investigators seized by OLAF investigators for on-the-spot-checks will need to apply the Customs Code and the Unions Customs Code: **19**

### Customs Code

**Art. 2**<sup>427</sup> In all parts of the customs territory, one must comply with the same customs laws and regulations.

**Art. 2bis**<sup>428</sup> Without prejudice to specific derogatory provisions, this code does not apply: 1. When Community goods enter customs territory; 2. When leaving the customs territory of Community goods destined for other Member States of the European Community.

**Art. 3**<sup>429</sup>

1. Customs laws and regulations shall be applied regardless of the status of persons.
2. Goods imported or exported by the State or on its behalf shall not be subject to any immunity or derogation.

The administrative provisions are accompanied by special inspection rights, which are analysed in-depth below (see (1) (b) and (2)). **20**

- **Art. 65** (general inspection right, the so-called *droit de communication*: „peuvent exiger la communication des papiers et documents de toute nature relatifs aux opérations intéressant leur service”<sup>430</sup>

A very important administrative provision is the following: **21**

<sup>427</sup> **Art. 2 Codes des douanes**

Dans toutes les parties du territoire douanier, on doit se conformer aux mêmes lois et règlements douaniers.

<sup>428</sup> **Art. 2 bis Codes des douanes**

Sans préjudice de dispositions dérogatoires particulières, le présent code ne s'applique pas:

1. A l'entrée sur le territoire douanier de marchandises communautaires ;
2. A la sortie du territoire douanier de marchandises communautaires à destination des autres Etats membres de la Communauté européenne.

<sup>429</sup> **Art. 3 Codes des douanes**

1. Les lois et règlements douaniers doivent être appliqués sans égard à la qualité des personnes.
2. Les marchandises importées ou exportées par l'Etat ou pour son compte ne sont l'objet d'aucune immunité ou dérogation.

<sup>430</sup> For a rejection of an appeal against the decision taken by the Paris Court of Appeal, February 4, 2014 by a company that claimed Art. 65 CD would be infringed by OLAF, cf. Court of Cassation, civil, Commercial Chamber, November 8, 2017, 14-15.569, Unpublished, ECLI:EN:CCASS:2017:CO01358.

**Art. 67sexies Customs Code<sup>431</sup>**

I. – Express freight companies carrying out the activities mentioned in 4.2 of appendix 30 bis to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down certain provisions for the application of Regulation (EEC ) No. 2913/92 of the Council establishing the Community Customs Code, and postal service providers transmit to the General Directorate of Customs and Indirect Taxes the data at their disposal relating to the identification of the goods and objects transported as well as their means of transportation.

Are excluded from the transmission mentioned in the first paragraph:

1° The data mentioned in I of article 6 of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms;

2° Data relating to goods subject to imports from non-member States of the European Union or exports to these same States.

This transmission cannot, under any circumstances, affect the secrecy of correspondence.

II.<sup>432</sup> – To allow the observation of the offenses mentioned in articles 414, 414-2, 415 and 459 of this code, the gathering of evidence of these offenses and the search for their perpetrators, the minister responsible for customs is authorized to implement processing automated processing of the data transmitted pursuant to I of this article.

<sup>431</sup> **Article 67 sexies Code des douanes**I. — Les entreprises de fret express, exerçant les activités mentionnées au 4.2 de l'annexe 30 bis au règlement (CEE) n° 2454/93 de la Commission, du 2 juillet 1993, fixant certaines dispositions d'application du règlement (CEE) n° 2913/92 du Conseil établissant le code des douanes communautaires, et les prestataires de services postaux transmettent à la direction générale des douanes et droits indirects les données dont ils disposent relatives à l'identification des marchandises et objets acheminés ainsi que de leurs moyens de transports.

Sont exclues de la transmission mentionnée au premier alinéa:

1° Les données mentionnées au I de l'article 6 de la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés ;

2° Les données relatives aux marchandises faisant l'objet d'importations en provenance d'Etats non membres de l'Union européenne ou d'exportations à destination de ces mêmes Etats.

Cette transmission ne peut, en aucun cas, porter atteinte au secret des correspondances.

<sup>432</sup> II. — Pour permettre la constatation des infractions mentionnées aux articles 414, 414-2, 415 et 459 du présent code, le rassemblement des preuves de ces infractions et la recherche de leurs auteurs, le ministre chargé des douanes est autorisé à mettre en œuvre des traitements automatisés des données transmises en application du I du présent article.

Seuls les agents des douanes individuellement désignés et spécialement habilités par le ministre chargé des douanes ont accès à ces données.

III. — Les traitements mentionnés au II respectent la loi n° 78-17 du 6 janvier 1978 précitée.

Les prestataires et entreprises mentionnés au I du présent article informent les personnes concernées par les traitements mis en œuvre par la direction générale des douanes et des droits indirects.

IV. — Un décret en Conseil d'Etat, pris après avis de la Commission nationale de l'informatique et des libertés, fixe les modalités d'application du présent article, dans le respect de la loi n° 78-17 du 6 janvier 1978 précitée.

Ce décret précise notamment:

1° La nature et les modalités de transmission des données mentionnées au I ;

2° Les catégories de données concernées par les traitements mentionnés au II ;

3° Les modalités d'accès et d'utilisation des données par les agents mentionnés au II ;

4° Les modalités du contrôle du respect de l'obligation mentionnée au second alinéa du III ;

5° Les modalités de destruction des données à l'issue de la durée mentionnée au V ;

6° Les modalités d'exercice par les personnes concernées de leur droit d'accès et de rectification des données.

V. — Les données faisant l'objet des traitements mentionnés au II sont conservées pendant un délai maximal de deux ans à compter de leur enregistrement.



Only customs officers individually designated and specially authorized by the Minister responsible for customs have access to this data.

III. – The processing operations mentioned in II comply with the aforementioned law n° 78-17 of January 6, 1978 .

The service providers and companies mentioned in I of this article inform the persons concerned of the processing implemented by the General Directorate of Customs and Indirect Taxation.

IV. – A Conseil d’Etat decree, taken after consulting the National Commission for Computing and Liberties, sets the terms of application of this article, in compliance with the aforementioned law n ° 78-17 of January 6, 1978.

This decree specifies in particular:

1° The nature and methods of transmission of the data mentioned in I;

2° The categories of data concerned by the processing mentioned in II;

3° The procedures for accessing and using the data by the agents mentioned in II;

4° The procedures for monitoring compliance with the obligation mentioned in the second paragraph of III;

5° The procedures for destroying the data at the end of the period mentioned in V;

6° The methods of exercise by the persons concerned of their right of access and rectification of the data.

V. – The data subject to the processing operations mentioned in II are kept for a maximum period of two years from their recording.

**(b) General principles for „checks and inspections”**

**(aa) Principle of investigation (Tax Procedures Code, Customs Codes)**

Chapitre I bis: *Le droit d’enquête* (Articles L80 F à L80 J) Article L80 F Article L80 FA Article L80 G Article L80 H Article L80 I Article L80 J Tax Procedures Code :

**Chapter I bis: The right of investigation (Articles L80 F to L80 J)****Art. 80F<sup>433</sup>**

To find breaches of the invoicing rules to which are subject to value added tax in application of the general tax code as well as of the provisions adopted by the Member States for the application of articles 217 to 248 of the 2006 directive /112/EC of the Council, of 28 November 2006, *tax officials with at least the rank of controller may be presented with invoices, stock accounts as well as books, registers and professional documents which may relate to operations* having given rise or to give rise to invoicing and proceed to the material observation of the physical elements of the operation.

They<sup>434</sup> can also, when the authenticity of the origin, the integrity of the content and the readability of the invoices are ensured by the checks provided for in 1° of VII of article 289 of the general tax code, *access all information, documents, data, computer processing or information systems* that make up these controls and the documentation describing how they are carried out.

For the purposes of the first two paragraphs, they may have access from 8 a.m. to 8 p.m. and during the taxable person's working hours to premises for professional use, excluding the parts of these premises assigned to the private home, as well as than land and warehouses. They also have access to means of transport for professional use and their loading.

*The agents of the administration can obtain or take copies, by any means and on any support*, of the documents relating to the operations having given or having to give rise to invoicing. If the checks provided for in 1° of VII of the same article 289 are carried out in electronic form, the taxable persons are required to present them in this form. The

<sup>433</sup> **Art. L. 80F. Livre des procédures fiscales**

Pour rechercher les manquements aux règles de facturation auxquelles sont soumis les assujettis à la taxe sur la valeur ajoutée en application du code général des impôts ainsi qu'aux dispositions adoptées par les Etats membres pour l'application des articles 217 à 248 de la directive 2006/112/CE du Conseil, du 28 novembre 2006, *les agents des impôts ayant au moins le grade de contrôleur peuvent se faire présenter les factures, la comptabilité matière ainsi que les livres, les registres et les documents professionnels pouvant se rapporter à des opérations* ayant donné ou devant donner lieu à facturation et procéder à la constatation matérielle des éléments physiques de l'exploitation.

<sup>434</sup> Ils peuvent également, lorsque l'authenticité de l'origine, l'intégrité du contenu et la lisibilité des factures sont assurées par les contrôles prévus au 1° du VII de l'article 289 du code général des impôts, *accéder à l'ensemble des informations, documents, données, traitements informatiques ou systèmes d'information constitutifs* de ces contrôles et à la documentation décrivant leurs modalités de réalisation.

Aux fins des deux premiers alinéas, ils peuvent avoir accès de 8 heures à 20 heures et durant les heures d'activité professionnelle de l'assujetti aux locaux à usage professionnel, à l'exclusion des parties de ces locaux affectées au domicile privé, ainsi qu'aux terrains et aux entrepôts. Ils ont également accès aux moyens de transport à usage professionnel et à leur chargement.

*Les agents de l'administration peuvent obtenir ou prendre copie, par tout moyen et sur tout support*, des pièces se rapportant aux opérations ayant donné ou devant donner lieu à facturation. Si les contrôles prévus au 1° du VII du même article 289 sont effectués sous forme électronique, les assujettis sont tenus de les présenter sous cette forme. Les agents de l'administration peuvent prendre copie des informations ou documents de ces contrôles et de leur documentation par tout moyen et sur tout support.

Ils peuvent recueillir sur place ou sur convocation des renseignements et justifications. Ces auditions donnent lieu à l'établissement de comptes rendus d'audition.

L'enquête définie au présent article ne relève pas des procédures de contrôle de l'impôt prévues aux articles L. 10 à L. 47 A. En outre, chaque intervention fait l'objet d'un procès-verbal relatant les opérations effectuées.

agents of the administration can take copies of the information or documents of these controls and their documentation by any means and on any support.

They can collect on the spot or on summons information and justifications. These hearings give rise to the establishment of hearing reports.

The investigation defined in this article does not come under the tax control procedures provided for in articles L. 10 to L. 47 A.

In addition, each intervention is the subject of a report relating the operations carried out.

## (bb) External audit (General Tax Code, Customs Codes)

### Tax Procedures Code

**Art. L13<sup>435</sup>** I. – The *tax administration officials check on the spot*, following the rules provided for in this book, the accounts of taxpayers required to keep and present accounting documents.

II. – 1. Taxpayers other than those subject to the regime defined in Article 50-0 of the General Tax Code who keep analytical accounts are required to present these when their turnover for the financial year exceeds 152.4 million euros, in the case of companies whose main trade is to sell goods, objects, supplies and foodstuffs to be taken away or

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#### <sup>435</sup> Art. L13. Livre des procédures fiscales

I. – Les agents de l'administration des impôts vérifient sur place, en suivant les règles prévues par le présent livre, la comptabilité des contribuables astreints à tenir et à présenter des documents comptables.

II. – 1. Les contribuables autres que ceux soumis au régime défini à l'article 50-0 du code général des impôts qui tiennent une comptabilité analytique sont tenus de présenter celle-ci lorsque leur chiffre d'affaires de l'exercice excède 152,4 millions d'euros, s'il s'agit d'entreprises dont le commerce principal est de vendre des marchandises, objets, fournitures et denrées à emporter ou à consommer sur place ou de fournir le logement, ou 76,2 millions d'euros, s'il s'agit d'autres entreprises.

2. Le 1 s'applique également aux contribuables qui tiennent une comptabilité analytique, quel que soit leur chiffre d'affaires:

1° Lorsque le total de leur actif brut est supérieur ou égal à 400 millions d'euros à la clôture de l'exercice ;

2° Ou lorsqu'ils appartiennent à l'une des catégories suivantes:

a) Personnes morales ou groupements de personnes de droit ou de fait détenant à la clôture de l'exercice, directement ou indirectement, plus de la moitié du capital ou des droits de vote d'une personne morale ou d'un groupement mentionné au 1 ou au 1° du présent 2 ;

b) Personnes morales ou groupements de personnes de droit ou de fait dont plus de la moitié du capital ou des droits de vote est détenue à la clôture de leur exercice, directement ou indirectement, par une personne ou un groupement mentionné aux mêmes 1 ou 1° ;

c) Personnes morales qui appartiennent à un groupe relevant du régime fiscal prévu à l'article 223 A ou à l'article 223 A bis du code général des impôts lorsque celui-ci comprend au moins une personne mentionnée au 1 ou au 1° du présent 2 ;

d) Membres d'un assujetti unique constitué en application de l'article 256 C du code général des impôts lorsque celui-ci comprend au moins une personne mentionnée au 1 ou au 1° du présent 2.

III. – Les sociétés commerciales qui établissent, en application de l'article L. 233-16 du code de commerce, des comptes consolidés sont tenues de les présenter.

IV. – Lorsque la comptabilité est tenue au moyen de systèmes informatisés, le contrôle porte sur l'ensemble des informations, données et traitements informatiques qui concourent directement ou indirectement à la formation des résultats comptables ou fiscaux et à l'élaboration des déclarations rendues obligatoires par le code général des impôts ainsi que sur la documentation relative aux analyses, à la programmation et à l'exécution des traitements.

V. – Les fiducies, en la personne de leur fiduciaire, sont soumises à vérification de comptabilité dans les conditions prévues au présent article.

consumed on site or to provide accommodation, or 76.2 million euros, if they are other companies.

2. Paragraph 1 also applies to taxpayers who keep analytical accounts, regardless of their turnover:

1° When the total of their gross assets is greater than or equal to 400 million euros at the end of the financial year;

2° Or when they belong to one of the following categories:

a) Legal persons or groups of legal or de facto persons holding, at the end of the financial year, directly or indirectly, more than half of the capital or voting rights of a legal person or a group mentioned in 1 or in 1° of this 2;

b) Legal persons or groups of de jure or de facto persons of which more than half of the capital or voting rights is held at the end of their financial year, directly or indirectly, by a person or a group mentioned in the same 1 or 1°;

c) Legal persons who belong to a group subject to the tax regime provided for in Article 223 A or Article 223 A bis of the General Tax Code when it includes at least one person mentioned in 1 or 1° of present 2;

d) Members of a single taxable person established pursuant to Article 256 C of the General Tax Code when it includes at least one person mentioned in 1 or 1° of this 2.

III. – Commercial companies which establish, pursuant to Article L. 233-16 of the Commercial Code, consolidated accounts are required to present them.

IV. – ***When the accounts are kept by means of computerized systems, the control relates to all the information, data and computer processing which contribute directly or indirectly to the formation of the accounting or tax results*** and to the preparation of the declarations made compulsory by the general tax code as well as on the documentation relating to the analyses, the programming and the execution of the processing.

V. – Trusts, in the person of their fiduciary, are subject to accounting verification under the conditions provided for in this article.

**Art. L13B.**<sup>436</sup>

When, *during an audit of the accounts or an examination of the accounts*, the administration has gathered elements leading to the presumption that a company, other than those mentioned in I of Article L. 13 AA, has carried out a indirect transfer of profits, within the meaning of the provisions of article 57 of the general tax code, it may ask this company for information and documents specifying:

1° The nature of the relations falling within the provisions of Article 57 of the General Tax Code, between this company and one or more companies operated outside France or companies or groups established outside France;

2° The method for determining the prices of the transactions of an industrial, commercial or financial nature that it carries out with the companies, companies or groups referred to in 1° and the elements which justify it as well as, where applicable, the consideration granted;

3° The activities carried out by the companies, companies or groups referred to in 1°, related to the operations referred to in 2°;

4°<sup>437</sup> The tax treatment reserved for the transactions referred to in 2° and carried out by the companies it operates outside France or by the companies or groups referred to in 1° in which it holds, directly or indirectly, the majority of the capital or vote.

The requests referred to in the first paragraph must be precise and explicitly indicate, by type of activity or by product, the country or territory concerned, the undertaking, company or group concerned as well as, where applicable, the amounts in question. . They must, in addition, specify to the verified company the response time that is open to it. This period, which may not be less than two months, may be extended on reasoned request without being able to exceed a total of three months.

<sup>436</sup> **Art. L13B. Livre des procédures fiscales**

Lorsque, au cours d'une vérification de comptabilité ou d'un examen de comptabilité, l'administration a réuni des éléments faisant présumer qu'une entreprise, autre que celles mentionnées au I de l'article L. 13 AA, a opéré un transfert indirect de bénéfices, au sens des dispositions de l'article 57 du code général des impôts, elle peut demander à cette entreprise des informations et documents précisant:

1° La nature des relations entrant dans les prévisions de l'article 57 du code général des impôts, entre cette entreprise et une ou plusieurs entreprises exploitées hors de France ou sociétés ou groupements établis hors de France ;

2° La méthode de détermination des prix des opérations de nature industrielle, commerciale ou financière qu'elle effectue avec des entreprises, sociétés ou groupements visés au 1° et les éléments qui la justifient ainsi que, le cas échéant, les contreparties consenties ;

3° Les activités exercées par les entreprises, sociétés ou groupements visés au 1°, liées aux opérations visées au 2°

<sup>437</sup> 4° Le traitement fiscal réservé aux opérations visées au 2° et réalisées par les entreprises qu'elle exploite hors de France ou par les sociétés ou groupements visés au 1° dont elle détient, directement ou indirectement, la majorité du capital ou des droits de vote.

Les demandes visées au premier alinéa doivent être précises et indiquer explicitement, par nature d'activité ou par produit, le pays ou le territoire concerné, l'entreprise, la société ou le groupement visé ainsi que, le cas échéant, les montants en cause. Elles doivent, en outre, préciser à l'entreprise vérifiée le délai de réponse qui lui est ouvert. Ce délai, qui ne peut être inférieur à deux mois, peut être prorogé sur demande motivée sans pouvoir excéder au total une durée de trois mois.

Lorsque l'entreprise a répondu de façon insuffisante, l'administration lui adresse une mise en demeure d'avoir à compléter sa réponse dans un délai de trente jours en précisant les compléments de réponse qu'elle souhaite. Cette mise en demeure doit rappeler les sanctions applicables en cas de défaut de réponse (1).

(1) Ces dispositions s'appliquent aux contrôles engagés à compter de la date d'entrée en vigueur de la loi 96-314.

When the company has responded insufficiently, the administration sends it a formal notice to complete its response within thirty days, specifying the additional responses it wishes. This formal notice must state the penalties applicable in the event of failure to respond (1).

These provisions apply to controls initiated from the date of entry into force of Law 96-314.

**L198A.**<sup>438</sup> I. – In order to investigate contentious requests for reimbursement of value added tax credits, tax officers with at least the rank of controller may go to the site after sending an instruction notice on place to make material findings and consult the books or accounting documents whose presentation is provided for by the general tax code as well as all the supporting documents relating to this request. As part of on-site intervention, these agents may have access, from 8 a.m. to 8 p.m. and during the taxable person's working hours, to premises for professional use, excluding parts of these premises assigned to the private residence, as well as to land, warehouses, means of transport for professional use and their loading. They can collect information and justifications on the spot.

When the application is submitted by the representative of a single taxable person established pursuant to Article 256 C of the General Tax Code, the on-site instruction

<sup>438</sup> **Art. L198A. Livre des procédures fiscales**

I. – En vue d'instruire les demandes contentieuses de remboursement de crédits de taxe sur la valeur ajoutée, les agents des impôts ayant au moins le grade de contrôleur peuvent se rendre sur place après l'envoi d'un avis d'instruction sur place pour procéder à des constats matériels et consulter les livres ou documents comptables dont la présentation est prévue par le code général des impôts ainsi que toutes les pièces justificatives qui sont afférents à cette demande. Dans le cadre de l'intervention sur place, ces agents peuvent avoir accès, de 8 heures à 20 heures et durant les heures d'activité professionnelle de l'assujetti, aux locaux à usage professionnel, à l'exclusion des parties de ces locaux affectées au domicile privé, ainsi qu'aux terrains, aux entrepôts, aux moyens de transport à usage professionnel et à leur chargement. Ils peuvent recueillir sur place des renseignements et justifications.

Lorsque la demande est déposée par le représentant d'un assujetti unique constitué en application de l'article 256 C du code général des impôts, l'avis d'instruction sur place est adressé à un ou plusieurs membres de l'assujetti unique dont les opérations ont concouru à la formation du crédit de taxe sur la valeur ajoutée. Dans ce cas, le représentant est informé de l'engagement de la ou des procédures d'instruction sur place.

II. – L'administration dispose d'un délai de soixante jours à compter de la première intervention sur place pour prendre sa décision. La décision rejetant tout ou partie de la demande de remboursement est motivée.

Lorsque la demande est déposée par le représentant d'un assujetti unique constitué en application de l'article 256 C du code général des impôts, les membres de l'assujetti unique ayant fait l'objet de la procédure prévue au I du présent article sont informés de la décision transmise au représentant.

III. – Lorsque, du fait du contribuable, l'administration n'a pas pu procéder aux constats matériels ou consulter sur place les livres, documents et pièces justificatives mentionnés au I dans un délai de soixante jours à compter de la date de notification de l'avis d'instruction sur place, elle peut rejeter la demande de remboursement pour défaut de justification. Cette faculté est mentionnée dans l'avis d'instruction.

IV. – La décision de l'administration ne peut en aucun cas intervenir après l'expiration d'un délai de quatre mois à compter de la notification au contribuable de l'avis d'instruction sur place mentionné au I.

V. – En l'absence de décision de l'administration dans les délais prévus aux II et IV du présent article, il est fait droit à la demande de remboursement.

Les délais prévus aux II et IV du présent article ne sont pas applicables à l'instruction d'une demande de remboursement de crédit de taxe sur la valeur ajoutée déposée par le représentant d'un assujetti unique constitué en application de l'article 256 C du code général des impôts.

VI. – Les opérations réalisées en application du présent article ne constituent pas une vérification de comptabilité au sens de l'article L. 13.

notice is sent to one or more members of the single taxable person whose transactions contributed to the formation of the value added tax credit. In this case, the representative is informed of the initiation of the on-site investigation procedure(s).

II. – The administration has a period of sixty days from the first intervention on site to make its decision. The decision rejecting all or part of the request for reimbursement is reasoned.

When the application is filed by the representative of a single taxable person constituted pursuant to Article 256 C of the General Tax Code, the members of the single taxable person who have been the subject of the procedure provided for in I of this article are informed of the decision transmitted to the representative.

III. – When, because of the taxpayer, the administration was unable to make the material findings or consult on the spot the books, documents and supporting documents mentioned in I within a period of sixty days from the date of notification of the instruction notice on the spot, it may reject the request for reimbursement for lack of justification. This option is mentioned in the instruction notice.

IV. – The decision of the administration can in no case intervene after the expiry of a period of four months from the notification to the taxpayer of the notice of instruction on the spot mentioned in I.

V. – In the absence of a decision from the administration within the deadlines provided for in II and IV of this article, the request for reimbursement shall be granted.

The deadlines provided for in II and IV of this article do not apply to the examination of a request for reimbursement of value added tax credit submitted by the representative of a single taxable person constituted pursuant to article 256 C of the general tax code.

VI. – The operations carried out pursuant to this article do not constitute an audit of accounts within the meaning of article L. 13.

**Art. L. 47** relates to an audit for a personal tax situation of a natural person with regard to income tax.

**(dd) Tax and customs investigation (Customs Codes/General Tax Code)**

23

**Customs Code****Art. 67A.<sup>439</sup> Customs Code**

1. Under no circumstances may State, departmental and municipal administrations, as well as companies granted by the State, departments and municipalities, or any establishments or bodies subject to the control of the administrative authority, as well as social security bodies and funds and bodies managing the unemployment insurance scheme, invoke professional secrecy against customs officers with at least the rank of controller who, in order to establish the taxes instituted by existing laws, ask them to communicate service documents which they hold, regardless of the medium.

Category C customs officers may exercise the above right of communication when acting on the written order of a customs officer of at least the rank of inspector. This order must be presented to the authorities referred to in the above paragraph.

2. Individual economic or financial information collected in the course of statistical surveys carried out within the framework of Act No. 51-711 of 7 June 1951 may under no circumstances be used for the purposes of fiscal control or economic repression. The administrations holding information of this nature are not bound by the obligation arising from 1 above.

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<sup>439</sup> **Art. 67A. Codes des douanes**

1. En aucun cas, les administrations de l'Etat, les départements et les communes, ainsi que les entreprises concédées par l'Etat, les départements et les communes, de même que tous les établissements ou organismes quelconques soumis au contrôle de l'autorité administrative ainsi que les organismes et caisses de sécurité sociale et les organismes gestionnaires du régime d'assurance-chômage, ne peuvent opposer le secret professionnel aux agents des douanes ayant au moins le grade de contrôleur qui, pour établir les impôts institués par les lois existantes, leur demandent communication des documents de service qu'ils détiennent, quel qu'en soit le support.

Les agents des douanes de catégorie C peuvent exercer le droit de communication susvisé lorsqu'ils agissent sur ordre écrit d'un agent des douanes ayant au moins le grade d'inspecteur. Cet ordre doit être présenté aux autorités visées à l'alinéa ci-dessus.

2. Les renseignements individuels d'ordre économique ou financier recueillis au cours d'enquêtes statistiques faites dans le cadre de la loi n° 51-711 du 7 juin 1951 ne peuvent en aucun cas être utilisés à des fins de contrôle fiscal ou de répression économique. Les administrations dépositaires de renseignements de cette nature ne sont pas tenues par l'obligation découlant du 1 ci-dessus.



**Art. 215<sup>440</sup>**

1. Those who possess or transport goods which are dangerous to public health, safety or morals, counterfeit goods, goods prohibited under international commitments or goods which are the subject of a current of international fraud and illegal market detrimental to the legitimate interests of regular trade and those of the Treasury, specially designated by decrees of the Minister of Economy and Finance ***must, at the first request of customs officers, produce either receipts attesting that these goods have been regularly imported into the customs territory of the European Community, either purchase invoices, production slips or any other proof of origin from persons or companies duly established within the customs territory of the European Community.***

2. Those who have held, transported, sold, assigned or exchanged the said goods and those who have established the proofs of origin are also required to present the documents referred to in 1 above upon any requisition by customs officers made within a period three years, either from the time the goods ceased to be in their hands, or from the issue of proof of origin.

3. Do not fall under the application of these provisions the goods that the holders, carriers, or those who have held, transported, sold, transferred or exchanged prove, by the production of their records, to have been imported, held or acquired in the customs territory prior to the date of publication of the aforementioned decrees.

Any person holding goods designated for the first time by the decree referred to in 1 above may, before the expiry of a period of six months from the publication of the decree, make a written declaration to the customs.

After verifying that it is correct, the service will authenticate this declaration which will serve as justification.

<sup>440</sup> **Art. 215 Code des douanes**

1. Ceux qui détiennent ou transportent des marchandises dangereuses pour la santé, la sécurité ou la moralité publiques, des marchandises contrefaisantes, des marchandises prohibées au titre d'engagements internationaux ou des marchandises faisant l'objet d'un courant de fraude internationale et d'un marché clandestin préjudicant aux intérêts légitimes du commerce régulier et à ceux du Trésor, spécialement désignées par arrêtés du ministre de l'économie et des finances doivent, à première réquisition des agents des douanes, produire soit des quittances attestant que ces marchandises ont été régulièrement importées dans le territoire douanier de la Communauté européenne, soit des factures d'achat, bordereaux de fabrication ou toutes autres justifications d'origine émanant de personnes ou sociétés régulièrement établies à l'intérieur du territoire douanier de la Communauté européenne.

2. Ceux qui ont détenu, transporté, vendu, cédé ou échangé lesdites marchandises et ceux qui ont établi les justifications d'origine sont également tenus de présenter les documents visés au 1 ci-dessus à toute réquisition des agents des douanes formulée dans un délai de trois ans, soit à partir du moment où les marchandises ont cessé d'être entre leurs mains, soit à partir de la délivrance des justifications d'origine.

3. Ne tombent pas sous l'application de ces dispositions les marchandises que les détenteurs, transporteurs, ou ceux qui les ont détenues, transportées, vendues, cédées ou échangées prouvent, par la production de leurs écritures, avoir été importées, détenues ou acquises dans le territoire douanier antérieurement à la date de publication des arrêtés susvisés.

Toute personne détenant des marchandises désignées pour la première fois par l'arrêté visé au 1 ci-dessus peut, avant l'expiration d'un délai de six mois à compter de la publication de l'arrêté, en faire la déclaration écrite au service des douanes.

Après avoir vérifié qu'elle est exacte, le service authentifiera cette déclaration qui tiendra lieu de justification.

**Art. 215bis**<sup>441</sup>

Those who hold or transport the goods referred to in 4 and 5 of Article 38 above must, at the first request of customs officers, produce either documents certifying that these goods were introduced into the customs territory in accordance with the provisions prohibiting imports or that these goods may leave the customs territory in accordance with the provisions prohibiting exports, or any proof of origin issued by persons or companies duly established within the customs territory.

**Art. 215ter**<sup>442</sup>

By way of derogation from Article 215 bis, those who hold or transport the cultural goods or national treasures referred to in 4 of Article 38 must, at the first request of customs officers, produce either documents certifying that these goods can leave the customs territory in accordance with the provisions prohibiting export, either any document proving that these goods have been temporarily imported from another Member State of the European Community, or any proof of origin from persons or companies duly established in the inside the Community customs territory.

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<sup>441</sup> **Art. 215bis Code des douanes**

Ceux qui détiennent ou transportent des marchandises visées au 4 et au 5 de l'article 38 ci-dessus doivent, à la première réquisition des agents des douanes, produire soit des documents attestant que ces marchandises ont été introduites sur le territoire douanier en conformité avec les dispositions portant prohibition d'importation ou que ces marchandises peuvent quitter le territoire douanier en conformité avec les dispositions portant prohibition d'exportation, soit toute justification d'origine émanant de personnes ou de sociétés régulièrement établies à l'intérieur du territoire douanier.

<sup>442</sup> **Art. 215ter Code des douanes**

Par dérogation à l'article 215 bis, ceux qui détiennent ou transportent les biens culturels ou les trésors nationaux visés au 4 de l'article 38 doivent, à première réquisition des agents des douanes, produire soit des documents attestant que ces marchandises peuvent quitter le territoire douanier en conformité avec les dispositions portant prohibition d'exportation soit tout document prouvant que ces biens ont été importés temporairement d'un autre Etat membre de la Communauté européenne, soit toute justification d'origine émanant de personnes ou de sociétés régulièrement établies à l'intérieur du territoire douanier communautaire.

The Tax Procedures Code contains further rights for customs officers:

- I bis: Special provisions on income or profits tax and value added tax (Articles L16 B to L16 BA) Article L16B Article L16-0 BA Article L16BA

**Art. L80I.**<sup>443</sup>

Customs officers, having at least the rank of controller, may have the right of inquiry provided for in Articles L. 80 F to L. 80 H to seek breaches in the application of invoicing rules relating to acquisitions and deliveries, falling within the scope of value added tax, carried out with Member States of the European Union. They may also have this right of inquiry in order to carry out the research required for the granting and renewal of the approval provided for in article 262-0 bis of the general tax code.

**(ee) Fiscal supervision**

Cf. → in the **Customs Code**

24

Cf. → in the **Tax Procedures Code**

**Monetary and Financial Code**

Title II: The Financial Markets Authority (Articles L621-1 to L621-35)

Here especially: Art. L. 621-8-4 Monetary and Financial Code

**(c) Administrative provisions in the area of structural funds and internal policies (*politiques internes*) = expenditure**

This area is part of the shared management i.e. EU institutions work together with national authorities that implement internal policies and EU funding programmes (EU shared management funds). Funds are used to foster policies of the EU, i.e. the Regional policy, which has a long history dating back to 1957. Regional policy is intricately connected to Cohesion policies, which is a broader term introduced in the 1980s.<sup>444</sup>

25

<sup>443</sup> **Art. L. 80I. Livre des procédures fiscales**

Les agents des douanes, ayant au moins le grade de contrôleur, peuvent disposer du droit d'enquête prévu aux articles L. 80 F à L. 80 H pour rechercher les manquements à l'application des règles de facturation afférentes aux acquisitions et livraisons, entrant dans le champ d'application de la taxe sur la valeur ajoutée, effectuées avec des Etats membres de l'Union européenne. Ils peuvent également disposer de ce droit d'enquête afin d'effectuer les recherches requises pour l'octroi et le renouvellement de l'agrément prévu à l'article 262-0 bis du code général des impôts.


<sup>444</sup> See [https://ec.europa.eu/regional\\_policy/en/policy/what/history/](https://ec.europa.eu/regional_policy/en/policy/what/history/). And see Bonnemains et al. 2018.

This area is prone to special frauds like agricultural subsidies fraud, forms of non-procurement expenditure frauds. Corruption may occur in this area, too.

26 *Figure 10 Data for EU frauds under shared management (expenditure frauds)*

“The 2020 PIF report estimates that in 2019, EU expenditure under shared management was affected by an estimated 538 fraudulent irregularities amounting to some EUR 253.5 million for the EU-27.”

27 More information on EU expenditure-related frauds can be retrieved from a recent study.<sup>445</sup>

 *Nota bene:* The (EU-)Anti-Fraud Knowledge Center provides information on the common typologies of EU frauds in this area.<sup>446</sup>

28 The financial transparency system provides information on recipients and beneficiaries of funding from the EU budget.<sup>447</sup>

**(aa) Structural funds in France in general: Organization and authorities**

29 The administrative controls are centered either with **MICAF** – *Mission interministérielle de coordination anti-fraude* (AFCOS) [see below → Art. 12 OLAF Regulation] or with the special **Interministerial Commission for the Coordination of Controls** – Audit Authority of European Funds in France. The authority has its legal basis in a Decree called: „*Décret n° 2008-548 du 11 juin 2008 relatif à la commission interministérielle de coordination des contrôles - autorité d’audit pour les fonds européens en France*”.<sup>448</sup>

30 **Article 1** Amended by Decree No. 2021-1718 of 20 December 2021 - art. 1  
 The Interministerial Commission for the Coordination of Controls, the audit authority for European funds in France, established by Article 60 of the above-mentioned Act of 30 December 2002, is responsible for carrying out, for the France, the tasks entrusted to the audit authorities by European regulations, the delegated and implementing regulations adopted pursuant thereto and the decisions of the European institutions relating to the European funds listed in the annex.  
 It is, for the funds under its jurisdiction:  
 1° Under the 2014-2020 programming:  
 (a) The independent audit body responsible for producing the reports and opinions on which the basis for the designation of the managing and certifying authorities of European funds pursuant to Article 124 of Regulation (EU) No 1303/2013 of the European

<sup>445</sup> Malan and Bosch 2022, p. 63 et seq.

<sup>446</sup> See [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/702671/IPOL\\_STU\(2022\)702671\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/702671/IPOL_STU(2022)702671_EN.pdf), p. 45; cf. Constantinescu and Jurma 2021, pp. 191–196; Erkoreka 2020, pp. 1425–1434.

<sup>447</sup> <https://ec.europa.eu/budget/financial-transparency-system/index.html>.

<sup>448</sup> Decree No. 2008-548 of 11 June 2008 on the Interministerial Commission for the Coordination of Controls - audit authority for European funds in France. See the full Decree <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000018979098>.

Parliament and of the Council of 17 December 2013, Article 35 of Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 and Article 26 of Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014;

(b) The audit authority responsible for monitoring the proper functioning of management and control systems and for drawing up an audit opinion and an audit report setting out the main conclusions of the audits it carries out or has carried out on its behalf pursuant to Article 127 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013; Article 34 of Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 and Article 29 of Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014;

2° Under the 2021-2027 programming:

(a) The public authority responsible for carrying out system audits, audits of operations and audits of accounts in order to provide the Commission, with complete independence, with assurance on the proper functioning of the management and control systems and on the legality and regularity of expenditure shown in the accounts transmitted to the Commission and for drawing up an audit opinion and an audit report pursuant to Article 77; Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021;

(b) If designated for that purpose, the single audit authority exercising the functions of audit authority of an Interreg programme as described in Article 48 of Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021;

3° Under the new European financial support:

(a) The audit authority responsible for drawing up the annual summary of audits in accordance with Article 22 of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021;

(b) The independent audit body designated pursuant to Article 14 of Regulation (EU) 2021/1755 of the European Parliament and of the Council of 6 October 2021.

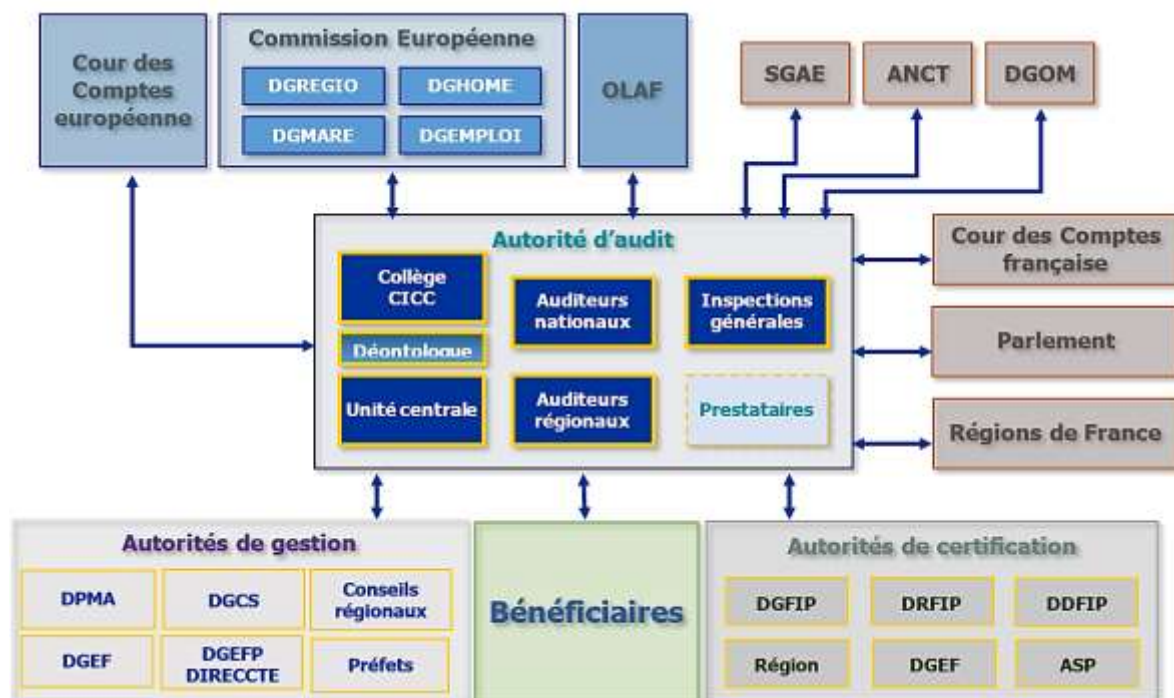
The logo of this French Control Body operating within the area of structural funds and the discovery of irregularities looks like this: **31**



Source: <https://www.economie.gouv.fr/cicc/interlocuteurs-de-la-cicc#>.

The CICC is the **Main Audit Authority**, which on the one hand interacts with MICAF **32** and OLAF but on the other hand controls its own area of responsibility. It acts, if said in a metaphorical style, like a hinge or door opener to other control bodies in the French Départements. It is integrated into a real concept of information flows between different competent bodies:

Figure 11 The French Partners of the Interministerial Commission for the Coordination of Controls - Audit Authority of European Funds in France



Source: <https://www.economie.gouv.fr/cicc/interlocuteurs-de-la-cicc#>.

- 33 The structural funds are distributed according to the operational programmes for each area of structural funds. The **operational programmes** have a connection to a territory (e.g. a special countryside) or a group of individuals (e.g. farmers and economic operators in the agricultural sector). The division of the territories has prevailed since it was adopted in 2014.<sup>449</sup> The operational programmes are managed by so-called Regional Councils. France has set-up 37 Regional Councils. The situation concerning the Regional Councils for the distribution of the structural funds within the territories can be **visualized with a picture from CICC** like follows:

<sup>449</sup> See CICC, <https://www.economie.gouv.fr/cicc/cicc/fonds-programmes-projets/programmes-operationnels>.

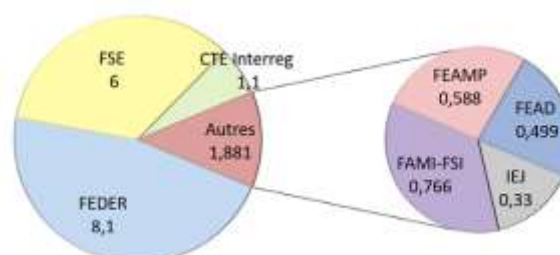
Figure 12 Regional Councils for the Distribution of Structural Funds under the Head of the special Interministerial Commission for the Coordination of Controls - Audit Authority of European Funds in France

37 Programmes opérationnels régionaux (POR)		8 Programmes nationaux
FEDER Alsace FSE Alsace FEDER/FSE/IEJ Aquitaine FEDER/FSE/IEJ Auvergne FEDER/FSE Basse-Normandie FEDER/FSE Bourgogne FEDER/FSE Bretagne FEDER/FSE/IEJ Centre-Val de Loire FEDER/FSE/IEJ Champagne-Ardenne FEDER/FSE Corse FEDER/FSE Franche-Comté et Massif du Jura FEDER/FSE/IEJ Guadeloupe FEDER/FSE Guyane FEDER/FSE/IEJ Haute-Normandie FEDER/FSE/IEJ Ile-de-France FEDER/FSE/IEJ Languedoc-Roussillon FEDER/FSE Limousin FEDER/FSE Lorraine et Vosges FEDER/FSE/IEJ Martinique FEDER/FSE/IEJ Midi-Pyrénées FEDER/FSE/IEJ Nord-Pas-de-Calais FEDER/FSE Pays-de-la-Loire FEDER/FSE/IEJ Picardie	FEDER/FSE Poitou-Charentes FEDER/FSE PACA FEDER Réunion FEDER/FSE Rhône-Alpes FEDER/FSE Guadeloupe et Saint-Martin FEDER/FSE Mayotte FSE Guyane FSE Martinique FSE Réunion  <b>Dont 5 Programme opérationnel interrégionaux (POI)</b> POI Loire POI Pyrénées POI Alpes POI Rhône Saône POI Massif central	Europ'Act 2014-2020 FSE, Emploi et Inclusion Initiative pour l'Emploi des Jeunes (IEJ) FEAMP Fonds Européen d'Aide aux plus Démunis (FEAD) Fonds Sécurité Intérieure (FSI) Fonds Asile et Migration et Intégration (FAMI) Fonds Européen d'Ajustement à la Mondialisation (FEM) Fonds de Solidarité de l'Union européenne (FSUE)  <b>13 Programmes de Coopération territoriale européenne (CTE)</b> CTE URBACT III CTE INTERREG V-A Rhin supérieur-Oberrhein CTE INTERREG V-A France-Suisse CTE INTERREG V Caraïbes CTE INTERREG V Amazonie CTE INTERREG V-A Les Deux Mers CTE INTERREG V C Europe CTE INTERREG V-B ENO (Europe du Nord-Ouest) CTE INTERREG V-B Méditerranée (MED) CTE INTERREG V Océan Indien CTE INTERREG V-A Alcotra (France Italie) CTE INTERREG V-A Saint Martin CTE INTERREG V-A Mayotte

Source: <https://www.economie.gouv.fr/cicc/interlocuteurs-de-la-cicc#>.

The CICC is responsible for the control of nearly all European Structural Funds – including the cohesion funds. The scope of the CICC’s intervention and the control of irregularities is therefore all-encompassing. The financial breakdown of the reception of funds has already been pictured above but this Figure 15 shall offer another rough idea of how high the sums are (sums in billion).

Figure 14 The scope of the CICC’s intervention



\* Nearly 17,4 € billion in Figure 15.

Source: <https://www.economie.gouv.fr/cicc/interlocuteurs-de-la-cicc#>.

The special organization and rules to fight fraud to the detriment of the Resilience Facility has been discussed by the drafters of the plan „France Relance” in 2021

and 2022. The competent authorities concluded a Working Agreement to cover fraud investigations in this area:

*COMMUNIQUE*

*Paris, le 11/02/2022*

*La Commission interministérielle de coordination des contrôles (CICC) et l'Agence française anticorruption (AFA) signent un protocole de coopération relatif à la mise en œuvre de la facilité pour la relance et la résilience (FRR).*

PRESS RELEASE

Paris, 11/02/2022

The Interministerial Commission for the Coordination of Controls (CICC) and the French Anti-Corruption Agency (AFA) have signed a memorandum of cooperation on the implementation of the Recovery and Resilience Facility (FRR).

- 36 News on the Policy of the French Governments to fight fraud against the EU in the area of the distribution and allocation of structural funds can be retrieved from the country's Webpage on the use of structural funds.<sup>450</sup>

**(bb) Structural funds: The new cohesion policy and „France Relance” 2020-2027**

- 37 The structural and investment funds are an integrated part of the EU's support to economic growth.<sup>451</sup> The old term for the funding phase 2014–2020 is still used for many programs (*l'Europe s'engage en France!*).
- 38 The new cohesion policy for 2021–2027 (see e.g. the new ERDF fund<sup>452</sup>) was drafted by the French Conference on structural organization of the territory „*Agence National de la cohésion des territoires, ANCT*”<sup>453</sup> and is implemented by the „*Plan national de relance et de résilience 2021*”, which was released on 19 April 2021 and send to the EU Commission afterwards.<sup>454</sup> The territories are sometimes reduced to French regions,

<sup>450</sup> See *L'Europe s'engage en France*, <https://www.europe-en-france.gouv.fr/fr/programmes-europeens>.

<sup>451</sup> See European Commission, [https://ec.europa.eu/regional\\_policy/en/funding/](https://ec.europa.eu/regional_policy/en/funding/).

<sup>452</sup> See Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund PE/48/2021/INIT, OJ L 231, 30.6.2021, p. 60–93.

<sup>453</sup> National Agency for Territorial Cohesion and the Ministry of Territorial Cohesion and Relations with Local Authorities: “The National Agency for Territorial Cohesion is the national coordinating authority for European funds in France for the periods 2014–2020 and 2021–2027. It monitors compliance with the commitments made by France under the Partnership Agreement and supports national and regional management authorities by providing them with technical support in terms of regulations, communication, training and evaluation. This support is provided within the framework of the *Europ'Act* programme, for which the ANCT is the managing authority.” See <https://www.europe-en-france.gouv.fr/fr/ressources/faq-reglementation-gestion-contrrole-des-fonds-europeens-2014-2020> and <https://agence-cohesion-territoires.gouv.fr/le-partenariat-etat-regions-est-essentiel-680> and last but not least see <https://aides-territoires.beta.gouv.fr/europe/>.

<sup>454</sup> See [https://www.economie.gouv.fr/files/files/directions\\_services/plan-de-relance/PNRR%20Francais.pdf](https://www.economie.gouv.fr/files/files/directions_services/plan-de-relance/PNRR%20Francais.pdf) and cf. Art. 12 Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347 20.12.2013, p. 320) as amended 2020.



which are the managing authorities of the funds.<sup>455</sup> They are supported by a start-up called „*aides-territoires*”.<sup>456</sup>

Agricultural and fisheries policies are the strongest parts of the French economy that lead to funding (cf. European Rural Development Fund (EAFRD, as of 2023). Another heavier funded policy area in France is the area of **cohesion policy** (see → the next table „Table ‘Structural funds and national administrative authorities – Cohesion policy acc. to the CFR Regulation in France (2021–2027)’”). The managing authorities are mainly the prefects of the regions.<sup>457</sup> **39**

In the introduction (see above → Introduction) we already mentioned that the French Republic has signed a Working Arrangement with the EPPO, which has as well an impact on OLAF’s investigations in France. It focuses on the Resilience Facility and aims at the discovery of irregularities. **40**

The next table focuses on the **distribution of EU funds** and **Resilience Facility** money in France. We recommend to get a first overview and eventually to connect the information with → Art. 12a OLAF Regulation and the information from the Working Arrangement that MICAF concluded with the EPPO<sup>458</sup>. Afterwards special questions can be dealt with in an ongoing investigation by e.g. contacting the responsible persons via the typical ways (OAFCN network, OLAF, MICAF, national authorities mentioned below, the EPPO etc. all by respect to the internal guidelines of the respective EU organ, EU IBOA, EPPO or OLAF – specially on the sensitivity of the information, respect for data protection and protection of the confidentiality of the ongoing investigation if one has already been opened (see below → Art. 5 OLAF Regulation; see above → Art. 25-26 EPPO Regulation, Part B). **41**

<sup>455</sup> See: Auvergne-Rhône-Alpes | Burgundy-Franche-Comté | Brittany | Centre-Val de Loire | Corsica | Great East | Guadeloupe | Guyana | Hauts-de-France | Ile de France | Martinique | Mayotte | Normandy | New Aquitaine, Occitania | Pays de la Loire | Meeting | South Provence-Alps-Côte d'Azur .

<sup>456</sup> Aides-territoires is a State Start-Up led by the General Directorate for Planning, Housing and Nature (DGALN) with the support of the National Agency for Territorial Cohesion (ANCT) and the General Directorate for Infrastructure of Transport and the Sea (DGITM).

<sup>457</sup> See Frese 2003, p. 86 et seq. The situation has not changed since 2002.

<sup>458</sup> See [https://www.eppo.europa.eu/sites/default/files/2024-01/Working\\_Arrangement\\_Version\\_EN.pdf](https://www.eppo.europa.eu/sites/default/files/2024-01/Working_Arrangement_Version_EN.pdf).

*Table 7 Structural funds and national administrative authorities acc. to the CFR Regulation in France (2021–2027) /Autorités de gestion en France habilitées à effectuer des contrôles dans le cadre des Fonds structurels de l’UE<sup>459</sup>*

<b>The European Regional Development Fund (ERDF)</b>	<b>European Social Fund Plus (ESF+)/Fonds social européen en France FSE+</b>	<b>European Maritime, Fisheries and Aquaculture Fund (EM-FAF)</b>	<b>Internal Security Fund (ISF)</b>	<b>European Rural Development Fund (EAFRD) * Not part of the CFR Regulation anymore (as of 2023)</b>	<b>Sector programs 460</b>
EU funds for France: As part of the 2021-2027 program, France benefits from an envelope of 9.1 billion euros.	EU funds for France: For the period 2021-2027 up-to 6.7 billion euros.	EU funds for France: 600 million euros.	EU funds for France: –	EU funds EAFRD 2021-2027: In terms of transition: €4.3 billion as well as €866 million under the recovery plan.  For the period 2023-2027: 10 billion euros	Different individual levels, see below for an example in the LIFE program.
<b>Administrative authority:</b> INTERREG	<b>Managing Authority:</b> Federal Ministry of Labour/ <i>Ministère</i>	<b>Managing Authority:</b>	<b>Administrative</b>	<b>(Co-)Managing Authorities:</b> Ministry of Agriculture and Food/FranceAgriMer, créé	Ministry of Ecological Transition/

<sup>459</sup> All information displayed in the table above can be retrieved from these sites: see <https://www.europe-en-france.gouv.fr/fr/fonds-europeens/fonds-europeen-de-developpement-regional-FEDER>; <https://fse.gouv.fr/>; <https://www.reseaurural.fr/>

<sup>460</sup> Creative Europe (cf. Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe program (2021 to 2027) and repealing Regulation (EU) No 1295/2013 (Text with relevance for the EEA), EP/31/2021/INIT OJ L 189, 28.5.2021, p. 34–60), Managing Authority: Ministère de la Culture et le Centre National du Cinéma et de l’image animée et en plus Relais Culture Europe 132 rue du Faubourg Saint-Denis 75010 Paris + 33 1 53 40 95 10/Horizon Europe: program for research and innovation/LIFE: environment and climate program: Sub-program concerned Budget 2021-2027 Nature and biodiversity €2,143,000,000, Circular economy and quality of life €1,345,000,000, Climate Change Mitigation and Adaptation €947,000,000, Transition to clean energy €997,000,000/Erasmus +: program for education, training, youth and sport/ Citizens, equality, rights and values. Les autorités des gestion sont: Ministère de l’enseignement supérieur, de la recherche et de l’innovation (DREIC, Délégation aux relations européennes et internationales et à la coopération + les bureaux des gérations) et Agence Erasmus+ France en connexion avec Regions of France/Centre-Val de Loire region/Association of University Cities of France (AVUF) et en plus Les Points de Contact Nationaux (ERASMUS +/HORIZON), Ministère de la transition écologique (LIFE),

<p>shows the different regions in France if you zoom in, see <a href="https://inter-reg.eu/">https://inter-reg.eu/</a>.</p>	<p><i>du travail, de l'emploi et de l'insertion</i></p>	<p>all regions that are located on/or have a coast</p>	<p><b>authority:</b> –</p>	<p>par l'ordonnance 2009-325 du 25 mars 2009 ; Office de développement de l'économie agricole d'outre-mer (Odeadom)/ L'autorité de gestion du Programme Spécifique du Réseau Rural National (PSRRN)/Commissariat Général à l'Égalité des Territoires/ Régions de France<sup>461</sup></p>	<p>Ministry of Higher Education, Research and Innovation/Région Hauts-de-France Direction Europe – Service animation et montage de projets européens 151 Avenue du président Hoover 59555 LILLE CEDEX</p>
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Source: The authors. For further information see previous footnotes.

According to the Working Arrangement (WA 2024) of MICAF with the EPPO the NRRP (Resilience plan) division of the Ministry of Economy (Directorate General Treasury) is the highest competent authority selected to deal with irregularities in relation to the Resilience Facility funding area (see → Art. 2 WA). MICAF has published the national anti-fraud strategy in 2022. It is no guideline for investigators, but still, it helps to understand the **French thinking** in this area. The national audity authority, the CICC is described above, Mn. 32. Art 4 of the WA sets up **liaison points**, which are at the disposal of OLAF and the EPPO. Art. 6 WA refers to the obligations to report conduct (see above → Art. 26 EPPO Regulation, Art. 696-111). For further details we make you aware that the WA contains more information and this illustration is not exhaustive. 42

<sup>461</sup> See Livret d'accueil des membres du Réseau rural national, [https://www.reseaurural.fr/sites/default/files/documents/fichiers/2019-09/2019\\_rrf\\_broch\\_livret\\_accueil.pdf](https://www.reseaurural.fr/sites/default/files/documents/fichiers/2019-09/2019_rrf_broch_livret_accueil.pdf).

- 43 Article L311-2 *Code rural et de la pêche maritime*/ Rural and maritime fishing code  
 Art. 208–214 *Code des douanes*/Customs Code

**Art. 208 Customs Code**


1. In the area between the land border of the customs territory and a line located two kilometers below the line of the customs offices and brigades nearest to foreign countries, animals of the categories designated by order of the Minister of Economy and Finance and of the Minister of Agriculture must be declared by their holders at the nearest customs office.


2. This declaration constitutes the basis of an account opened by customs officers for each taxable person. This open account is annotated progressively with increases and decreases according to the declarations made by the taxable persons.

**(cc) Internal policies**

- 44 The internal policies also known as common policies are a common term for the fields of funding etc., and supporting the Member States e.g. in the area of the establishment of sustainability in the EU. All in all there are more than 300 policy fields.
- 45 The connection between internal policies and structural funds is the following: The five known funds are used to foster the internal policies. This is the reason the area of funding is large. As a result, the area of potential frauds is wide, not to say vast, too.

**(d) Administrative provisions in the area of the common organization of the markets = expenditure**

 *Nota bene:* The old market organization Act (*Code des marchés publics*) has been repealed and replaced by the Public Procurement/order Code/*Code de la commande publique* since 2015.<sup>462</sup>

 *Example:* An offer on the site of the *Centrale des Marchés* (purely domestic): Réalisation d'enquêtes pour la détermination du taux de fraude sur le réseau des transports de la Métropole Européenne de Lille.

- 46 Other fictitious examples we could think of may include all areas of procurement areas and strictly organized markets in the agriculture or technology sectors. Investigators need to be aware of changes due to political decisions. Fraudsters tend, according to common knowledge of prosecutors and analysts to defraud in areas, which are heavily financed. These are those areas, which are financed to reach a common political goal e.g. sustainability or the Green Deal. These issues might become prominent problems in the coming years till 2030.

<sup>462</sup> For further information Directorate General for Competition, Consumer Affairs and Fraud Prevention (DGCCRF), see <https://www.economie.gouv.fr/dgccrf/concurrence/Veiller-a-la-concurrence-dans-la-commande-publique>

**Article L-2141-1<sup>463</sup> Code de la commande publique**

Persons who have been the subject of a final conviction for one of the offenses provided for in Articles 222-34 to 222-40, 225-4-1, 225-4-7 are excluded from the procurement procedure. 313-1, 313-3, 314-1, 324-1, 324-5, 324-6, 421-1 to 421-2-4, 421-5, 432-10, 432-11, 432-12 to 432-16, 433-1, 433-2, 434-9, 434-9-1, 435-3, 435-4, 435-9, 435-10, 441-1 to 441-7, 441-9, 445-1 to 445-2-1 or 450-1 of the criminal code, to articles 1741 to 1743, 1746 or 1747 of the general code of taxes, or for concealment of such offences, as well as for equivalent offenses provided for by the legislation of another Member State of the European Union.

The final conviction for one of these offenses or for concealment of one of these offenses of a member of the management, administration, management or supervisory body or of a natural person who holds a power of representation, decision-making or control of a legal person entails the exclusion of this legal person from the procurement procedure, as long as this natural person exercises these functions.

Except when the penalty of exclusion from contracts has been imposed for a different period by a final court decision, exclusion from the procurement procedure under this article applies for a period of five years from the pronouncement of the sentence.

**Art. 2142-2****Art. 2141-3****Art. 1241-4**

**Art. 2141-5 et seq.** may apply, too.

And see: Sub-section 2: Abnormally low offers from subcontractors (Articles L2193-8 to L2193-9)

- Obligation to keep documents (Article L2196-1)
- Book 2, Provisions Specific to Partnership Contracts (Articles L2200-1 to L2236-1), Title II, Partnership procurement, Chapter II: Presentation of consultation documents, tenders and award criteria (Articles L2222-1 to L2222-5)
- Title II: Choice of Procurement Procedure (Articles R2121-1 to R2124-6)

47

<sup>463</sup> **Art. 2141-1 Code de la commande publique** Sont exclues de la procédure de passation des marchés les personnes qui ont fait l'objet d'une condamnation définitive pour l'une des infractions prévues aux articles 222-34 à 222-40, 225-4-1, 225-4-7, 313-1, 313-3, 314-1, 324-1, 324-5, 324-6, 421-1 à 421-2-4, 421-5, 432-10, 432-11, 432-12 à 432-16, 433-1, 433-2, 434-9, 434-9-1, 435-3, 435-4, 435-9, 435-10, 441-1 à 441-7, 441-9, 445-1 à 445-2-1 ou 450-1 du code pénal, aux articles 1741 à 1743, 1746 ou 1747 du code général des impôts, ou pour recel de telles infractions, ainsi que pour les infractions équivalentes prévues par la législation d'un autre Etat membre de l'Union européenne. La condamnation définitive pour l'une de ces infractions ou pour recel d'une de ces infractions d'un membre de l'organe de gestion, d'administration, de direction ou de surveillance ou d'une personne physique qui détient un pouvoir de représentation, de décision ou de contrôle d'une personne morale entraîne l'exclusion de la procédure de passation des marchés de cette personne morale, tant que cette personne physique exerce ces fonctions. Sauf lorsque la peine d'exclusion des marchés a été prononcée pour une durée différente par une décision de justice définitive, l'exclusion de la procédure de passation des marchés au titre du présent article s'applique pour une durée de cinq ans à compter du prononcé de la condamnation.

- Title VI: Rules Applicable to Award Procedures and Purchasing Techniques (Articles R2161-1 to R2162-66)

**(e) Administrative provisions in the area of direct expenditure**

48 In the area of direct expenditure, the direct management i.e. the control and managing by one main authority (mainly the Commission itself) is the main source of money transfers. If it is the European Commission, its agencies and delegations that manage the EU budget in this area, they are competent to supervise i.e. exercise supervision and the accounting of projects in this area. The EU Commission runs e.g. the Funding and Tenders Portal (SEDIA) for this special area. The whole direct expenditure area is not immune to fraud. It can be said that it is prone to procurement, or procurement related fraud (causing damage to the expenditure side of the budget).<sup>464</sup> OLAF describes and displays investigations in this area as follows:

49 **„Direct expenditure**

Accounting for 14% of the EU budget, this is expenditure allocated and directly managed by EU institutions, bodies, agencies alone (not jointly with national authorities, as with the structural funds). Beneficiaries are located in EU countries.

It includes expenditure in, among others, the following areas:

- research and innovation (e.g. Horizon Europe programme)
- education, training and mobility of young people (e.g. ERASMUS+ programme)
- supporting the competitiveness of industry and in particular of micro, small and medium-sized enterprises (e.g. Single Market programme)
- environment and climate action (LIFE programme)
- improving the capacity of the EU to face security threats (Internal Security Fund)
- European public administration.

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<sup>464</sup> See OECD 2019, online: <https://www.oecd.org/gov/ethics/prevention-fraud-corruption-european-funds.pdf>, p. 7, 14: “The implementation stage of the project cycle brings with it numerous fraud and corruption risks due to the number of actors potentially involved in project implementation and the complexity of some of the processes at this stage. For projects with high investment value, such as large-scale infrastructure projects, this stage becomes even more vulnerable to fraud and corruption. Furthermore, tenders put out either directly by the MA or beneficiary are common during the implementation stage, and procurement processes are notoriously prone to fraud and corruption. As shown in the illustrated schemes in the final part of the guide, there are a number of procurementspecific risks that occur at this stage. For example, members of an MA or beneficiary may tailor tender specifications or leak commercially sensitive tender information to favour one particular company or individual. Companies or contractors may also take part in collusive bidding schemes to manipulate competitive procedures. Responses from an OECD survey that was distributed to programme authorities show that procurement-related fraud and corruption risks at the level of beneficiaries are sometimes overlooked in risk analysis activities. In addition, some MAs generally base the identification of fraud risks on their own experience, without any additional input from other knowledgeable actors. Outside of the procurement process, perpetrators employ other tactics to siphon off funds and defraud the EU budget. For example, a beneficiary may fabricate fictitious works, services or activities, or inflate labour costs. In attempt to cover up fraudulent or corrupt behaviour or to justify non-eligible expenditure, perpetrators may manipulate documents and submit fictitious invoices. In some cases, perpetrators may even attempt to bribe officials or staff within programme authorities to conceal the scheme.”

As a rule, national authorities are not involved in investigating fraud affecting direct expenditure.”<sup>465</sup>

In the area of direct expenditure beneficiaries subject themselves often under the regime of civil and administrative anti-fraud clauses, which are usually enshrined in the contract between the recipient and the monitoring payment office.

50

*Example:* The EU Commission supports large infrastructure projects.



OLAF has a **special unit**, which is competent to investigate and detect irregularities in the area of direct expenditure:

- **Direct Expenditure – Operations and Investigations (OLAF.A.2)** Rue Joseph II 30 / Josef II-straat 30, 1000, (postal office Box: 1049), Bruxelles / Brussel Belgium<sup>466</sup>

#### **(f) Administrative provisions in the area of external aid = expenditure**

In the area of indirect management, the budget is implemented by various actors that have to carry out delegated tasks, which the Commission carries out itself in the area of direct management.<sup>467</sup> In France this may be special institutions like intergovernmental organizations that operate from French territory and are subject to French law.

51

*Nota bene:* The **EU Aid explorer** can be used to discover beneficiaries and funding schemes.<sup>468</sup> A common fraud scheme in this area is the „manipulation of tender processes”.<sup>469</sup>



<sup>465</sup> OLAF, Information on Investigations related to EU expenditure, [https://ec.europa.eu/anti-fraud/investigations/investigations-related-eu-expenditure\\_hr](https://ec.europa.eu/anti-fraud/investigations/investigations-related-eu-expenditure_hr).

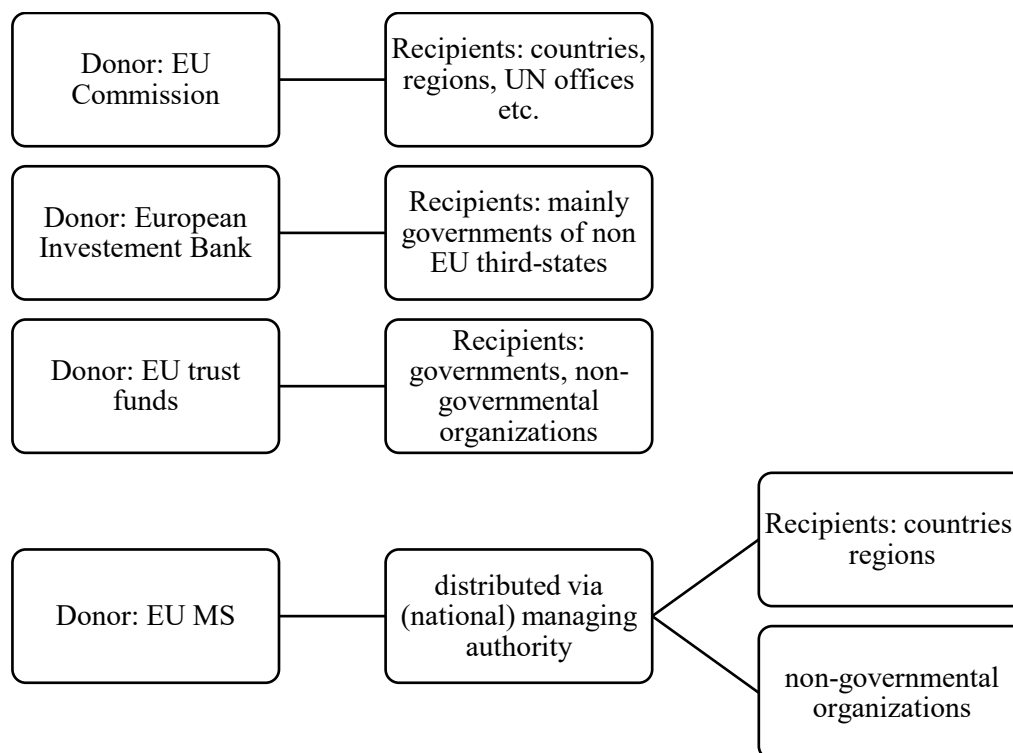
<sup>466</sup> EU, WHOisWHO, [https://op.europa.eu/en/web/who-is-who/organization/-/organization/OLAF/COM\\_CRF\\_230282](https://op.europa.eu/en/web/who-is-who/organization/-/organization/OLAF/COM_CRF_230282).

<sup>467</sup> EU Commission, Funding by management mode, [https://ec.europa.eu/info/funding-tenders/find-funding/funding-management-mode\\_en](https://ec.europa.eu/info/funding-tenders/find-funding/funding-management-mode_en).

<sup>468</sup> EU external aid explorer, [https://euaidexplorer.ec.europa.eu/index\\_en](https://euaidexplorer.ec.europa.eu/index_en).

<sup>469</sup> OLAF, Success Stories, May 2022, [https://ec.europa.eu/anti-fraud/investigations/success-stories\\_en#external-aid](https://ec.europa.eu/anti-fraud/investigations/success-stories_en#external-aid).

Figure 15 EU external aid/expenditure (indirect management): Art. 3 OLAF Regulation on-the-spot inspections to discover EU external aid expenditure-related frauds



Source: EU Commission Donor Website.

- 52 For the investigations in the area of external aid OLAF can make use of Administrative Cooperation Agreements (ACAs).<sup>470</sup>
- 53 In France a special national agency is competent for regional aid: *l'Agence nationale de la cohésion des territoires et du Ministère de la Cohésion des territoires et des Relations avec les collectivités territoriales*.
- 54 For the new programming period from 2021–2027 Article 23 of Regulation (EU) 2021/1057 stipulates annual updates for the ESF+ program and European support for food aid”. The French managing authorities act under national law and thus face as well national administrative investigations and the national criminal investigations (see above → Part B.).
- 55 If a French managing authority grants money from a social fund to a recipient like the UN, or a World Bank program or to the French Red Cross, which acts on other continents, it is supervised by the French Ministries competent to allocate the funds from one of these funds. The Directorate General for Social Cohesion (DGCS)/ *la direction générale de la cohésion sociale (DGCS)* has a special competence to manage the allocation of funds to certain recipients.

<sup>470</sup> OLAF, State of Play – June 2021 Administrative Cooperation Arrangements (ACAs) with partner authorities in non-EU countries and territories and counterpart administrative investigative services of International Organisations, [https://ec.europa.eu/anti-fraud/system/files/2021-07/list\\_signed\\_acas\\_en\\_7fd50a9cbe.pdf](https://ec.europa.eu/anti-fraud/system/files/2021-07/list_signed_acas_en_7fd50a9cbe.pdf).



- Order of 3 December 2021 relating to the list of legal persons selected to benefit from foodstuffs obtained from credits from the European Social Fund Plus (ESF+) in favour of the fight against material deprivation provided for by Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+)<sup>471</sup>

**(2) Investigative powers (*Les pouvoirs de l'enquête de l'administration*) (further explored by single provisions)**

**(a) Investigative powers in the area of customs duties and VAT (Customs Code, General Tax Code)**

**(aa) Customs-related investigative powers**

Investigative powers in the area of customs duties are mainly based on the Customs Code<sup>472</sup>. Relevant provisions are displayed on the following pages:

*Sources and national sections 7 Overview for France – Investigation powers in the area of customs duties and VAT (Code des douanes)* 57

**Chapter IV: Powers of customs officers (Articles 60 to 67 quinquies B)**

Section 1: Right of inspection of goods, means of transport and persons. (Rules 60 to 63 bis)

Section 60 Rule 60a Section 61 Rule 61a Section 62 Section 63 Rule 63a

Section 2: Right of access to premises and places for professional use and home visits. (Articles 63 ter to 64)

Article 63b Section 64

Section 3: Right of communication (Articles 64 A to 65 quinquies)

Paragraph 1: Right of communication of the administration of finances. (Articles 64 A to 64 B)

Section 64a Article 64B

Paragraph 2: Right of communication particular to the customs administration. (Articles 65 to 65 quinquies)

Section 65 Rule 65a Article 65b Article 65c Article 65d

Section 4: Controls of certain operations carried out within the framework of the European Community. (Articles 65 A to 65 C)

Section 65a Article 65aa Article 65B Article 65c

Section 5: Customs Controls of Mail Items. (Articles 66 to 66 bis)

Section 66 Rule 66a

Section 6: Presentation of titles and identity documents (Articles 67 to 67-1)

Section 67 Section 67-1

Section 7: Special customs investigation procedures (Articles 67 bis to 67 bis-4)

Rule 67a Article 67 bis-1 A Article 67 bis-1 Article 67 bis-2 Article 67 bis-3 Article 67 bis-4

Section 7 bis: Joint investigation teams (Article 67 ter A)

<sup>471</sup> Arrêté du 3 décembre 2021 relatif à la liste des personnes morales retenues pour bénéficier des denrées obtenues des crédits du Fonds social européen plus (FSE+) en faveur de la lutte contre la privation matérielle prévu par le règlement (UE) 2021/1057 du Parlement européen et du Conseil du 24 juin 2021 instituant le Fonds social européen plus (FSE+).

<sup>472</sup> Vervaele 2002, 181 (197 et seq.).

Article 67b A

Section 8: Provisional detention of persons (Article 67 ter)

Article 67b

Section 9: Control of titles (Article 67 quater)

Article 67c

Section 10: Employment of qualified persons (Article 67 quinquies A)

Article 67d A

Section 11: Taking samples (Article 67 quinquies B)

Article 67d B

**58 [Special contents]**

Title II: Organization and operation of the customs service (Art. 43–67F.), Chapter IV: Powers of customs officers (Articles 60 to 67 quinquies B), Section 1: Right of inspection of goods, means of transport and persons. (Art. 60 to 63 bis), Art. 60, 60a 61, 61bis, 62, 63, 63bis

Section 2: Right of access to premises and places for professional use and home visits. (Articles 63 ter to 64), Article 63ter, 64<sup>473</sup>

- Art. 65 (general inspection right, the so-called *droit de communication*: „*peuvent exiger la communication des papiers et documents de toute nature relatifs aux opérations intéressant leur service*”
- Art. 342, 343, 343bis, 344

! See as well → Art. L. 16B. Tax Procedures Code (on the following pages), which might apply as well as in the customs area.

**(bb) Tax-related investigative powers**

**59** Investigative powers in the area of tax irregularities must be distinguished from tax supervision powers and it must be clear that tax „investigators” are no prosecutors but administrative supervisory officers.<sup>474</sup> Art. L80 and Art. L38 Tax Procedures Code can be presented below.

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<sup>473</sup> Titre II: Organisation et fonctionnement du service des douanes (Articles 43 à 67 F), **Chapitre IV: Pouvoirs des agents des douanes (Articles 60 à 67 quinquies B)**

**Section 1: Droit de visite des marchandises, des moyens de transport et des personnes. (Articles 60 à 63 bis)**

Article 60

Article 60 bis

Article 61

Article 61 bis

Article 62

Article 63

Article 63 bis

**Section 2: Droit d'accès aux locaux et lieux à usage professionnel et visites domiciliaires. (Articles 63 ter à 64)**

Article 63 ter

Article 64

<sup>474</sup> See already Vervaele, J.A.E., 5. France, in: Vervaele, J.A.E. (ed.), *European Cooperation between Tax, Customs and Judicial Authorities, The Netherlands, England and Wales, France and Germany*, Wolters Kluwer academic Publishers, The Hague/London/New York, 2002, 181 (193 et seq.).

**Art. L. 80 J Livre des procédures fiscales<sup>475</sup> Tax Procedures Code**

To prevent breaches of the invoicing rules referred to in Article L. 80 I, customs officers may, within the framework of the provisions of Articles 60 and 61 of the Customs Code, carry out checks on means of transport for professional use and of their load and to be presented with the professional documents of any kind in the possession of the driver.

They may take copies of these documents and communicate them to the competent services of the Directorate General of Public Finances.

They may be assisted during these checks by agents of the Directorate General of Public Finances

**Art. L. 16B.**<sup>476</sup> I. – When the judicial authority, seized by the tax administration, considers that there are presumptions that a taxpayer is evading the establishment or payment of taxes on income or profits or taxes on turnover by engaging in purchases or

<sup>475</sup> **Art. L.80 J Livre des procédures fiscales**

Pour prévenir les manquements aux règles de facturation visées à l'article L. 80 I, les agents des douanes peuvent, dans le cadre des dispositions des articles 60 et 61 du code des douanes, procéder au contrôle des moyens de transport à usage professionnel et de leur chargement et se faire présenter les documents professionnels de toute nature en la possession du conducteur.

Ils peuvent prendre copie de ces documents et les communiquer aux services compétents de la direction générale des finances publiques.

Ils peuvent se faire assister lors de ces contrôles par des agents de la direction générale des finances publiques.

<sup>476</sup> **Art. L. 16B. Livre des procédures fiscales**

I. – Lorsque l'autorité judiciaire, saisie par l'administration fiscale, estime qu'il existe des présomptions qu'un contribuable se soustrait à l'établissement ou au paiement des impôts sur le revenu ou sur les bénéfices ou des taxes sur le chiffre d'affaires en se livrant à des achats ou à des ventes sans facture, en utilisant ou en délivrant des factures ou des documents ne se rapportant pas à des opérations réelles ou en omettant sciemment de passer ou de faire passer des écritures ou en passant ou en faisant passer sciemment des écritures inexactes ou fictives dans des documents comptables dont la tenue est imposée par le code général des impôts, elle peut, dans les conditions prévues au II, autoriser les agents de l'administration des impôts, ayant au moins le grade d'inspecteur et habilités à cet effet par le directeur général des finances publiques, à rechercher la preuve de ces agissements, en effectuant des visites en tous lieux, même privés, où les pièces et documents s'y rapportant sont susceptibles d'être détenus ou d'être accessibles ou disponibles et procéder à leur saisie, quel qu'en soit le support.

II. – Chaque visite doit être autorisée par une ordonnance du juge des libertés et de la détention du tribunal judiciaire dans le ressort duquel sont situés les lieux à visiter.

Lorsque ces lieux sont situés dans le ressort de plusieurs juridictions et qu'une visite simultanée doit être menée dans chacun d'eux, une ordonnance unique peut être délivrée par l'un des juges des libertés et de la détention territorialement compétents.

Le juge doit vérifier de manière concrète que la demande d'autorisation qui lui est soumise est bien fondée ; cette demande doit comporter tous les éléments d'information en possession de l'administration de nature à justifier la visite.

L'ordonnance comporte:

- a) L'adresse des lieux à visiter ;
- b) Le nom et la qualité du fonctionnaire habilité qui a sollicité et obtenu l'autorisation de procéder aux opérations de visite ;
- c) L'autorisation donnée au fonctionnaire qui procède aux opérations de visite de recueillir sur place, dans les conditions prévues au III bis, des renseignements et justifications auprès de l'occupant des lieux ou de son représentant et, s'il est présent, du contribuable mentionné au I, ainsi que l'autorisation de demander à ceux-ci de justifier pendant la visite de leur identité et de leur adresse, dans les mêmes conditions.
- d) La mention de la faculté pour le contribuable de faire appel à un conseil de son choix.

L'exercice de cette faculté n'entraîne pas la suspension des opérations de visite et de saisie.

Le juge motive sa décision par l'indication des éléments de fait et de droit qu'il retient et qui laissent présumer, en l'espèce, l'existence des agissements frauduleux dont la preuve est recherchée.

sales without an invoice, by using or issuing invoices or documents not relating to actual transactions or by knowingly omitting to make or cause to be made any entries or by making or by knowingly passing inaccurate or fictitious entries in accounting documents whose keeping is required by the General Tax Code, it may, under the conditions provided for in II, authorize tax administration officials, having at least the rank of inspector and authorized for this purpose by the Director General of Public Finance, to seek proof of these actions, by carrying out visits to all places, even private ones, where the items and documents relating thereto are likely to be held or be accessible or available and proceed to their seizure, whatever the medium.

Si, à l'occasion de la visite, les agents habilités découvrent l'existence d'un coffre dans un établissement de crédit ou une société de financement dont la personne occupant les lieux visités est titulaire et où des pièces et documents se rapportant aux agissements visés au I sont susceptibles de se trouver, ils peuvent, sur autorisation délivrée par tout moyen par le juge qui a pris l'ordonnance, procéder immédiatement à la visite de ce coffre. Mention de cette autorisation est portée au procès-verbal prévu au IV.

Si, à l'occasion de la visite, les agents habilités découvrent des éléments révélant l'existence en d'autres lieux de pièces et documents se rapportant aux agissements mentionnés au I, ils peuvent, en cas d'urgence, sur autorisation délivrée par tout moyen par le juge qui a pris l'ordonnance, procéder immédiatement à la visite de ces lieux aux fins de saisie de ces pièces et documents. Mention de cette autorisation est portée au procès-verbal prévu au IV.

La visite et la saisie de documents s'effectuent sous l'autorité et le contrôle du juge qui les a autorisées. A cette fin, il donne toutes instructions aux agents qui participent à ces opérations.

Il désigne le chef du service qui nomme l'officier de police judiciaire chargé d'assister à ces opérations et de le tenir informé de leur déroulement.

Lorsqu'elles ont lieu en dehors du ressort de son tribunal judiciaire, il délivre une commission rogatoire, pour exercer le contrôle mentionné au treizième alinéa du présent II, au juge des libertés et de la détention dans le ressort duquel s'effectue la visite.

Le juge peut, s'il l'estime utile, se rendre dans les locaux pendant l'intervention.

A tout moment, il peut décider la suspension ou l'arrêt de la visite.

L'ordonnance est exécutoire au seul vu de la minute.

L'ordonnance est notifiée verbalement et sur place au moment de la visite, à l'occupant des lieux ou à son représentant qui en reçoit copie intégrale contre récépissé ou émargement au procès-verbal prévu au IV. En l'absence de l'occupant des lieux ou de son représentant, l'ordonnance est notifiée, après la visite, par lettre recommandée avec avis de réception. La notification est réputée faite à la date de réception figurant sur l'avis.

A défaut de réception, il est procédé à la signification de l'ordonnance par acte d'huissier de justice.

Le délai et la voie de recours sont mentionnés dans l'ordonnance.

L'ordonnance peut faire l'objet d'un appel devant le premier président de la cour d'appel dans le ressort de laquelle le juge a autorisé la mesure. Les parties ne sont pas tenues de constituer avocat.

Suivant les règles prévues par le code de procédure civile, cet appel doit être exclusivement formé par déclaration remise ou adressée, par pli recommandé ou, à compter du 1er janvier 2009, par voie électronique, au greffe de la cour dans un délai de quinze jours. Ce délai court à compter soit de la remise, soit de la réception, soit de la signification de l'ordonnance. Cet appel n'est pas suspensif.

Le greffe du tribunal judiciaire transmet sans délai le dossier de l'affaire au greffe de la cour d'appel où les parties peuvent le consulter.

L'ordonnance du premier président de la cour d'appel est susceptible d'un pourvoi en cassation, selon les règles prévues par le code de procédure civile. Le délai du pourvoi en cassation est de quinze jours.

III. – La visite, qui ne peut être commencée avant six heures ni après vingt et une heures, est effectuée en présence de l'occupant des lieux ou de son représentant ; en cas d'impossibilité, l'officier de police judiciaire requiert deux témoins choisis en dehors des personnes relevant de son autorité ou de celle de l'administration des impôts.

Les agents de l'administration des impôts mentionnés au I peuvent être assistés d'autres agents des impôts habilités dans les mêmes conditions que les inspecteurs.

Les agents des impôts habilités, l'occupant des lieux ou son représentant et l'officier de police judiciaire peuvent seuls prendre connaissance des pièces et documents avant leur saisie.

L'officier de police judiciaire veille au respect du secret professionnel et des droits de la défense conformément aux dispositions du troisième alinéa de l'article 56 du code de procédure pénale ; l'article 58 de ce code est applicable.

II. – Each visit must be authorized by an order from the judge of freedoms and detention of the judicial court in whose jurisdiction the places to be visited are located.

When these places are located within the jurisdiction of several jurisdictions and a simultaneous visit must be carried out in each of them, a single order may be issued by one of the territorially competent liberty and detention judges.

The judge must concretely verify that the request for authorization submitted to him is well-founded; this request must include all the information in the possession of the administration likely to justify the visit.

The order includes:

- a) The address of the places to be visited;
- b) The name and capacity of the authorized official who requested and obtained the authorization to carry out the inspection operations;
- c) The authorization given to the official who carries out the inspection operations to collect on the spot, under the conditions provided for in III bis, information and justifications from the occupant of the premises or his representative and, if he is present, of the taxpayer mentioned in I, as well as the authorization to ask them to prove their identity and address during the visit, under the same conditions.
- d) Mention of the option for the taxpayer to call upon counsel of his choice.

The exercise of this option does not result in the suspension of inspection and seizure operations.

The judge justifies his decision by indicating the elements of fact and law that he retains and which suggest, in this case, the existence of the fraudulent acts whose proof is sought.

If, during the visit, the authorized agents discover the existence of a safe in a credit institution or a financing company of which the person occupying the places visited is the holder and where documents and documents relating to the actions referred to in I are likely to be found, they may, upon authorization issued by any means by the judge who issued the order, proceed immediately to inspect this safe. Mention of this authorization is recorded in the minutes provided for in IV.

If, during the visit, the authorized agents discover elements revealing the existence in other places of exhibits and documents relating to the actions mentioned in I, they may, in the event of an emergency, with authorization issued by any means by the judge who issued the order, immediately proceed to the visit of these places for the purpose of seizure of these exhibits and documents. Mention of this authorization is recorded in the minutes provided for in IV.

The inspection and seizure of documents are carried out under the authority and control of the judge who authorized them. To this end, he gives all instructions to the agents who take part in these operations.

He appoints the head of the service who appoints the judicial police officer responsible for assisting in these operations and keeping him informed of their progress.

When they take place outside the jurisdiction of his court, he issues a letter rogatory, to exercise the control mentioned in the thirteenth paragraph of this II, to the judge of freedoms and detention in whose jurisdiction the visit is carried out.

The judge may, if he deems it useful, visit the premises during the intervention.

At any time, he can decide to suspend or end the visit.

The order is enforceable at the sole sight of the minute.

The order is notified verbally and on the spot at the time of the visit, to the occupant of the premises or to his representative who receives a full copy against receipt or signature in the minutes provided for in IV. In the absence of the occupant of the premises or his representative, the order is notified, after the visit, by registered letter with acknowledgment of receipt. Notification is deemed to have been made on the date of receipt appearing on the notice.

Failing receipt, the order is served by bailiff.

The deadline and the remedy are mentioned in the order.

The order may be appealed to the first president of the court of appeal in whose jurisdiction the judge authorized the measure. The parties are not required to appoint a lawyer.

According to the rules provided for by the Code of Civil Procedure, this appeal must be made exclusively by declaration delivered or sent, by registered letter or, from January 1, 2009, electronically, to the court office within fifteen days. . This period runs from either the delivery, or receipt, or service of the order. This appeal is not suspensive.

The clerk of the court of law sends the case file without delay to the clerk of the court of appeal where the parties can consult it.

The order of the first president of the court of appeal is subject to appeal in cassation, according to the rules provided for by the code of civil procedure. The time limit for appeal in cassation is fifteen days.

III. – The visit, which cannot begin before six o'clock or after nine o'clock, is carried out in the presence of the occupant of the premises or his representative; in case of impossibility, the judicial police officer requires two witnesses chosen outside the persons coming under his authority or that of the tax administration.

The tax administration agents mentioned in I may be assisted by other authorized tax agents under the same conditions as the inspectors.

Authorized tax agents, the occupant of the premises or his representative and the judicial police officer alone may examine the exhibits and documents before their seizure.

The judicial police officer ensures respect for professional secrecy and the rights of the defense in accordance with the provisions of the third paragraph of article 56 of the code of criminal procedure; article 58 of this code is applicable.

IIIa. — During the visit, the authorized tax officials may collect, on the spot, information and justifications concerning the actions of the taxpayer mentioned in I from the occupant of the premises or his representative and, if he is present, from that taxpayer, after informing them that their consent is required. This information and justifications are

recorded in a report appended to the minutes mentioned in IV and which is drawn up by the tax agents and signed by these agents, the persons whose information and justifications have been collected as well as the police officer judiciary present.

Tax officials may ask the occupant of the premises or his representative and the taxpayer, if they consent, to provide proof of their identity and address.

Mention of the consents is recorded in the report as well as, where applicable, the refusal to sign.

IV. – A report describing the methods and progress of the operation and recording the findings made is drawn up immediately by the tax administration officials. An inventory of the exhibits and documents seized is attached to it if applicable. The report and the inventory are signed by the agents of the tax administration and by the judicial police officer as well as by the persons mentioned in the first paragraph of III; in the event of refusal to sign, this is mentioned in the minutes.

If the on-site inventory presents difficulties, the items and documents seized are placed under seal. The occupant of the premises or his representative is informed that he can attend the opening of the seals which takes place in the presence of the judicial police officer; the inventory is then drawn up.

IVa. – When the occupant of the premises or his representative obstructs access to the exhibits or documents present on a computer medium, their reading or their entry, a mention of this is made in the minutes.

The agents of the tax administration can then proceed to the copy of this support and seize the latter, which is placed under seal. They have fifteen days from the date of the visit to access the items or documents present on the computer medium placed under seal, to read and enter them, as well as to return it and its copy. This period is extended on authorization issued by the judge of freedoms and detention.

For the sole purpose of allowing the reading of the exhibits or documents present on the computer medium placed under seal, the agents of the tax administration carry out the operations necessary for their access or their clarification. These operations are performed on the copy of the medium.

The occupant of the premises or his representative is informed that he can attend the opening of the seals, the reading and the seizure of the exhibits and documents present on this computer medium, which take place in the presence of the police officer. judicial.

A report describing the operations carried out to gain access to these exhibits and documents, to clarifying them and reading them is drawn up by the agents of the tax administration. An inventory of the items and documents seized is attached to it, if applicable.

The report and the inventory are signed by the agents of the tax administration and by the judicial police officer as well as by the occupant of the premises or his representative; in his absence or in the event of refusal to sign, this is mentioned in the minutes.

The computer medium and its copy are returned at the same time. In the absence of the occupant of the premises or his representative, the administration then immediately takes all steps to return them.

V. – The originals of the report and the inventory are, as soon as they have been drawn up, sent to the judge who authorized the visit; a copy of these same documents is given to the occupant of the premises or his representative. A copy is also sent by registered letter with acknowledgment of receipt to the presumed author of the acts mentioned in I, notwithstanding the provisions of article L. 103.

The items and documents seized are returned to the occupant of the premises within six months of the visit; however, when criminal proceedings are instituted, their return is authorized by the competent judicial authority.

The minutes and the inventory mention the deadline and the means of appeal.

The first president of the court of appeal in whose jurisdiction the judge authorized the measure hears appeals against the progress of the inspection or seizure operations. The parties are not required to appoint a lawyer.

According to the rules provided for by the Code of Civil Procedure, this appeal must be lodged exclusively by declaration delivered or addressed, by registered letter or, from January 1, 2009, electronically, at the court registry within fifteen days. . This period runs from the delivery or receipt either of the report or of the inventory, mentioned in the first paragraph. This appeal is not suspensive.

The order of the first president of the court of appeal is subject to appeal in cassation according to the rules provided for by the code of civil procedure. The time limit for appeal in cassation is fifteen days.

VI. – The tax administration can only set up against the taxpayer the information collected, including that resulting from the processing mentioned in the third paragraph, after the return of the items and documents seized or their reproduction and implementation of the control procedures referred to in first and second paragraphs of article L. 47.

However, if, at the end of a period of thirty days following the notification of a formal notice sent to the taxpayer, to which is attached a summary of the steps taken by the administration for the return of the items and documents seized or of their reproduction, these could not be returned because of the taxpayer, the information collected is opposable to the latter after implementation of the control procedures mentioned in the first and second paragraphs of Article L. 47 and in the conditions provided for in article L. 76 C.

In the presence of accounts kept by means of computerized systems entered under the conditions provided for in this article, the administration communicates to the taxpayer, at the latest when sending the proposal for rectification provided for in the first paragraph of article L 57 or the notification provided for in Article L. 76, in dematerialized form or not at the latter's choice, the nature and the result of the computer processing carried out on this entry which contributes to enhancements, without this processing constituting the start of an accounting verification procedure. The taxpayer is informed of the names and administrative addresses of the agents by whom, and under whose control, the operations are carried out.



**Art. 16-0-BA<sup>477</sup>** I. – When, within the framework of the procedures mentioned in Articles L. 16 B, L. 16 D, L. 80 F and L. 80 Q, of the on-site verification of the value added

<sup>477</sup> **Art. L16-0-BA Livre des procédures fiscales**

I. – Lorsque, dans le cadre des procédures mentionnées aux articles L. 16 B, L. 16 D, L. 80 F et L. 80 Q, de la vérification sur place de la taxe sur la valeur ajoutée, ainsi que dans le cadre du contrôle inopiné mentionné au dernier alinéa de l'article L. 47, les agents de l'administration des impôts ayant au moins le grade de contrôleur constatent pour un contribuable se livrant à une activité professionnelle et au titre des périodes pour lesquelles l'une des obligations déclaratives prévues aux articles 87-0 A, 170,172,223 et 287 du code général des impôts n'est pas échue, l'un au moins des faits suivants:

1° L'exercice d'une activité que le contribuable n'a pas fait connaître à un centre de formalité des entreprises ou au greffe du tribunal de commerce, sauf s'il a satisfait, au titre d'une période antérieure, à l'une de ses obligations fiscales déclaratives ;

1° bis L'absence du respect d'au moins deux des obligations déclaratives prévues aux articles 87-0 A, 170,172,223 et 287 du code général des impôts, au titre de la dernière période échue ;

1° ter L'absence réitérée du respect d'au moins une des obligations déclaratives prévues aux articles 87-0 A, 170,172 et 223 et au 3 de l'article 287 du code général des impôts, durant les deux dernières périodes échues ;

2° La délivrance de factures ne correspondant pas à la livraison d'une marchandise ou à l'exécution d'une prestation de services, ou de factures afférentes à des livraisons de biens ou à des prestations de services au titre desquelles la taxe sur la valeur ajoutée ne peut faire l'objet d'aucune déduction en application du 3 de l'article 272 du code général des impôts ou la comptabilisation de telles factures reçues ;

3° Lorsqu'ils sont de nature à priver la comptabilité de valeur probante:

a) La réitération d'achats, de ventes ou de prestations non comptabilisés ;

b) L'utilisation d'un logiciel de comptabilité ou de caisse aux fins de permettre la réalisation de l'un des faits mentionnés au 1° de l'article 1743 du code général des impôts ;

4° Une infraction aux interdictions mentionnées à l'article L. 8221-1 du code du travail ;

5° L'absence réitérée du respect de l'obligation déclarative prévue au 2 de l'article 287 du code général des impôts, ils peuvent, en cas de circonstances susceptibles de menacer le recouvrement d'une créance fiscale de la nature de celle mentionnée au premier alinéa, dresser à l'encontre de ce contribuable un procès-verbal de flagrance fiscale. Le procès-verbal de flagrance fiscale est signé par les agents de l'administration des impôts ainsi que par le contribuable, son représentant ou la personne recevant les agents de l'administration des impôts, hormis les cas dans lesquels l'infraction mentionnée au 1 de l'article 1746 du code général des impôts a été constatée. En cas de refus de signer, mention en est faite au procès-verbal.

L'original du procès-verbal est conservé par l'administration des impôts et copie est notifiée au contribuable.

I bis. – Lorsque les agents mentionnés au premier alinéa du I sont informés, dans les conditions prévues au 1 de l'article 1649 quater-0 B bis du code général des impôts, de l'exercice par le contribuable d'une activité entrant dans le champ d'application du 2 du même article au titre de la période en cours pour laquelle l'une des obligations déclaratives prévues aux articles 87-0 A, 170,172,223 et 287 du même code n'est pas échue, ils peuvent, en cas de circonstances susceptibles de menacer le recouvrement d'une créance fiscale, dresser à l'encontre de ce contribuable un procès-verbal de flagrance fiscale.

Le procès-verbal de flagrance fiscale est signé par les agents de l'administration des impôts.

L'original du procès-verbal est conservé par l'administration des impôts et copie est notifiée au contribuable.

La décision de faire application du présent I bis est prise par un agent de catégorie A détenant au moins un grade fixé par décret en Conseil d'Etat, qui vise à cet effet le procès-verbal de flagrance fiscale.

I ter. – Lorsqu'une infraction mentionnée au 4° du I a été constatée par des agents de contrôle autres que ceux de l'administration des impôts et que ces derniers en ont été informés dans les conditions prévues aux articles L. 82 C ou L. 101, ils peuvent, dans le cadre de l'une des procédures énumérées au premier alinéa du I du présent article, en cas de circonstances susceptibles de menacer le recouvrement d'une créance fiscale de la nature de celle mentionnée à ce même alinéa, dresser à l'encontre du contribuable un procès-verbal de flagrance fiscale.

Le procès-verbal de flagrance fiscale est signé par les agents de l'administration des impôts ainsi que par le contribuable, son représentant ou la personne recevant les agents de l'administration des impôts, hormis les cas dans lesquels l'infraction visée au 1 de l'article 1746 du code général des impôts a été constatée. En cas de refus de signer, mention en est faite au procès-verbal.

L'original du procès-verbal est conservé par l'administration des impôts et copie est notifiée au contribuable.

II. – La notification du procès-verbal de flagrance fiscale permet d'effectuer les mesures conservatoires mentionnées à l'article L. 252 B.

tax, as well as in the framework of the unannounced control mentioned in the last paragraph of article L. 47, the agents of the tax administration having at least the rank of controller note for a taxpayer engaging in a professional activity and for the periods for which the one of the reporting obligations provided for in articles 87-0 A, 170, 172, 223 and 287 of the General Tax Code has not expired, at least one of the following facts:

1° The exercise of an activity that the taxpayer has not made known to a business formality center or to the registry of the commercial court, unless he has satisfied, for a previous period, the one of its tax reporting obligations;

1° bis Failure to comply with at least two of the reporting obligations provided for in Articles 87-0 A, 170, 172, 223 and 287 of the General Tax Code, for the last period expired;

1° ter Repeated failure to comply with at least one of the reporting obligations provided for in Articles 87-0 A, 170, 172 and 223 and 3 of Article 287 of the General Tax Code, during the last two periods due;

2° The issuance of invoices not corresponding to the delivery of goods or the performance of a provision of services, or of invoices relating to the delivery of goods or the provision of services in respect of which the tax on the added value cannot be subject to any deduction pursuant to 3 of article 272 of the general tax code or the accounting of such invoices received;

3° When they are of a nature to deprive the accounts of probative value:

a) Reiteration of unrecognized purchases, sales or services;

III. – Lorsque le procès-verbal de flagrante fiscale a été dressé dans le cadre de la procédure prévue à l'article L. 16 B, l'administration peut, par dérogation au VI de ce même article, utiliser pour la détermination du montant mentionné à l'article L. 252 B les informations recueillies au cours de cette procédure.

Lorsque le procès-verbal de flagrante fiscale a été dressé dans le cadre de la procédure prévue à l'article L. 80 F, l'administration peut, par dérogation à l'article L. 80 H, utiliser pour la détermination du montant mentionné à l'article L. 252 B les informations recueillies au cours de cette procédure.

L'administration peut se fonder, pour la détermination du montant mentionné à l'article L. 252 B, sur des renseignements et informations obtenus de tiers, en application des articles L. 81 et suivants.

IV. – Pour arrêter le montant mentionné à l'article L. 252 B, l'administration est fondée à consulter sur place les registres et documents de toute nature, notamment ceux dont la tenue est prévue par le code général des impôts et par le code de commerce. A cet effet, l'administration peut obtenir ou prendre copie des documents utiles, par tous moyens et sur tous supports.

Un procès-verbal relatant les opérations effectuées est établi. Il est signé par l'agent de l'administration des impôts ainsi que par le contribuable, son représentant ou la personne recevant les agents de l'administration des impôts. En cas de refus de signer, mention en est faite au procès-verbal. L'original de ce procès-verbal est conservé par l'administration et copie en est remise au contribuable.

Ces opérations ne constituent pas une vérification de comptabilité au sens de l'article L. 13.

V. – Le juge du référé administratif mentionné à l'article L. 279, saisi dans un délai de quinze jours à compter de la réception du procès-verbal de flagrante fiscale mentionné au I, met fin à la procédure s'il est fait état d'un moyen propre à créer, en l'état de l'instruction, un doute sérieux sur la régularité de cette procédure.

Le juge du référé statue dans un délai de quinze jours. Faute d'avoir statué dans ce délai, le juge des référés est dessaisi au profit du tribunal administratif qui se prononce en urgence.

La décision du juge du référé ou du tribunal administratif est susceptible d'appel devant le président de la cour administrative d'appel ou le magistrat qu'il désigne à cet effet dans le délai de huit jours. Le président ou le magistrat désigné se prononce en urgence.

La décision du juge du référé, du tribunal administratif, du président de la cour administrative d'appel ou du magistrat désigné ordonnant qu'il soit mis fin à la procédure entraîne la mainlevée immédiate des mesures conservatoires éventuellement prises.

b) The use of accounting or cash register software for the purpose of enabling the realization of one of the facts mentioned in 1° of article 1743 of the general tax code;  
 4° A violation of the prohibitions mentioned in Article L. 8221-1 of the Labor Code  
 5° Repeated failure to comply with the reporting obligation provided for in 2 of Article 287 of the General Tax Code,

they may, in the event of circumstances likely to threaten the recovery of a tax debt of the nature of that mentioned in the first paragraph, draw up a report of flagrance tax against this taxpayer.

The report of tax flagrance is signed by the officials of the tax administration as well as by the taxpayer, his representative or the person receiving the officials of the tax administration, except in cases in which the offense mentioned in 1 of article 1746 of the general tax code was noted. In the event of refusal to sign, this is mentioned in the minutes. The original of the report is kept by the tax administration and a copy is notified to the taxpayer.

Ia. – When the agents mentioned in the first paragraph of I are informed, under the conditions provided for in 1 of article 1649 quater-0 B bis of the general tax code, of the exercise by the taxpayer of an activity falling within the scope application of 2 of the same article for the current period for which one of the reporting obligations provided for in articles 87-0 A, 170,172,223 and 287 of the same code has not expired, they may, in the event of circumstances likely to threaten the recovery of a tax debt, draw up a report of flagrance tax against this taxpayer.

The report of tax flagrance is signed by the agents of the tax administration.

The original of the report is kept by the tax administration and a copy is notified to the taxpayer.

The decision to apply this I bis is taken by a category A agent holding at least one rank fixed by decree in the Council of State, which aims for this purpose the report of tax flagrance.

Ib. – When an offense mentioned in 4° of I has been noted by control officers other than those of the tax administration and that the latter have been informed of it under the conditions provided for in Articles L. 82 C or L. 101, they may, within the framework of one of the procedures listed in the first paragraph of I of this article, in the event of circumstances likely to threaten the recovery of a tax debt of the nature of that mentioned in this same paragraph, against the taxpayer a report of tax flagrance.

The tax flagrance report is signed by the tax administration officials as well as by the taxpayer, his representative or the person receiving the tax administration officials, except in cases in which the offense referred to in 1 of article 1746 of the general tax code was noted. In the event of refusal to sign, this is mentioned in the minutes.

The original of the report is kept by the tax administration and a copy is notified to the taxpayer.

II. – The notification of the tax flagrance report allows the precautionary measures mentioned in article L. 252 B to be carried out.

III. – When the tax flagrance report has been drawn up as part of the procedure provided for in Article L. 16 B, the administration may, by way of derogation from VI of this same article, use for the determination of the amount mentioned in Article L. 252 B the information collected during this procedure.

When the report of tax flagrance has been drawn up within the framework of the procedure provided for in Article L. 80 F, the administration may, by way of derogation from Article L. 80 H, use for the determination of the amount mentioned in article L. 252 B the information collected during this procedure.

The administration may rely, for the determination of the amount mentioned in Article L. 252 B, on information obtained from third parties, pursuant to Articles L. 81 et seq.

IV. – To set the amount mentioned in Article L. 252 B, the administration is entitled to consult on the spot the registers and documents of all kinds, in particular those whose keeping is provided for by the general tax code and by the tax code. trade. To this end, the administration may obtain or take copies of useful documents, by any means and on any medium.

A report relating the operations carried out is drawn up. It is signed by the tax administration official as well as by the taxpayer, his representative or the person receiving the tax administration officials. In the event of refusal to sign, this is mentioned in the minutes. The original of this report is kept by the administration and a copy is given to the taxpayer.

These operations do not constitute an accounting audit within the meaning of Article L. 13.

V. – The administrative summary judge mentioned in article L. 279, seized within a period of fifteen days from receipt of the report of flagrance tax mentioned in I, puts an end to the procedure if it is done State of a means capable of creating, in the state of the investigation, a serious doubt on the regularity of this procedure.

The judge in summary proceedings rules within fifteen days. Failing to have ruled within this period, the judge in chambers is relinquished in favour of the administrative tribunal which decides urgently.

The decision of the judge in summary proceedings or of the administrative court may be appealed before the president of the administrative court of appeal or the magistrate he appoints for this purpose within a period of eight days. The president or the designated magistrate makes an urgent decision.

The decision of the judge in summary proceedings, of the administrative tribunal, of the president of the administrative court of appeal or of the designated magistrate ordering that the procedure be terminated entails the immediate lifting of any precautionary measures taken.

**Art. 342<sup>478</sup>**


All offenses and contraventions provided for by customs laws may be prosecuted and proven by all legal means even though no seizure could have been made within the customs radius or outside this radius or that the goods having been the subject of a declaration would not have given rise to any observations.

For this purpose, information, certificates, reports and other documents provided or drawn up by the authorities of foreign countries may be validly cited as evidence.

**(b) Investigative powers in the area of structural funds and internal policies (*bénéficiaires des aides*)**

In one French court case from 2014, **the renovation of a church** in a French village called *Vendranges* was announced so that it could be used for tourism. The European Union supported this project under the **ERDF fund**, but suspicion was soon aroused because the tourist use and **construction were not undertaken**. OLAF carried out **on-the-spot checks** and reported to the Commission. The Commission ordered the **recovery of the funds**, for which administratively the disbursing agency, the next higher authority, the municipality of Loire was designated. 60

The Administrative State Court rejected the appeal submitted under Article R. 741-10 of the code of administrative justice of the small town against the Minister of Interior and the judgement of the Administrative Court of Lyon, which confirmed that the small town needed to pay back the sums because the Commission was allowed to request the recovery and the national authorities had no discretion in this regard: 61

„[15-02-03 A decision of the European Commission requesting a Member State to recover unduly granted European Union (EU) aid is binding on the authorities and national courts when its validity has not been contested in time before the courts of the Union by the beneficiary of the aid. 

15-08 A decision of the European Commission requesting a Member State to recover European Union (EU) aid wrongly granted is binding on the authorities as well as on the national courts when its validity has not been contested in the deadlines before the courts of the Union by the beneficiary of the aid.]

[The appeal dealt with R]epayment of the sum of 19,198.97 euros corresponding to the „ERDF“ subsidies concerning the operation „Valorisation of the religious heritage: restoration of the church (component C 1998) [...]

4. Considering that it follows from the case law of the Court of Justice of the European Union that a decision of the European Commission requiring a Member State to recover Community aid wrongly granted is binding on the authorities as well as on the courts national when its

<sup>478</sup> **Art. 342 Codes des douanes**

Tous délits et contraventions prévus par les lois sur les douanes peuvent être poursuivis et prouvés par toutes les voies de droit alors même qu'aucune saisie n'aurait pu être effectuée dans le rayon des douanes ou hors de ce rayon ou que les marchandises ayant fait l'objet d'une déclaration n'auraient donné lieu à aucune observation.

A cet effet, il pourra être valablement fait état, à titre de preuve, des renseignements, certificats, procès-verbaux et autres documents fournis ou établis par les autorités des pays étrangers.

validity has not been challenged within the time limits before the courts of the Union by the beneficiary of the aid;

5. Considering that it appears from the documents in the file submitted to the trial judges that the decision of the prefect of the Loire of November 18, 2008 mentions in a precise manner the meaning and the reasons for the decision of the European Commission of April 2, 2008, in particular the conclusions of OLAF's control as well as the prescription for repayment of the aid that it includes; that thus the commune of Vendranges became aware of the content of the decision of 2 April 2008, within the meaning of article 230 of the Treaty establishing the European Community, at the latest when it received the decision from the prefect of the Loire ; that, consequently, the Administrative Court of Appeal did not err in law in judging that the absence of challenge to this decision before the courts of

6. Considering, secondly, that by dismissing as inadmissible the challenge to the validity of the decision of 2 April 2008 on the grounds that this decision had become final, the Administrative Court of Appeal implicitly but necessarily responded by means of the common Vendranges alleging that the action for repayment committed by the European Commission was reached by the four-year prescription provided for by Article 3 of the Council Regulation of 18 December 1995;

7. Considering, thirdly, that it follows from what has been said in point 4 that, when the European Commission finds that an irregularity has been committed in the use of the Structural Funds and decides to implement the action in recovery of undue payment at its disposal, the competent national authority, seized by the European Commission, is required to proceed with the recovery of the funds concerned without having to make an assessment of the violation found;

8. Considering that, after noting that the Prefect of the Loire had no discretion as to whether or not to demand the return of Community funds unduly granted and was bound by the decision of the European Commission, the validity of which the municipality had not challenged within the time limits before the judge of the European Union, to proceed with the recovery of the sum in question, the administrative court of appeal did not commit an error of law in judging that the pleas raised by the town of Vendranges directed against the decision of 18 November 2008 of the prefect of the Loire and drawn from ignorance of the principles of legal certainty and protection of legitimate trust were ineffective; [...]."<sup>479</sup>

62 The aforementioned example from a court ruling clearly shows that it is important to fight fraud with structural funds – especially on the **countryside** and far-away from the city structure of Paris. France has a **departmental and municipal structure** on the countryside. This level of administration and organization has a huge effect on the distribution of Union funds and their controls and audits (see above → Administrative provisions in the area of structural funds (1)(c)).

63 The CICC has the power to conduct on-the-spot check:

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<sup>479</sup> Council of State, 3rd / 8th SSR, 07/23/2014, 364466

**Article 60 Loi n° 2002-1576 du 30 décembre 2002 de finances rectificative pour 2002<sup>480</sup>**

Art. 60 An interministerial commission for the coordination of controls is established, the organization and missions of which are fixed by decree in the Council of State. This commission carries out controls on operations co-financed by European funds, the list of which is fixed by decree in the Council of State, and exercises the same powers of control as those provided for in I of Article 43 of Law No. 96-314 of 12 April 1996 containing various economic and financial provisions with regard to the bodies involved in the implementation of these funds, in particular local and regional authorities, legal or natural persons who benefit from European funds and who implement operations included in the programmes benefiting from these funds as well as bodies through which this assistance has transited.

These *checks are carried out by the members of the Interministerial Commission for the Coordination of Controls* and, on its behalf, by the General Inspectorate of Finance, the General Inspectorate of Administration, the General Inspectorate of Social Affairs, the General Council for Agriculture, Food and Rural Areas or the General Economic and Financial Control represented on it.

Obstructing the controls of the Interministerial Commission for the Coordination of Controls is punishable by the penalties provided for in Article 43(III) of Act No. 96-314 of 12 April 1996.

<sup>480</sup> Art. 60 Version en vigueur depuis le 31 juillet 2011 Modifié par LOI n°2011-900 du 29 juillet 2011 - art. 66  
Il est institué une commission interministérielle de coordination des contrôles dont l'organisation et les missions sont fixées par décret en Conseil d'Etat. Cette commission effectue des contrôles portant sur les opérations cofinancées par des fonds européens, dont la liste est fixée par décret en Conseil d'Etat, et exerce les mêmes pouvoirs de contrôle que ceux prévus au I de l'article 43 de la loi n° 96-314 du 12 avril 1996 portant diverses dispositions d'ordre économique et financier à l'égard des organismes intervenant dans la mise en oeuvre de ces fonds, notamment les collectivités territoriales, des personnes morales ou physiques qui bénéficient des fonds européens et qui mettent en oeuvre des opérations inscrites dans les programmes bénéficiant de ces fonds ainsi que des organismes par lesquels ont transité ces concours.  
Ces contrôles sont effectués par les membres de la commission interministérielle de coordination des contrôles et, pour le compte de cette dernière, par l'inspection générale des finances, l'inspection générale de l'administration, l'inspection générale des affaires sociales, le conseil général de l'agriculture, de l'alimentation et des espaces ruraux ou le contrôle général économique et financier représentés en son sein.  
Le fait de faire obstacle aux contrôles de la commission interministérielle de coordination des contrôles est passible des sanctions prévues au III de l'article 43 de la loi n° 96-314 du 12 avril 1996 précitée.

64 In the following part the overview disseminates the powers for controls in the customs sector if this sector relates to structural funds:

65 *Sources and national sections 8 Overview for France – Art. 3 OLAF Regulation (External Investigations → Investigative powers in the area of structural funds and internal policies/Customs Code)*

**Customs Code**

<p>Chapitre IV: Pouvoirs des agents des douanes (Articles 60 à 67 quinquies B)                  Section 1: Droit de visite des marchandises, des moyens de transport et des personnes. (Articles 60 à 63 bis)                  Article 60 Article 60 bis Article 61 Article 61 bis Article 62 Article 63 Article 63 bis                  Section 2: Droit d'accès aux locaux et lieux à usage professionnel et visites domiciliaires. (Articles 63 ter à 64)                  Article 63 ter Article 64                  Section 2: Visites domiciliaires. (abrogé)                  Section 3: Droit de communication (Articles 64 A à 65 quinquies)                  Paragraphe 1: Droit de communication de l'administration des finances. (Articles 64 A à 64 B)                  Article 64 A Article 64 B                  Paragraphe 2: Droit de communication particulier à l'administration des douanes. (Articles 65 à 65 quinquies)                  Article 65 Article 65 bis Article 65 ter Article 65 quater Article 65 quinquies</p> <p>Section 4: Contrôles de certaines opérations effectuées dans le cadre de la Communauté européenne. (Articles 65 A à 65 C)                  Article 65 A Article 65 A bis Article 65 B Article 65 C Article 65 D Article 65 E                  Section 5: Contrôles douaniers des envois par la poste. (Articles 66 à 66 bis)                  Article 66 Article 66 bis                  Section 6: Présentation des titres et documents d'identité (Articles 67 à 67-1)                  Article 67 Article 67-1                  Section 7: Procédures spéciales d'enquête douanière (Articles 67 bis à 67 bis-4)</p>	<p>Chapter IV: Powers of customs officers (Articles 60 to 67d B)                  Section 1: Right to inspect goods, means of transport and persons. (Articles 60 to 63a)                  Article 60 Article 60a Article 61 Article 61a Article 62 Article 63 Article 63a                  Section 2: Right of access to premises and places of business and home visits. (Articles 63b to 64)                  Article 63b Article 64                  Section 2: Home visits. (repealed)                  Section 3: Right of communication (Articles 64a to 65d)                  Paragraph 1: Right of communication of the financial administration. (Articles 64 A to 64 B)                  Article 64 A Article 64 B                  Paragraph 2: Right of communication specific to the customs administration. (Articles 65 to 65d)                  Article 65 Article 65a Article 65b Article 65c Article 65d</p> <p>Section 4: Controls of certain operations carried out within the European Community. (Articles 65a to 65c)                  Article 65 A Article 65 A bis Article 65 B Article 65 C Article 65 D Article 65 E                  Section 5: Customs controls on postal consignments. (Articles 66 to 66a)                  Article 66 Article 66a                  Section 6: Presentation of identity papers and documents (Articles 67 to 67-1)                  Article 67 Article 67-1                  Section 7: Special customs investigation procedures (Articles 67a to 67a-4)</p>
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<p>Article 67 bis Article 67 bis-1 A Article 67 bis-1 Article 67 bis-2 Article 67 bis-3 Article 67 bis-4</p> <p>Section 7 bis: Equipes communes d'enquête (Article 67 ter A)</p> <p>Article 67 ter A</p> <p>Section 8: Retenue provisoire des personnes (Article 67 ter)</p> <p>Article 67 ter</p> <p>Section 9: Contrôle des titres (Article 67 quater)</p> <p>Article 67 quater</p> <p>Section 10: Emploi de personnes qualifiées (Article 67 quinquies A)</p> <p>Article 67 quinquies A</p> <p>Section 11: Prélèvement d'échantillons (Article 67 quinquies B)</p> <p>Article 67 quinquies B</p>	<p>Article 67a Article 67a-1 A Article 67a-1 Article 67a-2 Article 67a-3 Article 67a-4</p> <p>Section 7bis: Joint investigation teams (Article 67b A)</p> <p>Article 67b A</p> <p>Section 8: Temporary detention of persons (Article 67b)</p> <p>Article 67b</p> <p>Section 9: Control of documents (Article 67c)</p> <p>Article 67c</p> <p>Section 10: Employment of qualified persons (Article 67d A)</p> <p>Article 67 quinquies A</p> <p>Section 11: Taking of samples (Article 67d B)</p> <p>Article 67d B</p>
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## Tax Procedures Code

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*Sources and national sections 9 Overview for France – Art. 3 OLAF Regulation (External Investigations and Investigative powers in the area of structural funds and internal policies/Tax Procedures Code)*

<p><b>Chapitre II: Le droit de communication (Articles L81 à L102 AH)</b></p> <p><b>Art. L. 81</b></p> <p>Le droit de communication permet aux agents de l'administration, pour l'établissement de l'assiette, le contrôle et le recouvrement des impôts, d'avoir connaissance des documents et des renseignements mentionnés aux articles du présent chapitre dans les conditions qui y sont précisées.</p> <p>Pour l'établissement de l'assiette et le contrôle de l'impôt, le droit de communication peut porter sur des informations relatives à des personnes non identifiées, dans les conditions fixées par décret en</p>	<p><b>Chapter II: The right of communication (Articles L81 to L102 AH)</b></p> <p><b>Article L81</b></p> <p>The right of communication allows the agents of the administration, for the establishment of the base, <i>the control and the recovery of the taxes</i>, to have knowledge of the documents and information mentioned in the articles of this chapter under the conditions which are there. specified.</p> <p>For the establishment of the base and the control of the tax, the right of communication can relate to information relating to unidentified persons, under the conditions fixed by decree in Council of State taken after opinion of the National Commission computing and freedoms.</p>
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<p>Conseil d'Etat pris après avis de la Commission nationale de l'informatique et des libertés.</p>	<p>The <i>right provided for in the first paragraph is exercised on site or by correspondence, including electronically, and regardless of the medium used</i> to store the documents.</p>
<p>Le droit prévu au premier alinéa s'exerce sur place ou par correspondance, y compris électronique, et quel que soit le support utilisé pour la conservation des documents.</p>	<p>The administration agents may take copies of the documents of which they have knowledge pursuant to the first paragraph.</p>
<p>Les agents de l'administration peuvent prendre copie des documents dont ils ont connaissance en application du premier alinéa.</p>	<p>Civil servants from the administrations of other Member States may attend the exercise of the right of communication under the conditions provided for in 3 of Article L. 45.</p>
<p>Des fonctionnaires des administrations des autres Etats membres peuvent assister à l'exercice du droit de communication dans les conditions prévues au 3 de l'article L. 45.</p>	<p>Article L81 Article L81 A Section I: Conditions for exercising the communication right (Articles L82 A to L96 K) 1°: Persons paying fees or royalties (Article L82 A) Article L82 A 1° bis: Platform operators (Article L82 AA) Article L82 AA 2°: Employers and debtors (Article L82 B) Article L82 B 3°: Public prosecutors (Article L82 C) Article L82 C 4°: Public administrations and companies, establishments or bodies controlled by the administrative authority (Articles L83 to L84) Article L83 Article L83 A Article L83 C Article L83 D Article L83 E Article L84</p>
<p>Article L81 Article L81 A Section I: Conditions d'exercice du droit de communication (Articles L82 A à L96 K) 1°: Personnes versant des honoraires ou des droits d'auteur (Article L82 A) Article L82 A 1° bis: Opérateurs de plateforme (Article L82 AA) Article L82 AA 2°: Employeurs et débirentiers (Article L82 B) Article L82 B 3°: Ministère public (Article L82 C) Article L82 C 4°: Administrations et entreprises publiques, établissements ou organismes contrôlés par l'autorité administrative (Articles L83 à L84)</p>	<p>Article L81 Article L81 A Section I: Conditions for exercising the communication right (Articles L82 A to L96 K) 1°: Persons paying fees or royalties (Article L82 A) Article L82 A 1° bis: Platform operators (Article L82 AA) Article L82 AA 2°: Employers and debtors (Article L82 B) Article L82 B 3°: Public prosecutors (Article L82 C) Article L82 C 4°: Public administrations and companies, establishments or bodies controlled by the administrative authority (Articles L83 to L84) Article L83 Article L83 A Article L83 C Article L83 D Article L83 E Article L84</p>

Article L83 Article L83 A Article L83 C Article L83 D Article L83 E Article L84 5°: Commission nationale des comptes de campagne et des financements politiques (Article L84 A) Article L84 A 5° bis: Autorité nationale des jeux (Ar- ticle L84 B) Article L84 B 5° ter: Etablissements de jeux (Article L84 C) Article L84 C 5° quater: Autorité de contrôle prudentiel et de résolution (Article L84 D) Article L84 D 5° quinquies: Autorité des marchés finan- ciers (Article L84 E) Article L84 E 6°: Personnes ayant la qualité de commer- çant (Article L85) Article L85 6° bis: Personnes versant des revenus de capitaux mobiliers (Article L85-0 A) Article L85-0 A 6° ter: Artisans (Article L85-0 B) Article L85-0 B 7°: Agriculture (Article L85 A) Article L85 A 8°: Membres de certaines professions non commerciales (Articles L86 à L86 A) Article L86 Article L86 A 9°: Institutions et organismes versant des rémunérations ou répartissant des fonds (Article L87) Article L87 10°: Personnes effectuant des opérations immobilières (Article L88) (abrogé) Article L88 10°: Coopération administrative (Article L88) Article L88	5°: National Commission for campaign accounts and political financing (Article L84 A) Article L84 A 5° bis: National Gaming Authority (Arti- cle L84 B) Article L84 B 5° ter: Gaming establishments (Article L84 C) Article L84 C 5c: Prudential control and resolution au- thority (Article L84 D) Article L84 D 5° quinquies: Financial markets authority (Article L84 E) Article L84 E 6°: Persons having the status of trader (Article L85) Article L85 6° bis: Persons paying income from trans- ferable securities (Article L85-0 A) Article L85-0 A 6° ter: Artisans (Article L85-0 B) Article L85-0 B 7°: Agriculture (Article L85 A) Article L85 A 8°: Members of certain non-commercial professions (Articles L86 to L86 A) Article L86 Article L86 A 9°: Institutions and bodies paying remu- neration or distributing funds (Article L87) Article L87 10°: Persons carrying out real estate trans- actions (Article L88) (repealed) Article L88 10°: Administrative cooperation (Article L88) Article L88 11°: Persons carrying out insurance trans- actions (Article L89)
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11°: Personnes effectuant des opérations d'assurance (Article L89) Article L89	Article L89
12°: Entrepreneurs de transport (Article L90) Article L90	Article L90
13°: Redevables du droit d'accroissement (Article L91) Article L91	Article L91
14°: Dépositaires de documents publics (Article L92) Article L92	Article L92
15° bis: Sociétés civiles (Article L94 A) Article L94 A	Article L94 A
16°: Caisses de mutualité sociale agricole (Article L95) Article L95	Article L95
17°: Formules de chèques non barrées (Article L96) Article L96	Article L96
18°: Opérations de transfert de fonds à l'étranger (Article L96 A) Article L96 A	Article L96 A
19°: Déplacements intracommunautaires de biens. Assujettis et façonniers astreints à la tenue d'un registre des biens. Obligations du titulaire de l'entrepôt fiscal (Article L96 B) Article L96 B	Article L96 B
20°: Intermédiaires sur le MATIF, le MONEP et en matière de bons d'options. (Article L96 CA) (abrogé) Article L96 CA	Article L96 CA
20°: Intermédiaires pour des instruments financiers à terme (Article L96 CA) Article L96 CA	Article L96 CA
22°: Etablissements diffuseurs ou distributeurs de services payants de programmes de télévision (Article L96 E) Article L96 E	Article L96 E
23°: Fiducie (Article L96 F)	Article L96 F
	12°: Transport contractors (Article L90)
	13°: Persons liable for the duty of increase (Article L91)
	14°: Depositories of public documents (Article L92)
	15° bis: Civil companies (Article L94 A)
	16°: Agricultural social security funds (Article L95)
	17°: Unbarred cheque forms (Article L96)
	18°: Funds transfer operations abroad (Article L96 A)
	19°: Intra-Community movements of goods. Taxable persons and processors required to keep a register of goods. Obligations of the tax warehouse holder (Article L96 B)
	20°: Intermediaries on the MATIF, the MONEP and in relation to option warrants. (Article L96 CA) (repealed)
	20°: Intermediaries for financial futures instruments (Article L96 CA)
	22°: Establishments broadcasting or distributing pay services of television programmes (Article L96 E)
	23°: Trusts (Article L96 F)

Article L96 F	24°: Electronic communications operators (Article L96 G)
24°: Opérateurs de communications électroniques (Article L96 G)	Article L96 G
Article L96 G	25° Manufacturers and dealers of precious metals (Article L96 H)
25° Fabricants et marchands de métaux précieux (Article L96 H)	Article L96 H
Article L96 H	26° Real estate agencies (Article L96 I)
26° Agences immobilières (Article L96 I)	Article L96 I
Article L96 I	27° Designers and publishers of accounting or cash management software (Article L96 J)
27° Concepteurs et éditeurs de logiciels de comptabilité ou de caisse (Article L96 J)	Article L96 J
Article L96 J	28° Operators of warehouses or logistics platforms (Article L96 K)
28°: Exploitants d'entrepôts ou de plateformes logistiques (Article L96 K)	Article L96 K
Article L96 K	

The Monetary and Financial Code might apply in some cases. It ensures the actions of the Financial Markets Authority and has own powers to conduct controls: **67**

### **Monetary and Financial Code**

**68**

Title II: The Financial Markets Authority (Articles L621-1 to L621-35)

Here special attention should especially be drawn to: Art. L. 621-9 Monetary and Financial Code: I.- In order to ensure the performance of its mission, the Financial Markets Authority carries out checks and investigations. [...]

**Ordinance No. 45-2250 of October 4, 1945 on the organization of social security**

**Art. 1–16 [General Rules**

**Art. 45<sup>481</sup>**

Employers and self-employed workers are required to receive at all times the civil servants and inspectors of the funds referred to in Articles 43 and 44 above, as well as the consulting engineers and safety inspectors duly accredited by the said funds. Opposition or obstacles to these visits or inspections are subject to the same penalties as those provided for by the labor code with regard to labor inspection.

By way of derogation from the provisions subjecting them to professional secrecy, tax administration officials are empowered to report to the regional directors of social security and to the divisional controllers of social laws in agriculture, the offenses they observe with regard to the application laws and regulations relating to the general scheme or the agricultural social security scheme.

For their part, the agents of the organizations or funds of the general social security system, as well as the agents of the mutual funds of agricultural social insurance, will communicate to the tax authorities the offenses they report with regard to the application of the laws and regulations relating to taxes and duties in force.

**(c) Investigative powers in the area of common market organisations**

69 Cf. primarily the *Code de la commande publique* for administrative provisions and the procedure codes for investigative powers:

70 **Art. 60 Codes des douanes**

For the application of the provisions of this code and with a view to the search for fraud, the customs agents may carry out the inspection of goods and means of transport and of persons.

**Art. L.80 J Livre des procédures fiscales<sup>482</sup>**

To prevent breaches of the invoicing rules referred to in Article L. 80 I, customs officers may, within the framework of the provisions of Articles 60 and 61 of the Customs Code, carry out checks on means of transport for professional use and of their load and to be presented with the professional documents of any kind in the possession of the driver.

<sup>481</sup> **Art. 45 Ordonnance n° 45-2250 du 4 octobre 1945 portant organisation de la sécurité sociale**

Les employeurs et les travailleurs indépendants sont tenus de recevoir à toute époque les fonctionnaires et les agents de contrôle des caisses visés aux articles 43 et 44 ci-dessus, ainsi que les ingénieurs-conseils et contrôleurs de sécurité régulièrement accrédités par lesdites caisses. Les oppositions ou obstacles à ces visites ou inspections sont passibles des mêmes peines que celles prévues par le code du travail en ce qui concerne l'inspection du travail. Par dérogation aux dispositions qui les assujettissent au secret professionnel, les agents des administrations fiscales sont habilités à signaler aux directeurs régionaux de la sécurité sociale et aux contrôleurs divisionnaires des lois sociales en agriculture, les infractions qu'ils constatent en ce qui concerne l'application des lois et règlements relatifs au régime général ou au régime agricole de sécurité sociale.

De leur côté, les agents des organismes ou caisses de régime général de sécurité sociale, ainsi que les agents des caisses mutuelles d'assurances sociales agricoles, communiqueront aux administrations fiscales les infractions qu'ils relèvent en ce qui concerne l'application des lois et règlements relatifs aux impôts et taxes en vigueur.

<sup>482</sup> **Art. L.80 J Livre des procédures fiscales**

They<sup>483</sup> may take copies of these documents and communicate them to the competent services of the Directorate General of Public Finances.

They may be assisted during these checks by agents of the Directorate General of Public Finances.

#### **(d) Investigative powers in the area of direct expenditure**

The investigation rules in this area depend on mutual and administrative assistance agreements, see above. The grant agreements in the area of direct expenditure are highly individual, but they follow a certain standard procedure and include often the same table of contents. Inspection rights are agreed between the beneficiary and the Commission services.

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#### **(e) Investigative powers in the area of external aid = expenditure**

The investigation rules depend on mutual and administrative assistance agreements with international beneficiaries or international managing authorities. The donor of a loan, grant or subsidy to a recipient in a non-EU state, i.e. third state may be obliged to cooperate if any irregularities are discovered. OLAF relies therefore on national authorities that may have special investigative powers to conduct on-the-spot-checks.

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### **(3) Protection of information**

The protection of information while gathering evidence is of fundamental interest to OLAF investigators as one single failure in this regard may – in the worst-case scenario – lead to the uselessness of the actions taken on the basis of the OLAF report (see below → Art. 11). For secrecy there might be exceptions as well, see e.g. in Art. 82 C Tax Procedures Code.

73

#### **(a) Tax secrecy (General Tax Code, Tax Procedures Code)**

The tax secrecy plays a significant role in the external investigations as it limits the power of the inspectors. The positive law that is relevant in this regard is the following:<sup>484</sup>

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<sup>483</sup> Pour prévenir les manquements aux règles de facturation visées à l'article L. 80 I, les agents des douanes peuvent, dans le cadre des dispositions des articles 60 et 61 du code des douanes, procéder au contrôle des moyens de transport à usage professionnel et de leur chargement et se faire présenter les documents professionnels de toute nature en la possession du conducteur.

Ils peuvent prendre copie de ces documents et les communiquer aux services compétents de la direction générale des finances publiques.

Ils peuvent se faire assister lors de ces contrôles par des agents de la direction générale des finances publiques.

<sup>484</sup> See Collet and Collin 2020; Pilotin 2022; Bouloc, B. de Robert, P.-E. G. 2022.

75 **Tax Procedures Code**

- Art. L103–L. 167

- Art. 226-13 Code pénal

76 The protection of the secrecy ends if someone is released from his/her professional secrecy:

**Art.L 142**<sup>485</sup>

When a regular complaint has been lodged by the administration against a taxpayer and an investigation has been opened, the officials of the administration are released from professional secrecy *vis-à-vis* the examining magistrate who questions them about the facts that are the subject of the complaint.

**Art. L.142A.**<sup>486</sup>

Public finance officials **are released** from professional secrecy *vis-à-vis* the public prosecutor with whom they may exchange information covered by this secrecy regardless of the existence of a complaint or a denunciation filed pursuant to the article L. 228 or ongoing legal proceedings.

*Nota bene:* Since 2018, pursuant to Article L 142 A of the CGI, public finance officials are released from professional secrecy *vis-à-vis* the public prosecutor with whom they can exchange information covered by this secrecy.<sup>487</sup>

**(b) Administrative secrecy (Administrative laws)**

77 Art. 311-5, 311-6 *Code des relations entre le public et l'administration*/Code of relations between the public and the administration

Art. R557-3 *Code la justice administrative*/Code of administrative justice

Article 60 Loi n° 2002-1576 du 30 décembre 2002 de finances rectificative pour 2002

Article L. 151-1 of the *Code de commerce*/Commercial Code



National legislation:

*Tribunal administratif de Paris*, 5e sect., 15 octobre 2020, n° 1822236/5-2.

<sup>485</sup> **Art. L 142 Livre des procédures fiscales**

Lorsqu'une plainte régulière a été portée par l'administration contre un redevable et qu'une information a été ouverte, les agents de l'administration sont déliés du secret professionnel vis-à-vis du juge d'instruction qui les interroge sur les faits faisant l'objet de la plainte.

<sup>486</sup> **Art. L 142A. Livre des procédures fiscales**

Les agents des finances publiques sont déliés du secret professionnel à l'égard du procureur de la République avec lequel ils peuvent échanger des informations couvertes par ce secret indépendamment de l'existence d'une plainte ou d'une dénonciation déposée en application de l'article L. 228 ou d'une procédure judiciaire en cours.

<sup>487</sup> See <https://www.tribunal-de-paris.justice.fr/sites/default/files/2022-04/L%27%C3%A9volution%20des%20outils%20de%20lutte%20contre%20la%20fraude%20fiscale.pdf>.



**(c) Data secrecy****(aa) General Remarks**

Data secrecy rules are harmonized and governed nowadays mainly by the GDPR Regulation of the EU. The national laws cannot repeat the Union law in this regard but they present their own provisions – often referring back to national law (see above → for the structure of the Customs and Tax Codes). 78

**(bb) Example: CICC and Contact to Data Supervisor**

The CICC, which is competent to investigate and conduct controls in the area of structural funds has explicitly said the following on its Webpage: 79

„The CICC has access to the data and may transmit them to the bodies responsible for a control or inspection mission in application of European law (European Commission, OLAF, Court of Auditors, the Ombudsman, European Data Protection Supervisor, the European Public Prosecutor’s Office) and national law (Court of Auditors, Attorney General of the Republic, the general inspectorates of ministries, the CICC’s ethics and alert referent) as well as external contractors commissioned by one of these bodies or the CICC. These persons respect the confidentiality obligations related to their status, their function, the professional rules that govern them or their contractual commitments.”<sup>488</sup>

If you have any comments, questions, problems or complaints regarding the collection and use of personal data, please do not hesitate to contact the controller, whose contact details are as follows:

***Responsible for the operational processing of personal data at CICC***

By email: [cicc.rgpd@finances.gouv.fr](mailto:cicc.rgpd@finances.gouv.fr).

By post: CICC (data protection) 5 place des Vins de France 75573 Paris - Cedex 1.

**(d) Official secrecy (Civil servants’ law, Customs Code, General Tax Code)**

In France, too, confidentiality rules are important for the protection of communications in various areas, eg between lawyer and client, between administration and employee, between authorities within the state and between the state and citizens. 80

For example, any communication between a lawyer (member of a French bar association) and a client is protected by what is known in France as professional secrecy. 81

Furthermore, it can be assumed that professional secrecy is a general right of secrecy that also applies in other areas in France. According to Art. 226-13 of the Criminal Code, the violation of professional secrecy is punishable by law. 82

<sup>488</sup> See CICC, <https://www.economie.gouv.fr/cicc/cicc/audit-fonds-europeens/information-sur-la-protection-des-donnees-caractere-personnel>.

- 83 In the public sector and administration, discretion prevails above all, which is equivalent to the protection of secrets in other areas and ensures the same telos, namely the protection of highly sensitive information that a party could not obtain without consent.<sup>489</sup>

**Law No. 83-634 of July 13, 1983 on the rights and obligations of civil servants.**<sup>490</sup>

**Art. 26**<sup>491</sup>

Civil servants are bound by professional secrecy within the framework of the rules established in the penal code.

Civil servants must exercise professional discretion with regard to all facts, information or documents of which they become aware in the exercise or on the occasion of the exercise of their functions. Apart from the cases expressly provided for by the regulations in force, in particular with regard to freedom of access to administrative documents, civil servants can only be released from this obligation of professional discretion by express decision of the authority on which they depend.

- 84 Further provisions can be found in other Codes, which are displayed below:

**Art. 1653D.** para 2 stipulates the official secrecy and relates to Art. L.103 Tax Procedures Code (see below).

See **Art. L. 103** du livre des procédures fiscales

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<sup>489</sup> See <https://www.service-public.fr/particuliers/vosdroits/F530?lang=en>.

<sup>490</sup> See Loi n° 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires. Loi dite loi Le Pors.

<sup>491</sup> Art. 26 Le Pors

*Abrogé par Ordonnance n°2021-1574 du 24 novembre 2021 - art. 3*

Les fonctionnaires sont tenus au secret professionnel dans le cadre des règles instituées dans le code pénal.

Les fonctionnaires doivent faire preuve de discrétion professionnelle pour tous les faits, informations ou documents dont ils ont connaissance dans l'exercice ou à l'occasion de l'exercice de leurs fonctions. En dehors des cas expressément prévus par la réglementation en vigueur, notamment en matière de liberté d'accès aux documents administratifs, les fonctionnaires ne peuvent être déliés de cette obligation de discrétion professionnelle que par décision expresse de l'autorité dont ils dépendent.

**(4) Investigation reports (Customs Code, General Tax Code)**

85

**Tax Procedures Code****Art. L16B.**<sup>492</sup>

[...]

IV. – A report describing the methods and progress of the operation and recording the findings made is drawn up immediately by the tax administration officials. An inventory of the exhibits and documents seized is attached to it if applicable. The report and the inventory are signed by the agents of the tax administration and by the judicial police officer as well as by the persons mentioned in the first paragraph of III; in the event of refusal to sign, this is mentioned in the minutes.

If the on-site inventory presents difficulties, the items and documents seized are placed under seal. The occupant of the premises or his representative is informed that he can attend the opening of the seals which takes place in the presence of the judicial police officer; the inventory is then drawn up.

IVa. – When the occupant of the premises or his representative obstructs access to the exhibits or documents present on a computer medium, their reading or their entry, a mention of this is made in the minutes.

The agents of the tax administration can then proceed to the copy of this support and seize the latter, which is placed under seal. They have fifteen days from the date of the visit to access the items or documents present on the computer medium placed under seal, to read and enter them, as well as to return it and its copy. This period is extended on authorization issued by the judge of freedoms and detention.

For<sup>493</sup> the sole purpose of allowing the reading of the exhibits or documents present on the computer medium placed under seal, the agents of the tax administration carry out

<sup>492</sup> **Art. L16B. Livre des procédures fiscales**

IV. – Un procès-verbal relatant les modalités et le déroulement de l'opération et consignait les constatations effectuées est dressé sur-le-champ par les agents de l'administration des impôts. Un inventaire des pièces et documents saisis lui est annexé s'il y a lieu. Le procès-verbal et l'inventaire sont signés par les agents de l'administration des impôts et par l'officier de police judiciaire ainsi que par les personnes mentionnées au premier alinéa du III ; en cas de refus de signer, mention en est faite au procès-verbal.

Si l'inventaire sur place présente des difficultés, les pièces et documents saisis sont placés sous scellés. L'occupant des lieux ou son représentant est avisé qu'il peut assister à l'ouverture des scellés qui a lieu en présence de l'officier de police judiciaire ; l'inventaire est alors établi.

IV bis. – Lorsque l'occupant des lieux ou son représentant fait obstacle à l'accès aux pièces ou documents présents sur un support informatique, à leur lecture ou à leur saisie, mention en est portée au procès-verbal.

Les agents de l'administration des impôts peuvent alors procéder à la copie de ce support et saisir ce dernier, qui est placé sous scellés. Ils disposent de quinze jours à compter de la date de la visite pour accéder aux pièces ou documents présents sur le support informatique placé sous scellés, à leur lecture et à leur saisie, ainsi qu'à la restitution de ce dernier et de sa copie. Ce délai est prorogé sur autorisation délivrée par le juge des libertés et de la détention.

<sup>493</sup> A la seule fin de permettre la lecture des pièces ou documents présents sur le support informatique placé sous scellés, les agents de l'administration des impôts procèdent aux opérations nécessaires à leur accès ou à leur mise au clair. Ces opérations sont réalisées sur la copie du support.

the operations necessary for their access or their clarification. These operations are performed on the copy of the medium.

The occupant of the premises or his representative is informed that he can attend the opening of the seals, the reading and the seizure of the exhibits and documents present on this computer medium, which take place in the presence of the police officer. A report describing the operations carried out to gain access to these exhibits and documents, to clarifying them and reading them is drawn up by the agents of the tax administration. An inventory of the items and documents seized is attached to it, if applicable. The report and the inventory are signed by the agents of the tax administration and by the judicial police officer as well as by the occupant of the premises or his representative; in his absence or in the event of refusal to sign, this is mentioned in the minutes.

The computer medium and its copy are returned at the same time. In the absence of the occupant of the premises or his representative, the administration then immediately takes all steps to return them.

V. – The originals of the report and the inventory are, as soon as they have been drawn up, sent to the judge who authorized the visit; a copy of these same documents is given to the occupant of the premises or his representative. A copy is also sent by registered letter with acknowledgment of receipt to the presumed author of the acts mentioned in I, notwithstanding the provisions of article L. 103 .

The items and documents seized are returned to the occupant of the premises within six months of the visit; however, when criminal proceedings are instituted, their return is authorized by the competent judicial authority.

The minutes and the inventory mention the deadline and the means of appeal.

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L'occupant des lieux ou son représentant est avisé qu'il peut assister à l'ouverture des scellés, à la lecture et à la saisie des pièces et documents présents sur ce support informatique, qui ont lieu en présence de l'officier de police judiciaire.

Un procès-verbal décrivant les opérations réalisées pour accéder à ces pièces et documents, à leur mise au clair et à leur lecture est dressé par les agents de l'administration des impôts. Un inventaire des pièces et documents saisis lui est annexé, s'il y a lieu.

Le procès-verbal et l'inventaire sont signés par les agents de l'administration des impôts et par l'officier de police judiciaire ainsi que par l'occupant des lieux ou son représentant ; en son absence ou en cas de refus de signer, mention en est faite au procès-verbal.

Il est procédé concomitamment à la restitution du support informatique et de sa copie. En l'absence de l'occupant des lieux ou de son représentant, l'administration accomplit alors sans délai toutes diligences pour les restituer.

V. – Les originaux du procès-verbal et de l'inventaire sont, dès qu'ils ont été établis, adressés au juge qui a autorisé la visite ; une copie de ces mêmes documents est remise à l'occupant des lieux ou à son représentant. Une copie est également adressée par lettre recommandée avec demande d'avis de réception à l'auteur présumé des agissements mentionnés au I, nonobstant les dispositions de l'article L. 103.

Les pièces et documents saisis sont restitués à l'occupant des locaux dans les six mois de la visite ; toutefois, lorsque des poursuites pénales sont engagées, leur restitution est autorisée par l'autorité judiciaire compétente.

Le procès-verbal et l'inventaire mentionnent le délai et la voie de recours.

Le premier président de la cour d'appel dans le ressort de laquelle le juge a autorisé la mesure connaît des recours contre le déroulement des opérations de visite ou de saisie. Les parties ne sont pas tenues de constituer avocat.

Suivant les règles prévues par le code de procédure civile, ce recours doit être exclusivement formé par déclaration remise ou adressée, par pli recommandé ou, à compter du 1er janvier 2009, par voie électronique, au greffe de la cour dans un délai de quinze jours. Ce délai court à compter de la remise ou de la réception soit du procès-verbal, soit de l'inventaire, mentionnés au premier alinéa. Ce recours n'est pas suspensif.

L'ordonnance du premier président de la cour d'appel est susceptible d'un pourvoi en cassation selon les règles prévues par le code de procédure civile. Le délai du pourvoi en cassation est de quinze jours.

The first president of the court of appeal in whose jurisdiction the judge authorized the measure hears appeals against the progress of the inspection or seizure operations. The parties are not required to appoint a lawyer.

According to the rules provided for by the Code of Civil Procedure, this appeal must be lodged exclusively by declaration delivered or addressed, by registered letter or, from January 1, 2009, electronically, at the court registry within fifteen days. . This period runs from the delivery or receipt either of the report or of the inventory, mentioned in the first paragraph. This appeal is not suspensive.

The order of the first president of the court of appeal is subject to appeal in cassation according to the rules provided for by the code of civil procedure. The time limit for appeal in cassation is fifteen days.

**Art. L. 80H.**<sup>494</sup>

At the end of the investigation provided for in article L. 80 F, the agents of the administration draw up a report recording the shortcomings noted or the absence of such shortcomings. The list of documents of which a copy has been issued is attached to it, if applicable.

The report is drawn up within thirty days of the last on-site intervention or the last summons. It is signed by the agents of the administration as well as by the taxable person or his representative, who can put forward his observations within a period of thirty days. These are recorded or appended to the minutes. In the event of refusal to sign, this is mentioned in the minutes. A copy of it is given to the interested party.

The findings of the report can only be opposed to this taxable person and to third parties concerned by the invoicing within the framework of the control procedures mentioned in Article L. 47 with regard to taxation of any kind and the procedure for investigation provided for in article L. 80 F. They may be invoked when the implementation of the inspection and seizure procedures mentioned in articles L. 16 B and L. 38 is requested . The implementation of the right of investigation cannot give rise to the application of fines except those provided for in 1, 2 and 3 of I and II of Article 1737 and Article 1788 B of the General Code of taxes.

<sup>494</sup> **Art. L 80H.**

A l'issue de l'enquête prévue à l'article L. 80 F, les agents de l'administration établissent un procès-verbal consignnant les manquements constatés ou l'absence de tels manquements. La liste des documents dont une copie a été délivrée lui est annexée s'il y a lieu.

Le procès-verbal est établi dans les trente jours qui suivent la dernière intervention sur place ou la dernière convocation. Il est signé par les agents de l'administration ainsi que par l'assujetti ou son représentant, qui peut faire valoir ses observations dans un délai de trente jours. Celles-ci sont portées ou annexées au procès-verbal. En cas de refus de signer, mention en est faite au procès-verbal. Une copie de celui-ci est remise à l'intéressé.

Les constatations du procès-verbal ne peuvent être opposées à cet assujetti ainsi qu'aux tiers concernés par la facturation que dans le cadre des procédures de contrôle mentionnées à l'article L. 47 au regard des impositions de toute nature et de la procédure d'enquête prévue à l'article L. 80 F. Elles peuvent être invoquées lorsqu'est demandée la mise en oeuvre des procédures de visite et de saisie mentionnées aux articles L. 16 B et L. 38. La mise en oeuvre du droit d'enquête ne peut donner lieu à l'application d'amendes hormis celles prévues aux 1,2 et 3 du I et au II de l'article 1737 et à l'article 1788 B du code général des impôts.

**(5) Support to the inspectors (Customs Code, General Tax Code)**

86 In the area of tax inspections Article L 10 Tax Procedure Code may apply. The tax officers may as well by virtue of Art. 10, 16 and 85 Tax Procedures Code request documents.

**(6) Preservation of Evidence (Customs Code, General Tax Code)**

87 **Customs Code**

**Art. 67E.**<sup>495</sup> Within the framework of the controls and investigations provided for in this Code, with the exception of those provided for in Article 64, documents, records or information used by customs officers and duly brought to their attention under the conditions provided for in Articles 59c to 59e, 64A to 65b, 343a and 455 or pursuant to the rights of communication vested in them by other texts or pursuant to the provisions relating to administrative assistance by the competent authorities of foreign States, may not be disregarded on the sole grounds of their origin.

**g) Single measures**

88 Interviewing, taking statements, inspecting and searching for evidence are single measures, which if taken together create the scope of OLAF's external powers.

**aa. Interviewing/Questioning of „persons concerned” (in relation to suspects/defendants)**

**Art. 67F. Customs Code**<sup>496</sup>

A person in respect of whom there are plausible grounds for suspecting that he has committed or attempted to commit an offence and who is not placed in customs detention may only be heard on these facts after notification of the information provided for in Article 61-1 of the Code of Criminal Procedure.

If, during the hearing of a person, plausible grounds for suspecting that he or she has committed or attempted to commit an offence appear, this information shall be communicated to him or her without delay.

Where the person heard is a minor, Title I of Book III and Chapters I and II of Title I of Book IV of the Code of Criminal Justice for Minors shall apply.

<sup>495</sup> **Art. 67E. Codes des douanes**

Dans le cadre des contrôles et enquêtes prévus au présent code, à l'exception de ceux prévus à l'article 64, ne peuvent être écartés au seul motif de leur origine les documents, pièces ou informations que les agents des douanes utilisent et qui sont régulièrement portés à leur connaissance dans les conditions prévues aux articles 59 quater à 59 sexies, 64 A à 65 ter, 343 bis et 455 ou en application des droits de communication qui leur sont dévolus par d'autres textes ou en application des dispositions relatives à l'assistance administrative par les autorités compétentes des Etats étrangers.

<sup>496</sup> **Art. 67F. Codes des douanes**

La personne à l'égard de laquelle il existe des raisons plausibles de soupçonner qu'elle a commis ou tenté de commettre une infraction et qui n'est pas placée en retenue douanière ne peut être entendue sur ces faits qu'après la notification des informations prévues à l'article 61-1 du code de procédure pénale.

S'il apparaît au cours de l'audition d'une personne des raisons plausibles de soupçonner qu'elle a commis ou tenté de commettre une infraction, ces informations lui sont communiquées sans délai.

Lorsque la personne entendue est mineure, le titre Ier du livre III et les chapitres Ier et II du titre Ier du livre IV du code de la justice pénale des mineurs sont applicables.

## bb. The taking of statements from and actions at the premises of the Economic Operators

The applicable law for the taking of statements from and actions at the premises of the economic operators depends on the area of investigation: either revenue related irregularities (Customs law/Tax law) or expenditure related irregularities (possibly special administrative law, budget law, etc. applies) need to be applied. 89

- Customs Code (Section 2: *Droit d'accès aux locaux et lieux à usage professionnel et visites domiciliaires. (Articles 63 ter à 64)*)
- Tax Procedures Code (*Chapitre I bis: Le droit d'enquête (articles L80 F à L80 J)*)

### (1) Customs Procedures Perspective

#### Art. 63ter<sup>497</sup>

In order to carry out the investigations necessary for the detection and observation of the offenses provided for in this code, the customs agents of category A or B and the agents of category C provided that they are accompanied by one of the aforementioned agents **have access to premises and places for professional i.e. economic use**, as well as to land and warehouses where the goods and documents relating to these offenses are likely to be held, whatever the medium. For the same purposes, they have access to the means of transport for professional use and to their load. 90

This access takes place between 8 a.m. and 8 p.m. or, outside these hours, when public access is authorized, or when production, manufacturing, packaging, transport, handling, warehousing or marketing.

The public prosecutor is informed in advance of the operations referred to in the first paragraph and may oppose them. A report of the report describing the progress of the control operations is sent to him within five days of its establishment. A copy is sent to the interested party within the same period.

#### <sup>497</sup> Art. 63ter Codes des douanes

Afin de procéder aux investigations nécessaires à la recherche et à la constatation des infractions prévues au présent code, les agents des douanes de catégorie A ou B et les agents de catégorie C pour autant qu'ils soient accompagnés de l'un des agents précités ont accès aux locaux et lieux à usage professionnel, ainsi qu'aux terrains et aux entrepôts où les marchandises et documents se rapportant à ces infractions sont susceptibles d'être détenus quel qu'en soit le support. Aux mêmes fins, ils ont accès aux moyens de transport à usage professionnel et à leur chargement.

Cet accès a lieu entre 8 heures et 20 heures ou, en dehors de ces heures, lorsque l'accès au public est autorisé, ou lorsque sont en cours des activités de production, de fabrication, de conditionnement, de transport, de manutention, d'entreposage ou de commercialisation.

Le procureur de la République est préalablement informé des opérations visées au premier alinéa et peut s'y opposer. Un procès-verbal de constat relatant le déroulement des opérations de contrôle lui est transmis dans les cinq jours suivant son établissement. Une copie en est transmise à l'intéressé dans le même délai.

Au cours de leurs investigations, les agents des douanes mentionnés au premier alinéa peuvent procéder à la retenue de documents pour les besoins de l'enquête ou en prendre copie quel qu'en soit le support.

Pour l'application des dispositions relatives à l'assistance mutuelle entre les autorités administratives des Etats membres de la Communauté européenne en matière de réglementation douanière ou agricole, les agents des douanes sont autorisés à mettre en oeuvre les dispositions du présent article pour le contrôle des opérations douanières ou agricoles réalisées dans les autres Etats membres de la Communauté européenne.

Le présent article s'applique à la partie affectée à usage privatif des locaux et lieux mentionnés au premier alinéa lorsque leur occupant ou son représentant en donne l'assentiment exprès. Cet assentiment fait l'objet d'une déclaration signée par l'intéressé et recueillie sur place, annexée au procès-verbal mentionné au troisième alinéa.

During their investigations, the customs officers mentioned in the first paragraph may retain documents for the purposes of the investigation or take copies of them, whatever the medium.

For the application of the provisions relating to mutual assistance between the administrative authorities of the Member States of the European Community in matters of customs or agricultural regulations, customs officers are authorized to implement the provisions of this article for the control of customs or agricultural operations carried out in other Member States of the European Community.

This article applies to the part allocated for private use of the premises and places mentioned in the first paragraph when their occupant or his representative gives express consent. This consent is the subject of a declaration signed by the person concerned and collected on the spot, annexed to the minutes mentioned in the third paragraph.

## (2) Tax Procedures Perspective

91

### Tax Procedures Code

#### Chapter I bis: The right of investigation (Articles L80 F to L80 J)

See Art. L. 80F.<sup>498</sup>

[...]

They *can collect on the spot or on summons information and justifications*. These hearings give rise to the establishment of hearing reports.

The investigation defined in this article does not come under the tax control procedures provided for in articles L. 10 to L. 47 A.

In addition, each intervention is the subject of a report relating the operations carried out.

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<sup>498</sup> Art. L. 80F. Livre des procédures fiscales

Ils peuvent recueillir sur place ou sur convocation des renseignements et justifications. Ces auditions donnent lieu à l'établissement de comptes rendus d'audition.

L'enquête définie au présent article ne relève pas des procédures de contrôle de l'impôt prévues aux articles L. 10 à L. 47 A.

En outre, chaque intervention fait l'objet d'un procès-verbal relatant les opérations effectuées.



**Art. 80FA.**<sup>499</sup>

Administration agents may intervene unexpectedly in the professional premises of companies issuing and receiving invoices and, if necessary, in the professional premises of service providers for electronic transmission of invoices to check the compliance of the operation of the electronic transmission system for invoices and the advanced electronic signature procedure under the conditions set by decree.

During the intervention mentioned in the first paragraph, the administration gives the taxpayer, or his representative, a notice of intervention specifying the technical operations envisaged on the system for remote transmission of invoices or the electronic signature procedure.

In the event of impossibility of carrying out the checks mentioned in the first paragraph or of failure to comply with the conditions fixed by decree, the agents of the administration draw up a report. Within thirty days from the notification of this report, the taxpayer may submit his observations, provide justifications or proceed with the regularization of the operating conditions of the system. At the end of this period and in the absence of justification or regularization, electronic invoices are no longer considered as documents in lieu of original invoices.

The intervention, carried out by agents of the administration or under their control in accordance with the first paragraph, does not come under the tax control procedures governed by Articles L. 10 to L. 54 A . The reports drawn up pursuant to this article are only enforceable against the taxpayer with regard to the conformity of the electronic transmission system for invoices and the electronic signature procedure with the conditions set by decree.

<sup>499</sup> **Art. L. 80FA. Livre des procédures fiscales**

Les agents de l'administration peuvent intervenir de manière inopinée dans les locaux professionnels des entreprises émettrices et réceptrices des factures et, s'il y a lieu, dans les locaux professionnels des prestataires de services de télétransmission des factures pour contrôler la conformité du fonctionnement du système de télétransmission des factures et de la procédure de signature électronique avancée aux conditions fixées par décret. Lors de l'intervention mentionnée au premier alinéa, l'administration remet au contribuable, ou à son représentant, un avis d'intervention précisant les opérations techniques envisagées sur le système de télétransmission des factures ou de procédure de signature électronique.

En cas d'impossibilité de procéder aux contrôles mentionnés au premier alinéa ou de manquement aux conditions fixées par décret, les agents de l'administration en dressent procès-verbal. Dans les trente jours à compter de la notification de ce procès-verbal, le contribuable peut formuler ses observations, apporter des justifications ou procéder à la régularisation des conditions de fonctionnement du système. A l'expiration de ce délai et en l'absence de justification ou de régularisation, les factures électroniques ne sont plus considérées comme documents tenant lieu de factures d'origine.

L'intervention, opérée par des agents de l'administration ou sous leur contrôle conformément au premier alinéa, ne relève pas des procédures de contrôle de l'impôt régies par les articles L. 10 à L. 54 A. Les procès-verbaux établis en application du présent article ne sont opposables au contribuable qu'au regard de la conformité du système de télétransmission des factures et de la procédure de signature électronique aux conditions fixées par décret.

**Art. L. 80G.**<sup>500</sup>

During the first intervention or summons under the right of inquiry provided for in Article L. 80 F, the administration issues a notice of inquiry. When the first intervention takes place in the absence of the taxable person or, when the taxable person is a legal person, of his representative, the notice of investigation is given to the person receiving the investigators.

When the first intervention takes place in the absence of the taxable person or, when the taxable person is a legal person, of his representative, a report is drawn up immediately. It is signed by the administration officials and by the person who witnessed the intervention. In the event of refusal to sign, this is mentioned in the minutes. A copy of it is given to this person. Another copy is sent to the taxable person or, when the taxable person is a legal person, to his representative.

**cc. Interviewing/Questioning of witnesses**

- 92 Interviews and the questioning of witnesses is necessary to gather substantive evidence for recommendations to a national authority (below → Art. 11 OLAF-Reg.).
- 93 In an **anti-dumping and false origin case** (customs fraud) from 2017 **the Cour de Cassation** ruled that a „request for nullity of the minutes” by the accused company will be, considering the following:



„as a preliminary point, that the appellant cannot, without referring to any legal basis, seriously reproach the customs administration for not having it warned during the investigation undertaken as of October 11, 2006, of her right to call on counsel of her choice, on the one hand, nor on the other hand, to accuse the Anti-Fraud Office of having carried out his investigation in Malaysia without his presence; that the **alleged irregularities** invoked cannot be retained; [...] then, that in support of its request to have the minutes pronounced null and void, the company Fibertex argues, as in the first instance, the lack of respect, by **the Office for the Fight against Fraud and by French Customs** of the requirements of the Community Customs Code and the principles of adversarial proceedings and the rights of the defense, during the investigation and prior to notification of the offense report of April 8, 2009, which constitutes the act adversely affecting him and the event giving rise to the collection notice; that it adds that the period of 15 days elapsed between this report and the notice of collection did not allow it materially to examine the documents annexed to the report notification of offence;

<sup>500</sup> **Art. L. 80G. Livre des procédures fiscales**

Lors de la première intervention ou convocation au titre du droit d'enquête prévu à l'article L. 80 F, l'administration remet un avis d'enquête. Lorsque la première intervention se déroule en l'absence de l'assujetti ou, lorsque l'assujetti est une personne morale, de son représentant, l'avis d'enquête est remis à la personne recevant les enquêteurs.

Lorsque la première intervention se déroule en l'absence de l'assujetti ou, lorsque l'assujetti est une personne morale, de son représentant, un procès-verbal est établi sur-le-champ. Il est signé par les agents de l'administration et par la personne qui a assisté au déroulement de l'intervention. En cas de refus de signer, mention en est faite au procès-verbal. Une copie de celui-ci est remise à cette personne. Une autre copie est transmise à l'assujetti ou, lorsque l'assujetti est une personne morale, à son représentant.

[...] that if the provisions of articles 67A to 67D of the customs code, created by the law of December 30, 2009, on the right to be heard had not entered into force when the minutes of notification of infringement was established, the procedure was nonetheless subject, as invoked by the appellant, to the **requirements of Community law** which enshrines the principles of adversarial proceedings and the rights of the defence; that compliance with them implies that the person liable has been given the opportunity, before the issuance of the collection notice, to make his point of view known to the customs administration, with full knowledge of the facts, within a sufficient period of time with regard to the investigation procedure; [...] in view of the documents submitted to the proceedings, that the control which led to the issue of the disputed AMR took place over several months; that in this context, the customs officers intervened on the premises of the company on the dates hereinafter mentioned, proceeded to the hearing of Mr X..., chairman of the management board, of Mr. Alain Y..., administrative and financial director and Mr Gilles Z..., responsible for purchases and that they requested and seized various documents ; that minutes were drawn up: 10 and 11 October 2006, 24 and 25 April 2007, 16, 17 and 18 October 2007, 12 June 2008, and finally 8 April 2009; [...] that these minutes state that the investigation carried out had as its object the control of the commercial operations of foreign trade carried out by the company Fibertex during the non-prescribed period; that, as the customs administration rightly observes, the question of the **supply of raw materials from** China and Malaysia was addressed from the first intervention of the investigators, so that the company was not unaware of the field of investigation of the Administration; that subsequently the investigations continued on this point, the **hearing of Mr Z..** of 16 October 2006 in particular having focused exclusively on imports from China, Malaysia and Vietnam, and on the suppliers of raw materials from these country ; [...] furthermore, that at the end of each of the hearings or communications of exhibits, the persons interviewed were invited to make any observations they deemed useful; that however, they did not use this option, including, as noted by the court, after the establishment of the minutes of June 12, 2008 which relates that the Administration had presented to M Michel X...by way of example, five customs declarations checked, copied at his request, and which he had declared: „Following the documents that you present to me, I now have **serious doubts about the origin**“;

That despite a period of 10 months between this report and the report of notification of offence, the company Fibertex did not appear with the Customs Administration; [...] that even if the company Fibertex did not have “the entirety“ of the investigation of the Anti-Fraud Office, the fact remains that the elements collected during the **customs investigation** of which it disposed, as well as the **report of mission** established by the Office of Fight Anti Fraud, given in copy for the part useful to the present dispute to Mr Michel X..., legal representative of the company fully informed of the object of the investigation, allowed the latter, heard on several occasions, and for the first time, from October 10, 2006 and the last on April 8, 2009, to make known its point of view to the

customs administration, in full knowledge of the facts; [...] also, with regard to the period separating the offense report from the collection notice that the company Fibertex, which maintained at first instance that it had not had at its disposal the documents opposed to it by the customs, is not justified in claiming before the court that it did not have the material time to use them, whereas following the notification of the minutes of April 8, 2009, accompanied by the copy, to Mr Michel X..., of the documents founding the proceedings, the latter did not raise other dispute than the formal denial mentioned in these minutes, nor addressed the slightest observation during the 16 days which elapsed between this act and the notification of the notice of recovery on April 24, 2009; that the result is that the company Fibertex has indeed been put in a position before issuing the notice of collection to make known its point of view, knowingly, within a sufficient time; that the court correctly noted that the company Fibertex had not come forward during the procedure, other than by requesting, by letter dated April 28, 2009, a request for suspension of payment, then a request for remission on the basis articles 239 and 220-2-b of the community customs code; [...] that to assert its means of defence; that the plea based on the lack of respect for the principle of contradiction and the rights of the defence, [...] rejected”; [...].”<sup>501</sup>

Q The main national sources are therefore again:

- the Customs Code
- the Tax Procedures Code.

#### **dd. Inspections (droit de communication)**

94 On the revenue side customs and tax inspections must be distinguished.

##### **(1) Customs Code related legislation**

95 The relevant provisions are:

- **Section 3: Right of communication (Articles 64a to 65d)**
- Paragraph 1: Right of communication of the financial administration. (Articles 64 A to 64 B)
- Article 64 A Article 64 B
- Paragraph 2: Right of communication specific to the customs administration. (Articles 65 to 65d)
- Article 65 Article 65a Article 65b Article 65c Article 65d

96 Generally speaking Section 3 (*Paragraphe 1: Droit de communication de l'administration des finances. (Articles 64 A à 64 B)* and *Paragraphe 2: Droit de communication particulier à l'administration des douanes. (Articles 65 à 65 quinquies)*) of the Customs Code presents the rights of investigations (*droit d'investigations*).

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<sup>501</sup> Cour de Cassation, civile, Chambre commerciale, 8 novembre 2017, 14-15.569, Inédit, ECLI:FR:CCASS:2017:CO01358.

**Customs Code****Right of inspection of goods, means of transport and persons. (Art. 60 to 63 bis)<sup>502</sup>****Art. 60<sup>503</sup>**

For the application of the provisions of this code and with a view to the search for fraud, the customs officers may carry out the inspection of goods and means of transport and of persons.

**Art. 60-bis<sup>504</sup>**

When there are serious indications that a person is carrying narcotics concealed in his body, customs officers may subject him to medical screening examinations after first obtaining his express consent.

In case of refusal, the customs officers present to the president of the territorially competent court or to the judge delegated by him a request for authorization. This is transmitted to the magistrate by any means.

The magistrate seized may authorize customs officers to carry out medical examinations. He then appoints the doctor responsible for performing them as soon as possible. The results of the examination communicated by the doctor, the observations of the person concerned and the progress of the procedure must be recorded in a report sent to the magistrate.

Any person who refuses to submit to the medical examinations prescribed by the magistrate will be punished by a prison sentence of one year and a fine of 3750 euros.

<sup>502</sup> Droit de visite des marchandises, des moyens de transport et des personnes. (Articles 60 à 63 bis). Code des douanes

<sup>503</sup> **Article 60** Pour l'application des dispositions du présent code et en vue de la recherche de la fraude, les agents des douanes peuvent procéder à la visite des marchandises et des moyens de transport et à celle des personnes.

<sup>504</sup> **Article 60 bis**

Lorsque des indices sérieux laissent présumer qu'une personne transporte des produits stupéfiants dissimulés dans son organisme, les agents des douanes peuvent la soumettre à des examens médicaux de dépistage après avoir préalablement obtenu son consentement exprès.

En cas de refus, les agents des douanes présentent au président du tribunal judiciaire territorialement compétent ou au juge délégué par lui une demande d'autorisation. Celle-ci est transmise au magistrat par tout moyen.

Le magistrat saisi peut autoriser les agents des douanes à faire procéder aux examens médicaux. Il désigne alors le médecin chargé de les pratiquer dans les meilleurs délais.

Les résultats de l'examen communiqués par le médecin, les observations de la personne concernée et le déroulement de la procédure doivent être consignés dans un procès-verbal transmis au magistrat.

Toute personne qui aura refusé de se soumettre aux examens médicaux prescrits par le magistrat sera punie d'une peine d'emprisonnement d'un an et d'une amende de 3750 euros.

**Art. 61**<sup>505</sup>

1. Any driver of a means of transport must submit to the orders of customs officials.
2. The latter may make use of appropriate equipment, in accordance with the technical standards defined by order of the Minister responsible for customs, to immobilize the means of transport in the cases provided for in Article L. 214-2 of the Internal Security Code.

*Cf.* → e.g. Art. 3 Para 5 OLAF-Regulation

- 98 Art. 64 Customs Code contains the right of visit (*droit de visite*). **Art. 64A and Art 65 Customs Code** contain the right of communication (*droit de communication*) as an enforceable right against the national bodies:

99 **[Pouvoir des agents des douanes/Powers of the Customs Agents]**

**Art. 64 [concrete thresholds for seizures, assets and freezing at any private place]**<sup>506</sup>

1. For the investigation and observation of customs offences, referred to in Articles 414

<sup>505</sup> **Article 61 Codes des douanes**

1. Tout conducteur de moyen de transport doit se soumettre aux injonctions des agents des douanes.
2. Ces derniers peuvent faire usage de matériels appropriés, conformes à des normes techniques définies par arrêté du ministre chargé des douanes, pour immobiliser les moyens de transport dans les cas prévus à l'article L. 214-2 du code de la sécurité intérieure.

<sup>506</sup> **Art. 64 Code des douanes**

1. Pour la recherche et la constatation des délits douaniers, visés aux articles 414 à 429 et 459, les agents des douanes habilités à cet effet par le ministre chargé des douanes peuvent procéder à des visites en tous lieux, même privés, où les marchandises et documents se rapportant à ces délits ainsi que les biens et avoirs en provenant directement ou indirectement sont susceptibles d'être détenus ou d'être accessibles ou disponibles. Ils sont accompagnés d'un officier de police judiciaire.

Les agents des douanes habilités peuvent procéder, à l'occasion de la visite, à la saisie des marchandises et des documents, quel qu'en soit le support, se rapportant aux délits précités. Si, à l'occasion d'une visite autorisée en application du 2 du présent article, les agents habilités découvrent des biens et avoirs provenant directement ou indirectement des délits précités, ils peuvent procéder à leur saisie après en avoir informé par tout moyen le juge qui a pris l'ordonnance et qui peut s'y opposer.

2. a) Hormis le cas de flagrant délit, chaque visite doit être autorisée par une ordonnance du juge des libertés et de la détention du tribunal judiciaire du lieu de la direction des douanes dont dépend le service chargé de la procédure.

L'ordonnance comporte:

-l'adresse des lieux à visiter ;

-le nom et la qualité du fonctionnaire habilité qui a sollicité et obtenu l'autorisation de procéder aux opérations de visite ;

-la mention de la faculté pour l'occupant des lieux ou son représentant, ainsi que l'auteur présumé des infractions mentionnées au 1, de faire appel à un conseil de son choix.

L'exercice de cette faculté n'entraîne pas la suspension des opérations de visite et de saisie.

Le juge motive sa décision par l'indication des éléments de fait et de droit qu'il retient et qui laissent présumer, en l'espèce, l'existence des agissements frauduleux dont la preuve est recherchée. Il se prononce par une mention expresse sur la saisie de biens et avoirs pouvant provenir directement ou indirectement des délits dont la preuve est recherchée.

Si, à l'occasion de la visite, les agents habilités découvrent l'existence d'un coffre dans un établissement de crédit dont la personne occupant les lieux visités est titulaire et où des pièces, documents, objets ou marchandises se rapportant aux agissements visés au 1, sont susceptibles de se trouver, ils peuvent, sur autorisation délivrée par tout moyen par le juge qui a pris l'ordonnance, procéder immédiatement à la visite de ce coffre. Mention de cette autorisation est portée au procès-verbal prévu au b du 2.

Si, à l'occasion de la visite, les agents habilités découvrent des éléments révélant l'existence en d'autres lieux de biens ou avoirs se rapportant aux agissements visés au 1, ils peuvent, sur autorisation délivrée par tout moyen par

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le juge qui a pris l'ordonnance, procéder immédiatement à la visite de ces lieux aux fins de saisir ces biens et avoirs. Mention de cette autorisation est portée au procès-verbal prévu au b du présent 2.

Le juge doit vérifier de manière concrète que la demande d'autorisation qui lui est soumise est bien fondée ; cette demande doit comporter tous les éléments d'information en possession de l'administration de nature à justifier la visite.

Il désigne l'officier de police judiciaire chargé d'assister à ces opérations et de le tenir informé de leur déroulement. La visite s'effectue sous le contrôle du juge qui l'a autorisée. Lorsqu'elle a lieu en dehors du ressort de son tribunal judiciaire, il délivre une commission rogatoire, pour exercer ce contrôle, au juge des libertés et de la détention du tribunal judiciaire dans le ressort duquel s'effectue la visite.

Le juge peut se rendre dans les locaux pendant l'intervention.

A tout moment, il peut décider la suspension ou l'arrêt de la visite.

L'ordonnance est exécutoire au seul vu de la minute.

L'ordonnance est notifiée verbalement et sur place au moment de la visite à l'occupant des lieux ou à son représentant qui en reçoit copie intégrale contre récépissé ou émargement au procès-verbal prévu au b du 2. En l'absence de l'occupant des lieux ou de son représentant, l'ordonnance est notifiée après la visite par lettre recommandée avec avis de réception. La notification est réputée faite à la date de réception figurant sur l'avis. Une copie est également adressée par lettre recommandée avec demande d'avis de réception à l'auteur présumé des délits douaniers mentionnés au 1, nonobstant les dispositions de l'article 59 bis.

A défaut de réception, il est procédé à la signification de l'ordonnance par acte d'huissier de justice.

Le délai et la voie de recours sont mentionnés dans l'ordonnance.

L'ordonnance peut faire l'objet d'un appel devant le premier président de la cour d'appel. Les parties ne sont pas tenues de constituer avocat.

Suivant les règles prévues par le code de procédure civile, cet appel doit être exclusivement formé par déclaration remise ou adressée, par pli recommandé ou, à compter du 1er janvier 2009, par voie électronique, au greffe de la cour dans un délai de quinze jours. Ce délai court à compter soit de la remise, soit de la réception, soit de la signification de l'ordonnance. Cet appel n'est pas suspensif.

Le greffe du tribunal judiciaire transmet sans délai le dossier de l'affaire au greffe de la cour d'appel où les parties peuvent le consulter.

L'ordonnance du premier président de la cour d'appel est susceptible d'un pourvoi en cassation, selon les règles prévues par le code de procédure civile. Le délai de pourvoi en cassation est de quinze jours.

b) La visite ne peut être commencée avant six heures ni après vingt et une heures. Elle est effectuée en présence de l'occupant des lieux ou de son représentant ; en cas d'impossibilité, l'officier de police judiciaire requiert deux témoins choisis en dehors des personnes relevant de son autorité ou de celle de l'administration des douanes.

Les agents des douanes mentionnés au 1 ci-dessus, les personnes auxquelles ils ont éventuellement recours en application de l'article 67 quinquies A, l'occupant des lieux ou son représentant et l'officier de police judiciaire peuvent seuls prendre connaissance des pièces et documents avant leur saisie.

L'officier de police judiciaire veille au respect du secret professionnel et des droits de la défense conformément aux dispositions du troisième alinéa de l'article 56 du code de procédure pénale ; l'article 58 de ce code est applicable.

Le procès-verbal, auquel est annexé un inventaire des marchandises et documents saisis ainsi que des biens et avoirs provenant directement ou indirectement des délits dont la preuve est recherchée, est signé par les agents des douanes, l'officier de police judiciaire et par les personnes mentionnées au premier alinéa du présent b ; en cas de refus de signer, mention en est faite au procès-verbal.

Si l'inventaire sur place présente des difficultés, les pièces, documents, biens et avoirs saisis sont placés sous scellés. L'occupant des lieux ou son représentant est avisé qu'il peut assister à l'ouverture des scellés qui a lieu en présence de l'officier de police judiciaire ; l'inventaire est alors établi.

Une copie du procès-verbal et de l'inventaire est remise à l'occupant des lieux ou à son représentant. Une copie est également adressée par lettre recommandée avec demande d'avis de réception à l'auteur présumé des délits douaniers mentionnés au 1, nonobstant les dispositions de l'article 59 bis.

Un exemplaire du procès-verbal et de l'inventaire est adressé au juge qui a délivré l'ordonnance dans les trois jours de son établissement. Si le juge constate que les biens et avoirs saisis ne proviennent pas directement ou indirectement des délits dont la preuve est recherchée, il ordonne la mainlevée de la saisie et la restitution des biens et avoirs concernés.

Le premier président de la cour d'appel connaît des recours contre le déroulement des opérations de visite ou de saisie autorisées en application du a. Le procès-verbal et l'inventaire rédigés à l'issue de ces opérations mentionnent le délai et la voie de recours. Les parties ne sont pas tenues de constituer avocat.

Suivant les règles prévues par le code de procédure civile, ce recours doit être exclusivement formé par déclaration remise ou adressée, par pli recommandé ou, à compter du 1er janvier 2009, par voie électronique, au greffe de la

to 429 and 459, customs officers authorized for this purpose by the Minister responsible for customs may carry out visits to any place, even private, where the goods and documents relating to these offenses as well as the property and assets resulting directly or indirectly from them are likely to be held or to be accessible or available. They are accompanied by a judicial police officer.

Authorized customs officers may proceed, during the inspection, to seize the goods and documents, whatever the medium, relating to the aforementioned offences. If, during a visit authorized pursuant to 2 of this article, the authorized agents discover property and assets directly or indirectly resulting from the aforementioned offences, they can proceed to their seizure after having informed the judge by any means. who made the order and who can oppose it.

2. a) Except in the case of *flagrante delicto*, **each visit must be authorized by an order from the judge of freedoms and detention** of the judicial court of the place of the customs department on which the service responsible for the procedure depends.

The order includes:

- the address of the places to visit;
- the name and capacity of the authorized official who requested and obtained the authorization to carry out the inspection operations;

cour dans un délai de quinze jours. Ce délai court à compter de la remise ou de la réception soit du procès-verbal, soit de l'inventaire. Ce recours n'est pas suspensif.

L'ordonnance du premier président de la cour d'appel est susceptible d'un pourvoi en cassation selon les règles prévues par le code de procédure civile. Le délai du pourvoi en cassation est de quinze jours.

c) Lorsque l'occupant des lieux ou son représentant fait obstacle à l'accès aux pièces ou documents présents sur un support informatique, à leur lecture ou à leur saisie, mention en est portée au procès-verbal.

Les agents des douanes peuvent alors procéder à la copie de ce support et saisir ce dernier, qui est placé sous scellés. Ils disposent de quinze jours à compter de la date de la visite pour accéder aux pièces ou documents présents sur le support informatique placé sous scellés, à leur lecture et à leur saisie ainsi qu'à la restitution de ce dernier et de sa copie. Ce délai est prorogé sur autorisation délivrée par le juge des libertés et de la détention.

A la seule fin de permettre la lecture des pièces ou documents présents sur le support informatique placé sous scellés, les agents des douanes procèdent aux opérations nécessaires à leur accès ou à leur mise au clair. Ces opérations sont réalisées sur la copie du support.

L'occupant des lieux ou son représentant est avisé qu'il peut assister à l'ouverture des scellés, à la lecture et à la saisie des pièces et documents présents sur ce support informatique, qui ont lieu en présence de l'officier de police judiciaire.

Un procès-verbal décrivant les opérations réalisées pour accéder à ces pièces et documents, à leur mise au clair et à leur lecture est dressé par les agents des douanes. Un inventaire des pièces et documents saisis lui est annexé, s'il y a lieu.

Le procès-verbal et l'inventaire sont signés par les agents des douanes et par un officier de police judiciaire ainsi que par l'occupant des lieux ou son représentant ; en l'absence de celui-ci ou en cas de refus de signer, mention en est faite au procès-verbal.

Il est procédé concomitamment à la restitution du support informatique et de sa copie. En l'absence de l'occupant des lieux ou de son représentant, l'administration accomplit alors sans délai toutes diligences pour les restituer.

3. Les agents des douanes peuvent intervenir sans l'assistance d'un officier de police judiciaire:

a) pour opérer les visites, recensements et contrôles à domicile chez les titulaires d'un compte ouvert d'animaux ou d'un titre de passage ;

b) pour la recherche des marchandises qui, poursuivies à vue sans interruption dans les conditions prévues par l'article 332 ci-après, sont introduites dans une maison ou autre bâtiment même sis en dehors du rayon.

4. S'il y a refus d'ouverture des portes, les agents des douanes peuvent les faire ouvrir en présence d'un officier de police judiciaire.



- the mention of the right for the occupant of the premises or his representative, as well as the alleged perpetrator of the offenses mentioned in 1, to call on counsel of his choice. The exercise of this option does not result in the suspension of inspection and seizure operations.

The judge justifies his decision by indicating the elements of fact and law that he retains and which suggest, in this case, the existence of the fraudulent acts whose proof is sought. It decides by an express mention on the seizure of goods and assets which can come directly or indirectly from the offenses whose proof is sought.

If, during the visit, the authorized agents discover the existence of a safe in a credit institution held by the person occupying the premises visited and where documents, documents, objects or goods relating to the actions referred to in 1, are likely to be found, they may, upon authorization issued by any means by the judge who issued the order, proceed immediately to inspect this safe. Mention of this authorization is recorded in the minutes provided for in b of 2.

If, during the visit, the authorized agents discover elements revealing the existence in other places of property or assets relating to the actions referred to in 1, they may, with authorization issued by any means by the judge who issued the order, ***proceed immediately to the visit of these places for the purpose of seizing these goods and assets.*** Mention of this authorization is recorded in the minutes provided for in b of this 2.

The judge must verify in a concrete way that the request for authorization submitted to him is well founded; this request must include all the information in the possession of the administration likely to justify the visit.

He appoints the judicial police officer responsible for attending these operations and keeping him informed of their progress.

The visit is carried out under the supervision of the judge who authorized it. When it takes place outside the jurisdiction of his judicial court, he delivers a letter rogatory, to exercise this control, to the judge of freedoms and detention of the judicial court in the jurisdiction of which the visit is carried out.

The judge may visit the premises during the intervention.

At any time, he can decide to suspend or end the visit.

The order is enforceable at the sole sight of the minute.

The order is notified verbally and on the spot at the time of the visit to the occupant of the premises or to his representative who receives a full copy against receipt or signature in the minutes provided for in b of 2. In the absence of the occupant of the premises or his representative, the order is notified after the visit by registered letter with acknowledgment of receipt. Notification is deemed to have been made on the date of receipt appearing on the notice. A copy is also sent by registered letter with acknowledgment of receipt to the alleged perpetrator of the customs offenses mentioned in 1, notwithstanding the provisions of article 59 bis .

Failing receipt, the order is served by bailiff.

The deadline and the remedy are mentioned in the order.

The order may be appealed to the First President of the Court of Appeal. The parties are not required to appoint a lawyer.

According to the rules provided for by the Code of Civil Procedure, this appeal must be made exclusively by declaration delivered or sent, by registered letter or, from January 1, 2009, electronically, to the court office within fifteen days. . This period runs from either the delivery, or receipt, or service of the order. This appeal is not suspensive.

The clerk of the court of law sends the case file without delay to the clerk of the court of appeal where the parties can consult it.

The order of the first president of the court of appeal is subject to appeal in cassation, according to the rules provided for by the code of civil procedure. The time limit for appeal in cassation is fifteen days.

b) The *visit cannot begin before six o'clock or after nine o'clock*. It is carried out in the presence of the occupant of the premises or his representative; in case of impossibility, the judicial police officer requires two witnesses chosen outside the persons coming under his authority or that of the customs administration.

The customs officers mentioned in 1 above, the persons to whom they may have recourse pursuant to Article 67 quinquies A, the occupant of the premises or his representative and the judicial police officer may alone examine the documents and documents before they are entered.

The *judicial police officer ensures respect for professional secrecy and the rights of the defense in accordance with the provisions of the third paragraph of article 56 of the code of criminal procedure*; article 58 of this code is applicable.

The report, to which is attached an inventory of the goods and documents seized as well as the property and assets directly or indirectly resulting from the offenses whose proof is sought, is signed by the customs officers, the judicial police officer and by the persons mentioned in the first paragraph of this b; in the event of refusal to sign, this is mentioned in the minutes.

If the on-site inventory presents difficulties, *the items, documents, goods and assets seized are placed under seal*. The occupant of the premises or his representative is informed that he can attend the opening of the seals which takes place in the presence of the judicial police officer; the inventory is then drawn up.

A copy of the minutes and the inventory is given to the occupant of the premises or his representative. A copy is also sent by registered letter with acknowledgment of receipt to the alleged perpetrator of the customs offenses mentioned in 1, notwithstanding the provisions of article 59 bis.

A copy of the report and the inventory is sent to the judge who issued the order within three days of its establishment. If the judge finds that the goods and assets seized do not come directly or indirectly from the offenses whose proof is sought, he orders the release of the seizure and the restitution of the goods and assets concerned.

The first president of the Court of Appeal hears appeals against the conduct of inspection or seizure operations authorized pursuant to a. The report and the inventory drawn up at

the end of these operations mention the deadline and the means of appeal. The parties are not required to appoint a lawyer.

According to the rules provided for by the Code of Civil Procedure, this appeal must be lodged exclusively by declaration delivered or addressed, by registered letter or, from January 1, 2009, electronically, at the court registry within fifteen days. . This period runs from the delivery or receipt of either the report or the inventory. This appeal is not suspensive.

The order of the first president of the court of appeal is subject to appeal in cassation according to the rules provided for by the code of civil procedure. The time limit for appeal in cassation is fifteen days.

c) When the occupier of the premises or his representative obstructs access to the exhibits or documents present on a computer medium, to their reading or to their seizure, a mention of this is made in the minutes.

Customs officers can then copy this medium and seize it, which is placed under seal. They have fifteen days from the date of the visit to access the items or documents present on the computer medium placed under seal, to read and enter them as well as to return it and its copy. This period is extended on authorization issued by the judge of freedoms and detention.

For the sole purpose of allowing the reading of the items or documents present on the computer medium placed under seal, the customs officers carry out the operations necessary for their access or their clarification. These operations are performed on the copy of the medium.

The occupant of the premises or his representative is informed that he can attend the opening of the seals, the reading and the seizure of the exhibits and documents present on this computer medium, which take place in the presence of the police officer. judicial. ***A report describing the operations carried out to gain access to these exhibits and documents, to clarifying them and reading them is drawn up by the customs officers.*** An inventory of the items and documents seized is attached to it, if applicable.

***The report and the inventory are signed by the customs agents and by a judicial police officer*** as well as by the occupant of the premises or his representative; in the absence of the latter or in the event of refusal to sign, this is mentioned in the minutes.

The computer medium and its copy are returned at the same time. In the absence of the occupant of the premises or his representative, the administration then immediately takes all steps to return them.

3. Customs officers may intervene without the assistance of a judicial police officer:

a) to carry out home visits, censuses and inspections of holders of an open animal account or a grazing permit;

b) for the search for goods which, pursued at sight without interruption under the conditions provided for by article 332 below, are brought into a house or other building even located outside the radius.

4. If the doors are refused to be opened, the customs officers may have them opened in the presence of a judicial police office.

See → Article 64 A Article

**Art. 64A Customs Code<sup>507</sup>**

1. In no case, the administrations of the State, the departments and the communes, as well as the companies conceded by the State, the departments and the communes, as well as all the establishments or organizations whatsoever subject to the control of the administrative authority as well as the social security organizations and funds and the organizations managing the unemployment insurance scheme, cannot oppose professional secrecy to customs officers having at least the rank of controller who, to establish the taxes instituted by the laws existing ones, ask them to communicate the service documents they hold, whatever the medium.

Category C customs officers may exercise the aforementioned right of communication when acting on the written order of a customs officer having at least the rank of inspector. This order must be presented to the authorities referred to in the paragraph above.

2. Individual information of an economic or financial nature collected during statistical surveys carried out within the framework of Law No. 51-711 of June 7, 1951 may under no circumstances be used for the purposes of tax control or repression. economic. Administrations depositary of information of this nature are not bound by the obligation resulting from 1 above.

**100** The rights and powers of customs officers in the rank of controllers are extensive.

**101** **Art. 65<sup>508</sup>** 1° Customs officers with at least the rank of controller may require the communication of papers and documents of any kind relating to operations of interest to their service, whatever the medium;

<sup>507</sup> **Art. 64A. Codes des douanes**

1. En aucun cas, les administrations de l'Etat, les départements et les communes, ainsi que les entreprises concédées par l'Etat, les départements et les communes, de même que tous les établissements ou organismes quelconques soumis au contrôle de l'autorité administrative ainsi que les organismes et caisses de sécurité sociale et les organismes gestionnaires du régime d'assurance-chômage, ne peuvent opposer le secret professionnel aux agents des douanes ayant au moins le grade de contrôleur qui, pour établir les impôts institués par les lois existantes, leur demandent communication des documents de service qu'ils détiennent, quel qu'en soit le support.

Les agents des douanes de catégorie C peuvent exercer le droit de communication susvisé lorsqu'ils agissent sur ordre écrit d'un agent des douanes ayant au moins le grade d'inspecteur. Cet ordre doit être présenté aux autorités visées à l'alinéa ci-dessus.

2. Les renseignements individuels d'ordre économique ou financier recueillis au cours d'enquêtes statistiques faites dans le cadre de la loi n° 51-711 du 7 juin 1951 ne peuvent en aucun cas être utilisés à des fins de contrôle fiscal ou de répression économique. Les administrations dépositaires de renseignements de cette nature ne sont pas tenues par l'obligation découlant du 1 ci-dessus.

<sup>508</sup> **Art. 65 Code des douanes**

1° Les agents des douanes ayant au moins le grade de contrôleur peuvent exiger la communication des papiers et documents de toute nature relatifs aux opérations intéressant leur service, quel qu'en soit le support ;

a) dans les gares de chemin de fer (lettres de voiture, factures, feuilles de chargement, livres, registres, etc.) ;

b) dans les locaux des compagnies de navigation maritimes et fluviales et chez les armateurs, consignataires et courtiers maritimes (manifestes de fret, connaissements, billets de bord, avis d'expédition, ordres de livraison, etc.)

- a) in railway stations (waybills, invoices, load sheets, books, registers, etc.);
- b) at the premises of maritime and river navigation companies and at shipowners, consignees and maritime brokers (cargo manifests, bills of lading, ship's tickets, shipping notices, delivery orders, etc.);
- c) in the premises of airlines (dispatch notes, delivery notes and slips, store registers, etc.);
- d) in the premises of road transport companies (take-over registers, parcel register books, delivery books, waybills, waybills, dispatch notes, etc.);
- e) on the premises of agencies, including those known as „rapid transport“, which are responsible for receiving, grouping, shipping by all means of transport (rail, road, water, air) and delivery all parcels (detailed collective dispatch slips, receipts, delivery books, etc.);
- f) at customs representatives or freight forwarders;

c) dans les locaux des compagnies de navigation aérienne (bulletins d'expédition, notes et bordereaux de livraison, registres de magasins, etc.) ;

d) dans les locaux des entreprises de transport par route (registres de prise en charge, carnets d'enregistrement des colis, carnets de livraison, feuilles de route, lettres de voitures, bordereaux d'expédition, etc.) ;

e) dans les locaux des agences, y compris celles dites de " transports rapides ", qui se chargent de la réception, du groupage, de l'expédition par tous modes de locomotion (fer, route, eau, air) et de la livraison de tous colis (bordereaux détaillés d'expéditions collectives, récépissés, carnets de livraison, etc.) ;

f) chez les représentants en douane ou transitaires ;

g) chez les concessionnaires d'entrepôts, docks et magasins généraux (registres et dossiers de dépôt, carnets de warrants et de nantissements, registres d'entrée et de sortie des marchandises, situation des marchandises, comptabilité matières, etc.) ;

h) chez les destinataires ou les expéditeurs réels des marchandises déclarées en douane ;

i) (Abrogé) ;

j) et, en général, chez toutes les personnes physiques ou morales directement ou indirectement intéressées à des opérations régulières ou irrégulières relevant de la compétence du service des douanes.

Le droit de communication s'exerce sur place ou par correspondance, y compris électronique, et quel que soit le support utilisé pour la conservation des documents.

2° Les agents des douanes de catégorie C peuvent exercer le droit de communication prévu au 1° lorsqu'ils agissent sur ordre écrit d'un agent des douanes ayant au moins le grade d'inspecteur. Cet ordre doit être présenté aux personnes envers lesquelles le droit de communication est mis en œuvre.

3° Les divers documents visés au 1° du présent article doivent être conservés par les intéressés pendant un délai de trois ans, à compter de la date d'envoi des colis, pour les expéditeurs, et à compter de la date de leur réception, pour les destinataires.

4° a) Les bénéficiaires ou redevables visés à l'article 65 A ci-dessous doivent conserver les documents relatifs à leur activité professionnelle durant 3 années civiles à compter de la fin de l'année civile de l'établissement de ces documents. Ils doivent en délivrer des extraits ou des copies à la demande des agents chargés du contrôle.

b) Par documents, on entend l'ensemble des livres, registres, notes et pièces justificatives (comptabilité, registres, factures, correspondances, copies de lettres, etc.) relatives à l'activité professionnelle de l'entreprise, quel qu'en soit le support.

5° Au cours des contrôles et des enquêtes opérés auprès des personnes ou sociétés visées au 1° du présent article, les agents des douanes désignés par ce même paragraphe peuvent prendre copie, quel qu'en soit le support, ou procéder à la saisie des documents de toute nature (comptabilité, factures, copies de lettres, carnets de chèques, traites, comptes de banque, etc.) propres à faciliter l'accomplissement de leur mission.

6° L'administration des douanes est autorisée, sous réserve de réciprocité, à fournir aux autorités qualifiées des pays étrangers tous renseignements, certificats, procès-verbaux et autres documents susceptibles d'établir la violation des lois et règlements applicables à l'entrée ou à la sortie de leur territoire, quel qu'en soit le support.

7° Pour l'application des dispositions relatives à l'assistance mutuelle entre les autorités administratives des Etats membres de l'Union européenne en matière de réglementation douanière ou agricole, les agents des douanes sont autorisés à mettre en œuvre les dispositions du présent article pour le contrôle des opérations douanières ou agricoles réalisées dans les autres Etats membres.

8° (Abrogé).

g) at concessionaires of warehouses, docks and general stores (registers and deposit files, books of warrants and pledges, registers of entry and exit of goods, situation of goods, stock records, etc.);

h) at the actual recipients or shippers of the goods declared to customs;

i) (repealed);

j) and, in general, to all natural or legal persons directly or indirectly interested in regular or irregular operations falling within the jurisdiction of the customs service. right of communication is exercised on site or by correspondence, including electronically, and regardless of the medium used to store the documents.

2° Category C customs officers may exercise the right of communication provided for in 1° when they act on the written order of a customs officer having at least the rank of inspector. This order must be presented to the persons towards whom the right of communication is implemented.

3° The various documents referred to in 1° of this article must be kept by the interested parties for a period of three years, from the date of dispatch of the parcels, for the senders, and from the date of their receipt, for recipients.

4° a) The beneficiaries or taxpayers referred to in Article 65 A below must keep the documents relating to their professional activity for 3 calendar years from the end of the calendar year in which these documents were drawn up. They must issue extracts or copies thereof at the request of the agents responsible for the control.

b) By documents, we mean all the books, registers, notes and supporting documents (accounting, registers, invoices, correspondence, copies of letters, etc.) relating to the professional activity of the company, whatever either the support.

5° ***[provisions that allows seizure, full text presented below]***

6° The customs administration is authorized, subject to reciprocity, to provide the qualified authorities of foreign countries with all information, certificates, reports and other documents likely to establish the violation of the laws and regulations applicable to the entry or when leaving their territory, whatever the medium.

7° For the application of the provisions relating to mutual assistance between the administrative authorities of the Member States of the European Union with regard to customs or agricultural regulations, customs officers are authorized to implement the provisions of this article to control of customs or agricultural operations carried out in other Member States.

8° (Repealed).

**Title II: Organization and operation of the customs service (Articles 43 to 67 F)**  
**Chapter IV: Powers of customs officers (Articles 60 to 67 quinquies B)**  
**Section 4: Controls of certain operations carried out within the framework of the European Community. (Articles 65 A to 65 C)**

**Art. 65A.**<sup>509</sup>

The customs administration is empowered to control the beneficiaries of advantages granted internally by the European Agricultural Guidance and Guarantee Fund, guarantee section, or by the European Agricultural Guarantee Fund, as well as those liable for sums due in regime internal to these bodies. The information thus collected may be transmitted to the paying agencies and to the Interministerial Commission for the Coordination of Controls.

These checks are carried out within the framework of article 65 above. The perpetrators of irregularities must pay the sums unduly obtained and the sums evaded on the basis of a recovery notice drawn up by the competent intervention organization provisions of this code relating to sums evaded or compromised during foreign trade operations are also applicable to irregularities observed during these checks.

**Art. 65a-bis**<sup>510</sup>

1° Under the derogatory provisions of Article 2 bis, the customs administration is empowered to control the quantity, quality, markings, packaging, destination or use of goods with national or community status, for which any advantage granted by the European agricultural guidance and guarantee fund, guarantee section, or by the European agricultural guarantee fund, is requested.

In addition, it is empowered to issue approvals in accordance with the Community regulations in force, when these are necessary for the allocation of the advantages requested, whatever their nature, from the European Guidance and Guarantee Fund. agriculture, guarantee section or the European agricultural guarantee fund.

<sup>509</sup> **Art. 65A. Code des douanes**

L'administration des douanes est habilitée à contrôler les bénéficiaires d'avantages alloués en régime intérieur par le Fonds européen d'orientation et de garantie agricole, section garantie, ou par le fonds européen agricole de garantie, ainsi que les redevables des sommes dues en régime intérieur à ces organismes. Les informations ainsi recueillies peuvent être transmises aux organismes payeurs et à la Commission interministérielle de coordination des contrôles.

Ces contrôles sont effectués dans le cadre de l'article 65 ci-dessus. Les auteurs d'irrégularités doivent s'acquitter des sommes indûment obtenues et des sommes éludées au vu d'un avis de recouvrement établi par l'organisme d'intervention compétent.

Les dispositions du présent code relatives aux sommes éludées ou compromises lors d'opérations du commerce extérieur sont également applicables aux irrégularités constatées lors de ces contrôles.

<sup>510</sup> **Art. 65a-bis Code des doanes.**

1° Au titre des dispositions dérogatoires de l'article 2 bis, l'administration des douanes est habilitée à contrôler la quantité, la qualité, les marquages, les emballages, la destination ou l'utilisation des marchandises ayant le statut national ou communautaire, pour lesquelles un avantage quelconque alloué par le fonds européen d'orientation et de garantie agricole, section garantie, ou par le fonds européen agricole de garantie, est sollicité.

En outre, elle est habilitée à délivrer les agréments conformément à la réglementation communautaire en vigueur, lorsque ceux-ci sont nécessaires pour l'attribution des avantages sollicités, quelle qu'en soit la nature, auprès du fonds européen d'orientation et de garantie agricole, section garantie ou du fonds européen agricole de garantie.

2<sup>511°</sup> Goods having national or Community status, exported to another Member State of the European Community, imported from another Member State of the European Community or subject to an operation in the customs territory and for which the use or destination are checked in accordance with Community regulations, are presented to the customs service. Customs officers are responsible for approving the control documents relating to these goods.

The categories of goods referred to in the preceding paragraph as well as the methods of presentation to customs are fixed by order of the Minister responsible for customs.

3° The checks referred to in 1, when they relate to goods which are the subject of operations within the customs territory of the European Community, and the checks referred to in 2 are carried out in accordance with the provisions laid down in Articles 1, 2.3, 322 bis, 468 and 469 as well as by this title.

4° In all cases, customs officers have access to premises and land for professional use, excluding homes or the part of the premises which serves as a home, between 8 a.m. and 8 p.m., or, outside of these hours, when an activity is in progress.

5° (repealed)

6° The provisions of Title XII, excluding Articles 410 to 412, 414 to 430, and Title XV apply when customs officers are unable to carry out the checks provided for in 3 and 4 above.

7° The penalties provided for in Article 414-2 are applicable in the event of a fraudulent act having the purpose or effect of obtaining, in whole or in part, any advantage granted by the European Agricultural Guidance and Guarantee Fund, Guarantee Section, or by the European Agricultural Guarantee Fund, in the case of goods subject to operations within the customs territory of the European Community. In the event of an unintentional irregularity, article 410 is applicable.

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<sup>511</sup> 2° Les marchandises ayant le statut national ou communautaire, exportées vers un autre Etat membre de la Communauté européenne, importées d'un autre Etat membre de la Communauté européenne ou faisant l'objet d'une opération sur le territoire douanier et pour lesquelles l'utilisation ou la destination sont contrôlées conformément à la réglementation communautaire, sont présentées au service des douanes. Les agents des douanes sont chargés de viser les documents de contrôle relatifs à ces marchandises.

Les catégories de marchandises visées à l'alinéa précédent ainsi que les modalités de la présentation en douane sont fixées par un arrêté du ministre chargé des douanes.

3° Les contrôles visés au 1, lorsqu'ils portent sur des marchandises faisant l'objet d'opérations à l'intérieur du territoire douanier de la Communauté européenne, et les contrôles visés au 2 sont effectués conformément aux dispositions prévues par les articles 1er, 2,3,322 bis, 468 et 469 ainsi que par le présent titre.

4° Dans tous les cas, les agents des douanes ont accès aux locaux et aux terrains à usage professionnel, à l'exclusion des domiciles ou de la partie des locaux qui sert de domicile, entre 8 heures et 20 heures, ou, en dehors de ces heures, lorsqu'une activité est en cours.

5° (abrogé)

6° Les dispositions du titre XII, à l'exclusion des articles 410 à 412,414 à 430, et au titre XV sont applicables lorsque les agents des douanes sont mis dans l'impossibilité d'exercer les contrôles prévus aux 3 et 4 ci-dessus.

7° Les sanctions prévues par l'article 414-2 sont applicables en cas d'acte frauduleux ayant pour but ou pour effet d'obtenir, en tout ou partie, un avantage quelconque alloué par le fonds européen d'orientation et de garantie agricole, section garantie, ou par le fonds européen agricole de garantie, lorsqu'il s'agit de marchandises faisant l'objet d'opérations à l'intérieur du territoire douanier de la Communauté européenne. En cas d'irrégularité non intentionnelle, l'article 410 est applicable.



**Art. 65-B.**<sup>512</sup>

The customs administration may implement the provisions of articles 60, 61, 63b and 65 in order to ensure compliance with the special requirements applicable to trade in certain Community goods with other Member States of the European Community.

The list of goods referred to in the previous paragraph is laid down by order of the Minister responsible for customs.

**Art. 65-C.**<sup>513</sup>

The provisions provided for by articles 1, 2 and 3, by this title and titles XII and XV of this code are applicable with regard to the products mentioned in 4 and 5 of article 38.

Art. 65 para 5 Customs Code allows the customs officers to **even seize what they found during an inspection** dealt with by Art. 64A and 65 Customs Code: **102**

**Excerpt Customs Code, Art. 65 [Right to seize documents during Inspection]**

5° During the checks and investigations carried out with the persons or companies referred to in 1° of this article, the customs officers designated by this same paragraph may take a copy, whatever the medium, or seize the documents of any kind (accounting, invoices, copies of letters, check books, drafts, bank accounts, etc.) suitable to facilitate the accomplishment of their mission.

! See as well the next heading below, which takes a closer look at search and seizure.

<sup>512</sup> **Art. 65.-B. Code des douanes.**

L'administration des douanes peut mettre en oeuvre les dispositions prévues par les articles 60,61,63 ter et 65 afin d'assurer le respect des prescriptions spéciales applicables aux échanges de certaines marchandises communautaires avec les autres Etats membres de la Communauté européenne.

La liste des marchandises visées à l'alinéa précédent est fixée par arrêté du ministre chargé des douanes.

<sup>513</sup> **Art. 65-C. Code des douanes.**

Les dispositions prévues par les articles 1er, 2 et 3, par le présent titre et les titres XII et XV du présent code sont applicables en ce qui concerne les produits mentionnés au 4 et au 5 de l'article 38.

**Art. 468. Customs Code**<sup>514</sup>

When a presentation to customs is provided for the goods referred to in 4 and 5 of Article 38, the customs service carries out the control of these goods in the presence of the holder.

When the holder refuses to attend the inspection, the service notifies, by registered letter, the recipient or the exporter of the products, as the case may be, of its intention to begin the inspection operations; if, on the expiry of a period of forty-eight hours after this notification, it has remained without effect, the president of the court of law in whose jurisdiction the customs office is located designates ex officio, at the request the customs collector, a person to represent the recipient or the exporter of the goods, defaulting.

When the goods are the subject, moreover, of a consignment measure, under the conditions provided for in article 322 bis, this can only be pronounced once the control operations have actually been undertaken.

**(2) Tax Procedures Code related legislation**

**103** In the area of tax procedures (see **Book of tax procedures**) **the right of inspection is limited to Art. 81:**

**104 Tax Procedures Code**<sup>515</sup>

**Art. L 81**<sup>516</sup> The right of communication allows the agents of the administration, for the establishment of the base, the control and the recovery of the taxes, to have knowledge of the documents and information mentioned in the articles of this chapter under the conditions which are there. specified.

<sup>514</sup> **Art. 468 Codes des douanes**

Lorsqu'une présentation en douane est prévue pour les marchandises visées au 4 et au 5 de l'article 38, le service des douanes effectue le contrôle de ces marchandises en présence du détenteur.

Lorsque le détenteur refuse d'assister au contrôle, le service notifie, par lettre recommandée, au destinataire ou à l'exportateur des produits selon le cas, son intention de commencer les opérations de contrôle ; si, à l'expiration d'un délai de quarante-huit heures après cette notification, celle-ci est restée sans effet, le président du tribunal judiciaire dans le ressort duquel est situé le bureau de douane désigne d'office, à la requête du receveur des douanes, une personne pour représenter le destinataire ou l'exportateur des marchandises, défaillant.

Lorsque la marchandise fait l'objet, par ailleurs, d'une mesure de consignation, dans les conditions prévues à l'article 322 bis, celle-ci ne peut être prononcée qu'une fois que les opérations de contrôle ont été effectivement entreprises.

<sup>515</sup> Frese 2003, p. 102 et seq: "Art L 81 ff Livre Procédural Fiscal (LPF)". See Livre des procédures fiscales, [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000030059635/](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000030059635/).

<sup>516</sup> **Art. L 81 Livre des procédures fiscales**

Le droit de communication permet aux agents de l'administration, pour l'établissement de l'assiette, le contrôle et le recouvrement des impôts, d'avoir connaissance des documents et des renseignements mentionnés aux articles du présent chapitre dans les conditions qui y sont précisées.

Pour l'établissement de l'assiette et le contrôle de l'impôt, le droit de communication peut porter sur des informations relatives à des personnes non identifiées, dans les conditions fixées par décret en Conseil d'Etat pris après avis de la Commission nationale de l'informatique et des libertés.

Le droit prévu au premier alinéa s'exerce sur place ou par correspondance, y compris électronique, et quel que soit le support utilisé pour la conservation des documents.

Les agents de l'administration peuvent prendre copie des documents dont ils ont connaissance en application du premier alinéa.

Des fonctionnaires des administrations des autres Etats membres peuvent assister à l'exercice du droit de communication dans les conditions prévues au 3 de l'article L. 45.

For the establishment of the base and the control of the tax, the right of communication can relate to information relating to unidentified persons, under the conditions fixed by decree in Council of State taken after opinion of the National Commission computing and freedoms.

The right provided for in the first paragraph is exercised on site or by correspondence, including electronically, and regardless of the medium used to store the documents.

The administration agents may take copies of the documents of which they have knowledge pursuant to the first paragraph. Civil servants from the administrations of other Member States may attend the exercise of the right of communication under the conditions provided for in 3 of Article L. 45.

Fraud with invoices is a common problem in the PIF *acquis* area and the rules must be followed:

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**Art. L 80J.** <sup>517</sup>

To prevent breaches of the invoicing rules referred to in Article L. 80 I, customs officers may, within the framework of the provisions of Articles 60 and 61 of the Customs Code, carry out checks on means of transport for professional use and of their load and to be presented with the professional documents of any kind in the possession of the driver.

They may take copies of these documents and communicate them to the competent services of the Directorate General of Public Finances.

They may be assisted during these checks by agents of the Directorate General of Public Finances.

**Monetary and Financial Code**

See **Art. L. 612-23**.



**ee. Searches and seizures**

Searches are a common, but from the point-of-view of severeness a **coercive measure**. The measure exists in the customs and tax area. A study by the *Conseil d'État* outlined that the powers in the area of the investigation of customs offences are very intrusive for the persons concerned („*ponctuels et souvent particulièrement intrusifs pour les personnes concernées*”).<sup>518</sup>

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<sup>517</sup> **Art. L. 80J. Livre des procédures fiscales**

Pour prévenir les manquements aux règles de facturation visées à l'article L. 80 I, les agents des douanes peuvent, dans le cadre des dispositions des articles 60 et 61 du code des douanes, procéder au contrôle des moyens de transport à usage professionnel et de leur chargement et se faire présenter les documents professionnels de toute nature en la possession du conducteur.

Ils peuvent prendre copie de ces documents et les communiquer aux services compétents de la direction générale des finances publiques.

Ils peuvent se faire assister lors de ces contrôles par des agents de la direction générale des finances publiques.

<sup>518</sup> Conseil d'État, Etude réalisée à la demande du Premier ministre, Les pouvoirs d'enquête de l'administration, Etude adoptée par l'assemblée générale du Conseil d'Etat du 15 avril 2021, Paris, 2021, 68 et seq.

107 **Section 2: Right of access to premises and places for professional use and home visits. (Articles 63 ter to 64) Customs Code**

**Art. 63-ter**<sup>519</sup>

In order to carry out the investigations necessary for the search and observation of the offenses provided for in this code, the customs agents of category A or B and the agents of category C provided that they are accompanied by one of the aforementioned agents have access to premises and places for professional use, as well as to land and warehouses where the goods and documents relating to these offenses are likely to be held, whatever the medium is. For the same purposes, they have access to the means of transport for professional use and to their load.

This access takes place between 8 a.m. and 8 p.m. or, outside these hours, when public access is authorized, or when production, manufacturing, packaging, transport, handling, warehousing or marketing.

The public prosecutor<sup>520</sup> is informed in advance of the operations referred to in the first paragraph and may oppose them. A report of the report describing the progress of the control operations is sent to him within five days of its establishment. A copy is sent to the interested party within the same period.

During their investigations, the customs officers mentioned in the first paragraph may retain documents for the purposes of the investigation or take copies of them, whatever the medium.

For the application of the provisions relating to mutual assistance between the administrative authorities of the Member States of the European Community in matters of customs or agricultural regulations, customs officers are authorized to implement the provisions of this article for the control of customs or agricultural operations carried out in other Member States of the European Community.

<sup>519</sup> **Section 2: Droit d'accès aux locaux et lieux à usage professionnel et visites domiciliaires. (Articles 63 ter à 64) Art. 63ter Code des douanes** Afin de procéder aux investigations nécessaires à la recherche et à la constatation des infractions prévues au présent code, les agents des douanes de catégorie A ou B et les agents de catégorie C pour autant qu'ils soient accompagnés de l'un des agents précités ont accès aux locaux et lieux à usage professionnel, ainsi qu'aux terrains et aux entrepôts où les marchandises et documents se rapportant à ces infractions sont susceptibles d'être détenus quel qu'en soit le support. Aux mêmes fins, ils ont accès aux moyens de transport à usage professionnel et à leur chargement.

Cet accès a lieu entre 8 heures et 20 heures ou, en dehors de ces heures, lorsque l'accès au public est autorisé, ou lorsque sont en cours des activités de production, de fabrication, de conditionnement, de transport, de manutention, d'entreposage ou de commercialisation.

<sup>520</sup> Le procureur de la République est préalablement informé des opérations visées au premier alinéa et peut s'y opposer. Un procès-verbal de constat relatant le déroulement des opérations de contrôle lui est transmis dans les cinq jours suivant son établissement. Une copie en est transmise à l'intéressé dans le même délai.

Au cours de leurs investigations, les agents des douanes mentionnés au premier alinéa peuvent procéder à la retenue de documents pour les besoins de l'enquête ou en prendre copie quel qu'en soit le support.

Pour l'application des dispositions relatives à l'assistance mutuelle entre les autorités administratives des Etats membres de la Communauté européenne en matière de réglementation douanière ou agricole, les agents des douanes sont autorisés à mettre en oeuvre les dispositions du présent article pour le contrôle des opérations douanières ou agricoles réalisées dans les autres Etats membres de la Communauté européenne.

Le présent article s'applique à la partie affectée à usage privatif des locaux et lieux mentionnés au premier alinéa lorsque leur occupant ou son représentant en donne l'assentiment exprès. Cet assentiment fait l'objet d'une déclaration signée par l'intéressé et recueillie sur place, annexée au procès-verbal mentionné au troisième alinéa.

This article applies to the part allocated for private use of the premises and places mentioned in the first paragraph when their occupant or his representative gives express consent. This consent is the subject of a declaration signed by the person concerned and collected on the spot, annexed to the minutes mentioned in the third paragraph.

### Monetary and Financial Code

Art. L. 612-10, -11,-12.

#### (1) France, 64 et seq., 323 Customs Code, L38 et seq. Tax Procedures Code

##### (a) The system seizure of the measure in the French customs code/tax procedures code

- See Chapter I: Recording of customs offenses (Articles 322 bis to 341 bis)<sup>521</sup> 108
- See Chapter I of title II, (Artt. L10–L80) Tax Procedures Code

##### (b) Searches and Seizure of weapons and instruments, *Customs Code, Tax Procedures Code*

###### (aa) Customs Code

#### Section 1: Finding by seizure report (Articles 323 to 333)

##### Paragraph 1: Persons called upon to make seizures, rights and obligations of seizers and customs detention (Articles 323 to 323-10)

###### Art. 323 Customs Code<sup>522</sup>

1. Infringements of customs laws and regulations may be observed by a customs officer or any other administration.
  2. Those who find a customs offense have the right to seize all objects liable to confiscation, to retain the shipments and all other documents relating to the seized objects and to proceed to the preventive detention of the objects assigned to the security of the penalties.
- [...]

109

###### (bb) Tax Procedures Code (Right to access, Art. L38 LPF)

Art. L38 (Right of access/*Droit de visite*) of the French tax control authorities is enshrined in the Tax Procedures Code in the legislative part (L10–L289 LPF) in the title on Tax controls (L10–L189) and if detected even more precisely it can be found in the Chapter on the right of control of the administration (Art. L10–L80E LPF). Section II of this chapter contains rules on certain taxes (direct and indirect taxes) and Section III 110

<sup>521</sup> Chapitre Ier: Constatation des infractions douanières (Articles 322 bis à 341 bis). **Codes des douanes.**

<sup>522</sup> **Art 323 Codes des douanes**

Les infractions aux lois et règlements douaniers peuvent être constatées par un agent des douanes ou de toute autre administration.

2. Ceux qui constatent une infraction douanière ont le droit de saisir tous objets passibles de confiscation, de retenir les expéditions et tous autres documents relatifs aux objets saisis et de procéder à la retenue préventive des objets affectés à la sûreté des pénalités.

of this chapter, which contains Art. L38 LPF deals with special provisions for indirect taxes, stamp duty and similar legislation (Artt. L24–L40 LPF). The details of this right can be depicted with the presentation of the positive law text:

### **Tax Procedures Code**

#### **Art. L 38<sup>523</sup>**

1. For the investigation and observation of infringements of the provisions of title III of the first part of book I of the general tax code, of chapters III and IV of title I of book III of the tax code on goods and services and legislation enacting the same rules in terms of procedure and recovery, the agents authorized for this purpose by the Minister responsible for customs may carry out visits to any place, even private, where the documents, documents, objects or goods relating to these offenses as well as the property and assets directly or indirectly derived from them are likely to be held or to be accessible or available and to proceed to their seizure, whatever the medium. They are accompanied by a judicial police officer.

Authorized officers may proceed, during the visit, to seize exhibits and documents, whatever the medium, as well as objects or goods relating to the aforementioned offences. They may seize property and assets directly or indirectly resulting from the aforementioned offenses only in the case of visits authorized pursuant to 2.

[For the following, subsequent text *see* → the next pages]

### **(2) General remarks**

- 111 The right to access is limited via a request of the judge of freedoms and detention. The debate for judicial control in this regard has a long history and the special provision has only been inserted by the legislator after he was condemned of intrusive legislation unfounded by virtue of the freedoms guaranteed by the Constitution and the Declaration of rights and freedoms of Mankind.<sup>524</sup>

### **(3) Formal requirements**

- 112 The formal requirements of the Right to access (*droit de visite*) are stipulated by the subparas of Art. L38 Tax procedures Code:

#### <sup>523</sup> **Art. L38 Livre des procédures fiscales**

1. Pour la recherche et la constatation des infractions aux dispositions du titre III de la première partie du livre Ier du code général des impôts, des chapitres III et IV du titre Ier du livre III du code des impositions sur les biens et services et aux législations édictant les mêmes règles en matière de procédure et de recouvrement, les agents habilités à cet effet par le ministre chargé des douanes peuvent procéder à des visites en tous lieux, même privés, où les pièces, documents, objets ou marchandises se rapportant à ces infractions ainsi que les biens et avoirs en provenant directement ou indirectement sont susceptibles d'être détenus ou d'être accessibles ou disponibles et procéder à leur saisie, quel qu'en soit le support. Ils sont accompagnés d'un officier de police judiciaire.

Les agents habilités peuvent procéder, à l'occasion de la visite, à la saisie des pièces et documents, quel qu'en soit le support, ainsi que des objets ou des marchandises se rapportant aux infractions précitées. Ils peuvent saisir les biens et avoirs provenant directement ou indirectement des infractions précitées uniquement dans le cas de visites autorisées en application du 2.

<sup>524</sup> See already explaining the historic evolution Vervaele, J.A.E., 5. France, in: Vervaele, J.A.E. (ed.), European Cooperation between Tax, Customs and Judicial Authorities, The Netherlands, England and Wales, France and Germany, Wolters Kluwer academic Publishers, The Hague/London/New York, 2002, 181 (195 et seq.).

**[Further Excerpt of Code of Tax Procedures] 3.<sup>525</sup>** The *visit cannot begin before six o'clock or after nine o'clock*; in places open to the public it can also be started during the opening hours of the establishment. It is carried out in the presence of the occupant of the premises or his representative; in case of impossibility, the judicial police officer requires two witnesses chosen outside the persons coming under his authority or that of the customs and indirect rights administration.

The agents of the customs and indirect rights administration mentioned in 1, the persons to whom they may have recourse pursuant to article L. 103 B, the occupant of the premises or his representative and the judicial police officer may alone read the exhibits and documents before entering them.

The judicial police officer ensures respect for professional secrecy and the rights of the defense in accordance with the provisions of the third paragraph of article 56 of the code of criminal procedure; article 58 of this code is applicable.

4. The report of the visit describing the methods and progress of the operation is drawn up on the spot by the agents of the customs and indirect rights administration. An inventory of the exhibits and documents seized, as well as the property and assets directly or indirectly resulting from the offenses for which proof is sought, is annexed to it. The report and the inventory are signed by the agents of the customs and indirect rights administration and by the judicial police officer as well as by the persons mentioned in the first paragraph of 3; in the event of refusal to sign, this is mentioned in the minutes.

If the on-site inventory presents difficulties, the items, documents, goods and assets seized are placed under seal. The occupant of the premises or his representative is informed that he can attend the opening of the seals which takes place in the presence of the judicial police officer; the inventory is then drawn up.

<sup>525</sup> 3. La visite ne peut être commencée avant six heures ni après vingt et une heures ; dans les lieux ouverts au public elle peut également être commencée pendant les heures d'ouverture de l'établissement. Elle est effectuée en présence de l'occupant des lieux ou de son représentant ; en cas d'impossibilité, l'officier de police judiciaire requiert deux témoins choisis en dehors des personnes relevant de son autorité ou de celle de l'administration des douanes et droits indirects.

Les agents de l'administration des douanes et droits indirects mentionnés au 1, les personnes auxquelles ils ont éventuellement recours en application de l'article L. 103 B, l'occupant des lieux ou son représentant et l'officier de police judiciaire peuvent seuls prendre connaissance des pièces et documents avant leur saisie.

L'officier de police judiciaire veille au respect du secret professionnel et des droits de la défense conformément aux dispositions du troisième alinéa de l'article 56 du code de procédure pénale ; l'article 58 de ce code est applicable.

4. Le procès-verbal de visite relatant les modalités et le déroulement de l'opération est dressé sur-le-champ par les agents de l'administration des douanes et droits indirects. Un inventaire des pièces et documents saisis, ainsi que des biens et avoirs provenant directement ou indirectement des infractions dont la preuve est recherchée, lui est annexé. Le procès-verbal et l'inventaire sont signés par les agents de l'administration des douanes et droits indirects et par l'officier de police judiciaire ainsi que par les personnes mentionnées au premier alinéa du 3 ; en cas de refus de signer, mention en est faite au procès-verbal.

Si l'inventaire sur place présente des difficultés, les pièces, documents, biens et avoirs saisis sont placés sous scellés. L'occupant des lieux ou son représentant est avisé qu'il peut assister à l'ouverture des scellés qui a lieu en présence de l'officier de police judiciaire ; l'inventaire est alors établi.

4a.<sup>526</sup> When the occupant of the premises or his representative obstructs access to the exhibits or documents present on a computer medium, their reading or their entry, mention is made of this in the minutes.

The authorized agents can then copy this medium and seize it, which is placed under seal. They have fifteen days from the date of the visit to access the items or documents present on the computer medium placed under seal, to read and enter them, as well as to return it and its copy. This period is extended on authorization issued by the judge of freedoms and detention.

For the sole purpose of allowing the reading of the items or documents present on the computer medium placed under seal, the authorized agents carry out the operations necessary for their access or their clarification. These operations are performed on the copy of the medium.

The occupant of the premises or his representative is informed that he can attend the opening of the seals, the reading and the seizure of the exhibits and documents present on this computer medium, which take place in the presence of the police officer. judicial. these exhibits and documents, their clarification and their reading is drawn up by the authorized agents. An inventory of the items and documents seized is attached to it, if applicable.

The report and the inventory are signed by the authorized agents and by a judicial police officer as well as by the occupant of the premises or his representative; in the absence of the latter or in the event of refusal to sign, this is mentioned in the minutes.

The computer medium and its copy are returned at the same time. In the absence of the occupant of the premises or his representative, the administration then immediately takes all steps to return them.

<sup>526</sup> 4 bis. Lorsque l'occupant des lieux ou son représentant fait obstacle à l'accès aux pièces ou documents présents sur un support informatique, à leur lecture ou à leur saisie, mention en est portée au procès-verbal.

Les agents habilités peuvent alors procéder à la copie de ce support et saisir ce dernier, qui est placé sous scellés. Ils disposent de quinze jours à compter de la date de la visite pour accéder aux pièces ou documents présents sur le support informatique placé sous scellés, à leur lecture et à leur saisie, ainsi qu'à la restitution de ce dernier et de sa copie. Ce délai est prorogé sur autorisation délivrée par le juge des libertés et de la détention.

A la seule fin de permettre la lecture des pièces ou documents présents sur le support informatique placé sous scellés, les agents habilités procèdent aux opérations nécessaires à leur accès ou à leur mise au clair. Ces opérations sont réalisées sur la copie du support.

L'occupant des lieux ou son représentant est avisé qu'il peut assister à l'ouverture des scellés, à la lecture et à la saisie des pièces et documents présents sur ce support informatique, qui ont lieu en présence de l'officier de police judiciaire.

Un procès-verbal décrivant les opérations réalisées pour accéder à ces pièces et documents, à leur mise au clair et à leur lecture est dressé par les agents habilités. Un inventaire des pièces et documents saisis lui est annexé, s'il y a lieu.

Le procès-verbal et l'inventaire sont signés par les agents habilités et par un officier de police judiciaire ainsi que par l'occupant des lieux ou son représentant ; en l'absence de celui-ci ou en cas de refus de signer, mention en est faite au procès-verbal.



5.<sup>527</sup> The originals of the inspection report and the inventory are, as soon as they have been drawn up, sent to the judge who issued the order; a copy of these same documents is given to the occupant of the premises or his representative. A copy is also sent by registered letter with acknowledgment of receipt to the alleged perpetrator of the offenses mentioned in 1, notwithstanding the provisions of article L. 103.

If the judge finds that the goods and assets seized do not come directly or indirectly from the offenses whose proof is sought, he orders the release of the seizure and the restitution of the goods and assets concerned.

The items and documents seized are returned to the occupant of the premises after execution of the transaction following the drafting of the report of observation of the offenses provided for in Article L. 212 A ; in the event of legal proceedings, their restitution is authorized by the competent judicial authority.

The first president of the Court of Appeal hears appeals against the conduct of inspection or seizure operations authorized pursuant to 2. The report and the inventory drawn up at the end of these operations mention the time limit and the way of appeal. The parties are not required to appoint a lawyer.

According to the rules provided for by the Code of Civil Procedure, this appeal must be lodged exclusively by declaration delivered or addressed, by registered letter or, from January 1, 2009, electronically, at the court registry within fifteen days. . This period runs from the delivery or receipt either of the report or of the inventory, mentioned in the first paragraph. This appeal is not suspensive subject to appeal in cassation according to the rules provided for by the code of civil procedure. The time limit for appeal in cassation is fifteen days.

<sup>527</sup> 5. Les originaux du procès-verbal de visite et de l'inventaire sont, dès qu'ils ont été établis, adressés au juge qui a délivré l'ordonnance ; une copie de ces mêmes documents est remise à l'occupant des lieux ou à son représentant. Une copie est également adressée par lettre recommandée avec demande d'avis de réception à l'auteur présumé des infractions mentionnées au 1, nonobstant les dispositions de l'article L. 103.

Si le juge constate que les biens et avoirs saisis ne proviennent pas directement ou indirectement des infractions dont la preuve est recherchée, il ordonne la mainlevée de la saisie et la restitution des biens et avoirs concernés.

Les pièces et documents saisis sont restitués à l'occupant des lieux après exécution de la transaction consécutive à la rédaction du procès-verbal de constatation des infractions prévu par l'article L. 212 A ; en cas de poursuites judiciaires, leur restitution est autorisée par l'autorité judiciaire compétente.

Le premier président de la cour d'appel connaît des recours contre le déroulement des opérations de visite ou de saisie autorisées en application du 2. Le procès-verbal et l'inventaire rédigés à l'issue de ces opérations mentionnent le délai et la voie de recours. Les parties ne sont pas tenues de constituer avocat.

Suivant les règles prévues par le code de procédure civile, ce recours doit être exclusivement formé par déclaration remise ou adressée, par pli recommandé ou, à compter du 1er janvier 2009, par voie électronique, au greffe de la cour dans un délai de quinze jours. Ce délai court à compter de la remise ou de la réception soit du procès-verbal, soit de l'inventaire, mentionnés au premier alinéa. Ce recours n'est pas suspensif.

L'ordonnance du premier président de la cour d'appel est susceptible d'un pourvoi en cassation selon les règles prévues par le code de procédure civile. Le délai du pourvoi en cassation est de quinze jours.

6. Les informations recueillies ne peuvent être exploitées dans le cadre d'une procédure de vérification de comptabilité ou de contrôle de revenu qu'après restitution des pièces ou de leur reproduction et mise en oeuvre des procédures de contrôle visées aux premier et deuxième alinéas de l'article L. 47.

7. Les dispositions des 1 à 6 peuvent être mises en oeuvre par les agents habilités à cet effet par le directeur général des finances publiques, pour la recherche et la constatation des infractions aux dispositions de l'article 290 quater et du III de l'article 298 bis du code général des impôts.

6. The information collected may only be used in the context of an accounting verification or income control procedure after the documents or their reproduction have been returned and the control procedures referred to in the first and second paragraphs of Article L.47.

7. The provisions of 1 to 6 may be implemented by agents authorized for this purpose by the Director General of Public Finance, for the investigation and observation of breaches of the provisions of Article 290 quater and III of the article 298 bis of the general tax code.

#### (4) Substantive requirements

113 From the substantive point-of-view Art L38 LPF requires a judicial authorization that needs to be requested. The formal requirements – especially the way of carrying out the visit is described above under the heading of formal requirements.

#### [Excerpt Tax Procedures Code]

2.<sup>528</sup> Apart from cases of flagrante delicto, *each visit must be authorized by an order from the judge of freedoms and detention of the judicial court in whose jurisdiction the premises to be visited are located.*

<sup>528</sup> 2. Hormis les cas de flagrante, chaque visite doit être autorisée par une ordonnance du juge des libertés et de la détention du tribunal judiciaire dans le ressort duquel sont situés les locaux à visiter.

Le juge doit vérifier de manière concrète que la demande d'autorisation qui lui est soumise est bien fondée ; cette demande doit comporter tous les éléments d'information en possession de l'administration de nature à justifier la visite.

Il désigne l'officier de police judiciaire chargé d'assister à ces opérations et de le tenir informé de leur déroulement. L'ordonnance comporte:

l'adresse des lieux à visiter ;

le nom et la qualité du fonctionnaire habilité qui a sollicité et obtenu l'autorisation de procéder aux opérations de visite.

la mention de la faculté pour l'occupant des lieux ou son représentant, ainsi que l'auteur présumé des infractions mentionnées au 1, de faire appel à un conseil de son choix.

L'exercice de cette faculté n'entraîne pas la suspension des opérations de visite et de saisie.

Le juge motive sa décision par l'indication des éléments de fait et de droit qu'il retient et qui laissent présumer, en l'espèce, l'existence des infractions dont la preuve est recherchée. Il se prononce par une mention expresse sur la saisie de biens et avoirs pouvant provenir directement ou indirectement des infractions dont la preuve est recherchée.

Si, à l'occasion de la visite, les agents habilités découvrent l'existence d'un coffre dans un établissement de crédit ou une société de financement dont la personne occupant les lieux visités est titulaire et où des pièces, documents, objets ou marchandises se rapportant aux infractions visées au 1. sont susceptibles de se trouver, ils peuvent, sur autorisation délivrée par tout moyen par le juge qui a pris l'ordonnance, procéder immédiatement à la visite de ce coffre. Mention de cette autorisation est portée au procès-verbal prévu au 4.

Si, à l'occasion de la visite, les agents habilités découvrent des éléments révélant l'existence en d'autres lieux de biens ou avoirs se rapportant aux infractions visées au 1, ils peuvent, sur autorisation délivrée par tout moyen par le juge qui a pris l'ordonnance, procéder immédiatement à la visite de ces lieux aux fins de saisir ces biens et avoirs. Mention de cette autorisation est portée au procès-verbal prévu au 4.

La visite s'effectue sous l'autorité et le contrôle du juge qui l'a autorisée. Lorsqu'elle a lieu en dehors du ressort de son tribunal judiciaire, il délivre une commission rogatoire, pour exercer ce contrôle, au juge des libertés et de la détention du tribunal judiciaire dans le ressort duquel s'effectue la visite.

Il peut se rendre dans les locaux pendant l'intervention.

A tout moment, il peut décider la suspension ou l'arrêt de la visite.

L'ordonnance est exécutoire au seul vu de la minute.

The judge must determine in this way that the request for authorization submitted to him is well founded; this request must include all the information in the possession of the administration likely to justify the visit.

He appoints the judicial police officer responsible for attending these operations and keeping him informed of their progress.

The order includes:

- the address of places to visit;
- the name and capacity of the authorized official who requested and obtained the authorization to carry out the inspection operations.
- mention of the option for the occupant of the premises or his representative, as well as the presumed perpetrator of the offenses mentioned in 1, to call on counsel of his choice.
- The exercise of this option does not result in the suspension of inspection and seizure operations.
- The judge justifies his decision by indicating the elements of fact and law that he retains and which lead to the presumption, in the case in point, of the existence of the offenses for which proof is sought. It decides by an express mention on the seizure of property and assets that may come directly or indirectly from the offenses for which proof is sought.

If, during the visit, the authorized agents discover the existence of a safe in a credit institution or a financing company owned by the person occupying the premises visited and where documents, documents, objects or goods relating to the offenses referred to in 1. are likely to be found, they may, upon authorization issued by any means by the judge who issued the order, immediately proceed to visit this safe. Mention of this authorization is recorded in the minutes provided for in 4.

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L'ordonnance est notifiée, verbalement et sur place au moment de la visite, à l'occupant des lieux ou à son représentant qui en reçoit copie intégrale contre récépissé ou émargement au procès-verbal prévu au 4. En l'absence de l'occupant des lieux ou de son représentant, l'ordonnance est notifiée après la visite par lettre recommandée avec avis de réception. La notification est réputée faite à la date de réception figurant sur l'avis. Une copie est également adressée par lettre recommandée avec demande d'avis de réception à l'auteur présumé des infractions mentionnées au 1, nonobstant les dispositions de l'article L. 103.

A défaut de réception, il est procédé à la signification de l'ordonnance par acte d'huissier de justice.

Le délai et la voie de recours sont mentionnés dans l'ordonnance.

L'ordonnance peut faire l'objet d'un appel devant le premier président de la cour d'appel. Les parties ne sont pas tenues de constituer avocat.

Suivant les règles prévues par le code de procédure civile, cet appel doit être exclusivement formé par déclaration remise ou adressée, par pli recommandé ou, à compter du 1er janvier 2009, par voie électronique, au greffe de la cour dans un délai de quinze jours. Ce délai court à compter soit de la remise, soit de la réception, soit de la signification de l'ordonnance. Cet appel n'est pas suspensif.

Le greffe du tribunal judiciaire transmet sans délai le dossier de l'affaire au greffe de la cour d'appel où les parties peuvent le consulter.

L'ordonnance du premier président de la cour d'appel est susceptible d'un pourvoi en cassation, selon les règles prévues par le code de procédure civile. Le délai du pourvoi en cassation est de quinze jours.

Il est procédé concomitamment à la restitution du support informatique et de sa copie. En l'absence de l'occupant des lieux ou de son représentant, l'administration accomplit alors sans délai toutes diligences pour les restituer.

If, during the visit, the authorized agents discover elements revealing the existence in other places of property or assets relating to the offenses referred to in 1, they may, with authorization issued by any means by the judge who issued the order, proceed immediately to the visit of these places for the purpose of seizing these goods and assets. Mention of this authorization is recorded in the minutes provided for in 4.

***The visit is carried out under the authority and control of the judge who authorized it.*** When it takes place outside the jurisdiction of his judicial court, he delivers a letter rogatory, to exercise this control, to the judge of freedoms and detention of the judicial court in the jurisdiction of which the visit is carried out.

He can visit the premises during the intervention. He can decide to suspend or end the visit. It is enforceable at the sole sight of the minute.

The order is notified, verbally and on the spot at the time of the visit, to the occupant of the premises or to his representative who receives a full copy against receipt or signature in the report provided for in 4. In the absence of the occupant of the premises or his representative, the order is notified after the visit by registered letter with acknowledgment of receipt. Notification is deemed to have been made on the date of receipt appearing on the notice. A copy is also sent by registered letter with acknowledgment of receipt to the alleged perpetrator of the offenses mentioned in 1, notwithstanding the provisions of article L. 103.

Failing receipt, the order is served by bailiff.

The deadline and the remedy are mentioned in the order as well as to the First President of the Court of Appeal. The parties are not required to appoint a lawyer.

According to the rules provided for by the Code of Civil Procedure, this appeal must be made exclusively by declaration delivered or sent, by registered letter or, from January 1, 2009, electronically, to the court office within fifteen days. . This period runs from either the delivery, or receipt, or service of the order. This appeal is not suspensive.

The clerk of the court of law sends the case file without delay to the clerk of the court of appeal where the parties can consult it.

The order of the first president of the court of appeal is subject to appeal in cassation, according to the rules provided for by the code of civil procedure. The time limit for appeal in cassation is fifteen days.

**(a) Fraud-related peculiarities****Customs Code****Art. 62<sup>529</sup>**

I.-For the application of this code and *with a view to detecting fraud*, customs officers may, at any time, access on board and visit any ship located in the maritime zone of the customs radius, or in the zone defined in article 44 bis under the conditions provided for in this same article, or circulating on the waterways.

II.- When access on board has been materially impossible or when in-depth investigations which cannot be carried out must be carried out on board, the customs officers exercising the functions of captain at sea may order the diversion of the ship to an appropriate position or port.

III.<sup>530</sup>-Each visit takes place in the presence of the captain of the vessel or his representative.

When the visit concerns premises assigned to private or residential use, the visit is carried out in the presence of the occupant of the premises. In the absence of the occupant of the premises, the customs agents can only carry out the latter in the presence of the captain of the vessel or his representative.

IV.- Each visit is the subject of a report describing the progress of the inspection operations, a copy of which is immediately given to the captain of the vessel or to his representative and to the occupant of the premises assigned to private use or homes visited.

V.-The occupant of the premises for private use or residential visited has a right of appeal against the conduct of the inspection operations before the first president of the

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<sup>529</sup> **Art. 62 Code des douanes**

I.-Pour l'application du présent code et en vue de la recherche de la fraude, les agents des douanes peuvent, à toute heure, accéder à bord et visiter tout navire se trouvant dans la zone maritime du rayon des douanes, ou dans la zone définie à l'article 44 bis dans les conditions prévues à ce même article, ou circulant sur les voies navigables.

II.-Lorsque l'accès à bord s'est trouvé matériellement impossible ou que des investigations approfondies qui ne peuvent être effectuées doivent être diligentées à bord, les agents des douanes exerçant les fonctions de capitaine à la mer peuvent ordonner le déroutement du navire vers une position ou un port appropriés.

<sup>530</sup> III.-Chaque visite se déroule en présence du capitaine du navire ou de son représentant.

Lorsque la visite concerne des locaux affectés à un usage privé ou d'habitation, la visite est effectuée en présence de l'occupant des lieux. En l'absence de l'occupant des lieux, les agents des douanes ne peuvent procéder à celle-ci qu'en présence du capitaine du navire ou de son représentant.

IV.-Chaque visite fait l'objet d'un procès-verbal relatant le déroulement des opérations de contrôle, dont une copie est immédiatement remise au capitaine du navire ou à son représentant et à l'occupant des locaux affectés à un usage privé ou d'habitation visités.

V.-L'occupant des locaux à usage privé ou d'habitation visités dispose d'un recours contre le déroulement des opérations de visite devant le premier président de la cour d'appel du lieu de la direction des douanes dont dépend le service chargé de la procédure.

Le procès-verbal rédigé à l'issue des opérations de visite mentionne le délai et la voie de recours. Les parties ne sont pas tenues de constituer avocat.

VI.-Ce recours doit être exclusivement formé par déclaration remise ou adressée, par pli recommandé, au greffe de la cour dans un délai de quinze jours. Ce délai court à compter de la remise ou de la réception du procès-verbal. Ce recours n'est pas suspensif.

VII.-L'ordonnance du premier président de la cour d'appel est susceptible d'un pourvoi en cassation selon les règles de la procédure sans représentation. Le délai du pourvoi en cassation est de quinze jours.

VIII.-Le code de procédure civile s'applique sous réserve des dispositions prévues au présent article.

court of appeal of the place of the customs department on which the department responsible depends of the procedure.

The report drawn up at the end of the inspection operations mentions the deadline and the means of appeal. The parties are not required to appoint a lawyer.

VI.-This appeal must be filed exclusively by declaration delivered or sent, by registered mail, to the court office within fifteen days. This period runs from the delivery or receipt of the report. This appeal is not suspensive.

VII.-The order of the first president of the Court of Appeal is subject to appeal in cassation according to the rules of procedure without representation. The time limit for appeal in cassation is fifteen days.

VIII.-The Code of Civil Procedure applies subject to the provisions of this article.

### **(b) Examples and precedents**



- Décision n° 2013 – 357 QPC, Articles 62 et 63 du code des douanes.
- Décision n° 83-164 DC du 29 décembre 1983 (cons. 27).
- Décision n° 2019-789 QPC du 14 juin 2019<sup>531</sup>.

#### **(aa) In national case-law**



- Cass. 25. Januar 1977, Recueil Dalloz 1977, p. 666 (667)<sup>532</sup>.

#### **(bb) In the case-law of the ECJ and EctHR**



- Judgment of the Court of 21 September 1989. *Hoechst AG v Commission of the European Communities*, ECLI:EU:C:1989:337.

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<sup>531</sup> Conseil d'État, Etude réalisée à la demande du Premier ministre, Les pouvoirs d'enquête de l'administration, Etude adoptée par l'assemblée générale du Conseil d'Etat du 15 avril 2021, Paris, 2021, 38–39.

<sup>532</sup> Frese, p. 104.

**ff. Seizure of other evidence, Criminal procedure Code/Customs Code/Tax Procedures Code**

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**Tax Procedures Code**

**Chapter I bis: The right of investigation (Articles L80 F to L80 J) L80 E<sup>533</sup>**

To find breaches of the invoicing rules to which are subject to value added tax in application of the general tax code as well as of the provisions adopted by the Member States for the application of articles 217 to 248 of the 2006 directive /112/EC of the Council, of 28 November 2006, tax officials with at least the rank of controller may be presented with invoices, stock accounts as well as books, registers and professional documents which may relate to operations having given rise or to give rise to invoicing and proceed to the material observation of the physical elements of the operation.

They can also, when the authenticity of the origin, the integrity of the content and the readability of the invoices are ensured by the checks provided for in 1° of VII of article 289 of the general tax code, access all information, documents, data, computer processing or information systems that make up these controls and the documentation describing how they are carried out.

For the purposes of the first two paragraphs, they may have access from 8 a.m. to 8 p.m. and during the taxable person's working hours to premises for professional use, excluding the parts of these premises assigned to the private home, as well as than land and warehouses. They also have access to means of transport for professional use and their loading.

The agents of the administration can obtain or take copies, by any means and on any support, of the documents relating to the operations having given or having to give rise

<sup>533</sup> Chapitre I bis: Le droit d'enquête (Articles L80 F à L80 J)

**Article L80 F Livre des procédures fiscales**

Pour rechercher les manquements aux règles de facturation auxquelles sont soumis les assujettis à la taxe sur la valeur ajoutée en application du code général des impôts ainsi qu'aux dispositions adoptées par les Etats membres pour l'application des articles 217 à 248 de la directive 2006/112/CE du Conseil, du 28 novembre 2006, les agents des impôts ayant au moins le grade de contrôleur peuvent se faire présenter les factures, la comptabilité matière ainsi que les livres, les registres et les documents professionnels pouvant se rapporter à des opérations ayant donné ou devant donner lieu à facturation et procéder à la constatation matérielle des éléments physiques de l'exploitation. Ils peuvent également, lorsque l'authenticité de l'origine, l'intégrité du contenu et la lisibilité des factures sont assurées par les contrôles prévus au 1° du VII de l'article 289 du code général des impôts, accéder à l'ensemble des informations, documents, données, traitements informatiques ou systèmes d'information constitutifs de ces contrôles et à la documentation décrivant leurs modalités de réalisation.

Aux fins des deux premiers alinéas, ils peuvent avoir accès de 8 heures à 20 heures et durant les heures d'activité professionnelle de l'assujetti aux locaux à usage professionnel, à l'exclusion des parties de ces locaux affectées au domicile privé, ainsi qu'aux terrains et aux entrepôts. Ils ont également accès aux moyens de transport à usage professionnel et à leur chargement.

Les agents de l'administration peuvent obtenir ou prendre copie, par tout moyen et sur tout support, des pièces se rapportant aux opérations ayant donné ou devant donner lieu à facturation. Si les contrôles prévus au 1° du VII du même article 289 sont effectués sous forme électronique, les assujettis sont tenus de les présenter sous cette forme. Les agents de l'administration peuvent prendre copie des informations ou documents de ces contrôles et de leur documentation par tout moyen et sur tout support.

Ils peuvent recueillir sur place ou sur convocation des renseignements et justifications. Ces auditions donnent lieu à l'établissement de comptes rendus d'audition.

L'enquête définie au présent article ne relève pas des procédures de contrôle de l'impôt prévues aux articles L. 10 à L. 47 A.

En outre, chaque intervention fait l'objet d'un procès-verbal relatant les opérations effectuées.

to invoicing. If the checks provided for in 1° of VII of the same article 289 are carried out in electronic form, the taxable persons are required to present them in this form. The agents of the administration can take copies of the information or documents of these controls and their documentation by any means and on any medium.

[...]

**Article L80 I**<sup>534</sup>

Customs officers, having at least the rank of controller, may have the right of inquiry provided for in Articles L. 80 F to L. 80 H to seek breaches in the application of invoicing rules relating to acquisitions and deliveries, falling within the scope of value added tax, carried out with Member States of the European Union. They may also have this right of inquiry in order to carry out the research required for the granting and renewal of the approval provided for in article 262-0 bis of the general tax code.

**gg. Special kinds of seizure**

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- A. Seizures relating to forgery and the alteration of shipments. (Section 329) Customs Code
  - B. - Seizures at home. (Section 330) Customs Code
  - C. - Seizures on ships and decked boats. (Section 331) Customs Code
  - D. - Seizures outside the radius. (Section 332) Customs Code

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<sup>534</sup> **Art. L 80.I Livre des procédures fiscales**

Les agents des douanes, ayant au moins le grade de contrôleur, peuvent disposer du droit d'enquête prévu aux articles L. 80 F à L. 80 H pour rechercher les manquements à l'application des règles de facturation afférentes aux acquisitions et livraisons, entrant dans le champ d'application de la taxe sur la valeur ajoutée, effectuées avec des Etats membres de l'Union européenne. Ils peuvent également disposer de ce droit d'enquête afin d'effectuer les recherches requises pour l'octroi et le renouvellement de l'agrément prévu à l'article 262-0 bis du code général des impôts.



**hh. The seizure of digital forensic evidence including bank account information**

The seizure of digital forensic evidence during on-the-spot checks is codified in the Tax Procedures and in the Customs Code. 117

**Customs Code**

**Art. 64 [concrete thresholds for seizures, assets and freezing at any private place]<sup>535</sup>**  
[...]

c) When the occupier of the premises or his representative *obstructs access to the exhibits or documents present on a computer medium*, to their reading or to their seizure, a mention of this is made in the minutes.

Customs officers *can then copy this medium and seize it*, which is placed under seal. They have fifteen days from the date of the visit to access the items or documents present on the computer medium placed under seal, to read and enter them as well as to return it and its copy. This period is extended on authorization issued by the judge of freedoms and detention.

For the sole purpose of allowing the reading of the items or documents present on the computer medium placed under seal, *the customs officers carry out the operations necessary for their access* or their clarification. These operations are performed on the copy of the medium.

<sup>535</sup> **Art. 64 Code des douanes**

[...]

c) Lorsque l'occupant des lieux ou son représentant fait obstacle à *l'accès aux pièces ou documents présents sur un support informatique*, à leur lecture ou à leur saisie, mention en est portée au procès-verbal.

Les agents des douanes peuvent alors procéder à la copie de ce support et saisir ce dernier, qui est placé sous scellés. Ils disposent de quinze jours à compter de la date de la visite *pour accéder aux pièces ou documents présents sur le support informatique placé sous scellés*, à leur lecture et à leur saisie ainsi qu'à la restitution de ce dernier et de sa copie. Ce délai est prorogé sur autorisation délivrée par le juge des libertés et de la détention.

A la seule fin de permettre la lecture des pièces ou documents présents sur le support informatique placé sous scellés, les agents des douanes *procèdent aux opérations nécessaires à leur accès ou à leur mise au clair*. Ces opérations sont réalisées sur la copie du support.

L'occupant des lieux ou son représentant est avisé qu'il peut assister à l'ouverture des scellés, à la lecture et à la saisie des pièces et documents présents sur ce support informatique, qui ont lieu en présence de l'officier de police judiciaire.

Un procès-verbal décrivant les opérations réalisées pour accéder à ces pièces et documents, à leur mise au clair et à leur lecture est dressé par les agents des douanes. Un inventaire des pièces et documents saisis lui est annexé, s'il y a lieu.

Le procès-verbal et l'inventaire sont signés par les agents des douanes et par un officier de police judiciaire ainsi que par l'occupant des lieux ou son représentant ; en l'absence de celui-ci ou en cas de refus de signer, mention en est faite au procès-verbal.

Il est procédé concomitamment à la restitution du support informatique et de sa copie. En l'absence de l'occupant des lieux ou de son représentant, l'administration accomplit alors sans délai toutes diligences pour les restituer.

3. Les agents des douanes peuvent intervenir sans l'assistance d'un officier de police judiciaire:

a) pour opérer les visites, recensements et contrôles à domicile chez les titulaires d'un compte ouvert d'animaux ou d'un titre de passage ;

b) pour la recherche des marchandises qui, poursuivies à vue sans interruption dans les conditions prévues par l'article 332 ci-après, sont introduites dans une maison ou autre bâtiment même sis en dehors du rayon.

4. S'il y a refus d'ouverture des portes, *les agents des douanes peuvent les faire ouvrir* en présence d'un officier de police judiciaire.

The occupant of the premises or his representative is informed that he can attend the opening of the seals, the reading and the seizure of the exhibits and documents present on this computer medium, which take place in the presence of the police officer. judicial.

***A report describing the operations carried out to gain access to these exhibits and documents, to clarifying them and reading them is drawn up by the customs officers.***

An inventory of the items and documents seized is attached to it, if applicable.

***The report and the inventory are signed by the customs agents and by a judicial police officer*** as well as by the occupant of the premises or his representative; in the absence of the latter or in the event of refusal to sign, this is mentioned in the minutes.

***The computer medium and its copy are returned at the same time.*** In the absence of the occupant of the premises or his representative, the administration then immediately takes all steps to return them.

3. Customs officers may intervene without the assistance of a judicial police officer:

a) to carry out home visits, censuses and inspections of holders of an open animal account or a grazing permit;

b) for the search for goods which, pursued at sight without interruption under the conditions provided for by article 332 below, are brought into a house or other building even located outside the radius.

4. If the doors are refused to be opened, the ***customs officers may have them opened*** in the presence of a judicial police officer.

## **Tax Procedures Code**

### **Chapter I bis: The right of investigation (Articles L80 F to L80 J)L80 E<sup>536</sup>**

To find breaches of the invoicing rules to which are subject to value added tax in application of the general tax code as well as of the provisions adopted by the Member States for the application of articles 217 to 248 of the 2006 directive /112/EC of the Council, of 28 November 2006, tax officials with at least the rank of controller may be presented with invoices, stock accounts as well as books, registers and professional documents which may relate to operations having given rise or to give rise to invoicing and proceed to the material observation of the physical elements of the operation.<sup>537</sup> They can also,

<sup>536</sup> Chapitre I bis: Le droit d'enquête (Articles L80 F à L80 J)

**Article L80 F Livre des procédures fiscales** Pour rechercher les manquements aux règles de facturation auxquelles sont soumis les assujettis à la taxe sur la valeur ajoutée en application du code général des impôts ainsi qu'aux dispositions adoptées par les Etats membres pour l'application des articles 217 à 248 de la directive

<sup>537</sup> 2006/112/CE du Conseil, du 28 novembre 2006, les agents des impôts ayant au moins le grade de contrôleur peuvent se faire présenter les factures, la comptabilité matière ainsi que les livres, les registres et les documents professionnels pouvant se rapporter à des opérations ayant donné ou devant donner lieu à facturation et procéder à la constatation matérielle des éléments physiques de l'exploitation.

Ils peuvent également, lorsque l'authenticité de l'origine, l'intégrité du contenu et la lisibilité des factures sont assurées par les contrôles prévus au 1° du VII de l'article 289 du code général des impôts, accéder à l'ensemble des informations, documents, données, traitements informatiques ou systèmes d'information constitutifs de ces contrôles et à la documentation décrivant leurs modalités de réalisation.

when the authenticity of the origin, the integrity of the content and the readability of the invoices are ensured by the checks provided for in 1° of VII of article 289 of the general tax code, ***access all information, documents, data, computer processing or information systems*** that make up these controls and the documentation describing how they are carried out.

For the purposes of the first two paragraphs, ***they may have access from 8 a.m. to 8 p.m.*** and during the taxable person's working hours to premises for professional use, excluding the parts of these premises assigned to the private home, as well as than land and warehouses. They also have access to means of transport for professional use and their loading.

The agents of the administration ***can obtain or take copies, by any means and on any support, of the documents relating to the operations having given or having to give rise to invoicing.***

***If the checks*** provided for in 1° of VII of the same article 289 ***are carried out in electronic form, the taxable persons are required to present them in this form.*** The agents of the administration can take copies of the information or documents of these controls and their documentation ***by any means and on any medium.***

*Vervaele* had already once reported that the access to bank accounts may be requested 118 via art. 10, 16 and 85 Tax Procedures Code (see → bibliography).

## ii. Acquisition of digital evidence/perquisitions et saisies informatiques

Again, the acquisition of digital evidence must be distinguished by the applicable code 119 and area of irregularities or fraud (Which kind of EU money? How is it distributed? Directly or via indirect ways, etc.?).

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Aux fins des deux premiers alinéas, ils peuvent avoir accès de 8 heures à 20 heures et durant les heures d'activité professionnelle de l'assujetti aux locaux à usage professionnel, à l'exclusion des parties de ces locaux affectées au domicile privé, ainsi qu'aux terrains et aux entrepôts. Ils ont également accès aux moyens de transport à usage professionnel et à leur chargement.

Les agents de l'administration peuvent obtenir ou prendre copie, par tout moyen et sur tout support, des pièces se rapportant aux opérations ayant donné ou devant donner lieu à facturation. Si les contrôles prévus au 1° du VII du même article 289 sont effectués sous forme électronique, les assujettis sont tenus de les présenter sous cette forme. Les agents de l'administration peuvent prendre copie des informations ou documents de ces contrôles et de leur documentation par tout moyen et sur tout support.

Ils peuvent recueillir sur place ou sur convocation des renseignements et justifications. Ces auditions donnent lieu à l'établissement de comptes rendus d'audition.

L'enquête définie au présent article ne relève pas des procédures de contrôle de l'impôt prévues aux articles L. 10 à L. 47 A.

En outre, chaque intervention fait l'objet d'un procès-verbal relatant les opérations effectuées.

**(1) Digital forensic operations within inspections or on-the-spot checks**

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**Criminal Procedure Code****Art. 57-1<sup>538</sup>**

Judicial police officers or, under their responsibility, judicial police officers may, in the course of a search carried out under the conditions provided for in this code, access through a computer system located on the premises *where the search is taking place data of interest to the investigation in progress and stored in the said system or in another computer system*, provided that such data is accessible from the initial system or available to the initial system.

They may also, under the conditions of search provided for in this code, access through a computer system located on the premises of a police or gendarmerie department or unit data relevant to the current investigation and stored in another computer system, if such data is accessible from the initial system.

If it is first established that such data, accessible from the initial system or available to the initial system, is stored in another computer system located outside the national territory, it shall be collected by the criminal investigation police officer, subject to the conditions of access provided for by the international commitments in force.

The data to which access has been granted under the conditions provided for in this article may be copied onto any medium. Computer storage media may be seized and placed under seal under the conditions provided for by this code.

Judicial police officers may, by any means, request any person likely:

1° To have knowledge of the measures applied to protect the data to which access is permitted in the context of the search ;

2° To provide them with the information allowing access to the data mentioned in 1°.

<sup>538</sup> **Article 57-1 CPP**

Les officiers de police judiciaire ou, sous leur responsabilité, les agents de police judiciaire peuvent, au cours d'une perquisition effectuée dans les conditions prévues par le présent code, accéder par un système informatique implanté sur les lieux où se déroule la perquisition à des données intéressant l'enquête en cours et stockées dans ledit système ou dans un autre système informatique, dès lors que ces données sont accessibles à partir du système initial ou disponibles pour le système initial.

Ils peuvent également, dans les conditions de perquisition prévues au présent code, accéder par un système informatique implanté dans les locaux d'un service ou d'une unité de police ou de gendarmerie à des données intéressant l'enquête en cours et stockées dans un autre système informatique, si ces données sont accessibles à partir du système initial.

S'il est préalablement avéré que ces données, accessibles à partir du système initial ou disponibles pour le système initial, sont stockées dans un autre système informatique situé en dehors du territoire national, elles sont recueillies par l'officier de police judiciaire, sous réserve des conditions d'accès prévues par les engagements internationaux en vigueur.

Les données auxquelles il aura été permis d'accéder dans les conditions prévues par le présent article peuvent être copiées sur tout support. Les supports de stockage informatique peuvent être saisis et placés sous scellés dans les conditions prévues par le présent code.

Les officiers de police judiciaire peuvent, par tout moyen, requérir toute personne susceptible:

1° D'avoir connaissance des mesures appliquées pour protéger les données auxquelles il est permis d'accéder dans le cadre de la perquisition ;

2° De leur remettre les informations permettant d'accéder aux données mentionnées au 1°.

A l'exception des personnes mentionnées aux articles 56-1 à 56-5, le fait de s'abstenir de répondre dans les meilleurs délais à cette réquisition est puni d'une amende de 3 750 €.

With the exception of the persons mentioned in articles 56-1 to 56-5, failure to respond as soon as possible to this request is punishable by a fine of €3,750.

Art. 97 presents further requirements.

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### Customs Code

Section 7: Special customs investigation procedures (**Articles 67 bis to 67 bis-4**)<sup>539</sup>, **Art. 67bis–Art. 67bis-4**

**Art. 64 [concrete thresholds for seizures, assets and freezing at any private place]**<sup>540</sup>  
[...]

c) When the occupier of the premises or his representative *obstructs access to the exhibits or documents present on a computer medium*, to their reading or to their seizure, a mention of this is made in the minutes.

Customs officers *can then copy this medium and seize it*, which is placed under seal. They have fifteen days from the date of the visit to access the items or documents present on the computer medium placed under seal, to read and enter them as well as to return it and its copy. This period is extended on authorization issued by the judge of freedoms and detention.

<sup>539</sup> Section 7: Procédures spéciales d'enquête douanière (Articles 67 bis à 67 bis-4).

<sup>540</sup> **Art. 64 Code des douanes**

[...]

c) Lorsque l'occupant des lieux ou son représentant fait obstacle à *l'accès aux pièces ou documents présents sur un support informatique*, à leur lecture ou à leur saisie, mention en est portée au procès-verbal.

Les agents des douanes peuvent alors procéder à la copie de ce support et saisir ce dernier, qui est placé sous scellés. Ils disposent de quinze jours à compter de la date de la visite *pour accéder aux pièces ou documents présents sur le support informatique placé sous scellés*, à leur lecture et à leur saisie ainsi qu'à la restitution de ce dernier et de sa copie. Ce délai est prorogé sur autorisation délivrée par le juge des libertés et de la détention.

A la seule fin de permettre la lecture des pièces ou documents présents sur le support informatique placé sous scellés, les agents des douanes *procèdent aux opérations nécessaires à leur accès ou à leur mise au clair*. Ces opérations sont réalisées sur la copie du support.

L'occupant des lieux ou son représentant est avisé qu'il peut assister à l'ouverture des scellés, à la lecture et à la saisie des pièces et documents présents sur ce support informatique, qui ont lieu en présence de l'officier de police judiciaire.

Un procès-verbal décrivant les opérations réalisées pour accéder à ces pièces et documents, à leur mise au clair et à leur lecture est dressé par les agents des douanes. Un inventaire des pièces et documents saisis lui est annexé, s'il y a lieu.

Le procès-verbal et l'inventaire sont signés par les agents des douanes et par un officier de police judiciaire ainsi que par l'occupant des lieux ou son représentant ; en l'absence de celui-ci ou en cas de refus de signer, mention en est faite au procès-verbal.

Il est procédé concomitamment à la restitution du support informatique et de sa copie. En l'absence de l'occupant des lieux ou de son représentant, l'administration accomplit alors sans délai toutes diligences pour les restituer.

3. Les agents des douanes peuvent intervenir sans l'assistance d'un officier de police judiciaire:

a) pour opérer les visites, recensements et contrôles à domicile chez les titulaires d'un compte ouvert d'animaux ou d'un titre de pacage ;

b) pour la recherche des marchandises qui, poursuivies à vue sans interruption dans les conditions prévues par l'article 332 ci-après, sont introduites dans une maison ou autre bâtiment même sis en dehors du rayon.

4. S'il y a refus d'ouverture des portes, *les agents des douanes peuvent les faire ouvrir* en présence d'un officier de police judiciaire.

For the sole purpose of allowing the reading of the items or documents present on the computer medium placed under seal, the ***customs officers carry out the operations necessary for their access*** or their clarification. These operations are performed on the copy of the medium.

The occupant of the premises or his representative is informed that he can attend the opening of the seals, the reading and the seizure of the exhibits and documents present on this computer medium, which take place in the presence of the police officer. judicial. ***A report describing the operations carried out to gain access to these exhibits and documents, to clarifying them and reading them is drawn up by the customs officers.*** An inventory of the items and documents seized is attached to it, if applicable.

The ***report and the inventory are signed by the customs agents and by a judicial police officer*** as well as by the occupant of the premises or his representative; in the absence of the latter or in the event of refusal to sign, this is mentioned in the minutes.

The ***computer medium and its copy are returned at the same time.*** In the absence of the occupant of the premises or his representative, the administration then immediately takes all steps to return them.

3. Customs officers may intervene without the assistance of a judicial police officer:

- a) to carry out home visits, censuses and inspections of holders of an open animal account or a grazing permit;
- b) for the search for goods which, pursued at sight without interruption under the conditions provided for by article 332 below, are brought into a house or other building even located outside the radius.

4. If the doors are refused to be opened, the ***customs officers may have them opened*** in the presence of a judicial police officer.

122 These provisions should be taken into account, too:

**Tax Procedures Code**

**Art. L16B**

**Code rural et de la pêche maritime**

**Art. R. 622-5**

**Art. R. 622-6**

**Art. D. 615-54**

**(2) Fraud-related peculiarities****Customs Code****Art. 67bis para 2<sup>541</sup>**

II.- When the investigations justify it, the public prosecutor may authorize the carrying out, under his control, of an infiltration operation under the conditions provided for by this article in order to:

[...] specially authorized customs agent under conditions fixed by decree, acting under the responsibility of a category A agent responsible for coordinating the operation, in monitoring persons suspected of committing a customs offense by being pass, to these people, *as one of their co-authors, accomplices or interested parties in the fraud*. For this purpose, the customs officer is authorized to use an assumed identity and to commit, if necessary, the acts mentioned below. On pain of nullity, these acts cannot constitute an incitement to commit offences.

The infiltration is the subject of a report drawn up by the category A agent who coordinated the operation, which includes the elements strictly necessary for the observation of the offenses and does not endanger the safety of the infiltrated agent and the required persons within the meaning of III.

123

**jj. Investigative missions in third countries and international assistance**

France has already accompanied Union actions abroad, financed by Union funds, grants and subsidies and French courts have dealt with proceedings relating e.g. to the so-called Cotonou Agreement.<sup>542</sup>

124

*Case Study 2 Products suspected of „false origin” (customs, revenue case)***Case Studies: Products suspected of „false origin” (customs, revenue case)**

„1. According to the judgment under appeal (Paris, October 8, 2018), the company Etam, which specializes in the distribution of textile articles, between January 4, 2002 and December 17, 2004, imported hosiery articles in from Jamaica. For these imports, it benefited from the preferential duty regime provided for in Protocol No. 1 of the

<sup>541</sup> **Article 67 bis Code des douanes** [...]

II.-Lorsque les investigations le justifient, le procureur de la République peut autoriser qu'il soit procédé, sous son contrôle, à une opération d'infiltration dans les conditions prévues par le présent article afin:

L'infiltration consiste, pour un agent des douanes spécialement habilité dans des conditions fixées par décret, agissant sous la responsabilité d'un agent de catégorie A chargé de coordonner l'opération, à surveiller des personnes suspectées de commettre un délit douanier en se faisant passer, auprès de ces personnes, comme un de leurs coauteurs, complices ou intéressés à la fraude. L'agent des douanes est à cette fin autorisé à faire usage d'une identité d'emprunt et à commettre si nécessaire les actes mentionnés ci-après. A peine de nullité, ces actes ne peuvent constituer une incitation à commettre des infractions.

L'infiltration fait l'objet d'un rapport rédigé par l'agent de catégorie A ayant coordonné l'opération qui comprend les éléments strictement nécessaires à la constatation des infractions et ne mettant pas en danger la sécurité de l'agent infiltré et des personnes requises au sens du III.

<sup>542</sup> Court of Cassation, civil, Commercial Chamber, November 24, 2021, 18-25.603, Unpublished, ECLI:EN:CCASS:2021:CO00808, [https://www.legifrance.gouv.fr/juri/id/JURITEXT000044384677?init=true&page=1&query=1%27OLAF&searchField=ALL&tab\\_selection=all](https://www.legifrance.gouv.fr/juri/id/JURITEXT000044384677?init=true&page=1&query=1%27OLAF&searchField=ALL&tab_selection=all).

Africa-Caribbean-Pacific Partnership Agreement, known as the Cotonou Agreement, dated June 23, 2000, to which Jamaica is a party, by producing so-called „EUR. 1”, issued by the Jamaican authorities.

2. Following a Community investigation carried out by the Anti-Fraud Office (Olaf) in Jamaica in March 2005, it was found, in particular, that these products exported by two suppliers of Etam were not not originating in Jamaica within the meaning of the Cotonou Agreement for not having been manufactured exclusively from yarns originating in that country, a condition for the benefit of preferential tariff treatment, but from parts of garments originating in the People’s Republic from China.

3. A report of customs offense of import without declaration of prohibited goods having made it possible to evade the sum of 763,382 euros in respect of duties and taxes, was drawn up by the customs administration against the company Etam, on October 21, 2005.

4. After being discharged, on October 27, 2005, of the amount claimed by the customs administration, the company Etam assigned this one by requesting the refunding of this sum.”



By the way: In this very case the Cour de Cassation (Commercial Chamber) found that the Paris Court of Appeal violated Art. 367 Customs Code by confirming the original judgement that condemned the company Etam to pay the costs of the first instance.

125 The efforts under the so-called Cotonou Agreement can be considered as an example. This is an international treaty between the Union and the Caribbean and Pacific (ACP) countries, which was extended until 30 June 2023. The Lomé Convention regulated the relationship as early as 1975.

126 The situation today is different, because since 2020 the ACP Group of States has become an international organisation: the Organisation of African, Caribbean and Pacific States (OACPS). Soon, an agreement will be set up for future relationship.<sup>543</sup>

127 The new proposed Agreement contains provisions, which shall prevent fraud from happening and make (criminal) investigations possible if it does either way:

PARTNERSHIP AGREEMENT [EUROPEAN UNION/ EUROPEAN UNION AND ITS MEMBER STATES], OF THE ONE PART, AND MEMBERS OF THE ORGANISATION OF AFRICAN, CARIBBEAN AND PACIFIC STATES, OF THE OTHER PART

**Article 21 Organised crime**<sup>544</sup>

1. The Parties, acknowledging the negative political, economic, cultural and social implications of organised criminal activities, shall strengthen cooperation to prevent and combat those activities more effectively. They shall work together under an integrated approach to address root causes and provide alternatives to crime. In that regard, they

<sup>543</sup> Directorate-General for International Partnerships (European Commission)/Kantar, EU citizens and development cooperation, Special Eurobarometer 521, 2022, Luxembourg,

<sup>544</sup> Negotiated Agreement text initialled by the EU and OACPS chief negotiators on 15th April 2021.



shall address the links between organised crime and human trafficking and migrant smuggling, the illicit trafficking of weapons, hazardous materials, narcotics and their precursors, wildlife, timber and cultural goods, and other illegal economic and financial activities.

2. The Parties commit to increase efforts to prevent, combat and eradicate trafficking in persons and to support in drafting and implementing appropriate legislative and institutional frameworks and strategies, with particular attention to persons in vulnerable situations, including women, children and unaccompanied minors, and to their specific needs. The Parties continue to uphold the standards of the UN Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons.

3. The Parties shall enhance efforts to recover and return stolen assets and combat all forms of organised crime. In that regard, they shall strengthen legal and administrative frameworks to fight money laundering and illicit financial flows, including fiscal fraud and public procurement fraud, and active and passive corruption in both the private and public sector, which can have a debilitating effect on domestic resource mobilisation.

4. The Parties shall promote citizen security, with a particular focus on strengthening institutions and the rule of law, protecting human rights, and fostering justice and security sector reforms. They shall promote multi-disciplinary programmes aimed at addressing vulnerable groups and supporting victims of violence, including gun violence, as well as mediation and other community-based prevention and reconciliation solutions.

## **Article 82**

### **International development cooperation**

[...] 12. The Parties shall strengthen dialogue and cooperation in the sound use of financial resources, including through cooperation with the European Anti-Fraud Office, where appropriate.

## ***AFRICA REGIONAL PROTOCOL***

### ***PART I***

#### ***FRAMEWORK FOR COOPERATION***

### **Article 10 Business environment and investment climate**

1. The Parties shall improve national and regional regulatory frameworks and simplify business regulations and processes, reduce and streamline administrative formalities, reinforce cooperation and build capacities to implement effective competition policies. They shall adopt open, transparent and clear regulatory frameworks for business and investment, with protection for property rights, land rights and intellectual property rights. They shall ensure effective, transparent and predictable tax systems and improve the role of customs authorities in facilitating trade, ***while enforcing the rules in place to combat fraud and other infringements***. They shall promote policies that enhance the

relevance, efficiency and effectiveness of labour market institutions, striking the right balance between flexibility and worker protection.

**Art. 20 Extractive industries and processing**

3. The Parties shall promote good governance in the extractive sector for socioeconomic development. They shall strengthen domestic legislation to ensure compliance with internationally recognised principles and guidelines, taking into consideration regional strategies as appropriate. They shall combat tax fraud and tax evasion, and ensure that all operators pay the taxes, fees and royalties due to host countries. They shall use national, regional and international legal means to fight illegal exploitation and trade in mineral resources.

**Article 71**

**Corruption**

1. The Parties shall establish and strengthen legislation, institutions and other measures to

prevent and combat corruption in all its forms, fraud, financial corporate crimes and related offences in the public and private sectors, including by implementing and promoting relevant international standards and instruments, notably the United Nations Convention against Corruption. They shall adopt legislative and other measures that are required to prevent corruption and to ensure that corruption legislation is effectively enforced, that impartial investigations and prosecutions are conducted and that effective, proportionate and dissuasive sanctions for corruption and corruption-related crimes are applied. They shall adopt legislative and other measures to provide effective protection from potential retaliation, including in the work-related context, and from intimidation of whistle-blowers who report on corruption and related offences and of witnesses who give testimony about such offences, including protection of their identities.

2. The Parties shall adopt legislative measures to enable the freezing and confiscation of proceeds and instrumentalities, or of other property the value of which corresponds to that of such proceeds and instrumentalities, derived from acts of corruption and related offences. They shall cooperate to recover such proceeds and instrumentalities and to return them to their prior legitimate owners in the country of origin, in accordance with the United Nations Convention against Corruption. They shall adopt legislative and other measures to combat the laundering of the proceeds of corruption.

3. The Parties shall ensure transparency and accountability in the management of public resources, including recovered and returned assets. They shall encourage actions that support the values of a culture of transparency, integrity and legality and a change in people's attitudes to corrupt practices. They shall strengthen the capacity and expertise of public administration in fighting corruption. They shall promote the establishment of specialised bodies in the field of anticorruption.

4. The Parties shall cooperate in the investigations of acts of corruption and related offences, including when committed in international business transactions.

## **Article 72**

### **Financial governance**

3. The Parties shall combat tax fraud, tax evasion, tax avoidance and illicit financial flows and shall strengthen asset recovery. They shall work towards ensuring the efficiency, effectiveness, certainty, transparency and fairness of tax systems.

## ***CARIBBEAN REGIONAL PROTOCOL***

### ***PART I***

#### ***FRAMEWORK FOR COOPERATION***

##### ***Chapter 1***

###### ***Nature and scope***

### **Article 34 Governance**

1. The Parties shall take concrete measures to build inclusive, accountable and transparent public institutions. They shall strengthen the capacity for policy design and implementation, develop an accountable, efficient, transparent and professional civil service, strengthen the delivery of quality public services, improve legislative and governance mechanisms, and promote the impartiality and effectiveness of law enforcement bodies.
2. The Parties shall strengthen the capacities of parliaments and local, municipal, national and regional institutions to ensure and enhance respect for democratic principles and practices.
3. The Parties shall promote respect for freedom of expression and media independence and pluralism, and preserve and broaden an enabling space for civil society, with a view to improving democratic accountability.
4. The Parties shall accelerate wider use of e-governance and digital services infrastructure as a means to enhance access to, and the availability of, public services, thereby supporting the development of accountable and transparent public institutions.
5. The Parties shall develop and strengthen institutions, legislation and mechanisms to prevent and combat corruption, bribery, fraud and corporate crimes, including on the confiscation and return of recovered assets. They shall ensure that anti-corruption legislation is effectively enforced and that impartial investigations and prosecutions are conducted, and that effective, proportionate sanctions and penalties for corruption and corruption-related crimes are applied. They shall promote and implement relevant international standards and instruments, notably the United Nations Convention against Corruption, acknowledging that corruption is a transnational issue which is linked to other forms of transnational and economic crime and which requires joint and multi-disciplinary efforts also at international levels

***PACIFIC REGIONAL PROTOCOL***  
***PART I***  
***FRAMEWORK FOR COOPERATION***  
***Chapter 1***  
***Nature and scope***

**Article 39 Democracy and governance**

1. The Parties shall uphold democratic processes and institutions in accordance with internationally recognised principles and national legal frameworks, including accountable governments elected through peaceful, inclusive, transparent and credible elections, the acceptance of election results and the ensuing government transition and the individual's right to participate in the public affairs of the society they live in.
2. The Parties shall enhance the role of parliaments, promote media independence and pluralism, and preserve and broaden an enabling space for civil society, with a view to improving democratic accountability. They shall strengthen national, regional and decentralised capacities to ensure respect for democratic principles and practices.
3. The Parties shall promote the principles of good governance. They shall take concrete measures to build inclusive, accountable and transparent public institutions. They shall support capacities for policy design and implementation, develop an accountable, efficient, transparent and professional civil service, and strengthen the delivery of quality public services.
4. The Parties shall accelerate the deployment of e-governance services and digital services infrastructure as a means of enhancing access to and the availability of public services, improving democratic practices and governance, and promoting, protecting and fulfilling human rights and fundamental freedoms.
5. The Parties shall establish or strengthen mechanisms and institutions to combat corruption, bribery, fraud and corporate financial crimes, including by implementing and promoting relevant international standards and instruments, notably the United Nations Convention against Corruption. They shall promote transparent management of public resources and accountability, encourage actions that support the values of a culture of transparency, legality and behaviour change in order to ensure the eradication of corruption, and further develop legislation to facilitate the recovery and return of assets.
6. The Parties shall strengthen governance systems to stem irregular migration and to combat smuggling of migrants and related criminal networks, as well as trafficking in persons, with a specific focus on victim protection.

128

*Laws:*

- Customs Code (Code des douanes), Section 7 bis: Joint investigation teams (Article 67 ter A/ A s. 7 bis: Equipes communes d'enquête (Article 67 ter A)
- Tax Procedures Code (*Livre des procédures fiscales*)

See a case example dealing with the Coutou Agreement:

129

- *Cour de cassation*, criminelle, Chambre criminelle, 9 décembre 2015, 15-82.300, Publié au bulletin, Décision attaquée: Chambre de l’instruction de la cour d’appel de Colmar, du 19 mars 2015.

## **h) National procedural rules for „checks and inspections” by the assisting national authority**

*Laws:*

130

- Customs Code (Code des douanes)
- Tax Procedures Code (Livre des procédures fiscales)

*Ordinances and other laws:*

- e.g. Ordinance No. 2021-1843 of December 22, 2021 on the legislative part of the tax code on goods and services and transposing various standards of European Union law<sup>545</sup>

### **Tax Procedures Code**

#### **Art. L83 A.**<sup>546</sup>

Officials of the General Directorate of Public Finances, agents of the General Directorate of Customs and Indirect Taxes and agents of competition, consumption and the repression of fraud may communicate to each other spontaneously or on request any documents and information held or collected within the framework of all of their respective missions.

Officials of the General Directorate of Public Finance, on the one hand, and officials of the following administrations and services, on the other hand, may communicate to each other spontaneously or on request all documents and information held or collected within the framework of the whole of their respective missions:

- 1° The General Directorate of Civil Aviation;
- 2° The Department of Maritime Affairs;
- 3° The General Directorate for Risk Prevention and its decentralized services;
- 4° Services under the authority of the Minister responsible for energy.

<sup>545</sup> See Ordonnance n° 2021-1843 du 22 décembre 2021 portant partie législative du code des impositions sur les biens et services et transposant diverses normes du droit de l’Union européenne, NOR: ECOE2120672, ELI: <https://www.legifrance.gouv.fr/eli/ordonnance/2021/12/22/ECOE2120672R/jo/texte> NOR: ECOE2120672R; ELI: <https://www.legifrance.gouv.fr/eli/ordre/2021/12/22/ECOE2120672R/jo/texte>.

<sup>546</sup> **Article L83 A Livre des procédures fiscales**

Les agents de la direction générale des finances publiques, les agents de la direction générale des douanes et droits indirects et les agents de la concurrence, de la consommation et de la répression des fraudes peuvent se communiquer spontanément ou sur demande tous documents et renseignements détenus ou recueillis dans le cadre de l’ensemble de leurs missions respectives.

Les agents de la direction générale des finances publiques, d’une part, et les agents des administrations et services suivants, d’autre part, peuvent se communiquer spontanément ou sur demande tous documents et renseignements détenus ou recueillis dans le cadre de l’ensemble de leurs missions respectives:

- 1° La direction générale de l’aviation civile ;
- 2° La direction des affaires maritimes ;
- 3° La direction générale de la prévention des risques et ses services déconcentrés;
- 4° Les services sous l’autorité du ministre chargé de l’énergie.

**i) Cooperation and mutual assistance agreements**

- 131** **Codes des douanes**  
 Title XII: Litigation and recovery (Articles 321 to 440 bis)  
 Chapter II: Prosecution and recovery (Articles 342 to 355)  
**Section 2 bis: International recovery assistance (Articles 349 ter to 349 octies)**  
 Article 349b Article 349c Article 349d Article 349e Article 349f Article 349g
- Tax Procedures Code**  
 Chapter IV: Recovery assistance within the European Union (Articles L283 A to L283 F)  
 Article L283A Article L283B Article L283C Article L283 D Article L283 E Article L283 F
- 132** France has **bilateral agreements with e.g. Germany**. The German Ministry of Finance has a special bureau called « Referat », which is competent to ensure an effective and close cooperation in tax (fraud) matters:
- Referat E B 4**  
 Krisenmanagement, Eurozone; Krisenbewältigungsmechanismen (EFSF, ESM); Analysen für den Bundestag *MR Dinter*
- Referat E B 5** Finanzaspekte des Binnenmarktes; WTO; EU-Außenwirtschaftspolitik *MRin Nortmann*
- Referat E B 6**  
 Bilaterale Beziehungen zu EU-Staaten, EFTA/ EWR-Staaten sowie Großbritannien; Deutsch-Französische Zusammenarbeit EU-Erweiterung Geschäftsstelle  
 Deutsch-Französische Arbeitseinheit (DFA) *MR Quast*
- 133** The analysis above succinctly described the applicability of Article 3 of the OLAF Regulation in France. OLAF is authorized to conduct investigations in the areas specified in Article 3 of the OLAF Regulation (EU Regulation 883/2013).
- 134** The investigations have an emphasis on EU financial interests. Due to the wording of the Union law, which the article establishes, OLAF is authorized to investigate cases of fraud, corruption, and other irregularities that may have an impact on the financial interests of the European Union. Among these interests are: Direct spending (such as grants and subsidies from the EU, see above → Mn. 45) and revenue gathering (encompassing customs duties, for example, see above → Mn. 52 et seq.) France as an EU Member State is not immune to fraud.<sup>547</sup>

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<sup>547</sup> Looking back into time the sugar subsidy fraud cases of the last decade involved France see Stephen Castle and Doreen Carvajal, Ney York Times, Huge Fraud Afoot in E.U. Sugar Market, <https://www.nytimes.com/2009/10/27/world/europe/27iht-sugar.html>. Accessed 31 May 2024.

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It can be difficult to identify the “largest” fraud case in French history since there are several criteria to gauge the scope of a scam, including the amount of money lost, the quantity of victims, and the intricacy of the plan. But in recent history one case must be named. i.e. the affluent Wildenstein art-dealing family was implicated in the Wildenstein Art-Dealing Dynasty tax-fraud case, which entailed money laundering and tax avoidance rather than outright fraud. **135**

The main charges were concealing assets and artwork valued at billions of euros to evade paying taxes. The entire legal action was dubbed the largest tax-evasion case in recent French history because of the enormous sum of money involved (estimated at €500 million), even though the family was finally found not guilty in 2017 but found guilty in 2024. **136**

In accordance with Article 3, France is liable to the investigative powers of OLAF. This implies that fraud and typical cases as mentioned above involving EU monies utilized in France can potentially be investigated by OLAF. If the cases involve criminal conduct the EPPO must be involved, see above → Part B, Art. 26 EPPO Regulation et seq. **137**

## 5. Article 4 Internal investigations

1. Investigations within the institutions, bodies, offices and agencies in the areas referred to in Article 1 shall be conducted *in accordance with this Regulation and with the decisions adopted by the relevant institution, body, office or agency* ('internal investigations').

8. Without prejudice to Article 12c(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.

- 1 Internal investigations of OLAF concerning e.g. French nationals may lead to the relevance of national law, which is referenced in Art. 4 OLAF Regulation. Recent accusations and cases such as e.g. the FRONTEX (EU agency) irregularities have shown that the nationals of EU Member States can not be left unconsidered in the light of fraud investigations if they switch working places after a (political) scandal.<sup>548</sup>
- 2 Last but not least it can be pointed at the fact that the Cour de Cassation has ruled cases in the past, which included French parliamentarians and unduly paid sums.<sup>549</sup>

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<sup>548</sup> See Giorgos Christides, Klaas van Dijken, Steffen Lüdke und Maximilian Popp, *Missteps and Mismanagement at Frontex Scandals Plunge Europe's Border Agency into Turmoil*, 5.2.2021, Spiegel International, online: <https://www.spiegel.de/international/europe/missteps-and-mismanagement-at-frontex-scandals-plunge-europe-s-border-agency-into-turmoil-a-d11ae404-5fd4-41a7-b127-eca47a00753f>. And see [statewatch.org](http://statewatch.org), *Frontex investigations: what changes in the EU border agency's accountability?*, 30 March 2021: „On 07 December 2020, OLAF raided the offices of Frontex Executive Director Fabrice Leggeri, as well as his head of Cabinet Thibault de La Haye Jousselein, as part of an investigation into allegations of migrant pushbacks. According to Der Spiegel, the investigation involves a possible case of fraud involving a service provider, allegations of workplace harassment, and information withheld from the Fundamental Rights Officer. Moreover, the magazine reports that internal documents suggest that Leggeri's entire leadership style is under scrutiny.“

<sup>549</sup> Court of Cassation, civil, Civil Chamber 1, May 11, 2022, 21-12.513, Published in the bulletin, Contested decision: Colmar Court of Appeal, November 05, 2020, Strasbourg Tribunal de Grande Instance of March 28, 2019.



**a) References to national law, Para 8**

<b>Code des douanes</b>	<b>Livre des procédures fiscales</b>	<b>CPC</b>
Art. 64 (for the crimes enshrined (des délits douaniers) 414–429 et 459	Art. L16B, Art. L-80F, Art. L-80K, Art. L-80L	Art. 696-113, Art. 696-114

3

**b) Competent authorities**

A recent study outlined the following:

4

[Unofficial translation]

„Agents of the Payment Services Agency (ASP), France Agrimer, the Overseas Agricultural Economy Development Office (ODEADOM) and certain decentralized services have investigative powers to protect the financial interests of the European Union, which delegates the execution of the budget of the common agricultural policy (CAP) to the Member States and the national paying agencies under the conditions provided for by European regulations. Checks are carried out remotely, by cross-checking the databases of the integrated management and control system and by remote sensing („administrative checks“, which are systematic in nature), and on the spot (depending on the minimum rate of checks and in accordance with the procedures set by European regulations). In particular, the controllers have access to the accounts and registers kept by the operators, to the supporting documents that they must keep at their disposal and to the information necessary to verify compliance with the cross-compliance rules.”<sup>550</sup>

[Official text]

5

„Les agents de l’agence des services de paiement (ASP), de France Agrimer, de l’Office de développement de l’économie agricole d’outre-mer (ODEADOM) et de certains services déconcentrés<sup>551</sup> disposent de pouvoirs d’investigation afin de protéger les intérêts financiers de l’Union européenne, laquelle délègue l’exécution du budget de la politique agricole commune (PAC) aux Etats membres et aux organismes payeurs nationaux dans les conditions prévus par des règlements européens. Les contrôles s’effectuent à distance, par recoupement des bases de données du système intégré de gestion et de contrôle<sup>552</sup> et par télédétection<sup>553</sup> (« contrôle administratif », qui revêt un caractère

<sup>550</sup> Conseil d’État, Etude réalisée à la demande du Premier ministre, Les pouvoirs d’enquête de l’administration, Etude adoptée par l’assemblée générale du Conseil d’Etat du 15 avril 2021, Paris, 2021, p. 46.

<sup>551</sup> Directions départementales des territoires et de la mer ainsi que de la protection des populations, directions régionales de l’alimentation, de l’agriculture et de la forêt.

<sup>552</sup> Qui comprend des bases de données interconnectées: systèmes d’identification des agriculteurs, des parcelles agricoles (voir le registre parcellaire graphique sur le site Géoportail), d’identification et d’enregistrement des animaux.

<sup>553</sup> Pour le mesurage des surfaces.

systématique), et sur place<sup>554</sup> (en fonction de taux minimum de contrôle et selon des modalités fixées par les règlements européens)<sup>555</sup>. Les contrôleurs ont notamment accès à la comptabilité et aux registres tenus par les exploitants, aux pièces justificatives que ceux-ci doivent maintenir à leur disposition<sup>556</sup> et aux informations nécessaires à la vérification du respect des règles de conditionnalité<sup>557</sup>.

**6 General authorities:**

- Agence de services et de paiement (ASP)
- Institut national de l'origine et de la qualité (INAO)

**7 In corruption matters:**

- La Haute Autorité pour la transparence de la vie publique (HATVP) = ) has the task to check the declarations of financial situation and the declarations of interests of the members of the Government, certain elected officials and heads of administrations and public companies

**8 In customs matters:**

- The Directorate General for Competition, Consumer Affairs and Fraud Prevention (DGCCRF)<sup>558</sup>
- Directorate General of Public Finances (DGFIP)<sup>559</sup>
- Directorate General of Customs and Indirect Duties (DGDDI)<sup>560</sup>
- 1) National Directorate of Intelligence and Customs Investigations (DNRED)<sup>561</sup>
- a) the Customs Intelligence Directorate (DRD)<sup>562</sup>,
- b) the Customs Investigation Department (DED)<sup>563</sup>,
- c) and the Directorate of Customs Operations (DOD)<sup>564</sup>.
- 2) Service with national competence called intelligence processing and action against clandestine financial circuits (TRACFIN) of the Ministry of Economy and Finance<sup>565</sup>

**9 In agricultural, fisheries matters:**

Managing Authority: all regions that are located on/or have a coast

FranceAgriMer, créé par l'ordonnance 2009-325 du 25 mars 2009;

Office de développement de l'économie agricole d'outre-mer (ODEADOM)

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<sup>554</sup> Identification des animaux pour les primes animales, vérification du respect des conditions environnementales, des matériels acquis dans le cas des aides à l'installation et à l'investissement.

<sup>555</sup> Règlement n° 1306/2013 du Parlement et du Conseil du 17 décembre 2013 relatif au financement, à la gestion et au suivi de la PAC et ses règlements d'exécution.

<sup>556</sup> Art. R. 622-5 et R. 622-6 du code rural et de la pêche maritime.

<sup>557</sup> Art. D. 615-54 du code rural et de la pêche maritime.

<sup>558</sup> La direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF).

<sup>559</sup> Direction générale des Finances publiques (DGFIP).

<sup>560</sup> Direction générale des Douanes et Droits indirects (DGDDI).

<sup>561</sup> Direction nationale du renseignement et des enquêtes douanières (DNRED).

<sup>562</sup> La direction du renseignement douanier (DRD).

<sup>563</sup> La direction des enquêtes douanières (DED).

<sup>564</sup> La direction des opérations douanières (DOD).

<sup>565</sup> Service à compétence nationale dénommé traitement du renseignement et action contre les circuits financiers clandestins (TRACFIN) du ministère de l'Économie et des Finances.

(see above → structural funds C.4.bb(1)(c)(aa)).

**In forest matters:** 10

- Office national des forêts (ONF)

**In financial fraud matters**<sup>566</sup>: 11

- The central office for the fight against corruption and financial and tax offenses (OCLCIFF)<sup>567</sup>
- High Authority for Transparency in Public Life (HATVP)<sup>568</sup>
- L'Agence française anticorruption (AFA)

**6. Article 5 Opening of investigations**

[...] 5. If the Director-General decides not to open an investigation, he or she may without delay send any relevant information, as appropriate, to the **competent authorities of the Member State concerned** for appropriate **action to be taken in accordance with Union and national law** or to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules applicable to that institution, body, office or agency. The Office shall agree with that institution, body, office or agency, if appropriate, on suitable measures to protect the confidentiality of the source of that information and shall, if necessary, ask to be Competent authorities

- *Mission Interministérielle de Coordination Anti Fraude* (MICAF) as competent authority, Ministry of Finance as relevant administration 1
- Customs Administration

*Direction Nationale du Renseignement et des Enquêtes Douanières* (DNRED) – competent authority to work with OLAF for the control within the scope of the Customs code<sup>569</sup> 2

The *Commission interministérielle de la coordination des contrôles relevant de la section Garantie du Fonds européen d'orientation et de garantie agricole* (specifically established coordination body for controls in the area of EAGFL, Guarantee department) has been repealed in 2007.<sup>570</sup> 3

*Sources and national sections 10 Overview for France – Art. 5 (Opening of investigations) OLAF Regulation* 4

<b>Customs Code/Code de douanes</b>	Art. 60 to Art. 63bis (Droit de visite des marchandises, des moyens de transport et des personnes = Right to inspect goods, means of transport and persons) → criminal investigation in nature?
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<sup>566</sup> See Conseil constitutionnel, Décision n° 83-164 DC du 29 décembre 1983

<sup>567</sup> L'office central de lutte contre la corruption et les infractions financières et fiscales (OCLCIFF).

<sup>568</sup> Haute Autorité pour la transparence de la vie publique (HATVP).

<sup>569</sup> Frese 2003, p.101.

<sup>570</sup> Frese 2003, p.164.

<p><b>Fiscal Procedure Code/Livre des procédures fiscales</b></p>	<p>Art. 63ter + 65 („droit d'accès" right of access to files + „droit de communication" right to inspect the files) for the area of revenues as well as export refunds</p> <p>Art. 65 A (for other expenditures financed by the EAGFL apart from export refunds)<sup>571</sup></p> <p>Art. 2bis – argumentum e contrario: applicability of the law to customs and agricultural duties as well as export refunds</p> <p>Art. 69 b), 71</p> <p>Art. L81 to L102B LPF („droit de communication")<sup>572</sup></p>
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Source: The authors.

**[Article 6 Access to information in databases prior to the opening of an investigation]**

*Not analysed here.*

**7. Article 7 Investigations procedure**

[...] 3. The competent authorities of Member States shall give the necessary assistance to enable the staff of the Office to fulfil their tasks in accordance with this Regulation effectively and without undue delay. When providing such assistance, the *competent authorities of Member States* shall *act in accordance with any national procedural rules applicable to them*.

3a. At the request of the Office, which shall be explained in writing, in relation to matters under investigation, the relevant competent authorities of the Member States shall, *under the same conditions as those that apply to the national competent authorities*, provide the Office with the following:

- (a) information available in the centralised automated mechanisms referred to in Article 32a(3) of Directive (EU) 2015/849 of the European Parliament and of the Council ( 4 );
- (b) where strictly necessary for the purposes of the investigation, the record of transactions.

The request of the Office shall include a justification of the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation. Such request shall refer only to information referred to in points (a) and (b) of the first subparagraph.

Member States shall notify to the Commission the relevant competent authorities for the purposes of points (a) and (b) of the first subparagraph.

<sup>571</sup> Frese 2003, p.121.

<sup>572</sup> Frese 2003, p.102.

6. Where investigations show that it might be appropriate to take precautionary administrative measures to protect the financial interests of the Union, the Office shall without delay inform the institution, body, office or agency concerned of the investigation in progress. The information supplied shall include the following:

- (a) the identity of the official, other servant, member of an institution or body, head of office or agency, or staff member concerned and a summary of the facts in question;
- (b) any information that could assist the institution, body, office or agency concerned in deciding on the appropriate precautionary administrative measures to be taken in order to protect the financial interests of the Union;
- (c) any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or, in the case of an external investigation, within the competence of a national authority, *in accordance with the national rules applicable to investigations*.

The institution, body, office or agency concerned may at any time consult the Office with a view to taking, in close cooperation with the Office, any appropriate precautionary measures, including measures for the safeguarding of evidence. The institution, body, office or agency concerned shall inform the Office without delay about any precautionary measures taken.

7. Where necessary, it shall be for the competent authorities of the Member States, at the Office's request, to take the *appropriate precautionary measures under their national law*, in particular measures for the safeguarding of evidence.

#### a) References to national law

*Sources and national sections 11 Overview for France – Art. 7 (Investigation procedure)* **1**  
*OLAF Regulation*

<b>Para 3</b>	<p><i>Code des Douanes:</i></p> <p>La procedure non-contentieuse → there is no law for this area, but incomplete and sporadic codification („<i>codification rampante</i>”) but there are “<i>principes généraux de droit</i>”:<sup>573</sup></p> <p>→ inquisitorial principle</p> <ul style="list-style-type: none"> <li>- The inquisitorial principle applies to the whole of French administrative investigation procedures<sup>574</sup></li> </ul> <p>→ proportionality principle</p> <ul style="list-style-type: none"> <li>- Code des douanes: e.g Cass. Crim. of 15. October 1984, Bull. crim. Nr. 298, p. 793 (796) (related to the <i>droit de communication</i>)</li> </ul>
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<sup>573</sup> Frese 2003, p.192 ff.

<sup>574</sup> Riedel, EuR 1995, Beiheft I, p. 49 (65).

<b>Para 7</b>	<ul style="list-style-type: none"> <li>- applies to the whole of the investigation procedure as a <i>principe général de droit</i> according to certain literature<sup>575</sup></li> <li>→ Pouvoir discrétionnaire (<i>discretion</i> in the French administrative procedure)</li> </ul> <p>Art. 65 V (seizure), 63ter IV (seizure) Code des Douanes</p>
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Source: The authors.

**b) References to national authorities**

2 See *Décret n° 2020-119 du 12 février 2020 renforçant le dispositif national de lutte contre le blanchiment de capitaux et le financement du terrorisme*.<sup>576</sup>

3 **General authorities:**

- Agence de services et de paiement (ASP)

- Institut national de l'origine et de la qualité (INAO)**In customs matters:**

4 - The Directorate General for Competition, Consumer Affairs and Fraud Prevention (DGCCRF)<sup>577</sup>

- Directorate General of Public Finances (DGFIP)<sup>578</sup>

- Directorate General of Customs and Indirect Duties (DGDDI)<sup>579</sup>

- 1) National Directorate of Intelligence and Customs Investigations (DNRED)<sup>580</sup>

- a) the Customs Intelligence Directorate (DRD)<sup>581</sup>,

- b) the Customs Investigation Department (DED)<sup>582</sup>,

- c) and the Directorate of Customs Operations (DOD)<sup>583</sup>.

- 2) Service with national competence called intelligence processing and action against clandestine financial circuits (TRACFIN) of the Ministry of Economy and Finance<sup>584</sup>

5 **In agricultural, fisheries matters:**

Managing Authority: all regions that are located on/or have a coast

FranceAgriMer, créé par l'ordonnance 2009-325 du 25 mars 2009;

Office de développement de l'économie agricole d'outre-mer (ODEADOM) (see above

→ structural funds C.4.bb(1)(c)(aa)).

<sup>575</sup> de Laubadère/Venezia/Gaudemet, *Traité de droit administratif*, Margin Number 900, p. 696.

<sup>576</sup> *Décret n° 2020-119 du 12 février 2020 renforçant le dispositif national de lutte contre le blanchiment de capitaux et le financement du terrorisme*, Official publication: Journal Officiel de la République Française (JORF); Publication date: 2020-02-13.

<sup>577</sup> La direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF).

<sup>578</sup> Direction générale des Finances publiques (DGFIP).

<sup>579</sup> Direction générale des Douanes et Droits indirects (DGDDI).

<sup>580</sup> Direction nationale du renseignement et des enquêtes douanières (DNRED).

<sup>581</sup> La direction du renseignement douanier (DRD).

<sup>582</sup> La direction des enquêtes douanières (DED).

<sup>583</sup> La direction des opérations douanières (DOD).

<sup>584</sup> Service à compétence nationale dénommé traitement du renseignement et action contre les circuits financiers clandestins (TRACFIN) du ministère de l'Économie et des Finances.

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<b>In forest matters:</b>	<b>6</b>
· Office national des forêts (ONF)	
<b>In financial fraud matters<sup>585</sup>:</b>	<b>7</b>
- The central office for the fight against corruption and financial and tax offenses (OCLCIFF) <sup>586</sup>	
- High Authority for Transparency in Public Life (HATVP) <sup>587</sup>	
- L'Agence française anticorruption (AFA)	

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<sup>585</sup> See Conseil constitutionnel, Décision n° 83-164 DC du 29 décembre 1983

<sup>586</sup> L'office central de lutte contre la corruption et les infractions financières et fiscales (OCLCIFF).

<sup>587</sup> Haute Autorité pour la transparence de la vie publique (HATVP).

## II. Formal requirements in the Investigations by OLAF – relations to national law

Formal requirements are essential for a **lawful (administrative) procedure**. In national and european administrative law, they are checked by national administrative staff as a standard. In more complex situations, expert opinions are prepared. In simple cases, for example, checklists are used: Has a hearing taken place? Have the information rights and notification obligations been complied with? These and similar tasks are important for OLAF's activities, too. In OLAF's area of activity, union law prescribes comparable principles. The aim of the regulations is standardisation, **safeguarding the procedure and compliance with the rights of the person affected** by the measures. This is important because in the area of the Union authorities there is a similar relationship of subordination as in the national state-citizen relationship.

### 1. 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.

- 1 What preventing rules exist under national law and what do they prevent?
  - **Secrecy of criminal investigations („*secret de l'instruction*“)**, Art. 11 para 1 CPC (for matters concerning the criminal investigation procedure, secrecy has to be kept for the duration of the criminal investigation procedure)<sup>588</sup>
- 2 Searches in business premises are only possible during criminal investigations due to fundamental rights system in France.<sup>589</sup>
- 3 - **Proportionality principle** → may prevent the use of evidence obtained through seizure without consent or voluntary assistance of the economic operator concerned.<sup>590</sup>
- 4 The wording of Art. 63ter IV, 65, 65 A Code des douanes shows that consent is needed for those measures listed in the articles.<sup>591</sup>
- 5 - **Pouvoir discrétionnaire** → i.e. discretion in the French administrative procedure

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<sup>588</sup> Frese 2003, p. 216f.

<sup>589</sup> Frese 2003, p. 215.

<sup>590</sup> Cass. Crim. 15. October 1984, bull.crim. no. 298, p. 793 (796).

<sup>591</sup> Frese 2003, p. 206.



The discretion is given if action of the administration either is not regulated at all or the regulations of such administrative action are vague enough, that the competent authority has further leeway in deciding whether and, if so, how to take action.<sup>592</sup>

## 2. 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.

<sup>592</sup> Frese 2003, p. 206f; Grote in NVwZ 1986, S. 269 (270).

- 7 If everything is conducted according to the law, OLAF reports may be of great help in national proceedings but it may happen that OLAF reports are useless if the evidence is not properly disclosed to the suspect in order to defend him-/herself against the accusations.<sup>593</sup>
- 8 But generally speaking the recommendations are the primary tool of OLAF to fight fraud effectively because it can hereby stimulate actions in the Member States that may really lead to consequences for the suspects.<sup>594</sup> Still a judgement resulting from a trial by an investigating chamber needs to include the reasons that justify the decision.<sup>595</sup>



A prominent appeal against a decision of the *Chambre de l'instruction de la cour d'appel* de Paris in a case of undly paid sums i.e. „funds reserved exclusively for parliamentary assistance”, which was initiated through recommendations by OLAF and lead to this criminal trial was rejected by the Cour de Cassation with the following arguments:

„Whereas, in order to reject the pleas alleging the material lack of jurisdiction of the French courts and the principle of the separation of powers and the autonomy of parliamentary assemblies, the judgment states that neither the Treaty on European Union nor the Treaty on the functioning of the European Union confer criminal jurisdiction on the Court of Justice or the Court of the European Union; that the judges note that it follows from article 11, paragraph 5, of regulation n° 883/2013 of the European Parliament and of the council of September 11, 2013 relating to the investigations carried out by OLAF that, when the report following an internal investigation reveals the existence of facts likely to give rise to criminal proceedings, this information is transmitted to the judicial authorities of the Member State concerned, paragraph 6 providing that at the request of the Office, the competent authorities of the Member States concerned send it timely information on any action taken; that they add that it follows from Article 11 of the OLAF Regulations that the latter assesses in particular the damage, recommends disciplinary or financial follow-up and seizes, if necessary, the national authorities, the national judicial authorities assessing freely within the framework of their own powers the content and scope of the information communicated and, therefore, the follow-up that should be given to it;[...].”<sup>596</sup>

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<sup>593</sup> Cour de cassation, civile, Chambre commerciale, 25 novembre 2014, 13-26.240, Inédit.

<sup>594</sup> Cour de cassation, criminelle, Chambre criminelle, 19 février 2019, 18-83.827, Inédit a case in which “on July 22, 2016, the European Anti-Fraud Office (OLAF) recommended to the public prosecutor at the Paris tribunal de grande instance to initiate legal proceedings, in particular for breach of trust, against Ms. C... for obtaining allowances for parliamentary assistance paid by the European Parliament for remuneration for a job as assistant accredited presumably fictitious [...]”. {In the following time] Mrs. U... was indicted, on 20 June 2017, on the count of breach of trust, for having paid MF.. K... on funds reserved exclusively for parliamentary assistance, while he held a job with the National Front; that, on 6 July 2017, she seized the investigating chamber of a motion for annulment of procedural documents; [...]”

<sup>595</sup> Court of Cassation, Criminal, Criminal Chamber, November 10, 2015, 15-82.497, Unpublished, ECLI:FR :CCASS:2015:CR05487.

<sup>596</sup> Cour de cassation, criminelle, Chambre criminelle, 19 février 2019, 18-83.827, Inédit: “Attendu que, pour rejeter les moyens tirés de l'incompétence matérielle des juridictions françaises et des principe de séparation des pouvoirs et de l'autonomie des assemblées parlementaires, l'arrêt énonce que ni le traité de l'Union européenne ni

The following table gives an overview of certain provisions and national sections that may apply: 9

**a) References to national law**

*Sources & national sections 13: Overview for France – Art. 11 OLAF Regulation* 10

<b>Para 2</b>	<p>Art. L. 80H. Livres des procédures fiscales  Code de l'énergie/Energy Code  Code civile  Code de la procédure civile  Code de l'environnement/Environmental Code  Code des juridictions financières/Code of Financial Jurisdictions (especially: Contrôle des comptes et de la gestion (Articles LO262-5 à L262-11-2))  Code monétaire et financier/Monetary and Financial Code  Code commerce/Trade code  Code rurale et de la pêche maritime/Rural and maritime fisheries Code  Code des transports/Transports Code  Code la sécurité sociale/Social Security Code  Code du tourisme/Tourism Code  Ordonnance n° 2021-1843 du 22 décembre 2021 portant partie législative du code des impositions sur les biens et services et transposant diverses normes du droit de l'Union européenne</p>
<b>Para 2 (a)</b>	<p>Art. 34 Constitution, Le droit des sanctions administratives, Code pénal, Code de procédure pénale, Code de justice administrative<sup>597</sup></p>
<b>Para 2 (b) [What are these final decisions under national law and what rules apply for them? What are relevant judicial proceed-</b>	<p>Code pénal, Code de procédure pénale, Code de justice administrative  “In application of the right to effective judicial review, the Investigating Chamber has jurisdiction, in the context of nullity proceedings, to rule on the legality of an investigative act carried out by OLAF, an independent administra-</p>

le traité sur le fonctionnement de l'Union européenne ne confèrent à la Cour de justice ou au tribunal de l'Union européenne une compétence pénale ; que les juges relèvent qu'il résulte de l'article 11, paragraphe 5, du règlement n° 883/2013 du Parlement européen et du conseil du 11 septembre 2013 relatif aux enquêtes effectuées par l'Olaf que, lorsque le rapport établi à la suite d'une enquête interne révèle l'existence de faits susceptibles de donner lieu à des poursuites pénales, cette information est transmise aux autorités judiciaires de l'Etat membre concerné, le paragraphe 6 disposant qu'à la demande de l'Office, les autorités compétentes des Etats membres concernés lui envoient en temps utile des informations sur les suites éventuellement données ; qu'ils ajoutent qu'il résulte de l'article 11 du règlement de l'Olaf que celui-ci évalue notamment le préjudice, recommande des suites disciplinaires ou financières et saisit, le cas échéant, les autorités nationales, les autorités judiciaires nationales appréciant librement dans le cadre de leurs pouvoirs propres le contenu et la portée des informations communiquées et, partant, les suites qu'il convient de leur donner ; [...].”

<sup>597</sup> See Backes and Eliantonio et al 2019, Table of Case Law, France.

<p><b>ings? What means de-termination from a domestic viewpoint?</b></p>	<p>tive body created by the European Commission and empowered to conduct investigations in the fight against fraud against the financial interests of the European Union, when such an act is included in criminal proceedings in France. The act may be annulled if it is established that it was carried out in <b>breach of fundamental rights.</b>”<sup>598</sup></p>
<p><b>Para 2 (c) What are the requirements for such publication?] [What are these national rules of assessment?]</b></p>	<p>Cf. → Code de procedure pénale, Code de justice administrative</p>

Source: The authors.

**b) National authority, Para 3**

**Which are these competent authorities of the Member States?**

**11 General authorities:**

- Agence de services et de paiement (ASP)
- Institut national de l’origine et de la qualité (INAO)

**In customs matters:**

- The Directorate General for Competition, Consumer Affairs and Fraud Prevention (DGCCRF)<sup>599</sup>
- Directorate General of Public Finances (DGFIP)<sup>600</sup>
- Directorate General of Customs and Indirect Duties (DGDDI)<sup>601</sup>
- 1) National Directorate of Intelligence and Customs Investigations (DNRED)<sup>602</sup>
  - a) the Customs Intelligence Directorate (DRD)<sup>603</sup>,
  - b) the Customs Investigation Department (DED)<sup>604</sup>,
  - c) and the Directorate of Customs Operations (DOD)<sup>605</sup>.
- 2) Service with national competence called intelligence processing and action against clandestine financial circuits (TRACFIN) of the Ministry of Economy and Finance<sup>606</sup>

<sup>598</sup> Chambre de l’instruction, 2015, Crim. 9 déc. R 283 15-82.300.

<sup>599</sup> La direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF).

<sup>600</sup> Direction générale des Finances publiques (DGFIP).

<sup>601</sup> Direction générale des Douanes et Droits indirects (DGDDI).

<sup>602</sup> Direction nationale du renseignement et des enquêtes douanières (DNRED).

<sup>603</sup> La direction du renseignement douanier (DRD).

<sup>604</sup> La direction des enquêtes douanières (DED).

<sup>605</sup> La direction des opérations douanières (DOD).

<sup>606</sup> Service à compétence nationale dénommé traitement du renseignement et action contre les circuits financiers clandestins (TRACFIN) du ministère de l’Économie et des Finances.

**In agricultural, fisheries matters:** 12

Managing Authority: all regions that are located on/or have a coast

- FranceAgriMer, créé par l'ordonnance 2009-325 du 25 mars 2009 ;
- Office de développement de l'économie agricole d'outre-mer (ODEADOM) (see above → structural funds C.4.bb(1)(c)(aa)).

**In forest matters:** 13

- Office national des forêts (ONF)

**In financial fraud matters**<sup>607</sup>: 14

- The central office for the fight against corruption and financial and tax offenses (OCLCIFF)<sup>608</sup>
- High Authority for Transparency in Public Life (HATVP)<sup>609</sup>
- L'Agence française anticorruption (AFA)

**3. Article 12 (Exchange of information between the Office and the competent authorities of the Member States)**

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. [...]

Information from national authorities is of particular interest for OLAF as OLAF itself needs, metaphorically described „eyes and ears” in the Member State concerned (for an interpretation of Art. 12 see → the EU Fraud Commentary, Part C on OLAF). 1

<sup>607</sup> See Conseil constitutionnel, Décision n° 83-164 DC du 29 décembre 1983

<sup>608</sup> L'office central de lutte contre la corruption et les infractions financières et fiscales (OCLCIFF).

<sup>609</sup> Haute Autorité pour la transparence de la vie publique (HATVP).

**a) Art. 12 Para 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law)**

**2 Competent authorities**

- Police authorities (Regional Police, Federal Police, Federal Criminal Police Office)

**Appropriate action acc. to national law**

*Depends on the area of the irregularity (recouvrement is the most common).*

**b) Art. 12 Para 2 OLAF Regulation (judicial authorities of the Member State concerned)**

**3 Which are these national authorities?**

- Public Prosecutor's Office and its' magistrates (ministère public et ses magistrats):
- District Attorney (Procureur de la République),
- General Counsel (Avocat general),
- Attorney General (Procureur general)

**c) Art. 12 Para 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned)**

- 4** 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.

**5 Prevention by national law**

The right to withhold information (for a certain time) may result from provisions, which ensure the secrecy of an action under national law.

**d) Art. 12 Para 4 OLAF Regulation (Providing evidence in court proceedings before national courts and tribunals in conformity with national law)**

- 6** The Code of Administrative Court Procedure (*Code de justice administrative*, R811-1 et seq.) will apply if it is necessary to provide evidence in court proceedings before national administrative courts and tribunals. Furthermore the Criminal Procedure Code (*Code de procedure penale*) might apply if evidence in national court proceedings before criminal courts and tribunals.

**4. Article 12a (Anti-fraud coordination services)**

1. Each Member State shall, for the purposes of this Regulation, designate a service (the 'anti-fraud coordination service') to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, *in accordance with national law*, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation. [...]

**National AFCOS:**

- Ministry of Finance: Mission Interministérielle de Coordination Anti Fraude (MICAF).

The French MICAF is a new useful AFCOS at the heights of times and came into effect alongside the French antifraud strategy in 2021.<sup>610</sup> Marie-Laure Malcles, competent for the fraud against the EU budget inside MICAF spoke at the conference for the first anniversary of the EPPO in the Hémicycle in Luxembourg and underlined the importance of data mining and artificial intelligence, which could be used to better detect EU fraud schemes and irregularities. Previously she had already outlined the importance of an AFCOS.<sup>611</sup> The BILAN of MICAF presents a good overview of activities and mentions



that France has finally adopted a national strategy for fraud in 2022.<sup>612</sup>

MICAF has a special Website and indicates its national partners. It provides for special documents and links to national partners.<sup>613</sup>

MICAF can be contacted via a Web document: <https://www.economie.gouv.fr/contact/contactez-la-micaf>.

Following information can be displayed here:

*“Mission interministérielle de coordination anti-fraude (MICAF)”*

***Last modification on September 23, 2021 - Directorate of legal and administrative information (Prime Minister): Contact MICAF***

**Tel:** 01 79 84 38 60

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**Tasks**

The Interministerial Anti-Fraud Coordination Mission is placed, by delegation of the Prime Minister, with the Minister in charge of the Budget. It ensures the coordination of all public administrations and bodies in the area of public finance fraud (fraud on compulsory tax and social security deductions, fraud on social benefits).

<sup>610</sup> Belfayol 2021, 156–158.

<sup>611</sup> Malcles 2021, 183–185.

<sup>612</sup> See [https://www.economie.gouv.fr/files/files/directions\\_services/micaf/BilanMICAF\\_R%C3%A9sultats%202021.pdf?v=1671706195](https://www.economie.gouv.fr/files/files/directions_services/micaf/BilanMICAF_R%C3%A9sultats%202021.pdf?v=1671706195). Accessed 31 May 2024.

<sup>613</sup> See <https://www.economie.gouv.fr/micaf>. Ibid.

***Manager(s) Head of mission***

Eric BELFAYOL

*Project manager Justice issues and coordination of departmental anti-fraud operational committees*

Selma Muller

*Tax Issues Project Manager*

Marie-Laure MALCLES

*Social Issues Project Manager*

Yann PORTAT

*Digital issues project manager*

Christine FOURNIER

*Administrative manager*

Philippe QUEROY

*Executive management*

Nathalie HATILIP

- 5 Special information and further material can be retrieved from the Catalogue: Catalogue des Formations de lutte contre la fraude 2022. The catalogues are reproduced for each new year and the anti-fraud strategy is developed according to annual cycles.
- 6 MICAFA has published the following document, which indicates that it already works closely together with the EPPO in terms of ensuring even better control and fight of frauds in France<sup>614</sup>:

<p><b>FICHE D'INSCRIPTION</b></p> <p>Parquet Européen / MICAFA</p>	<p><b>FORMATIONS PROPOSÉES</b></p> <ul style="list-style-type: none"> <li>- Lutte contre la fraude aux intérêts financiers européens</li> <li>- Fraude aux intérêts financiers de l'Union Européenne:</li> </ul>
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**Intitulé de la formation:**

**Date(s): Du au**

- 7 See above → Art 3 and 4 (national authorities) and the national law, which is applicable in an „enquête administrative”.

**[Article 12b–12d]**

*Not displayed here.*

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<sup>614</sup> See <https://www.economie.gouv.fr/micaf/le-nouveau-catalogue-des-formations-est-paru>. Source: [https://www.economie.gouv.fr/files/files/directions\\_services/micaf/CATALOGUE%20FORMATIONS%202023\\_%2010%2003%2023.pdf?v=1679645466](https://www.economie.gouv.fr/files/files/directions_services/micaf/CATALOGUE%20FORMATIONS%202023_%2010%2003%2023.pdf?v=1679645466). Accessed 31 May 2024.



## 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; [...]

### General administrative authorities:

1

- Agence de services et de paiement (ASP)
- Institut national de l'origine et de la qualité (INAO)

### In customs matters:

2

- The Directorate General for Competition, Consumer Affairs and Fraud Prevention (DGCCRF)<sup>615</sup>
- Directorate General of Public Finances (DGFIP)<sup>616</sup>
- Directorate General of Customs and Indirect Duties (DGDDI)<sup>617</sup>
- 1) National Directorate of Intelligence and Customs Investigations (DNRED)<sup>618</sup>
  - a) the Customs Intelligence Directorate (DRD)<sup>619</sup>,
  - b) the Customs Investigation Department (DED)<sup>620</sup>,
  - c) and the Directorate of Customs Operations (DOD)<sup>621</sup>.
- 2) Service with national competence called intelligence processing and action against clandestine financial circuits (TRACFIN) of the Ministry of Economy and Finance<sup>622</sup>

3

### In agricultural, fisheries matters:

Managing Authority: all regions that are located on/or have a coast

FranceAgriMer, créé par l'ordonnance 2009-325 du 25 mars 2009;

Office de développement de l'économie agricole d'outre-mer (ODEADOM)

(see above → structural funds C.4.bb(1)(c)(aa)).

### In forest matters:

4

- Office national des forêts (ONF)

<sup>615</sup> La direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF).

<sup>616</sup> Direction générale des Finances publiques (DGFIP).

<sup>617</sup> Direction générale des Douanes et Droits indirects (DGDDI).

<sup>618</sup> Direction nationale du renseignement et des enquêtes douanières (DNRED).

<sup>619</sup> La direction du renseignement douanier (DRD).

<sup>620</sup> La direction des enquêtes douanières (DED).

<sup>621</sup> La direction des opérations douanières (DOD).

<sup>622</sup> Service à compétence nationale dénommé traitement du renseignement et action contre les circuits financiers clandestins (TRACFIN) du ministère de l'Économie et des Finances.

**5 In financial fraud matters<sup>623</sup>:**

- The central office for the fight against corruption and financial and tax offenses (OCLCIFF)<sup>624</sup>
- High Authority for Transparency in Public Life (HATVP)<sup>625</sup>
- L'Agence française anticorruption (AFA)

**[Article 12f–g]**

*Not analysed here.*

**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. [...]

- 1 The French *Code de procédure pénale* contains a section on the relationship between the French justice system and Eurojust, which is placed in **Titre X: De l'entraide judiciaire internationale** (Articles 694 à 696-107). Art. 695-4 et seq. CPC relates to Eurojust. Art. 695-8 CPC deals with the national member to Eurojust. Art. 695-8-3 CPP **refers to OLAF** as well.
- 2 This specific article mentions the European Anti-Fraud Office (OLAF). It highlights that the **French national member to Eurojust** has the competence to receive and transmit information related to OLAF investigations to the relevant French prosecutor.
- 3 This provision essentially creates a **tripolar channel for information exchange** between OLAF, the French national member to Eurojust, and the French prosecution system. **This facilitates coordination** and a more efficient response to potential fraud cases involving the EU budget and France.

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<sup>623</sup> See Conseil constitutionnel, Décision n° 83-164 DC du 29 décembre 1983

<sup>624</sup> L'office central de lutte contre la corruption et les infractions financières et fiscales (OCLCIFF).

<sup>625</sup> Haute Autorité pour la transparence de la vie publique (HATVP).

**Art. 695-8-3 CPC**<sup>626</sup> Creation LAW n°2013-711 of August 5, 2013 - art. 10  
 The national member [of Eurojust] is competent to receive and transmit to the competent public prosecutor information relating to the investigations of the European Anti-Fraud Office of which it is the recipient.

**National investigating and prosecuting authorities:** 4

- Public Prosecutor's Office and its' magistrates (ministère public et ses magistrats):
- District Attorney (Procureur de la République),
- General Counsel (Avocat general),
- Attorney General (Procureur general)

**General administrative authorities:** 5

- Agence de services et de paiement (ASP)
- Institut national de l'origine et de la qualité (INAO)

**In customs matters:** 6

- The Directorate General for Competition, Consumer Affairs and Fraud Prevention (DGCCRF)<sup>627</sup>
- Directorate General of Public Finances (DGFIP)<sup>628</sup>
- Directorate General of Customs and Indirect Duties (DGDDI)<sup>629</sup>
- 1) National Directorate of Intelligence and Customs Investigations (DNRED)<sup>630</sup>
  - a) the Customs Intelligence Directorate (DRD)<sup>631</sup>,
  - b) the Customs Investigation Department (DED)<sup>632</sup>,
  - c) and the Directorate of Customs Operations (DOD)<sup>633</sup>.
- 2) Service with national competence called intelligence processing and action against clandestine financial circuits (TRACFIN) of the Ministry of Economy and Finance<sup>634</sup>

**In agricultural, fisheries matters:** 7

Managing Authority: all regions that are located on/or have a coast

FranceAgriMer, créé par l'ordonnance 2009-325 du 25 mars 2009;

Office de développement de l'économie agricole d'outre-mer (ODEADOM) (see above

→ structural funds C.4.bb(1)(c)(aa)).

<sup>626</sup> Article 695-8-3

Création LOI n°2013-711 du 5 août 2013 - art. 10

Le membre national est compétent pour recevoir et transmettre au procureur général compétent des informations relatives aux enquêtes de l'Office européen de lutte antifraude dont il est destinataire.

<sup>627</sup> La direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF).

<sup>628</sup> Direction générale des Finances publiques (DGFIP).

<sup>629</sup> Direction générale des Douanes et Droits indirects (DGDDI).

<sup>630</sup> Direction nationale du renseignement et des enquêtes douanières (DNRED).

<sup>631</sup> La direction du renseignement douanier (DRD).

<sup>632</sup> La direction des enquêtes douanières (DED).

<sup>633</sup> La direction des opérations douanières (DOD).

<sup>634</sup> Service à compétence nationale dénommé traitement du renseignement et action contre les circuits financiers clandestins (TRACFIN) du ministère de l'Économie et des Finances.

**8 In forest matters:**

- Office national des forêts (ONF)

**9 In financial fraud matters<sup>635</sup>:**

- The central office for the fight against corruption and financial and tax offenses (OCLCIFF)<sup>636</sup>
- High Authority for Transparency in Public Life (HATVP)<sup>637</sup>
- L'Agence française anticorruption (AFA)

**[Article 14–16 omitted]**

Not displayed here.

**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.

**a) National law applicable to judicial proceedings**


- 1**
- Code of administrative justice
  - *Code général des impôts*/General Tax Code
  - *Code des douanes*/Customs Code
  - *Code des juridictions financières*/Code of Financial Jurisdictions (especially: Contrôle des comptes et de la gestion (Articles LO262-5 à L262-11-2))
  - *Code monétaire et financier*/Monetary and Financial Code
  - *Code commerce*/Trade code

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<sup>635</sup> See Conseil constitutionnel, Décision n° 83-164 DC du 29 décembre 1983

<sup>636</sup> L'office central de lutte contre la corruption et les infractions financières et fiscales (OCLCIFF).

<sup>637</sup> Haute Autorité pour la transparence de la vie publique (HATVP).

Examples: Court of Cassation, civil, Commercial Chamber, October 23, 2012, 10-25.824, Unpublished [The possibility to comment on the allegations (also in the case of a recovery order) must be given.] 

### **Competent authorities:**

2

#### **General administrative authorities:**

- National Payment Agency/*Agence de services et de paiement* (ASP)
- National Institute of Origin/*Institut national de l'origine et de la qualité* (INAO)

#### **In customs matters:**

3

- The Directorate General for Competition, Consumer Affairs and Fraud Prevention (DGCCRF)<sup>638</sup>
- Directorate General of Public Finances (DGFIP)<sup>639</sup>
- Directorate General of Customs and Indirect Duties (DGDDI)<sup>640</sup>
- 1) National Directorate of Intelligence and Customs Investigations (DNRED)<sup>641</sup>
  - a) the Customs Intelligence Directorate (DRD)<sup>642</sup>,
  - b) the Customs Investigation Department (DED)<sup>643</sup>,
  - c) and the Directorate of Customs Operations (DOD)<sup>644</sup>.
- 2) Service with national competence called intelligence processing and action against clandestine financial circuits (TRACFIN) of the Ministry of Economy and Finance<sup>645</sup>

#### **In agricultural, fisheries matters:**

4

Managing Authority: all regions that are located on/or have a coast

- FranceAgriMer, créé par l'ordonnance 2009-325 du 25 mars 2009;
- Office de développement de l'économie agricole d'outre-mer (ODEADOM)
- (see above → structural funds C.4.bb(1)(c)(aa)).

#### **In forest matters:**

5

- Office national des forêts (ONF)

<sup>638</sup> La direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF).

<sup>639</sup> Direction générale des Finances publiques (DGFIP).

<sup>640</sup> Direction générale des Douanes et Droits indirects (DGDDI).

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**6 In financial fraud matters<sup>646</sup>:**

- The central office for the fight against corruption and financial and tax offenses (OCLCIFF)<sup>647</sup>
- High Authority for Transparency in Public Life (HATVP)<sup>648</sup>
- L'Agence française anticorruption (AFA)

**7 Authorities in the remit area of the French Ministries**

**Ministry of Finance**

- General Secretariat of the Economic and Financial Ministries (Le secrétariat général des ministères économiques et financiers (SG))
- The General Directorate for Competition, Consumer Affairs and Fraud Prevention (*La direction générale de la concurrence, de la consommation et de la répression des fraudes*)
- The General Directorate of Customs and Indirect Taxes (*La direction générale des douanes et droits indirects*)
- The General Directorate of Public Finance (*La direction générale des finances publiques*)
- The general management of the National Institute of Statistics and Economic Studies (*La direction générale de l'Institut national de la statistique et des études économiques*)
- The interministerial anti-fraud coordination mission (*Mission Interministérielle de Co-ordination Anti Fraude* (MICAF))
- The General Inspectorate of Finance (IGF) (*L'inspection générale des finances*)
- The general economic and financial control department (CGEFi) (*Le service du contrôle général économique et financier*)

**8 Ministry of Agriculture and Food**

- Administrative authority, Art. L201-4 et seq. Rural and maritime fishing code (Section 2: Responsibilities of the State in the surveillance, prevention and fight against health hazard)

Empowered to record violations of certain provisions of the rural and maritime fishing code (concerning Production and markets) are those listed in **Art. L671-1**

1° The agents of the establishment(s) mentioned in **Article L. 621-1** [National Establishment for Agricultural and Seafood Products (FranceAgriMer)] approved and commissioned by the Minister of Agriculture under the conditions set by decree in Council of State;

2° The agents of the decentralized services of the Ministry of Agriculture approved and commissioned for this purpose by the Minister of Agriculture under the conditions fixed by decree in Council of State;

3° Competition, consumer and fraud prevention officers;

4° The agents mentioned in 1° to 6° of I of Article L. 205-1 ;

6° Agents in charge of legal metrology;

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<sup>646</sup> See Conseil constitutionnel, Décision n° 83-164 DC du 29 décembre 1983

<sup>647</sup> L'office central de lutte contre la corruption et les infractions financières et fiscales (OCLCIFF).

<sup>648</sup> Haute Autorité pour la transparence de la vie publique (HATVP).

7° Customs officers;

8° Agents of the decentralized services of the General Directorate of Public Finance.)

**b) Internal advisory and control procedure: Legality check involving national law**

- E.g. Code of administrative justice, Tax Procedures Code, Customs Code

The Supervisory Committee noted that OLAF's country mini-profiles provided some information on national laws but were insufficient for compensating occasional expertise issues.<sup>649</sup> They also reviewed **OLAF's legality check procedures**, recognizing the importance of expertise in all EU Member States' legal systems. Good relations between investigators and reviewers were seen to positively impact the quality of checks and reviews. OLAF's legality check ensures compliance with legal rules and addresses any breaches swiftly. The check focuses on procedural aspects and may lead to modifications or abandonment of actions if it fails. The committee emphasized the importance of compliance with rights and procedural rules in promoting the rights of those affected. 9

**[Article 18–21 omitted]**

[**Annex** Excerpt Working Arrangement between MICAF and EPPO: Art. 8 The transmission of a report to the EPPO shall not prevent the reporting or irregularities to OLAF, provided that both entities are duly informed of these parallel steps, when the EPPO conducts a criminal investigation in accordance with this Regulation, OLAF shall not initiate a parallel administrative investigation into the same facts. (Art. 101 para 2 of the EPPO Regulation)].

**As a conclusion**, it is worthwhile for practitioners to take a close look at the structure of the OLAF or EPPO Regulations. Article 8 of the Working Arrangement with MICAF shows again in an exemplary manner that verbatim statements of the Regulations, i.e. the secondary Union legal act, are incorporated into tertiary national legal acts below the legal force of a law or into quaternary legal acts such as agreements with a soft law character. This is a simplification of Union law for everyday use and a differentiation. This contributes significantly to the success of investigations. The courts have a similar task in exercising judicial control on investigation measures, as do academics in interpreting and making suggestions for improving the conditions when they formulate these to the European legislator.

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<sup>649</sup> Supervisory Committee, Opinion No 2/2015, Legality check and review in OLAF, p. 6 et seq.





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This **French EPPO/OLAF volume** provides an overview of French and European Union law, with particular attention paid to the European Public Prosecutor's Office and the Anti-Fraud Office (OLAF) as well as the investigative missions of its national partners. Union law and French law in relation to EPPO investigations are the main topics of the first part of the volume, while OLAF's investigations are the subject of the second part. Each section is preceded by an introduction. A synopsis of the French EPPO Adoption Act (LOI n° 2020-1672 du 24 décembre 2020 relative au Parquet européen, à la justice environnementale et à la justice pénale spécialisée –) is also included.

This volume is written in English and contains footnotes that reproduce the original French legislation. It also contains symbols for further information and quick reference for academics, students, practitioners and other interested readers. Dr Héléne Christodoulou acted as the national expert for this volume.

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