

# THE EPPO/OLAF

# XXII

## Compendium of National Procedures

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

Pierre Hauck and Jan-Martin Schneider

# Portugal



λογος

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*Volume XXII – Portugal*

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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 XXII – Portugal*

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This volume has been reviewed and updated for accuracy of content with the kind assistance of Sandra Oliveira e Silva. Nevertheless, the authors take full responsibility for the content.

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

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# The EPPO/OLAF Compendium of National Procedures

## Volumes

I: Austria	XIV: Ireland
II: Belgium	XV: Italy
III: Bulgaria	XVI: Latvia
IV: Croatia	XVII: Lithuania
V: Cyprus	XVIII: Luxembourg
VI: Czech Republic	XIX: Malta
VII: Denmark	XX: Netherlands
VIII: Estonia	XXI: Poland
IX: Finland	XXII: Portugal
X: France	XXIII: Romania
XI: Germany	XXIV: Slovakia
XII: Greece	XXV: Slovenia
XIII: Hungary	XXVI: Spain
	XXVII: Sweden

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## Preface and Acknowledgements

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

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

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

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

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

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

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

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

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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).

Giessen/Germany, in November 2023

Pierre Hauck & Jan-Martin Schneider

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*Executive Summary:* In the Parts A and B, it is a question of describing and presenting a collection of both Union law and Portuguese law related to criminal investigations concerning EU Fraud offences (Art. 26–33 EPPO Regulation) and the actions of the EPPO Regional Offices (Lisbon and Porto) relating to the start and the conduction of investigations in the relevant country: Who is involved, which provisions do apply, how is the investigation done? This includes explanations concerning the potential action of the EPPO in Portugal, examples from practice, recent cases, EU fraud typologies, criminological insights and relevant case-law from Portuguese Tribunal Criminal Jurisprudence. Therefore, the Union Law for the European Public Prosecutor’s Office is explained, too and compared to the current situation: Is this situation feasible for the future? This part is as well important for defence lawyers and experts intending to read the law, case law and case examples.

The third part C is a compendium for OLAF investigations. It is intended, for its part, to explain on-the-spot-checks carried out by the European Anti-Fraud Office according to Regulation 2185/96, *Sigma Orionis* jurisprudence, national law and with its numerous national partners as part of external investigations. An introduction precedes each part focussing on the presentation of both Union law and national law, which complement each other. In order to enable quick references and communication about the thresholds of an investigation measure, the body of the text of the whole chapter is translated into English while the footnotes take up the original text in Portuguese and the parts in-between contain explanations, steps to carry out, tips and further information.

*Nas Partes A. e B., trata-se de descrever e apresentar um conjunto de diplomas de direito da União e de direito português relacionados com investigações criminais por crimes de fraude contra EU, bem como as atuações dos Gabinetes Regionais da Procuradoria Europeia relativas ao início e à condução de investigações no país relevante: Quem está envolvido, que disposições se aplicam, como é feita a investigação? São incluídas explicações sobre a atuação potencial da Procuradoria Europeia em Portugal, exemplos retirados da prática, casos recentes, tipologias de fraude contra a UE, percepções criminológicas e jurisprudência relevante dos tribunais portugueses. Desta*

*forma, as normas da União sobre a Procuradoria Europeia também são explicadas e comparadas com a situação atual: Esta situação é viável para o futuro?*

*A terceira parte do presente Capítulo Nacional sobre Portugal chama-se Compêndio (C.) para as Investigações do OLAF. Pretende-se aqui centrar a atenção nas missões de informação (in loco) efectuadas pelo Organismo Europeu de Luta Antifraude (OLAF) nos termos do Regulamento n.º 2185/96, da jurisprudência Sigma Orionis, do direito interno – e de acordo com seus numerosos parceiros nacionais como parte de investigações externas. Antes de cada uma das duas partes, uma introdução precede a apresentação tanto do direito da União como do direito nacional, que se complementam. Para realizar esses desenvolvimentos, o corpo do texto de todo o capítulo é traduzido para inglês, ao passo que as notas de rodapé retomam o texto original em português e as partes intermediárias contêm explicações, etapas a serem executadas, indicações úteis e outras informações.*

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## Table of Contents

Table of Contents .....	15
Abbreviations .....	23
Tables and Figures .....	27
Explanation of Symbols & Highlighting .....	29
Copyright Statements & (Free) Licences.....	29
A. General Collection of Material for Part A and Part B.....	31
I. Collection of Cases for OLAF and EPPO concerning PIF Investigations .....	31
1. EPPO Regulation: Examples concerning the Material Scope and Investigation Measures from National Case-Law.....	31
2. OLAF Regulation: Examples concerning the Material Scope and Investigation Measures from ECJ and National Case-Law .....	33
II. Institutions .....	37
1. The EPPO in Portugal.....	37
2. Organization of the criminal justice system in Portugal .....	38
3. AFCOS – The Partner of OLAF in Portugal .....	39
III. Sources of law .....	39
1. General national laws relating to the EPPO and OLAF .....	40
a) PIF-Investigation related Laws and administrative Documents in Portugal .....	40
b) Circulars and Instructions by the competent Ministries:.....	41
c) OLAF related Laws .....	42
d) Further Decrees by the Ministries .....	44
2. Special national laws: Law No. 112/2019 of 10 September and Instruction No. 1/21 of 2 June .....	44
B. EPPO-Regulation .....	77
I. Introduction: EPPO’s investigations into fraud against the financial interests of the European Union. The scenario in Portugal .....	77
1. Preliminary remarks .....	77
2. The structuring of criminal investigation in Portugal – a synoptic roadmap	78
3. The effect of EPPO operational activities in Portugal – a first look at the statistics .....	81
4. Final outlook: can EPPO be the cornerstone of effective transnational criminal investigations? .....	82
II. The Start of Criminal investigations according to the EPPO Regulation based on national law (measures).....	84
SECTION 1 .....	86

1. Article 26 Initiation of investigations and allocation of competences within the EPPO .....	86
a) Introduction and short overview.....	89
b) Powers of the Portuguese EDPs and Role of the Portuguese Prosecutor ..	89
aa. The CPC (Código De Processo Penal).....	89
bb. The different Investigation phases .....	91
(1) Flagrancy investigation (Artigo 254.º – Finalidades, Artigo 255.º – Detenção em flagrante delito, Artigo 256.º – Flagrante delito) .....	91
(2) Normal investigation (Do inquérito, Art. 262 et seq. CPC) .....	92
(3) Instruction (instrução, Art. 286 et seq. CPC).....	93
c) The assessment cycle (verification) for opening of an investigation due to indications of a criminal PIF offence.....	93
aa. Transfer of information to determine competence.....	93
bb. EPPO Crime Report, Verifications (Art. 24 para 6) and relevant sources of the indications for a criminal offence falling within the competence of the EPPO .....	94
d) Competence and reasonable grounds for a criminal offence falling within the competence of the EPPO .....	95
aa. Determination of the competence and verification of Crime Reports ....	95
(1) The Union standards: Art. 22–25 EPPO Regulation .....	95
(a) How to assess and verify the suspicion level according to Art. 26 para 1 and the CPC for a criminal offence falling within the competence of the EPPO .....	97
(b) The PIF offences in Portugal, Art. 22 EPPO Regulation & PIF Directive .....	98
(aa) Criminal Code offences (crimes do código penal) .....	100
(bb) Tax-related offences .....	103
(c) Methods of investigation.....	108
(aa) Impetus of fraud knowledge patterns .....	108
(bb) Special national databases for PIF offences/Digital investigations, Art. 40 para 3 IRP 2020.003 .....	109
(d) Examples and precedents in national case-law.....	110
(aa) Peculiarities differentiated by PIF offences (Typologies of EU frauds) .....	110
(bb) Fraud.....	110
(cc) Revenue frauds.....	112
(dd) Expenditure frauds.....	116
(ee) Corruption offences .....	119
(ff) Money laundering with PIF money .....	119
(2) Jurisdiction of the European Delegated Prosecutor in Portugal .....	120

bb. Competence of the EPPO, Art. 26 para 4 EPPO Reg. ....	120
e) Actions if “Decision to open/not open a case” (Regulation + Rules in IRP, 2020.003 EPPO) .....	121
f) Justiciability and appeals (Defence perspective) .....	123
2. Article 27 Right of Evocation.....	125
a) Provisions with a precluding effect for the right of evocation of the EPPO, para 2.....	127
aa. Statute of limitations (Extinção da responsabilidade criminal) .....	127
bb. Amnesty and other reasons .....	131
cc. Criminal complaint .....	131
dd. Prosecution before the trial court.....	135
ee. Opposing legal validity .....	137
b) Urgent measures of national authorities for securing an investigation and prosecution.....	138
c) Competent national authorities in paras 3 to 7 of Art. 27 .....	145
d) Provisions regarding the finalization of the national investigation, para 7 .....	146
3. Article 28 Conducting the investigation.....	147
a) The handling EDP carrying out the investigative measures, para 1 .....	148
b) Instructions and assignment of investigative measures for “those national authorities”.....	148
aa. General rules .....	148
bb. Judicial Police (Policia Judiciária).....	150
cc. Area of tax fraud and the Tax Investigation Unit (Unidade de Ação Fiscal).....	154
c) Ensuring compliance with national law .....	157
aa. Via the general investigation provisions.....	157
bb. Via national administrative decrees/regulations under criminal procedural law.....	167
(1) Portugal .....	167
(2) Specific Decrees, non-formal laws .....	169
d) Urgent measures in accordance with national law necessary to ensure effective investigations .....	172
e) Provisions in relation to the Gathering Evidence.....	179
4. Article 29 Lifting privileges or immunities.....	185
a) National privilege provisions, para 1 .....	185
(1) Legal (professional) privilege .....	186
(a) Provisions in Portuguese law .....	186
(b) Provisions on Lifting a legal (professional) privilege .....	187
(2) Privilege against self-incrimination .....	188

b)	Immunity provisions.....	189
aa.	Parliamentary privilege or immunity.....	189
bb.	National Legislation.....	189
cc.	Provisions on the lifting of immunities?.....	190
c)	Conclusion/Comparison.....	191
d)	Immunities and Privileges under union law, para 2.....	192
III.	National Law applicable in EPPO Investigation with Special Focus on Investigation Measures.....	193
1.	Article 30 Investigation measures and other measures.....	193
a)	Member States shall ensure that the European Delegated Prosecutors are entitled to order or request.....	195
aa.	Adaption Law of the Member State.....	196
bb.	The role of the investigating judge.....	196
b)	Investigation measures.....	197
cc.	Para 1(a).....	197
(1)	Search measures.....	197
(a)	Search any premises or land.....	197
(b)	Search any means of transport.....	198
(c)	Search any private home.....	199
(d)	Search any clothes and any other personal property.....	200
(e)	Search any computer system.....	200
(2)	Para 1 (b) necessary to avoid the loss, necessary to avoid the contamination of evidence.....	202
dd.	Para 1(c).....	204
(1)	Obtainment of the production of stored computer data, encrypted or decrypted.....	204
(a)	General Provisions in the CPC.....	204
(b)	Special Provisions in the Tax Code, Digital Evidence Act.....	204
(2)	Obtainment of banking account data and traffic data.....	208
(3)	Exception of data specifically retained in accordance with national law (pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council).....	209
ee.	Para 1(d).....	210
(1)	Freezing instrumentalities or proceeds of crime, including assets ...	210
(2)	Legislation and Subject to confiscation Status by the trial court.....	210
ff.	Para 1(e) Interception of electronic communications to and from the suspect or accused person.....	214
(1)	Provisions in the CPC and other national laws.....	214
(a)	(Scope).....	221

(b) Fulfilment of the requirement of the Regulation: “over any electronic communication means that the suspect or accused person is using” .....	221
(2) Summary to e).....	221
gg. Para 1(f) Tracking & Tracing an Object .....	221
c) Para 2: Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation, Art. 29 .....	222
d) Para 3: Conditions/Thresholds for investigation measures .....	223
aa. Conditions and Limitations for investigation measures of Para 1(c), (e) and (f).....	223
bb. Serious offences Limitation for offences of Para 1(e) and (f) .....	223
cc. Notifications according to the last sentence of para. 3 .....	224
e) Para 4: Any other measure(s) in the EDP’s Member State .....	225
f) Para 5: National Procedures and national modalities for taking investigative measures .....	226
aa. Formalities for a House search .....	227
bb. Formalities for seizures.....	228
cc. Formalities for an Interception, para 1(e) .....	229
dd. Formalities for Tracking & Tracing an object, para 1 (f) .....	231
2. Article 31 and 32 (omitted) .....	235
3. Article 33 Pre-trial arrest and cross-border surrender .....	237
a) General relation to national law: applicable Codes.....	237
b) Para 1: Provisions for arrest and pre-trial detention.....	237
aa. Arrest.....	237
bb. Pre-trial detention.....	242
c) Para 2: Cross-border surrender.....	250
d) Fraud-related peculiarities .....	251
e) Relevant examples and precedents in national case-law.....	251
C. OLAF-Regulation (EU, EURATOM) No 883/2013.....	253
I. Investigation Powers and National Law Related to OLAF in Portugal (Art. 3–8 OLAF Regulation) .....	253
1. General Introduction.....	253
2. Art. 3 External investigations .....	258
a) On the spot-checks and inspections – Renouncing the applicable national law – Para 2, 4.....	263
b) Assistance needed, competent authorities and access to information in the Member States, para 5 .....	263
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 .....	263

d)	The basic principle of conformity to Regulations 2185/96 and 883/2013263	
aa.	Submission: Compliance with Union law.....	263
bb.	Resistance: Assistance in conformity with national procedural rules applicable .....	264
e)	Competent authorities.....	264
aa.	Area of managing authorities.....	264
bb.	Judicial Police in administrative investigations.....	268
cc.	Customs area .....	268
	(1) Customs duties area in general .....	269
	(2) Anti-dumping area .....	273
f)	National law and “checks and inspections” of OLAF.....	274
aa.	Administrative procedure in general.....	274
bb.	Special administrative powers and provisions in certain areas of revenue and expenditure .....	274
	(1) Administrative provisions in the area of customs duties and VAT= revenue .....	274
	(a) Administrative provisions.....	274
	(b) Principle of investigation (General Tax Code).....	276
	(c) External audit (General Tax Code/Customs Code) .....	276
	(d) Fiscal supervision in both areas .....	278
	(2) Administrative provisions in the area of structural funds and internal policies (interne Politiken) = expenditure .....	278
	(a) Structural funds.....	279
	(b) Internal policies.....	282
	(3) Administrative provisions in the area of the common organization of the markets = expenditure .....	282
	(4) Administrative provisions in the area of direct expenditure.....	282
cc.	Investigative powers .....	283
	(1) Investigative powers in the area of customs duties and VAT (General Tax Code).....	283
	(2) Investigative powers in the area of structural funds and internal policies.....	289
	(3) Investigative powers in the area of common market organisations..	305
	(4) Investigative powers in the area of direct expenditure .....	309
	(5) Protection of information.....	310
	(a) Tax secrecy (General Tax Code) .....	310
	(b) Administrative secrecy (Administrative laws) .....	313
	(c) Data secrecy (Data protection laws, Customs situation, General Tax Code).....	313
	(d) Official secrecy .....	315

(6) Investigation reports (General Tax Code).....	315
(7) Preservation of Evidence (General Tax Code) .....	318
g) Single measures .....	318
aa. Interviewing/Questioning of “persons concerned” (in relation to suspects/defendants).....	318
bb. The taking of statements from Economic Operators .....	318
cc. Interviewing/Questioning of witnesses.....	318
dd. Inspections .....	319
ee. Searches in the various areas of external investigations.....	319
ff. Seizure of other evidence.....	319
gg. The Information gathering and seizure of digital forensic evidence including bank account information (General Tax Law).....	321
(1) General remarks .....	327
(2) Formal requirements .....	329
(3) Substantive requirements .....	329
hh. Digital forensic operations within inspections or on-the-spot checks ..	329
ii. Investigative missions in third countries.....	333
h) National procedural rules for “checks and inspections” by the assisting national authority .....	333
i) Cooperation and mutual assistance agreements .....	333
3. Article 4 Internal investigations .....	334
a) References to national law, para 8.....	334
b) Competent authorities.....	337
4. Article 5 Opening of investigations.....	337
a) Competent authorities.....	338
b) National rules .....	338
5. Article 7 Investigations procedure.....	349
a) References to national law .....	350
b) References to national authorities .....	362
6. Article 8 Duty to inform the Office [omitted] .....	363
II. References to National law in the OLAF Regulation (Art. 9–17 OLAF Regulation) .....	364
1. Article 9 Procedural guarantees.....	364
a) Art. 9 para 3 – remit of a national judicial authority.....	364
b) Art. 9 para 4 – national judicial authorities .....	364
2. Article 10 Confidentiality and data protection [omitted] .....	365
3. Article 11 Investigation report and action to be taken following investigation .....	365
a) References to national law .....	366

b) Annex: Example of an Investigation Report cited in a Portuguese Judgment .....	367
4. Article 12 Exchange of information between the Office and the competent authorities of the Member States.....	379
a) Art. 12 para 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law).....	380
b) Art. 12 para 2 OLAF Regulation (judicial authorities of the Member State concerned).....	380
c) Art. 12 para 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned).....	380
d) Art. 12 para 4 OLAF Regulation (Providing evidence in court proceedings before national courts and tribunals in conformity with national law).....	381
5. Article 12a Anti-fraud coordination services .....	384
a) The role of AFCOS .....	384
b) Organisation of AFCOS .....	385
[Article 12b–12d omitted].....	388
6. Article 12e (The Office’s support to the EPPO) .....	388
[Article 12f–g omitted] .....	388
7. Article 13 Cooperation of the Office with Eurojust and Europol .....	388
[Article 14–16 omitted].....	388
8. Article 17 Director-General.....	388
a) National law applicable to judicial proceedings .....	389
b) Internal advisory and control procedure: Legality check involving national law .....	391
[Article 18–21].....	391
Bibliography .....	393
Index .....	405



## Abbreviations

AFCOS	Anti-Fraud Coordination Service
AMIF	Asylum, Migration and Integration Fund
AML	Anti-Money Laundering
ANEPC	Portuguese National Authority for Emergency and Civil Protection
ASAE	Food and Economic Security Authority
AT	Tax and Customs Authority
BMVI	Border Management and Visa Instrument
CC	Criminal Code
CCP	Public Contracts Code
CF	Cohesion Fund
CMS	Case Management System
CNPD	National Data Protection Commission
CP	Código Penal/Criminal Code
CPC	Criminal Procedure Code
CPP	Código de Processo Penal
CRP	Portuguese Constitution
CSF	Community Support Framework
DCIAP	Central Department of Criminal Investigation and Action of Portugal (founded 2019)
DGAIEC	Directorate-General for Customs and Excise
DIAP	Department of Investigation and Criminal Action of Lisbon
DL/Dec-Lei	Decreto-Lei/Decree Law
DSAFA	Customs Anti-Fraud Services Directorate
DSIFAE	Directorate of Fraud Investigation and Special Actions
DSL	Licensing Services Directorate
DSPCIT	Directorate of Planning and Coordination Services for Tax Inspection
DSRA	Customs Regulatory Services Directorate
DSTA	Customs Taxation Services Directorate
EAFRD	European Agricultural Fund for Rural Development

EAGGF	European Agricultural Guidance and Guarantee Fund
ECHA	European Chemicals Agency
ECHR/ECtHR	European Court of Human Rights
ECJ	European Court of Justice (now CJEU)
ECJN	European Judicial Network against Cybercrime
ECON	European Parliament's Committee on Economic and Monetary Affairs
ECP	European Chief Prosecutor
EDF	European Development Fund
EDMS	Electronic Document Management System
EDO	European Data Officer
eDP	ePrivacy Directive
EDP	European Delegated Prosecutor
EEAS	European External Action Service
EEC	European Economic Community
EIO	European Investigation Order
EJN	European Judicial Network
EMFF	European Maritime Affairs Fund and of Fisheries
EP	European Prosecutor
EPPO	European Public Prosecutor's Office
ESF	European Social Fund
EUACR	EU Anti-Corruption Report
EUCFR	Charter of Fundamental Rights of the European Union
EuCLR	European Criminal Law Review
EUROJUST	European Union Agency for Criminal Justice Cooperation
EUROPOL	European Police Office
EUSF	European Union Solidarity Fund
FIFG	Financial Instrument for Fisheries Guidance
FIU	Financial Intelligence Unit
GDPR	General Data Protection Regulation
IGA	General Inspection and Management Audit

IFADAP	Institute for Financing and Support for the Development of Agriculture and Fisheries
IFAP	Instituto de Financiamento da Agricultura e Pescas/Institute for Financing Agriculture and Fisheries
IGAMAOT	Inspeção-Geral da Agricultura, do Mar, do Ambiente e do Ordenamento do Território/General Inspection of Agriculture, Sea, Environment and Spatial Planning
IGF	General Inspectorate of Finance
IMPEL	European Network for the Implementation Enforcement of Environmental Law
INGA	National Institute of Agricultural Intervention and Guarantee
IRC	Corporate income tax
IRP	Internal Rules of Procedure
IRS	Personal income tax
ISF	Internal Security Fund
MAM	Ministry of Agriculture and the Sea
MAOTE	Ministry of the Environment, Spatial Planning and Energy
MTIC	Missing Trade Intra-Community
OLAF	European Anti-Fraud Office
PIF	Protéger les intérêts financiers de l'Union européenne/Protecting the EU's financial interests
PJ	Polícia Judiciária/Judiciary Police
PNAITA	National Plan for Tax and Customs Inspection Activities
PNCPI	National Audit System of the National Integrated Multiannual Control Plan
RGIT	Regime Geral das Infrações Tributárias/General Regime for Tax Infractions
SCI	Internal Control System
SEP	Supervising European Prosecutor
STJ	Supremo Tribunal de Justiça/Supreme Court of Justice

TCAS	South Central Administrative Court
TCIPA	Tax Criminal Infractions & Procedure Act/Lei n.º 15/2001 Reforça as garantias do contribuinte e a simplificação processual, reformula a organização judiciária tributária e estabelece um novo regime geral para as infracções tributárias
VAT	Value-Added Tax
VIES	Vat Information Exchange System

## Tables and Figures

### *Tables*

Table 1: The EPPO regional offices in Portugal.....	37
Table 2: The Justice System in Portugal.....	38
Table 3: Overview Box: Art. 26 EPPO Regulation (PIF offences etc.) Portugal.....	88
Table 4: Structure of the Portuguese Criminal Procedure Code with a focus on the Book of the Preliminary Phase I.....	90
Table 5: Overview of provisions regarding the gathering of evidence .....	181
Table 6: Structural funds and national administrative authorities – Cohesion policy acc. to the CF Regulation in Portugal (2021–2027).....	281

### *Figures*

Figure 1: National (indirect way of) Obtaining information for the EPPO competence and the exercise of jurisdiction .....	94
Figure 2: Supranational (direct way of) Obtaining information for the EPPO competence and the exercise of jurisdiction .....	94
Figure 3: Organisation of the AFCOS Office in Portugal .....	386

### *Case Studies*

Case Study 1: Portugal VAT fraud scheme with mobile phones to the detriment of the national budget.....	113
Case Study 2: Portugal Expenditure frauds with European funds 1 – Wilful insolvency .....	116
Case Study 3: Portugal Expenditure frauds with European funds 2 – The Wine trading scheme.....	117

Sources & national sections 1: Overview for Portugal, Art. 7 OLAF Regulation .....	350
Sources & national sections 2: Overview for Portugal, Art. 11 OLAF Regulation ...	366

### *Synopsis*

Synopsis 1: Lei n.º 112/2019 Diário da República n.º 173/2019, Act for the Execution of the European Public Prosecutor’s Office .....	45
Synopsis 2: Instruction 1/21 of 2 June 2021 – General framework for the relationship between the Public Prosecutor’s Office and the EPPO .....	61
Synopsis 3: Portuguese Original Text vs. Unofficial English Translation: Art. 33 para 2 EPPO Regulation .....	250



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

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

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

	Articles referred to	Judgment, ECLI etc.	Content
<b>Relevant case law for the area of investigation, ECtHR</b>	<b>30</b>	Constitutional Court ( <i>Tribunal Constitucional</i> ) Judgment No. 101/2022, 3.2.2022. <sup>1</sup>	House searches; consent to carry out the home search by a person other than the accused
		Constitutional Court ( <i>Tribunal Constitucional</i> ) Judgment No. 364/2006, 8.6.2006. <sup>2</sup>	House searches Art. 177 CPC; Pimping (Art. 170 no. 1 Penal Code), Criminal association (Art. 299 no. 3 Penal Code) and Money laundering (Art. 2 no. 1 a) Decree-Law no. 325/95 of 2 December, as amended by Law no. 10/2002 of 11 February); Concept of “house” in relation to intimate or private natured acts in the case of pimping; prohibited methods of proof Art. 126 CPC; Assumptions (of searches) Art. 174 CPC; immunity of homes from judicial searches.
		Constitutional Court ( <i>Tribunal Constitucional</i> ) Judgment No. 387/2019, 26.6.2019. <sup>3</sup>	Freezing of assets; competence of the Public Prosecutor; money laundering.



<sup>1</sup> <https://www.tribunalconstitucional.pt/tc/acordaos/20220101.html>

<sup>2</sup> <https://www.tribunalconstitucional.pt/tc/acordaos/20060364.html>

<sup>3</sup> <https://www.tribunalconstitucional.pt/tc/acordaos/20190387.html>

		Constitutional Court ( <i>Tribunal Constitucional</i> ) Judgment No. 392/2015, 12.8.2015. <sup>4</sup>	Admissibility of extended confiscation measures.
		Constitutional Court ( <i>Tribunal Constitucional</i> ) Judgment No. 559/2020. <sup>5</sup>	Email interception; rules unconstitutional the provision that, in administrative offence proceedings for practices restricting competition, allows the Competition Authority to search and seize open e-mail messages upon authorisation from the Public Prosecutor's Office.
	<b>33</b>	Affaire Fernandes Pedrosa C. Portugal, Application No. 59133/11, ECHR 211 (2018), 12.6.2018.	Deprivation of liberty; no economic offence; criminal investigation; pre-trial detention; violation of Art. 5 §§ 4, 1, 5 ECHR. No violation of Article 6 §§ 1 and 3 (c) (right to a fair trial/right to defend oneself in person); necessity to be represented and represented by a lawyer in criminal proceedings; compatible with defence rights. No violation of Art. 6; applicant had alleged decisions of the domestic courts refusing him leave to conduct his own defence in the criminal proceedings against him and requiring that he be represented by a lawyer had violated Article 6 § 3 (c) of the Convention.

Source: The authors.

<sup>4</sup> <https://www.tribunalconstitucional.pt/tc/acordaos/20150392.html>

<sup>5</sup> <https://www.tribunalconstitucional.pt/tc/acordaos/20230091.html>

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

	Relates to following Article of the Regulation	Judgment, ECLI, etc.	Content
	<b>1</b>	Judgment of the Supreme Administrative Court ( <i>Acórdão do Supremo Tribunal Administrativo</i> ) No. 0480/17, 8.3.2018.	“deadline for requesting the return of amounts received irregularly under the European Agricultural Guidance and Guarantee Fund [EAGGF] is 4 years”; Community Legislation: REG CE/EURATOM 2988/95 ART3. REC CE 800/99 ART51 ART52. National Jurisprudence: AC STAPLENO PROC0173/13 OF 02/26/2015.
		Judgment of the Supreme Administrative Court ( <i>Acórdão do Supremo Tribunal Administrativo</i> ), No. 01115/09, 26.5.2010.	Regional Ordinance No. 80/1995, of 23 November, the Regional Secretary for Agriculture and Fisheries of the Azores, External partner of OLAF.
	<b>3, 11</b>	Judgment of the Supreme Administrative Court ( <i>Acórdão do Supremo Tribunal Administrativo</i> ), No. 01723/13, 15.1.2014.	Territorial competence of an external on-the-spot checks partner of OLAF, the <i>Divisão Operacional do Norte da Direcção de Serviços Antifraude da DGAIEC</i> .
		Judgment of the Supreme Administrative Court ( <i>Acórdão do Supremo Tribunal Administrativo</i> ), No. 0736/19.2BEPRT, 18.5.2022.	Request for preliminary CJEU ruling; On-the-spot checks; Inspection Report; evidence; already revoked Regulation; 2010 possible infractions; 2018 liquidation of sums; transshipment through Malaysia of goods from China with a view to



			evading payment of anti-dumping duties (OLAF case of 2010/0697); steel screws; non-preferential Chinese origin; EUR 106,997.60; settlement of anti-dumping duties; conventional duties; VAT and compensatory interest.
		Supreme Administrative Court (STA), Judgment No. 02326/14.7BEPRT, 10.11.2021, Anabela Russo	OLAF Report; Competence; anti-dumping duties; OLAF investigation <sup>6</sup>
		North Central Administrative Court (TCAN), Judgment No. 00019/13.1BEMDL; 31.5.2013, Carlos Luís Medeiros de Carvalho	Precautionary procedure suspension effectiveness; Revocation Financing, Replacement Money Expresses; Procedures Claim, Art. 120, No. 1, Al. a) CPTA <sup>7</sup>
	<b>9</b>	Judgment of the Supreme Administrative Court ( <i>Acórdão do Supremo Tribunal Administrativo</i> ), 0672/06, 12.6.2007.	Right of defence must be respected; “A period of 13 (thirteen) days, counted from the notification carried out by the customs authority to a Community importer (in this case a small Portuguese footwear trade company) to exercise their right to a prior hearing within 8 (eight) days and the date of notification to pay import duties within 10 (ten) days, for 52 operations to import shoes from the Far East under the GSP regime carried out in two and a half years (between 2000 and mid-

<sup>6</sup> [https://www.dgsi.pt/jsta.nsf/35fbbbf22e1bb1e680256f8e003ea931/ad698ab9b24a5a208025878b006a34f3?OpenDocument&ExpandSection=1&Highlight=0,olaf#\\_Section1](https://www.dgsi.pt/jsta.nsf/35fbbbf22e1bb1e680256f8e003ea931/ad698ab9b24a5a208025878b006a34f3?OpenDocument&ExpandSection=1&Highlight=0,olaf#_Section1).

<sup>7</sup> <https://www.dgsi.pt/jtcn.nsf/-/CC869C154BB877C980257B8E0042A797>. Accessed 23 January 2024.

			2002), it can be considered a reasonable period for the importer to exercise his right of defence?”
		Judgment of the Supreme Court of Justice ( <i>Acórdão do Supremo Tribunal de Justiça</i> ) 3/00.5TELSB.C1.S2, Conventional No: 3 <sup>rd</sup> section	Wine; Case of origin; Criminal Procedural Law; Application of Civil Procedure Rules; Subjects of the Procedure, Civil Parties; Evidence; Hearing; Judgment; Appeals.
		Ruling of the South Central Administrative Court (TCAS) No 01732/07, 12.6.2007, Eugénio Sequeira.	VAT and customs duties, right to hearing, burden of proof “2. AT fulfilled the burden of proof imposed on it when it bases the settlement acts on information from the competent community body (OLAF), which informs it and substantiates the falsity of certain AGRIM certificates used before the national Customs” <sup>8</sup>
		Supreme Administrative Court (STA), Judgment No. 01962/18.7BEBRG, 9.3.2022, José Goems Correia	VAT Compensation, Settlement expiry, settlement deadline customs “it is clear from the evidence that the investigation process that has been underway, since 2014, against the Defendant, in the Department of Investigation and Criminal Action, 1st Section of Braga, has as its object the investigation of the commission of a crime of qualified smuggling, based on the facts established by OLAF, which coincides precisely with the factual framework that led to the initiation

<sup>8</sup> TCAS, Judgement 01732/07 of 12.6.2007, see <https://www.dgsi.pt/jtca.nsf/170589492546a7fb802575c3004c6d7d/96cc7aff94533b77802572fb003b3258?OpenDocument>. Accessed 23 January 2024.

			of the customs inspection procedure that culminated in the issuance of the contested assessments (...).” <sup>9</sup>
<b>ECtHR</b>	<b>9, 11</b>	ECHR Judgment of 16.6.2016, Versini-Campinchi and Crasnianski v. France, No. 49176/11.	Right of the person concerned to control the evidence presented in an administrative proceeding if evidence derives from criminal proceedings.
	<b>9</b>	ECHR Judgment of 14.3.2013, Bernh Larsen Holding AS and others v. Norway, Complaint No. 24117/08.	Seizure of mail infringes inviolability of domicile and correspondence.

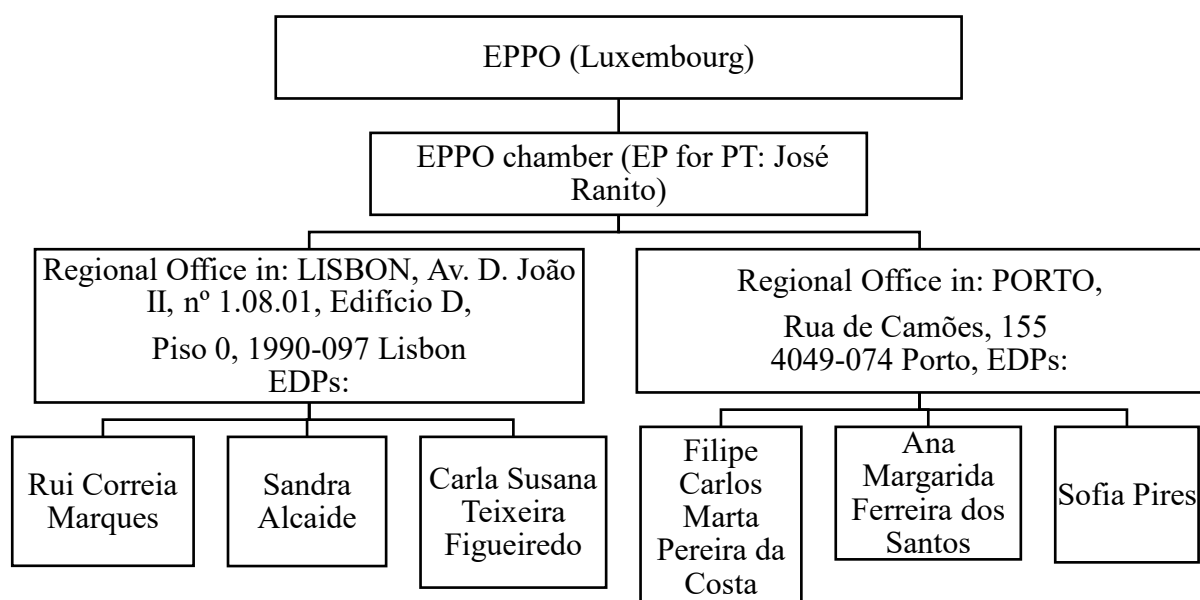
*Source:* The authors.

<sup>9</sup> STA, Judgement No. 01962/18.7BEBRG of 9.3.2022, see [https://www.dgsi.pt/jsta.nsf/35fbbbf22e1bb1e680256f8e003ea931/35f7a757fd2458ab8025880400708bfc?OpenDocument&ExpandSection=1&Highlight=0,olaf#\\_Section1](https://www.dgsi.pt/jsta.nsf/35fbbbf22e1bb1e680256f8e003ea931/35f7a757fd2458ab8025880400708bfc?OpenDocument&ExpandSection=1&Highlight=0,olaf#_Section1). Accessed 23 January 2024.

## II. Institutions

### 1. The EPPO in Portugal

Table 1: The EPPO regional offices in Portugal



Source: EPPO Website. Country Information 2023.

## 2. Organization of the criminal justice system in Portugal

Table 2: The Justice System in Portugal

<p>Investigating authorities</p> <ul style="list-style-type: none"> <li>- Public Ministry<sup>10</sup> <ul style="list-style-type: none"> <li>· Prosecutor General’s Office</li> <li>· Regional Deputy Prosecutors General’s Offices</li> <li>· Country District Prosecutors’ Offices</li> <li>· Administrative and Tax State Prosecutor’s Offices</li> </ul> </li> <li>- Central Investigation and Prosecution Department<sup>11</sup> <ul style="list-style-type: none"> <li>· (“responsible for investigating and prosecuting bribery offences, money laundering, terrorism or economic and financial offences committed internationally, transnationally or as part of organised crime”<sup>12</sup>)</li> </ul> </li> <li>- Regional Departments of Criminal Investigation and Prosecution<sup>13</sup></li> <li>- Public Prosecution Service at the Superior Courts (Constitutional Court, Court of Audit, Supreme Court of Justice, Supreme Administrative Court)</li> <li>- General Inspectorate of Finance<sup>14</sup></li> <li>- General Inspection and Management Audit of the Ministry of Agriculture<sup>15</sup></li> <li>- Criminal police authorities with general powers: <ul style="list-style-type: none"> <li>· Judiciary Police<sup>16</sup></li> </ul> </li> </ul>	<p>Administrative authorities</p> <ul style="list-style-type: none"> <li>- Agency for Development and Cohesion (AD&amp;C)<sup>17</sup></li> <li>- General Finance Inspectorate – Audit Authority<sup>18</sup> [Ministry of Finance]</li> <li>- IFAP Institute for Financing Agriculture and Fisheries<sup>19</sup></li> <li>- General Directorate of Customs and Special Consumption Taxes<sup>20</sup></li> <li>- Fiscal Brigade of the Republican National Guard<sup>21</sup> (formerly: Guarda Fiscal<sup>22</sup>)</li> <li>- Finance department of the local tax service<sup>23</sup></li> <li>- Director of the Large Taxpayers Unit</li> </ul>
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<sup>10</sup> *Ministério Público.*

<sup>11</sup> *Departamento Central de Investigação e Ação Penal (DCIAP).*

<sup>12</sup> João Medeiros, Paulo Farinha Alves, Dirce Rente and José Maria Formosinho Sanchez, PLMJ, Financial crime in Portugal: overview, see [https://content.next.westlaw.com/3-588-2486?\\_lrTS=20201028195548593&transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://content.next.westlaw.com/3-588-2486?_lrTS=20201028195548593&transitionType=Default&contextData=(sc.Default)&firstPage=true). Accessed 10 July 2023.

<sup>13</sup> *Departamentos de Investigação e Ação Penal Regionais (DIAP).*

<sup>14</sup> *Inspeção-Geral de Finanças.*

<sup>15</sup> *Inspeção-Geral e Auditoria de Gestão do Ministério de Agricultura.*

<sup>16</sup> *Polícia Judiciária (PJ).*

<sup>17</sup> *Agência para o Desenvolvimento e Coesão (AD&C).*

<sup>18</sup> *Inspeção-Geral de Finanças – Autoridade de Auditoria.*

<sup>19</sup> *Instituto de Financiamento da Agricultura e Pescas.*

<sup>20</sup> *Direcção Geral das Alfândegas e dos Impostos Especiais sobre o Consumo (DGAIEC).*

<sup>21</sup> *Brigada Fiscal da Guarda Nacional Republicana.*

<sup>22</sup> Billwiller 2002, p 177.

<sup>23</sup> *Departamento financeiro do serviço tributário local.*



<ul style="list-style-type: none"> <li>- Police Financial Information Unit (special unit for money laundering, financing of terrorism and criminal tax offences)             <ul style="list-style-type: none"> <li>· National Republican Guard<sup>24</sup></li> <li>· National Public Security Police<sup>25</sup></li> </ul> </li> <li>- Criminal Police Bodies with specific competence:             <ul style="list-style-type: none"> <li>· Tax and Customs Authority<sup>26</sup></li> <li>· Food and Economic Safety Authority<sup>27</sup></li> </ul> </li> <li>- All other police entities and agents who, in accordance with their legal powers, are responsible for carrying out any acts ordered by the Code of Criminal Procedure<sup>28</sup></li> <li>- Pre-trial judge<sup>29</sup></li> <li>- Directorate-General for Economic Inspection, Art. 51 Anti-Economic Offences and Against Public Health, Decree No. 28/84, of January 20</li> <li>- Securities Market Commission (cooperating in criminal proceedings for offences related to stock markets, also an administrative authority)</li> </ul>	<ul style="list-style-type: none"> <li>- Directorate of Services for Tax Prevention and Inspection<sup>30</sup></li> <li>- Central Services of the Director-General for Taxation<sup>31</sup></li> <li>- General Inspectorate for Agriculture, Sea, Environment and Territorial Planning<sup>32</sup></li> </ul> <p>Relevant ministries, e.g.</p> <ul style="list-style-type: none"> <li>- Ministry of Finance (contains AFCOS)</li> <li>- Ministry of the Economy and Maritime Affairs</li> <li>- Ministry of Agriculture and Food</li> <li>- Ministry of Territorial Cohesion</li> </ul>
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*Source:* Own Compilation from information of the Portuguese Government, AFCOS Website and the AFCOS Reports.

### 3. AFCOS – The Partner of OLAF in Portugal

See → Article 12a Anti-fraud coordination services Regulation in Part C.

1

### III. Sources of law

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

2

<sup>24</sup> *Guarda Nacional Republicana (GNR)*-

<sup>25</sup> *Polícia Nacional de Segurança Pública (PSP)*.

<sup>26</sup> *Autoridade Tributária e Aduaneira (AT)*.

<sup>27</sup> *Autoridade de Segurança Alimentar e Económica (ASAE)*; see official website of the ASAE, <https://www.asae.gov.pt/>. Accessed 13 February 2024.

<sup>28</sup> Portuguese notification under Article 117 EPPO Regulation of 31 May 2021, see <https://www.eppo.europa.eu/sites/default/files/2021-11/08-PT.pdf>. Accessed 13 February 2024.

<sup>29</sup> *Juiz de instrução criminal*.

<sup>30</sup> *Direcção de Serviços de Prevenção e Inspeção Tributária (DSPIT)*.

<sup>31</sup> *Direcção-Geral dos Impostos*.

<sup>32</sup> *Inspeção-Geral da Agricultura, do Mar, do Ambiente e do Ordenamento do Território (IGAMAOT)*.

## 1. General national laws relating to the EPPO and OLAF

### a) PIF-Investigation related Laws and administrative Documents in Portugal

- 3
- Constitution / *Constituição*
  - Criminal Procedure Code, Decree Law No 78/87 of February 17 / *Código De Processo Penal, Dec-Lei n.º 78/87, de 17 de Fevereiro*
  - Criminal Code / *Código Penal*
  - Code of Administrative Procedure, Decree-Law No. 4/2015, of January 7 / *Código do Procedimento Administrativo Dec-Lei n.º 4/2015, de 7 de janeiro*
  - Code of Procedure in Administrative and Fiscal Courts, Law No. 15/2002, of February 22 / *Código de Processo nos Tribunais Administrativos e Fiscais, Lei n.º 15/2002, de 22 de fevereiro*
  - Decree-Law No 109-E/2021 of 9 December (creates the National Anti-Corruption Mechanism and establishes the general regime for the prevention of corruption / *Dec-Lei n.º 109-E/2021, de 9 de dezembro (cria o Mecanismo Nacional Anticorrupção e estabelece o regime geral de prevenção da corrupção)*
  - Legal Regime Applicable to Data Processing – Judicial System, Law No 34/2009 of July 14 / *Regime Jurídico Aplicável Ao Tratamento de Dados – Sistema Judicial, Lei n.º 34/2009, de 14 de julho*
  - Cybercrime Law, No 109/2009 of September 15 / *Lei do Cibercrime n.º 109/2009, de 15 de Setembro*
  - Law No 43/2006 of August 25 (regulates the monitoring, assessment and pronouncement by Parliament within the framework of the process of building the European Union) / *Lei n.º 43/2006, de 25 de agosto (regula o acompanhamento, apreciação e pronúncia pela Assembleia da República no âmbito do processo de construção da União Europeia)*
  - EEC/EAEC Council: Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials / *Regulamento n.º 31 (CEE), n.º 11 (CEEA) que fixa o Estatuto dos Funcionários e o Regime aplicável aos outros agentes da Comunidade Económica Europeia e da Comunidade Europeia da Energia Atómica. JO 45 de 14.6.1962, p. 1385-1386*
  - Anti-Economic Offences and Public Health Offences (Catalogue of Anti-Economic Crimes) Decree-Law No 28/84 of January 20 / *Dec-Lei n.º 28/84, de 20 de Janeiro Infracções Antieconómicas E Contra A Saúde Pública*
  - Law No 83/2017 of August 18 (establishes preventive and repressive measures to combat money laundering and the financing of terrorism) / *Lei n.º 83/2017, de 18 de Agosto, (estabelece medidas de combate ao branqueamento de capitais e ao financiamento do terrorismo)*

- Law No. 5/2002, of January 11 (Establishes measures to combat organised and economic-financial crime) / *Lei n.º 5/2002, de 11 de janeiro (estabelece medidas de combate à criminalidade organizada e económico-financeira)*
- Decree-Law No 9/2021 of January 29 – Legal Regime of Economic Offences / *Dec-Lei n.º 9/2021, de 29 de Janeiro Regime Jurídico das Contraordenações Económicas*
- Cybercrime Law No 109/2009 of September 15 / *Lei do Cibercrime n.º 109/2009, de 15 de Setembro Lei do Cibercrime*
- Protection of Personal Data and Privacy in Telecommunications Law No 41/2004 of August 18 / *Protecção De Dados Pessoais E Privacidade Nas Telecomunicações, Lei n.º 41/2004, de 18 de agosto*
- Electronic Commerce in the Internal Market and Processing of Personal Data Decree-Law No 7/2004 of January 7 / *Comércio Electrónico No Mercado Interno E Tratamento De Dados Pessoais, Dec-Lei n.º 7/2004, de 07 de Janeiro*
- General Regime of Tax Offences Law No 15/2001 of June 5 / *Regime Geral das Infracções Tributárias, Lei n.º 15/2001, de 5 de junho*
- Complementary Regime of the Tax Inspection Procedure, Decree-Law n.º 413/98 of 31 December / *Regime Complementar do Procedimento de Inspeção Tributária, Dec-Lei n.º 413/98 de 31 de dezembro*
- Decree No. 433/99, of October 26 Code of Tax Procedure and Procedure / *DL n.º 433/99, de 26 de outubro Código de Procedimento E de Processo Tributário*
- Public Contracts Code (CCP), DL no. 18/2008, of 29 January / *Código dos Contratos Públicos (CCP), Dec-Lei n.º 18/2008, de 29 de janeiro*
- Decree-Law No. 137/2014, of 12 September Establishes the governance model for the European Structural and Investment Funds for the period 2014–2020 / *Decreto-Lei n.º 137/2014, de 12 de setembro Estabelece o modelo de governação dos fundos europeus estruturais e de investimento para o período de 2014–2020*
- Framework Law On Environmental Contra-Ordinations, Law No. 50/2006, of 29 August / *Lei n.º 50/2006, de 29 de Agosto Lei Quadro Das Contra-Ordenações Ambientais*
- Law No. 151/2015, of 11 September Budget Framework Law / *Lei n.º 151/2015, de 11 de Setembro Lei De Enquadramento Orçamental*

**b) Circulars and Instructions by the competent Ministries:**

- Directive No. 1/2021 of 1 April 2021 of the Prosecutor General, with the General Directives and Instructions for the implementation of the Criminal Policy Law for the 2020–2022 biennium / *Divulga-se a Diretiva n.º 1/2021, de 04-01-2021, da Procuradora-Geral da República, com as Diretivas e Instruções Genéricas para execução da Lei da Política Criminal para o biénio de 2020–2022*

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- Instruction No. 1/2021 of 2 June 2021 of the Prosecutor General that sets out the general framework for relationship between the Public Prosecutor's Office and the European Public Prosecutor's Office.
- *Nota bene:* The Decree-Law No. 23/2021, of March 23, determines the cessation of validity of decree-laws published between 1986 and 1991 (only the ones expressly listed in the DL itself), which includes EU related law of Portugal as well.

**c) OLAF related Laws**

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- Decree-Law No. 17/91, Processing and Judgment of Misdemeanours and Transgressions / *Dec-Lei n.º 17/91, Processamento e Julgamento de contravenções e transgressões*
- Value Added Tax Code / *Código do Imposto sobre o Valor Acrescentado*
- Law no. 15/2001, Strengthening taxpayer guarantees and procedural simplification, reformulating the tax judicial organisation and establishing a new general regime for tax offences / *Lei n.º 15/2001, Reforça as garantias do contribuinte e a simplificação processual, reformula a organização judiciária tributária e estabelece um novo regime geral para as infracções tributárias*
- General Tax Law – Title III Decree-Law No. 398/98 / *Lei Geral Tributária - Título III/ Decreto-Lei n.º 398/98*
- Decree-Law No. 413/98 Tax Inspection Regulations / *Decreto-Lei n.º 413/98 Regulamento da inspecção tributária*
- Code of Tax Procedure and Process Decree-Law No. 433/99 / *Código de Procedimento e Processo Tributário Decreto-Lei n.º 433/99*
- Notary Code Decree-Law No. 207/95 / *Código do Notariado Decreto-Lei n.º 207/95*
- Public Procurement Code / *Código dos Contratos Públicos Decreto-Lei n.º 18/2008*
- Dec-Lei no. 360/99 16. September 1999 Approves the organizational structure of the Directorate-General for Customs and Special Consumption Taxes (DGAIEC) / *Decreto-Lei n.º 360/99, de 16 de setembro, Aprova a orgânica da Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo (DGAIEC)*
- Decree-Law No 376-A/89 of 25 October 1989 Approves the Legal Framework for Customs Tax Offences / *Decreto-Lei n.º 376-A/89 Aprova o Regime Jurídico das Infracções Fiscais Aduaneiras*
- Decree-Law No 433/82 of 27 October 1982 (Administrative Penalty and Procedure) Establishes the misdemeanour of mere social order and respective procedure / *Dec-Lei n.º 433/82, de 27 de Outubro Institui o ilícito de mera ordenação social e respectivo processo*

- Decree-Law 78/98 of 27 March 1998 Approves the organic statute of the National Institute of Agricultural Intervention and Guarantee (INGA), a legal person governed by public law, endowed with administrative and financial autonomy and its own assets / *Decreto-lei 78/98, de 27 de Março Aprova o estatuto orgânico do Instituto Nacional da Intervenção e Garantia Agrícola (INGA), pessoa colectiva de direito público, dotado de autonomia administrativa e financeira e de património próprio*
- Decree-Law No 8/2001 of 22 January 2001 (Regional Development) Establishes the general rules for the implementation of the Rural Development Plan, abbreviated as RURIS / *Decreto-lei 8/2001, de 22 de Janeiro Estabelece as regras gerais de aplicação do Plano de Desenvolvimento Rural, abreviadamente designado por RURIS.*
- Decree-Law No 414/93 of 23 December 1993 approves the statute of the Institute for Financing and Support for the Development of Agriculture and Fisheries (IFADAP). / *Decreto-lei 414/93, de 23 de Dezembro Aprova o estatuto do Instituto de Financiamento e Apoio ao Desenvolvimento da Agricultura e Pescas (IFADAP).*
- Decree-Law No 192/91 of 21 May 1991 Approves the Organic Law of General Inspection and Management Audit (IGA) of the Ministry of Agriculture, Fisheries and Food. (General inspection in the area of fishers and nutriture) / *Decreto-lei 192/91, de 21 de Maio Aprova a Lei Orgânica da Inspeção-Geral e Auditoria de Gestão (IGA), do Ministério da Agricultura, Pescas e Alimentação.*
- Old version of the Administrative Procedure Act – Amendment Decree-Law no. 6/96 of 31 January 1996 / *DL n.º 442/91, de 15 de Novembro Código Do Procedimento Administrativo (VELHO)*
- Decree-Law No 70/89 2 March 1989 (Olive Sector/Grants), Establishes the new legal regime for the Agency for the Control of Community Aid to the Olive Oil Sector (ACACSA) and repeals Decree-Law 259/87 of 26 June / *Decreto-lei 70/89, de 2 de Março Estabelece o novo regime jurídico da Agência do Controle das Ajudas Comunitárias ao Sector do Azeite (ACACSA) e revoga o Decreto-Lei n.º 259/87, de 26 de Junho.*
- Decree-Law No 265/92 of 24 November 1992 Extinguishes the Department of Monitoring and Evaluation, created by Decree-Law no. 130/86 of 7 June, and amends the organisational structure of the Ministry of Planning and Territorial Administration, approved by the same law. / *Decreto-lei 265/92, de 24 de Novembro Extingue o Departamento de Acompanhamento e Avaliação, criado pelo Decreto-Lei n.º 130/86, de 7 de Junho e altera a orgânica do Ministério do Planeamento e da Administração do Território, aprovada pelo mesmo diploma.*
- Decree-Law No 31/92 of 24. November 1992 (new body for financial inspections) / *Lei 31/92, de 30 de Dezembro*

- Decree-Law No 45-A/2000 of 22 March 2000 / *Decreto-Lei n.º 45-A/2000 de 22 de Março*
- Decree-Law No 54-A/2000 of 7 April 2000 (Structural funds area / Revocation) Defines the organisational structure relating to the management, monitoring, evaluation and control of the implementation of the CSF III and of the Community structural interventions relating to Portugal, under the terms of Regulation (EC) No. 1260/99 of the Council, of 21 June / *Decreto-lei 54-A/2000, de 7 de Abril Define a estrutura orgânica relativa à gestão, acompanhamento, avaliação e controlo da execução do QCA III e das intervenções estruturais comunitárias relativas a Portugal, nos termos do Regulamento (CE) n.º 1260/99 (EUR-Lex), do Conselho, de 21 de Junho.*
- Decree-Law No 249/98 of 11 August 1998 (Inspection for Finance) / *Decreto-Lei n.º 249/98 de 11 de Agosto*
- Decree-Law No 168/2001 of 25 May 2001 / *Decreto-lei 168/2001, de 25 de Maio*

**d) Further Decrees by the Ministries**

- 6     ▪ Resolution of the Council of Ministers No. 97/2020 / *Resolução do Conselho de Ministros n.º 97/2020*

**2. Special national laws: Law No. 112/2019 of 10 September and Instruction No. 1/21 of 2 June**

- 7     Portugal adopted the Law 112/2019 of September 9 that “adapts the internal legal order to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation for the establishment of the European Public Prosecutor’s Office, hereinafter referred to as the European Public Prosecutor’s Office Regulation”.
- 8     It is also relevant the Instruction No. 1/2021, from the PGR, that “sets out the general framework for relationship between the Public Prosecutor’s Office and the European Public Prosecutor’s Office”.<sup>33</sup>

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<sup>33</sup> <https://www.ministeriopublico.pt/iframe/instrucoes-0>. Accessed 23 January 2024.

*Synopsis 1: Lei n.º 112/2019 Diário da República n.º 173/2019, Act for the Execution of the European Public Prosecutor's Office*

9

Official text	Unofficial translation
<p><b>Lei n.º 112/2019 de 10 de setembro Adapta a ordem jurídica interna ao Regulamento (UE) 2017/1939 do Conselho, de 12 de outubro de 2017, que dá execução a uma cooperação reforçada para a instituição da Procuradoria Europeia.</b></p> <p>Adapta a ordem jurídica interna ao Regulamento (UE) 2017/1939 do Conselho, de 12 de outubro de 2017, que dá execução a uma cooperação reforçada para a instituição da Procuradoria Europeia</p>	<p><b>Law No. 112/2019 of September 10th Adapts the internal legal order to Council Regulation (EU) 2017/1939 of 12 October 2017, which implements enhanced cooperation for the establishment of the European Public Prosecutor's Office.</b></p> <p>Adapts the domestic legal order to Council Regulation (EU) 2017/1939 of 12 October 2017, which implements enhanced cooperation for the establishment of the European Public Prosecutor's Office</p>
<p>A Assembleia da República decreta, nos termos da alínea c) do artigo 161.º da Constituição, o seguinte:</p> <p>Capítulo I</p> <p><b>Disposições gerais</b></p> <p><b>Artigo 1.º</b></p> <p><b>Objeto</b></p> <p>A presente lei adapta a ordem jurídica interna ao Regulamento (UE) 2017/1939 do Conselho, de 12 de outubro de 2017, que dá execução a uma cooperação reforçada para a instituição da Procuradoria Europeia, doravante designado Regulamento da Procuradoria Europeia.</p>	<p>The Assembly of the Republic decrees, pursuant to Article 161(c) of the Constitution, as follows:</p> <p>Chapter I</p> <p><b>General provisions</b></p> <p><b>Article 1</b></p> <p><b>Object</b></p> <p>This law adapts the internal legal order to Council Regulation (EU) 2017/1939 of 12 October 2017, which implements enhanced cooperation for the establishment of the European Public Prosecutor's Office, hereinafter referred to as the European Public Prosecutor's Office Regulation.</p>
<p><b>Artigo 2.º</b></p> <p><b>Âmbito de aplicação</b></p> <p>1 - A presente lei dispõe sobre a articulação e a cooperação entre as autoridades nacionais e a Procuradoria Europeia no exercício das funções desta entidade em território nacional relativamente aos crimes da sua competência, nos termos</p>	<p><b>Article 2</b></p> <p><b>Scope of application</b></p> <p>1 - This law provides for the articulation and cooperation between national authorities and the European Public Prosecutor's Office in the exercise of the functions of this entity in national territory in relation to crimes within its competence,</p>

do Regulamento da Procuradoria Europeia.

2 - A presente lei dispõe, ainda, sobre a representação nacional na Procuradoria Europeia, regulando o procedimento interno de designação dos candidatos nacionais a Procurador Europeu, bem como a designação e o estatuto dos Procuradores Europeus Delegados nacionais.

## **Capítulo II**

### **Atuação da Procuradoria Europeia em território nacional**

#### **Artigo 3.º**

#### **Exercício da competência da Procuradoria Europeia em território nacional**

1 - A Procuradoria Europeia, sempre que exerça as suas competências de investigação e de promoção da ação penal em território nacional, é, para este efeito e no âmbito do processo penal e da demais legislação aplicável, equiparada ao Ministério Público.

2 - Quando, nos termos do n.º 4 do artigo 28.º do Regulamento da Procuradoria Europeia, o Procurador Europeu nacional avocar as competências de investigação e de exercício da ação penal em território nacional, são-lhe conferidos, para o caso concreto, os mesmos poderes que são conferidos para o efeito ao Procurador Europeu Delegado, em conformidade com o Regulamento da Procuradoria Europeia e com a lei nacional.

pursuant to the Regulation of the European Public Prosecutor's Office.

2 - This law also provides for national representation in the European Public Prosecutor's Office, regulating the internal procedure for designating national candidates for European Public Prosecutor, as well as the designation and status of European Delegated European Public Prosecutors.

## **Chapter II**

### **Performance of the European Public Prosecutor's Office in national territory**

#### **Article 3**

#### **Exercise of the competence of the European Public Prosecutor's Office in national territory**

1 - The European Public Prosecutor's Office, whenever exercising its powers of investigation and promotion of criminal proceedings in national territory, is, for this purpose and within the scope of criminal proceedings and other applicable legislation, equivalent to the Public Prosecution Service.

2 - When, under the terms of paragraph 4 of Article 28 of the European Public Prosecutor's Office Regulation, the national European Public Prosecutor invokes the powers to investigate and carry out criminal proceedings in national territory, they are conferred on him, for the specific case, the same powers as are conferred to the Delegated European Public Prosecutor in accordance



**Artigo 4.º**

**Comunicação de infrações**

Compete ao Ministério Público, após a aquisição da notícia do crime, comunicar à Procuradoria Europeia, para o efeito do exercício da sua competência, as situações a que se referem os n.os 2 e 3 do artigo 24.º do Regulamento da Procuradoria Europeia, nos termos por esta definidos.

**Artigo 5.º**

**Coadjuvação pelos órgãos de polícia criminal**

1 - Os órgãos de polícia criminal coadjuvam a Procuradoria Europeia no exercício das suas competências de investigação e de promoção da ação penal em território nacional, nos termos das respetivas competências tal como definidas na lei interna.

2 - Nos casos a que se refere o número anterior, os órgãos de polícia criminal atuam sob a direção e na dependência funcional da Procuradoria Europeia, sem prejuízo a respetiva organização hierárquica.

**Artigo 6.º Juízo de instrução criminal competente**

A prática dos atos jurisdicionais relativos ao inquérito quanto aos crimes que, nos termos do Regulamento da Procuradoria Europeia, sejam da competência desta entidade cabe:

with the European Public Prosecutor's Office Regulation and national law.

**Article 4**

**Communication of infractions**

It is incumbent upon the Public Prosecutor, after acquiring the news of the crime, to communicate to the European Public Prosecutor's Office, for the purpose of exercising its competence, the situations referred to in paragraphs 2 and 3 of Article 24 of the Regulation of the European Public Prosecutor's Office, under the terms defined by it.

**Article 5**

**Assistance by criminal police bodies**

1 - The criminal police bodies assist the European Public Prosecutor's Office in the exercise of its powers to investigate and promote criminal proceedings in national territory, in accordance with the respective powers as defined in domestic law.

2-in the cases referred to in the preceding paragraph, the criminal police bodies act under the direction and functional dependence of the European Public Prosecutor's Office, without prejudice to the respective hierarchical organization.

**Article 6 Competent criminal investigation court**

The practice of jurisdictional acts relating to the investigation of crimes that, pursuant to the Regulation of the European Public Prosecutor's Office, fall within the competence of this entity:

a) Ao juízo de instrução criminal de Lisboa, quando se trate de factos que tenham sido praticados na área de competência dos tribunais da Relação de Lisboa e de Évora;

b) Ao juízo de instrução criminal do Porto, quando se trate de factos que tenham sido praticados na área de competência dos tribunais da Relação de Guimarães, do Porto e de Coimbra.

#### **Artigo 7.º**

##### **Conflitos de competência**

Compete ao Procurador-Geral da República decidir da atribuição da competência para a investigação em caso de desacordo entre a Procuradoria Europeia e o Ministério Público nacional sobre a inscrição da conduta criminosa no âmbito de aplicação dos n.ºs 2 ou 3 dos artigos 22.º e 25.º do Regulamento da Procuradoria Europeia.

#### **Artigo 8.º**

##### **Comunicações, informações e consultas**

1 - O Ministério Público é a autoridade nacional competente para:

a) Receber a informação a que se refere o n.º 8 do artigo 24.º do Regulamento da Procuradoria Europeia;

b) Se pronunciar nos termos da parte final do n.º 2 do artigo 25.º do Regulamento da Procuradoria Europeia, sempre que o Ministério Público deva ser consultado, bem como nos termos do n.º 3

a) To the criminal investigation court in Lisbon, in the case of facts that have been practiced in the area of competence of the courts of appeal in Lisbon and Évora;

b) The criminal investigation court in Porto, in the case of facts that have been practiced in the area of competence of the Courts of Appeal of Guimarães, Porto and Coimbra.

#### **Article 7**

##### **Competence Conflicts**

It is incumbent upon the Attorney General to decide on the attribution of competence to investigate in the event of a disagreement between the European Public Prosecutor's Office and the national Public Prosecutor's Office on the inclusion of criminal conduct within the scope of application of paragraphs 2 or 3 of Articles 22 and 25 of the European Public Prosecutor's Office Regulation.

#### **Article 8**

##### **Communications, information and inquiries**

1 - The Public Ministry is the competent national authority for:

a) Receive the information referred to in paragraph 8 of Article 24 of the Regulation of the European Public Prosecutor's Office;

b) To pronounce itself under the terms of the final part of paragraph 2 of Article 25 of the Regulation of the European Public Prosecutor's Office, whenever the

do artigo 25.º do Regulamento da Procuradoria Europeia;

c) Prestar o consentimento a que se refere o n.º 4 do artigo 25.º do Regulamento da Procuradoria Europeia.

2 - A Procuradoria-Geral da República define e comunica à Procuradoria Europeia quais os departamentos do Ministério Público competentes para os efeitos previstos no número anterior.

### **Artigo 9.º**

#### **Encargos com as medidas de investigação**

1 - Os custos e os encargos decorrentes das medidas de investigação executadas pelas autoridades nacionais no âmbito de inquérito da competência da Procuradoria Europeia em território nacional são suportados pelas autoridades que as executam.

2 - Quando as despesas referidas no número anterior sejam excepcionalmente elevadas, as autoridades nacionais executantes apresentam ao Procurador Europeu Delegado pedido fundamentado para que a Procuradoria Europeia suporte o seu pagamento parcial, nos termos do Regulamento da Procuradoria Europeia.

### **Capítulo III Cooperação e acesso a informações**

#### **Artigo 10.º Cooperação em geral**

1 - As autoridades nacionais competentes colaboram com a Procuradoria Europeia,

Public Prosecutor's Office must be consulted, as well as under the terms of paragraph 3 of Article 25 of the Regulation the European Public Prosecutor's Office;

c) Provide the consent referred to in paragraph 4 of Article 25 of the Regulation of the European Public Prosecutor's Office.

2 - The Public Prosecutor's Office defines and informs the European Public Prosecutor's Office which departments of the Public Prosecution Service are competent for the purposes set out in the preceding paragraph.

### **Article 9**

#### **Charges for investigation measures**

1 - The costs and charges arising from investigative measures carried out by national authorities within the scope of the investigation of the competence of the European Public Prosecutor's Office in national territory are borne by the authorities that execute them.

2 - When the expenses referred to in the preceding paragraph are exceptionally high, the executing national authorities submit a reasoned request to the European Delegated Prosecutor so that the European Public Prosecutor's Office supports its partial payment, in accordance with the Regulation of the European Public Prosecutor's Office.

### **Chapter III Cooperation and access to information**

#### **Article 10 Cooperation in general**

1 - The competent national authorities collaborate with the European Public

no exercício das suas competências, nos mesmos termos em que colaboram com o Ministério Público nacional.

2 - A colaboração a que se refere o número anterior inclui o envio de todas as informações necessárias ao desempenho das funções da Procuradoria Europeia, nos termos da presente lei e do Regulamento da Procuradoria Europeia.

### **Artigo 11.º**

#### **Acesso a informações**

1 - Os Procuradores Europeus Delegados acedem às bases de dados da investigação criminal nos mesmos termos em que a lei interna permite o acesso aos magistrados do Ministério Público nacionais.

2 - Para o efeito do disposto na Lei n.º 34/2009, de 14 julho, os Procuradores Europeus Delegados são equiparados aos magistrados do Ministério Público nacionais.

3 - A consulta dos dados relativos aos inquéritos em processo penal e dos demais processos da competência do Ministério Público relativos a processos que sejam da competência da Procuradoria Europeia é efetuada nos termos do n.º 2 do artigo 30.º da Lei n.º 34/2009, de 14 de julho.

Prosecutor's Office, in the exercise of their powers, under the same terms as they collaborate with the national Public Prosecutor's Office.

2 - The collaboration referred to in the preceding paragraph includes the submission of all information necessary for the performance of the functions of the European Public Prosecutor's Office, under the terms of this law and the Regulation of the European Public Prosecutor's Office.

### **Article 11**

#### **Access to information**

1 - European Delegated Prosecutors access criminal investigation databases under the same terms as domestic law allows access to national Public Prosecution Service magistrates.

2 - For the purposes of the provisions of Law No. 34/2009, of 14 July, European Delegated Prosecutors are equivalent to national prosecutors.

3-the consultation of data relating to investigations in criminal proceedings and other processes within the competence of the Public Prosecutor's Office relating to cases that fall within the competence of the European Public Prosecutor's Office is carried out in accordance with paragraph 2 of Article 30 of Law no. 34/2009, of July 14th.

**Capítulo IV Seleção e designação de magistrados nacionais**

**Artigo 12.º**

**Designação**

A designação dos candidatos a Procurador Europeu e dos Procuradores Europeus Delegados nacionais tem lugar nos termos previstos na presente lei.

**Artigo 13.º**

**Procedimento de seleção e designação dos candidatos nacionais a Procurador Europeu**

1 - Compete ao Conselho Superior da Magistratura e ao Conselho Superior do Ministério Público proceder à seleção e indicar ao membro do Governo responsável pela área da justiça três candidatos de cada magistratura a Procurador Europeu, conforme os critérios identificados no artigo seguinte.

2 - A indicação dos candidatos é acompanhada de deliberação dos referidos Conselhos a conceder autorização para o exercício do cargo a que o magistrado se candidata.

3 - Os seis candidatos propostos nos termos do n.º 1 são ouvidos pela Assembleia da República, conforme o disposto no artigo 7.º-A da Lei n.º 43/2006, de 25 de agosto.

4 - Após o procedimento de seleção a que se referem os números anteriores, a República Portuguesa, por despacho do

**Chapter IV Selection and appointment of national magistrates**

**Article 12**

**Designation**

The appointment of candidates for European Public Prosecutor and national Delegated European Public Prosecutors takes place under the terms provided for in this law.

**Article 13**

**Selection and designation procedure of national candidates for European Public Prosecutor**

1 - It is incumbent upon the Superior Council of the Magistracy and the Superior Council of the Public Prosecution Service to select and nominate to the member of the Government responsible for the area of justice three candidates from each magistracy for European Public Prosecutor, in accordance with the criteria identified in the following article.

2 - The indication of candidates is accompanied by a deliberation of the aforementioned Councils to grant authorization for the exercise of the position for which the magistrate is applying.

3 - The six candidates proposed under the terms of paragraph 1 are heard by the Assembly of the Republic, in accordance with the provisions of Article 7-A of Law no. 43/2006, of 25 August.

4-After the selection procedure referred to in the preceding paragraphs, the Por-

membro do Governo responsável pela área da justiça, designa três candidatos ao cargo de Procurador Europeu.

**Artigo 14.º**

**Critérios de seleção**

1 - Para além dos critérios fixados no n.º 1 do artigo 16.º do Regulamento da Procuradoria Europeia e dos previstos no Regulamento n.º 31.º (CEE) 11.º (CEE), que fixa o Estatuto dos Funcionários e o Regime aplicável aos outros agentes da Comunidade Económica Europeia e da Comunidade Europeia da Energia Atómica, constituem critérios de seleção os seguintes:

- a) Experiência mínima de 20 anos como magistrado do Ministério Público ou como magistrado judicial;
- b) Experiência prática relevante no sistema jurídico nacional em investigação e em casos de crimes de natureza financeira;
- c) Experiência prática em cooperação judiciária internacional em matéria penal;
- d) Classificação de mérito de Muito Bom.

2 - Constituem condições preferenciais de seleção as seguintes:

tuguese Republic, by order of the member of the Government responsible for the area of justice, designates three candidates for the position of European Public Prosecutor.

**Article 14**

**Selection criteria**

1 - In addition to the criteria set out in paragraph 1 of Article 16 of the Regulation of the European Public Prosecutor's Office and those provided for in Regulation no. 31 (EEC) 11 (CEE), which establishes the Staff Regulations and the Regime applicable to other agents of the European Economic Community and the European Atomic Energy Community, the following are selection criteria:

- a) Minimum experience of 20 years as a public prosecutor or as a judicial magistrate;
- b) Relevant practical experience in the national legal system in investigating and in cases of crimes of a financial nature;
- c) Practical experience in international judicial cooperation in criminal matters;
- d) Very Good Merit Rating.

2 - The following are the preferential conditions for selection:

<p>a) Experiência na investigação de crimes contra os interesses financeiros da União Europeia;</p>	<p>a) Experience in investigating crimes against the financial interests of the European Union;</p>
<p>b) Experiência em investigações de natureza transfronteiriça;</p>	<p>b) Experience in cross-border investigations;</p>
<p>c) Experiência de gestão e coordenação de equipas;</p>	<p>c) Experience in managing and coordinating teams;</p>
<p>d) Excelente conhecimento do quadro institucional e legal da União Europeia;</p>	<p>d) Excellent knowledge of the institutional and legal framework of the European Union;</p>
<p>e) Aptidão para o trabalho em ambientes multiculturais, incluindo a capacidade de lidar com diferentes sistemas legais;</p>	<p>e) Aptitude to work in multicultural environments, including the ability to deal with different legal systems;</p>
<p>f) Excelentes capacidades de comunicação e de relação interpessoal, de negociação e de decisão;</p>	<p>f) Excellent communication and interpersonal skills, negotiation and decision skills;</p>
<p>g) Trabalhos científicos publicados nas áreas da investigação e do processo penal sobre crimes de natureza financeira e de corrupção, cooperação internacional em matéria penal, direito europeu ou outras áreas relacionadas com interesse para o cargo;</p>	<p>g) Scientific works published in the areas of investigation and criminal proceedings on crimes of a financial nature and corruption, international cooperation in criminal matters, European law or other areas related to the interest of the position;</p>
<p>h) Atividade no âmbito do ensino jurídico, no qual se enquadre a docência universitária e outras intervenções, ainda que sem carácter de permanência, mas que possam assumir a natureza de ensino jurídico, como a lecionação no âmbito da formação de profissionais do foro ou nas ações de formação complementar;</p>	<p>h) Activity in the field of legal education, which includes university teaching and other interventions, even if not on a permanent basis, but which may assume the nature of legal education, such as teaching within the scope of training of legal professionals or in the complementary training actions;</p>

i) Formação contínua relevante como magistrado nas áreas mencionadas nas alíneas b) e c) do número anterior e nas alíneas a) e b) do presente número;

j) Elevado prestígio profissional e cívico.

### **Artigo 15.º**

#### **Designação dos Procuradores Europeus Delegados nacionais**

1 - O cargo de Procurador Europeu Delegado é exercido por magistrados do Ministério Público, indicados por despacho do membro do Governo responsável pela área da justiça.

2 - Compete ao Conselho Superior do Ministério Público seleccionar e indicar ao membro do Governo responsável pela área da justiça dois candidatos por cada Procurador Europeu Delegado a indicar, para o efeito da sua nomeação por parte do Colégio da Procuradoria Europeia.

3 - A indicação dos candidatos é acompanhada de deliberação do Conselho Superior do Ministério Público a conceder autorização para o exercício do cargo a cada um dos magistrados indicados.

4 - Os magistrados seleccionados e não indicados integram uma lista de reserva, válida por três anos e suscetível de renovações por dois períodos sucessivos de um ano cada, sem prejuízo de novo procedimento de seleção se a lista ficar deserta ou expirar a sua validade.

i) Relevant continuing training as a magistrate in the areas mentioned in subparagraphs b) and c) of the preceding paragraph and in subparagraphs a) and b) of the present paragraph;

j) High professional and civic prestige.

### **Article 15**

#### **Appointment of European National Delegated Prosecutors**

1 - The position of Delegated European Prosecutor is exercised judged by magistrates of the Public Ministry, appointed by order of the member of the Government responsible for the area of justice.

2 - It is incumbent upon the Superior Council of the Public Prosecution Service to select and nominate to the member of the Government responsible for the area of justice two candidates for each European Delegated Prosecutor to be appointed, for the purpose of their appointment by the College of the European Public Prosecutor's Office.

3 - The nomination of candidates is accompanied by a decision by the Superior Council of the Public Prosecution Service to grant authorization for the exercise of the position to each of the appointed magistrates.

4 - The selected and unnamed magistrates are part of a reserve list, valid for three years and subject to renewal for two successive periods of one year each, without prejudice to a new selection procedure if the list becomes deserted or expires.



5 - No caso de cessação antecipada de funções ou de substituição temporária de um Procurador Europeu Delegado nomeado pelo Colégio da Procuradoria Europeia, a indicação é feita de entre os magistrados que integram a lista de reserva a que se refere o número anterior.

## **Capítulo V**

### **Estatuto e garantias**

#### **Artigo 16.º**

##### **Garantias do Procurador Europeu**

1 - As funções de Procurador Europeu são exercidas, consoante os casos, em comissão de serviço judicial ou comissão de serviço equiparada ao exercício de funções de magistrado do Ministério Público.

2 - A comissão de serviço a que se refere o número anterior não dá lugar à abertura de vaga.

3 - O tempo de serviço prestado na Procuradoria Europeia considera-se, para todos os efeitos, nomeadamente de antiguidade, de progressão na carreira, de aposentação e de pensão de sobrevivência, como prestado na carreira de origem.

4 - O Procurador Europeu nacional mantém o direito a efetuar os descontos para os regimes de proteção social de que beneficie com base na remuneração correspondente à categoria profissional que detenha no lugar de origem.

5 - In the event of early termination of duties or temporary replacement of a European Delegated Prosecutor appointed by the College of the European Public Prosecutor's Office, the appointment is made from among the magistrates who are part of the reserve list referred to in the preceding paragraph.

## **Chapter V**

### **Status and guarantees**

#### **Article 16**

##### **European Prosecutor's Guarantees**

1 - The functions of European Public Prosecutor are exercised, depending on the case, in a judicial service commission or a service commission equivalent to the exercise of functions of magistrate of the Public Ministry.

2 - The service commission referred to in the previous number does not give rise to the opening of a vacancy.

3 - The length of service provided in the European Public Prosecutor's Office is considered, for all purposes, namely seniority, career progression, retirement and survival pension, as provided in the original career.

4 - The national European Public Prosecutor retains the right to make discounts for social protection schemes that benefit based on the remuneration corresponding to the professional category held in the place of origin.

5 - O Procurador Europeu mantém os benefícios do subsistema de saúde correspondente para si e respetivos familiares que residam em território nacional, mediante a efetivação dos respetivos descontos com base na remuneração do lugar de origem.

6 - O Procurador Europeu nacional não é sujeito a inquéritos, a sindicâncias ou a procedimentos disciplinares por parte do respetivo Conselho Superior de origem, por factos praticados durante o exercício de funções na Procuradoria Europeia e com elas relacionados.

7 - O Procurador Europeu nacional mantém o direito a ser avaliado pelo serviço prestado na magistratura nacional até à data da sua nomeação como Procurador Europeu.

#### **Artigo 17.º**

#### **Garantias do Procurador Europeu Delegado**

1 - Os Procuradores Europeus Delegados não podem ser prejudicados, por causa do exercício das suas funções na Procuradoria Europeia, na carreira profissional, no regime de segurança social de que beneficiem, bem como nos seus direitos, regalias, subsídios e outros benefícios sociais de que gozem na sua posição profissional de origem.

2 - O Procurador Europeu Delegado em regime de exclusividade exerce funções em comissão de serviço equiparada, para

5-the European Public Prosecutor maintains the benefits of the corresponding health subsystem for themselves and their family members residing in national territory, by effecting the respective discounts based on the remuneration of the place of origin.

6 - The national European Public Prosecutor is not subject to inquiries, investigations or disciplinary proceedings by the respective Superior Council of origin, for facts practiced during the exercise of functions in the European Public Prosecutor's Office and related to them.

7 - The national European Public Prosecutor retains the right to be evaluated for the service provided in the national judiciary up to the date of his appointment as European Public Prosecutor.

#### **Article 17**

#### **Guarantees of the Delegated European Prosecutor**

1 - European Delegated Prosecutors may not be harmed, because of the exercise of their functions in the European Public Prosecutor's Office, in their professional career, in the social security scheme they benefit from, as well as in their rights, benefits, allowances and other social benefits from which enjoy in their original professional position.

2 - The Delegated European Attorney on an exclusive basis performs duties on a service commission equivalent, for all

todos os efeitos, ao exercício de funções de magistrado do Ministério Público.

3 - A comissão de serviço a que se refere o número anterior não dá lugar à abertura de vaga.

4 - O Procurador Europeu Delegado que não exerça funções em regime de exclusividade tem direito à redução proporcional de serviço na magistratura de origem, compatível com o pleno exercício daquelas funções, não podendo, em qualquer caso, haver diminuição na remuneração pelo exercício cumulativo de funções face à remuneração do lugar de origem, aplicando-se com as devidas adaptações o disposto no n.º 1.

5 - O Procurador Europeu Delegado não é sujeito a inquéritos, a sindicâncias ou a procedimentos disciplinares por parte do Conselho Superior do Ministério Público por factos praticados durante o exercício de funções na Procuradoria Europeia e com elas relacionados.

6 - O tempo de serviço prestado na Procuradoria Europeia considera-se, para todos os efeitos, nomeadamente de antiguidade, de progressão na carreira, de aposentação e de pensão de sobrevivência, como prestado na carreira de origem.

7 - O Procurador Europeu Delegado mantém o regime de protecção social de

purposes, to the exercise of functions of magistrate of the Public Prosecution Service.

3 - The service commission referred to in the previous number does not give rise to the opening of a vacancy.

4 - The Delegated European Prosecutor who does not exercise functions on an exclusive basis is entitled to a proportional reduction of service in the magistracy of origin, compatible with the full exercise of those functions, and may not, in any case, be reduced in remuneration for the cumulative exercise of functions given the remuneration of the place of origin, applying, with the necessary adaptations, the provisions of paragraph 1.

5-the Delegated European Prosecutor is not subject to inquiries, investigations or disciplinary proceedings by the Superior Council of the Public Prosecution Service for facts practiced during the exercise of functions in the European Prosecutor's Office and related to them.

6 - The length of service provided in the European Public Prosecutor's Office is considered, for all purposes, including seniority, career progression, retirement and survival pension, as provided in the original career.

7 - The Delegated European Public Prosecutor maintains the social protection scheme of which he is the beneficiary as

que é beneficiário como magistrado nacional, mediante a efetivação dos correspondentes descontos com base na remuneração do lugar de origem.

8 - Os descontos para o regime a que se refere o número anterior são assegurados, na parte a cargo da entidade empregadora, pelo Ministério da Justiça, sem prejuízo de reembolso pela Procuradoria Europeia.

9 - O Procurador Europeu Delegado mantém os benefícios do subsistema de saúde correspondente para si e respetivos familiares, mediante a efetivação dos respetivos descontos com base na remuneração do lugar de origem.

10 - Ficam isentos de imposto nacional os rendimentos auferidos pelos Procuradores Europeus Delegados pelo exercício de funções na Procuradoria Europeia, aplicando-se o regime fiscal previsto no Regulamento n.º 31.º (CEE) 11.º (CEEA), bem como as regras de execução que vierem a ser definidas pela Procuradoria Europeia.

### **Artigo 18.º**

#### **Estatuto, mandato e local de trabalho dos Procuradores Europeus Delegados nacionais**

1 - Os Procuradores Europeus Delegados são magistrados do Ministério Público, tal como definidos no respetivo estatuto.

2 - Os Procuradores Europeus Delegados representam a Procuradoria Europeia em todas as instâncias nacionais em que

a national magistrate, through the realization of the corresponding discounts based on the remuneration of the place of origin.

8 - Discounts for the regime referred to in the preceding paragraph are ensured, in the part paid by the employer, by the Ministry of Justice, without prejudice to reimbursement by the European Public Prosecutor's Office.

9 - The Delegated European Attorney maintains the benefits of the corresponding health subsystem for you and your relatives, through the realization of the respective discounts based on the remuneration of the place of origin.

10 - Income earned by European Delegated Prosecutors for the exercise of functions in the EPPO shall be exempt from national tax, and the tax regime provided for in Regulation No 31 (EEC), 11 (EAEC) and the implementing rules to be laid down by the European Public Prosecutor's Office shall apply.

### **Article 18**

#### **Status, mandate and place of work of European National Delegated Prosecutors**

1 - European Delegated Prosecutors are public prosecutors, as defined in the respective statute.

2 - The European Delegated Prosecutors represent the European Public Prosecutor's Office in all national instances in

corram termos processos criminais por crimes relativamente aos quais a Procuradoria Europeia exerça a sua competência.

3 - Os Procuradores Europeus Delegados exercem, preferencialmente em regime de exclusividade, as funções e as competências definidas pelo Regulamento da Procuradoria Europeia.

4 - O mandato do Procurador Europeu Delegado tem a duração de cinco anos e pode ser renovado.

5 - Os Procuradores Europeus Delegados têm o seu local de trabalho em Lisboa e no Porto.

#### **Artigo 19.º**

##### **Medidas disciplinares**

O Conselho Superior do Ministério Público é o órgão competente para os efeitos do disposto no n.º 4 do artigo 17.º do Regulamento da Procuradoria Europeia.

#### **Capítulo VI**

##### **Disposições transitórias e finais**

#### **Artigo 20.º**

##### **Disposição transitória**

A Procuradoria Europeia exerce as suas competências em relação aos crimes cometidos após a entrada em vigor do Regulamento da Procuradoria Europeia.

#### **Artigo 21.º**

##### **Entrada em vigor**

A presente lei entra em vigor 30 dias após a sua publicação.

which criminal proceedings are under way for crimes over which the European Prosecutor's Office exercises its competence.

3 - European Delegated Prosecutors exercise, preferably on an exclusive basis, the functions and powers defined by the Regulation of the European Prosecutor's Office.

4 - The mandate of the European Delegated Prosecutor lasts for five years and can be renewed.

5 - European Delegated Prosecutors have their place of work in Lisbon and Porto.

#### **Article 19**

##### **Disciplinary measures**

The Superior Council of the Public Prosecution Service is the competent body for the purposes of paragraph 4 of Article 17 of the Regulation of the European Public Prosecutor's Office.

#### **Chapter VI**

##### **Transitional and Final Provisions**

#### **Article 20**

##### **Transitional provision**

The European Public Prosecutor's Office exercises its powers in relation to crimes committed after the entry into force of the European Public Prosecutor's Office Regulation.

#### **Article 21**

##### **Implementation**

This law enters into force 30 days after its publication.

Aprovada em 19 de julho de 2019.

*O Presidente da Assembleia da República, Eduardo Ferro Rodrigues.*

*Promulgada em 6 de agosto de 2019.*

*Publique-se.*

*O Presidente da República, Marcelo Rebelo de Sousa.*

*Referendada em 12 de agosto de 2019.*

*O Primeiro-Ministro, António Luís Santos da Costa.*

Approved on July 19, 2019.

*The President of the Assembly of the Republic, Eduardo Ferro Rodrigues.*

*Enacted on August 6, 2019.*

*Publish yourself.*

*The President of the Republic, Marcelo Rebelo de Sousa.*

*Countersigned on August 12, 2019.*

*The Prime Minister, António Luís Santos da Costa.*

*Synopsis 2: Instruction 1/21 of 2 June 2021 – General framework for the relationship between the Public Prosecutor’s Office and the EPPO*

<b>Instrução n.º 1/21</b>	<b>Instruction No. 1/21</b>
<p><b>Procuradoria Europeia</b>  <b>Departamentos do Ministério Públicos competentes para efeitos das comunicações, informações, consultas, recebimento e transmissão de processos – Procedimentos</b></p> <p>O Regulamento (UE) 2017/1939, do Conselho, de 12 de outubro de 2017, que dá execução a uma cooperação reforçada para a instituição da Procuradoria Europeia, prevê, para efeitos do exercício das suas competências, um conjunto de interações entre este órgão da União e as autoridades nacionais dos Estados Membros participantes nessa cooperação reforçada.</p> <p>Nesse conjunto de interações inserem-se comunicações, informações e consultas que se relacionam, v.g. com a comunicação de notícia de crime e transmissão de inquéritos para a Procuradoria Europeia ou o envio de inquéritos ou de notícia de crime por aquele órgão às autoridades nacionais competentes para o exercício da ação penal, bem como consultas para esse efeito ou para efeitos de arquivamento de inquéritos, nas situações em que essa consulta é exigida pelo Regulamento da Procuradoria Europeia, ou de procedimento penal simplificado.</p>	<p><b>European Public Prosecutor’s Office</b>  <b>Public Prosecutor’s Office departments responsible for the purposes of communications, information, consultations, receipt and transmission of files – Procedures</b></p> <p>Council Regulation (EU) 2017/1939 of 12 October 2017, which implements enhanced cooperation for the establishment of the European Public Prosecutor’s Office, provides, for the purposes of exercising its powers, a set of interactions between this body of the Union and the national authorities of the Member States participating in that enhanced cooperation.</p> <p>This set of interactions includes communications, information and consultations that are related, for example, to the communication of news of crime and transmission of inquiries to the European Public Prosecutor’s Office or the sending of inquiries or news of crime by that body to the competent national authorities to the exercise of criminal action, as well as consultations for this purpose or for the purposes of archiving investigations, in situations where such consultation is required by the European Public Prosecutor’s Office Regulation, or simplified criminal procedure.</p>

Estão, pois, em causa comunicações, informações e consultas para as quais o Ministério Público é, necessariamente, a autoridade nacional competente, atentas as suas competências constitucionais e legais como titular do exercício da ação penal.

Tanto assim que a Lei 112/2019, de 10 de setembro, que adapta à ordem jurídica interna aquele Regulamento, prevê, no artigo 4.º, que “Compete ao Ministério Público após a aquisição da notícia do crime, comunicar à Procuradoria Europeia, para o efeito do exercício da sua competência, as situações a que se referem os n.ºs 2 e 3 do artigo 24.º do Regulamento da Procuradoria Europeia, nos termos por esta definidos».

Por seu turno, o artigo 8.º, n.º 1 da citada Lei define o Ministério Público como autoridade nacional competente para efeitos das comunicações, informações e consultas no mesmo identificadas, estabelecendo o n.º 2 do mesmo preceito que compete à Procuradoria-Geral da República definir e comunicar à Procuradoria Europeia os departamentos do Ministério Público competentes para aqueles efeitos.

Atribuindo o artigo 7.º daquela Lei competência ao Procurador-Geral da República para decidir da atribuição da competência para a investigação em caso

These are, therefore, communications, information and consultations for which the Public Prosecutor’s Office is necessarily the competent national authority, taking into account its constitutional and legal powers as the holder of criminal action.

So much so that Law 112/2019, of September 10, which adapts that Regulation to the internal legal order, provides, in article 4, that “It is the responsibility of the Public Prosecutor’s Office after acquiring news of the crime, to communicate to the European Public Prosecutor’s Office, for the purpose of exercising its competence, the situations referred to in paragraphs 2 and 3 of article 24 of the European Public Prosecutor’s Office Regulation, under the terms defined therein”.

In turn, article 8, paragraph 1 of the aforementioned Law defines the Public Prosecutor’s Office as the competent national authority for the purposes of communications, information and consultations identified therein, establishing paragraph 2 of the same precept that the Prosecutor’s Office is responsible for. -General of the Republic define and communicate to the European Public Prosecutor’s Office the departments of the Public Prosecutor’s Office competent for those purposes.

By granting Article 7 of that Law competence to the Attorney General of the Republic to decide on the attribution of competence for investigation in the event of



de desacordo entre a Procuradoria Europeia e o Ministério Público nacional sobre a inscrição da conduta criminosa no âmbito de aplicação dos n.ºs 2 ou 3 dos artigos 22.º e 25.º do Regulamento da Procuradoria Europeia.

Num tal contexto, de modo a conferir exequibilidade àquelas normas, importa definir os departamentos do Ministério Público competentes para aqueles efeitos. Definição que terá, necessariamente, como eixo orientador a competência territorial e/ou material do Ministério Público nacional para a investigação.

Exige-se, em todo o caso, o estabelecimento de uma estrutura mínima de centralização que, face às especificidades dos ilícitos criminais em causa e ao modelo de funcionamento da Procuradoria Europeia, garanta efetiva verificação dos critérios de competência material deste órgão da União, de modo, desde logo, a evitar ou minimizar conflitos, a promover uniformidade de atuação, coordenação e articulação, sempre desejáveis, a estabelecer canais de comunicação facilmente identificáveis, bem como a garantir o registo e monitorização de todo o acervo comunicacional relativo às infrações em causa.

Assim, tendo em conta o Regulamento (UE) 2017/1939, do Conselho, de 12 de outubro de 2017, e o disposto nos artigos 4.º, 7.º e 8.º, n.ºs 1 e 2, da Lei 112/2019, de 10 de setembro, ao abrigo do disposto no artigo 19.º, n.º 2, alínea b), do Estatuto

disagreement between the European Public Prosecutor's Office and the national Public Prosecutor's Office regarding the inclusion of criminal conduct within the scope of application of paragraphs 2 or 3 of Articles 22 and 25 of the European Public Prosecutor's Office Regulation.

In such a context, in order to make those standards enforceable, it is important to define the Public Prosecutor's Office departments responsible for those purposes. A definition that will necessarily have as its guiding axis the territorial and/or material competence of the national Public Prosecutor's Office for the investigation.

In any case, it is necessary to establish a minimum centralization structure that, given the specificities of the criminal offenses in question and the operating model of the European Public Prosecutor's Office, guarantees effective verification of the material competence criteria of this Union body, of in order, from the outset, to avoid or minimize conflicts, to promote uniformity of action, coordination and articulation, which are always desirable, to establish easily identifiable communication channels, as well as to guarantee the recording and monitoring of the entire communication collection relating to the infractions in question .

Thus, taking into account Regulation (EU) 2017/1939, of the Council, of October 12, 2017, and the provisions of articles 4, 7 and 8, paragraphs 1 and 2, of the Law 112/2019, of 10 September, under

do Ministério Público, define-se o seguinte quadro genérico de relacionamento entre o Ministério Público e a Procuradoria Europeia, em especial para efeitos dos casos a seguir identificados:

I. Departamentos competentes e Pontos de Contacto

1. Os Departamentos de Investigação e Ação Penal Regionais (DIAP regionais) são designados os departamentos competentes para efeitos de centralização das comunicações, informações e consultas entre a Procuradoria Europeia e o Ministério Público das respetivas áreas de competência territorial, de acordo com o prescrito na presente Instrução.

2. O Departamento Central de Investigação e Ação Penal (DCIAP) é designado o departamento competente para os efeitos consignados no ponto anterior, quando estejam em causa casos que se insiram no âmbito da sua competência material, ou adquira notícia de crime para o qual não é competente e seja suscetível de se integrar na competência da Procuradoria Europeia.

3. A Procuradoria-Geral da República é competente para efeitos dos casos especificamente identificados nesta Instrução e do disposto no artigo 7.º da Lei 112/2019, de 10 de setembro.

the provisions of article 19, no. 2, paragraph b), of the Statute of the Public Prosecutor's Office, the following generic relationship framework is defined between the Public Prosecutor's Office and the Prosecutor's Office European Union, in particular for the purposes of the cases identified below :

I. Competent Departments and Contact Points

1. The Regional Criminal Investigation and Action Departments (regional DIAP) are designated as the competent departments for the purposes of centralizing communications, information and consultations between the European Public Prosecutor's Office and the Public Prosecutor's Office of the respective areas of territorial competence, in accordance with the provisions of this Instruction.

2. The Central Department of Investigation and Criminal Action (DCIAP) is designated as the competent department for the purposes set out in the previous point, when cases are at stake that fall within the scope of its material competence, or it acquires news of a crime for which it is not is competent and capable of falling within the competence of the European Public Prosecutor's Office.

3. The Attorney General's Office is competent for the purposes of the cases specifically identified in this Instruction and the provisions of article 7 of Law 112/2019, of 10 September.

4. Nos casos não previstos na presente Instrução em que, nos termos do Regulamento da Procuradoria Europeia, devam por esta ser efetuadas comunicações ou prestadas informações ao Ministério Público nacional, aplicam-se os procedimentos de tramitação adiante definidos nas situações aí expressamente contempladas.

5. Nos DIAP regionais e no DCIAP é instituído um mecanismo de centralização, registo e monitorização das referidas comunicações, informações, consultas e transmissão de processos.

6. Nos DIAP regionais e no DCIAP é designado, pelos respetivos Diretores, pelo menos, um Ponto de Contacto, ao qual competirá articular com a Procuradoria Europeia e com o Ministério Público competente para os efeitos previstos na presente Instrução.

7. Na Procuradoria-Geral da República é, igualmente, designado, pelo menos, um Ponto de Contacto.

8. Os Diretores dos DIAP regionais e o Diretor do DCIAP definem, em articulação com os pontos de contacto respetivos, e, se necessário, com os Procuradores Europeus Delegados afetos às respetivas áreas de competência, os procedimentos a adotar para a operacionalização das referidas inter-relações comunicacionais.

4. In cases not provided for in this Instruction in which, under the terms of the European Public Prosecutor's Office Regulation, communications must be made or information provided to the national Public Prosecutor's Office, the processing procedures defined below apply in the situations expressly contemplated therein.

5. In the regional DIAP and DCIAP, a mechanism for centralizing, recording and monitoring the aforementioned communications, information, consultations and transmission of processes is established.

6. In the regional DIAP and DCIAP, at least one Contact Point is designated by the respective Directors, who will be responsible for liaising with the European Public Prosecutor's Office and the competent Public Prosecutor's Office for the purposes set out in this Instruction.

7. At least one Contact Point is also designated in the Attorney General's Office.

8. The Directors of the regional DIAPs and the Director of the DCIAP define, in conjunction with the respective contact points, and, if necessary, with the Delegated European Prosecutors assigned to the respective areas of competence, the procedures to be adopted for the operationalization of the aforementioned inter-connections. -communication relations.

9. Do mesmo modo, devem aqueles departamentos definir mecanismos de articulação com os DIAP de comarca respetivos e com os magistrados do Ministério Público Coordenadores das Procuradorias da República das comarcas.

10. Os Diretores dos DIAP regionais e o Diretor do DCIAP comunicam entre si, à Procuradoria-Geral da República, às Procuradorias-Gerais Regionais e aos Magistrados Coordenadores das Comarcas, os pontos de contacto designados e as respetivas coordenadas de contacto (v.g. número de telefone e endereço de correio eletrónico especificamente dedicado, a criar para cada DIAP regional e para o DCIAP), bem como posteriores substituições que possam ocorrer.

11. A Procuradoria-Geral da República comunica o ponto de contacto designado, respetivas coordenadas e substituições que possam ocorrer aos DIAP regionais, ao DCIAP, às Procuradorias-Gerais Regionais e aos Magistrados Coordenadores das Comarcas.

12. A Procuradoria-Geral da República, sem prejuízo da comunicação que os DIAP regionais e o DCIAP efetuam aos Procuradores Europeus Delegados, comunica à Procuradoria Europeia os pontos de contacto designados, respetivas coordenadas de contacto e posteriores substituições que possam ocorrer.

9. Likewise, those departments must define coordination mechanisms with the respective district DIAPs and with the public prosecutors who coordinate the Public Prosecutor's Offices in the districts.

10. The Directors of the regional DIAP and the Director of the DCIAP communicate among themselves, the Attorney General's Office, the Regional Attorney General's Offices and the Coordinating Magistrates of the Districts, the designated contact points and the respective contact coordinates (e.g. number of specifically dedicated telephone and email address, to be created for each regional DIAP and for the DCIAP), as well as subsequent replacements that may occur.

11. The Attorney General's Office communicates the designated contact point, respective coordinates and replacements that may occur to the regional DIAP, the DCIAP, the Regional Attorney General's Offices and the Coordinating Magistrates of the Districts.

12. The Attorney General's Office, without prejudice to the communication that the regional DIAPs and the DCIAP make to the European Delegated Prosecutors, communicates to the European Public Prosecutor's Office the designated contact points, their respective contact coordinates and subsequent replacements that may occur.

13. A Procuradoria-Geral da República elabora e divulga no SIMP uma lista de pontos de contacto com a Procuradoria Europeia e respetivas coordenadas, bem como os contactos dos Procuradores Europeus Delegados.

II. Comunicações a que se refere o artigo 4.º da Lei 112/2019, de 10 de setembro

1. Compete ao magistrado do Ministério Público titular do inquérito, aquando da sua abertura ou durante a investigação, a apreciação sobre se a situação concreta integra infração penal relativamente à qual a Procuradoria Europeia possa exercer a sua competência em conformidade com os artigos 22.º e 25.º, n.ºs 2 e 3 do Regulamento da Procuradoria Europeia (cfr. artigo 24.º, n.ºs 2 e 3 do Regulamento da PE).

2. Concluindo nesse sentido, o magistrado do Ministério Público competente elabora comunicação a efetuar à Procuradoria Europeia preferencialmente através do preenchimento do formulário de comunicação anexo à presente Instrução -, instruída com os elementos documentais necessários à apreciação por aquele órgão. Obtida a concordância do seu imediato superior hierárquico, transmite-a ao Procurador Europeu Delegado da respetiva área territorial, dela dando conhecimento ao ponto de contacto designado no DIAP regional competente.

3. A comunicação a que se refere o número anterior não é acompanhada do

13. The Public Prosecutor's Office prepares and publishes in the SIMP a list of contact points with the European Public Prosecutor's Office and their respective coordinates, as well as the contact details of the European Delegated Public Prosecutors.

II. Communications referred to in article 4 of Law 112/2019, of September

1. It is the responsibility of the public prosecutor in charge of the investigation, when it is opened or during the investigation, to assess whether the specific situation is a criminal offence in respect of which the European Public Prosecutor's Office may exercise its jurisdiction in accordance with Articles 22 and 25(2) and (3) of the European Public Prosecutor's Office Regulation (see Article 24(2) and (3) of the EP Regulation).

2. Concluding in this sense, the competent Public Prosecutor's Office prepares a communication to be made to the European Public Prosecutor's Office, preferably by completing the communication form attached to this Instruction -, accompanied by the documentary elements necessary for assessment by that body. Once the agreement of his/her immediate superior has been obtained, he/she transmits it to the European Delegated Prosecutor of the respective territorial area, informing the contact point designated in the competent regional DIAP.

3. The communication referred to in the previous number is not accompanied by

processo, o qual apenas é transmitido pelo magistrado do Ministério Público competente após aceitação da competência pela Procuradoria Europeia, com conhecimento ao imediato superior hierárquico e ao ponto de contacto do DIAP regional competente.

4. O Diretor do DCIAP define a tramitação interna da comunicação das situações da competência daquele departamento.

III. Outras comunicações, informações e consultas

1. Os DIAP regionais são designados, para efeitos da alínea a) do artigo 8.º da Lei 112/2019, de 10 de setembro, os departamentos competentes para o recebimento das informações e meios de prova a transmitir pela Procuradoria Europeia ao Ministério Público nacional, relativas a infrações penais não abrangidas pelo âmbito de competência daquele órgão da União, nos termos do n.º 8 do artigo 24.º do Regulamento da Procuradoria Europeia.

1.1. Recebidas as informações e os meios de prova a que se refere o número anterior, o ponto de contacto remete-as ao Ministério Público territorialmente competente para a investigação, ou ao DCIAP quando a infração se insira no âmbito da sua competência material, em vista à sua apreciação e, se for o caso, instauração de inquérito.

the process, which is only transmitted by the competent Public Prosecutor's Office after acceptance of the competence by the European Public Prosecutor's Office, with the knowledge of the immediate superior and the regional DIAP contact point competent.

4. The Director of DCIAP defines the internal process for communicating situations within that department's competence.

III. Other communications, information and consultations

1. The regional DIAPs are designated, for the purposes of paragraph a) of article 8 of Law 112/2019, of 10 September, the departments responsible for receiving the information and evidence to be transmitted by the European Public Prosecutor's Office to the national Public Prosecutor's Office, relating to criminal offenses not falling within the scope of competence of that Union body, in accordance with Article 24(8) of the European Public Prosecutor's Office Regulation.

1.1. Once the information and evidence referred to in the previous paragraph have been received, the contact point forwards it to the Public Prosecutor's Office territorially competent for the investigation, or to the DCIAP when the infraction falls within the scope of its material competence, with a view to assessment and, if applicable, initiation of an investigation.

2. Os DIAP regionais e o DCIAP são designados como os departamentos competentes para:

a) Receber os pedidos de consulta e consentimento a que se referem, respetivamente, as alíneas b) e c) do artigo 8.º da Lei 112/2019, de 10 de setembro.

b) Receber o caso quando a Procuradoria Europeia, após consulta, procede ao seu reenvio ao Ministério Público nacional, nos termos do n.º 3 do artigo 25.º do Regulamento da Procuradoria Europeia.

c) Receber os pedidos de consulta a que se reporta o artigo 40.º do Regulamento da Procuradoria Europeia, referentes à aplicação de procedimentos penais simplificados.

2.1. Nos casos em que a comunicação da infração à Procuradoria Europeia foi efetuada nos termos do artigo 4.º da mesma Lei, os referidos pedidos de consulta e de consentimento devem, se disso for caso, ser remetidos pelo ponto de contacto respetivo ao Ministério Público competente para que emita pronúncia, nos termos e para os efeitos dos n.ºs 2, 3 e 4 do artigo 25º e 40.º do Regulamento da Procuradoria Europeia.

2.1.1. O magistrado do Ministério Público em causa envia a sua posição ao seu superior hierárquico que, após pronúncia, a transmite ao Procurador Europeu Delegado competente, com conhecimento ao ponto de contacto respetivo.

2. The regional DIAP and the DCIAP are designated as the competent departments for:

a) Receive requests for consultation and consent referred to, respectively, in paragraphs b) and c) of article 8 of Law 112/2019, of 10 September.

b) Receive the case when the European Public Prosecutor's Office, after consultation, forwards it to the national Public Prosecutor's Office, in accordance with paragraph 3 of article 25 of the European Public Prosecutor's Office Regulation.

c) Receive consultation requests referred to in article 40 of the European Public Prosecutor's Office Regulation, regarding the application of simplified criminal procedures.

2.1. In cases where the infraction was communicated to the European Public Prosecutor's Office in accordance with article 4 of the same Law, the aforementioned requests for consultation and consent must, where applicable, be sent by the respective contact point to the competent Public Prosecutor's Office to issue a statement, under the terms and for the purposes of paragraphs 2, 3 and 4 of articles 25 and 40 of the European Public Prosecutor's Office Regulation.

2.1.1. The Public Prosecutor in question sends his position to his hierarchical superior who, after pronouncing, transmits it to the competent European Delegated Prosecutor, with knowledge of the respective contact point.

2.1.2. O Diretor do DCIAP define a tramitação interna dos pedidos de consulta e consentimento relativos às situações da competência daquele departamento.

2.2. Compete aos DIAP regionais, e ao DCIAP quando estejam em causa situações que se insiram no âmbito da sua competência material, emitir pronúncia sobre os pedidos de consulta e consentimento relativos a casos que não tenham tido origem em comunicação do Ministério Público nacional à Procuradoria Europeia.

2.2.1. Nos DIAP regionais e no DCIAP são definidos os procedimentos internos relativos à emissão de pronúncia sobre tais casos.

2.3. Se a Procuradoria Europeia proceder ao reenvio do caso, o ponto de contacto dos DIAP regionais transmite-o ao Ministério Público competente, sendo no DCIAP seguidos os procedimentos internos definidos no departamento.

IV. Consulta prévia ao exercício do direito de avocação pela Procuradoria Europeia (artigo 27.º do Regulamento da Procuradoria Europeia), reenvio e transferência de processos para o Ministério Público nacional (artigo 34.º do Regulamento da Procuradoria Europeia)

1. Os DIAP regionais, e o DCIAP nos casos da sua competência material, são os departamentos competentes para:

2.1.2. The DCIAP Director defines the internal processing of requests for consultation and consent relating to situations within the competence of that department.

2.2. It is the responsibility of the regional DIAP, and the DCIAP when situations that fall within the scope of their material competence are involved, to issue a ruling on requests for consultation and consent relating to cases that did not originate in a communication from the national Public Prosecutor's Office to the European Public Prosecutor's Office.

2.2.1. In the regional DIAP and DCIAP, internal procedures for issuing a ruling on such cases are defined.

2.3. If the European Public Prosecutor's Office forwards the case, the regional DIAP contact point transmits it to the competent Public Prosecutor's Office, with the internal procedures defined in the department being followed at the DCIAP.

IV. Consultation prior to the exercise of the right of recall by the European Public Prosecutor's Office (Article 27 of the European Public Prosecutor's Office Regulation) , referral and transfer of cases to the national Public Prosecutor's Office (Article 34 of the European Public Prosecutor's Office Regulation)

1. Regional DIAPs, and the DCIAP in cases within its material competence, are the departments responsible for:



Receber os pedidos de consulta da Procuradoria Europeia para efeitos de decisão sobre o exercício, ou não, do seu direito de avocação e, se disso for caso, os transmitir ao Ministério Público competente para efeitos de pronúncia, o qual, mediante prévia concordância do seu imediato superior hierárquico, comunica a sua posição ao Procurador Europeu Delegado competente, dela dando conhecimento ao ponto de contacto respetivo.

Receber as comunicações da Procuradoria Europeia sobre a sua decisão de exercer o direito de avocação nos termos do artigo 27.º do Regulamento da Procuradoria Europeia e, se disso for caso, as transmitir ao Ministério Público competente para efeitos de conhecimento de que foi, ou não, exercido o direito de avocação.

Receber da Procuradoria Europeia e transmitir, via hierárquica, ao Ministério Público competente, as decisões de reenvio a que se reporta o artigo 34.º do Regulamento da Procuradoria Europeia, o qual, mediante prévia concordância do seu imediato superior hierárquico, transmite a sua posição ao Procurador Europeu Delegado competente, dela dando conhecimento ao ponto de contacto respetivo.

#### V. Decisões de arquivamento

1. A Procuradoria-Geral da República, conforme disposições conjugadas dos artigos 25.º n.º 6, 39.º n.º 3 do Regulamento da Procuradoria Europeia e artigo 7.º da Lei 112/2019, de 10 de setembro, nos

Receive consultation requests from the European Public Prosecutor's Office for the purposes of deciding whether or not to exercise your right to recall and, if applicable, transmit them to the competent Public Prosecutor's Office for the purposes of ruling, which, subject to the prior agreement of your immediate superior, communicates his position to the competent European Delegated Prosecutor, informing the respective contact point.

Receive communications from the European Public Prosecutor's Office regarding its decision to exercise the right of recall in accordance with Article 27 of the European Public Prosecutor's Office Regulation and, where applicable, transmit them to the competent Public Prosecutor's Office for the purpose of knowing that it was, or no, exercised the right of recall.

Receive from the European Public Prosecutor's Office and transmit, hierarchically, to the competent Public Prosecutor's Office, the referral decisions referred to in article 34 of the European Public Prosecutor's Office Regulation, which, subject to the prior agreement of its immediate superior, transmits its position to the competent European Delegated Prosecutor, informing the respective contact point.

#### V. Archiving decisions

1. The Public Prosecutor's Office, in accordance with the combined provisions of articles 25.º no. 6, 39.º no. 3 of the European Public Prosecutor's Office Regulation and article 7.º of Law 112/2019, of 10

casos a que se reporta o artigo 39.º, n.º 3 daquele Regulamento, é a autoridade nacional competente para:

A consulta a efetuar pela Procuradoria Europeia para efeitos de arquivamento do processo.

O recebimento da notificação da decisão de arquivamento relativa àqueles casos.

1.1. Recebido o pedido de consulta, a Procuradoria-Geral da República remete-o, via hierárquica e com conhecimento ao ponto de contacto respetivo, ao Ministério Público competente, a fim de que se pronuncie sobre a adequação do arquivamento proposto ou a exigência de reenvio do processo para investigação nacional.

1.2. A pronúncia é remetida, via hierárquica, diretamente à Procuradoria Europeia, com conhecimento à Procuradoria-Geral da República e ao respetivo ponto de contacto.

1.3. Em caso de decisão de arquivamento, recebida a respetiva notificação, a Procuradoria-Geral da República dela dá conhecimento ao Ministério Público competente e ao ponto de contacto respetivo.

2. As demais comunicações de decisões de arquivamento que a Procuradoria Europeia efetue são recebidas:

Pelos DIAP regionais, que, fora dos casos que tenham tido origem em comunicação de infrações da sua competência, pelos mesmos efetuada ao abrigo do artigo 4.º da Lei 112/2019, ou em que tenham emitido pronúncia ou consentimento nos termos do consignados no ponto III. 2.2,

September, in the cases referred to in article 39, paragraph 3 of that Regulation, it is the national authority competent to:

Consultation to be carried out by the European Public Prosecutor's Office for the purpose of archiving the case.

Receipt of notification of the archiving decision relating to those cases.

1.1. Once the request for consultation has been received, the Attorney General's Office forwards it, hierarchically and with knowledge to the respective point of contact, to the competent Public Prosecutor's Office, in order for it to issue a ruling on the suitability of the proposed archiving or the requirement to resend the process for national investigation.

1.2. The report is sent, hierarchically, directly to the European Public Prosecutor's Office, with knowledge to the Public Prosecutor's Office and the respective contact point.

1.3. In the event of a decision to archive, upon receipt of the respective notification, the Attorney General's Office informs the competent Public Prosecutor's Office and the respective contact point.

2. Other communications of archiving decisions made by the European Public Prosecutor's Office are received:

By the regional DIAP, which, outside of cases that have originated from the communication of infractions within their competence, carried out by them under article 4 of Law 112/2019, or in which they have issued a pronouncement or consent in accordance with the terms set out in

as transmitem, via hierárquica, ao Ministério Público competente.

Pelo DCIAP, quando estejam em causa casos da sua competência material, bem como casos que tenham tido origem em comunicação pelo mesmo efetuada ao abrigo do artigo 4.º da Lei 112/2019, ou em que tenha emitido pronúncia ou consentimento nos termos do consignados no ponto III. 2.2.

#### VI. Comunicações ao DCIAP

Todos os casos transmitidos à Procuradoria Europeia e por esta transmitidos ao Ministério Público nacional são comunicados ao DCIAP, atentas as competências de coordenação previstas no artigo 58.º, n.ºs 1 e 5 do Estatuto do Ministério Público.

#### VII. Acesso dos Procuradores Europeus Delegados aos meios de investigação e informação

Aos Procuradores Europeus Delgados é facultado acesso aos meios de investigação, informações e bases de dados a que o Ministério Público nacional pode aceder, conforme resulta do Regulamento da Procuradoria Europeia e da Lei 112/2019, de 10 de setembro (v.g. artigos 43.º e 10.º e 11.º, respetivamente).

#### VIII. Coordenadas de contacto dos Procuradores Europeus Delegados

São os seguintes os endereços de contacto dos Procuradores Europeus Delegados de cada uma das respetivas unidades orgânicas:

point III. 2.2, transmit them, hierarchically, to the competent Public Prosecutor's Office.

By the DCIAP, when cases within its material competence are at stake, as well as cases that originated in a communication made by it under article 4 of Law 112/2019, or in which it issued a pronouncement or consent under the terms set out in point III. 2.2.

#### VI. Communications to the DCIAP

All cases transmitted to the European Public Prosecutor's Office and transmitted by it to the national Public Prosecutor's Office are communicated to the DCIAP, taking into account the coordination powers provided for in article 58, paragraphs 1 and 5 of the Statute of the Public Prosecutor's Office.

#### VII. Delegated European Prosecutors' access to means of investigation and information

Delegated European Prosecutors are provided with access to means of investigation, information and databases that the national Public Prosecutor's Office can access, as per the European Public Prosecutor's Office Regulation and Law 112/2019, of September 10th (eg articles 43 and 10 and 11, respectively).

#### VIII. Contact details for Delegated European Prosecutors

The contact addresses for Delegated European Prosecutors of each of the respective organic units are as follows:

PE - Lisbon Processes Section:  
eppo.lx@pe.mpublico.org.pt

PE - Secção de Processos de Lisboa:  
eppo.lx@pe.mpublico.org.pt

PE - Secção de Processos do Porto:  
eppo.prt@pe.mpublico.org.pt

IX. Norma transitória comunicações até à designação dos pontos de contacto

Até que sejam designados os pontos de contacto nacionais e divulgada a lista a que se refere a presente Instrução, as comunicações a que haja lugar são remetidas para os e-mails dos DIAP Regionais e do DCIAP abaixo indicados e dirigidas aos respetivos Diretores, com a menção, em assunto, de que se trata de comunicação à/da Procuradoria Europeia:

DCIAP: [correio.dciap@pgr.pt](mailto:correio.dciap@pgr.pt)

DIAP Regional de Lisboa: [lisboa.diapregional@tribunais.org.pt](mailto:lisboa.diapregional@tribunais.org.pt)

DIAP Regional do Porto: [porto.diapregional@tribunais.org.pt](mailto:porto.diapregional@tribunais.org.pt)

DIAP Regional de Coimbra: [coimbra.diapregional@tribunais.org.pt](mailto:coimbra.diapregional@tribunais.org.pt)

DIAP Regional de Évora: [evora.diapregional@tribunais.org.pt](mailto:evora.diapregional@tribunais.org.pt)

Publique-se no SIMP (atualidades/destaques e módulo Documentos hierárquicos-subespécie Instruções) e no Portal do Ministério Público (módulo documentos hierárquicos).

Comunique-se aos Senhores Procuradores-Gerais Regionais, ao Senhor Diretor do DCIAP, aos Senhores Diretores dos DIAP regionais e aos Senhores Magistrados do Ministério Público Coordenadores de Comarca.

PE - Processes Section from Porto:  
eppo.prt@pe.mpublico.org.pt

IX. Transitional standard communications until the designation of contact points

Until the national contact points are designated and the list referred to in this Instruction is published, any communications that may occur are sent to the e-mails of the Regional DIAP and DCIAP indicated below and addressed to the respective Directors, with the mention, in the subject, that it is a communication to/from the European Public Prosecutor's Office:

DCIAP: [mail.dciap@pgr.pt](mailto:mail.dciap@pgr.pt)

Lisbon Regional DIAP: [lisboa.diapregional@tribunais.org.pt](mailto:lisboa.diapregional@tribunais.org.pt)

Porto Regional DIAP: [porto.diapregional@tribunais.org.pt](mailto:porto.diapregional@tribunais.org.pt)

Coimbra Regional DIAP: [coimbra.diapregional@tribunais.org.pt](mailto:coimbra.diapregional@tribunais.org.pt)

Évora Regional DIAP: [evora.diapregional@tribunais.org.pt](mailto:evora.diapregional@tribunais.org.pt)

Publish in SIMP (news/highlights and Hierarchical documents-subspecies Instructions module) and on the Public Prosecutor's Office Portal (hierarchical documents module).

Communicate to the Regional Attorneys General, the Director of the DCIAP, the Directors of the regional DIAP and the District Coordinating Magistrates of the Public Ministry.

<p>Comunique-se, ainda:</p> <ul style="list-style-type: none"> <li>- à Senhora Ministra da Justiça;</li> <li>- à Senhora Procuradora-Geral Europeia;</li> <li>- ao Senhor Procurador Europeu nacional;</li> <li>- ao Membro Nacional da Eurojust;</li> <li>- ao Senhor Diretor Nacional da Polícia Judiciária;</li> <li>- à Senhora Diretora-Geral da Autoridade Tributária e Aduaneira.</li> </ul> <p>Anexo: Formulário de comunicação de infração para a Procuradoria Europeia</p> <p>Lisboa, 2 de junho de 2021. A Procuradora-Geral da República Lucília Gago</p>	<p>Please also communicate:</p> <ul style="list-style-type: none"> <li>- to the Minister of Justice;</li> <li>- to the European Attorney General;</li> <li>- to the national European Prosecutor;</li> <li>- to the National Member of Eurojust;</li> <li>- to the National Director of the Judiciary Police;</li> <li>- to the Director General of the Tax and Customs Authority.</li> </ul> <p>Annex: Infringement communication form for the European Public Prosecutor's Office</p> <p>Lisbon, June 2, 2021. The Public Prosecutor of the Republic Lucília Gago</p>
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*Sources:* Official Gazette, EPPO Notification pursuant to Art. 117 EPPO Regulation 2021–2022.



## B. EPPO-Regulation

### I. Introduction: EPPO's investigations into fraud against the financial interests of the European Union. The scenario in Portugal

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#### 1. Preliminary remarks

Portugal was one of the 16 Member States that initiated the enhanced cooperation procedure resulting in the approval of Regulation (EU) 2017/1939 of 12 October 2017 (hereinafter ‘EPPO Regulation’)<sup>34</sup>. The idea of installing an EU body with the power to adopt decisions *vis-à-vis* the individuals in the field of criminal law could be seen as a Copernican revolution in the history of EU law<sup>35</sup>. Nevertheless, it was received with some enthusiasm from the part of the policy makers in Portugal, contrasting with the traditional reluctance of States to give up their sovereignty in the sensitive area of criminal law<sup>36</sup>.

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The political commitment for the setting up of the EPPO was accompanied by a broad academic interest on the topic, materialised in the form of collective books, monographs and scientific articles – some of them written *even before* the Commission submitted its Proposal on 17 July 2013. However, Academia has expressed a more cautious attitude than political decision-makers, displaying a stance somewhere between ‘optimism and resistance’ regarding the desirability of creating an independent EU agency with the authority to investigate and prosecute fraud and other crimes against the financial interests of the EU<sup>37</sup>.

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The discussion reached out to legal practitioners, and notably to public prosecutors, who were mainly concerned about the status of European Delegated Prosecutor (EDP) and its integration into the organisation of the Portuguese Public Prosecution Service<sup>38</sup>. In fact, EDPs must be “active members of the public prosecution service or judiciary” (Art.

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<sup>34</sup> As well as Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Finland, France, Greece, Lithuania, Luxembourg, Romania, Slovakia, Slovenia and Spain. These Member States were joined during the legislative process by Latvia, Estonia, Austria and Italy. Already after the adoption of the Regulation, the Netherlands and Malta informed the Commission of their intention to participate.

<sup>35</sup> Giuffrida 2017, p 1.

<sup>36</sup> On 28 October 2013, 14 national parliaments triggered a ‘yellow card’ – for the second time ever – against the European Commission’s proposal for a Council Regulation on the establishment of the European Public Prosecutor’s Office (COM (2013) 534). Five Member States whose national parliaments had issued a reasoned opinion have changed their mind and, four years later, decided to participate in the enhanced cooperation on EPPO. Portuguese *Assembleia da República* concluded the parliamentary scrutiny by not raising any subsidiary issues on EPPO.

<sup>37</sup> This attitude explains the title of the monograph by Rodrigues, *Um Ministério Público Europeu: algures entre o optimismo e a resistência? Da protecção dos interesses financeiros comunitários às possibilidades de desenho de um novo órgão*, Livraria Almedina, 2012. On the subject, see also, *inter alia*, Santos 2016; Santos/Ferreira Monte/Conde Monteiro 2017; Ligeti/Antunes/Giuffrida 2020; Freitas 2021, pp 191–216.

<sup>38</sup> Albuquerque 2015, pp 9–118; Alcaide 2019, pp 79–129.

17(2) EPPO Regulation) and may simultaneously exercise functions as national prosecutors and EPPO members (Art. 13(3) EPPO Regulation). This peculiar status is usually referred to as ‘double hat’<sup>39</sup>, meaning that when exercising functions as national prosecutors EDPs are submitted to the internal rules governing their statute, whereas when wearing the ‘EU hat’ they act under the direction of the Central Office, following the instructions of the Permanent Chamber and the supervising European Prosecutor (SEP) (Art. 13(1) EPPO Regulation). In the view of the Portuguese Prosecutors General’s Office, the duties to which EDPs are bound while wearing the ‘EU hat’ would be incompatible with those provided for in their national statute, namely that of obedience to the directives and instructions of immediate superiors and of the Prosecutor General<sup>40</sup>.

- 4 Notwithstanding this position, the national legislator’s option in Law 112/2019 of 10 September (which adapts the EPPO Regulation to the Portuguese legal order) was to make it clear that EDPs “are magistrates of the Public Prosecution Service, as defined in the respective Statute” (Art. 18(1) Law 112/2019), with the proviso that they are not subject to disciplinary control by the Superior Council of the Public Prosecution Service “for facts committed during the exercise of functions in EPPO and related to them” (Art. 17(2) Law 112/2019). To avoid the confusion of roles to which the ‘double hat’ could lead, the Portuguese legislator expresses a preference for the exercise on an exclusive basis of the functions and competences provided for in the EPPO Regulation (Art. 18(3) Law 112/2019). The liaison between the central level of the EPPO (European Chief Prosecutor, College, Permanent Chambers and European Prosecutors) and the national authorities is ensured by the *contact points* defined in Instruction No 1 of the Portuguese Prosecutor General’s Office<sup>41</sup>.

## 2. The structuring of criminal investigation in Portugal – a synoptic roadmap

- 5 In contrast to the proposals of the *Model Rules* study<sup>42</sup>, the Regulation does not promote a unification of the procedural rules applicable to EPPO’s action. The option is in line with the European legislator’s intention to integrate this EU body into domestic judicial systems while achieving the best of both worlds – to avoid excessive fragmentation of the investigation by different national prosecution services *and* to ensure the least possible interference with the legal orders of the Member States (as implied by the principle of subsidiarity). Thus, investigative activities under EPPO rely heavily on national procedural law<sup>43</sup>.

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<sup>39</sup> Giuffrida 2017, p 12.

<sup>40</sup> See the reasoned opinion on Draft Law 192/XIII/4, available at <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheIniciativa.aspx?BID=43588>. Accessed 23 January 2024.

<sup>41</sup> Available at <https://www.ministeriopublico.pt/iframe/instrucoes-0>. Accessed 23 January 2024.

<sup>42</sup> Study on the EU Model Rules for the Procedure of the EPPO (dir. K. Ligeti), 2010–2013, available at <https://orbilu.uni.lu/bitstream/10993/42085/1/Model%20Rules%20and%20explanatory%20notes%20EN.pdf>. Accessed 23 January 2024.

<sup>43</sup> Caeiro, Rodrigues 2020, p 59.



In Portugal, the Public Prosecution Service is a judiciary body with external independence and a hierarchical internal structure. The Constitution assigns to this body the right to prosecute, i.e., the power to decide whether to bring the facts and the perpetrator to trial (Art. 219(1) CRP) – which means that public prosecutors must be responsible for directing the investigations leading to such a decision and, consequently, they must have the power to support the charges brought at trial. It is therefore a public prosecutor – not a judge, as it happens in France – who directs the normal phase of investigations, known as the ‘enquiry’ (*inquérito*).

6

The public prosecutor controls the investigation phase and defines the overall strategy, but does not carry out all the acts into which this strategy is developed: he/she acts with the assistance of the criminal police bodies (*órgãos de polícia criminal*) intervening under his/her functional dependence (Art. 263 CPP). In the field of economic and financial crimes – those covered by EPPO’s jurisdiction –, the Public Prosecution Service is assisted by the Judiciary Police (PJ), which has reserved (exclusive) competence for the investigation of offences of criminal association, money laundering, corruption, embezzlement and fraud in obtaining or misappropriating subsidies and other related offences (Art. 7(2) Law 49/2008, of 27 August). If tax offences are specifically concerned – such as VAT fraud –, the investigative functions are assigned to the Tax Authority (AT), which even enjoys greater investigative autonomy than ordinary police forces by virtue of the presumed delegation of powers referred to in Articles 40(2) and 41 RGIT. In addition to the Police and the AT, special mention should be made in this regard of the Financial Intelligence Unit (FIU) and to the Anti-Fraud Coordination Service (AFCOS). In Portugal, FIU is included in the organic structure of PJ and is responsible for collecting, processing and disseminating information on suspicious transactions concerning money laundering, terrorist financing and tax crimes at national level; it is also responsible for cooperation with similar structures at international level<sup>44</sup>. In turn, AFCOS’s specific tasks are carried out by the General Inspectorate of Finance<sup>45</sup>, which is responsible for collecting information on irregularities and suspected fraud against EU funds and communicating them to the European Anti-Fraud Office (OLAF) and to national prosecution authorities (if a criminal conduct is detected).

7

EPPO’s status, when investigating offences against the EU’s financial interests on Portuguese territory, is equivalent to that of the Public Prosecutor’s Office (Art. 3(1) Law 112/2019). Moreover, EDPs acting on behalf of the EPPO enjoy exactly the same powers and prerogatives as those granted to prosecutors at domestic level (Art. 18(1) Law

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<sup>44</sup> FIU’s competences are described in Article 27 of Decree-Law 137/2019, of 13 September, and Article 82 of Law 83/2017 of 18 August (sets out measures to combat money laundering and terrorist financing, partially transposing Directives 2015/849/EU of the European Parliament and of the Council of 20 May 2015 and 2016/2258/EU of the Council of 6 December 2016).

<sup>45</sup> By designation of the Minister of State and Finance, by Order No 07/14/MEF of 10 January 2014.

112/2019), and may carry out personally or with the assistance of the police any investigative measure available under Portuguese law in similar national cases (Art. 5 Law 112/2019). The same applies to the SEP in the event of an investigation being referred to it (Art. 3(2) Law 112/2019). Those investigative measures include, of course, the ones expressly listed in Article 30(1) of EPPO Regulation, which were already provided for in Portuguese law – some in the Code of Criminal Procedure (CPP), others in separate legislation such as Cybercrime Law (Law 109/2009, of 15 September), Infiltrated Actions Regime (Law 101/2001, of 25 August) and Law 5/2002, of 11 January (on measures to combat organised and economic-financial crime). It should be noted, however, that there is some doctrinal and jurisprudential controversy about the possibility of tracking and tracing an object by technical means (cf. Art. 30(1)(f) EPPO Regulation) when it comes to tracking a car by means of a GPS locator<sup>46</sup>.

- 9 The investigative measures available to the EPPO, including those listed in Article 30 of the Regulation, are subject to the verification of specific conditions laid down in national law. In some cases, the intervention of a judge is required: the ‘judge of freedoms’ or, in the terminology of the law, the ‘criminal instruction judge’ (*juiz de instrução criminal*).<sup>47</sup> For example, public prosecutors may order *searches* of premises, land or cars (Art. 174(3) CPP), but *house searches* are, as a rule, subject to judicial authorisation and, in principle, may only be carried out during the day (cf. Art. 34 CRP and Art. 177 CPP). More problematic is the determination of the competent authority to authorise or order the *freezing of instrumentalities and proceeds of crime*: on the one hand, the public prosecutors are given the authority, during the investigation, to order the seizure (*apreensão*) of instrumentalities and proceeds of crime (Art. 178(1)(3) CPP); on the other hand, the judge has the exclusive power to rule on the freezing (*arresto preventivo*) of assets necessary to ensure compliance with the decision to confiscate (by value) those instrumentalities and proceeds, including extended confiscation (Arts. 227(1)(a) and 228 CPP; Art. 10(3) Law 5/2002). Part of the doctrine considers that the attribution to the Public Prosecutor’s Office of the competence to order a seizure instrumental to the forfeiture of proceeds is unconstitutional, but this opinion has not been accepted by the Constitutional Court (see Judgment No 387/2019)<sup>48</sup>.

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<sup>46</sup> Rodrigues Nunes 2007, pp 97–122.

<sup>47</sup> The Code of Criminal Procedure expressly reserves to the criminal instruction judge the practice or authorisation of certain coercive or investigative measures (Arts. 268 and 269 CPP), but the leading academic doctrine considers that the statutory catalogue is not exhaustive and that all acts of investigation that interfere in a relevant way with fundamental rights fall within the competence of a judge (see, *inter alia*, Figueiredo Dias, Brandão 2020, pp 1155–1177). This interpretation has been welcomed by the Constitutional Court (see Judgement no. 121/2021).

<sup>48</sup> In this regard, see Andrade/Antunes 2017, pp 360–370.

### 3. The effect of EPPO operational activities in Portugal – a first look at the statistics

Until September 2023, Portugal had only four active EDPs – there are currently six –, two of whom are dedicated on an exclusive basis to the investigation of VAT fraud. Despite the lack of human resources, after one year-and-a-half of operations, the action of the European Public Prosecutor’s Office (EPPO) in Portugal has resulted in 26 active investigations<sup>49</sup>. 10

The European Chief Prosecutor Laura Kövesi finds EPPO’s operational numbers encouraging because they show a gradual improvement of the level of detection of EU fraud<sup>50</sup>. As regards Portugal, EPPO’s Annual Report 2022 indicates that 23 of the 26 active investigations were opened during the first full year calendar of operations, for overall estimated damages of €2.9 billion – the highest of all EPPO participating States in 2022. In terms of asset freezing, Portugal ‘ranked’ third in 2022 with €65.3 million (out of €359.1 total), only surpassed by Germany (€114.8 million) and Italy (€88.9 million). 11

Portugal is in fact the epicentre of *Operation Admiral*, EPPO’s most important investigation to date, and probably “the biggest VAT carousel fraud ever investigated in the EU”<sup>51</sup>. Its total negative impact is thought to approach an approximate €2.2 billion. Beyond the extent of the damage, this Missing Trade Intra-Community (MTIC) fraud stands out for the extraordinary complexity of its international ramifications and the involvement of several highly skilled organised crime groups. 12

Everything started in April 2021, when the Portuguese Tax Authority in Coimbra was looking into a company selling mobile phones, tablets and other electronic devices, on suspicion of VAT fraud. From a national perspective, the invoicing and tax declarations seemed to be in order, but the Portuguese authorities reported the case to the EPPO as soon as it was installed in June 2021. Using the information available in national and European databases, European Prosecutors, EDPs, EPPO’s financial fraud analysts and representatives from Europol and national law enforcement authorities managed to establish “connections between the suspected company in Portugal and close to 9000 other legal entities, and more than 600 natural persons located in different countries” – not only UE Member States, but also third countries as the United Kingdom, Albania, Switzerland, Turkey, China, Mauritius, Serbia, Singapore, the United Arab Emirates, and the United States. Eighteen months after receiving the initial report, the EPPO exposed the 13

<sup>49</sup> EPPO’s Annual Report 2022 is available at [https://www.eppo.europa.eu/sites/default/files/2023-02/EPPO\\_2022\\_Annual\\_Report\\_EN\\_WEB.pdf](https://www.eppo.europa.eu/sites/default/files/2023-02/EPPO_2022_Annual_Report_EN_WEB.pdf). Accessed 23 January 2024

<sup>50</sup> EPPO’s Annual Report 2022, p 4.

<sup>51</sup> See the official press release available at <https://www.eppo.europa.eu/en/news/operation-admiral-eppo-uncovers-organised-crime-groups-responsible-vat-fraud-estimated-eu22> (Accessed 29 January 2024), from where the relevant information and the sentences in commas along the text were taken.

criminal scheme and, in cooperation with law enforcement agencies of 14 EU Member States, carried out simultaneous investigative measures, including more than 200 searches (almost 100 in Portugal) and 14 arrests (exclusively in Portugal).

- 14 As the European Chief Prosecutor put it, only an ‘helicopter view’ like EPPO’s made it possible to see the ‘whole picture’ and identify criminal links that had remained hidden until that point. “Without the EPPO, this kind of operation would have taken years to prepare – or more likely, would never have taken place”. *Operation Admiral* is – she states – “a clear demonstration of the advantages of a transnational prosecution office”.

#### 4. Final outlook: can EPPO be the cornerstone of effective transnational criminal investigations?

- 15 The performance indicators summarised in the preceding lines give some grounds for optimism as regards the EPPO’s role in protecting the European Union’s financial interests: it appears that the investigations led by this ‘over-complicated contraption’<sup>52</sup> are more effective than those carried out using the traditional mutual assistance modalities and cross-border cooperation methods.
- 16 However, EPPO’s excessive deference to national systems can be a serious obstacle to its effectiveness. Since there is no supranational system of substantive criminal law, the boundaries of the material competence of EPPO are set by national laws that implement the ‘PIF Directive’<sup>53</sup> and the Framework Decision 2008/841/JHA<sup>54</sup> (Art. 22 EPPO Regulation). Poor or entirely lacking transposition of those EU instruments may therefore hinder the effective action of the EPPO.
- 17 The problem is that in Portugal – where the biggest VAT carousel fraud ever in the EU is being investigated and will most likely be prosecuted and brought to trial (Art. 36(3) EPPO Regulation) – the PIF Directive has not yet been transposed. Portugal declared that national legislation already complies with the ‘minimum rules’ set in the PIF Directive<sup>55</sup>, but the Commission’s Second Report to the Parliament and the Council states that letters of formal notice have been sent to 17 Member States, including Portugal<sup>56</sup>. Even though Portuguese criminal law covers all the offences provided for in the PIF Directive, some changes are needed to ensure the minimum level of harmonisation required. For example, it would be advisable to expressly include EU funds in the concept of ‘subsidy’ underlying offences of fraud in obtaining or misappropriating subsidies

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<sup>52</sup> Caeiro and Rodrigues 2020, p 83.

<sup>53</sup> 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.

<sup>54</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime.

<sup>55</sup> See <https://eur-lex.europa.eu/legal-content/PT/NIM/?uri=celex:32017L1371>. Accessed 23 January 2024

<sup>56</sup> Available at <https://data.consilium.europa.eu/doc/document/ST-12540-2022-INIT/en/pdf> (p 4, n 19, mentions the December infringements package where Portugal is included). At domestic level, this non-compliance is reported in the Report prepared by the EU Financial Resources Fraud Risk Think Tank ([https://thinktank-fundosue.ministeriopublico.pt/sites/default/files/2023-06/comentarios\\_tt\\_14\\_06\\_2023.pdf](https://thinktank-fundosue.ministeriopublico.pt/sites/default/files/2023-06/comentarios_tt_14_06_2023.pdf)). Accessed 23 January 2024

(Arts. 21, 36 and 37 Law 28/84, of 20 January), as well as to separate EU financial interests in the incrimination of tax fraud (especially in the case of cross-border VAT)<sup>57</sup>.

Since none of the 26 EPPO's actions in Portugal has yet reached the trial stage, it is impossible to fully assess the (potential) negative effect of the mentioned regulatory shortcomings. One can only hope that these and other similar handicaps do not turn the EPPO into a 'paper tiger' and investigations like *Operation Admiral* in 'a mountain that gives birth to a mouse'.

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<sup>57</sup> See Damião da Cunha 2020a, p 22; Damião da Cunha 2020b, pp 11–13.

## II. The Start of Criminal investigations according to the EPPO Regulation based on national law (measures)

*Hauck, Laird, Schneider, Karakocaoğlu*

- 19 The *Répubblica Portuguesa* has welcomed the EPPO within its justice system in 2019 already. In the meantime, the EPPO is installed quite well in Portugal, but the investigations numbers are still low if it comes to bringing them to prosecution.<sup>58</sup>
- 20 The *Ministério Público* has even before the EPPO started operations promoted the detection of fraud with European funds.<sup>59</sup> The **Central Department of Criminal Investigation and Action/DCIAP** re-founded by Law No. 68/2019, of 27 August establishing bylaws for the Portuguese Prosecution office has been competent to deal with EU frauds prior to the establishment of the EPPO and it is still a useful organ to consult for help in the investigations.
- 21
- |   |
|---|
| <p>1. The DCIAP is an organ for coordinating and directing the investigation and prevention of violent, economic-financial, highly organized, or particularly complex crime.</p> <p>2. The DCIAP is headed by a deputy attorney general, and other deputy attorneys general and public prosecutors also exercise functions there.</p> |
|---|
- 22 According to Article 8, which describes the Administration of criminal justice it is up to the Judicial courts, as primarily competent bodies to decide criminal cases to apply criminal penalties and security measures. In comparison to that it is nowadays up to the Portuguese EDPs and the EP to investigate those criminal cases and bring them to court (Art. 34 et seq. EPPO Regulation).<sup>60</sup> The Portuguese EPPO Adoption Law has made a few changes (see below → III: Sources of law).
- 23 One should be aware that the **General Inspection of Finances** has a very important role in detecting EU frauds in Portugal. It is the Anti-fraud coordination service by virtue of 12a OLAF Regulation as well.<sup>61</sup>

<sup>58</sup> See EPPO Annual Report 2021, Chapter on Portugal. For recent developments see Lusa 2020, PSD quer ‘novo’ ministério da Economia e grupo para gerir fundos comunitários [PSD wants ‘new’ Ministry of Economy and group to manage EU funds]. ECO. 5 October 2020. online: <https://eco.sapo.pt/2020/10/05/psd-quer-novo-ministerio-da-economia-e-grupo-para-gerir-fundos-comunitarios/>. Accessed 23 January 2024. See also Lusa 2022, Procuradoria Europeia investiga nove casos de fraude em Portugal com danos de 160 milhões [European Public Prosecutor’s Office investigates nine fraud cases in Portugal with damages of 160 million]. ECO Advocatus. 24 March 2022. online: <https://eco.sapo.pt/2022/03/24/procuradoria-europeia-investiga-nove-casos-de-fraude-em-portugal-com-danos-de-160-milhoes/>. Accessed 23 January 2024.

<sup>59</sup> See Nota Para A Comunicação Social, Fraudes com Fundos Europeus – Grupo de Reflexão (Think Tank): [https://www.ministeriopublico.pt/sites/default/files/documentos/pdf/nota\\_para\\_a\\_comunicacao\\_social-think\\_tank.pdf](https://www.ministeriopublico.pt/sites/default/files/documentos/pdf/nota_para_a_comunicacao_social-think_tank.pdf). Accessed 23 January 2024.

<sup>60</sup> For the first time in office these are: José Eduardo Guerra Procurador-Geral Adjunto e Procurador Europeu, José Ranito, Procurador Europeu Delegado, Rui Correia Marques Procurador Europeu Delegado, Sandra Alcaide Procuradora Europeia Delegada, Sofia Lopes Cardoso Procuradora Europeia Delegada.

<sup>61</sup> See <https://www.igf.gov.pt/paginas-institucional/autoridadeauditoria.aspx>. Accessed 23 January 2024

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- The EDPs, which have their seats in Lisbon and Porto will only be competent if e.g. an OLAF investigation or investigation conducted by a national prosecutor or administrative body, which is conducted by administrative means evolves to a criminal suspicion. 24
- The various ways of transferring information to the EPPO are displayed below (Art. 26 EPPO Regulation in combination with Art. 24–25 EPPO Regulation). The action *proprio motu* by the Portuguese EDPs is analysed in the part on 26 EPPO Regulation. 25
- The **evocation** from Portuguese national bodies is described in → Art. 27. 26
- The conduct and cooperation with national special police forces is analysed in → Art. 28 (special organized crime, fraud detection police bodies, customs, and tax authorities, etc.). 27
- Finally → Art. 29–33 EPPO Regulation deal with the rules that apply during an investigation and the thresholds that Portuguese EDPs need to accomplish for intrusive measures to properly investigate potential frauds to the detriment of the EU. 28

[...]

**SECTION 1**  
**Rules on investigations**

**1. Article 26 Initiation of investigations and allocation of competences within the EPPO**

<ul style="list-style-type: none"> <li>a) Introduction and short overview..... 89</li> <li>b) Powers of the Portuguese EDPs and Role of the Portuguese Prosecutor..... 89                             <ul style="list-style-type: none"> <li>aa. The CPC (Código De Processo Penal) ..... 89</li> <li>bb. The different Investigation phases ..... 91                                     <ul style="list-style-type: none"> <li>(1) Flagrancy investigation (Artigo 254.º – Finalidades, Artigo 255.º – Detenção em flagrante delito, Artigo 256.º – Flagrante delito) .. 91</li> <li>(2) Normal investigation (Do inquérito, Art. 262 et seq. CPC)..... 92</li> <li>(3) Instruction (instrução, Art. 286 et seq. CPC)..... 93</li> </ul> </li> </ul> </li> <li>c) The assessment cycle (verification) for opening of an investigation due to indications of a criminal PIF offence ..... 93                             <ul style="list-style-type: none"> <li>aa. Transfer of information to determine competence..... 93</li> <li>bb. EPPO Crime Report, Verifications (Art. 24 para 6) and relevant sources of the indications for a criminal offence falling within the competence of the EPPO..... 94</li> </ul> </li> <li>d) Competence and reasonable grounds for a criminal offence</li> </ul>	<ul style="list-style-type: none"> <li>falling within the competence of the EPPO ..... 95                             <ul style="list-style-type: none"> <li>aa. Determination of the competence and verification of Crime Reports..... 95                                     <ul style="list-style-type: none"> <li>(1) The Union standards: Art. 22–25 EPPO Regulation ..... 95   <ul style="list-style-type: none"> <li>(a) How to assess and verify the suspicion level according to Art. 26 para 1 and the CPC for a criminal offence falling within the competence of the EPPO ..... 97</li> <li>(b) The PIF offences in Portugal, Art. 22 EPPO Regulation &amp; PIF Directive ..... 98   <ul style="list-style-type: none"> <li>(aa) Criminal Code offences (crimes do código penal) ..... 100</li> <li>(bb) Tax-related offences..... 103</li> </ul> </li> <li>(c) Methods of investigation ..... 108   <ul style="list-style-type: none"> <li>(aa) Impetus of fraud knowledge patterns 108</li> <li>(bb) Special national databases for PIF offences/Digital investigations, Art. 40</li> </ul> </li> </ul> </li> </ul> </li> </ul> </li> </ul>
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para 3 IRP 2020.003 .....	109	(ee) Corruption offences.....	119
(d) Examples and precedents in national case-law .....	110	(ff) Money laundering with PIF money .....	119
(aa) Peculiarities differentiated by PIF offences (Typologies of EU frauds).....	110	(2) Jurisdiction of the European Delegated Prosecutor in Portugal...	120
(bb) Fraud.....	110	bb. Competence of the EPPO, Art. 26 para 4 EPPO Reg..	120
(cc) Revenue frauds .....	112	e) Actions if “Decision to open/not open a case” (Regulation + Rules in IRP, 2020.003 EPPO).....	121
(dd) Expenditure frauds.....	116	f) Justiciability and appeals (Defence perspective).....	123

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.

29 Table 3: Overview Box: Art. 26 EPPO Regulation (PIF offences etc.) Portugal

<b>Overview Wording of the EPPO Regulation</b>	
<b>Relevant national law</b>	Sources: <i>Código Penal</i> , Portuguese Criminal Code; <i>DL n.º 78/87, de 17 de Fevereiro Código De Processo Penal/Criminal Procedure Code of Portugal</i> last amended with <i>Lei n.º 13/2022, de 01/08; Lei n.º 15/2001, de 05 de Junho Regime Geral Das Infracções Tributárias/ General Regime Of Tax Infractions; Decreto Lei N.º 28/84, De 20 De Janeiro Infracções Anti-económicas e contra a Saúde Pública/ Decree Law N.º 28/84, of 20 January Anti-Economic Offences and Against Public Strength</i>
<b>“An offence within the competence of the EPPO”</b>	For the text of the offences that are mentioned by Art. 26 EPPO Regulation “an offence within...” see below → The PIF offences in Portugal.
<b>Sanctions for legal persons</b>	Chapter VI, –90m Criminal Code apply.
<b>“[Competence of] an EDP in [Portugal]”</b>	See → EPPO Adoption Law.
<b>“Jurisdiction”</b>	Cf. ss. from the Portuguese Criminal Code and cf. Art. 11 of the PIF Directive The CPC contains the following Articles: Section II Territorial jurisdiction

	<p>Article 19 (General rules)</p> <p>Article 20 (Crime committed on board ship or aircraft)</p> <p>Article 21 (Crime of dubious or unknown location)</p> <p>Article 22 (Crime committed abroad)</p> <p>And see Articles 2–7 Portuguese Criminal Code for the material competence.</p>
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*Source:* The authors.

### **a) Introduction and short overview**

The EPPO was integrated into the Portuguese criminal justice system with special provisions of an Adoption Law. Portugal has as well analysed the compatibility of its Criminal Code with the transposition requisites of the material base of the EPPO actions, the Directive 2017/1371/EU. **30**

### **b) Powers of the Portuguese EDPs and Role of the Portuguese Prosecutor**

The Portuguese EDPs powers are determined by the EPPO Adoption Law and the national Criminal Procedure Law. Art. 18 of the Adoption Law indicates that the workplace is either Lisbon or Porto.<sup>62</sup> The main level playing field is thus the CPC. **31**

#### **aa. The CPC (*Código De Processo Penal*)**

The structure of the CPC, which integrates Parts, Books, Titles, Chapters, Sections, and the articles is the following: **32**

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<sup>62</sup> **Article 18 Status, mandate, and place of work of European National Delegated Prosecutors**

1 - European Delegated Prosecutors are public prosecutors, as defined in the respective statute.

2 - The European Delegated Prosecutors represent the European Public Prosecutor's Office in all national instances in which criminal proceedings are under way for crimes over which the European Prosecutor's Office exercises its competence.

3 - European Delegated Prosecutors exercise, preferably on an exclusive basis, the functions and powers defined by the Regulation of the European Prosecutor's Office.

4 - The mandate of the European Delegated Prosecutor lasts for five years and can be renewed.

5 - European Delegated Prosecutors have their place of work in Lisbon and Porto.

See as well <https://www.ministeriopublico.pt/pagina/procuradores-europeus-delegados>.

*Table 4: Structure of the Portuguese Criminal Procedure Code with a focus on the Book of the Preliminary Phase I*

The most relevant parts are highlighted.

<b>BOOK I</b> The subjects of the process of the judge and the court
Title II The Public Prosecutor's Office and criminal police bodies
Title III The defendant and his defender
Title IV Victim
Title V and Title VI (Art. 71–84)
<b>Part II Civil Parties Of procedural documents of proof</b>
Title I General provisions
Title II Evidence
Title III The means of obtaining the evidence
<b>BOOK IV The measures of coercion and asset guarantee</b>
<b>BOOK V Relations with foreign authorities and international judicial entities</b>
<b>BOOK VI of the (Art. 241–310)</b> Title II Of the Investigation, General provisions II of the acts of inquiry, The closure of the investigation
Title III Of General provisions of acts of instruction III Of the instructional debate
<i>Closing the instruction</i> <b>Title VII of the Judgment of the special proceedings of Resources of Executions of Responsibility for Costs</b>

- 33 The most important Part for the EDPs in relation to the start of investigations on behalf of the EPPO is Part II of the CPC, which contains Book VI, which deals with the pre-trial phase.

- 34 **Book VI Preliminary stages**  
**General provisions**  
**Notification of the crime**  
**Article 241 CPC**<sup>63</sup> The Public Prosecutor's Office acquires news of the crime through its own knowledge, through the organs of criminal police or through denunciation, under the terms of the following articles.

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<sup>63</sup> PARTE II  
LIVRO VI  
Das fases preliminares  
TÍTULO I  
Disposições gerais  
CAPÍTULO I  
Da notícia do crime  
**Artigo 241.º Código De Processo Penal**

*Nota bene:* [In national cases Art. 242 “Compulsory accusation/ *Denúncia obrigatória*” et seq. CPC would apply. In EPPO cases the information/transfer of information arrives at the EDPs quarters via the Central Office in Luxembourg or via the different channels of information that exist in the national area, see below i.e. customs and tax offices.] In some cases, these national reports may contain “EU cases which needs to be assessed and verified as well as notified to the EPPO, so that in can decide by virtue of Art. 27 EPPO Regulation whether to evocate the case.

Title II

The investigation

General provisions

[...]

## bb. The different Investigation phases

Portuguese EDPs can open different investigation phases. Following investigation phases can be distinguished:

35

I. Flagrancy investigation (*Artigo 254.º – Finalidades, Artigo 255.º – Detenção em flagrante delito, Artigo 256.º – Flagrante delito*) = summary proceedings

II. Normal investigation (*Do inquérito, Art. 262 et seq. CPC*) = common proceedings

III. (*instrução, Art. 286 et seq. CPC*)

### (1) Flagrancy investigation (*Artigo 254.º – Finalidades, Artigo 255.º – Detenção em flagrante delito, Artigo 256.º – Flagrante delito*)

In case of an in flagrante investigation the summary proceedings apply. The situations are described by Art. 255 CPC.

36

### Arrest in flagrante delicto situation

**Art. 255 CPC**<sup>64</sup> 1 - In case of flagrant crime, for a crime punishable by imprisonment:

37

#### Aquisição da notícia do crime

O Ministério Público adquire notícia do crime por conhecimento próprio, por intermédio dos órgãos de polícia criminal ou mediante denúncia, nos termos dos artigos seguintes.

<sup>64</sup> **Artigo 255.º Código De Processo Penal**

#### Detenção em flagrante delicto

1 - Em caso de flagrante delicto, por crime punível com pena de prisão:

a) Qualquer autoridade judiciária ou entidade policial procede à detenção;

b) Qualquer pessoa pode proceder à detenção, se uma das entidades referidas na alínea anterior não estiver presente nem puder ser chamada em tempo útil.

2 - No caso previsto na alínea b) do número anterior, a pessoa que tiver procedido à detenção entrega imediatamente o detido a uma das entidades referidas na alínea a), a qual redige auto sumário da entrega e procede de acordo com o estabelecido no artigo 259.º

- (a) Any judicial authority or police entity makes the arrest;
- (b) Any person may make the arrest if one of the entities referred to in the preceding subparagraph is not present and cannot be called in a timely manner.
- 2 - In the case provided for in point (b) of the preceding paragraph, the person who has made the arrest immediately delivers the detainee to one of the entities referred to in point (a), which writes a summary of the delivery and proceeds in accordance with Article 259.
- 3 - In the case of a crime the procedure of which depends on a complaint, the detention shall be maintained only when, in an act followed by it, the holder of the respective right exercises it. In this case, the judicial authority or the police authority shall raise or have the case heard.
- 4 - In the case of a crime whose procedure depends on a particular charge, there is no place in the arrest of the offender, but only the identification of the offender.

**(2) Normal investigation (*Do inquérito*, Art. 262 et seq. CPC)**

- 38 The main provisions that describe the initiation of an investigation are those in Art. 262 et seq. CPC.<sup>65</sup> This investigation depends on the kind of proceedings conducted. Summary, common, and abbreviated proceedings need to be distinguished. The normal investigation must only be conducted in common proceedings and not in summary proceedings.

- 39 **Article 262 CPC<sup>66</sup> Purpose and scope of the enquiry** 1 - The enquiry comprises the set of measures aimed at investigating the existence of a crime, determining its agents and their responsibility and discovering and collecting evidence in order to decide on the indictment.
- 2 - Subject to the exceptions provided for in this Code, the news of a crime shall always give rise to the opening of an enquiry

3 - Tratando-se de crime cujo procedimento dependa de queixa, a detenção só se mantém quando, em acto a ela seguido, o titular do direito respectivo o exercer. Neste caso, a autoridade judiciária ou a entidade policial levantam ou mandam levantar auto em que a queixa fique registada.

4 - Tratando-se de crime cujo procedimento dependa de acusação particular, não há lugar a detenção em flagrante delito, mas apenas à identificação do infractor.

<sup>65</sup> Caeiro/Costa Joao 2012, pp 542 et seq.

<sup>66</sup> *Título II Do inquérito*

*Capítulo I Disposições gerais*

**Artigo 262.º Código De Processo Penal**

**Finalidade e âmbito do inquérito**

1 - O inquérito compreende o conjunto de diligências que visam investigar a existência de um crime, determinar os seus agentes e a responsabilidade deles e descobrir e recolher as provas, em ordem à decisão sobre a acusação.

2 - Ressalvadas as excepções previstas neste Código, a notícia de um crime dá sempre lugar à abertura de inquérito.

**Art. 263 CPC<sup>67</sup> Management and Monitoring of the investigation** 1 - The Public Prosecutor's Office, assisted by the criminal police bodies, shall direct the investigation.  
2 - For the purposes of the provisions in the previous paragraph, the police criminal justice bodies shall act under the direct guidance of the Public Prosecutor's Office and in its functional dependence.

**(3) Instruction (*instrução*, Art. 286 et seq. CPC)**

The instruction phase is determined to bring a case to judgment and is therefore not the first stage of an investigation but the next level in the criminal procedure.

40

**Title III, Chapter I provisions**

**Article 286 CPC<sup>68</sup> Purpose and scope of the enquiry**

1 - The purpose of the fact-finding is to judicially substantiate the decision to indict or to close the investigation in order to submit or not the case to trial.

2 - Preliminary enquiries are optional.

3 - In special forms of proceedings, there is no place for an investigation.

41

**c) The assessment cycle (verification) for opening of an investigation due to indications of a criminal PIF offence**

**aa. Transfer of information to determine competence**

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

42

Thus, supranational law determines the transfer of information that may constitute a PIF offence according to Portuguese PIF law, i.e. the harmonised PIF Directive Implementation legal area. This process can be visualized as follows:

43

<sup>67</sup> **Artigo 263.º Código De Processo Penal**

**Direcção do inquérito**

1 - A direcção do inquérito cabe ao Ministério Público, assistido pelos órgãos de polícia criminal.

2 - Para efeito do disposto no número anterior, os órgãos de polícia criminal actuam sob a directa orientação do Ministério Público e na sua dependência funcional.

<sup>68</sup> **Título III Da instrução**

**Capítulo I Disposições gerais**

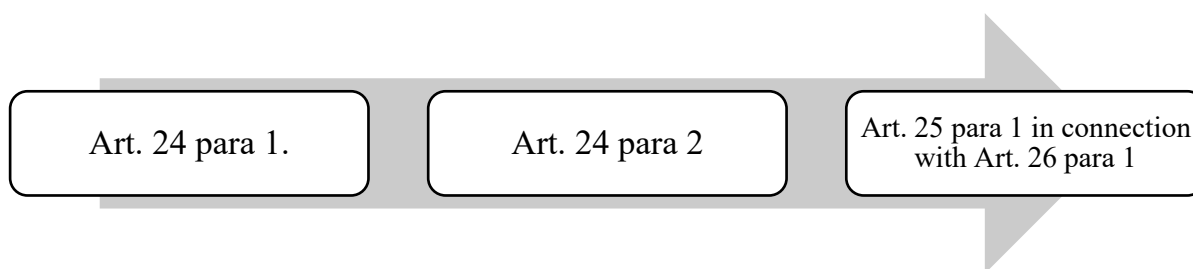
**Artigo 286.º Código De Processo Penal**

**Finalidade e âmbito da instrução**

1 - A instrução visa a comprovação judicial da decisão de deduzir acusação ou de arquivar o inquérito em ordem a submeter ou não a causa a julgamento.

2 - A instrução tem carácter facultativo.

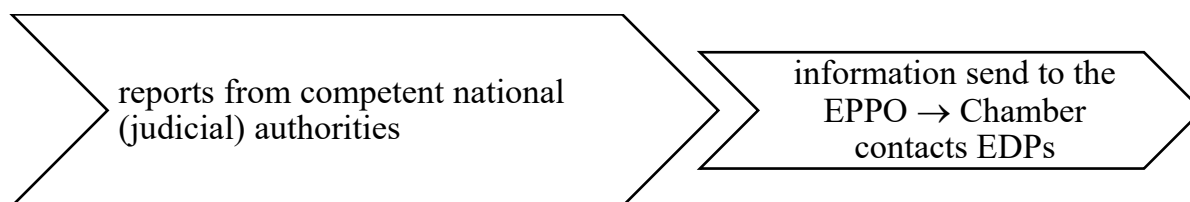
3 - Não há lugar a instrução nas formas de processo especiais.



**bb. EPPO Crime Report, Verifications (Art. 24 para 6) and relevant sources of the indications for a criminal offence falling within the competence of the EPPO**

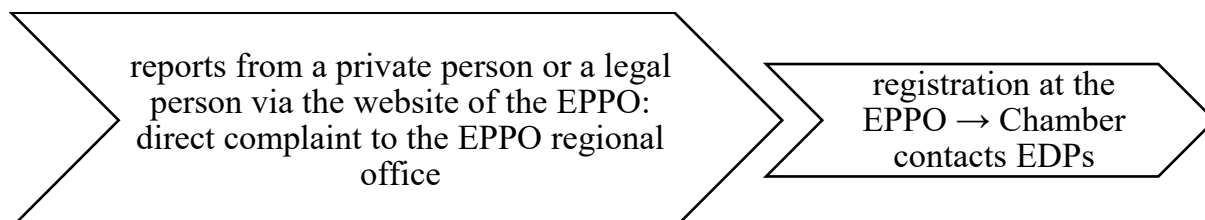
44 A distinction can be made between the direct and the indirect path for the transfer of information related to the competence:

*Figure 1: National (indirect way of) Obtaining information for the EPPO competence and the exercise of jurisdiction*



Art. 24 para 8<sup>69</sup>: see above A. III. and the Portuguese notification to the EPPO.

*Figure 2: Supranational (direct way of) Obtaining information for the EPPO competence and the exercise of jurisdiction*



45 Report from a private person may although be directed to the Portuguese AFCOS.

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

<sup>69</sup> Art. 24 para 1: “Compete ao Ministério Público comunicar a aquisição da notícia do crime à Procuradoria Europeia.”/It is up to the Public Prosecutor to communicate the acquisition of news of the crime to the European Public Prosecutor’s Office; Art. 24 para 8: “A autoridade nacional competente é o Ministério Público.”/ “The competent national authority is the Public Ministry.”




OLAF will either way report conduct that falls in the EPPO's competence by virtue of → Art. 12c OLAF Reg. 47

#### d) Competence and reasonable grounds for a criminal offence falling within the competence of the EPPO

##### aa. Determination of the competence and verification of Crime Reports

The first task of the EDPs in a Portuguese regional office is to determine whether the EPPO has competence and jurisdiction or can obtain competence and exercise jurisdiction (see below, Art. 27 → p. 124). 48

These are formal but essential questions. They are determined by means of Union secondary legislation and special delegated guidelines required by secondary legislation, the so-called **Internal Rules on Procedure [of the EPPO]**. This depends on the criteria of the Regulation (see → Art. 22, 23). 49

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

#### (1) The Union standards: Art. 22–25 EPPO Regulation

For the EPPO to be competent, the requirements of the Regulation must be met. 50

Either an examination according to Art. 24 para 6 must show that the EPPO is competent or the delegated prosecutor carries out an examination and assessment by virtue of Art. 26 para 1 EPPO Regulation himself/herself without informing the Permanent Chamber and initiates an investigation about which he/she subsequently informs the Permanent Chamber. 51

The IRP rules state the following: 52

#### **Article 40: Verification of information [Internal Rules of Procedure, 2020-12-2020.003 IRP – EPPO]**

1. The verification for the purpose of initiating an investigation shall assess whether:
  - a) the reported conduct constitutes a criminal offence falling under the material, territorial, personal and temporal competence of the EPPO;
  - b) *there are reasonable grounds under the applicable national law* to believe that an offence is being or has been committed;
  - c) there are obvious legal grounds that bar prosecution;
  - d) where applicable, the conditions prescribed by Article 25(2), (3) and (4) of the Regulation are met.
2. The verification for the purpose of evocation shall additionally assess:

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

- 53 The requirements of Art. 25 para. 2 and 3 must be observed but he/she can still initiate an investigation “without prejudice to the rules set out in Article 25(2) and (3)”.
- 54 The provisions, jurisdiction (e.g. territory), the thresholds i.e. “euro-declarations” of the Regulation and orders of the Luxembourg Chamber must exist for the exercise of competence.

#### **Article 22 Material competence of the EPPO**

- PIF Implementation (see below → p. 98).
- National databases and information according to Art. 40 para 3 IRP

## Article 23 Territorial and personal competences of the EPPO

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

## Section 2 Exercise of the competence of the EPPO

### Article 24 Communication, registration and verification of information

- The transfer of information to the relevant EDPs or the chamber of the EPPO is mainly regulated by Art. 24 EPPO Regulation. This provision has been made public to all authorities in Portugal by virtue of the EPPO Adoption Act, which indicates how the transfer of information should take place in order to comply with the supranational law. The transfer of information that could establish an initial suspicion for a PIF offence depends on the suspected concrete offence.
- The **transfer of information** is explained within the Notification of the Portugal Government from 2021 by virtue of Art. 117 EPPO Regulation.<sup>70</sup>

#### (a) How to assess and verify the suspicion level according to Art. 26 para 1 and the CPC for a criminal offence falling within the competence of the EPPO

The initial suspicion arrives at the regional office via the transfer of information (see above → “assessment cycle and verification”). If it arrives at the office, it is important to determine its quality. If other authorities, like the tax or customs authorities or even OLAF have pre-prepared evidence, this evidence must be assessed whether it stipulates the obligation to investigate further for the determination of the criminal quality of the conduct. If the verification of the suspicion proves positive in the end, it is the impetus, so to speak, the ball that gets the criminal proceedings rolling.

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<sup>70</sup> From the point-of-view of Brodowski/Herrnfeld, in Herrnfeld/Esser 2022, Art. 117 EPPO is only an indication for PIF implementation laws and has no legal validity character.

- 56 The Portuguese Criminal Procedure Code establishes rules on pre-trial criminal proceedings, which describe the aim of this phase:

**Article 267 CPC<sup>71</sup> Acts of the Public Prosecutor's Office** The Public Prosecutor shall carry out the acts and shall ensure the means of proof necessary to carry out the purposes referred to in Article 262(1), in accordance with and with the restrictions contained in the following articles.

**(b) The PIF offences in Portugal, Art. 22 EPPO Regulation & PIF Directive**

- 57 The material competence is determined by the offences, which the Portuguese Parliament implemented and tried to harmonise according to the transposition requisites of the PIF Directive 2017/1371/EU as well as the relevant description of Art. 22 EPPO Regulation.

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<sup>71</sup> Capítulo II Dos actos de inquérito

**Artigo 267.º Código De Processo Penal**

**Actos do Ministério Público**

O Ministério Público pratica os actos e assegura os meios de prova necessários à realização das finalidades referidas no n.º 1 do artigo 262.º, nos termos e com as restrições constantes dos artigos seguintes.



CC fraud offences + AML offences	CC corruption	Tax and Customs related offences (stipulated by the CC)
<ul style="list-style-type: none"> <li>• Art. 217</li> <li>• Art. 256 CC</li> <li>• Art. 257 CC</li> <li>• Art. 368a (AML) CC</li> <li>• see below.</li> <li>• Art. 317</li> <li>• Art. 306</li> <li>• Art. 24 et seq. CC</li> </ul>	<ul style="list-style-type: none"> <li>• Art. 374 CC</li> <li>• Art. 375 CC</li> <li>• see below.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Art. 87-91</b> Lei n.º 15/2001 [<i>Regime Geral Das Infracções Tributárias</i>] (<i>Crimes tributários</i>)</li> <li>• Art. 87 Tax fraud (<i>Burla tributária</i>)</li> <li>• Art. 88 Credit frustration</li> <li>• Art. 89 Criminal association</li> <li>• Art. 90. Qualified disobedience</li> <li>• Art. 91. Violation of secrecy</li> <li>• <b>Chapter III Tax Crimes</b> (<i>Crimes fiscais</i>)</li> <li>• Article 103 Fraud</li> <li>• Article 104 Qualified Fraud</li> <li>• <b>Chapter II Customs Crimes</b></li> <li>• Article 92. Smuggling (<i>Contrabando</i>)</li> <li>• Article 93 Circulation smuggling</li> <li>• Article 94. Smuggling of restricted circulation goods on vessels</li> <li>• Article 95 Fraud in the transport of goods under suspensive regime</li> <li>• Article 96. Fraudulent introduction into consumption</li> <li>• Article 97 Qualification</li> <li>• Article 97-A Smuggling of goods liable to inflict the death penalty or torture</li> <li>• Article 98. Violation of customs guarantees</li> <li>• Article 99. Breach of marks and seals</li> <li>• Article 100.º Receipt of goods subject to a customs crime</li> </ul>

! Be aware that the EU Commission has several times asked Portugal to directly refer to the damage of the financial interests of the Union within these laws. Therefore the transposition was considered not sufficient. See SWD(2023) 273 final, p. 70–71, Brussels, 27.7.2023.



**(aa) Criminal Code offences (*crimes do código penal*)**

59 The PIF offences within the Criminal Code can be viewed as follows:

**Article 256<sup>72</sup> Falsification or forgery of a document**

1. Whoever, with intent to cause damage to another person or to the State, to obtain for himself or another person illegitimate benefit, or to prepare, facilitate, execute, or cover up another crime

a) Fabricating or elaborating a false document, or any of the components intended to embody it;

b) Falsifying or altering a document or any of its components;

c) using another person's signature to falsify or counterfeit a document;

d) Falsely state in a document or any of its components a legally relevant fact:

(e) 1: the document referred to in the preceding subparagraphs; or

f) By any means, provides or holds a document that has been falsified or counterfeited; shall be punished with a prison sentence of up to three years or with a fine.

2. Attempt shall be punishable.

3. If the facts referred to in paragraph 1 refer to an authentic document or, with the same the same force, a certified will, a postal order, a bill of exchange, a cheque or

If the facts referred to in paragraph 1 concern a certified will, a money order, a bill of exchange, a cheque or any other commercial document 4. If the acts referred to in paragraphs 1 and 2 are committed with equal force, the agent shall be punished with imprisonment from six months to six (6) days, or with a fine from 61 to 6 (R) days.

4. If the acts referred to in paragraphs 1 and 3 are committed by an official, in the exercise of his functions, the agent shall be punished by imprisonment of between one and five years.

<sup>72</sup> **Artigo 256.º Código Penal**

**Falsificação ou contrafação de documento**

1 - Quem, com intenção ele causar prejuízo a outra pessoa ou ao Estado, de obter para si ou para outra pessoa benefício ilegítimo, ou de preparar, facilitar, executar ou encobrir outro crime:

a) Fabricar ou elaborar documento falso, ou qualquer dos componentes destinados a corporizá-lo;

b) Falsificar ou alterar documento ou qualquer dos componentes que o integram;

c) .Ibusar da assinatura ele outra pessoa para falsificar ou contrafazer documento;

d) Fizer constar falsamente de documento ou de qualquer dos seus componentes facto juridicamente relevante:

e) 1: sar documento a que se referem as alíneas -anteriores; ou

f) Por qualquer meio, facultar ou detiver documento falsificado ou contrafeito; é punido com pena de prisão até três anos ou com pena de multa.

2 A tentativa é punível.

3 - Se os factos referidos no 1 disserem respeito a documento autêntico Ou COM

igual força, a testamento cerrado, a vale do correio, a letra de cambio, a cheque ou a

outro documento comercial transmissível por endosso, ou a qualquer outro título de crédito não compreendido no artigo 267.º, o agente e punido com pena de prisão de seis meses a CitlCO ' , MOS ou com pena de multa de 61) a 6(R) dias.

4 Se os factos referidos nos n."s 1 e 3 forem praticados por funcionário, no exercício das suas funções, o agente é punido com pena de prisão de um a cinco anos.

**Article 257<sup>73</sup> Forgery by an official**

An official who, in the performance of his duties

- a) Omits in a document, to which the law attributes public faith, a fact that such document is intended to certify or authenticate; or
- b) Intercalating an act or document in a protocol, registry or official book, without complying with the legal formalities;
- c) With the intention of causing damage to another person or to the State, or of obtaining an illegitimate benefit for oneself or another person, shall be punished by imprisonment for a term of between one and five years.

**Article 368a<sup>74</sup> Money Laundering** 1. For the purposes of the provisions of the following numbers, assets are deemed to be advantages resulting from the commission, in any

**<sup>73</sup> Artigo 257.º Código Penal****Falsificação praticada por funcionário**

O funcionário que, no exercício das suas funções:

- a) Omitir em documento, a que a lei atribui fé pública, facto que esse documento se destina a certificar ou autenticar; ou
- b) Intercalar ato ou documento em protocolo, registo ou livro oficial, sem cumprir as formalidades legais;
- c) Com intenção de causar prejuízo a outra pessoa ou ao Estado, ou de obter para si ou para outra pessoa benefício ilegítimo, é punido com pena de prisão de 1 a 5 anos.

**<sup>74</sup> Artigo 368.º-A Código Penal****Branqueamento**

1 - Para efeitos do disposto nos números seguintes, consideram-se vantagens os bens provenientes da prática, sob qualquer forma de comparticipação, de factos ilícitos típicos puníveis com pena de prisão de duração mínima superior a seis meses ou de duração máxima superior a cinco anos ou, independentemente das penas aplicáveis, de factos ilícitos típicos de:

- a) Lenocínio, abuso sexual de crianças ou de menores dependentes, ou pornografia de menores;
- b) Burla informática e nas comunicações, extorsão, abuso de cartão de garantia ou de crédito, contrafação de moeda ou de títulos equiparados, depreciação do valor de moeda metálica ou de títulos equiparados, passagem de moeda falsa de concerto com o falsificador ou de títulos equiparados, passagem de moeda falsa ou de títulos equiparados, ou aquisição de moeda falsa para ser posta em circulação ou de títulos equiparados;
- c) Falsidade informática, dano relativo a programas ou outros dados informáticos, sabotagem informática, acesso ilegítimo, interceção ilegítima ou reprodução ilegítima de programa protegido;
- d) Associação criminosa;
- e) Terrorismo;
- f) Tráfico de estupefacientes e substâncias psicotrópicas;
- g) Tráfico de armas;
- h) Tráfico de pessoas, auxílio à imigração ilegal ou tráfico de órgãos ou tecidos humanos;
- i) Danos contra a natureza, poluição, atividades perigosas para o ambiente, ou perigo relativo a animais ou vegetais;
- j) Fraude fiscal ou fraude contra a segurança social;
- k) Tráfico de influência, recebimento indevido de vantagem, corrupção, peculato, participação económica em negócio, administração danosa em unidade económica do setor público, fraude na obtenção ou desvio de subsídio, subvenção ou crédito, ou corrupção com prejuízo do comércio internacional ou no setor privado;
- l) Abuso de informação privilegiada ou manipulação de mercado;
- m) Violação do exclusivo da patente, do modelo de utilidade ou da topografia de produtos semicondutores, violação dos direitos exclusivos relativos a desenhos ou modelos, contrafação, imitação e uso ilegal de marca, venda ou ocultação de produtos ou fraude sobre mercadorias.

2 - Consideram-se igualmente vantagens os bens obtidos através dos bens referidos no número anterior.

3 - Quem converter, transferir, auxiliar ou facilitar alguma operação de conversão ou transferência de vantagens, obtidas por si ou por terceiro, direta ou indiretamente, com o fim de dissimular a sua origem ilícita, ou de evitar

form of participation, of typical illegal acts punishable by a prison sentence of a minimum of more than six months or a maximum of more than five years or, irrespective of the applicable penalties, of typical illegal acts of:

- (a) pimping, sexual abuse of children or dependent minors, or child pornography;
- b) Computer and communications fraud, extortion, misuse of a guarantee or credit card, counterfeiting currency or similar securities, depreciation in value of currency or similar securities, passing counterfeit currency in concert with the counterfeiter or similar securities, passing counterfeit currency or similar securities or acquiring counterfeit currency to be put into circulation or similar securities;
- c) Computer forgery, damage to programs or other computer data, computer sabotage, illegitimate access, illegitimate interception or illegitimate reproduction of a protected program
- d) Criminal association;
- e) Terrorism;
- f) Trafficking in narcotic drugs and psychotropic substances;
- g) Trafficking in arms;
- h) Trafficking in persons, aiding illegal immigration or trafficking in human organs or tissue;
- i) Damage to nature, pollution, activities dangerous to the environment, or danger to animals or plants;
- j) Tax fraud or fraud against social security;
- k) Trading in influence, undue receipt of advantage, corruption, embezzlement, economic participation in a business, harmful administration in a public sector economic unit, fraud in obtaining or diverting a subsidy, grant or credit, or corruption with prejudice to international trade or the private sector;
- l) Insider trading or market manipulation;
- m) Violation of patent exclusivity, of the utility model or of the topography of semiconductor products, violation of exclusive rights regarding designs or models, counterfeiting, imitation and illegal use of a mark, sale or concealment of products or fraud on goods.

2 - Goods obtained through the goods referred to in the previous point shall also be considered as advantages.

3 - Whoever converts, transfers, aids or facilitates any conversion or transfer operation of advantages, obtained by himself or a third party, directly or indirectly, with the purpose of disguising their illicit origin or of preventing the author or participant of such

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que o autor ou participante dessas infrações seja criminalmente perseguido ou submetido a uma reação criminal, é punido com pena de prisão até 12 anos.

4 - Na mesma pena incorre quem ocultar ou dissimular a verdadeira natureza, origem, localização, disposição, movimentação ou titularidade das vantagens, ou os direitos a ela relativos.



offences from being criminally prosecuted or subjected to a criminal reaction, is punished with a prison sentence of up to 12 years.

4 - The same penalty shall be incurred by whoever conceals or disguises the true nature, origin, location, disposition, movement or ownership of advantages, or the rights thereto.

#### **Article 373<sup>75</sup> Passive corruption**

1 - An official who, by him/herself or through an intermediary, with his/her consent or ratification, requests or accepts, for him/herself or for a third party, a patrimonial or non-pecuniary advantage, or the promise thereof, for the practice of any act or omission contrary to the duties of the office, even if prior to that request or acceptance, shall be punished with a prison sentence of between one and eight years.

2. If the act or omission is not contrary to the duties of the office and the advantage is not due to the agent, the agent shall be punished by imprisonment of between one and five years.

#### **Article 374<sup>76</sup> Active Corruption**

1 - Whoever, by him/herself or through an intermediary, with his/her consent or ratification, gives or promises to an official, or to a third party by indication or with his/her knowledge, a patrimonial or non-pecuniary advantage for the purpose set out in Article 373, no. 1, is punished with a prison sentence of between one and five years.

2 - If the purpose is that set out in Article 373.2, the agent will be punished with a prison sentence of up to three years or with a fine of up to 360 days.

3 - Attempt is punishable.

### **(bb) Tax-related offences**

Tax-related offences may be found in the provisions of the Tax Infractions Act.

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#### <sup>75</sup> **Artigo 373.º Código Penal**

##### **Corrupção passiva**

1 - O funcionário que por si, ou por interposta pessoa, com o seu consentimento ou ratificação, solicitar ou aceitar, para si ou para terceiro, vantagem patrimonial ou não patrimonial, ou a sua promessa, para a prática de um qualquer ato ou omissão contrários aos deveres do cargo, ainda que anteriores àquela solicitação ou aceitação, é punido com pena de prisão de um a oito anos.

2 - Se o ato ou omissão não forem contrários aos deveres do cargo e a vantagem não lhe for devida, o agente é punido com pena de prisão de um a cinco anos.

#### <sup>76</sup> **Artigo 374. Código Penal**

##### **Corrupção Activa**

1 - Quem, por si ou através de um intermediário, com o seu consentimento ou ratificação, der ou prometer a um funcionário, ou a um terceiro por indicação ou com o seu conhecimento, uma vantagem patrimonial ou não-pecuniária para o fim estabelecido no artigo 373, n.º 1, é punido com uma pena de prisão de um a cinco anos.

2 - Se o objectivo for o estabelecido no artigo 373.2, o agente será punido com uma pena de prisão até três anos ou com uma multa de até 360 dias.

3 - Tentativa é punível.

**Tax Infractions Act<sup>77</sup>****Art. 87<sup>78</sup> Tax fraud**

1 - Whoever, by means of false statements, falsification or vitiation of a fiscally relevant document or other fraudulent means, determines the tax administration or the social security administration to make patrimonial allocations that result in the enrichment of the agent or a third party, is punished with a prison sentence of up to three years or a fine of up to 360 days.

2 - If the attribution of property is of a high value, the penalty is imprisonment of between 1 and 5 years for natural persons and a fine of between 240 and 1200 days for legal persons.

3 - If the attribution of property is of a considerably high value, the penalty is imprisonment for two to eight years for natural persons and a fine of 480 to 192() days for legal persons.

4 - False statements, falsification or vitiation of a fiscally relevant document or the use of other fraudulent means for the purposes set out in paragraph 1 are not punishable autonomously, unless they are subject to a more serious penalty.

5. Attempt shall be punishable.

**Art. 92<sup>79</sup> Contraband** 1 - Whoever, by any means

(a) imports or exports or, by any means, introduces or removes goods from the na-

<sup>77</sup> Lei n.º 15/2001, de 05 de Junho Regime Geral as Infracções Tributárias.

<sup>78</sup> **Artigo 87.º Regime Geral Das Infracções Tributárias – Burla tributária**

1 - Quem, por meio de falsas declarações, falsificação ou viciação de documento fiscalmente relevante ou outros meios fraudulentos, determinar a administração tributária ou a administração da segurança social a efetuar atribuições patrimoniais das quais resulte enriquecimento do agente ou de terceiro é punido com prisão até três anos ou multa até 360 dias.

2 - Se a atribuição patrimonial for de valor elevado, a pena é a de prisão de 1 a 5 anos para as pessoas singulares e a de multa de 240 a 1200 dias para as pessoas coletivas.

3 - Se a atribuição patrimonial for de valor consideravelmente elevado, a pena é a de prisão de dois a oito anos para as pessoas singulares e a de multa de 480 a 192() dias para as pessoas coletivas.

4 - As falsas declarações, a falsificação ou viciação de documento fiscalmente relevante ou a utilização de outros meios fraudulentos com o fim previsto no n.º 1 não são puníveis autonomamente, salvo se pena mais grave lhes couber.

5 -A tentativa é punível.

<sup>79</sup> **Artigo 92 Regime Geral Das Infracções Tributárias – Contrabando**

1 - Quem, por qualquer meio:

a) Importar ou exportar ou, por qualquer modo, introduzir ou retirar mercadorias do território nacional sem as apresentar às estâncias aduaneiras ou recintos diretamente fiscalizados pela autoridade aduaneira para cumprimento das formalidades de despacho ou para pagamento da prestação tributária aduaneira legalmente devida;

b) Ocultar ou subtrair quaisquer mercadorias à ação da administração aduaneira no interior das estâncias aduaneiras ou recintos tos diretamente fiscalizados pela administração aduaneira ou sujeitos ao seu controlo;

c) Retirar do território nacional objetos de considerável interesse histórico ou artístico sem as autorizações impostas por lei;

d) Obter, mediante falsas declarações ou qualquer outro meio fraudulento, o despacho aduaneiro de quaisquer mercadorias ou um benefício ou vantagem fiscal;

tional territory without presenting them to customs offices or enclosures directly supervised by the customs authority for the fulfilment of clearance formalities or for payment of the customs tax instalment legally due;

(b) The concealment or subtraction of any goods from the action of the customs administration within customs offices or enclosures directly supervised by the customs administration or subject to its control;

(c) removing from the national territory objects of considerable historical or artistic interest without the authorisations required by law

(d) obtaining, through false declarations or any other fraudulent means, the customs clearance of any goods or a tax benefit or advantage;

e) Omitting, at the entry or exit from the national territory, the declaration of cash, as defined in the community and national legislation, when such amount exceeds (euro) 300,000 and its origin and destination are not immediately justified; shall be punished with a prison sentence of up to three years, or with a fine of up to 360 days, if the value of the missing tax payment is higher than (euro) 15,000 or, if there is no tax payment, the infringing goods have a customs value higher than 50,000, if a more serious penalty is not applicable under any other legal provision, or, even, when lower than these values and with the intention of deceiving them, the associated conducts are carried out in an organised manner or assume an international dimension.

2 - Attempt shall be punishable.

**Article 93<sup>80</sup> Smuggling in circulation** 1 - Whoever, by any means, places or holds goods in circulation, within the national territory, in violation of the customs laws regarding the internal or community circulation of goods, without processing the competent documents or other legally required documents or without applying the legally prescribed seals, marks or other signs, is punished with a prison sentence of up to three

e) Omitir, à entrada ou saída do território nacional, a declaração de dinheiro líquido, tal como definido na legislação comunitária e nacional, quando esse montante seja superior a (euro) 300 000 e não seja, de imediato, justificada a sua origem e destino; é punido com pena de prisão até três anos, ou com pena de multa até 360 dias, se o valor da prestação tributária em falta for superior a (euro) 15 000 ou, não havendo lugar a prestação tributária, a mercadoria objeto da infração for de valor aduaneiro superior a (euro) 50 000, se pena mais grave não lhe couber por força de outra disposição legal, ou ainda, quando inferiores a estes valores e com a intenção de os iludir, as condutas que lhe estão associadas sejam praticadas de forma organizada ou assumam dimensão internacional.

2 - A tentativa é punível.

<sup>80</sup> **Artigo 93.º Contrabando de circulação Lei n.º 15/2001, de 05 de Junho**

**Regime Geral Das Infracções Tributárias**

1 - Quem, por qualquer meio, colocar ou detiver em circulação, no interior do território nacional, mercadorias em violação das leis aduaneiras relativas à circulação interna ou comunitária de mercadorias, sem o processamento das competentes guias ou outros documentos legalmente exigíveis ou sem a aplicação de selos, marcas ou outros sinais legalmente prescritos, é punido com pena de prisão até três anos ou com pena de multa até 360 dias, se o valor da prestação tributária em falta for superior a (euro) 15 000 ou, não havendo lugar a prestação tributária, a mercadoria objeto da infração for de valor aduaneiro superior a (euro) 50 000 ou ainda, quando inferiores a estes valores e com a intenção de os iludir, as condutas que lhe estão associadas sejam praticadas de forma organizada ou assumam dimensão internacional.

2 - A tentativa é punível.

years or with a fine of up to 360 days, if the value of the unpaid tax due is higher than (euro) 15,000 or, in the absence of tax due, the goods object of the infringement have a customs value higher than (euro) 50,000, or even, when lower than these values and with the intention of evading them, the associated conduct is carried out in an organised manner or has an international dimension.

2 - Attempt is punishable.

### **Article 103<sup>81</sup> Fraud**

1 - The illegitimate conduct typified in this article, which aims at the non-assessment, delivery or payment of the tax payment or the undue obtaining of tax benefits, refunds or other patrimonial advantages susceptible of causing a reduction in tax revenue, constitutes tax fraud, punishable with a prison sentence of up to three years or a fine of up to 360 days. Tax fraud may take place by

- a) Concealment or alteration of facts or values that should be included in the accounting or bookkeeping books, or in the declarations submitted or provided in order for the tax administration to specifically supervise, determine, assess or control the taxable income;
- b) Concealment of undeclared facts or values that should be disclosed to the tax administration;
- c) Conclusion of simulated business, whether in terms of value or nature, or by interposition, omission or substitution of persons.

2 - The facts provided for in the preceding paragraphs are not punishable if the illegitimate asset advantage is less than (euro) 15000.

3 - For the purposes of the provisions of the previous paragraphs, the amounts to be considered are those that, under the terms of the applicable legislation, should be included in each tax return to be presented to the tax administration.

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<sup>81</sup> **Artigo 103.º Regime Geral Das Infracções Tributárias**

#### **Fraude**

1 - Constituem fraude fiscal, punível com pena de prisão até três anos ou multa até 360 dias, as condutas ilegítimas tipificadas no presente artigo que visem a não liquidação, entrega ou pagamento da prestação tributária ou a obtenção indevida de benefícios fiscais, reembolsos ou outras vantagens patrimoniais suscetíveis de causarem diminuição das receitas tributárias. A fraude fiscal pode ter lugar por:

- a) Ocultação ou alteração de factos ou valores que devam constar dos livros de contabilidade ou escrituração, ou das declarações apresentadas ou prestadas a fim de que a administração fiscal especificamente fiscalize, determine, avalie ou controle a matéria coletável;
- b) Ocultação de factos ou valores não declarados e que devam ser revelados à administração tributária;
- c) Celebração de negócio simulado, quer quanto ao valor, quer quanto à natureza, quer por interposição, omissão ou substituição de pessoas.

2 - Os factos previstos nos números anteriores não são puníveis se a vantagem patrimonial ilegítima for inferior a (euro) 15000.

3 - Para efeitos do disposto nos números anteriores, os valores a considerar são os que, nos termos da legislação aplicável, devam constar de cada declaração a apresentar à administração tributária.

**Art. 104<sup>82</sup> Qualified Fraud**

1 - The facts set out in the previous article are punishable with one to five years' imprisonment for natural persons and 240 to 1200 days' fine for legal persons when there is an accumulation of more than one of the following circumstances

- a) The agent has colluded with third parties who are subject to accessory obligations for the purposes of tax inspection;
- b) The agent is a public servant and has seriously abused his functions;
- c) The agent has availed himself of the aid of the civil servant with serious abuse of his functions;
- d) The agent falsifies or vitiates, hides, destroys, renders useless or refuses to deliver, exhibit or present books, computer programs or files and any other documents or evidence required by the tax law;
- e) The agent uses the books or any other elements referred to in the previous number knowing that they have been falsified or vitiated by a third party;
- f) The agent has used the interposition of natural or legal persons residing outside Portuguese territory and subject there to a clearly more favourable tax regime;
- g) The perpetrator has colluded with third parties with whom he or she is in a situation of special relations.

2 - The same penalty is applicable when

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<sup>82</sup> **Artigo 104.º Regime Geral Das Infracções Tributárias**  
**Fraude qualificada**

1 - Os factos previstos no artigo anterior são puníveis com prisão de um a cinco anos para as pessoas singulares e multa de 240 a 1200 dias para as pessoas coletivas quando se verificar a acumulação de mais de uma das seguintes circunstâncias:

- a) O agente se tiver conluiado com terceiros que estejam sujeitos a obrigações acessórias para efeitos de fiscalização tributária;
- b) O agente for funcionário público e tiver abusado gravemente das suas funções;
- c) O agente se tiver socorrido do auxílio do funcionário público com grave abuso das suas funções;
- d) O agente falsificar ou viciar, ocultar, destruir, inutilizar ou recusar entregar, exhibir ou apresentar livros, programas ou ficheiros informáticos e quaisquer outros documentos ou elementos probatórios exigidos pela lei tributária;
- e) O agente usar os livros ou quaisquer outros elementos referidos no número anterior sabendo-os falsificados ou viciados por terceiro;
- f) Tiver sido utilizada a interposição de pessoas singulares ou coletivas residentes fora do território português e aí submetidas a um regime fiscal claramente mais favorável;
- g) O agente se tiver conluiado com terceiros com os quais esteja em situação de relações especiais.

2 - A mesma pena é aplicável quando:

- a) A fraude tiver lugar mediante a utilização de faturas ou documentos equivalentes por operações inexistentes ou por valores diferentes ou ainda com a intervenção de pessoas ou entidades diversas das da operação subjacente; ou
- b) A vantagem patrimonial for de valor superior a (euro) 50 000,

3 - Se a vantagem patrimonial for de valor superior a € 200 000, a pena é a de prisão de 2 a 8 anos para as pessoas singulares e a de multa de 480 a 1920 dias para as pessoas coletivas.

4 - Os factos previstos nas alíneas d) e e) do n.º 1 do presente preceito com o fim definido no n.º 1 do artigo 103.º não são puníveis autonomamente, salvo se pena mais grave lhes couber.


- a) The fraud takes place through the use of invoices or equivalent documents for non-existent transactions or for different amounts or with the intervention of people or entities different from those of the underlying transaction; or
- b) The patrimonial advantage is of a value superior to (euro) 50 000,
- 3 - If the asset advantage is worth more than (gold) 200,000, the penalty is imprisonment of between 2 and 8 years for natural persons and a fine of between 480 and 1920 days for legal persons.
- 4 - The facts provided for in paragraphs d) and e) of subsection 1 of this precept with the purpose defined in Article 103(1) are not punishable autonomously, unless a more serious penalty is applicable to them.

**(c) Methods of investigation**

- 61** An investigation begins with the act of gathering facts and documenting the start of an investigation for a formal accusation. The thresholds for an EPPO indictment in front of a national court are governed by Articles 34 et seq. of the EPPO Regulation and Article 40 paragraph 3 of the IRP.

**(aa) Impetus of fraud knowledge patterns**

- 62** Recent studies have analysed and frequently analyse the peculiarities and typologies of (EU-)frauds quite extensively and they are therefore highly important for EDPs and their knowledge about the structures of this crime area (criminological insights):
- 63**
- National level: The Anti-Corruption Report, the reports of the Anti-fraud think-tank, The information by the Prosecution Office, FIU Portugal, Asset Recovery Office.
  - EU-level: PIF Reports, Rule of law Report, “Impact of Organised Crime on the EU’s Financial Interests”<sup>83</sup>

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

- 64** Information that is gathered in this pre-trial phase can possibly be used as evidence at a later stage.<sup>84</sup>

<sup>83</sup> Malan 2021.

<sup>84</sup> See CPC: Title II *Means of evidence*, Chapter I *Witness Evidence*, Article 128. (*Object and limits of testimony*), Article 129 (*Indirect Testimony*), Article 130. (*Public voices and personal convictions*), Article 131. (*Ability and duty to testify*), Article 132. *Rights and Duties of the Witness*, Article 133. (*Impediments*), Article 134. *Refusal to give testimony*, Article 135 *Professional secrecy*, Article 136. (*Secrecy of employees*), Article 137. (*State Secrecy*), Article 138. (*Rules of inquiry*), Article 139. *Immunities, prerogatives and special protection measures*, Chapter II *Statements by the accused, the assistant and the civil parties*, Article 140. (*Declarations by the accused: general rules*), Article 141 (*First judicial interrogation of a detained defendant*), Article 142 (*Competent investigating judge*), Article 143. (*First non-judicial interrogation of a detained defendant*), Article 144. (*Other interrogations*), Article 145.° *Declarations and notifications by the assistant and civil parties.*

**(bb) Special national databases for PIF offences/Digital investigations, Art. 40 para 3 IRP 2020.003**

Apparently, there is no specific database solely for PIF offences in Portugal but EDPs might have conduct to various Union databases and national databases via the competent police bodies. The (judicial) police bodies and the EDPs have at least access to the police information system of the Republic, which is regulated by Art. 10 of the new Police Act from 2019.

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**Art. 10 Police Act<sup>85</sup> Criminal information system**

1 - The PJ has its own criminal information system at national level, aiming at the processing of information, to be regulated in a specific diploma, as well as its dissemination, and ensures its articulation and interoperability with the other legally provided criminal information systems, namely, with the Integrated Criminal Information Platform under the terms and for the purposes of Law no. 73/2009, of 12 August, in its current wording.  
2 - Without prejudice to the provisions of this decree-law and the legal regime for the protection of personal data, the regimes of judicial secrecy and professional secrecy apply to information processed from the PJ's criminal information system.

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**Art. 11 Police Act<sup>86</sup> Right of access to information**

1 - The PJ has direct access to information on civil and criminal identification contained in the files of the civil and criminal identification services and is obliged to collaborate in the analysis of automatic information processing applications of interest to crime pre-

<sup>85</sup> **Artigo 10.º Decreto-Lei n.º 137/2019**

**Sistema de informação criminal**

1 - A PJ dispõe de um sistema de informação criminal próprio de âmbito nacional, visando o tratamento da informação, a regular em diploma próprio, bem como a sua difusão, e assegura a sua articulação e interoperabilidade com os demais sistemas de informação criminal legalmente previstos, nomeadamente, com a Plataforma Integrada de Informação Criminal nos termos e para os efeitos da Lei n.º 73/2009, de 12 de agosto, na sua redação atual.

2 - Sem prejuízo do disposto no presente decreto-lei e no regime legal de proteção de dados pessoais, à informação tratada a partir do sistema de informação criminal da PJ são aplicáveis os regimes do segredo de justiça e do segredo profissional.

<sup>86</sup> **Artigo 11.º Decreto-Lei n.º 137/2019**

**Direito de acesso à informação**

1 - A PJ acede diretamente à informação relativa à identificação civil e criminal constante dos ficheiros dos serviços de identificação civil e criminal e presta obrigatoriamente colaboração na análise de aplicações de tratamento automático da informação com interesse para a prevenção e investigação criminal, quando efetuada pelo Instituto de Gestão Financeira e Equipamentos da Justiça, I. P.

2 - A PJ, no âmbito da sua missão, acede a outras bases de dados nacionais, cujo conteúdo se compreenda diretamente nos limites das suas competências de prevenção e de investigação criminal, nos termos a regular em portaria dos membros do Governo responsáveis pelas respetivas áreas governativas, sem prejuízo do disposto na Lei n.º 73/2009, de 12 de agosto, na sua redação atual.

3 - A PJ acede, ainda, nos termos das normas e procedimentos aplicáveis, a informação de interesse criminal contida nos ficheiros informáticos de outros organismos nacionais e internacionais, através da celebração de protocolos.

vention and investigation, when carried out by the *Instituto de Gestão Financeira e Equipamentos da Justiça*, I. P. (Institute for Financial Management and Justice Equipment).

2 - Within the scope of its mission, the PJ shall access other national databases, the content of which falls directly within the limits of its criminal prevention and investigation powers, under the terms to be regulated by ordinance of the members of the Government responsible for the respective areas of government, without prejudice to the provisions of Law no. 73/2009, of 12 August, in its current wording.

3 - The PJ also accesses, under the terms of the applicable rules and procedures, information of criminal interest contained in the computer files of other national and international bodies, through the signing of protocols.

#### (d) Examples and precedents in national case-law



There are different types of fraud against the EU budget. A basic distinction must be made between fraud on the revenue side and fraud on the expenditure side. This separation applies not only to investigations by the delegated public prosecutors, but also to OLAF investigators (see → National law and “checks and inspections” of OLAF) and national authorities in administrative procedures (especially on the expenditure side, for example in the case of subsidies). The first EPPO crime report therefore correctly distinguishes between:

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

#### (aa) Peculiarities differentiated by PIF offences (Typologies of EU frauds)

67 The peculiarities and typologies of EU-related frauds may be found in national as well as in European-level studies. Exemplarily, such a report may be found at

- EU-level: PIF Reports, Rule of law Report, “Impact of Organized Crime on the EU’s Financial Interests”<sup>87</sup>.

#### (bb) Fraud

68 *Burla*, the **crime of fraud** is regulated by Art. 217 of the Criminal Code and has been subject to many trials and Judgments of the Court of Appeals in Portugal.

<sup>87</sup> Malan 2021.



The judges summarized in a **judgment from 24.4.2015** what the EDPs need to prove, i.e. the objective and the subjective type of the crime:

“II - The crime of fraud, which protects the legal property, globally considered, has as constitutive elements of its type (Art. 217, paragraph 1 of the Criminal C.):

[Objective type]

- that the agent determines another to the practice of acts that cause him, or cause the third party, property damage;
- that this determination is caused by error or deception about facts which the agent cunningly provoked;

[Subjective type]

- The generic deceit, the knowledge and will of the agent to act fraudulently, knowing its censurability; and
- The specific intent, the intention of the agent to obtain for himself or for a third party an illegitimate enrichment, the *animus lucri faciendi*.

III - If the facts contained in the assistant’s application are incapable of characterizing the property damage that integrates the objective type of the crime of fraud and the illegitimate enrichment that constitutes the object of the intention of the agent, an integral element of the subjective type of the same crime, as an alternative charge, that application does not contain the narrative, even if synthetic, of the facts giving reasons for the application to those accused of a penalty, *in casu*, the narration of the necessary and sufficient facts to fill the type, objective and subjective, of the crime of fraud.”<sup>88</sup>

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<sup>88</sup> Judgment of the Court of Appeal of Coimbra, Ac. TRC of 29-04-2015, 306/12.6TATND-A. C1: “[Tipo objectivo]

- Que o agente determine outrem à prática de actos que lhe causem, ou causem a terceiro, prejuízo patrimonial;  
 - Que esta determinação seja causada por meio de erro ou engano sobre factos que o agente astuciosamente provocou;

[Tipo subjectivo]

- O dolo genérico, o conhecimento e vontade do agente actuar de forma fraudulenta, com conhecimento da sua censurabilidade; e  
 - O dolo específico, a intenção de o agente obter para si ou para terceiro um enriquecimento ilegítimo, o *animus lucri faciendi*.

III - Se os factos constantes do requerimento da assistente são insusceptíveis de caracterizarem o prejuízo patrimonial que integra o tipo objectivo do crime de burla e o enriquecimento ilegítimo que constitui o objecto da intenção do agente, elemento integrante do tipo subjectivo do mesmo crime, enquanto acusação alternativa, o dito requerimento não contém a narração, ainda que sintética, dos factos que fundamentam a aplicação aos denunciados de uma pena, *in casu*, a narração dos factos necessários e suficientes para o preenchimento do tipo, objectivo e subjectivo, do crime de burla.

**(cc) Revenue frauds**

69 In the area of tax frauds, including VAT frauds the “Tax Criminal Infractions & Procedure Act / *Lei n.º 15/2001 Reforça as garantias do contribuinte e a simplificação processual, reformula a organização judiciária tributária e estabelece um novo regime geral para as infracções tributárias*” is applicable. In Chapter II, Art. 35 et seq. (*Processo penal tributário / Tax Criminal Procedure*) it contains regulations about the discovery and investigation of tax offences, which are established in Part I of this law. Art. 40 deals with the start of investigations

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**[Excerpt Tax Criminal Infractions & Procedure Act]****Art. 35<sup>89</sup> Acquisition of crime news**

**Art. 36<sup>90</sup> Arrest in flagrante delicto** In case of flagrante delicto for a tax crime punishable with a prison sentence, the entities mentioned in paragraph 6 of the previous article shall make the arrest, in accordance with the provisions of Article 255 of the Code of Criminal Procedure.

71 A lot of recent cases in from of the Criminal Court *Comarca* in Lisbon dealt – even if they were related to the national budget, they can be dealt with here – with VAT frauds.<sup>91</sup>

<sup>89</sup> **Artigo 35.º REGIME GERAL DAS INFRACÇÕES TRIBUTÁRIAS**

**Aquisição da notícia do crime Lei n.º 15/2001**

1 - A notícia de crime tributário adquire-se por conhecimento próprio do Ministério Público ou dos órgãos da administração tributária com competência delegada para os actos de inquérito, por intermédio dos órgãos de polícia criminal ou dos agentes tributários e mediante denúncia. 2 - A notícia do crime é sempre transmitida ao órgão da administração tributária com competência delegada para o inquérito. 3 - Qualquer autoridade judiciária que no decurso de um processo por crime não tributário tome conhecimento de indícios de crime tributário dá deles conhecimento ao órgão da administração tributária competente. 4 - O agente da administração tributária que adquira notícia de crime tributário transmite-a ao órgão da administração tributária competente. 5 - A denúncia contém, na medida do possível, a indicação dos elementos referidos nas alíneas do n.º 1 do artigo 243.º do Código de Processo Penal. 6 - Os agentes da administração tributária, os órgãos de polícia criminal e da marinha de guerra procedem de acordo com o disposto no artigo 243.º do Código de Processo Penal sempre que presenciarem crime tributário, devendo o auto de notícia ser remetido, no mais curto prazo, ao órgão da administração tributária competente para o inquérito. 7 - O disposto nos números anteriores é correspondentemente aplicável aos órgãos e agentes da administração da segurança social.

<sup>90</sup> **Artigo 36.º REGIME GERAL DAS INFRACÇÕES TRIBUTÁRIAS**

**Detenção em flagrante delito Lei n.º 15/2001**

Em caso de flagrante delito por crime tributário punível com pena de prisão, as entidades referidas no n.º 6 do artigo anterior procedem à detenção, nos termos do disposto no artigo 255.º do Código de Processo Penal.

<sup>91</sup> See <https://comarca-lisboa.ministeriopublico.pt/pagina/associacao-criminosa-fraude-fiscal-qualificada-fraude-contra-seguranca-social-qualificada>. Accessed 23 January 2024

*Case Study 1: Portugal VAT fraud scheme with mobile phones to the detriment of the national budget*

72



### **Case Studies: VAT-Intra-Community-(qualified) fraud with mobile phones to the detriment of the Portuguese budget**

#### ***Introduction and Summary***

On the 21st of December 2021 the Central Criminal Court of Almada, of the Judicial Court of the District of Lisbon decided a case, which involved a group of criminals who dealt by using the Intra-Community free movement regulations of goods, with sales and purchases of mobile phones. The aim of this study is it to make visible similarities in the investigations prior to the operations and actions of the EPPO and the current potential actions of the Portuguese EDPs.

#### ***I. Case and Conduct-scheme***

Accused were 11 natural persons and 16 legal persons. All of the natural persons and the 16 legal persons involved in the scheme and case were in the indictment accused of having not declared and submitted VAT that had to be payed to the Portuguese state and its coffers between a 3-year period from 2016 to 2019. They did this in order to gain benefits that they knew were illegitimate.

For this purpose, some of the defendants would have paid VAT in the national territory when invoicing, the other defendants, of the equipment they had purchased as part of intra-community acquisitions of goods, which they did not deliver to the State.

By using this conduct these circumstances would have allowed them to lower the selling price of the goods to a value lower than the of the respective purchase and, even so, make a profit, as well as created in the sphere of the defendants to whom the goods was invoiced in Portugal, the right to deduct the amount of tax paid in the different invoices, which, however, had not been delivered to AT.

The special scheme in question was said to have included the participation of companies already established in the market and other that would have been constituted with the sole purpose of being part of the fraudulent circuit among which there was only apparent commercial relationships.

## ***II. Information on Investigations***<sup>92</sup>

Having analysed the scheme and investigated with different measures the Department of Investigation and Criminal Action of Lisbon (DIAP) indicted the above mentioned natural and legal persons of the described conduct by citing the facts of the case as qualified fraud.

The concrete investigations were carried out by the Tax and Customs Authority (AT) – here the Directorate of Fraud Investigation and Special Actions (DSIFAE), which was “instructed” by the DIAP. The DSIFAE concentrated on the practice of the crime of (tax) fraud.

The Judiciary Police (PJ) concentrated in the meantime on the practice of crimes of criminal association and money laundering, which are regulated by the Portuguese Criminal Code and constitute “classic offences” for the PJ teams.

## ***III. The Court’s Findings***

Part of the Judgment were 11 natural persons and 16 legal persons.

“Two defendants were convicted as material co-authors for the crime of qualified fraud for an effective prison sentence (not suspended):

- one of them in a sentence of 5 years and 6 months in prison and the other a sentence of 2 years and 2 months in prison;
- A defendant was convicted as a material co-perpetrator for the crime of qualified fraud a sentence of 3 years and six months of imprisonment suspended in its execution for the same period subject to probation;
- Eight defendants were convicted as accomplices for the crime of qualified fraud:
  - One defendant was sentenced to 2 years and 9 months in prison suspended for identical period subject to a probation regime;

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<sup>92</sup> Another document, which relates to this judgement, states that over 50 premises and buildings were searched while investigations were ongoing (Operation Osiris). This shows how powerful searches are and that they most likely lead to evidence, which constitutes facts in the criminal trial, see AT, [https://info.portaldasfinancas.gov.pt/pt/destaques/Documents/Comunicado\\_AT\\_Operacao\\_Osiris.pdf](https://info.portaldasfinancas.gov.pt/pt/destaques/Documents/Comunicado_AT_Operacao_Osiris.pdf): “carrying out 50 house and non-household searches, as well as 14 arrests, for suspected of committing crimes of criminal association, qualified tax fraud and money laundering, in a criminal proceeding whose investigation runs under the terms of the Lisbon Department of Investigation and Criminal Action. The present operation aims to dismantle a network of tax fraud, in which there are indications of the use of the so-called ‘carousel fraud’ scheme, with the objective of not handing over large amounts of VAT to the State. This type of fraud consists of the purchase of goods from companies in the European Union, without VAT, reselling them later, with a price drop only possible at the expense of undelivered VAT to the State, by the first operator involved in the circuit in national territory, called “missing trader”. The invoices issued by this operator, already with VAT, allow the deduction of this tax that was never delivered to the State coffers, to the successive participants in the of invoicing, giving rise to high amounts of tax credit to the last intervening party, which carries out the intra-community transfer of the goods or sells them in national territory to customers finals. The illegitimate patrimonial advantage, in the fraud network under investigation, already amounts to about 6 millions of euros. [...]”

- Two defendants were each sentenced to a sentence of 1 year and 10 months of imprisonment suspended in its execution for an equal period with subjection to a regime of test;
- One defendant was sentenced to 1 year and 8 months in prison suspended in its execution for an equal period subject to a probation regime;
- Four defendants were each sentenced to a sentence of 1 year and 6 months of imprisonment suspended in its execution for an equal period with subjection to a regime of test.

The same court decision condemned the 16 companies accused of committing the crime of qualified fraud, in the following terms:

- One of the defendant companies was sentenced to a penalty of 1000 days of fine to reason €20.00 daily, totalling €20,000.00;
- The other defendant companies were each sentenced to a penalty of 800 days of imprisonment and a fine at the daily rate of €10.00, totalling €8,000.00

The defendants, both natural and legal persons, were also sentenced, jointly and severally, for to the payment of civil compensation to the Portuguese State in the amount of €7,663,167.91, corresponding to the missing tax, plus interest due until the effective and full payment.

Some of the assets and values seized from the defendants: computers, tablets, mobile phones and other computer media, the amount of €95,675.00 and balances of bank accounts held by the convicted defendants.”<sup>93</sup>

#### IV. Analysis and Comment

This prominent Portuguese case could have easily as well damaged the financial interests of the Union primarily. From the point-of-view of this study Portuguese EDPs should therefore, if trying to start investigations on their own, focus as well on the area of revenue frauds that seem at the first glance to be only a damage for the national budget. Sufficient indications may arise as well from a case that has already been investigated by national authorities. But in this situation Art. 27 EPPO Regulation (see below → Art 27 c)) might apply as the indications may show that the case initiated by national prosecution offices is in fact a case of European dimension.

The investigation could develop with the instructions and assignment of the same or equal investigations teams (see below → Art. 28). The police (PJ teams) and the special

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<sup>93</sup> AT e aduaneira, COMUNICADO DE IMPRENSA Esquema de Fraude Intracomunitária ao IVA – Fraude na aquisição Condenação por FRAUDE QUALIFICADA, [https://info.portaldasfinancas.gov.pt/pt/destaques/Documents/Comunicado\\_20220124\\_Condenacao\\_Fraude\\_qualificada.pdf](https://info.portaldasfinancas.gov.pt/pt/destaques/Documents/Comunicado_20220124_Condenacao_Fraude_qualificada.pdf). Accessed 23 January 2024.

investigators from the tax or customs offices, if ranked like a PJ officer, may be instructed and assigned with measures by the Portuguese EDPs.

- 74 This CNP chapter does only focus on the start and the conduct of investigations, which is the very beginning of an EPPO action but may as well be already the end of further actions. If the investigations are carried out with a positive result the evidence may be enough to conduct perpetrators alike to the present conduct for fraud to the detriment of the Union instead of the Portuguese state budget.

**(dd) Expenditure frauds**

- 75 In the area of expenditure frauds, the National Anti-fraud strategy designers have published documents that can be used to identify common fraud patterns.<sup>94</sup>
- 76 Subsidy frauds – as part of the expenditure area – seem to occur quite often compared to other frauds they are at least investigated quite frequently in the past two years (2020–2022).<sup>95</sup>
- 77 *Case Study 2: Portugal Expenditure frauds with European funds 1 – Wilful insolvency*

	<b>Case Studies: Fraud with European Funds – Willful insolvency</b>
<p>“[The] <i>Coimbra</i> Court sentenced a businessman to six years in prison for fraud with European funds and willful insolvency of a printing company that defrauded the State in more than half a million euros. And, at the end of last year, the PJ carried out 70 searches in the north of the country to investigate a possible fraud in obtaining European funds.”<sup>96</sup></p>	

- 78 The fraud in obtaining subsidies can result from trade with wines and the required export certificate that might be obligatory in order to obtain a grant.<sup>97</sup>
- 79 The Supreme Court declared once that “VI – The crime of fraud in obtaining a subsidy is a crime of damage insofar as its consummation depends on the actual receipt of the subsidy.”<sup>98</sup> And he said as well that “[t]he crime produces not only criminal damage, for which a penalty is imposed, but also civil damage that must be compensated to the injured party.”<sup>99</sup> In addition to that one should recall that “[t]he obligation to repay is the

<sup>94</sup> See COCOF, Nota de Informação sobre Indícios de Fraude para o FEDER, o FSE e o FC, <https://shorturl.at/atFT8>. Accessed 23 January 2024.

<sup>95</sup> See <https://eco.sapo.pt/especiais/ministerio-publico-investiga-15-casos-de-fraude-com-fundos-comunitarios/>. Accessed 23 January 2024.

<sup>96</sup> See <https://www.dn.pt/politica/fraude-nos-fundos-europeus-portugal-entre-os-bons-alunos-14179064.html>. Accessed 23 January 2024.

<sup>97</sup> See Acórdão do Supremo Tribunal de Justiça 3/00.5TELSB.C1.S2, N° Convencional: 3.ª SECÇÃO.

<sup>98</sup> See Acórdão do Supremo Tribunal de Justiça Processo: 3/00.5TELSB.C1.S2, N° Convencional: 3.ª SECÇÃO.

<sup>99</sup> See Acórdão do Supremo Tribunal de Justiça Processo: 3/00.5TELSB.C1.S2, N° Convencional: 3.ª SECÇÃO.

typical example of a civil sanction, which aims to reconstitute the *de facto* situation that existed before the wrongdoing was committed. Restitution includes not only the thing, but also its fruits.”<sup>100</sup>

Special attention should be paid to agricultural and green funds these days. An old case that resulted from the wine sector shows were investigations might result in a suspicion. The EAGGF fund has in the past been prone to fraud as a particular case description of the Supreme Court of Justice shows:

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*Case Study 3: Portugal Expenditure frauds with European funds 2 – The Wine trading scheme*

81



### Case Studies: Fraud with European Funds – The Wine trading scheme

“13. In 1995, the defendants AA, CC and BB decided, in their interest and that of the company DD & Companhia and, later on, in the interest of EE, to take advantage of the benefits granted by the EEC regulations, issued under the common organization of the wine market, namely as regards the application for export refunds on red table wine, to be borne by the Guarantee section of the EAGGF (European Agricultural Guidance and Guarantee Fund).

14. The granting of these benefits was intended, moreover, to allow the flow of production from the common wine market, namely to third countries, through the practice of competitive prices with those charged in the countries of destination.

15. The export subsidy/refund would only be granted after the issue of the export certificate, the certificate of Community origin for the wine and the certificate of analysis attesting that it met the Community qualitative standards for the product in question.

16. In order to issue a certificate of Community origin, the exporter would have to present a copy of all the accompanying documents that accompanied the transport of the product from origin to the exporter, including those that accompanied all transport possibly carried out between the various facilities of the exporter, as well as the current accounts of the deposits between which the wine to be exported was transferred.

17. In either case, the ac/c of VTMUE – European Union Blend Red Wine from Gafanha da Nazaré was presented, as it was the final export warehouse where all the wine destined for Angola was received and shipped.

18. In order to obtain the export subsidy/refund, which varies depending on whether the alcoholic strength was higher or lower than 13° (which is higher in the first case), defendant DD, with the knowledge and willingness of defendants AA, CC and BB,

<sup>100</sup> See Acórdão do Supremo Tribunal de Justiça Processo: 3/00.5TELSB.C1.S2, N° Convencional: 3.ª SECÇÃO.

decided to start exporting for Angola “red table wine” with an alcoholic strength above 13°, proceeding, as planned between them:

- increasing the alcoholic strength, by adding alcohol to the batches of wine they purchased, either in the country or in the European Union, that did not reach that value;
- mixed with red wines with white wines (Appendix 105 and Appendix 106 4 to 417 and 429 to 434) and other wine products other than red table wine (VQPRD, muffled, acidulated, rose, etc. (Appendix 106 - Pages. 431 and 432).

19. The defendant a) did not have any equipment for partial cold concentration to increase the alcoholic strength.

20. Since DD & Companhia did not have any authorized warehouse for the production or storage of alcohol, it acquired this product from third parties, namely the company “HH.”, based in Torres Vedras, obtaining alcohol there through the distillation of wine lees and, mainly through a process of fermentation and distillation of a cereal compound (cassava).

21. In the years 1996 to 1999, DD & Companhia received from HH nevertheless than 1,056,371.31 liters of alcohol, as follows:

- 1996: 243,754.78 Liters
- 1997: 96,125.46 Liters
- 1998: 384,107.14 Liters
- 1999: 332,383.93 Liters

22. At least part of this alcohol, in an undetermined quantity, was intended to increase the alcoholic strength of the wine exported to Angola.

23. Upstream of the Gafanha da Nazaré warehouse, the final export warehouse for DD & Companhia, the defendants AA, BB and CC used the various tax warehouses they had available throughout the country and subject to controls by different Customs, circulating between them several departures of wines and blending carried out, which made it difficult for public authorities to monitor.

24. Intending, at least, in part, to compensate for the increase in product resulting from the quantities of alcohol added, DD & Companhia entered in the current accounts, with the knowledge and will of the defendants AA, BB and BB, a quantity of wine greater than that which actually received.

25. Thus, since the quantity of wine registered in some of the DAA’s that entitled the transport of wine is expressed in liters, DD & Companhia assumed that this value



referred to kilograms and from there used a density conversion formula (Kg /Liters) which increased the amount of product that was entered in current accounts.”<sup>101</sup>

*Source:* Excerpt from the Case Portal.

Most appeals in subsidy fraud cases seem to be dismissed.<sup>102</sup> Civil compensation requests will most likely be issued in the criminal proceedings if a suspicion arises and an investigation gathers enough evidence for a criminal trial of undue receipt of subsidy, i.e. subsidy fraud.<sup>103</sup> Matters of fact cannot be reconsidered easily again – especially not with a revision appeal if they result from private evidence that shall be useful for a revision of a conviction.<sup>104</sup>

82

### **(ee) Corruption offences**

In the area of corruption offences, the author of the national anti-fraud strategy has issued several “Books and Codes of Ethics, which may be used to detect irregularities and create a potential suspicion *propri motu*.”<sup>105</sup> The Public Prosecution Office explains typical scenarios and indications on its website.<sup>106</sup>

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### **(ff) Money laundering with PIF money**

Money laundering with PIF money depends on the question if i.e. VAT fraud offences are a predicate offence of AML legislation and how high the prescription limits for these offences are.<sup>107</sup>

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<sup>101</sup> Acórdão do Supremo Tribunal de Justiça 3/00.5TELSB.C1.S2, N° Convencional: 3.ª SECÇÃO, Margin numbers 13–22 et seq.

<sup>102</sup> See Acórdão do Supremo Tribunal de Justiça Processo: 8641/14.2TDLSB.C1-A.S1, N° Convencional: 3.ª SECÇÃO.

<sup>103</sup> See Acórdão do Supremo Tribunal de Justiça, Processo: 621/06.8TAPRG.P1.S1, N° Convencional: 3.ª SECÇÃO; see Acórdão do Supremo Tribunal de Justiça, Processo: 209/10.9TAGVA.C1.S1, N° Convencional: 5.ª SECÇÃO.

<sup>104</sup> See Acórdão do Supremo Tribunal de Justiça, Processo: 171/02.1TAALB-D. S1, N° Convencional: 5.ª SECÇÃO.

<sup>105</sup> See <https://poise.portugal2020.pt/estrategia-antifraude>.

<sup>106</sup> <https://www.ministeriopublico.pt/perguntas-frequentes/area-criminal>. Accessed 23 January 2024

<sup>107</sup> Rossel et al 2021 in: Unger/Ferwerda/Rossel (ed) *Combating Fiscal Fraud and Empowering Regulators, Bringing Tax Money back into the COFFERS*, pp 236–271.

**(2) Jurisdiction of the European Delegated Prosecutor in Portugal**

85

**[Excerpt Portuguese Criminal Procedure Code]****Art. 264<sup>108</sup> Jurisdiction**

- 1 - The public prosecutor who performs his duties in the place where the crime has been committed shall be competent to carry out the investigation.
- 2 - As long as it is not known where the crime was committed, the jurisdiction belongs to the public prosecutor who perform sit in the place where there was first news of the crime.
- 3 - If the crime is committed abroad, the public prosecutor who has duties before the court competent for the trial shall have jurisdiction.
- 4 - Regardless of the provisions of the preceding paragraphs, any magistrate or public prosecutor shall, in case of urgency or danger in the delay, carry out acts of inquiry, including detention, interrogation and, in general, the acquisition and retention of evidence.
- 5 - The provisions of Articles 24 to 30 shall be applicable, and it is for the Public Prosecutor's Office to order or terminate the connection.

**bb. Competence of the EPPO, Art. 26 para 4 EPPO Reg.**

- 86 The first task is to discover if the “focus of the criminal activity” is or has been committed in Portugal, which is simpler if there is only suspicion for one offence. If several offences are suspected and there seems to be a connection between these offences, the Portuguese office, if it wants to exercise competence for the EPPO must determine with the Chamber and the help of other Member States where the “bulk of offences” has been committed.

<sup>108</sup> **Artigo 264.º Código De Processo Penal**

**Competência**

- 1 - É competente para a realização do inquérito o Ministério Público que exercer funções no local em que o crime tiver sido cometido.
- 2 - Enquanto não for conhecido o local em que o crime foi cometido, a competência pertence ao Ministério Público que exercer funções no local em que primeiro tiver havido notícia do crime.
- 3 - Se o crime for cometido no estrangeiro, é competente o Ministério Público que exercer funções junto do tribunal competente para o julgamento.
- 4 - Independentemente do disposto nos números anteriores, qualquer magistrado ou agente do Ministério Público procede, em caso de urgência ou de perigo na demora, a actos de inquérito, nomeadamente de detenção, de interrogatório e, em geral, de aquisição e conservação de meios de prova.
- 5 - É correspondentemente aplicável o disposto nos artigos 24.º a 30.º, competindo ao Ministério Público ordenar ou fazer cessar a conexão.

**e) Actions if “Decision to open/not open a case” (Regulation + Rules in IRP, 2020.003 EPPO)**

If he/she decides to initiate an investigation and open or not open a case he/she **must note this in the case management system (Art. 45 para 1 EPPO Regulation, 38 IRP<sup>109</sup>)**. In addition, the numerous obligations to provide information from Art. 24 para 3 to 8. **87**

If an investigation is opened by virtue of Art. 26 para 1 EPPO Regulation, he/she must insert the following information in the case management system according to **Art. 38 para 3 IRP**: **88**

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

Specific steps on how to initiate an investigation or evoke a case are presented by the IRP. Art. 41 of the IRP relates to the initiation according to Art. 26 EPPO Regulation: **89**

***Article 41: Decision to initiate an investigation or to evoke a case***

1. Where, following the verification, the European Delegated Prosecutor decides to exercise EPPO’s competence by initiating an investigation or evoking a case,

a case file shall be opened and it shall be assigned an identification number in the index of the case files (hereinafter the Index). A permanent link to the related registration under Article 38(1) above

<sup>109</sup> See <https://www.eppo.europa.eu/sites/default/files/2020-12/2020.003%20IRP%20-%20final.pdf>. Accessed 23 January 2024.

shall be automatically created by the Case Management System.

If an investigation procedure is to be started, the competent national authorities must be informed:

2. The corresponding reference in the Index shall contain, to the extent available:

a) As regards suspected or accused persons in the criminal proceedings of the EPPO or persons convicted following the criminal proceedings of the EPPO,

i. surname, maiden name, given names and any alias or assumed names;

ii. date and place of birth;

iii. nationality;

iv. sex;

v. place of residence, profession and whereabouts of the person concerned,

vi. social security numbers, ID-codes, driving licences, identification documents,

passport data, customs and tax identification numbers;

vii. description of the alleged offences, including the date on which they were committed;

viii. category of the offences, including the existence of inextricably linked offences;

ix. the amount of the estimated damages;

x. suspected membership of a criminal organisation;

xi. details of accounts held with banks and other financial institutions;

xii. telephone numbers, SIM-card numbers, email addresses, IP addresses, and account and user names used on on line platforms;

xiii. vehicle registration data;

xiv. identifiable assets owned or utilised by the person, such as crypto-assets and real estate.

xv. information whether potential privileges or immunities may apply.

b) as regards natural persons who reported or are victims of offences that fall within the competence of the EPPO,

i. surname, maiden name, given names and any alias or assumed names;

ii. date and place of birth;

iii. nationality;

iv. sex;

v. place of residence, profession and whereabouts of the person concerned;

vi. ID-codes, identification documents, and passport data;

vii. description and nature of the offences involving or reported by the person

concerned, the date on which the offences were committed and the criminal category of the offences.

c) as regards contacts or associates of one of the persons referred to in point (a) above,

i. surname, maiden name, given names and any alias or assumed names;

ii. date and place of birth;

iii. nationality;

iv. sex;

v. place of residence, profession and whereabouts of the person concerned;

vi. ID-codes, identification documents, and passport data. The categories of personal data referred to above under points

(a) (x) – (xv) shall be entered in the Index only to the extent practicable, taking into account the operational interest and available resources. The reference in the

Index shall be maintained up to date during the investigation of a case file. The Case Management System shall periodically notify the European Delegated Prosecutor if certain categories of information are not entered in the Index.

3. The Case Management System shall notify the supervising European Prosecutor and the European Chief Prosecutor and shall randomly assign the monitoring of the investigation to a Permanent Chamber, in accordance with Article 19.

4. Where the handling European Delegated Prosecutor considers that in order to preserve the integrity of the investigation it is necessary to temporarily defer the obligation to inform the authorities referred to in Articles 25(5), 26(2) and 26(7) of the Regulation, he/she shall inform the monitoring Permanent Chamber without delay. The latter may object to this decision and instruct the European Delegated Prosecutor to proceed with the relevant notification immediately.

#### **f) Justiciability and appeals (Defence perspective)**

In the area of tax and customs fraud investigations the officers should pay attention to the limits for investigations and defence lawyers alike may watch the positively established time-limits for investigations in the tax procedures and investigations of tax offences Act:

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#### **Article 42<sup>110</sup> Duration and closure of the investigation**

1 - Any investigation delegated to the tax administration, social security or criminal police bodies shall be concluded within a maximum period of eight months from the date on which the news of the crime is acquired.

2 - In the event that a tax procedure or process is initiated in which a tax situation is being discussed, the definition of which depends on the criminal classification of the facts, the investigation shall not be terminated until a definitive act has been carried out or a final decision has been made regarding said tax situation, and the time limit referred to in the preceding paragraph shall be suspended.

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#### <sup>110</sup> **Artigo 42.º Regime Geral Das Infracções Tributárias**

##### **Duração do inquérito e seu encerramento Lei n.º 15/2001**

1 - Os actos de inquérito delegados nos órgãos da administração tributária, da segurança social ou nos órgãos de polícia criminal devem estar concluídos no prazo máximo de oito meses contados da data em que foi adquirida a notícia do crime.

2 - No caso de ser intentado procedimento ou processo tributário em que se discuta situação tributária de cuja definição dependa a qualificação criminal dos factos, não é encerrado o inquérito enquanto não for praticado ato definitivo ou proferida decisão final sobre a referida situação tributária, suspendendo-se, entretanto, o prazo a que se refere o número anterior.

3 - Concluídas as investigações relativas ao inquérito, o órgão da administração tributária, da segurança social ou de polícia criminal competente emite parecer fundamentado que remete ao Ministério Público juntamente com o auto de inquérito.

4 - Não serão concluídas as investigações enquanto não for apurada a situação tributária ou contributiva da qual dependa a qualificação criminal dos factos, cujo procedimento tem prioridade sobre outros da mesma natureza.

3 - Once the investigation has been concluded, the competent tax administration, social security or criminal police body shall issue a reasoned opinion which shall be forwarded to the Public Prosecution Service together with the case record.

4 - Investigations shall not be concluded until the tax or tax contribution situation on which the criminal classification of the facts depends has been ascertained, the procedure of which has priority over others of the same nature.

## 2. Article 27 Right of Evocation

a) Provisions with a precluding effect for the right of evocation of the EPPO, para 2 .....	126	ee. Opposing legal validity .....	137
aa. Statute of limitations (Extinção da responsabilidade criminal) .....	127	b) Urgent measures of national authorities for securing an investigation and prosecution	138
bb. Amnesty and other reasons .....	131	c) Competent national authorities in paras 3 to 7 of Art. 27 .....	145
cc. Criminal complaint ....	131	d) Provisions regarding the finalization of the national investigation, para 7 .....	146
dd. Prosecution before the trial court .....	135		

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 The national authorities – mainly the national prosecution offices<sup>111</sup> need to refrain from actions that could hinder the EPPO, i.e., the EDPs to exercise its/their competence.

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<sup>111</sup> All national prosecution offices can be retrieved from the Website of the General Prosecution Office.



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

The Criminal Code (CC)/*Código Penal (CP)* establishes provisions with a precluding effect in terms of Article 27 EPPO Regulation. In the following provisions from the Portuguese law such as relating to the statute of limitations, amnesty or criminal complaint are presented.

2

**aa. Statute of limitations (*Extinção da responsabilidade criminal*)**

**Criminal Code**

3

**Title V Extinction of criminal liability**

**Art. 118 CC<sup>112</sup> Limitation periods 1** - The criminal procedure shall be extinguished, by the effect of prescription, as soon as the following periods have elapsed:

a) 15 years, in the case of:

i) Crimes punishable by imprisonment whose maximum limit exceeds 10 years;

<sup>112</sup> **Título V Extinção da responsabilidade criminal**

**Capítulo I Prescrição do procedimento criminal**

**Artigo 118.ºCP Prazos de prescrição**

1 - O procedimento criminal extingue-se, por efeito de prescrição, logo que sobre a prática do crime tiverem decorrido os seguintes prazos:

a) 15 anos, quando se tratar de:

i) Crimes puníveis com pena de prisão cujo limite máximo for superior a 10 anos;

ii) Crimes previstos nos artigos 335.º, 372.º, 373.º, 374.º, 374.º-A, nos n. os 1 e 3 do artigo 375.º, no n.º 1 do artigo 377.º, no n.º 1 do artigo 379.º e nos artigos 382.º, 383.º e 384.º do Código Penal;

iii) Crimes previstos nos artigos 11.º, 16.º a 20.º, no n.º 1 do artigo 23.º e nos artigos 26.º e 27.º da Lei n.º 34/87, de 16 de julho;

iv) Crimes previstos nos artigos 7.º, 8.º e 9.º da Lei n.º 20/2008, de 21 de abril;

v) Crimes previstos nos artigos 8.º, 9.º, 10.º, 10.º-A, 11.º e 12.º da Lei n.º 50/2007, de 31 de agosto;

vi) Crime previsto no artigo 36.º do Decreto-Lei n.º 28/84, de 20 de janeiro;

vii) Crimes previstos nos artigos 36.º e 37.º do Código de Justiça Militar; ou

viii) Crime previsto no artigo 299.º do Código Penal, contanto que a finalidade ou atividade do grupo, organização ou associação seja dirigida à prática de um ou mais dos crimes previstos nas subalíneas i) a iv), vi) e vii);

b) 10 anos, quando se tratar de crimes puníveis com pena de prisão cujo limite máximo for igual ou superior a 5 anos, mas que não exceda 10 anos;

c) 5 anos, quando se tratar de crimes puníveis com pena de prisão cujo limite máximo for igual ou superior a 1 ano, mas inferior a 5 anos;

d) 2 anos, nos casos restantes.

2 - Para efeito do disposto no número anterior, na determinação do máximo da pena aplicável a cada crime são tomados em conta os elementos que pertençam ao tipo de crime, mas não as circunstâncias agravantes ou atenuantes.

3 - Se o procedimento criminal respeitar a pessoa colectiva ou entidade equiparada, os prazos previstos no n.º 1 são determinados tendo em conta a pena de prisão, antes de se proceder à conversão prevista nos n.os 1 e 2 do artigo 90.º-B.

4 - Quando a lei estabelecer para qualquer crime, em alternativa, pena de prisão ou de multa, só a primeira é considerada para efeito do disposto neste artigo.

5 - Nos crimes contra a liberdade e autodeterminação sexual de menores, bem como no crime de mutilação genital feminina sendo a vítima menor, o procedimento criminal não se extingue, por efeito da prescrição, antes de o ofendido perfazer 23 anos.

ii) crimes provided for in Articles 335, 372, 373, 374, 374a, Article 375(1) and (3), Article 377(1), Article 377(1), Article 379(1) and Articles 382, 383 and 384 of the Penal Code;

iii) crimes provided for in Articles 11, 16 to 20, Article 23(1) and Articles 26 and 27 of Law No. 34/87 of July 16;

iv) Crimes provided for in Articles 7, 8 and 9 of Law No. 20/2008 of April 21;

v) crimes provided for in Articles 8, 9, 10, 10a, 11 and 12 of Law No. 50/2007 of 31 August;

vi) Crime provided for in Article 36 of Decree-Law No. 28/84 of January 20;

vii) Crimes provided for in Articles 36 and 37 of the Code of Military Justice; or

viii) Crime provided for in Article 299 of the Penal Code, provided that the purpose or activity of the group, organization or association is directed to the commission of one or more of the crimes provided for in subparagraphs i) to iv), vi) and vii);

b) 10 years, in the case of crimes punishable by imprisonment whose maximum limit is 5 years or more, but not exceeding 10 years;

c) 5 years, in the case of crimes punishable by imprisonment whose maximum limit is equal to or greater than 1 year, but less than 5 years;

(d) 2 years in the remaining cases.

2 - For the purpose of the provisions of the preceding paragraph, in determining the maximum penalty applicable to each crime, account shall be taken of the elements belonging to the type of crime, but not the aggravating or mitigating circumstances.

3 - If the criminal proceedings concern a legal person or similar entity, the time limits provided for in paragraph 1 shall be determined taking into account the prison sentence, before the conversion provided for in paragraphs 1 and 2 of Article 90b.

4 - When the law establishes, alternatively, a prison sentence or a fine for any offence, only the former shall be considered for the purposes of this Article.

5 - In crimes against the sexual freedom and self-determination of minors, as well as in the crime of female genital mutilation where the victim is a minor, the criminal proceedings shall not be extinguished by prescription before the offender reaches the age of 23.

**Art. 119 CC<sup>113</sup> Start of the deadline timeframe** 1 - The limitation period for criminal proceedings runs from the day on which the fact has been consummated.

2 - The limitation period runs only:

<sup>113</sup> **Artigo 119.ºCP Início do prazo**

1 - O prazo de prescrição do procedimento criminal corre desde o dia em que o facto se tiver consumado.

2 - O prazo de prescrição só corre:

a) Nos crimes permanentes, desde o dia em que cessar a consumação;

b) Nos crimes continuados e nos crimes habituais, desde o dia da prática do último acto;

c) Nos crimes não consumados, desde o dia do último acto de execução.

3 - No caso de cumplicidade atende-se sempre, para efeitos deste artigo, ao facto do autor.

4 - Quando for relevante a verificação de resultado não compreendido no tipo de crime, o prazo de prescrição só corre a partir do dia em que aquele resultado se verificar.

- a) In permanent crimes, from the day on which the consummation ceases;
- b) continued crimes and usual crimes, from the day of the last act;
- c) in uncommitted crimes from the day of the last act of execution.

3 - In the case of complicity, the author must always be met for the purposes of this Article.

4 - When the verification of results not understood in the type of crime is relevant, the limitation period runs only from the day on which that result occurs.

**Art. 120 CC<sup>114</sup> Suspension of prescription** 1 - The prescription of criminal proceedings is suspended, in addition to cases specially provided for by law, during the time when:

- a) The criminal procedure cannot legally begin or continue for lack of legal authorization or judgment to be given by a non-criminal court, or for the effect of returning a question referred for a preliminary ruling to non-criminal judgment;
- b) the criminal proceedings are pending after the notification of the accused or, if it has not been deducted, from the notification of the instructional decision pronouncing the accused or the application for the application of a penalty in very short proceedings;
- c) The default Judgment is in force; or
- d) The judgment cannot be notified to the defendant tried in the absence;
- e) the judgment, after notification to the accused, shall not become final;
- f) the offender serves a custodial sentence or security measure abroad.

2 - In the case provided for in point (b) of the preceding paragraph the suspension may not exceed 3 years.

3 - In the case provided for in paragraph 1 (c) the suspension may not exceed the normal limitation period.

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<sup>114</sup> **Artigo 120. CPº Suspensão da prescrição**

1 - A prescrição do procedimento criminal suspende-se, para além dos casos especialmente previstos na lei, durante o tempo em que:

- a) O procedimento criminal não puder legalmente iniciar-se ou continuar por falta de autorização legal ou de sentença a proferir por tribunal não penal, ou por efeito da devolução de uma questão prejudicial a juízo não penal;
- b) O procedimento criminal estiver pendente a partir da notificação da acusação ou, não tendo esta sido deduzida, a partir da notificação da decisão instrutória que pronunciar o arguido ou do requerimento para aplicação de sanção em processo sumaríssimo;
- c) Vigorar a declaração de contumácia; ou
- d) A sentença não puder ser notificada ao arguido julgado na ausência;
- e) A sentença condenatória, após notificação ao arguido, não transitar em julgado;
- f) O delinquento cumprir no estrangeiro pena ou medida de segurança privativas da liberdade.

2 - No caso previsto na alínea b) do número anterior a suspensão não pode ultrapassar 3 anos.

3 - No caso previsto na alínea c) do n.º 1 a suspensão não pode ultrapassar o prazo normal de prescrição.

4 - No caso previsto na alínea e) do n.º 1 a suspensão não pode ultrapassar 5 anos, elevando-se para 10 anos no caso de ter sido declarada a excecional complexidade do processo.

5 - Os prazos a que alude o número anterior são elevados para o dobro se tiver havido recurso para o Tribunal Constitucional.

6 - A prescrição volta a correr a partir do dia em que cessar a causa da suspensão.

4 - In the case provided for in paragraph 1 (e) the suspension may not exceed 5 years, rising to 10 years if the exceptional complexity of the proceedings has been declared.

5 - The time limits to which the preceding paragraph alludes are doubled if there has been an appeal to the Constitutional Court.

6 - The prescription runs again from the day that the cause of the suspension ceases.

**Art. 121 CC<sup>115</sup> Interruption of prescription**

1 - The prescription of criminal proceedings is interrupted:

a) With the constitution of accused;

b) with the notification of the accused or, having not been deducted, with the notification of the instructional decision which the accused has ruled or with the notification of the application for the application of the penalty in very short proceedings;

c) With the declaration of defiance.

d) With the notification of the order designating day for hearing in the absence of the accused.

2 - After each interruption begins to run new limitation period.

3 - Without prejudice to Article 118(5), the limitation period for criminal proceedings always takes place when, from the outset and the suspension period, the normal limitation period plus half has elapsed. Where, by reason of a special provision, the limitation period is less than two years, the limitation period is twice that period.

- 4 In criminal tax proceedings the tax procedure may be suspended, cf. Art. 47 Law 15/2001. This might be important in the case that a Portuguese authority has already started PIF investigations and must inform the EPPO in the moment it becomes aware that the damage caused is most likely not the national but the EU budget (see Art. 25 EPPO Regulation for various possibilities and the Internal Rules of Procedure).

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<sup>115</sup> **Artigo 121.ºCP Interrupção da prescrição**

1 - A prescrição do procedimento criminal interrompe-se:

a) Com a constituição de arguido;

b) Com a notificação da acusação ou, não tendo esta sido deduzida, com a notificação da decisão instrutória que pronunciar o arguido ou com a notificação do requerimento para aplicação da sanção em processo sumaríssimo;

c) Com a declaração de contumácia.

d) Com a notificação do despacho que designa dia para audiência na ausência do arguido.

2 - Depois de cada interrupção começa a correr novo prazo de prescrição.

3 - Sem prejuízo do disposto no n.º 5 do artigo 118.º, a prescrição do procedimento criminal tem sempre lugar quando, desde o seu início e ressalvado o tempo de suspensão, tiver decorrido o prazo normal de prescrição acrescido de metade. Quando, por força de disposição especial, o prazo de prescrição for inferior a dois anos o limite máximo da prescrição corresponde ao dobro desse prazo.

**Article 47 Law 15/2001<sup>116</sup> Suspension of tax criminal proceedings**

5

1 - If a judicial challenge process is under way or an opposition to the execution takes place, under the terms of the Tax Procedure and Procedure Code, in which a tax situation is discussed whose definition depends on the criminal qualification of the alleged facts, the tax criminal proceedings shall be suspended. until the respective sentences become final.

2 - If the criminal tax proceedings are suspended, under the terms of the previous number, the process that gave rise to the suspension has priority over all others of the same kind.

**bb. Amnesty and other reasons**

Amnesty and other reasons with a precluding effect are prescribed by Art. 127 of the Criminal Code.

6

**Article 127 CC<sup>117</sup> Death, amnesty, generic forgiveness, pardon, and extinction**

1- Criminal liability is also extinguished by death, amnesty, generic forgiveness, and pardon.

2 - In the event of the extinction of a legal person or similar entity, its assets shall be liable for fines and compensation in which it is ordered.

3 - The extinction of criminal liability for the death of the agent does not prevent the continuation of the proceedings for the purpose of the declaration of the loss of instruments, products, and advantages in favour of the State.

**cc. Criminal complaint**

The provisions on the criminal complaint and private accusation are presented in Art. 113 et seq. Criminal Code.

7

**<sup>116</sup> Artigo 47. Lei n. ° 15/2001 Suspensão do processo penal tributário**

1 - Se estiver a correr processo de impugnação judicial ou tiver lugar oposição à execução, nos termos do Código de Procedimento e de Processo Tributário, em que se discuta situação tributária de cuja definição dependa a qualificação criminal dos factos imputados, o processo penal tributário suspende-se até que transitem em julgado as respectivas sentenças.

2 - Se o processo penal tributário for suspenso, nos termos do número anterior, o processo que deu causa à suspensão tem prioridade sobre todos os outros da mesma espécie.

**<sup>117</sup> Artigo 127.º Morte, amnistia, perdão genérico, indulto e extinção CC**

1- A responsabilidade criminal extingue-se ainda pela morte, pela amnistia, pelo perdão genérico e pelo indulto.

2 - No caso de extinção de pessoa colectiva ou entidade equiparada, o respectivo património responde pelas multas e indemnizações em que aquela for condenada.

3 - A extinção da responsabilidade criminal pela morte do agente não impede o prosseguimento do processo para efeitos da declaração da perda de instrumentos, produtos e vantagens a favor do Estado.

**8 Title IV Complaint and private accusation**

**Article 113 CC<sup>118</sup> Holders of the right to complain** 1 - When the criminal procedure depends on complaint, it has the legitimacy to present it, unless otherwise provided, the offended, considering as such the holder of the interests that the law specifically wanted to protect with incrimination.

2 - If the offended person dies without having filed a complaint or renounced it, the right of complaint belongs to the persons indicated below, unless any of them have participated in the crime:

a) The surviving spouse not legally separated from persons and property or to the person, of another or of the same sex, who with the offended person lived in conditions analogous to those of the spouses, descendants and adoptees and ascendants and adopters; and, in their absence

b) To the brothers and their descendants.

3 - Any person belonging to one of the classes referred to in the preceding paragraph points may complain independently of the others.

4 - If the offender is under 16 years of age or does not have the discernment to understand the scope and meaning of the exercise of the right of complaint, it belongs to the legal representative and, in its absence, to the persons indicated successively in paragraph 2, applying the provisions of the preceding paragraph.

<sup>118</sup> **Título IV**

**Queixa e acusação particular**

**Artigo 113.º CP**

**Titulares do direito de queixa**

1 - Quando o procedimento criminal depender de queixa, tem legitimidade para apresentá-la, salvo disposição em contrário, o ofendido, considerando-se como tal o titular dos interesses que a lei especialmente quis proteger com a incriminação.

2 - Se o ofendido morrer sem ter apresentado queixa nem ter renunciado a ela, o direito de queixa pertence às pessoas a seguir indicadas, salvo se alguma delas houver participado no crime:

a) Ao cônjuge sobrevivente não separado judicialmente de pessoas e bens ou à pessoa, de outro ou do mesmo sexo, que com o ofendido vivesse em condições análogas às dos cônjuges, aos descendentes e aos adoptados e aos ascendentes e aos adoptantes; e, na sua falta

b) Aos irmãos e seus descendentes.

3 - Qualquer das pessoas pertencentes a uma das classes referidas nas alíneas do número anterior pode apresentar queixa independentemente das restantes.

4 - Se o ofendido for menor de 16 anos ou não possuir discernimento para entender o alcance e o significado do exercício do direito de queixa, este pertence ao representante legal e, na sua falta, às pessoas indicadas sucessivamente nas alíneas do n.º 2, aplicando-se o disposto no número anterior.

5 - Quando o procedimento criminal depender de queixa, o Ministério Público pode dar início ao procedimento no prazo de seis meses a contar da data em que tiver tido conhecimento do facto e dos seus autores, sempre que o interesse do ofendido o aconselhar e:

a) Este for menor ou não possuir discernimento para entender o alcance e o significado do exercício do direito de queixa; ou

b) O direito de queixa não puder ser exercido porque a sua titularidade caberia apenas ao agente do crime.

6 - Se o direito de queixa não for exercido nos termos do n.º 4 nem for dado início ao procedimento criminal nos termos da alínea a) do número anterior, o ofendido pode exercer aquele direito a partir da data em que perfizer 16 anos.

5 - Where the criminal proceedings depend on a complaint, the Public Prosecutor's Office may initiate the procedure within six months of the date on which it became aware of the fact and its perpetrators, where the interest of the offended advises him and:

- a) It is less or does not have discernment to understand the scope and meaning of the exercise of the right of complaint; or
- b) The right of complaint cannot be exercised because its ownership would be the only responsibility of the crime officer.

6 - If the right of complaint is not exercised in accordance with paragraph 4 and the criminal proceedings are initiated in accordance with point (a) of the preceding paragraph, the offender may exercise that right from the date on which he/she turns 16.

#### **Article 114 CC<sup>119</sup> Extension of the effects of the complaint**

The filing of the complaint against one of the participants in the crime makes the criminal proceedings extensive to the rest.

#### **Article 115 CC<sup>120</sup> Termination of the right of complaint**

1 - The right of complaint shall be extinguished within 6 months of the date on which the holder became aware of the fact and its perpetrators, or from the death of the offended person, or from the date on which he has become incapable.

2 - The right of complaint provided for in Article 113(6) shall be extinguished within six months of the date on which the offender turns 18.

3 - The non-timely exercise of the right of complaint in relation to one of the participants in the crime takes advantage of the others, in cases where they too cannot be pursued without complaint.

4 - Several of them are the holders of the right of complaint, the deadline is counted independently for each of them.

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<sup>119</sup> **Artigo 114.ºCP Extensão dos efeitos da queixa**

A apresentação da queixa contra um dos comparticipantes no crime torna o procedimento criminal extensivo aos restantes.

<sup>120</sup> **Artigo 115.ºCP Extinção do direito de queixa**

1 - O direito de queixa extingue-se no prazo de 6 meses a contar da data em que o titular tiver tido conhecimento do facto e dos seus autores, ou a partir da morte do ofendido, ou da data em que ele se tiver tornado incapaz.

2 - O direito de queixa previsto no n.º 6 do artigo 113.º extingue-se no prazo de seis meses a contar da data em que o ofendido perfizer 18 anos.

3 - O não exercício tempestivo do direito de queixa relativamente a um dos comparticipantes no crime aproveita aos restantes, nos casos em que também estes não puderem ser perseguidos sem queixa.

4 - Sendo vários os titulares do direito de queixa, o prazo conta-se autonomamente para cada um deles.

**Article 116 CC<sup>121</sup> Waiver and withdrawal of the complaint**

- 1 - The right of complaint may not be exercised if the holder expressly renounced or has committed facts from which the waiver necessarily is deduced.
- 2 - The complainant may withdraw the complaint, provided there is no opposition from the accused, until the publication of the judgment of the 1st instance. The withdrawal prevents the complaint from being renewed.
- 3 - The withdrawal of the complaint in relation to one of the participants in the crime takes advantage of the others, except as opposed by them, in cases where they too cannot be pursued without complaint.
- 4 - The provisions of the preceding paragraph shall apply in the case of cumulative liability of the natural and legal person or similar entity.
- 5 - After the age of 16, the offended may request that the proceedings be terminated, under the conditions laid down in paragraphs 2 and 3, when the right of complaint has been exercised in accordance with Article 113(4), or criminal proceedings have been initiated in accordance with Article 113(5) (a).

9 Further, see the obligatory provision from the CPC:

**Article 242 CPC<sup>122</sup> (Mandatory reporting)**

- 1 - The complaint is mandatory, even if the agents of the crime are not known:
  - a) For the police entities, for all the crimes of which they become aware;
  - b) officials within the meaning of Article 386 of the Penal Code for crimes of which they become aware of and because of their duties;
- 2 - When several people are obliged to report the same crime, their presentation by one of them dispenses with the rest.

<sup>121</sup> **Artigo 116.º CP Renúncia e desistência da queixa**

- 1 - O direito de queixa não pode ser exercido se o titular a ele expressamente tiver renunciado ou tiver praticado factos donde a renúncia necessariamente se deduz.
- 2 - O queixoso pode desistir da queixa, desde que não haja oposição do arguido, até à publicação da sentença da 1.ª instância. A desistência impede que a queixa seja renovada.
- 3 - A desistência da queixa relativamente a um dos participantes no crime aproveita aos restantes, salvo oposição destes, nos casos em que também estes não puderem ser perseguidos sem queixa.
- 4 - O disposto no número anterior é aplicável no caso de responsabilidade cumulativa da pessoa singular e coletiva ou entidade equiparada.
- 5 - Depois de perfazer 16 anos, o ofendido pode requerer que seja posto termo ao processo, nas condições previstas nos n. os 2 e 3, quando tiver sido exercido o direito de queixa nos termos do n.º 4 do artigo 113.º, ou tiver sido dado início ao procedimento criminal nos termos da alínea a) do n.º 5 do artigo 113.º

<sup>122</sup> **Artigo 242.º Código De Processo Penal (Denúncia obrigatória)**

- 1 - A denúncia é obrigatória, ainda que os agentes do crime não sejam conhecidos:
  - a) Para as entidades policiais, quanto a todos os crimes de que tomarem conhecimento;
  - b) Para os funcionários, na aceção do artigo 386.º do Código Penal, quanto a crimes de que tomarem conhecimento no exercício das suas funções e por causa delas;
- 2 - Quando várias pessoas forem obrigadas à denúncia do mesmo crime, a sua apresentação por uma delas dispensa as restantes.
- 3 - Quando se referir a crime cujo procedimento dependa de queixa ou de acusação particular, a denúncia só dá lugar a instauração de inquérito se a queixa for apresentada no prazo legalmente previsto.



3 - When referring to a crime the procedure of which depends on a complaint or a particular accusation, the complaint shall not give place to an investigation only if the complaint is submitted within the legally provided period.

#### **dd. Prosecution before the trial court**

A prosecution before the trial court that has already begun can have a precluding effect on EPPO investigations as well. Such prosecution starts with the indictment by the prosecutor:

10

**Article 283 CPC<sup>123</sup> Indictment by the Public Prosecutor's Office** 1 - If during the investigation sufficient evidence has been collected that there has been a crime and whose agent was, the Public Prosecutor's Office, within 10 days, deducts charges against it.

11

2 - Evidence shall be considered sufficient where there is a reasonable possibility for the accused to be applied, by force of them, to a sentence or a security measure.

3 - The charge contains, under penalty of nullity:

#### <sup>123</sup> **Artigo 283.º Código De Processo Penal Acusação pelo Ministério Público**

1 - Se durante o inquérito tiverem sido recolhidos indícios suficientes de se ter verificado crime e de quem foi o seu agente, o Ministério Público, no prazo de 10 dias, deduz acusação contra aquele.

2 - Consideram-se suficientes os indícios sempre que deles resultar uma possibilidade razoável de ao arguido vir a ser aplicada, por força deles, em julgamento, uma pena ou uma medida de segurança.

3 - A acusação contém, sob pena de nulidade:

a) As indicações tendentes à identificação do arguido;

b) A narração, ainda que sintética, dos factos que fundamentam a aplicação ao arguido de uma pena ou de uma medida de segurança, incluindo, se possível, o lugar, o tempo e a motivação da sua prática, o grau de participação que o agente neles teve e quaisquer circunstâncias relevantes para a determinação da sanção que lhe deve ser aplicada;

c) As circunstâncias relevantes para a atenuação especial da pena que deve ser aplicada ao arguido ou para a dispensa da pena em que este deve ser condenado;

d) A indicação das disposições legais aplicáveis;

e) O rol com o máximo de 20 testemunhas, com a respectiva identificação, discriminando-se as que só devam depor sobre os aspetos referidos no n.º 2 do artigo 128.º, as quais não podem exceder o número de cinco;

f) A indicação dos peritos e consultores técnicos a serem ouvidos em julgamento, com a respectiva identificação;

g) A indicação de outras provas a produzir ou a requerer;

h) A indicação do relatório social ou de informação dos serviços de reinserção social, quando o arguido seja menor, salvo quando não se mostre ainda junto e seja prescindível em função do superior interesse do menor;

i) A data e assinatura.

4 - Em caso de conexão de processos, é deduzida uma só acusação.

5 - É correspondentemente aplicável o disposto no n.º 3 do artigo 277.º, prosseguindo o processo quando os procedimentos de notificação se tenham revelado ineficazes.

6 - As comunicações a que se refere o número anterior efectuam-se mediante contacto pessoal ou por via postal registada, excepto se o arguido e o assistente tiverem indicado a sua residência ou domicílio profissional à autoridade policial ou judiciária que elaborar o auto de notícia ou que os ouvir no inquérito ou na instrução, caso em que são notificados mediante via postal simples, nos termos da alínea c) do n.º 1 do artigo 113.º

7 - O limite do número de testemunhas previsto na alínea e) do n.º 3 apenas pode ser ultrapassado desde que tal se afigure necessário para a descoberta da verdade Material, designadamente quando tiver sido praticado algum dos crimes referidos no n.º 2 do artigo 215.º ou se o processo se revelar de excepcional complexidade, devido ao número de arguidos ou ofendidos ou ao carácter altamente organizado do crime.

8 - O requerimento referido no número anterior é indeferido caso se verifiquem as circunstâncias previstas nas alíneas b), c) e d) do n.º 4 do artigo 340.º

- a) The indications for the identification of the accused;
- (b) the account of, albeit synthetic, the facts giving reasons for the application to the accused of a penalty or a security measure, including, where possible, the place, time and motivation of his practice, the degree of participation which the agent had in them and any circumstances relevant to the determination of the penalty to be imposed on him;
- (c) the circumstances relevant to the special mitigation of the penalty to be imposed on the accused or to the dispensation of the sentence in which he is to be sentenced;
- (d) the indication of the applicable legal provisions;
- (e) the list of a maximum of 20 witnesses, with their identification, discriminating against those who should only testify on the aspects referred to in Article 128(2), which may not exceed the number of five;
- (f) the appointment of experts and technical consultants to be heard on trial, with their identification;
- (g) the indication of other evidence to be produced or to be applied for;
- (h) the indication of the social report or information of the social reintegration services, when the accused is a minor, unless he is not yet shown with him and is dispensable in the best interests of the minor;
- (i) the date and signature.

4 - In case of connection of proceedings, a single charge is deducted.

5 - The provisions of Article 277(3) shall be correspondingly applicable, and the proceedings shall continue when the notification procedures have proved ineffective.

6 - Communications referred to in the preceding paragraph shall be made by personal contact or by registered post, unless the accused and the assistant have indicated their residence or professional domicile to the police or judicial authority to draw up the news report or to hear them in the investigation or in the investigation, in which case they are notified by simple postage, pursuant to Article 113(1)(c).

7 - The limit on the number of witnesses provided for in paragraph 3 (e) may be exceeded only if this appears necessary for the discovery of the material truth, in particular where any of the crimes referred to in Article 215(2) have been committed or if the proceedings prove to be of exceptional complexity, due to the number of accused or offended or the highly organized nature of the crime.

8 - The application referred to in the preceding paragraph shall be rejected if the circumstances provided for in Article 340(4) (b) and (d) are present.

**ee. Opposing legal validity**

The criminal procedure law contains provisions regarding Judgments in Book IV, Title III, and Art. 374 et seq. 12

**Article 375 CPC<sup>124</sup> (Sentencing)**

1 - The sentence shall specify the reasons that presided over the choice and measure of the applied sanction, namely indicating, if applicable, the beginning and regime of its compliance, other duties that are imposed on the convicted individual and their duration, as well as the individual plan for social rehabilitation.

2. After reading the sentence, the President, whenever he or she deems appropriate, shall address a brief speech to the accused exhorting him or her to correct himself or herself.

3 - For the purposes of the provisions of this Code, a sentence that has decreed exemption from punishment shall also be considered a sentence of conviction.

4. Whenever necessary, the court shall review the situation of the accused and subject him or her to admissible measures of restraint that are appropriate to the precautionary requirements that the case requires.

**Article 376 CPC<sup>125</sup> (Absolution Judgment)**

1 - A sentence of acquittal shall declare the extinction of any measure of coercion and order the immediate release of the defendant in preventive custody, except where he or she must remain in custody for another reason or must undergo a security measure of internment.

2. A sentence of acquittal shall order the assistant to pay costs, under the terms provided for in this Code and in the Rules of Procedural Costs.

3. Where the crime was committed by an accused person, the sentence shall be acquitted; however, where a security measure is applied, it shall be regarded as a condemnatory

<sup>124</sup> **Artigo 375.º Código de Processo Penal (Sentença condenatória)**

1 - A sentença condenatória especifica os fundamentos que presidiram à escolha e à medida da sanção aplicada, indicando, nomeadamente, se for caso disso, o início e o regime do seu cumprimento, outros deveres que ao condenado sejam impostos e a sua duração, bem como o plano individual de readaptação social.

2 - Após a leitura da sentença condenatória, o presidente, quando o julgar conveniente, dirige ao arguido breve alocução, exortando-o a corrigir-se.

3 - Para efeito do disposto neste Código, considera-se também sentença condenatória a que tiver decretado dispensa da pena.

4 - Sempre que necessário, o tribunal procede ao reexame da situação do arguido, sujeitando-o às medidas de coacção admissíveis e adequadas às exigências cautelares que o caso requerer.

<sup>125</sup> **Artigo 376.º Código de Processo Penal (Sentença absolutória)**

1 - A sentença absolutória declara a extinção de qualquer medida de coacção e ordena a imediata libertação do arguido preso preventivamente, salvo se ele dever continuar preso por outro motivo ou sofrer medida de segurança de internamento.

2 - A sentença absolutória condena o assistente em custas, nos termos previstos neste Código e no Regulamento das Custas Processuais.

3 - Se o crime tiver sido cometido por inimputável, a sentença é absolutória; mas se nela for aplicada medida de segurança, vale como sentença condenatória para efeitos do disposto no n.º 1 do artigo anterior e de recurso do arguido.

sentence for the purposes of paragraph 1 of the previous Article and for the purposes of the defendant's appeal.

- 14 In criminal tax proceedings it is clearly stated by the applicable law that the legal validity of decided cases does only apply to the conduct that was questioned in court:

**Article 48 Law 15/2001<sup>126</sup> Judged case of impugnation and opposition judgments**

Judgments in judicial review proceedings and decisions on the opposition of persons enforced under the terms of the Administrative and Judicial Tax Procedure Code, once final, constitute *res judicata* for tax criminal proceedings only in relation to the issues decided therein and under the precise terms in which they were decided.

- 15 It is questionable if Art. 122–126 of the Tax Procedures & Investigations of Tax Offences Act apply in this regard. They deal with the Judgment in tax proceedings.

**b) Urgent measures of national authorities for securing an investigation and prosecution**

- 16 The area of fraud committed by the CC (*burla*) and the area of tax fraud and customs fraud must be distinguished in relation to investigations as these investigations are carried out by various different (police) bodies (see below 28 with detailed explanations). The police bodies are competent to conduct first measures by virtue of 9 para 1 d et seq. of the new Police Act from 2019 (This competence is called procedural competence/*Competências processuais*).
- 17 The Appeal Court of *Coimbra* has decided on the matter of urgent investigation measures, which is highly important for the safeguarding of evidence (at the very beginning of a discovery). Art. 55 para 2, 249 and 250 CPC constitute this obligation for police bodies and their agents, which may acquire knowledge of further facts of the crime during an official measure that already constitutes an investigation and they might testify in court about what they heard.<sup>127</sup>

<sup>126</sup> **Artigo 48. Lei n. ° 15/2001 Caso julgado das sentenças de impugnação e de oposição**

A sentença proferida em processo de impugnação judicial e a que tenha decidido da oposição de executado, nos termos do Código de Procedimento e de Processo Tributário, uma vez transitadas, constituem caso julgado para o processo penal tributário apenas relativamente às questões nelas decididas e nos precisos termos em que o foram.

<sup>127</sup> “Acórdão do Tribunal da Relação de Coimbra [Ac. TRL of 16-06-2015]: I. The criminal police agencies must gather, inter alia, news of the crime, discover their agents and carry out the necessary and urgent precautionary acts to ensure the means of proof (cf. arts. 55(2, 249 and 250) of the CPP), there is nothing to prevent, once the rights of defence of the accused have been guaranteed, the same bodies reproduce the steps taken and the conversations taken in those areas at a hearing of discussion and trial.

II. In this context, neither the testimony is indirect - the criminal police bodies only report in court what their senses perceive - nor is it covered by the prohibition of proof of Article 356(7).

III. So little does this testimony frustrate the defendant's right to silence.”

**Art. 55 CPC<sup>128</sup> (Of criminal police bodies)** 1 - It is for the criminal police bodies to help the judicial authorities with a view to carrying out the purposes of the proceedings.

2 - It is in particular the responsibility of the criminal police bodies, *even on their own initiative*, to gather news of the crimes and to prevent their consequences as possible, to discover their agents and to carry out the necessary and urgent acts aimed at ensuring the means of proof.

The EPPO Adoption Act applies in addition:

**Article 5 EPPO Adoption Act<sup>129</sup>**

**Assistance by criminal police bodies**

1. The criminal police bodies assist the European Public Prosecutor's Office in the exercise of its powers to investigate and promote criminal proceedings in national territory, in accordance *with the respective powers as defined in domestic law*.
2. In the cases referred to in the preceding paragraph, the criminal police bodies act under the direction and functional dependence of the European Public Prosecutor's Office, without prejudice to the respective hierarchical organization.

Further, CPC provisions relating to the pre-trial phases could apply:

**Book IV Chapter II Precautionary and Police Measures**

**Article 248 CPC<sup>130</sup> Communication of news of a crime**

- 1 - Police entities that have news of a crime, either through their own knowledge or through a complaint, shall transmit it to the Public Prosecutor's Office as soon as possible, which cannot exceed 10 days.
- 2 - The provisions of the previous paragraph apply to manifestly unfounded news of crime that have been transmitted to the criminal police bodies.

<sup>128</sup> **Artigo 55. Código De Processo Penal**

Competência dos órgãos de polícia criminal

1 - Compete aos órgãos de polícia criminal coadjuvar as autoridades judiciárias com vista à realização das finalidades do processo.

2 - Compete em especial aos órgãos de polícia criminal, mesmo por iniciativa própria, colher notícia dos crimes e impedir quanto possível as suas consequências, descobrir os seus agentes e levar a cabo os actos necessários e urgentes destinados an assegurar os meios de prova.

<sup>129</sup> See above → Special national laws: Law No. 112/2019.

<sup>130</sup> **CAPÍTULO II**

**Artigo 248.º Código De Processo Penal**

**Das medidas cautelares e de polícia**

Comunicação da notícia do crime

1 - Os órgãos de polícia criminal que tiverem notícia de um crime, por conhecimento próprio ou mediante denúncia, transmitem-na ao Ministério Público no mais curto prazo, que não pode exceder 10 dias.

2 - Aplica-se o disposto no número anterior a notícias de crime manifestamente infundadas que hajam sido transmitidas aos órgãos de polícia criminal.

3 - Em caso de urgência, a transmissão a que se refere o número anterior pode ser feita por qualquer meio de comunicação para o efeito disponível. A comunicação oral deve, porém, ser seguida de comunicação escrita

3 - In case of urgency, the transmission referred to in the previous paragraph may be made by any means of communication available for the purpose. Oral communication shall, however, be followed by written communication.

**Article 249 CPC<sup>131</sup> Preventive measures regarding the means of evidence**

1 - It is incumbent upon the criminal police bodies, even before receiving an order from the competent judicial authority to proceed with investigations, to carry out the necessary and urgent precautionary acts to ensure the means of evidence.

2 - It is incumbent upon them, namely, under the terms of the previous item

a) Proceed with the examination of crime traces, especially the diligences provided for in Article 171, no. 2, and Article 173, ensuring the integrity of the animals and the maintenance of the state of things, objects and places;

b) Collecting information from people to facilitate the discovery of the perpetrators of the crime and its reconstruction

c) Apprehend during searches or in case of urgency or danger in delay, as well as adopt the necessary precautionary measures to preserve the integrity of the animals and the conservation or maintenance of the apprehended things and objects.

3 - Even after the intervention of the judicial authority, it is the duty of the criminal police to secure new evidence of which they have knowledge, without prejudice to immediately informing the judicial authority.

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<sup>131</sup> **Artigo 249.º Código De Processo Penal**

**Providências cautelares quanto aos meios de prova**

1 - Compete aos órgãos de polícia criminal, mesmo antes de receberem ordem da autoridade judiciária competente para procederem a investigações, praticar os actos cautelares necessários e urgentes para assegurar os meios de prova.

2 - Compete-lhes, nomeadamente, nos termos do número anterior:

a) Proceder a exames dos vestígios do crime, em especial às diligências previstas no n.º 2 do artigo 171.º, e no artigo 173.º, assegurando a integridade dos animais e a manutenção do estado das coisas, dos objetos e dos lugares;

b) Colher informações das pessoas que facilitem a descoberta dos agentes do crime e a sua reconstituição;

c) Proceder a apreensões no decurso de revistas ou buscas ou em caso de urgência ou perigo na demora, bem como adotar as medidas cautelares necessárias à conservação da integridade dos animais e à conservação ou manutenção das coisas e dos objetos apreendidos.

3 - Mesmo após a intervenção da autoridade judiciária, cabe aos órgãos de polícia criminal assegurar novos meios de prova de que tiverem conhecimento, sem prejuízo de deverem dar deles notícia imediata àquela autoridade.

**Article 250 CPC<sup>132</sup> Identification of suspects and request for information**

1 - The police bodies may identify any person found in a public place, open to the public or under police surveillance, whenever there is reason to suspect that he or she has committed a crime, is awaiting extradition or expulsion proceedings, has entered or is staying illegally in the national territory or has an arrest warrant against him or her.

2 - Before proceeding with identification, the criminal police bodies shall prove their status, communicate to the suspect the circumstances that justify the identification obligation, and indicate the means by which he or she can identify himself or herself.

3 - Suspects may identify themselves by presenting one of the following documents

- a) Identity card or passport, in case he is a Portuguese citizen;
- b) Residence permit, identity card, passport or document replacing the passport, if he is a foreign citizen.

4 - Where it is impossible to produce one of the documents referred to in the previous paragraph, the suspect may identify himself by presenting an original document, or a certified copy, bearing his full name, signature and photograph.

5 - If no identification document is held, the suspected person may identify himself/herself by one of the following means

- a) Communicating with a person presenting his identification documents;
- b) Going accompanied by the criminal police to the place where his identification documents are found; Recognition of their identity by a person identified under the terms

**<sup>132</sup> Artigo 250.º Código De Processo Penal****Identificação de suspeito e pedido de informações**

1 - Os órgãos de polícia criminal podem proceder à identificação de qualquer pessoa encontrada em lugar público, aberto ao público ou sujeito a vigilância policial, sempre que sobre ela recaiam fundadas suspeitas da prática de crimes, da pendência de processo de extradição ou de expulsão, de que tenha penetrado ou permaneça irregularmente no território nacional ou de haver contra si mandado de detenção. 2 - Antes de procederem à identificação, os órgãos de polícia criminal devem provar a sua qualidade, comunicar ao suspeito as circunstâncias que fundamentam a obrigação de identificação e indicar os meios por que este se pode identificar. 3 - O suspeito pode identificar-se mediante a apresentação de um dos seguintes documentos: a) Bilhete de identidade ou passaporte, no caso de ser cidadão português; b) Título de residência, bilhete de identidade, passaporte ou documento que substitua o passaporte, no caso de ser cidadão estrangeiro. 4 - Na impossibilidade de apresentação de um dos documentos referidos no número anterior, o suspeito pode identificar-se mediante a apresentação de documento original, ou cópia autenticada, que contenha o seu nome completo, a sua assinatura e a sua fotografia. 5 - Se não for portador de nenhum documento de identificação, o suspeito pode identificar-se por um dos seguintes meios: a) Comunicação com uma pessoa que apresente os seus documentos de identificação; b) Deslocação, acompanhado pelos órgãos de polícia criminal, ao lugar onde se encontram os seus documentos de identificação; c) Reconhecimento da sua identidade por uma pessoa identificada nos termos do n.º 3 ou do n.º 4 que garanta a veracidade dos dados pessoais indicados pelo identificando. 6 - Na impossibilidade de identificação nos termos dos n.os 3, 4 e 5, os órgãos de polícia criminal podem conduzir o suspeito ao posto policial mais próximo e compeli-lo a permanecer ali pelo tempo estritamente indispensável à identificação, em caso algum superior a seis horas, realizando, em caso de necessidade, provas dactiloscópicas, fotográficas ou de natureza análoga e convidando o identificando a indicar residência onde possa ser encontrado e receber comunicações. 7 - Os actos de identificação levados a cabo nos termos do número anterior são sempre reduzidos a auto e as provas de identificação dele constantes são destruídas na presença do identificando, a seu pedido, se a suspeita não se confirmar. 8 - Os órgãos de polícia criminal podem pedir ao suspeito, bem como a quaisquer pessoas susceptíveis de fornecerem informações úteis, e deles receber, sem prejuízo, quanto ao suspeito, do disposto no artigo 59.º, informações relativas a um crime e, nomeadamente, à descoberta e à conservação de meios de prova que poderiam perder-se antes da intervenção da autoridade judiciária. 9 - Será sempre facultada ao identificando a possibilidade de contactar com pessoa da sua confiança.

of no. 3 or no. 4 who guarantees the veracity of the personal data indicated by the person being identified.

6 - When it is impossible to identify the person in accordance with paragraphs 3, 4 and 5, the criminal police bodies may take the suspect to the nearest police station and compel him/her to stay there for the time strictly necessary for identification, in no case longer than six hours, carrying out dactyloscopy, photographic or similar tests and inviting the person to indicate a residence where he/she can be found and receive communications.

7 - The identification acts carried out under the terms of the previous number shall always be reduced to a record and the identification evidence contained therein shall be destroyed in the presence of the person being identified, at his request, if the suspicion is not confirmed.

8 - The criminal police bodies may request and receive from the suspect, as well as from any person who may provide useful information, without prejudice, as far as the suspect is concerned, to the provisions in Article 59, information concerning a crime and, namely, the discovery and preservation of evidence that might be lost before the intervention of the judicial authority.

9 - The person identified shall always be given the possibility of contacting a person of confidence

#### **Art. 251 CPC<sup>133</sup> Surveys and searches**

1 - In addition to the cases provided for in Article 174(5), the criminal police bodies may carry out, without prior authorisation from the judicial authority

a) Search suspects in case of imminent flight or arrest and search the place where they are, except in the case of house searches, whenever they have reasonable grounds to believe that objects related to the crime are hidden in them that may be used as evidence and might otherwise be lost; Searching people who have to participate or intend to attend any procedural act or who, as suspects, have to be taken to a police station, whenever they have reason to believe that they are hiding weapons or other objects with which they might commit acts of violence.

2 - The provisions of Article 174(6) shall apply accordingly.

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#### <sup>133</sup> **Artigo 251.º Código De Processo Penal**

##### **Revistas e buscas**

1 - Para além dos casos previstos no n.º 5 do artigo 174.º, os órgãos de polícia criminal podem proceder, sem prévia autorização da autoridade judiciária:

a) À revista de suspeitos em caso de fuga iminente ou de detenção e a buscas no lugar em que se encontrarem, salvo tratando-se de busca domiciliária, sempre que tiverem fundada razão para crer que neles se ocultam objectos relacionados com o crime, susceptíveis de servirem a prova e que de outra forma poderiam perder-se;

b) À revista de pessoas que tenham de participar ou pretendam assistir a qualquer acto processual ou que, na qualidade de suspeitos, devam ser conduzidos a posto policial, sempre que houver razões para crer que ocultam armas ou outros objectos com os quais possam praticar actos de violência.

2 - É correspondentemente aplicável o disposto no n.º 6 do artigo 174.º



**Art. 252 CPC<sup>134</sup> Seizure of correspondence**

1 – When correspondence is to be seized, the criminal police bodies shall transmit it intact to the judge who has authorised or ordered it.

2 – In the case of sealed parcels or valuables that may be seized, whenever the police have reasonable grounds to believe that they may contain useful information for investigating a crime or lead to its discovery, and that they may be lost in case of delay, they shall inform the judge by the most rapid means, who may authorise their immediate opening.

3 – Once the reasons referred to in the previous paragraph are verified, the criminal police bodies may order the suspension of any correspondence sent to post offices and telecommunication centres. If, within forty-eight hours, the order is not validated by a motivated order of the judge, the correspondence shall be sent to the addressee.

In the area of tax fraud procedures, it is the tax police, which is competent to take precautionary, thus urgent measures to safeguard potential evidence:

**Art. 37 Law no 15 2001<sup>135</sup> Precautionary measures concerning evidence**

Irrespective of the provisions of the following article, any criminal police body or tax administration agent shall, in cases of urgency or danger of delay, take the necessary and *urgent precautionary measures to secure the means of proof*, in accordance with the provisions of Article 249 of the Code of Criminal Procedure [scil. see above → Art. 249].

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<sup>134</sup> **Artigo 252.º Código De Processo Penal**

**Apreensão de correspondência**

1 - Nos casos em que deva proceder-se à apreensão de correspondência, os órgãos de polícia criminal transmitem-na intacta ao juiz que tiver autorizado ou ordenado a diligência.

2 - Tratando-se de encomendas ou valores fechados susceptíveis de serem apreendidos, sempre que tiverem fundadas razões para crer que eles podem conter informações úteis à investigação de um crime ou conduzir à sua descoberta, e que podem perder-se em caso de demora, os órgãos de polícia criminal informam do facto, pelo meio mais rápido, o juiz, o qual pode autorizar a sua abertura imediata.

3 - Verificadas as razões referidas no número anterior, os órgãos de polícia criminal podem ordenar a suspensão da remessa de qualquer correspondência nas estações de correios e de telecomunicações. Se, no prazo de quarenta e oito horas, a ordem não for convalidada por despacho fundamentado do juiz, a correspondência é remetida ao destinatário.

<sup>135</sup> **Artigo 37.º Lei n.º 15/2001**

**Providências cautelares quanto aos meios de prova**

Independentemente do disposto no artigo seguinte, qualquer órgão de polícia criminal ou agente da administração tributária pratica, em caso de urgência ou de perigo de demora, os actos cautelares necessários e urgentes para assegurar os meios de prova, nos termos do disposto no artigo 249.º do Código de Processo Penal.

**Article 38 Law no 15 2001<sup>136</sup> Deposit of goods and instrumentalities of crime in customs offices or public warehouses and immediate sale**

1 - The seized goods, means of transport, weapons and other instruments of crime shall be deposited at customs offices or public warehouses, unless these cannot receive them due to lack of space.

2 - By order of the competent judicial authority, the objects referred to in the preceding paragraph and seized by the Tax Brigade may be used by the latter on a provisional basis until their confiscation or restitution is declared, provided that an interest in their use is recognised.

3 - If the seizure concerns perishable, dangerous or perishable items, the provisions of Article 185 of the Code of Criminal Procedure shall apply, with the necessary adaptations, and the decision shall be pronounced within two days.

4 - The sale operations shall be carried out by the competent bodies of the tax administration, under the terms of the applicable laws, and the proceeds of the sale shall be deposited to the order of the respective process.

5 - If the final decision does not decree confiscation, the proceeds of the sale shall be handed over to the owner of the seized objects.

21 In the area of tax frauds, the Tax and Customs Authority is vested with special powers:

**[Excerpt General Tax Code]**

**Article 64-C<sup>137</sup> Powers of public authority** For the purposes of the provisions of the Penal Code, employees of the Tax and Customs Authority, in the exercise of the functions assigned to them in this capacity, are considered to be vested with the powers of public authority.

<sup>136</sup> **Artigo 38.º Lei n.º 15/2001**

**Depósito de mercadorias e instrumentos do crime nas estâncias aduaneiras ou depósitos públicos e venda imediata**

1 - As mercadorias, meios de transporte, armas e outros instrumentos do crime apreendidos serão depositados nas estâncias aduaneiras ou depósitos públicos, a não ser que estes não possam recebê-los por falta de espaço.

2 - Mediante despacho da autoridade judiciária competente, os objectos referidos no número anterior, apreendidos pela Brigada Fiscal, podem ser por esta utilizados provisoriamente até à declaração de perda ou de restituição, sempre que seja reconhecido interesse an sua utilização.

3 - Se a apreensão respeitar a coisas perecíveis, perigosas ou deterioráveis, é aplicável, com as necessárias adaptações, o disposto no artigo 185.º do Código de Processo Penal, devendo a decisão ser proferida no prazo de dois dias.

4 - As operações de venda são realizadas pelos órgãos competentes da administração tributária, nos termos das leis aplicáveis, sendo o produto da venda depositado à ordem do processo respectivo.

5 - Se a decisão final não decretar a perda, o produto da venda será entregue ao proprietário dos objectos apreendidos.

<sup>137</sup> **Artigo 64.º-C Poderes de autoridade pública**

Para efeitos do disposto no Código Penal, os funcionários da Autoridade Tributária e Aduaneira, no exercício das funções que nessa qualidade lhes sejam cometidas, consideram-se investidos de poderes de autoridade pública.

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

In its notification to the EPPO the Portuguese Government has stated that the Public Ministry is competent to act by virtue of paras 3 to 7 of Art. 27 EPPO Regulation, thus it receives this information and issues these actions with its specialized bodies and units. (Article 219.º /1, CRP).<sup>138</sup>

22

**Constitution of the Portuguese Republic**

Decree of April 10, 1976

23

**Art. 219**<sup>139</sup> 1. The Public Prosecutor's Office is responsible for representing the State and defending the interests that the law determines, as well as, in compliance with the provisions of the following number and under the terms of the law, participating in the execution of the criminal policy defined by the sovereign bodies, exercising criminal proceedings guided by the principle of legality and defend democratic legality.

2. The Public Ministry enjoys its own statute and autonomy, under the terms of the law.

3. The law establishes special forms of advice to the Public Ministry in cases of strictly military crimes.

4. Public prosecutors are responsible magistrates, hierarchically subordinate, and cannot be transferred, suspended, retired, or dismissed except in the cases provided for by law.

5. The appointment, placement, transfer, and promotion of agents of the Public Ministry and the exercise of disciplinary action are the responsibility of the Attorney General's Office.

Summarising this information, it can be stated that the Portuguese Public Ministry (MP) is a constitutional body whose competence lays in the area of carrying out criminal proceedings, participating in the execution of a (governmental) criminal policy defined by sovereign bodies, representing the State and defending democratic legality and the interests that the law determines.<sup>140</sup>

24

<sup>138</sup> See <https://www.epo.europa.eu/sites/default/files/2021-11/08-PT.pdf>. Accessed 23 January 2024.

<sup>139</sup> **Artigo 219 CRP**

1. Ao Ministério Público compete representar o Estado e defender os interesses que a lei determinar, bem como, com observância do disposto no número seguinte e nos termos da lei, participar na execução da política criminal definida pelos órgãos de soberania, exercer a acção penal orientada pelo princípio da legalidade e defender a legalidade democrática.

2. O Ministério Público goza de estatuto próprio e de autonomia, nos termos da lei.

3. A lei estabelece formas especiais de assessoria junto do Ministério Público nos casos dos crimes estritamente militares.

4. Os agentes do Ministério Público são magistrados responsáveis, hierarquicamente subordinados, e não podem ser transferidos, suspensos, aposentados ou demitidos senão nos casos previstos na lei.

5. A nomeação, colocação, transferência e promoção dos agentes do Ministério Público e o exercício da acção disciplinar competem à Procuradoria-Geral da República.

<sup>140</sup> See <https://www.ministeriopublico.pt/pagina/o-ministerio-publico>. Accessed 23 January 2024

**25** The information in the notification is quite unspecific but the EPPO Chamber will learn how to approach the Portuguese authorities and has the option to conclude further working arrangements if this original notification seems to be too unspecific for the work in praxis.

**d) Provisions regarding the finalization of the national investigation, para 7**

**26** For the end of investigations in relation tax and customs offences, see Art. 42 of the Tax Procedures & Investigations of tax offences Act (above Art. 26 Justiciability and appeals).

### 3. Article 28 Conducting the investigation

a) The handling EDP carrying out the investigative measures, para 1 .....	148	bb. Via national administrative decrees/regulations under criminal procedural law ....	167
b) Instructions and assignment of investigative measures for “those national authorities”... 148		(1) Portugal.....	167
aa. General rules .....	148	(2) Specific Decrees, non-formal laws.....	169
bb. Judicial Police (Polícia Judiciária).....	150	d) Urgent measures in accordance with national law necessary to ensure effective investigations .....	172
cc. Area of tax fraud and the Tax Investigation Unit (Unidade de Ação Fiscal)..	154	e) Provisions in relation to the Gathering Evidence .....	179
c) Ensuring compliance with national law .....	157		
aa. Via the general investigation provisions ....	157		

1. The European Delegated Prosecutor handling a case may, in accordance with this Regulation **and with national law**, either undertake the investigation measures and other measures on his/her own or instruct the competent authorities in his/her Member State. Those authorities shall, **in accordance with national law**, ensure that all instructions are followed and undertake the measures assigned to them. The handling European Delegated Prosecutor shall report through the case management system to the competent European Prosecutor and to the Permanent Chamber any significant developments in the case, in accordance with the rules laid down in the internal rules of procedure of the EPPO.

2. At any time during the investigations conducted by the EPPO, the competent national authorities shall take urgent measures **in accordance with national law** necessary to ensure effective investigations even where not specifically acting under an instruction given by the handling European Delegated Prosecutor. The national authorities shall without undue delay inform the handling European Delegated Prosecutor of the urgent measures they have taken.

3. The competent Permanent Chamber may, on proposal of the supervising European Prosecutor decide to reallocate a case to another European Delegated Prosecutor in the same Member State when the handling European Delegated Prosecutor:

- (a) cannot perform the investigation or prosecution; or
- (b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.

4. In exceptional cases, after having obtained the approval of the competent Permanent Chamber, the supervising European Prosecutor may take a reasoned decision to conduct the investigation personally, either by undertaking personally the investigation measures and other measures or by instructing the competent authorities in his/her Member State, where this appears to be indispensable in the interest of the efficiency to the investigation or prosecution by reasons of one or more of the following criteria:

- (a) the seriousness of the offence, in particular in view of its possible repercussions at Union level;
- (b) when the investigation concerns officials or other servants of the Union or members of the institutions of the Union;
- (c) in the event of failure of the reallocation mechanism provided for in paragraph 3.

In such exceptional circumstances Member States shall ensure that the European Prosecutor is entitled to order or request investigative measures and other measures and that he/she has all the powers, responsibilities and obligations of a European Delegated Prosecutor in accordance with this Regulation and national law.

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

#### **a) The handling EDP carrying out the investigative measures, para 1**

- 1 See → Art. 26 mainly and see for tax procedures, Art. 40 General Tax Procedures Code.

#### **b) Instructions and assignment of investigative measures for “those national authorities”**

##### **aa. General rules**

- 2 The national criminal police<sup>141</sup> has been renewed in 2019 and the restructured competences might be of importance for the EDPs.<sup>142</sup> They have a special relationship with the Public Prosecutor, hence as well with the Portuguese EDPs.<sup>143</sup>

<sup>141</sup> See <https://www.ministeriopublico.pt/perguntas-frequentes/area-criminal>. Accessed 23 January 2024.

<sup>142</sup> Decreto-Lei n.º 137/2019 Aprova a nova estrutura organizacional da Polícia Judiciária/Approves the new organizational structure of the Judiciary Police Decree-Law No. 137/2019.

<sup>143</sup> The Portuguese Criminal Procedure Act deals with this relationship in the following Arts.:

Title II *Of the Public Prosecutor's Office and criminal police bodies*

Article 48 (*Legitimacy*)

Article 49 (*Legitimacy in complaint-dependent procedure*)

Article 50 (*Legitimacy in a procedure dependent on private prosecution*)

Article 51 (*Approval of the withdrawal of the complaint or the private accusation*)

Article 52 (*Legitimacy in the case of a crime contest*)

Article 53 (*Position and attributions of the Public Prosecutor in the proceedings*)

Article 54 (*Impediments, refusals and excuses*)

Article 55 (*Jurisdiction of criminal police bodies*)

Article 56 (*Guidance and functional dependence on criminal police bodies*).

First of all, the instruction and assignment of investigative measures can be detected in the Criminal Procedure Code. Next, the tax procedures and investigations of Tax Offences Code can be analysed and, last but not least, the Customs (Procedures) Code and its provisions can be listed below. 3

*As for the instructed and assigned national authorities* 4

See above → Institutions, Organization of the criminal justice system in Portugal

**Art. 270 CPC<sup>144</sup> Acts that may be delegated by the Public Prosecutor's Office to the criminal police bodies** 5

1 - The Public Prosecutor's Office may delegate to the police criminal investigation bodies the task of carrying out any diligences and investigations related to the enquiry.

2 - In addition to the acts that are the exclusive competence of the investigating judge, under the terms of Articles 268 and 269, the following acts are an exception to the provision in the previous paragraph

a) Receiving sworn statements, under the terms of the second part of paragraph 3 of Article 138.

b) Ordering the performance of expert examinations, under the terms of Article 154

c) Attending an examination likely to offend the modesty of the person, under the terms of the second part of Article 172 paragraph 3

d) Ordering or authorising searches under the terms and limits of Article 174 (3) and (5)

e) Any other acts that the law expressly determines to be presided over or carried out by the Public Prosecution Service.

3 - The Public Prosecutor's Office may, however, delegate to the criminal police authorities the power to order the carrying out of forensics regarding certain types of crimes,

<sup>144</sup> **Artigo 270.º Código De Processo Penal**

**Actos que podem ser delegados pelo Ministério Público nos órgãos de polícia criminal**

1 - O Ministério Público pode conferir a órgãos de polícia criminal o encargo de procederem a quaisquer diligências e investigações relativas ao inquérito.

2 - Exceptuam-se do disposto no número anterior, além dos actos que são da competência exclusiva do juiz de instrução, nos termos dos artigos 268.º e 269.º, os actos seguintes:

a) Receber depoimentos ajuramentados, nos termos da segunda parte do n.º 3 do artigo 138.º;

b) Ordenar a efectivação de perícia, nos termos do artigo 154.º

c) Assistir a exame susceptível de ofender o pudor da pessoa, nos termos da segunda parte do n.º 3 do artigo 172.º;

d) Ordenar ou autorizar revistas e buscas, nos termos e limites dos n.ºs 3 e 5 do artigo 174.º;

e) Quaisquer outros actos que a lei expressamente determinar que sejam presididos ou praticados pelo Ministério Público.

3 - O Ministério Público pode, porém, delegar em autoridades de polícia criminal a faculdade de ordenar a efectivação da perícia relativamente a determinados tipos de crime, em caso de urgência ou de perigo na demora, nomeadamente quando a perícia deva ser realizada conjuntamente com o exame de vestígios. Exceptuam-se a perícia que envolva a realização de autópsia médico-legal, bem como a prestação de esclarecimentos complementares e a realização de nova perícia nos termos do artigo 158.º

4 - Sem prejuízo do disposto no n.º 2, no n.º 3 do artigo 58.º, no n.º 3 do artigo 243.º e no n.º 1 do artigo 248.º, a delegação a que se refere o n.º 1 pode ser efectuada por despacho de natureza genérica que indique os tipos de crime ou os limites das penas aplicáveis aos crimes em investigação.

in cases of urgency or danger in delay, namely when the forensics must be carried out together with the examination of evidence. Exception is made for the expertise involving the performance of a medico-legal autopsy, as well as the provision of complementary clarifications and the performance of a new expertise under the terms of Article 158.

4 - Without prejudice to the provisions of paragraphs 2, 3, 58, 3, 243 and 248(1), the delegation referred to in paragraph 1 may be made by generic order indicating the types of crimes or the limits of the penalties applicable to the crimes under investigation.

#### **bb. Judicial Police (*Polícia Judiciária*)**

- 6 The judicial police authorities are involved in the investigations of PIF crime offences if it does not primarily concern customs duties fraud to the detriment of the EU revenue or VAT fraud above €10 million to the detriment of the budget.<sup>145</sup> The judicial police units have been reorganised in 2019<sup>146</sup> and it has since then several different units for the numerous areas of crime. The Central Criminal Investigation Units and the Decentralized Criminal investigation Units will be competent if their region and jurisdiction is concerned of frauds or other PIF offences. The following articles from the current law determining the structure are these ones:

**Decree-Law No. 137/2019, of September 13**<sup>147</sup> Law no. 35/2023, of 07/21.

#### **Competence of services and organizational units *directly reporting to the national director***

##### **Article 27**<sup>148</sup> **Financial Information Unit**

1 - The FIU is responsible for collecting, centralizing, processing and disseminating, at the national level, information regarding the prevention and investigation of crimes of laundering of illicit advantages, financing of terrorism and tax crimes, ensuring, internally, cooperation and articulation with the judicial authority, with supervisory and supervisory authorities and with financial and non-financial entities, provided for in Law

<sup>145</sup> See <https://www.policiajudiciaria.pt/unidades-organicas/>. Accessed 23 January 2024.

<sup>146</sup> See Aprova a nova estrutura organizacional da Polícia Judiciária Decreto-Lei n.º 137/2019 Diário da República n.º 176/2019, Série I de 2019-09-13.

<sup>147</sup> *Decreto-Lei n.º 137/2019, de 13 de setembro* – 6ª versão - a mais recente (Lei n.º 35/2023, de 21/07).

<sup>148</sup> Artigo 27.º Decreto-Lei n.º 137/2019

Unidade de Informação Financeira

1 - A UIF tem como competências a recolha, a centralização, o tratamento e a difusão, no plano nacional, da informação respeitante à prevenção e investigação dos crimes de branqueamento de vantagens de proveniência ilícita, financiamento do terrorismo e dos crimes tributários, assegurando, no plano interno, a cooperação e articulação com a autoridade judiciária, com as autoridades de supervisão e de fiscalização e com as entidades financeiras e não financeiras, previstas na Lei n.º 83/2017, de 18 de agosto, e, no plano internacional, a cooperação com as unidades de informação financeira ou estruturas congéneres.

2 - As competências a que se refere o número anterior não prejudicam as atribuições, e as competências, nesta área, dos órgãos da administração tributária.

3 - Podem integrar a UIF trabalhadores da Autoridade Tributária e Aduaneira e de outras autoridades de supervisão ou serviços e estruturas governamentais, em modalidade a definir por portaria pelos respetivos ministros, de acordo com o regime que lhes seja aplicável.



no. 83/2017 of 18 August, and, internationally, cooperation with financial intelligence units or similar structures.

2 - The competences referred to in the previous number do not prejudice the attributions, and competences, in this area, of the tax administration bodies.

3 - Employees of the Tax and Customs Authority and other supervisory authorities or government services and structures may integrate the FIU, in a modality to be defined by decree by the respective ministers, in accordance with the regime applicable to them.

### **Article 28<sup>149</sup> Asset Recovery Office**

1 - The GRA is regulated by a separate statute. (*See below Art. 30 EPPO Regulation and Art. 3 OLAF Regulation*)

2 - The position of coordinator of the GRA is a 1st degree middle management position.

### **Subsection II<sup>150</sup>**

Article 30. National Counterterrorism Unit

Article 31 National Anti-Corruption Unit

Article 32 National Unit to Combat Drug Trafficking

Article 33 National Unit to Combat Cybercrime and Technological Crime

### **Article 34<sup>151</sup> Directorates, criminal investigation departments and local criminal investigation units**

The directorates, criminal investigation departments and local criminal investigation units are responsible for preventing, detecting, investigating, and assisting the judicial authorities in relation to crimes within the jurisdiction of the PJ, or whose investigation is granted to them, practiced or known in the respective geographic area of intervention and that the competence is not attributed to the national units.

<sup>149</sup> **Artigo 28. Decreto-Lei n.º 137/2019**

Gabinete de Recuperação de Ativos

1 - O GRA é regulado em diploma próprio.

2 - O cargo de coordenador do GRA é de direção intermédia de 1.º grau.

<sup>150</sup> SUBSECÇÃO II

Competência das unidades orgânicas da área de investigação criminal e de apoio técnico à investigação criminal

Artigo 30.º - Unidade Nacional Contraterrorismo

Artigo 31.º - Unidade Nacional de Combate à Corrupção

Artigo 32.º - Unidade Nacional de Combate ao Tráfico de Estupefacientes

Artigo 33.º - Unidade Nacional de Combate ao Cibercrime e à Criminalidade Tecnológica

<sup>151</sup> Artigo 34. Decreto-Lei n.º 137/2019

Diretorias, departamentos de investigação criminal e unidades locais de investigação criminal

Às diretorias, aos departamentos de investigação criminal e às unidades locais de investigação criminal compete a prevenção, deteção, investigação e coadjuvação das autoridades judiciais relativamente aos crimes da competência da PJ, ou cuja investigação lhe seja deferida, praticados ou conhecidos na respetiva área geográfica de intervenção e que a competência não esteja atribuída às unidades nacionais.

7 According to Chapter II, Art. 8 et seq. of the same Act the police have the task to participate in the discovery of evidence in criminal cases:

8

***[Excerpt Decree-Law No. 137/2019]***  
***Criminal police authorities and procedural powers***

**Article 8<sup>152</sup> Criminal police authorities**

1 - The following are criminal police authorities, under the terms and for the purposes of the Code of Criminal Procedure

- a) National director
- b) Deputy national directors
- c) Directors of national units
- d) Directors of the directorates
- e) Coordinator of the Asset Recovery Office;
- f) Deputy Directors of the directorates
- g) Senior Criminal Coordinators
- h) Coordinators of criminal investigation;
- i) Chief Inspectors;
- j) Inspectors, when formally appointed to exercise functions of brigade head, under the terms of paragraph 10 of Article 18

2 - The criminal police authorities referred to in the previous paragraph are also police authorities under the terms of the Internal Security Act.

3 - The criminal investigation staff not referred to in paragraph 1 may, with due observance of the legal provisions, proceed with the identification of any person.

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<sup>152</sup> **Capítulo II**

**Autoridades de polícia criminal e competências processuais**

**Artigo 8.º Decreto-Lei n.º 137/2019 Autoridades de polícia criminal**

1 - São autoridades de polícia criminal, nos termos e para os efeitos do Código de Processo Penal:

- a) Diretor nacional;
- b) Diretores nacionais-adjuntos;
- c) Diretores das unidades nacionais;
- d) Diretores das diretorias;
- e) Coordenador do Gabinete de Recuperação de Ativos;
- f) Subdiretores das diretorias;
- g) Coordenadores superiores de investigação criminal;
- h) Coordenadores de investigação criminal;
- i) Inspetores-chefes;
- j) Inspetores, quando formalmente designados para o exercício de funções de chefia de brigada, nos termos do n.º 10 do artigo 18.º

2 - As autoridades de polícia criminal referidas no número anterior são, também, autoridades de polícia nos termos da Lei de Segurança Interna.

3 - O pessoal de investigação criminal não referenciado n.º 1 pode, com observância das disposições legais, proceder à identificação de qualquer pessoa.

**Article 9<sup>153</sup> Procedural Competences**

1 - The criminal police authorities referred to in paragraph 1 of the previous article also have special competence to order, within the scope of an order of generic delegation of criminal investigation competence

- a) The carrying out of expert examinations to be carried out by official bodies, safeguarding those concerning psychiatric issues, personality and medico-legal autopsy;
- b) Searches and inspections, with the exception of home searches and those conducted in a lawyer's office, a doctor's surgery or a hospital or banking establishment;
- c) Seizures, with the exception of mail or those taking place in a lawyer's office, a doctor's surgery, a hospital or a banking establishment;
- d) Detention out of flagrante delicto, under the terms of the criminal procedural law;
- e) Driving a person with a mental disorder to an official mental health service, under the terms of the Mental Health Law, whenever there is imminent danger to the person's own or other people's personal or property assets of relevant value, namely due to the acute deterioration of the person's state of health, whenever it is not possible, given the urgency and danger in delay, to wait for the judicial decision; and
- f) The search in a computer system, as defined in Article 2 of Law No. 109/2009, of 15 September, whenever it is not possible, given the situation of urgency and danger in delay, to wait for the decision of the judicial authority.

2 - The carrying out of any of the acts foreseen in the previous number shall obey the procedure of the Code of Criminal Procedure and must be immediately communicated to the judicial authority that is titular of the direction of the process for the purposes and under the penalties of the criminal procedural law.

**<sup>153</sup> Artigo 9. Decreto-Lei n.º 137/2019 Competências processuais**

1 - As autoridades de polícia criminal referidas no n.º 1 do artigo anterior têm ainda especial competência para, no âmbito de despacho de delegação genérica de competência de investigação criminal, ordenar:

- a) A realização de perícias a efetuar por organismos oficiais, salvaguardadas as perícias relativas a questões psiquiátricas, sobre a personalidade e de autópsia médico-legal;
- b) A realização de revistas e buscas, com exceção das domiciliárias e das realizadas em escritório de advogado, em consultório médico ou em estabelecimento hospitalar ou bancário;
- c) Apreensões, exceto de correspondência ou as que tenham lugar em escritório de advogado, em consultório médico, em estabelecimento hospitalar ou bancário;
- d) A detenção fora do flagrante delito, nos termos da lei processual penal;
- e) A condução de pessoa com anomalia psíquica a serviço oficial de saúde mental, nos termos previstos na Lei de Saúde Mental, sempre que exista perigo iminente para bens jurídicos, de relevante valor, próprios ou alheios, de natureza pessoal ou patrimonial, nomeadamente por deterioração aguda do seu estado de saúde, sempre que não seja possível, dada a situação de urgência e perigo na demora, aguardar pela decisão judicial; e
- f) A pesquisa em sistema informático, como definido no artigo 2.º da Lei n.º 109/2009, de 15 de setembro, sempre que não seja possível, dada a situação de urgência e perigo na demora, aguardar pela decisão de autoridade judiciária.

2 - A realização de qualquer dos atos previstos no número anterior obedece à tramitação do Código de Processo Penal e tem de ser de imediato comunicada à autoridade judiciária titular da direção do processo para os efeitos e sob as cominações da lei processual penal.

3 - A todo o tempo, a autoridade judiciária titular da direção do processo criminal pode condicionar o exercício ou avocar as competências previstas no n.º 1, nos termos da Lei de Organização da Investigação Criminal.

3 - At any time, the judicial authority in charge of directing the criminal proceedings may condition the exercise or call back the competencies provided for in paragraph 1, under the terms of the Criminal Investigation Organisation Act.

**cc. Area of tax fraud and the Tax Investigation Unit (*Unidade de Ação Fiscal*)**

- 9 The Republican National Guard contains various subdivisions. One of them is the long existing Tax Investigations Unit, which is regulated by the Law 63/2007 of 6 November, called GNR Organic Law (*Lei n.º 63/2007, de 06 de Novembro Lei Orgânica Da GNR Aprova a orgânica da Guarda Nacional Republicana*).

**10 Article 41 Law 63/2007<sup>154</sup> Tax Action Unit**

1 - The UAF is a specialized unit of national scope with specific investigative competence for the fulfilment of the tax, fiscal and customs mission entrusted to the Guard.

2 - The UAF is articulated in detachments of fiscal action and a detachment of research of national scope.

3 - The UAF is commanded by a colonel, assisted by a 2nd commander.

**Art. 13 Law 63/2007<sup>155</sup> Tax police authority**

1 - For the purposes of the legal regime applicable to tax infractions, the following are considered tax police authorities:

- a) All officers exercising command functions in the Coastal Control and Tax Action Units and in the respective subunits;
- b) Other officers of the Guard, when in the exercise of operational command functions of a tax scope.

2 - In order to allow the fulfilment of its tax mission, as well as the pursuit of its financial and patrimonial attributions, Guarda maintains a functional link with the Ministry of Finance, regulated by a joint ordinance of the responsible minister and the member of the Government responsible for the area of finance.

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<sup>154</sup> **Artigo 41.º Lei Orgânica Da GNR – Unidade de Acção Fiscal**

1 - A UAF é uma unidade especializada de âmbito nacional com competência específica de investigação para o cumprimento da missão tributária, fiscal e aduaneira cometida à Guarda.

2 - A UAF articula-se em destacamentos de acção fiscal e um destacamento de pesquisa de âmbito nacional.

3 - A UAF é comandada por um coronel, coadjuvado por um 2.º comandante.

<sup>155</sup> **Artigo 13. Lei Orgânica Da GNR – Autoridade de polícia tributária**

1 - Para efeitos do regime jurídico aplicável às infracções tributárias, são consideradas autoridades de polícia tributária:

a) Todos os oficiais no exercício de funções de comando nas Unidades de Controlo Costeiro e de Acção Fiscal e nas respectivas subunidades;

b) Outros oficiais da Guarda, quando no exercício de funções de comando operacional de âmbito tributário.

2 - De forma a permitir o cumprimento da sua missão tributária, bem como a prossecução das suas atribuições de natureza financeira e patrimonial, a Guarda mantém uma ligação funcional com o Ministério das Finanças, regulada por portaria conjunta do ministro da tutela e do membro do Governo responsável pela área das finanças.

In the area of tax fraud and potential customs (duties fraud) investigations the Art. 40 of the Tax Procedures & Investigations of Tax Offences Act may apply:

11

**Article 40 Tax Offences Act<sup>156</sup> Investigation/s in the area of tax frauds and irregularities]**

1 - Once **news of a tax crime** has been acquired, an investigation shall be carried out under the direction of the Public Prosecutor's Office, for the purposes and **under the terms of the provisions of the Code of Criminal Procedure.**

2 - During the investigation, the tax administration and social security bodies shall be entrusted with the powers and functions that the Code of Criminal Procedure attributes to the bodies and authorities of the criminal police, and the practice of acts that the Public Prosecutor's Office may attribute to those entities shall be presumed to be delegated to them, regardless of the value of the illegitimate asset advantage.

3 - Within the scope of the enquiry, for the purposes of the Code of Criminal Procedure, the following are considered to be criminal police authorities

a) In the Tax and Customs Authority, the director-general, the deputy director-general for the area of Tax and Customs Inspection, the heads of the services to whom criminal investigation powers are entrusted and the directors of finance, without prejudice to their hierarchical organisation;

b) The presidents of the collective persons of public social security law to whom the attributions in the areas of taxpayers and beneficiaries are entrusted;

c) In the National Republican Guard, all officers exercising command functions in units with tax powers, as well as the commanders of the respective sub-units or other officers of the Guard when exercising operational command functions in the tax field, in accordance with their organic law.

<sup>156</sup> **Artigo 40.º Lei n.º 15/2001**

**Inquérito**

1 - Adquirida a notícia de um crime tributário procede-se a inquérito, sob a direcção do Ministério Público, com as finalidades e nos termos do disposto no Código de Processo Penal.

2 - Aos órgãos da administração tributária e aos da segurança social cabem, durante o inquérito, os poderes e funções que o Código de Processo Penal atribui aos órgãos e às autoridades de polícia criminal, presumindo-se-lhes delegada a prática de atos que o Ministério Público pode atribuir àquelas entidades, independentemente do valor da vantagem patrimonial ilegítima.

3 - No âmbito do inquérito, para efeitos do Código de Processo Penal, são consideradas autoridade de polícia criminal:

a) Na Autoridade Tributária e Aduaneira, o diretor-geral, o subdiretor-geral para a área da Inspeção Tributária e Aduaneira, os dirigentes dos serviços a quem as competências de investigação criminal estejam cometidas e os diretores de finanças, sem prejuízo da sua organização hierárquica;

b) Os presidentes das pessoas coletivas de direito público da segurança social a quem estejam cometidas as atribuições nas áreas dos contribuintes e dos beneficiários;

c) Na Guarda Nacional Republicana, todos os oficiais no exercício de funções de comando nas unidades com competências tributárias, bem como os comandantes das respetivas subunidades ou outros oficiais da Guarda, quando no exercício de funções de comando operacional de âmbito tributário, de acordo com a sua lei orgânica.

4 - A instauração de inquérito pelos órgãos da administração tributária e da administração da segurança social ao abrigo da competência delegada deve ser de imediato comunicada ao Ministério Público.

4 - The commencement of an enquiry by the tax administration and social security administration bodies under delegated powers shall be immediately communicated to the Public Prosecutor's Office.

12 The above-mentioned article 40 shows that the public prosecutor's office is also responsible for tax offences and acts in accordance with the investigation standards in the Code of Criminal Procedure.

13 **Article 41 Tax Offences Act<sup>157</sup> Delegated powers of investigation**

1 - Without prejudice to the fact that the case may at any time be taken over by the Public Prosecutor's Office, the competence for the investigation acts referred to in Article 40(2) shall be presumed to be delegated

a) With *regard to customs crimes*, to the criminal police authorities referred to in paragraph 3(a) of the preceding article, in proceedings for crimes that may be indicted by them in the exercise of their powers, and to the units with tax powers of the National Republican Guard, in proceedings for crimes that they indict in the exercise of their powers;

b) As *regards tax crimes*, the criminal police authorities referred to in paragraph 3(a) of the previous Article; b) As regards tax crimes, the director of the Tax Office who performs functions in the area where the crime was committed, or the director of the Large Taxpayers Unit, or the director of the Fraud Investigation and Special Actions Directorate in the proceedings for crimes that may be reported by them in the exercise of their powers;

c) With regard to crimes against social security, the presidents of the legal persons governed by public law to whom the attributions in the taxpayers' and beneficiaries' areas are entrusted.

<sup>157</sup> Artigo 41.º Lei n.º 15/2001

**Competência delegada para a investigação**

1 - Sem prejuízo de a todo o tempo o processo poder ser avocado pelo Ministério Público, a competência para os atos de inquérito a que se refere o n.º 2 do artigo 40.º presume-se delegada:

a) Relativamente aos crimes aduaneiros, nas autoridades de polícia criminal referidas na alínea a) do n.º 3 do artigo anterior, nos processos por crimes que venham a ser indiciados por estas no exercício das suas atribuições e nas unidades com competências tributárias da Guarda Nacional Republicana, nos processos por crimes que esta indicie no exercício das suas atribuições;

b) Relativamente aos crimes fiscais, nas autoridades de polícia criminal referidas na alínea a) do n.º 3 do artigo anterior; b) Relativamente aos crimes fiscais, no diretor de finanças que exercer funções na área onde o crime tiver sido cometido ou no diretor da Unidade dos Grandes Contribuintes, ou no diretor da Direção de Serviços de Investigação da Fraude e de Ações Especiais nos processos por crimes que venham a ser indiciados por estas no exercício das suas atribuições;

c) Relativamente aos crimes contra a segurança social, nos presidentes das pessoas colectivas de direito público a quem estejam cometidas as atribuições nas áreas dos contribuintes e dos beneficiários.

2 - Os atos de inquérito para cuja prática a competência é delegada nos termos do número anterior são realizados pelos funcionários designados pelas autoridades de polícia criminal competentes, no âmbito da autonomia técnica e tática necessária ao eficaz exercício dessas atribuições.

3 - (Revogado.)

2 - The investigation acts for the performance of which the competence is delegated under the terms of the preceding paragraph shall be carried out by the officers appointed by the competent criminal police authorities, within the scope of technical and tactical autonomy required for the effective exercise of such powers.

**c) Ensuring compliance with national law**

**aa. Via the general investigation provisions**

The main standards can be found in the code of criminal procedure. In the following, there are provisions presented from other legal sources as well.

14

**[Excerpt CPC]**

15

**Title II Public Ministry and criminal police bodies**

**Article 48 CPC<sup>158</sup> Legitimacy**

The Public Ministry has the legitimacy to promote the criminal process, with the restrictions contained in Articles 49 to 52.

**Article 50 CPC<sup>159</sup> Legitimacy in proceedings dependent on private prosecution**

1 - When the criminal procedure depends on a private accusation, the victim, or other people, it is necessary that these people complain, become assistants and deduct a private accusation.

2 - The Public Prosecutor's Office shall carry out any steps it deems indispensable for the discovery of the truth and fall within its competence, participates in all procedural acts in which the private prosecution intervenes, accuses jointly with the latter and appeals autonomously against judicial decisions.

3 - The provisions of paragraph 3 of the previous article are correspondingly applicable.

<sup>158</sup> **Título II**

**Do Ministério Público e dos órgãos de polícia criminal**

**Artigo 48. Código De Processo Penal**

Legitimidade

O Ministério Público tem legitimidade para promover o processo penal, com as restrições constantes dos artigos 49.º a 52.º

<sup>159</sup> **Artigo 50. Código De Processo Penal**

Legitimidade em procedimento dependente de acusação particular

1 - Quando o procedimento criminal depender de acusação particular, do ofendido ou de outras pessoas, é necessário que essas pessoas se queixem, se constituam assistentes e deduzam acusação particular.

2 - O Ministério Público procede oficiosamente a quaisquer diligências que julgar indispensáveis à descoberta da verdade e couberem na sua competência, participa em todos os actos processuais em que intervier an acusação particular, acusa conjuntamente com esta e recorre autonomamente das decisões judiciais.

3 - É correspondentemente aplicável o disposto no n.º 3 do artigo anterior.

**Article 53 CPC<sup>160</sup> Position and attributions of the Public Prosecutor's Office in the process**

1 - It is incumbent upon the Public Prosecutor's Office, in criminal proceedings, to collaborate with the court in the discovery of the truth and in the realization of the law, obeying in all procedural interventions the criteria of strict objectivity.

2 - It is in particular the responsibility of the Public Prosecutor's Office:

- a) To receive denunciations, complaints and reports and assess the follow-up to be given to them;
- b) Direct the inquiry;
- c) Deduce accusation and support it effectively in the investigation and in the trial;
- d) File appeals, even if in the exclusive interest of the defence;
- e) Promote the execution of penalties and security measures.

**Article 55 CPC Jurisdiction of criminal police bodies**

See above → Art. 27, Urgent measures of national authorities for securing an investigation and prosecution.

**Article 56 CPC<sup>161</sup> Guidance and functional dependence of criminal police bodies**

Within the limits of the provisions of paragraph 1 of the previous article, the criminal police bodies act, in the process, under the direction of the judicial authorities and in their functional dependence.

**Article 263 CPC<sup>162</sup> Direction of the inquiry**

1 - The direction of the investigation is the responsibility of the Public Prosecutor's Office, assisted by the criminal police bodies.

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<sup>160</sup> **Artigo 53.º Código De Processo Penal**

**Posição e atribuições do Ministério Público no processo**

1 - Compete ao Ministério Público, no processo penal, colaborar com o tribunal na descoberta da verdade e na realização do direito, obedecendo em todas as intervenções processuais a critérios de estrita objectividade.

2 - Compete em especial ao Ministério Público:

- a) Receber as denúncias, as queixas e as participações e apreciar o seguimento a dar-lhes.
- b) Dirigir o inquérito.
- c) Deduzir acusação e sustentá-la efectivamente na instrução e no julgamento.
- d) Interpor recursos, ainda que no exclusivo interesse da defesa.
- e) Promover a execução das penas e das medidas de segurança.

<sup>161</sup> **Artigo 56.º Código De Processo Penal**

Orientação e dependência funcional dos órgãos de polícia criminal

Nos limites do disposto no n.º 1 do artigo anterior, os órgãos de polícia criminal actuam, no processo, sob a direcção das autoridades judiciais e na sua dependência funcional.

<sup>162</sup> **Artigo 263.º Código De Processo Penal**

(Direcção do inquérito)

1 - A direcção do inquérito cabe ao Ministério Público, assistido pelos órgãos de polícia criminal.

2 - Para efeito do disposto no número anterior, os órgãos de polícia criminal actuam sob a directa orientação do Ministério Público e na sua dependência funcional.



2 - For the purposes of the provisions of the previous number, the criminal police bodies act under the direct guidance of the Public Prosecutor's Office and in their functional dependence.

### **Article 264 CPC<sup>163</sup> Competence**

1 - The Public Prosecutor's Office that performs functions in the place where the crime was committed is competent to carry out the investigation.

2 - As long as the place where the crime was committed is not known, the competence belongs to the Public Ministry that performs functions in the place where the crime was first reported.

3 - If the crime is committed abroad, the Public Prosecutor's Office that performs functions before the competent court for the trial is competent.

4 - Regardless of the provisions of the previous numbers, any magistrate or agent of the Public Prosecutor's Office, in case of urgency or danger in delay, carries out acts of inquiry, namely arrest, interrogation and, in general, the acquisition and conservation of proof.

5 - The provisions of Articles 24 to 30 are correspondingly applicable, and the Public Prosecutor's Office is responsible for ordering or terminating the connection.

## **Chapter II Acts of inquiry**

### **Article 267 CPC<sup>164</sup> Acts of the Public Prosecutor's Office**

The Public Prosecutor's Office carries out the acts and ensures the means of proof necessary to achieve the purposes referred to in paragraph 1 of Article 262, under the terms and with the restrictions contained in the following articles.

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#### <sup>163</sup> **Artigo 264.º Código De Processo Penal**

##### **Competência**

1 - É competente para a realização do inquérito o Ministério Público que exercer funções no local em que no crime tiver sido cometido.

2 - Enquanto não for conhecido o local em que no crime foi cometido, a competência pertence ao Ministério Público que exercer funções no local em que primeiro tiver havido notícia do crime.

3 - Se o crime for cometido no estrangeiro, é competente o Ministério Público que exercer funções junto do tribunal competente para o julgamento.

4 - Independentemente do disposto nos números anteriores, qualquer magistrado ou agente do Ministério Público procede, em caso de urgência ou de perigo na demora, an actos de inquérito, nomeadamente de detenção, de interrogatório e, em geral, de aquisição e conservação de meios de prova.

5 - É correspondentemente aplicável o disposto nos artigos 24.º a 30.º, competindo ao Ministério Público ordenar ou fazer cessar a conexão.

#### <sup>164</sup> **Capítulo II**

##### **Dos actos de inquérito**

#### **Artigo 267.º Código De Processo Penal**

##### **Actos do Ministério Público**

O Ministério Público pratica os actos e assegura os meios de prova necessários à realização das finalidades referidas no n.º 1 do artigo 262.º, nos termos e com as restrições constantes dos artigos seguintes.

**Article 268 CPC<sup>165</sup> Acts to be performed by the investigating judge**

1 - During the investigation, the investigating judge is exclusively responsible for:

- a) Conducting the first judicial interrogation of the detained defendant;
- b) Proceed to the application of a coercive measure or asset guarantee, with the exception of that provided for in Article 196, which may be applied by the Public Prosecutor's Office;
- c) Carry out searches and seizures in a lawyer's office, medical practice or banking establishment, under the terms of Article 177(5), Article 180(1) and Article 181;
- d) Firstly, take cognizance of the content of the seized correspondence, under the terms of paragraph 3 of Article 179;
- e) Declare the confiscation of seized assets in favour of the State, with express mention of the applicable legal provisions, when the Public Prosecutor's Office closes the investigation under the terms of Articles 277, 280 and 282;
- f) Carry out any other acts that the law expressly reserves to the investigating judge.

2 - The judge performs the acts referred to in the previous number at the request of the Public Prosecutor's Office, the criminal police authority in case of urgency or danger in delay, by the defendant or the assistant.

3 - The request, when originating from the Public Ministry or from a criminal police authority, is not subject to any formalities.

4 - In the cases referred to in the previous numbers, the judge decides, within a maximum period of twenty-four hours, based on the information that, together with the request, is provided, waiving the presentation of the case whenever it is not considered essential.

<sup>165</sup> **Artigo 268.º Código De Processo Penal**

**Actos a praticar pelo juiz de instrução**

1 - Durante o inquérito compete exclusivamente ao juiz de instrução:

- a) Proceder ao primeiro interrogatório judicial de arguido detido.
- b) Proceder à aplicação de uma medida de coacção ou de garantia patrimonial, à excepção da prevista no artigo 196.º, a qual pode ser aplicada pelo Ministério Público.
- c) Proceder a buscas e apreensões em escritório de advogado, consultório médico ou estabelecimento bancário, nos termos do n.º 5 do artigo 177.º, do n.º 1 do artigo 180.º e do artigo 181.º;
- d) Tomar conhecimento, em primeiro lugar, do conteúdo da correspondência apreendida, nos termos do n.º 3 do artigo 179.º;
- e) Declarar a perda a favor do Estado de bens apreendidos, com expressa menção das disposições legais aplicadas, quando o Ministério Público proceder ao arquivamento do inquérito nos termos dos artigos 277.º, 280.º e 282.º;
- f) Praticar quaisquer outros actos que a lei expressamente reservar ao juiz de instrução.

2 - O juiz pratica os actos referidos no número anterior a requerimento do Ministério Público, da autoridade de polícia criminal em caso de urgência ou de perigo na demora, do arguido ou do assistente.

3 - O requerimento, quando proveniente do Ministério Público ou de autoridade de polícia criminal, não está sujeito a quaisquer formalidades.

4 - Nos casos referidos nos números anteriores, o juiz decide, no prazo máximo de vinte e quatro horas, com base na informação que, conjuntamente com o requerimento, lhe for prestada, dispensando a apresentação dos autos sempre que a não considerar imprescindível.

**Article 269 CPC<sup>166</sup> Acts to be ordered or authorized by the investigating judge**

1 - During the investigation, it is exclusively up to the investigating judge to order or authorize:

- a) The execution of expertise, under the terms of paragraph 3 of Article 154;
- b) Carrying out examinations, under the terms of no. 2 of Article 172;
- c) House searches, under the terms and within the limits of Article 177;
- d) Seizure of correspondence, under the terms of no. 1 of Article 179;
- e) Interception, recording or recording of conversations or communications, under the terms of Articles 187 and 189;
- f) The practice of any other acts that the law expressly makes depend on the order or authorization of the investigating judge.

2 - The provisions of numbers 2, 3 and 4 of the previous Article are correspondingly applicable.

**Article 270 CPC<sup>167</sup> Acts that may be delegated by the Public Ministry to criminal police bodies**

1 - The Public Prosecutor's Office may entrust criminal police bodies with the task of carrying out any steps and investigations relating to the investigation.

**<sup>166</sup> Artigo 269.º Código De Processo Penal****Actos a ordenar ou autorizar pelo juiz de instrução**

1 - Durante o inquérito compete exclusivamente ao juiz de instrução ordenar ou autorizar:

- a) A efetivação de perícias, nos termos do n.º 3 do artigo 154.º;
- b) A efectivação de exames, nos termos do n.º 2 do artigo 172.º;
- c) Buscas domiciliárias, nos termos e com os limites do artigo 177.º.
- d) Apreensões de correspondência, nos termos do n.º 1 do artigo 179.º;
- e) Intercepção, gravação ou registo de conversações ou comunicações, nos termos dos artigos 187.º e 189.º.
- f) A prática de quaisquer outros actos que a lei expressamente fizer depender de ordem ou autorização do juiz de instrução.

2 - É correspondentemente aplicável o disposto nos n. os 2, 3 e 4 do artigo anterior.

**<sup>167</sup> Artigo 270.º Código De Processo Penal**

Actos que podem ser delegados pelo Ministério Público nos órgãos de polícia criminal

1 - O Ministério Público pode conferir a órgãos de polícia criminal o encargo de procederem a quaisquer diligências e investigações relativas ao inquérito.

2 - Exceptuam-se do disposto no número anterior, além dos actos que são da competência exclusiva do juiz de instrução, nos termos dos artigos 268.º e 269.º, os actos seguintes:

- a) Receber depoimentos ajuramentados, nos termos da segunda parte do n.º 3 do artigo 138.º;
- b) Ordenar a efectivação de perícia, nos termos do artigo 154.º
- c) Assistir a exame susceptível de ofender o pudor da pessoa, nos termos da segunda parte do n.º 3 do artigo 172.º;
- d) Ordenar ou autorizar revistas e buscas, nos termos e limites dos n. os 3 e 5 do artigo 174.º;
- e) Quaisquer outros actos que a lei expressamente determinar que sejam presididos ou praticados pelo Ministério Público.

3 - O Ministério Público pode, porém, delegar em autoridades de polícia criminal a faculdade de ordenar an efectivação da perícia relativamente a determinados tipos de crime, em caso de urgência ou de perigo na demora, nomeadamente quando a perícia deva ser realizada conjuntamente com o exame de vestígios. Exceptuam-se a perícia que envolva a realização de autópsia médico-legal, bem como a prestação de esclarecimentos complementares e a realização de nova perícia nos termos do artigo 158.º

4 - Sem prejuízo do disposto no n.º 2, no n.º 3 do artigo 58.º, no n.º 3 do artigo 243.º e no n.º 1 do artigo 248.º, a delegação a que se refere o n.º 1 pode ser efectuada por despacho de natureza genérica que indique os tipos de crime ou os limites das penas aplicáveis aos crimes em investigação.

2 - The following acts are excluded from the provisions of the previous number, in addition to the acts that are the exclusive competence of the investigating judge, under the terms of Articles 268 and 269:

- a) To receive sworn statements, under the terms of the second part of paragraph 3 of Article 138;
- b) Order the execution of an expert examination, under the terms of Article 154.
- c) Attend an examination likely to offend the person's modesty, under the terms of the second part of paragraph 3 of Article 172;
- d) Order or authorize searches and searches, under the terms and limits of numbers 3 and 5 of Article 174;
- e) Any other acts that the law expressly determines to be presided over or carried out by the Public Prosecutor's Office.

3 - The Public Prosecutor's Office may, however, delegate to criminal police authorities the faculty of ordering the execution of the expertise in relation to certain types of crime, in case of urgency or danger in the delay, namely when the expertise must be carried out jointly with the examination of traces. Exceptions are made to expertise involving the performance of a medico-legal autopsy, as well as the provision of additional clarifications and the performance of a new expertise under the terms of Article 158.

4 - Without prejudice to the provisions of paragraph 2, paragraph 3 of Article 58, paragraph 3 of Article 243 and paragraph 1 of Article 248, the delegation to which referred to in paragraph 1 may be carried out by order of a general nature that indicates the types of crime or the limits of penalties applicable to crimes under investigation.

16

**General Tax Law Decree-Law No. 398/98<sup>168</sup>**

May apply for tax investigations.

<sup>168</sup> Lei Geral Tributária Decreto-Lei n.º 398/98.

**Law no. 83/2017, of 18 August, established preventive and repressive measures to combat money laundering and the financing of terrorism<sup>169</sup>**

**Article 81 Law 83/2017<sup>170</sup> Judicial and police authorities**

1 - The criminal investigation judge and the Public Prosecutor's Office exercise the powers and benefit from the other prerogatives conferred by the specific provisions of this law.

2 - Without prejudice to the provisions of the previous number, the DCIAP carries out actions to prevent practices related to criminal activities from which funds or other assets come, with money laundering or the financing of terrorism, within the scope of which it exercises its powers. That are specifically conferred on it by this law.

3 - In carrying out the prevention actions referred to in the previous number, the DCIAP has the powers conferred by the provisions of this law and paragraph 3 of Article 1 of Law No. 36/94, of 29 September, as amended by Laws 90/99, of July 10th, 101/2001, of August 25th, 5/2002, of January 11th, and 32/2010, of September 2nd, with the necessary adaptations and can request in terms provided for in paragraph 4 of Article 95, any elements or information that it deems relevant for the exercise of the functions conferred on it in this scope.

4 - With a view to achieving the purposes of preventing money laundering and financing of terrorism, the DCIAP accesses directly and by means of an order, all the financial,

<sup>169</sup> Lei n.º 83/2017, de 18 de Agosto, Medidas De Combate Ao Branqueamento De Capitais E Ao Financiamento Do Terrorismo.

<sup>170</sup> **CAPÍTULO VII**

**Autoridades competentes**

**SECÇÃO I**

**Autoridades competentes**

**SUBSECÇÃO I**

**Autoridades judiciárias e policiais**

**Artigo 81.º Lei n.º 83/2017**

**Autoridades judiciárias e policiais**

1 - O juiz de instrução criminal e o Ministério Público exercem as competências e beneficiam das demais prerrogativas conferidas pelas disposições específicas da presente lei.

2 - Sem prejuízo do disposto no número anterior, o DCIAP realiza as ações de prevenção das práticas relacionadas com atividades criminosas de que provenham fundos ou outros bens, com o branqueamento de capitais ou com o financiamento do terrorismo, no âmbito das quais exerce as competências que lhe são especificamente conferidas pela presente lei.

3 - Na realização das ações de prevenção referidas no número anterior, o DCIAP tem os poderes conferidos pelo disposto na presente lei e no n.º 3 do artigo 1.º da Lei n.º 36/94, de 29 de setembro, alterada pelas Leis n.os 90/99, de 10 de julho, 101/2001, de 25 de agosto, 5/2002, de 11 de janeiro, e 32/2010, de 2 de setembro, com as necessárias adaptações e pode solicitar nos termos previstos no n.º 4 do artigo 95.º, quaisquer elementos ou informações que considere relevantes para o exercício das funções que lhe são conferidas neste âmbito.

4 - Com vista à realização das finalidades da prevenção do branqueamento e do financiamento do terrorismo, o DCIAP acede diretamente e mediante despacho, a toda a informação financeira, fiscal, administrativa, judicial e policial, necessária aos procedimentos de averiguação preventiva subjacentes ao branqueamento de capitais e do financiamento do terrorismo.

5 - As autoridades policiais, no exercício das respetivas competências, beneficiam das prerrogativas conferidas pela presente lei, em especial do dever de colaboração previsto no artigo 53.º

fiscal, administrative, judicial and police information necessary for the preventive investigation procedures underlying money laundering. Capital and the financing of terrorism.

5 - The police authorities, in the exercise of their respective powers, benefit from the prerogatives conferred by this law, in particular the duty of collaboration provided for in Article 53.

18

**Cybercrime Law no. 109/2009, of 15 September/**

*Lei n.º 109/2009 de 15 de Setembro*

**Article 29 Cybercrime Law<sup>171</sup>**

**Competence of the Judicial Police for international cooperation**

The competence assigned by this law to the Judiciary Police for the purposes of international cooperation is performed by the organic unit responsible for investigating the crimes provided for in this law.

19

In the area of tax crimes, the following provisions apply:

**General Regime of Tax Offences, Law No. 15/2001, of June 5<sup>172</sup>**

**Part II Proceedings**

**Chapter I Criminal Tax Proceedings**

**Acquisition of news of the crime**

**Article 35<sup>173</sup>** 1 - The news of a tax crime is acquired by the Public Prosecutor's Office or the tax administration bodies with delegated competence for the acts of inquiry, through the criminal police bodies or tax agents and upon denunciation.

<sup>171</sup> **Artigo 29.º Lei n.º 109/2009 Competência da Polícia Judiciária para a cooperação internacional**

A competência atribuída pela presente lei à Polícia Judiciária para efeitos de cooperação internacional é desempenhada

pela unidade orgânica a quem se encontra cometida a investigação dos crimes previstos na presente lei.

<sup>172</sup> Regime Geral Das Infracções Tributárias, Lei n.º 15/2001, de 05 de Junho.

<sup>173</sup> **Parte II Do processo**

**Capítulo I Processo penal tributário**

**Artigo 35.º Lei n.º 15/2001 Aquisição da notícia do crime**

1 - A notícia de crime tributário adquire-se por conhecimento próprio do Ministério Público ou dos órgãos da administração tributária com competência delegada para os actos de inquérito, por intermédio dos órgãos de polícia criminal ou dos agentes tributários e mediante denúncia.

2 - A notícia do crime é sempre transmitida ao órgão da administração tributária com competência delegada para o inquérito.

3 - Qualquer autoridade judiciária que no decurso de um processo por crime não tributário tome conhecimento de indícios de crime tributário dá deles conhecimento ao órgão da administração tributária competente.

4 - O agente da administração tributária que adquira notícia de crime tributário transmite-a ao órgão da administração tributária competente.

5 - A denúncia contém, na medida do possível, a indicação dos elementos referidos nas alíneas do n.º 1 do artigo 243.º do Código de Processo Penal.

6 - Os agentes da administração tributária, os órgãos de polícia criminal e da marinha de guerra procedem de acordo com o disposto no artigo 243.º do Código de Processo Penal sempre que presenciarem crime tributário, devendo o auto de notícia ser remetido, no mais curto prazo, ao órgão da administração tributária competente para o inquérito.

- 2 - The news of the crime is always transmitted to the tax administration body with competence delegated to the investigation.
- 3 - Any judicial authority that, in the course of a proceeding for a non-tax crime, becomes aware of evidence of a tax crime, informs the competent tax administration body of them.
- 4 - The tax administration agent who acquires news of a tax crime transmits it to the competent tax administration body.
- 5-the complaint contains, as far as possible, an indication of the elements referred to in paragraph 1 of Article 243 of the Criminal Procedure Code.
- 6 - Tax administration agents, criminal police bodies and the navy act in accordance with the provisions of Article 243 of the Code of Criminal Procedure whenever they witness a tax crime, and the report must be sent, at the latest short term, to the tax administration body responsible for the investigation.
- 7 - The provisions of the previous numbers are correspondingly applicable to the bodies and agents of the social security administration.

#### **Article 40 Cybercrime Law<sup>174</sup> Investigation**

- 1 - Once the news of a tax crime has been acquired, an investigation is carried out, under the direction of the Public Prosecutor's Office, for the purposes and in accordance with the provisions of the Criminal Procedure Code.
- 2 - During the investigation, the tax administration and social security bodies are responsible for the powers and functions that the Code of Criminal Procedure assigns to criminal police bodies and authorities, presuming to be delegated the practice of acts

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7 - O disposto nos números anteriores é correspondentemente aplicável aos órgãos e agentes da administração da segurança social.

<sup>174</sup> **Artigo 40.º Lei n.º 15/2001 Inquérito**

- 1 - Adquirida a notícia de um crime tributário procede-sea inquérito, sob a direcção do Ministério Público, com as finalidades e nos termos do disposto no Código de Processo Penal.
- 2 - Aos órgãos da administração tributária e aos da segurança social cabem, durante o inquérito, os poderes e funções que o Código de Processo Penal atribui aos órgãos e às autoridades de polícia criminal, presumindo-se-lhes delegada a prática de atos que o Ministério Público pode atribuir àquelas entidades, independentemente do valor da vantagem patrimonial ilegítima.
- 3 - No âmbito do inquérito, para efeitos do Código de Processo Penal, são consideradas autoridade de polícia criminal:
- Na Autoridade Tributária e Aduaneira, o diretor-geral, o subdiretor-geral para a área da Inspeção Tributária e Aduaneira, os dirigentes dos serviços a quem as competências de investigação criminal estejam cometidas e os diretores de finanças, sem prejuízo da sua organização hierárquica;
  - Os presidentes das pessoas coletivas de direito público da segurança social a quem estejam cometidas as atribuições nas áreas dos contribuintes e dos beneficiários;
  - Na Guarda Nacional Republicana, todos os oficiais no exercício de funções de comando nas unidades com competências tributárias, bem como os comandantes das respetivas subunidades ou outros oficiais da Guarda, quando no exercício de funções de comando operacional de âmbito tributário, de acordo com a sua lei orgânica.
- 4 - A instauração de inquérito pelos órgãos da administração tributária e da administração da segurança social ao abrigo da competência delegada deve ser de imediato comunicada ao Ministério Público.

that the Public Prosecutor's Office may attribute to those entities, regardless of the value of the illegitimate patrimonial advantage.

3 - Within the scope of the investigation, for the purposes of the Criminal Procedure Code, the following are considered criminal police authorities:

a) In the Tax and Customs Authority, the director-general, the deputy director-general for the Tax and Customs Inspection area, the directors of the services to whom the criminal investigation powers are entrusted and the finance directors, without prejudice to their organization hierarchical;

b) The presidents of social security legal persons governed by public law to whom the attributions in the areas of taxpayers and beneficiaries are entrusted;

c) In the Guarda Nacional Republicana, all officers exercising command functions in units with tributary powers, as well as the commanders of the respective subunits or other officers of the Guard, when exercising operational command functions of a tributary scope, in accordance with its organic law.

4 - The opening of an inquiry by the tax administration and social security administration bodies under the delegated competence must be immediately communicated to the Public Prosecutor's Office.

#### **Article 41 Cybercrime Law<sup>175</sup> Delegated competence for investigation**

1 - Without prejudice to the fact that at any time the process may be invoked by the Public Prosecutor's Office, the competence for the acts of inquiry referred to in paragraph 2 of Article 40 is presumed to be delegated:

a) In relation to customs crimes, in the criminal police authorities referred to in subparagraph a) of no. crimes that it indicts in the exercise of its attributions;

b) With regard to tax crimes, in the criminal police authorities referred to in subparagraph a) of paragraph 3 of the previous article;

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#### <sup>175</sup> **Artigo 41.º Lei n.º 15/2001 Competência delegada para a investigação**

1 - Sem prejuízo de a todo o tempo o processo poder ser avocado pelo Ministério Público, a competência para os atos de inquérito a que se refere o n.º 2 do artigo 40.º presume-se delegada:

a) Relativamente aos crimes aduaneiros, nas autoridades de polícia criminal referidas na alínea a) do n.º 3 do artigo anterior, nos processos por crimes que venham a ser indiciados por estas no exercício das suas atribuições e nas unidades com competências tributárias da Guarda Nacional Republicana, nos processos por crimes que esta indície no exercício das suas atribuições;

b) Relativamente aos crimes fiscais, nas autoridades de polícia criminal referidas na alínea a) do n.º 3 do artigo anterior;

c) Relativamente aos crimes contra a segurança social, nos presidentes das pessoas colectivas de direito público a quem estejam cometidas as atribuições nas áreas dos contribuintes e dos beneficiários.

2 - Os atos de inquérito para cuja prática a competência é delegada nos termos do número anterior são realizados pelos funcionários designados pelas autoridades de polícia criminal competentes, no âmbito da autonomia técnica e tática necessária ao eficaz exercício dessas atribuições.

3 - (Revogado.)

4 - Se o mesmo facto constituir crime tributário e crime comum ou quando a investigação do crime tributário assuma especial complexidade, o Ministério Público pode determinar a constituição de equipas também integradas por elementos a designar por outros órgãos de polícia criminal para procederem aos actos de inquérito.



c) With regard to crimes against social security, in the presidents of legal persons governed by public law to whom the attributions in the areas of taxpayers and beneficiaries are entrusted.

2 - The acts of inquiry for which the competence is delegated under the terms of the previous number are carried out by officials appointed by the competent criminal police authorities, within the scope of the technical and tactical autonomy necessary for the effective exercise of these attributions.

3 - (Revoked)

4 - If the same fact constitutes a tax crime and a common crime or when the investigation of the tax crime assumes special complexity, the Public Prosecutor's Office may determine the constitution of teams also made up of elements to be designated by other criminal police bodies to carry out the acts of inquiry.

#### **Article 50 Cybercrime Law<sup>176</sup> Assistance to the Public Prosecutor's Office and communication of decisions**

1 - The tax or social security administration technically assists the Public Prosecutor's Office at all stages of the process, being able to appoint an administration agent or tax expert for each case, who is always able to consult the case and be informed about its progress.

2 - At any stage of the process, the respective final decisions, and the relevant facts for the settlement of taxes due are always communicated to the Tax and Customs Authority or to social security.

### **bb. Via national administrative decrees/regulations under criminal procedural law**

#### **(1) Portugal**

Portugal is a typical country with specific guidelines for the criminal policy. Thus, the Prosecutors issues guidelines for this area and the criminal bodies are bound by these guidelines. If the EDPs instruct the national bodies, they must also obey these national guidelines.<sup>177</sup>

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<sup>176</sup> **Artigo 50.º Lei n.º 15/2001 Assistência ao Ministério Público e comunicação das decisões**

1 - A administração tributária ou da segurança social assiste tecnicamente o Ministério Público em todas as fases do processo, podendo designar para cada processo um agente da administração ou perito tributário, que tem sempre a faculdade de consultar o processo e ser informado sobre a sua tramitação.

2 - Em qualquer fase do processo, as respetivas decisões finais e os factos apurados relevantes para liquidação dos impostos em dívida são sempre comunicados à Autoridade Tributária e Aduaneira ou à segurança social.

<sup>177</sup> **Artigo 51. DL n.º 28/84 (Entidades competentes)**

21

**Law No. 112/2019 of September 10<sup>th</sup> adapts the internal legal order to Council Regulation (EU) 2017/1939 of 12 October 2017, which implements enhanced cooperation for the establishment of the European Public Prosecutor's Office<sup>178</sup>**

## **Chapter II Performance of the European Public Prosecutor's Office in national territory**

### **Article 3 Law 112/2019<sup>179</sup> Exercise of the competence of the European Public Prosecutor's Office in national territory**

1 - The European Public Prosecutor's Office, whenever exercising its powers of investigation and promotion of criminal proceedings in national territory, is, for this purpose and within the scope of criminal proceedings and other applicable legislation, equivalent to the Public Prosecution Service.

2 - When, under the terms of paragraph 4 of Article 28 of the European Public Prosecutor's Office Regulation, the national European Public Prosecutor invokes the powers to investigate and carry out criminal proceedings in national territory, they are conferred on him, for the specific case, the same powers as are conferred to the Delegated European Public Prosecutor in accordance with the European Public Prosecutor's Office Regulation and national law.

1 - A fiscalização de bens e serviços exercer-se-á na produção, confecção, preparação, importação, exportação, armazenagem, depósito, conservação, transporte e venda por grosso ou a retalho, bem como na prestação de serviços, qualquer que seja o agente económico, incluindo os do sector público.

2 - É da competência exclusiva da Polícia Judiciária a investigação dos crimes previstos nos artigos 36.º a 38.º

3 - Relativamente aos restantes crimes previstos neste diploma, compete à Direcção-Geral de Fiscalização Económica proceder a inquérito preliminar, sem prejuízo do disposto no artigo 4.º do Decreto-Lei n.º 605/75, de 3 de Novembro, no que respeita ao ministério público.

4 - As autoridades que recebam denúncias ou levantem autos nos termos do artigo 166.º do Código de Processo Penal respeitantes aos crimes previstos neste diploma enviá-los-ão imediatamente à entidade que, nos termos do presente artigo, for competente para a respectiva investigação.

<sup>178</sup> Lei n.º 112/2019 de 10 de setembro

Adapta a ordem jurídica interna ao Regulamento (UE) 2017/1939 do Conselho, de 12 de outubro de 2017, que dá execução a uma cooperação reforçada para a instituição da Procuradoria Europeia

<sup>179</sup> Capítulo II

Atuação da Procuradoria Europeia em território nacional

Artigo 3.º Lei n.º 112/2019

Exercício da competência da Procuradoria Europeia em território nacional

1 - A Procuradoria Europeia, sempre que exerça as suas competências de investigação e de promoção da ação penal em território nacional, é, para este efeito e no âmbito do processo penal e da demais legislação aplicável, equiparada ao Ministério Público.

2 - Quando, nos termos do n.º 4 do artigo 28.º do Regulamento da Procuradoria Europeia, o Procurador Europeu nacional avocar as competências de investigação e de exercício da ação penal em território nacional, são-lhe conferidos, para o caso concreto, os mesmos poderes que são conferidos para o efeito ao Procurador Europeu Delegado, em conformidade com o Regulamento da Procuradoria Europeia e com a lei nacional.

The next section deals with the competent authorities in the health sector: 22

**Anti-Economic Offences and Against Public Health, Decree No. 28/84, of January 20<sup>180</sup>** 23

**Article 51<sup>181</sup> Competent Entities**

1 - The inspection of goods and services will be carried out in the production, manufacture, preparation, import, export, storage, storage, conservation, transport and wholesale or retail sale, as well as in the provision of services, whatever the economic agent, including those in the public sector.

2 - It is the exclusive competence of the Judiciary Police to investigate the crimes provided for in Articles 36 to 38.

3 - With regard to the other crimes provided for in this diploma, it is incumbent upon the Directorate-General for Economic Inspection to carry out a pre-trial investigation, without prejudice to the provisions in Article 4 of Decree-Law no. 605/75, of 3 November, with regard to public prosecutors.

4 - The authorities that receive complaints or raise records under the terms of Article 166 of the Code of Criminal Procedure concerning the crimes provided for in this diploma shall immediately send them to the entity that, under the terms of this article, is competent for the respective investigation.

**(2) Specific Decrees, non-formal laws**

The focus lies on the Directive No. 1/2021, of 01-04-2021, of the Prosecutor General, with the General Directives and Instructions for the implementation of the Criminal Policy Law for the 2020–2022 biennium:<sup>182</sup> 24

**[...] Corruption and related crime – Economic and financial crime, in particular the crime of money laundering** 25

K) and L)

i) In the investigation of corruption and related crimes and economic and economic crime;

<sup>180</sup> Infracções Antieconómicas E Contra A Saúde Pública, DL n.º 28/84, de 20 de Janeiro.

<sup>181</sup> **Artigo 51.º DL n.º 28/84 (Entidades competentes)**

1 - A fiscalização de bens e serviços exercer-se-á na produção, confecção, preparação, importação, exportação, armazenagem, depósito, conservação, transporte e venda por grosso ou a retalho, bem como na prestação de serviços, qualquer que seja o agente económico, incluindo os do sector público.

2 - É da competência exclusiva da Polícia Judiciária a investigação dos crimes previstos nos artigos 36.º a 38.º

3 - Relativamente aos restantes crimes previstos neste diploma, compete à Direcção-Geral de Fiscalização Económica proceder a inquérito preliminar, sem prejuízo do disposto no artigo 4.º do Decreto-Lei n.º 605/75, de 3 de Novembro, no que respeita ao ministério público.

4 - As autoridades que recebam denúncias ou levantem autos nos termos do artigo 166.º do Código de Processo Penal respeitantes aos crimes previstos neste diploma enviá-los-ão imediatamente à entidade que, nos termos do presente artigo, for competente para a respectiva investigação.

<sup>182</sup> See <https://www.ministeriopublico.pt/pagina/diretiva-no-12021-da-procuradora-geral-da-republica-de-4-de-janeiro-de-2021>. Accessed 23 January 2024.

-financial, special attention should be given to the risk associated with the increase in public funds made available to combat the economic crisis and the risks of abuse of specific regimes flexibility in public procurement or financial inspection procedures.

ii) They should be the object of particular attention, within the scope of procedural action of the Ministry Public, the measures that may be enshrined in the scope of the National Strategy to combat the corruption.

iii) Without prejudice to the priority of investigation of other typologies that integrate the phenomenon corruption, especially the others described in the Table attached to Service Order No. 1/13 of 11-11-2013, of the Prosecutor General, special priority will be given to the investigation crimes of passive and active corruption, corruption in international trade and private property, corruption associated with the sporting phenomenon, malfeasance, influence peddling and economic participation in business, including those practiced by holders of political offices or high public office.

iv) Priority will also be given to the crime of money laundering (provided for in Article 368-A of the Penal Code), especially when it relates to other investigative crimes priority or transnational drug trafficking networks.

v) In addition to the priority of investigating crimes related to banking activity, mechanisms should be created for articulation with regulatory or supervisory bodies of the financial markets.

vi) Scrupulous compliance must be given to the communication to be made to the DCIAP for the purposes the exercise of its coordinating powers.

vii) After verifying the respective assumptions, the inquiries should be sent to the sections specialists or the Regional DIAP, as the case may be.

#### **IV – Asset Recovery and Asset Management**

(Article 19 of Law No. 55/2020, of 27 August)

i) Priority should be given to the application of the mechanisms for confiscating the advantages provided for in the Law, irrespective of the crime to be investigated, whenever it has been found that the crime generated economic benefits of any kind, for its agents or third parties, or whenever the existence of incongruous assets is verified in the cases of application of the Law 5/2002 of 11 January.

ii) The Public Prosecutor's Office holders of the investigation must ensure the application mechanisms for confiscating the proceeds of crime, either through their own means, or that is, by determining the steps towards the identification, location, seizure and confiscation of the proceeds of the crime or, whenever the legal presuppositions are verified provided for in Law no. 45/2011, of 24 June, by delegating this task to the Asset Recovery.

iii) The stated priority covers the application of asset guarantee measures aimed at guaranteeing the future confiscation of the proceeds of the crime, whenever the legal presuppositions for its application, namely through the seizure, arrest or economic bond.

iv) Equal priority must be given to the promotion, in the respective closing order investigation, the confiscation of the advantages obtained from the commission of the crime, either through their appropriation in kind, or, when the appropriation in kind is not possible, to the confiscation of the respective value, in accordance with the law.

v) The Regional Attorney General's Offices and the District Attorney's Offices shall develop actions to raise awareness and stimulate asset recovery mechanisms, either through the Asset Recovery Office, or through steps taken by the Public Prosecutor's Office in the identification, location and seizure of goods or products related to crimes and the subsequent administration and disposal.

vi) After the application of asset guarantee measures, the Public Prosecutor's Office should also prompt the intervention of the Assets Administration Office, within the framework of the its legal powers defined in Law no. 45/2011 of 24 June.

vii) public prosecutors should pay particular attention to the rapid assignment to public utilities of the seized assets, articulating, for this purpose, and whenever the respective intervention assumptions are met, with the Assets Administration Office, as well as with the other administrative entities involved. [...]

## **VII – Criminal Police Bodies**

i) These general directives and instructions are also binding on the criminal police bodies that assist the Public Prosecutor's Office, pursuant to Article 6 of Law no. 55/2020 of 27 August.

ii) The top leaders of the criminal police bodies shall, in accordance with their respective competences and internal organizational structures, endeavour to allocate resources intended for to effectively implement the criminal policy priorities defined by Law No. 55/2020, of 27 August, and for the implementation of the necessary coordination and articulation between criminal police bodies and with the Public Ministry.

iii) The practical implementation of the participation of criminal police bodies in the execution of these instructions must be coordinated, in an articulated way, by the Attorneys-

-Regional Generals, by the DIAP Directors. Regional Courts and Public Prosecutor's Office Coordinators of the District Attorney's Offices, without prejudice to cases in which the intervention of the Attorney General's Office is necessary. [...]

**d) Urgent measures in accordance with national law necessary to ensure effective investigations**

26 Urgent measures are found in the Portuguese CPC:

27 **Article 174 CPC<sup>183</sup> Assumptions**

1 - When there are indications that someone hides in their person any animals, things or objects related to a crime or that can serve as evidence, a search is ordered.

2 - When there are indications that the animals, things, or objects referred to in the previous number, or the defendant or other person who must be detained, are in a reserved place or not freely accessible to the public, a search is ordered.

3 - Searches and searches are authorized or ordered by order by the competent judicial authority, which should, whenever possible, preside over the diligence.

4 - The order provided for in the previous number has a maximum validity period of 30 days, under penalty of nullity.

5 - Exemption from the requirements contained in paragraph 3 are searches and searches carried out by a criminal police body in the following cases:

a) Of terrorism, violent or highly organized crime, when there are well-founded indications of the imminent practice of a crime that serious risk to the life or integrity of any person;

b) In which the subject's consent, provided that the consent given is, in any way, documented; or

c) When arrested in flagrante delicto for a crime that corresponds to a prison sentence.

<sup>183</sup> **Capítulo II**

**Das revistas e buscas**

**Artigo 174. Código De Processo Penal**

**Pressupostos**

1 - Quando houver indícios de que alguém oculta na sua pessoa quaisquer animais, coisas ou objetos relacionados com um crime ou que possam servir de prova, é ordenada revista.

2 - Quando houver indícios de que os animais, as coisas ou os objetos referidos no número anterior, ou o arguido ou outra pessoa que deva ser detida, se encontram em lugar reservado ou não livremente acessível ao público, é ordenada busca.

3 - As revistas e as buscas são autorizadas ou ordenadas por despacho pela autoridade judiciária competente, devendo esta, sempre que possível, presidir à diligência.

4 - O despacho previsto no número anterior tem um prazo de validade máxima de 30 dias, sob pena de nulidade.

5 - Ressalvam-se das exigências contidas no n.º 3 as revistas e as buscas efectuadas por órgão de polícia criminal nos casos:

a) De terrorismo, criminalidade violenta ou altamente organizada, quando haja fundados indícios da prática iminente de crime que ponha em grave risco a vida ou a integridade de qualquer pessoa;

b) Em que os visados consintam, desde que o consentimento prestado fique, por qualquer forma, documentado; ou

c) Aquando de detenção em flagrante por crime a que corresponda pena de prisão.

6 - Sendo a pessoa coletiva ou entidade equiparada a visada pela diligência, o consentimento para o efeito só pode ser colhido junto do representante.

7 - Nos casos referidos na alínea a) do n.º 5, a realização da diligência é, sob pena de nulidade, imediatamente comunicada ao juiz de instrução e por este apreciada em ordem à sua validação.

6 - If the legal person or entity is equivalent to the one targeted by the diligence, consent for this purpose can only be obtained from the representative.

7 - In the cases referred to in subparagraph a) of paragraph 5, the execution of the diligence is, under penalty of nullity, immediately communicated to the investigating judge and analysed by him in order to validate it.

#### **Article 248 CPC<sup>184</sup> Communication of the news of the crime**

1 - Criminal police bodies that have news of a crime, either by their own knowledge or by means of a complaint, transmit it to the Public Prosecutor's Office as soon as possible, which cannot exceed 10 days.

2 - The provisions of the previous number apply to news of clearly unfounded crime that have been transmitted to the criminal police bodies.

3 - *In case of urgency*, the transmission referred to in the previous number may be made by any means of communication available for this purpose. Oral communication must, however, be followed by written communication.

#### **Article 249 CPC<sup>185</sup> Precautionary measures regarding the means of evidence**

1 - It is incumbent upon the criminal police bodies, even before receiving an order from the competent judicial authority to carry out investigations, to carry out the necessary and urgent precautionary acts to ensure the means of evidence.

2 - It is incumbent upon them, namely, under the terms of the previous number:

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#### <sup>184</sup> **Capítulo II**

##### **Das medidas cautelares e de polícia**

##### **Artigo 248. Código De Processo Penal**

##### **Comunicação da notícia do crime**

1 - Os órgãos de polícia criminal que tiverem notícia de um crime, por conhecimento próprio ou mediante denúncia, transmitem-na ao Ministério Público no mais curto prazo, que não pode exceder 10 dias.

2 - Aplica-se o disposto no número anterior a notícias de crime manifestamente infundadas que hajam sido transmitidas aos órgãos de polícia criminal.

3 - Em caso de urgência, a transmissão a que se refere o número anterior pode ser feita por qualquer meio de comunicação para o efeito disponível. A comunicação oral deve, porém, ser seguida de comunicação escrita.

##### <sup>185</sup> **Artigo 249. Código De Processo Penal**

##### **Providências cautelares quanto aos meios de prova**

1 - Compete aos órgãos de polícia criminal, mesmo antes de receberem ordem da autoridade judiciária competente para procederem a investigações, praticar os actos cautelares necessários e urgentes para assegurar os meios de prova.

2 - Compete-lhes, nomeadamente, nos termos do número anterior:

a) Proceder a exames dos vestígios do crime, em especial às diligências previstas no n.º 2 do artigo 171.º, e no artigo 173.º, assegurando a integridade dos animais e a manutenção do estado das coisas, dos objetos e dos lugares;

b) Colher informações das pessoas que facilitem a descoberta dos agentes do crime e a sua reconstituição;

c) Proceder a apreensões no decurso de revistas ou buscas ou em caso de urgência ou perigo na demora, bem como adotar as medidas cautelares necessárias à conservação da integridade dos animais e à conservação ou manutenção das coisas e dos objetos apreendidos.

3 - Mesmo após a intervenção da autoridade judiciária, cabe aos órgãos de polícia criminal assegurar novos meios de prova de que tiverem conhecimento, sem prejuízo de deverem dar deles notícia imediata àquela autoridade.

- a) To carry out examinations of traces of the crime, in particular the steps provided for in paragraph 2 of Article 171 and in Article 173, ensuring the integrity of animals and the maintenance of the state of things, objects and places;
  - b) Collect information from people that facilitate the discovery of the agents of crime and their reconstitution;
  - c) Proceed with seizures during searches or searches or *in case of urgency or danger in the delay*, as well as adopt the precautionary measures necessary to preserve the integrity of the animals and the conservation or maintenance of the things and objects seized.
- 3 - Even after the intervention of the judicial authority, it is up to the criminal police bodies to ensure new evidence of which they are aware, without prejudice to their having to inform that authority immediately.

**Article 251 CPC<sup>186</sup> Magazines and searches**

1 - In addition to the cases provided for in paragraph 5 of Article 174, the criminal police bodies may, without prior authorization from the judicial authority:

- a) Search suspects in the event of imminent escape or arrest and searches in the place where they are, except in the case of a house search, whenever they have reason to believe that objects related to the crime are hidden there, which could serve as evidence and which could otherwise be lost;
- b) The search of persons who have to participate or who intend to attend any procedural act or who, as suspects, must be taken to a police station, whenever there is reason to believe that they hide weapons or other objects with which they may carry out acts of violence.

2 - The provisions of paragraph 6 of Article 174 are correspondingly applicable.

**Article 252 CPC<sup>187</sup> Seizure of correspondence** 1 - In cases where correspondence must be seized, the criminal police bodies transmit it intact to the judge who authorized or ordered the investigation.

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<sup>186</sup> **Artigo 251. Código De Processo Penal**

**Revistas e buscas**

1 - Para além dos casos previstos no n.º 5 do artigo 174.º, os órgãos de polícia criminal podem proceder, sem prévia autorização da autoridade judiciária:

- a) À revista de suspeitos em caso de fuga iminente ou de detenção e a buscas no lugar em que se encontrarem, salvo tratando-se de busca domiciliária, sempre que tiverem fundada razão para crer que neles se ocultam objectos relacionados com o crime, susceptíveis de servirem a prova e que de outra forma poderiam perder-se;
- b) À revista de pessoas que tenham de participar ou pretendam assistir a qualquer acto processual ou que, na qualidade de suspeitos, devam ser conduzidos a posto policial, sempre que houver razões para crer que ocultam armas ou outros objectos com os quais possam praticar actos de violência.

2 - É correspondentemente aplicável o disposto no n.º 6 do artigo 174.º

<sup>187</sup> **Artigo 252. Código De Processo Penal**

**Apreensão de correspondência**

1 - Nos casos em que deva proceder-se à apreensão de correspondência, os órgãos de polícia criminal transmitem-na intacta ao juiz que tiver autorizado ou ordenado a diligência.



2 - In the case of closed parcels or valuables susceptible of being seized, whenever there are reasonable reasons to believe that they may contain information useful to the investigation of a crime or lead to its discovery, and that they may be lost in case of delay, the criminal police bodies inform the judge of the fact, by the fastest means, who can authorize its immediate opening.

3 - Once the reasons mentioned in the previous number have been verified, the criminal police bodies may order the suspension of the remittance of any correspondence at post offices and telecommunications. If, within forty-eight hours, the order is not validated by a reasoned order of the judge, the correspondence is sent to the addressee.

### **Article 255 CPC<sup>188</sup> Detention in flagrante delicto**

1 - In case of flagrante delicto, for a crime punishable by imprisonment:

- a) Any judicial authority or police entity makes the arrest;
- b) Any person may proceed with the arrest if one of the entities referred to in the previous paragraph is not present and cannot be summoned in good time.

2 - In the case provided for in subparagraph b) of the preceding paragraph, the person who has carried out the detention immediately surrenders the detainee to one of the entities referred to in subparagraph a), which shall draw up a summary report of the surrender and proceed in accordance with the provisions of Article 259th

3 - In the case of a crime whose procedure depends on a complaint, detention is only maintained when, in an act followed, the holder of the respective right exercises it. In this case, the judicial authority or the police entity raises or orders the collection of a document in which the complaint is registered.

2 - Tratando-se de encomendas ou valores fechados susceptíveis de serem apreendidos, sempre que tiverem fundadas razões para crer que eles podem conter informações úteis à investigação de um crime ou conduzir à sua descoberta, e que podem perder-se em caso de demora, os órgãos de polícia criminal informam do facto, pelo meio mais rápido, o juiz, o qual pode autorizar a sua abertura imediata.

3 - Verificadas as razões referidas no número anterior, os órgãos de polícia criminal podem ordenar a suspensão da remessa de qualquer correspondência nas estações de correios e de telecomunicações. Se, no prazo de quarenta e oito horas, a ordem não for convalidada por despacho fundamentado do juiz, a correspondência é remetida ao destinatário.

### <sup>188</sup> **Artigo 255. Código De Processo Penal**

#### **Detenção em flagrante delito**

1 - Em caso de flagrante delito, por crime punível com pena de prisão:

- a) Qualquer autoridade judiciária ou entidade policial procede à detenção;
- b) Qualquer pessoa pode proceder à detenção, se uma das entidades referidas na alínea anterior não estiver presente nem puder ser chamada em tempo útil.

2 - No caso previsto na alínea b) do número anterior, a pessoa que tiver procedido à detenção entrega imediatamente o detido a uma das entidades referidas na alínea a), a qual redige auto sumário da entrega e procede de acordo com o estabelecido no artigo 259.º

3 - Tratando-se de crime cujo procedimento dependa de queixa, a detenção só se mantém quando, em acto a ela seguido, o titular do direito respectivo o exercer. Neste caso, a autoridade judiciária ou a entidade policial levantam ou mandam levantar auto em que a queixa fique registada.

4 - Tratando-se de crime cujo procedimento dependa de acusação particular, não há lugar a detenção em flagrante delito, mas apenas à identificação do infractor.

4 - In the case of a crime whose procedure depends on a private accusation, there is no place for detention in flagrante delicto, but only for the identification of the offender.

**Article 256 CPC<sup>189</sup> Flagrante delicto**

1 - It is flagrante delicto every crime that is being committed or has just been committed.

2 - It is also considered flagrante delicto the case in which the agent is, immediately after the crime, pursued by any person or found with objects or signs that clearly show that he has just committed or participated in it.

3 - In the case of a permanent crime, the state of flagrante delicto only persists as long as there are signs that clearly show that the crime is being committed and the agent is participating in it.

**Article 257 CPC<sup>190</sup> Detention outside of flagrante delicto**

1 - Outside of flagrante delicto, detention can only be carried out by order of the judge or, in cases where preventive detention is admissible, of the Public Prosecutor's Office: within the period set for it;

b) When there is, in particular, any of the situations provided for in Article 204, which only detention can take care of; or

c) If this proves to be essential for the protection of the victim.

2 - The criminal police authorities may also order detention outside the act of committing a crime, on their own initiative, when:

a) It is a case in which preventive detention is admissible;

b) There are elements that make the fear of flight or continuation of criminal activity well founded; and

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<sup>189</sup> **Artigo 256. Código De Processo Penal**

**Flagrante delito**

1 - É flagrante delito todo o crime que se está cometendo ou se acabou de cometer.

2 - Reputa-se também flagrante delito o caso em que o agente for, logo após o crime, perseguido por qualquer pessoa ou encontrado com objectos ou sinais que mostrem claramente que acabou de o cometer ou nele participar.

3 - Em caso de crime permanente, o estado de flagrante delito só persiste enquanto se mantiverem sinais que mostrem claramente que o crime está a ser cometido e o agente está nele a participar.

<sup>190</sup> **Artigo 257. Código De Processo Penal**

**Detenção fora de flagrante delito**

1 - Fora de flagrante delito, a detenção só pode ser efectuada por mandado do juiz ou, nos casos em que for admissível prisão preventiva, do Ministério Público:

a) Quando houver fundadas razões para considerar que o visado se não apresentaria voluntariamente perante autoridade judiciária no prazo que lhe fosse fixado;

b) Quando se verifique, em concreto, alguma das situações previstas no artigo 204.º, que apenas a detenção permita acautelar; ou

c) Se tal se mostrar imprescindível para a protecção da vítima.

2 - As autoridades de polícia criminal podem também ordenar a detenção fora de flagrante delito, por iniciativa própria, quando:

a) Se tratar de caso em que é admissível a prisão preventiva;

b) Existirem elementos que tornem fundados o receio de fuga ou de continuação da actividade criminosa; e

c) Não for possível, dada a situação de urgência e de perigo na demora, esperar pela intervenção da autoridade judiciária.

c) It is not possible, given the *urgency and danger* situation in the delay, to wait for the intervention of the judicial authority.

### **Article 258 CPC<sup>191</sup> Arrest Warrants**

1 - The arrest warrants are issued in triplicate and contain, under penalty of nullity:

- a) The date of issue and the signature of the competent judicial authority or criminal police;
- b) The identification of the person to be detained; and
- c) Indication of the fact that motivated the detention and the circumstances that legally justify it.

2 - *In case of urgency and danger in delay*, the request for detention by any means of telecommunication is admissible, followed immediately by confirmation by warrant, under the terms of the previous number.

3 - The arrest warrant is shown to the detainee and one of the copies is delivered. In the case of the previous number, you are shown the detention order containing the request, the indication of the judicial or criminal police authority that made it and the other requirements referred to in number 1 and delivered the respective copy.

### **Article 264 CPC<sup>192</sup> Competence**

1 - The Public Prosecutor's Office that performs functions in the place where the crime was committed is competent to carry out the investigation.

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#### <sup>191</sup> **Artigo 258. Código De Processo Penal**

##### **Mandados de detenção**

1 - Os mandados de detenção são passados em triplicado e contêm, sob pena de nulidade:

- a) A data da emissão e a assinatura da autoridade judiciária ou de polícia criminal competentes;
- b) A identificação da pessoa a deter; e
- c) A indicação do facto que motivou a detenção e das circunstâncias que legalmente a fundamentam.

2 - Em caso de urgência e de perigo na demora é admissível a requisição da detenção por qualquer meio de telecomunicação, seguindo-se-lhe imediatamente confirmação por mandado, nos termos do número anterior.

3 - Ao detido é exibido o mandado de detenção e entregue uma das cópias. No caso do número anterior, é-lhe exibida a ordem de detenção donde conste a requisição, a indicação da autoridade judiciária ou de polícia criminal que a fez e os demais requisitos referidos no n.º 1 e entregue a respectiva cópia.

#### <sup>192</sup> **Artigo 264. Código De Processo Penal**

##### **Competência**

1 - É competente para a realização do inquérito o Ministério Público que exercer funções no local em que o crime tiver sido cometido.

2 - Enquanto não for conhecido o local em que o crime foi cometido, a competência pertence ao Ministério Público que exercer funções no local em que primeiro tiver havido notícia do crime.

3 - Se o crime for cometido no estrangeiro, é competente o Ministério Público que exercer funções junto do tribunal competente para o julgamento.

4 - Independentemente do disposto nos números anteriores, qualquer magistrado ou agente do Ministério Público procede, em caso de urgência ou de perigo na demora, a actos de inquérito, nomeadamente de detenção, de interrogatório e, em geral, de aquisição e conservação de meios de prova.

5 - É correspondentemente aplicável o disposto nos artigos 24.º a 30.º, competindo ao Ministério Público ordenar ou fazer cessar a conexão.

2 - As long as the place where the crime was committed is not known, the competence belongs to the Public Ministry that performs functions in the place where the crime was first reported.

3 - If the crime is committed abroad, the Public Prosecutor's Office that performs functions before the competent court for the trial is competent.

4 - Regardless of the provisions of the previous numbers, any magistrate or agent of the Public Prosecutor's Office, *in case of urgency or danger in delay*, carries out acts of inquiry, namely arrest, interrogation and, in general, the acquisition and conservation of proof.

5 - The provisions of Articles 24 to 30 are correspondingly applicable, and the Public Prosecutor's Office is responsible for ordering or terminating the connection.

### **Article 268 CPC Acts to be performed by the investigating judge**

See above → Via the general investigation provisions.

### **Article 270 CPC<sup>193</sup> Acts that may be delegated by the Public Ministry to criminal police bodies**

1 - The Public Prosecutor's Office may entrust criminal police bodies with the task of carrying out any steps and investigations relating to the investigation.

2- The following acts are excluded from the provisions of the previous number, in addition to the acts that are the exclusive competence of the investigating judge, under the terms of Articles 268 and 269:

- a) To receive sworn statements, under the terms of the second part of paragraph 3 of Article 138;
- b) Order the execution of an expert examination, under the terms of Article 154.
- c) <sup>194</sup> Attend an examination likely to offend the person's modesty, under the terms of the second part of paragraph 3 of Article 172;

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<sup>193</sup> **Artigo 270. Código De Processo Penal**

#### **Actos que podem ser delegados pelo Ministério Público nos órgãos de polícia criminal**

1 - O Ministério Público pode conferir a órgãos de polícia criminal o encargo de procederem a quaisquer diligências e investigações relativas ao inquérito.

2 - Exceptuam-se do disposto no número anterior, além dos actos que são da competência exclusiva do juiz de instrução, nos termos dos artigos 268.º e 269.º, os actos seguintes:

- a) Receber depoimentos ajuramentados, nos termos da segunda parte do n.º 3 do artigo 138.º;
- b) Ordenar a efectivação de perícia, nos termos do artigo 154.º

<sup>194</sup> c) Assistir a exame susceptível de ofender o pudor da pessoa, nos termos da segunda parte do n.º 3 do artigo 172.º;

d) Ordenar ou autorizar revistas e buscas, nos termos e limites dos n.os 3 e 5 do artigo 174.º;

e) Quaisquer outros actos que a lei expressamente determinar que sejam presididos ou praticados pelo Ministério Público.

3 - O Ministério Público pode, porém, delegar em autoridades de polícia criminal a faculdade de ordenar a efectivação da perícia relativamente a determinados tipos de crime, em caso de urgência ou de perigo na demora, nomeadamente quando a perícia deva ser realizada conjuntamente com o exame de vestígios. Exceptuam-se a perícia

d) Order or authorize searches and searches, under the terms and limits of numbers 3 and 5 of Article 174;

e) Any other acts that the law expressly determines to be presided over or carried out by the Public Prosecutor's Office.

3 - The Public Prosecutor's Office may, however, delegate to criminal police authorities the faculty of ordering the execution of the expertise in relation to certain types of crime, *in case of urgency or danger in the delay*, namely when the expertise must be carried out jointly with the examination of traces. Exceptions are made to expertise involving the performance of a medico-legal autopsy, as well as the provision of additional clarifications and the performance of a new expertise under the terms of Article 158.

4 - Without prejudice to the provisions of paragraph 2, paragraph 3 of Article 58, paragraph 3 of Article 243 and paragraph 1 of Article 248, the delegation to which referred to in paragraph 1 may be carried out by order of a general nature that indicates the types of crime or the limits of penalties applicable to crimes under investigation.

### **General Regime of Tax Offences, Law No. 15/2001, of June 5<sup>th</sup>**

28

#### **Article 37<sup>195</sup> Precautionary measures regarding the means of evidence**

Regardless of the provisions of the following article, any criminal police body or tax administration agent shall, in case of urgency or danger of delay, take the necessary and urgent precautionary measures to secure the means of proof, in accordance with the provisions of Article 249 of the Criminal Procedure Code.

#### **e) Provisions in relation to the Gathering Evidence**

Provisions related to the gathering of evidence quickly may be found under Book III, Title I of the Portuguese CPC as well as under the following Titles:

29

**Article 124 CPC<sup>196</sup> Object of the test 1** - All facts legally relevant to the existence or non-existence of the crime, the punishability or non-punishment of the accused and the determination of the applicable penalty or security measure are the object of evidence.

30

que envolva a realização de autópsia médico-legal, bem como a prestação de esclarecimentos complementares e a realização de nova perícia nos termos do artigo 158.º

4 - Sem prejuízo do disposto no n.º 2, no n.º 3 do artigo 58.º, no n.º 3 do artigo 243.º e no n.º 1 do artigo 248.º, a delegação a que se refere o n.º 1 pode ser efectuada por despacho de natureza genérica que indique os tipos de crime ou os limites das penas aplicáveis aos crimes em investigação.

<sup>195</sup> **Artigo 37.º**

#### **Providências cautelares quanto aos meios de prova**

Independentemente do disposto no artigo seguinte, qualquer órgão de polícia criminal ou agente da administração tributária prática, em caso de urgência ou de perigo de demora, os actos cautelares necessários e urgentes para assegurar os meios de prova, nos termos do disposto no artigo 249.º do Código de Processo Penal.

<sup>196</sup> **Livro III Da prova**

#### **Título I Disposições gerais**

**Artigo 124. Código De Processo Penal – Objecto da prova**

2 - If a civil claim is made, the facts relevant to the determination of civil liability are also subject to evidence.

**Article 125 CPC<sup>197</sup> Legality of the evidence**

Evidence that is not prohibited by law is admissible.

**Article 126 CPC<sup>198</sup> Prohibited methods of proof**

1 - Evidence obtained through torture, coercion or, in general, offence to the physical or moral integrity of persons, is null and cannot be used.

2 - Evidence obtained, even if with their consent, is offensive to the physical or moral integrity of people, through:

- a) Disruption of freedom of will or decision through mistreatment, bodily harm, administration of means of any nature, hypnosis or use of cruel or deceptive means;
- b) Disturbance, by any means, of memory or assessment;
- c) Use of force, outside the cases and limits permitted by law;
- d) Threat with a legally inadmissible measure and, as well, with denial or conditioning of obtaining a legally foreseen benefit;
- e) Promise of a legally inadmissible advantage.

3 - With the exception of the cases provided for by law, evidence obtained through intrusion into private life, home, correspondence or telecommunications without the consent of the respective holder is also null and void.

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1 - Constituem objecto da prova todos os factos juridicamente relevantes para a existência ou inexistência do crime, a punibilidade ou não punibilidade do arguido e a determinação da pena ou da medida de segurança aplicáveis.

2 - Se tiver lugar pedido civil, constituem igualmente objecto da prova os factos relevantes para a determinação da responsabilidade civil.

<sup>197</sup> **Artigo 125. Código De Processo Penal**

Legalidade da prova

São admissíveis as provas que não forem proibidas por lei.

<sup>198</sup> **Artigo 126. Código De Processo Penal**

Métodos proibidos de prova

1 - São nulas, não podendo ser utilizadas, as provas obtidas mediante tortura, coacção ou, em geral, ofensa da integridade física ou moral das pessoas.

2 - São ofensivas da integridade física ou moral das pessoas as provas obtidas, mesmo que com consentimento delas, mediante:

- a) Perturbação da liberdade de vontade ou de decisão através de maus tratos, ofensas corporais, administração de meios de qualquer natureza, hipnose ou utilização de meios cruéis ou enganosos;
- b) Perturbação, por qualquer meio, da capacidade de memória ou de avaliação;
- c) Utilização da força, fora dos casos e dos limites permitidos pela lei;
- d) Ameaça com medida legalmente inadmissível e, bem assim, com denegação ou condicionamento da obtenção de benefício legalmente previsto;
- e) Promessa de vantagem legalmente inadmissível.

3 - Ressalvados os casos previstos na lei, são igualmente nulas, não podendo ser utilizadas, as provas obtidas mediante intromissão na vida privada, no domicílio, na correspondência ou nas telecomunicações sem o consentimento do respectivo titular.

4 - Se o uso dos métodos de obtenção de provas previstos neste artigo constituir crime, podem aquelas ser utilizadas com o fim exclusivo de proceder contra os agentes do mesmo.

4 - If the use of the methods of obtaining evidence provided for in this article constitutes a crime, they may be used for the exclusive purpose of proceeding against the agents of the same.

**Article 127. CPC<sup>199</sup> Free assessment of evidence**

Except when the law provides otherwise, the evidence is assessed according to the rules of experience and the free conviction of the competent authority.

The articles of the CPC that are important for the preservation of evidence in the investigation procedure partly coincide with the special investigation authorisation norms regarding the intrusive investigative measures that Art. 30 addresses. They are initially presented below in a list with a synopsis. In Art. 30, the individual provisions are analysed and presented in more detail.

Reference to the following relevant headings in the CPC is made:

*Table 5: Overview of provisions regarding the gathering of evidence*

<p><b>Title II</b>  <b>Means of evidence</b>  <b>Chapter I</b>  <b>Testimonial evidence</b>  Article 128 - Object and limits of testimony   Article 129 - Indirect Testimony  Article 130 - Public voices and personal convictions  Article 131 - Capacity and duty to testify   Article 132 - Rights and Duties of the Witness  Article 133 - Impediments  Article 134 - Refusal to give testimony  Article 135 - Professional secrecy  Article 136 - Employee secrecy  Article 137 - State Secrecy  Article 138 - Rules of inquiry  Article 139 - Immunities, prerogatives and special protective measures</p>	<p><b>TÍTULO II</b>  <b>Dos meios de prova</b>  <b>CAPÍTULO I</b>  <b>Da prova testemunhal</b>  Artigo 128.º - Objecto e limites do depoimento  Artigo 129.º - Depoimento indirecto  Artigo 130.º - Vozes públicas e convicções pessoais  Artigo 131.º - Capacidade e dever de testemunhar  Artigo 132.º - Direitos e deveres da testemunha  Artigo 133.º - Impedimentos  Artigo 134.º - Recusa de depoimento  Artigo 135.º - Segredo profissional  Artigo 136.º - Segredo de funcionários  Artigo 137.º - Segredo de Estado  Artigo 138.º - Regras da inquirição  Artigo 139.º - Imunidades, prerrogativas e medidas especiais de protecção</p>
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<sup>199</sup> **Artigo 127. Código De Processo Penal**

Livre apreciação da prova

Salvo quando a lei dispuser diferentemente, a prova é apreciada segundo as regras da experiência e a livre convicção da entidade competente.

**Chapter II**

**Statements by the accused, the assistant and the civil parties**

Article 140 - Defendant's statements: General rules

Article 141 - First judicial interrogation of a detained defendant

Article 142 - Competent investigating judge

Article 143 - First non-judicial interrogation of a detained defendant

Article 144 - Other interrogations

Article 145 - Declarations and notifications by the assistant and civil parties

**Chapter III**

**Evidence by cross-examination**

Article 146 - Assumptions and procedure

**Chapter IV**

**Proof by recognition**

Article 147 - Recognition of persons

Article 148 - Recognition of objects

Article 149 - Plurality of recognition

**Chapter V**

**The reconstitution of the fact**

Article 150 - Assumptions and procedure

**Chapter VI**

**Expert evidence**

Article 151 - When does experts evidence take place

Article 152 - Who carries it out?

Article 153 - Performance of the role of expert

Article 154 - Ordering the expertise

Article 155 - Technical consultants

Article 156 - Procedure

Article 157 - Expert report

Article 158 - Clarifications and new expertise

**CAPÍTULO II**

**Das declarações do arguido, do assistente e das partes civis**

Artigo 140.º - Declarações do arguido: Regras gerais

Artigo 141.º - Primeiro interrogatório judicial de arguido detido

Artigo 142.º - Juiz de instrução competente

Artigo 143.º - Primeiro interrogatório não judicial de arguido detido

Artigo 144.º - Outros interrogatórios

Artigo 145.º - Declarações e notificações do assistente e das partes civis

**CAPÍTULO III**

**Da prova por acareação**

Artigo 146.º - Pressupostos e procedimento

**CAPÍTULO IV**

**Da prova por reconhecimento**

Artigo 147.º - Reconhecimento de pessoas

Artigo 148.º - Reconhecimento de objectos

Artigo 149.º - Pluralidade de reconhecimento

**CAPÍTULO V**

**Da reconstituição do facto**

Artigo 150.º - Pressupostos e procedimento

**CAPÍTULO VI**

**Da prova pericial**

Artigo 151.º - Quando tem lugar

Artigo 152.º - Quem a realiza

Artigo 153.º - Desempenho da função de perito

Artigo 154.º - Despacho que ordena a perícia

Artigo 155.º - Consultores técnicos

Artigo 156.º - Procedimento

Artigo 157.º - Relatório pericial

Artigo 158.º - Esclarecimentos e nova perícia



Article 159. - Medico-legal and forensic investigations

Article 159A - Legal and forensic medical-veterinary investigations

Article 160 - Expertise on the personality

Article 160-A - Conducting expertise

Article 161 - Destruction of objects

Article 162 - Remuneration of the expert

Article 163 - Value of expert evidence

## **Chapter VII**

### **Documentary evidence**

Article 164 - Admissibility

Article 165 - When can documents be attached?

Article 166 - Translation, deciphering and transcription of documents

Article 167 - Evidential value of mechanical reproductions

Article 168 - Mechanical reproduction of documents

Article 169 - Evidential value of authentic and authenticated documents

Article 170 - False document

## **Title III**

### **Means of obtaining the test**

#### **Chapter I**

##### **Exams**

Article 171 - Assumptions

Article 172 - Subjection to examination

Article 173 - Persons at the examination site

#### **Chapter II**

##### **Magazines and searches**

Article 174 - Assumptions

Article 175 - Journal formalities

Article 176 - Search formalities

Article 177 - House search

Artigo 159.º - Perícias médico-legais e forenses

Artigo 159.º-A - Perícias médico-veterinárias legais e forenses

Artigo 160.º - Perícia sobre a personalidade

Artigo 160.º-A - Realização de perícias

Artigo 161.º - Destruição de objectos

Artigo 162.º - Remuneração do perito

Artigo 163.º - Valor da prova pericial

## **CAPÍTULO VII**

### **Da prova documental**

Artigo 164.º - Admissibilidade

Artigo 165.º - Quando podem juntar-se documentos

Artigo 166.º - Tradução, decifração e transcrição de documentos

Artigo 167.º - Valor probatório das reproduções mecânicas

Artigo 168.º - Reprodução mecânica de documentos

Artigo 169.º - Valor probatório dos documentos autênticos e autenticados

Artigo 170.º - Documento falso

## **TÍTULO III**

### **Dos meios de obtenção da prova**

#### **CAPÍTULO I**

##### **Dos exames**

Artigo 171.º - Pressupostos

Artigo 172.º - Sujeição a exame

Artigo 173.º - Pessoas no local do exame

#### **CAPÍTULO II**

##### **Das revistas e buscas**

Artigo 174.º - Pressupostos

Artigo 175.º - Formalidades da revista

Artigo 176.º - Formalidades da busca

Artigo 177.º - Busca domiciliária

<p><b>Chapter III</b>  <b>Apprehensions</b>                  Article 178 - Object and assumptions of the seizure                  Article 179 - Seizure of correspondence</p> <p>Article 180 - Apprehension in a lawyer's office or in a doctor's office                  Article 181 - Seizure in a banking establishment                  Article 182 - Professional or official secrecy and State secrecy                  Article 183 - Copies and certificates                  Article 184 - Affixing and lifting of seals</p> <p>Article 185 - Seizure of worthless, perishable, dangerous or perishable things                  Article 186 - Restitution of seized animals, things and objects</p> <p><b>Chapter IV</b>  <b>Telephone tapping</b>                  Article 187 - Admissibility                  Article 188 - Operation formalities                  Article 189 - Extension                  Article 190 - Nullity</p>	<p><b>CAPÍTULO III</b>  <b>Das apreensões</b>                  Artigo 178.º - Objeto e pressupostos da apreensão                  Artigo 179.º - Apreensão de correspondência</p> <p>Artigo 180.º - Apreensão em escritório de advogado ou em consultório médico                  Artigo 181.º - Apreensão em estabelecimento bancário                  Artigo 182.º - Segredo profissional ou de funcionário e segredo de Estado                  Artigo 183.º - Cópias e certidões                  Artigo 184.º - Aposição e levantamento de selos</p> <p>Artigo 185.º - Apreensão de coisas sem valor, perecíveis, perigosas ou deterioráveis                  Artigo 186.º - Restituição de animais, coisas e objetos apreendidos</p> <p><b>CAPÍTULO IV</b>  <b>Das escutas telefónicas</b>                  Artigo 187.º - Admissibilidade                  Artigo 188.º - Formalidades das operações                  Artigo 189.º - Extensão                  Artigo 190.º - Nulidade.</p>
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34

**General Regime of Tax Offences, Law No. 15/2001, of June 5<sup>200</sup>**

**Article 37 Precautionary measures regarding the means of evidence**

See above → Urgent measures in accordance with national law necessary to ensure effective investigations.

<sup>200</sup> *Regime Geral Das Infracções Tributárias, Lei n.º 15/2001, de 05 de Junho.*

#### 4. Article 29 Lifting privileges or immunities

a) National privilege provisions, para 1 .....	185	(2) Privilege against self- incrimination .....	188
(1) Legal (professional) privilege .....	185	b) Immunity provisions .....	189
(a) Provisions in Portuguese law .....	186	aa. Parliamentary privilege or immunity .....	189
(b) Provisions on Lifting a legal (professional) privilege .....	187	bb. National Legislation ..	189
		cc. Provisions on the lifting of immunities? .....	190
		c) Conclusion/Comparison	191
		d) Immunities and Privileges under union law, para 2 .....	192

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

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

##### a) National privilege provisions, para 1

National privilege provisions can be differentiated into legal (professional) privilege and the privilege against self-incrimination, which are presented below with regard to Portugal. **1**

**(1) Legal (professional) privilege**

**(a) Provisions in Portuguese law**

2

**Criminal Procedure Code**

**Title II From the means of proof**

**Chapter I From witness evidence**

**Article 128 CPC<sup>201</sup> (Subject and limits of testimony)**

1 - The witness shall be asked about facts which he has direct knowledge and which are the subject of the evidence.

2 - Unless the law has differently, before the time of the court determines the applicable penalty or security measure, the inquiry into facts relating to the personality and character of the accused, as well as his personal conditions and his previous conduct, is permitted only to the extent strictly necessary for the proof of evidence of the crime, the agent's fault, or for the application of a measure of coercion or asset guarantee.

**Article 135 CPC<sup>202</sup> Professional secret**

1 - Ministers of religion or religious confession and lawyers, doctors, journalists, members of credit institutions and other persons to whom the law permits or requires them to keep a secret may refuse to give a case of the facts covered by it.

<sup>201</sup> **Título II**

**Dos meios de prova**

**Capítulo I**

**Da prova testemunhal**

**Artigo 128.CPPº (Objecto e limites do depoimento)**

1 - A testemunha é inquirida sobre factos de que possua conhecimento directo e que constituam objecto da prova.  
2 - Salvo quando a lei dispuser diferentemente, antes do momento de o tribunal proceder à determinação da pena ou da medida de segurança aplicáveis, a inquirição sobre factos relativos à personalidade e ao carácter do arguido, bem como às suas condições pessoais e à sua conduta anterior, só é permitida na medida estritamente indispensável para a prova de elementos constitutivos do crime, nomeadamente da culpa do agente, ou para a aplicação de medida de coacção ou de garantia patrimonial.

<sup>202</sup> **Artigo 135.ºCPP Segredo profissional**

1 - Os ministros de religião ou confissão religiosa e os advogados, médicos, jornalistas, membros de instituições de crédito e as demais pessoas a quem a lei permitir ou impuser que guardem segredo podem escusar-se a depor sobre os factos por ele abrangidos.

2 - Havendo dúvidas fundadas sobre a legitimidade da escusa, a autoridade judiciária perante a qual o incidente se tiver suscitado procede às averiguações necessárias. Se, após estas, concluir pela ilegitimidade da escusa, ordena, ou requer ao tribunal que ordene, a prestação do depoimento.

3 - O tribunal superior àquele onde o incidente tiver sido suscitado, ou, no caso de o incidente ter sido suscitado perante o Supremo Tribunal de Justiça, o pleno das secções criminais, pode decidir da prestação de testemunho com quebra do segredo profissional sempre que esta se mostre justificada, segundo o princípio da prevalência do interesse preponderante, nomeadamente tendo em conta a imprescindibilidade do depoimento para a descoberta da verdade, a gravidade do crime e a necessidade de protecção de bens jurídicos. A intervenção é suscitada pelo juiz, oficiosamente ou a requerimento.

4 - Nos casos previstos nos n.os 2 e 3, a decisão da autoridade judiciária ou do tribunal é tomada ouvido o organismo representativo da profissão relacionada com o segredo profissional em causa, nos termos e com os efeitos previstos na legislação que a esse organismo seja aplicável.

5 - O disposto nos n.os 3 e 4 não se aplica ao segredo religioso.

2 - If there are well-founded doubts about the legitimacy of the shady, the judicial authority before which the incident has arose shall carry out the necessary investigations. If, after these, it concludes that the excuse remit is illegitimate, order, or require the court to order, the provision of the testimony.

3 - The higher court to the court where the incident has been brought, or, where the incident has been brought before the Supreme Court of Justice, the full criminal sections may decide on the performance of evidence in breach of professional secrecy where it is justified, in accordance with the principle of the prevalence of the prevailing interest, in particular in view of the imprescindibility of the evidence for the discovery of the truth, the seriousness of the crime and the need for protection of legal property. The intervention is raised by the judge, of its own motion or at request.

4 - In the cases provided for in paragraphs 2 and 3, the decision of the judicial authority or the court shall be taken into account the representative body of the profession relating to the professional secrecy in question, in accordance with and with the effects provided for in the legislation applicable to that body.

5 - The provisions of paragraphs 3 and 4 do not apply to religious secrecy.

Equally important is the protection of persons who work for persons who are obliged by a professional secret. 3

#### **Article 136 CPC<sup>203</sup> (Employee secret)**

1 - Officials may not be asked about facts which constitute secrecy and which they have been aware of in the performance of their duties. 4

2 - The provisions of paragraphs 2 and 3 of the preceding article shall apply accordingly.

#### **(b) Provisions on Lifting a legal (professional) privilege**

#### **Article 138 CPC<sup>204</sup> (Rules of inquiry)**

1 - The testimony is a personal act that cannot, under any circumstances, be done through a prosecutor. 5

#### <sup>203</sup> **Artigo 136.º CPP (Segredo de funcionários)**

1 - Os funcionários não podem ser inquiridos sobre factos que constituam segredo e de que tiverem tido conhecimento no exercício das suas funções.

2 - É correspondentemente aplicável o disposto nos n.os 2 e 3 do artigo anterior.

#### <sup>204</sup> **Artigo 138.º CPP (Regras da inquirição)**

1 - O depoimento é um acto pessoal que não pode, em caso algum, ser feito por intermédio de procurador.

2 - Às testemunhas não devem ser feitas perguntas sugestivas ou impertinentes, nem quaisquer outras que possam prejudicar a espontaneidade e a sinceridade das respostas.

3 - A inquirição deve incidir, primeiramente, sobre os elementos necessários à identificação da testemunha, sobre as suas relações de parentesco e de interesse com o arguido, o ofendido, o assistente, as partes civis e com outras testemunhas, bem como sobre quaisquer circunstâncias relevantes para avaliação da credibilidade do depoimento. Seguidamente, se for obrigada a juramento, deve prestá-lo, após o que depõe nos termos e dentro dos limites legais. 4 - Quando for conveniente, podem ser mostradas às testemunhas quaisquer peças do processo, documentos que a ele respeitem, instrumentos com que o crime foi cometido ou quaisquer outros objectos apreendidos.

5 - Se a testemunha apresentar algum objecto ou documento que puder servir a prova, faz-se menção da sua apresentação e junta-se ao processo ou guarda-se devidamente.

2 - Witnesses should not be asked suggestive or impertinent questions, nor any other questions that may impair the spontaneity and sincerity of the answers.

3 - The inquiry shall focus first on the elements necessary for the identification of the witness, on his relations of kinship and interest with the accused, the offended, the assistant, the civil parties, and other witnesses, as well as any circumstances relevant to the assessment of the credibility of the testimony. Then, if you are sworn in, you must provide it, after which you testify in accordance with the terms and within the legal limits.

4 - Where appropriate, witnesses may be shown any parts of the proceedings, documents that relate to him, instruments with which the crime was committed, or any other objects seized.

5 - If the witness presents any object or document that can serve the evidence, mention sits on it and joins the file or is properly guarded.

### **Article 139 CPC<sup>205</sup> Immunities, prerogatives and special protective measures**

1 - All immunities and prerogatives established by law as to the duty to testify and the manner and place of the statements are applicable in criminal proceedings.

2 - The protection of witnesses and other actors in the proceedings against forms of threat, pressure or intimidation, in particular in cases of terrorism, violent or highly organised crime, is regulated by special law.

3 - The possibility of holding the legally admissible adversarial proceedings in the case shall be ensured.

## **(2) Privilege against self-incrimination**

### **6 Article 61<sup>206</sup> (Procedural rights and duties)**

1 - The defendant enjoys, in particular, at any stage of the proceedings and save for exceptions provided by law, the rights to: [...]

d) Not answering questions asked by any entity about the facts that are alleged to them and about the content of the statements they make about them; [...].

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### <sup>205</sup> **Artigo 139.º (Imunidades, prerrogativas e medidas especiais de protecção)**

1 - Têm aplicação em processo penal todas as imunidades e prerrogativas estabelecidas na lei quanto ao dever de testemunhar e ao modo e local de prestação dos depoimentos.

2 - A protecção das testemunhas e de outros intervenientes no processo contra formas de ameaça, pressão ou intimidação, nomeadamente nos casos de terrorismo, criminalidade violenta ou altamente organizada, é regulada em lei especial.

3 - Fica assegurada a possibilidade de realização do contraditório legalmente admissível no caso.

### <sup>206</sup> **Artigo 61.º (Direitos e deveres processuais)**

1 - O arguido goza, em especial, em qualquer fase do processo e salvas as excepções da lei, dos direitos de: [...]

d) Não responder a perguntas feitas, por qualquer entidade, sobre os factos que lhe forem imputados e sobre o conteúdo das declarações que acerca deles prestar; [...].

**b) Immunity provisions**

Immunities for parliamentarians are well researched and imminent to the administration of justice in Portugal.<sup>207</sup> The Statute of Deputies applies with regard to Portuguese Deputies. 7

**aa. Parliamentary privilege or immunity**

The Portuguese Statue on Deputies presents both forms of obstacles to criminal investigations. 8

**bb. National Legislation****[Excerpt Statute on Deputies]** 9**Chapter II Immunity****Article 10<sup>208</sup> Irresponsibility**

Deputies are not civil, criminal or disciplinary responsible for the votes and opinions they issue in the exercise of their functions.

Deputies are not civilly, criminally, or disciplinary liable for the votes and opinions they express in the exercise of their functions. 10

**Article 11<sup>209</sup> Immunities**

1 - No Deputy may be detained or imprisoned without authorization from the Assembly, except for an intentional crime that carries a prison sentence with a maximum limit of more than 3 years and in flagrante delicto.

2 - Deputies cannot be heard as deponents or defendants without authorization from the Assembly, and the authorization decision is mandatory, in the second case, when there are strong indications of the practice of an intentional crime that corresponds to a prison sentence whose maximum limit is greater than 3 years. [...]

<sup>207</sup> Divisão de Informação Legislativa e Parlamentar – DILP (2016) Imunidades E Incompatibilidades Parlamentares, Lisbon. online: [https://www.parlamento.pt/ArquivoDocumentacao/Documents/Imunidades\\_e\\_Incompatibilidades\\_Parlamentares.pdf](https://www.parlamento.pt/ArquivoDocumentacao/Documents/Imunidades_e_Incompatibilidades_Parlamentares.pdf). Accessed 23 January 2024

<sup>208</sup> **Capítulo II**

**Imunidades**

**Artigo 10.º Irresponsabilidade Lei n.º 7/93, de 01 de Março ESTATUTO DOS DEPUTADOS**

Os Deputados não respondem civil, criminal ou disciplinarmente pelos votos e opiniões que emitirem no exercício das suas funções.

<sup>209</sup> **Artigo 11.º Imunidades Lei n.º 7/93, de 01 de Março ESTATUTO DOS DEPUTADOS**

1 - Nenhum Deputado pode ser detido ou preso sem autorização da Assembleia, salvo por crime doloso a que corresponda pena de prisão cujo limite máximo seja superior a 3 anos e em flagrante delicto.

2 - Os Deputados não podem ser ouvidos como declarantes nem como arguidos sem autorização da Assembleia, sendo obrigatória a decisão de autorização, no segundo caso, quando houver fortes indícios de prática de crime doloso a que corresponda pena de prisão cujo limite máximo seja superior a 3 anos. [...]

**cc. Provisions on the lifting of immunities?**

- 11** Art. 139 CPC contains provisions on immunities and privileges and their lifting in a criminal process, whereby it remains questionable if they are applicable in the case of deputies.
- 12** The **Statute of Deputies** itself holds special rules in Art. 11 paras 3 et seq.:

**Art. 11**<sup>210</sup> [...] 3 - When criminal proceedings are brought against a Deputy and he is definitively accused, the Assembly shall decide, within the period set out in the Rules of Procedure, whether or not the Deputy should be suspended for the purpose of continuing the process, in the following terms:

- a) Suspension is mandatory in the case of a crime of the type referred to in paragraph 1;
- b) The Assembly may limit the suspension of the Deputy to the time it deems most appropriate, according to the circumstances, for the exercise of the mandate and the progress of the criminal process.

4 - The indictment becomes definitive, leading to continuation of the case until the trial hearing:

- a) When, in the event of the intervention of the investigating judge, he confirms the accusation of the Public Prosecutor's Office and the decision is not contested, or, having appeal, is upheld by the higher court;

<sup>210</sup> **Art. 11 Imunidades Lei n.º 7/93, de 01 de Março ESTATUTO DOS DEPUTADOS**

[...] 3 - Movido procedimento criminal contra um Deputado e acusado este definitivamente, a Assembleia decide, no prazo fixado no Regimento, se o Deputado deve ou não ser suspenso para efeito de seguimento do processo, nos termos seguintes:

- a) A suspensão é obrigatória quando se tratar de crime do tipo referido no n.º 1;
- b) A Assembleia pode limitar a suspensão do Deputado ao tempo que considerar mais adequado, segundo as circunstâncias, ao exercício do mandato e ao andamento do processo criminal.

4 - A acusação torna-se definitiva, acarretando prosseguimento dos autos até à audiência de julgamento:

- a) Quando, havendo lugar a intervenção do juiz de instrução, este confirme a acusação do Ministério Público e a decisão não seja impugnada, ou, tendo havido recurso, seja mantida pelo tribunal superior;
- b) Após o trânsito em julgado da decisão de pronúncia, por factos diversos dos da acusação do Ministério Público;
- c) Não havendo lugar a instrução, após o saneamento do processo pelo juiz da audiência de julgamento;
- d) Em caso de processo sumaríssimo, após o requerimento do Ministério Público para aplicação de sanção.

5 - O pedido de autorização a que se referem os números anteriores é apresentado pelo juiz competente em documento dirigido ao Presidente da Assembleia da República e não caduca com o fim da legislatura, se o Deputado for eleito para novo mandato.

6 - As decisões a que se refere o presente artigo são tomadas pelo Plenário, precedendo audição do Deputado e parecer da comissão competente.

7 - O prazo de prescrição do procedimento criminal suspende-se a partir da entrada, na Assembleia da República, do pedido de autorização formulado pelo juiz competente, nos termos e para os efeitos decorrentes da alínea a) do n.º 1 do artigo 120.º do Código Penal, mantendo-se a suspensão daquele prazo caso a Assembleia delibere o não levantamento da imunidade e enquanto ao visado assistir tal prerrogativa.

8 - Quaisquer pedidos de elementos relativos a Deputados, apresentados de modo devidamente fundamentado por parte da competente autoridade judiciária, são dirigidos ao Presidente da Assembleia da República e não caducam com o fim da legislatura, processando-se a sua disponibilização nos termos do n.º 3 do artigo 27.º-A.

9 - Com respeito pelo disposto nos números anteriores, os Deputados que sejam ouvidos em condição diversa da de arguido têm a prerrogativa de depor por escrito, nos termos da lei do processo.



b) After the indictment decision has become final, for facts other than those alleged by the Public Prosecutor's Office;

c) If there is no instruction, after the process has been cleaned up by the judge at the hearing;

d) In the case of a very summary proceeding, after the request of the Public Prosecutor's Office to apply a sanction.

5 - The authorization request referred to in the previous numbers is presented by the competent judge in a document addressed to the President of the Assembly of the Republic and does not expire at the end of the legislature, if the Deputy is elected for a new term.

6 - The decisions referred to in this article are taken by the Plenary, preceding the hearing of the Deputy and the opinion of the competent committee.

7 - The statute of limitations for criminal proceedings is suspended from the date of entry, in the Assembly of the Republic, of the authorization request formulated by the competent judge, under the terms and for the purposes arising from subparagraph a) of paragraph 1 of Article 120 of the Penal Code, maintaining the suspension of that period if the Assembly decides not to waive immunity and while the person concerned attends this prerogative.

8 - Any requests for elements relating to Deputies, presented in a duly substantiated manner by the competent judicial authority, are addressed to the President of the Assembly of the Republic and do not expire with the end of the legislature, being made available under the terms of no. 3 of Article 27-A.

9 - With respect to the provisions of the previous numbers, Deputies who are heard in a different condition than the defendant have the prerogative to testify in writing, in accordance with the law of procedure.

### **c) Conclusion/Comparison**

Compared to other countries the provisions on lifting are not enshrined in the Constitution but in the Statute of Deputies, which prescribes in a very detailed manner on how Deputies might be prosecuted. The Rules of Procedure play a major role, like e.g. in Germany the Rules of the Parliament (*Geschäftsordnung des Bundestages*). It is up to the parliament, if contacted by the European Chief Prosecutor, to decide on how to proceed with the request of lifting this obstacle.

13

**d) Immunities and Privileges under union law, para 2**

- 14** The Union law differs from national law and is not researched here in-depth. But the following shall be said. The immunities and privileges **under Union law refer to** the protocol n°7, which is annexed to the consolidated version of the Treaty on the Functioning of the European Union. It will apply if the immunity or a privilege of a Union official needs to be lifted.<sup>211</sup>

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<sup>211</sup> Cf. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12012E/PRO/07>. Accessed 23 January 2024

### III. National Law applicable in EPPO Investigation with Special Focus on Investigation Measures

[...]

#### SECTION 2

#### Rules on investigation measures and other measures

##### 1. Article 30 Investigation measures and other measures

- |   |   |
|---|---|
| <p>a) Member States shall ensure that the European Delegated Prosecutors are entitled to order or request ..... 195</p> <p>aa. Adaption Law of the Member State ..... 196</p> <p>bb. The role of the investigating judge ..... 196</p> <p>b) Investigation measures .. 197</p> <p>cc. Para 1(a) ..... 197</p> <p>(1) Search measures ..... 197</p> <p>(a) Search any premises or land ..... 197</p> <p>(b) Search any means of transport ..... 198</p> <p>(c) Search any private home ..... 199</p> <p>(d) Search any clothes and any other personal property ..... 200</p> <p>(e) Search any computer system ..... 200</p> <p>(2) Para 1 (b) necessary to avoid the loss, necessary to avoid the contamination of evidence ..... 202</p> <p>dd. Para 1(c) ..... 204</p> <p>(1) Obtainment of the production of stored computer data, encrypted or decrypted ..... 204</p> <p>(a) General Provisions in the CPC ..... 204</p> | <p>(b) Special Provisions in the Tax Code, Digital Evidence Act ..... 204</p> <p>(2) Obtainment of banking account data and traffic data ..... 208</p> <p>(3) Exception of data specifically retained in accordance with national law (pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council)..... 209</p> <p>ee. Para 1(d) ..... 210</p> <p>(1) Freezing instrumentalities or proceeds of crime, including assets ..... 210</p> <p>(2) Legislation and Subject to confiscation Status by the trial court ..... 210</p> <p>ff. Para 1(e) Interception of electronic communications to and from the suspect or accused person ..... 214</p> <p>(1) Provisions in the CPC and other national laws . 214</p> <p>(a) (Scope)..... 221</p> <p>(b) Fulfilment of the requirement of the Regulation: “over any electronic communication</p> |
|---|---|

means that the suspect or accused person is using” .....	221	cc. Notifications according to the last sentence of para. 3 .....	224
(2) Summary to e).....	221	e) Para 4: Any other measure(s) in the EDP’s Member State .....	225
gg. Para 1(f) Tracking & Tracing an Object.....	221	f) Para 5: National Procedures and national modalities for taking investigative measures .....	226
c) Para 2: Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation, Art. 29.....	222	aa. Formalities for a House search .....	227
d) Para 3: Conditions/Thresholds for investigation measures.....	223	bb. Formalities for seizures .....	228
aa. Conditions and Limitations for investigation measures of Para 1(c), (e) and (f) .....	223	cc. Formalities for an Interception, para 1(e).....	229
bb. Serious offences Limitation for offences of Para 1(e) and (f).....	223	dd. Formalities for Tracking & Tracing an object, para 1 (f) .....	231

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 Judgment ordering confiscation.

(e) intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using;

(f) track and trace an object by technical means, including controlled deliveries of goods.

2. Without prejudice to Article 29, the investigation measures set out in paragraph 1 of this Article may be subject to conditions in accordance with the applicable national law if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.

3. The investigation measures set out in points(c), (e) and (f) of paragraph 1 of this Article may be subject to further conditions, including limitations, provided for in the applicable national law. In particular, Member States may limit the application of points (e) and (f) of paragraph 1 of this Article to specific serious offences. A Member State intending to make use of such limitation shall notify the EPPO of the relevant list of specific serious offences in accordance with Article 117.

4. The European Delegated Prosecutors shall be entitled to request or to order any other measures in their Member State that are available to prosecutors under national law in similar national cases, in addition to the measures referred to in paragraph 1.

5. The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 4 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective. The procedures and the modalities for taking the measures shall be governed by the applicable national law.

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

**a) Member States shall ensure that the European Delegated Prosecutors are entitled to order or request**

The EDPs in Portugal are vested with powers under Art. 18 EPPO Adoption law and the accompanying provisions in Books III and IV, V and VII of the Criminal Procedure Code. For some measures the EDP cannot act alone as it needs the prior authorization by the investigating judge (*juiz de instrução*). 2

**aa. Adaption Law of the Member State**

- 3 The authorization of an EDP (the “handling” EDP in one of the MS) to order or request could/should or must be enshrined in the new adaption laws which the Member States enacted in order to be fully operational for the EPPO and its tasks. As most of the Member States either amended their Criminal Procedure Code or their Code of the Organization of the Judiciary and/or the Prosecutors Act, the relevant provision(s) is (are) presented in the following.
- 4 Taking the example “house search”, the Portuguese CPC states that, as a matter of principle, the judge must order such an investigative measure (Art. 177/1 CPC: “can only be ordered or authorised by the judge and carried out between 7 a.m. and 9 p.m., under penalty of nullity”). The adoption law has only partly changed the role of the judges in this regard by conferring more powers to the EDPs, but it stated as well that the EDPs have only the rights that national prosecutors have. Thus, Portuguese EDPs cannot order a house search without the help of the judge except in very exceptional circumstances, as stated by the law in art. 177/3 CPC (see below).

**bb. The role of the investigating judge**

- 5 The measures in Art. 30 EPPO Regulation are very intrusive.<sup>212</sup> Thus, it needs to be determined from case to case, when carrying out investigative measures, if the EDP needs an act performed by the investigating judge. The general rule on the role of the investigating judge in the pre-trial phase reads as follows:

**Article 269 CPC<sup>213</sup>**

1 - During the enquiry it is exclusively incumbent upon the investigating judge to order or authorise

- a) The carrying out of expert examinations, under the terms of Article 154, paragraph 3;
- b) The carrying out of examinations, under the terms of paragraph 2 of Article 172
- c) House searches, under the terms and within the limits of Article 177
- d) Seizure of correspondence, under the terms of Article 179, paragraph 1

<sup>212</sup> For legal comments on the single measures see Gama, Latas, Correia et al. 2022, Comentário Judiciário do Código de Processo Penal. Tomo II and Tomo III (Artigos 191.º a 310.º). For further information on the Portuguese CPC see the book of Gonçalves 2009 and ERA (2022) Seminário. A Procuradoria Europeia. 20–21 junho 2022.

<sup>213</sup> **Artigo 269.º CPP**

**Actos a ordenar ou autorizar pelo juiz de instrução**

1 - Durante o inquérito compete exclusivamente ao juiz de instrução ordenar ou autorizar:

- a) A efetivação de perícias, nos termos do n.º 3 do artigo 154.º;
- b) A efectivação de exames, nos termos do n.º 2 do artigo 172.º;
- c) Buscas domiciliárias, nos termos e com os limites do artigo 177.º;
- d) Apreensões de correspondência, nos termos do n.º 1 do artigo 179.º;
- e) Intercepção, gravação ou registo de conversações ou comunicações, nos termos dos artigos 187.º e 189.º;
- f) A prática de quaisquer outros actos que a lei expressamente fizer depender de ordem ou autorização do juiz de instrução.

2 - É correspondentemente aplicável o disposto nos n.os 2, 3 e 4 do artigo anterior.

- e) Interception, recording or registration of conversations or communications under the terms of Articles 187 and 189
- f) Performing any other acts that the law expressly makes dependent on the order or authorisation of the investigating judge.
2. The provisions of paragraphs 2, 3 and 4 of the previous Article shall apply accordingly.

## b) Investigation measures

### cc. Para 1(a)

#### (1) Search measures

##### (a) Search any premises or land

### Criminal Procedure Code

#### Chapter II Inspections and Searches

##### Article 174 CPC<sup>214</sup>

- 1 - When there is evidence that someone is hiding on his or her person any animals, things or objects related to a crime or that may serve as evidence, a search is ordered.
- 2 - When there is evidence that the animals, things or objects referred to in the previous sub-paragraph, or the accused or other person to be arrested, are in a private place or a place that is not freely accessible to the public, a search is ordered.
- 3 - Searches and searches shall be authorised or ordered by order of the competent judicial authority, which shall, whenever possible, preside over the search.

6

#### <sup>214</sup> Capítulo II

##### Das revistas e buscas

##### Artigo 174.º CPP (Pressupostos)

- 1 - Quando houver indícios de que alguém oculta na sua pessoa quaisquer animais, coisas ou objetos relacionados com um crime ou que possam servir de prova, é ordenada revista.
- 2 - Quando houver indícios de que os animais, as coisas ou os objetos referidos no número anterior, ou o arguido ou outra pessoa que deva ser detida, se encontram em lugar reservado ou não livremente acessível ao público, é ordenada busca.
- 3 - As revistas e as buscas são autorizadas ou ordenadas por despacho pela autoridade judiciária competente, devendo esta, sempre que possível, presidir à diligência.
- 4 - O despacho previsto no número anterior tem um prazo de validade máxima de 30 dias, sob pena de nulidade.
- 5 - Ressalvam-se das exigências contidas no n.º 3 as revistas e as buscas efectuadas por órgão de polícia criminal nos casos:
- a) De terrorismo, criminalidade violenta ou altamente organizada, quando haja fundados indícios da prática iminente de crime que ponha em grave risco a vida ou a integridade de qualquer pessoa;
- b) Em que os visados consentam, desde que o consentimento prestado fique, por qualquer forma, documentado; ou
- c) Aquando de detenção em flagrante por crime a que corresponda pena de prisão.
- 6 - Sendo a pessoa coletiva ou entidade equiparada a visada pela diligência, o consentimento para o efeito só pode ser colhido junto do representante.
- 7 - Nos casos referidos na alínea a) do n.º 5, a realização da diligência é, sob pena de nulidade, imediatamente comunicada ao juiz de instrução e por este apreciada em ordem à sua validação.

4 - The order provided for in the previous paragraph shall be valid for a maximum of 30 days, under penalty of nullity.

5 - The requirements laid down in paragraph 3 are not applicable to searches and searches carried out by criminal police bodies in the following cases

a) Of terrorism, violent or highly organised crime, when there are well-founded indications of the imminent commission of a crime that puts the life or integrity of any person at serious risk;

b) Where the persons concerned consent, provided the consent given is documented in any way; or

c) When caught in the act of committing a crime involving a prison sentence.

6 - If the legal person or equivalent entity is the one targeted by the procedure, consent for the purpose can only be collected from the representative.

7 - In the cases referred to in paragraph 5(a), the diligence shall, under penalty of nullity, be immediately communicated to the investigating judge and assessed by him/her for validation.

#### **(b) Search any means of transport**

#### **7 Article 176 CPC<sup>215</sup> (Search formalities)**

1 - Before carrying out the search, except in the cases of paragraph 5 of article 174, whoever has the location where the investigation is carried out is available, a copy of the order that determined it, in which the mentions that you can attend the proceedings and be accompanied or replaced by a person you trust who can present themselves without delay.

2 - If the people referred to in the previous number are missing, the copy is, whenever possible, given to a relative, a neighbour, the doorman or someone who replaces him.

3 - Along with the search or during it, a search of people who are in the place may be carried out, if whoever orders or carries out the search has reasons to assume that the assumptions of article 174, paragraph 1, are met. You can also proceed as provided in article 173.

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#### <sup>215</sup> **Artigo 176.º CPP (Formalidades da busca)**

1 - Antes de se proceder a busca, é entregue, salvo nos casos do n.º 5 do artigo 174.º, a quem tiver a disponibilidade do lugar em que a diligência se realiza, cópia do despacho que a determinou, na qual se faz menção de que pode assistir à diligência e fazer-se acompanhar ou substituir por pessoa da sua confiança e que se apresente sem delonga.

2 - Faltando as pessoas referidas no número anterior, a cópia é, sempre que possível, entregue a um parente, a um vizinho, ao porteiro ou a alguém que o substitua.

3 - Juntamente com a busca ou durante ela pode proceder-se a revista de pessoas que se encontrem no lugar, se quem ordenar ou efectuar a busca tiver razões para presumir que se verificam os pressupostos do artigo 174.º, n.º 1. Pode igualmente proceder-se como se dispõe no artigo 173.º



**(c) Search any private home**

8

**Art. 177 CPC<sup>216</sup> Home search**

1 - A search of an inhabited house or a closed premises can only be ordered or authorized by the judge and carried out between 7am and 9pm, under penalty of nullity.

2 - Between 9 pm and 7 am, a home search can only be carried out in cases of:

- a) Terrorism or especially violent or highly organized crime;
- b) Consent of the target, documented in any form;
- c) Flagrant offense for committing a crime punishable by a prison sentence of up to 3 years.

3 - Home searches may also be ordered by the Public Prosecutor's Office or carried out by a criminal police body:

- a) In the cases referred to in paragraph 5 of article 174, between 7 am and 9 pm;
- b) In the cases referred to in paragraphs b) and c) of the previous paragraph, between 9 pm and 7 am.

4 - The provisions of paragraph 6 of article 174 are correspondingly applicable in cases where the home search is carried out by a criminal police body without the consent of the target and outside the act of committing a crime.

5 - In the case of a search in a lawyer's office or in a doctor's office, it is, under penalty of nullity, personally presided over by the judge, who previously notifies the president of the local council of the Order of Lawyers or the Order of Doctors, so that he or his delegate can be present.

6 - In the case of a search at an official health establishment, the notice referred to in the previous paragraph is made to the president of the establishment's board of directors or management or to whoever legally replaces him.

**<sup>216</sup> Artigo 177.º CPP Busca domiciliária**

1 - A busca em casa habitada ou numa sua dependência fechada só pode ser ordenada ou autorizada pelo juiz e efectuada entre as 7 e as 21 horas, sob pena de nulidade. 2 - Entre as 21 e as 7 horas, a busca domiciliária só pode ser realizada nos casos de: a) Terrorismo ou criminalidade especialmente violenta ou altamente organizada; b) Consentimento do visado, documentado por qualquer forma; c) Flagrante delito pela prática de crime punível com pena de prisão superior, no seu máximo, a 3 anos. 3 - As buscas domiciliárias podem também ser ordenadas pelo Ministério Público ou ser efectuadas por órgão de polícia criminal: a) Nos casos referidos no n.º 5 do artigo 174.º, entre as 7 e as 21 horas; b) Nos casos referidos nas alíneas b) e c) do número anterior, entre as 21 e as 7 horas. 4 - É correspondentemente aplicável o disposto no n.º 6 do artigo 174.º nos casos em que a busca domiciliária for efectuada por órgão de polícia criminal sem consentimento do visado e fora de flagrante delito. 5 - Tratando-se de busca em escritório de advogado ou em consultório médico, ela é, sob pena de nulidade, presidida pessoalmente pelo juiz, o qual avisa previamente o presidente do conselho local da Ordem dos Advogados ou da Ordem dos Médicos, para que o mesmo, ou um seu delegado, possa estar presente. 6 - Tratando-se de busca em estabelecimento oficial de saúde, o aviso a que se refere o número anterior é feito ao presidente do conselho directivo ou de gestão do estabelecimento ou a quem legalmente o substituir.

**(d) Search any clothes and any other personal property**

9 See above → Search any premises or land. (Art. 174 CPC)

**(e) Search any computer system**



Art. 15 of Cybercrime Law applies to computer searches. In addition to this investigative measure, computers may also be subject to computer forensics and examinations, which are regulated, respectively, in Articles 151 et seq. and 171 of the CPC.

10

**Cybercrime Law**

**Article 15<sup>217</sup> Computer data search**

1 - When, during the course of the proceedings, it becomes necessary for the production of evidence, with a view to discovering the truth, to obtain specific and certain computer data, stored in a specific computer system, the competent judicial authority authorizes or orders by order that a research in that computer system, and should, whenever possible, preside over the diligence.

2 - The order provided for in the previous number is valid for a maximum period of 30 days, under penalty of nullity.

3 - The criminal police body may carry out the search, without prior authorization from the judicial authority, when:

a) The same is voluntarily consented by whoever has the availability or control of such data, provided that the consent given is, in any way, documented;

<sup>217</sup> **Artigo 15.º Lei Do Cibercrime  
Pesquisa de dados informáticos**

1 - Quando no decurso do processo se tornar necessário à produção de prova, tendo em vista a descoberta da verdade, obter dados informáticos específicos e determinados, armazenados num determinado sistema informático, a autoridade judiciária competente autoriza ou ordena por despacho que se proceda a uma pesquisa nesse sistema informático, devendo, sempre que possível, presidir à diligência.

2 - O despacho previsto no número anterior tem um prazo de validade máximo de 30 dias, sob pena de nulidade.

3 - O órgão de polícia criminal pode proceder à pesquisa, sem prévia autorização da autoridade judiciária, quando:

a) A mesma for voluntariamente consentida por quem tiver a disponibilidade ou controlo desses dados, desde que o consentimento prestado fique, por qualquer forma, documentado;

b) Nos casos de terrorismo, criminalidade violenta ou altamente organizada, quando haja fundados indícios da prática iminente de crime que ponha em grave risco a vida ou a integridade de qualquer pessoa.

4 - Quando o órgão de polícia criminal proceder à pesquisa nos termos do número anterior:

a) No caso previsto na alínea b), a realização da diligência é, sob pena de nulidade, imediatamente comunicada à autoridade judiciária competente e por esta apreciada em ordem à sua validação;

b) Em qualquer caso, é elaborado e remetido à autoridade judiciária competente o relatório previsto no artigo 253.º do Código de Processo Penal.

5 - Quando, no decurso de pesquisa, surgirem razões para crer que os dados procurados se encontram noutra sistema informático, ou numa parte diferente do sistema pesquisado, mas que tais dados são legitimamente acessíveis a partir do sistema inicial, a pesquisa pode ser estendida mediante autorização ou ordem da autoridade competente, nos termos dos n.os 1 e 2.

6 - À pesquisa a que se refere este artigo são aplicáveis, com as necessárias adaptações, as regras de execução das buscas previstas no Código de Processo Penal e no Estatuto do Jornalista.

b) In cases of terrorism, violent or highly organized crime, when there are well-founded indications of the imminent commission of a crime that puts the life or integrity of any person at serious risk.

4 - When the criminal police body proceeds with the search under the terms of the previous number:

a) In the case provided for in sub-paragraph b), the performance of the investigation is, under penalty of nullity, immediately communicated to the competent judicial authority, which shall be assessed in order to its validation;

b) In any case, the report provided for in Article 253 of the Code of Criminal Procedure is drawn up and sent to the competent judicial authority.

5 - When, in the course of the search, reasons arise to believe that the data sought is found in another computer system, or in a different part of the searched system, but that such data are legitimately accessible from the initial system, the search can be extended by means of authorization or order from the competent authority, under the terms of paragraphs 1 and 2.

6 - The search to which this article refers, with the necessary adaptations, shall apply the rules for carrying out the searches provided for in the Code of Criminal Procedure and in the Statute of the Journalist.

### **Anti-Economic Offences and Against Public Health**

Decree No. 28/84, of January 20

#### **Article 46<sup>218</sup> Seizure of goods**

1 - In proceedings instituted for crimes provided for in this statute, the seizure of assets may take place when necessary for the criminal investigation or instruction, for the cessation of illegality or in cases of evidence of an infraction capable of determining its loss.

2 - In the crime of speculation, goods equal to the object of the crime may be seized and found in the possession of the agent in the respective establishment, in other premises or at the place of sale.

3 - For the purposes of the previous number, goods equal to the object of the crime are those of the same type, quality, characteristics and unit price.

<sup>218</sup> **Artigo 46.º DL n.º 28/84**

#### **(Apreensão de bens)**

1 - Nos processos instaurados por crimes previstos neste diploma, a apreensão de bens pode ter lugar quando necessária à investigação criminal ou à instrução, à cessação da ilicitude ou nos casos de indícios de infracção capaz de determinar a sua perda.

2 - No crime de especulação podem ser apreendidos bens iguais aos do objecto do crime que sejam encontrados em poder do agente no respectivo estabelecimento, em outras dependências ou no local da venda.

3 - Para os efeitos do número anterior, consideram-se bens iguais ao objecto do crime os que forem do mesmo tipo, qualidade, características e preço unitário.

**(2) Para 1 (b) necessary to avoid the loss, necessary to avoid the contamination of evidence**

12

**Article 178 CPC<sup>219</sup> Object and assumptions of the seizure**

1 - Instruments, products or advantages related to the practice of a typical illicit act are seized, as well as all animals, things and objects that have been left by the agent at the scene of the crime or any other likely to serve as evidence.

2 - The instruments, products or advantages and other objects seized under the terms of the previous number are attached to the process, when possible, and, when not, entrusted to the custody of the justice official assigned to the process or of a depositary, all mentioning in the record, and the animals seized must be entrusted to the custody of suitable custodians for the function, with the possibility of ordering the steps to provide care, such as food and other duties provided for in the Civil Code.

3 - The seizures are authorized, ordered, or validated by order of the judicial authority.

4 - Criminal police bodies may make seizures during searches or searches or when there is urgency or danger in delay, under the terms provided for in Article 249, paragraph 2, subparagraph c).

<sup>219</sup> **Artigo 178.º CPP Objeto e pressupostos da apreensão**

1 - São apreendidos os instrumentos, produtos ou vantagens relacionados com a prática de um facto ilícito típico, e bem assim todos os animais, as coisas e os objetos que tiverem sido deixados pelo agente no local do crime ou quaisquer outros suscetíveis de servir a prova.

2 - Os instrumentos, produtos ou vantagens e demais objetos apreendidos nos termos do número anterior são juntos ao processo, quando possível, e, quando não, confiados à guarda do funcionário de justiça adstrito ao processo ou de um depositário, de tudo se fazendo menção no auto, devendo os animais apreendidos ser confiados à guarda de depositários idóneos para a função com a possibilidade de serem ordenadas as diligências de prestação de cuidados, como a alimentação e demais deveres previstos no Código Civil.

3 - As apreensões são autorizadas, ordenadas ou validadas por despacho da autoridade judiciária.

4 - Os órgãos de polícia criminal podem efectuar apreensões no decurso de revistas ou de buscas ou quando haja urgência ou perigo na demora, nos termos previstos no artigo 249.º, n.º 2, alínea c).

5 - Os órgãos de polícia criminal podem ainda efectuar apreensões quando haja fundado receio de desaparecimento, destruição, danificação, inutilização, ocultação ou transferência de animais, instrumentos, produtos ou vantagens ou outros objetos ou coisas provenientes da prática de um facto ilícito típico suscetíveis de serem declarados perdidos a favor do Estado.

6 - As apreensões efectuadas por órgão de polícia criminal são sujeitas a validação pela autoridade judiciária, no prazo máximo de setenta e duas horas.

7 - Os titulares de instrumentos, produtos ou vantagens ou outros objetos ou coisas ou animais apreendidos podem requerer ao juiz a modificação ou a revogação da medida.

8 - O requerimento a que se refere o número anterior é autuado por apenso, notificando-se o Ministério Público para, em 10 dias, deduzir oposição.

9 - Se os instrumentos, produtos ou vantagens ou outros objetos ou coisas ou animais apreendidos forem suscetíveis de ser declarados perdidos a favor do Estado e não pertencerem ao arguido, a autoridade judiciária ordena a presença do interessado e ouve-o.

10 - A autoridade judiciária prescinde da presença do interessado quando esta não for possível.

11 - Realizada a apreensão, é promovido o respetivo registo nos casos e nos termos previstos na legislação registal aplicável.

12 - Nos casos a que se refere o número anterior, havendo sobre o bem registo de aquisição ou de reconhecimento do direito de propriedade ou da mera posse a favor de pessoa diversa da que no processo for considerada titular do mesmo, antes de promover o registo da apreensão a autoridade judiciária notifica o titular inscrito para que, querendo, se pronuncie no prazo de 10 dias.

- 5 - Criminal police bodies may also make seizures when there is a well-founded fear of disappearance, destruction, damage, destruction, concealment or transfer of animals, instruments, products or advantages or other objects or things arising from the practice of a typical illicit act susceptible of be declared lost in favour of the State.
- 6 - Apprehensions carried out by a criminal police body are subject to validation by the judicial authority, within a maximum period of seventy-two hours.
- 7 - The holders of instruments, products or advantages or other objects or things or animals seized may request the judge to modify or revoke the measure.
- 8 - The application referred to in the previous number is assessed by attachment, notifying the Public Prosecutor's Office to file an opposition within 10 days.
- 9 - If the instruments, products or advantages or other objects or things or animals seized are likely to be declared forfeited in favour of the State and do not belong to the defendant, the judicial authority orders the presence of the interested party and hears him.
- 10 - The judicial authority waives the presence of the interested party when this is not possible.
- 11 - Once the seizure is carried out, the respective registration is promoted in the cases and under the terms provided for in the applicable registration legislation.
- 12 - In the cases referred to in the previous number, if there is a record of the acquisition or recognition of the right to property or mere possession in favour of a person other than the person who in the process is considered the holder of the same, before promoting the registration of the seizure, the judicial authority notifies the registered holder so that, if he so wishes, he can make a statement within 10 days.

The police may carry out precautionary measures with regard to potential evidence, see Art. 249 et seq. CPC (see above → Art. 27, Urgent measures of national authorities for securing an investigation and prosecution).

13

**dd. Para 1(c)****(1) Obtainment of the production of stored computer data, encrypted or de-encrypted****(a) General Provisions in the CPC**

14 See above.

**(b) Special Provisions in the Tax Code, Digital Evidence Act**

The Cybercrime law is the special digital evidence act. It contains both special substantive provisions (new crimes) and special procedural and evidence rules (on computer searches, interception of communications, etc.).

**15 Article 12 Cybercrime law<sup>220</sup> Expedited data preservation**

1 - If, in the course of the process, it is necessary for the production of evidence, with a view to discovering the truth, obtaining specific computer data stored in a computer system, including traffic data, in relation to which there is a fear that they may be lost, altering if it is or is no longer available, the competent judicial authority orders whoever has the availability or control of such data, namely the service provider, to preserve the data in question.

2 - Preservation may also be ordered by the criminal police body with the authorization of the competent judicial authority or when there is urgency or danger in the delay, and in the latter case, the latter must immediately notify the judicial authority of the fact and transmit to it the foreseen report. In Article 253 of the Criminal Procedure Code.

3 - The preservation order discriminates, under penalty of nullity:

<sup>220</sup> **Artigo 12.º Lei Do Cibercrime****Preservação expedita de dados Lei n.º 109/2009, de 15 de Setembro LEI DO CIBERCRIME**

1 - Se no decurso do processo for necessário à produção de prova, tendo em vista a descoberta da verdade, obter dados informáticos específicos armazenados num sistema informático, incluindo dados de tráfego, em relação aos quais haja receio de que possam perder-se, alterar-se ou deixar de estar disponíveis, a autoridade judiciária competente ordena a quem tenha disponibilidade ou controlo desses dados, designadamente a fornecedor de serviço, que preserve os dados em causa.

2 - A preservação pode também ser ordenada pelo órgão de polícia criminal mediante autorização da autoridade judiciária competente ou quando haja urgência ou perigo na demora, devendo aquele, neste último caso, dar notícia imediata do facto à autoridade judiciária e transmitir-lhe o relatório previsto no artigo 253.º do Código de Processo Penal.

3 - A ordem de preservação discrimina, sob pena de nulidade:

a) A natureza dos dados;

b) A sua origem e destino, se forem conhecidos; e

c) O período de tempo pelo qual deverão ser preservados, até um máximo de três meses.

4 - Em cumprimento de ordem de preservação que lhe seja dirigida, quem tenha disponibilidade ou controlo sobre esses dados, designadamente o fornecedor de serviço, preserva de imediato os dados em causa, protegendo e conservando a sua integridade pelo tempo fixado, de modo a permitir à autoridade judiciária competente a sua obtenção, e fica obrigado a assegurar a confidencialidade da aplicação da medida processual.

5 - A autoridade judiciária competente pode ordenar a renovação da medida por períodos sujeitos ao limite previsto na alínea c) do n.º 3, desde que se verifiquem os respectivos requisitos de admissibilidade, até ao limite máximo de um ano.

- a) The nature of the data;
- b) Its origin and destination, if known; and
- c) The period of time for which they must be preserved, up to a maximum of three months.

4 - In compliance with a preservation order addressed to it, whoever has availability or control over such data, namely the service provider, immediately preserves the data in question, protecting and conserving its integrity for the fixed time, in order to allow to the competent judicial authority to obtain it, and is obliged to ensure the confidentiality of the application of the procedural measure.

5 - The competent judicial authority may order the renewal of the measure for periods subject to the limit provided for in subparagraph c) of paragraph 3, provided that the respective admissibility requirements are met, up to a maximum limit of one year.

#### **Article 14 Cybercrime law<sup>221</sup> Injunction to present or grant access to data**

1 - If, in the course of the proceedings, it becomes necessary for the production of evidence, with a view to uncovering the truth, to obtain specific and determined computer data, stored in a particular computer system, the competent judicial authority shall order whoever has availability or control of such data to communicate them to the proceedings or to allow access to them, under penalty of punishment for disobedience.

2 - The order referred to in the previous paragraph shall identify the data in question.

#### <sup>221</sup> **Artigo 14.º Lei Do Cibercrime**

##### **Injunção para apresentação ou concessão do acesso a dados Lei n.º 109/2009, de 15 de Setembro Lei Do Cibercrime**

1 - Se no decurso do processo se tornar necessário à produção de prova, tendo em vista a descoberta da verdade, obter dados informáticos específicos e determinados, armazenados num determinado sistema informático, a autoridade judiciária competente ordena a quem tenha disponibilidade ou controlo desses dados que os comunique ao processo ou que permita o acesso aos mesmos, sob pena de punição por desobediência.

2 - A ordem referida no número anterior identifica os dados em causa.

3 - Em cumprimento da ordem descrita nos n.os 1 e 2, quem tenha disponibilidade ou controlo desses dados comunica esses dados à autoridade judiciária competente ou permite, sob pena de punição por desobediência, o acesso ao sistema informático onde os mesmos estão armazenados.

4 - O disposto no presente artigo é aplicável a fornecedores de serviço, a quem pode ser ordenado que comuniquem ao processo dados relativos aos seus clientes ou assinantes, neles se incluindo qualquer informação diferente dos dados relativos ao tráfego ou ao conteúdo, contida sob a forma de dados informáticos ou sob qualquer outra forma, detida pelo fornecedor de serviços, e que permita determinar:

- a) O tipo de serviço de comunicação utilizado, as medidas técnicas tomadas a esse respeito e o período de serviço;
- b) A identidade, a morada postal ou geográfica e o número de telefone do assinante, e qualquer outro número de acesso, os dados respeitantes à facturação e ao pagamento, disponíveis com base num contrato ou acordo de serviços; ou
- c) Qualquer outra informação sobre a localização do equipamento de comunicação, disponível com base num contrato ou acordo de serviços.

5 - A injunção prevista no presente artigo não pode ser dirigida a suspeito ou arguido nesse processo.

6 - Não pode igualmente fazer-se uso da injunção prevista neste artigo quanto a sistemas informáticos utilizados para o exercício da advocacia, das actividades médica e bancária e da profissão de jornalista.

7 - O regime de segredo profissional ou de funcionário e de segredo de Estado previsto no artigo 182.º do Código de Processo Penal é aplicável com as necessárias adaptações.

3 - In compliance with the order described in paragraphs 1 and 2, whoever has availability or control of such data shall communicate them to the competent judicial authority or allow access to the computer system where they are stored, under penalty of punishment for disobedience.

4 - The provisions of this article are applicable to service providers, who may be ordered to communicate data regarding their customers or subscribers, including any information other than traffic or content data, contained in the form of computer data or in any other form, held by the service provider and which makes it possible to determine

a) the type of communication service used, the technical measures taken in this respect and the period of service;

b) the identity, postal or geographical address and telephone number of the subscriber and any other access number, billing and payment details which are available on the basis of a contract or service agreement; or

c) any other information about the location of the communication equipment available on the basis of a contract or service agreement.

5 - The injunction provided for in this article may not be addressed to a suspect or defendant in such proceedings.

6 - The injunction provided for in this article shall also not be applied to computer systems used in the exercise of the legal profession, medical and banking activities and the profession of journalist.

7 - The regime of professional or official secrecy and State secrecy provided for in Article 182 of the Code of Criminal Procedure shall apply with the necessary adaptations.

### **Art. 15 Cybercrime Law**

See above → Search any computer system.

**Article 16 Cybercrime law<sup>222</sup> Seizure of computer data** 1 - When, in the course of a computer search or other legitimate access to a computer system, computer data or documents necessary for the production of evidence are found, with a view to finding the truth, the competent judicial authority authorises or orders their apprehension by order.

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#### <sup>222</sup> **Artigo 16.º Lei Do Cibercrime**

##### **Apreensão de dados informáticos Lei n.º 109/2009, de 15 de Setembro Lei Do Cibercrime**

1 - Quando, no decurso de uma pesquisa informática ou de outro acesso legítimo a um sistema informático, forem encontrados dados ou documentos informáticos necessários à produção de prova, tendo em vista a descoberta da verdade, a autoridade judiciária competente autoriza ou ordena por despacho a apreensão dos mesmos.

2 - O órgão de polícia criminal pode efectuar apreensões, sem prévia autorização da autoridade judiciária, no decurso de pesquisa informática legitimamente ordenada e executada nos termos do artigo anterior, bem como quando haja urgência ou perigo na demora.

3 - Caso sejam apreendidos dados ou documentos informáticos cujo conteúdo seja susceptível de revelar dados pessoais ou íntimos, que possam pôr em causa a privacidade do respectivo titular ou de terceiro, sob pena de nulidade esses dados ou documentos são apresentados ao juiz, que ponderará a sua junção aos autos tendo em conta os interesses do caso concreto.



2 - The criminal police body may carry out seizures, without prior authorisation from the judicial authority, during a computer search legitimately ordered and executed under the terms of the previous article, as well as when there is urgency or danger in delay.

3 - Where computer data or documents are seized, the contents of which are likely to reveal personal or intimate data that may jeopardise the privacy of the respective holder or third party, under penalty of being declared null and void, such data or documents shall be submitted to the judge, who shall consider whether they should be added to the case file taking into account the interests of the specific case.

4 - Seizures made by the criminal police are always subject to validation by the judicial authority within 72 hours.

5 - Seizures relating to computer systems used in the exercise of the legal profession and medical and banking activities shall be subject, with the necessary adaptations, to the rules and formalities provided for in the Code of Criminal Procedure, and those relating to computer systems used in the exercise of the profession of journalist shall be subject, with the necessary adaptations, to the rules and formalities provided for in the Statute of the Journalist.

6 - The rules governing professional or official secrecy and state secrecy laid down in Article 182 of the Code of Criminal Procedure shall apply, with the necessary adaptations.

7 - The seizure of computer data, as appropriate and proportional, taking into account the interests of the specific case, may, namely, take the following forms

a) Seizure of the medium on which the system is installed or seizure of the medium on which the computer data is stored, as well as the devices necessary for the respective reading;

b) Making a copy of the data, in an autonomous support, which will be attached to the process;

4 - As apreensões efectuadas por órgão de polícia criminal são sempre sujeitas a validação pela autoridade judiciária, no prazo máximo de 72 horas.

5 - As apreensões relativas a sistemas informáticos utilizados para o exercício da advocacia e das actividades médica e bancária estão sujeitas, com as necessárias adaptações, às regras e formalidades previstas no Código de Processo Penal e as relativas a sistemas informáticos utilizados para o exercício da profissão de jornalista estão sujeitas, com as necessárias adaptações, às regras e formalidades previstas no Estatuto do Jornalista.

6 - O regime de segredo profissional ou de funcionário e de segredo de Estado previsto no artigo 182.º do Código de Processo Penal é aplicável com as necessárias adaptações.

7 - A apreensão de dados informáticos, consoante seja mais adequado e proporcional, tendo em conta os interesses do caso concreto, pode, nomeadamente, revestir as formas seguintes:

a) Apreensão do suporte onde está instalado o sistema ou apreensão do suporte onde estão armazenados os dados informáticos, bem como dos dispositivos necessários à respectiva leitura;

b) Realização de uma cópia dos dados, em suporte autónomo, que será junto ao processo;

c) Preservação, por meios tecnológicos, da integridade dos dados, sem realização de cópia nem remoção dos mesmos; ou

d) Eliminação não reversível ou bloqueio do acesso aos dados.

8 - No caso da apreensão efectuada nos termos da alínea b) do número anterior, a cópia é efectuada em duplicado, sendo uma das cópias selada e confiada ao secretário judicial dos serviços onde o processo correr os seus termos e, se tal for tecnicamente possível, os dados apreendidos são certificados por meio de assinatura digital.

- c) Preservation, by technological means, of the integrity of the data, without making a copy or removing it; or  
 d) Non-reversible erasure or blocking of access to the data.

8 - In the case of seizure carried out in accordance with paragraph b) of the previous number, the copy shall be made in duplicate, one of the copies shall be sealed and entrusted to the legal secretary of the services where the proceedings are being carried out and, if technically possible, the seized data shall be certified by means of a digital signature.

**Article 17 Cybercrime law<sup>223</sup> Seizure of e-mails and similar communication records**

When, in the course of a computer search or other legitimate access to a computer system, e-mail messages or records of communications of a similar nature are found stored in that computer system or in another one to which legitimate access from the former is allowed, the judge may authorise or order, by means of an order, the seizure of those that seem to be of great interest for finding out the truth or for evidence, applying accordingly the regime of seizure of correspondence provided for in the Code of Criminal Procedure.

**(2) Obtainment of banking account data and traffic data**



Searches and seizures in a banking establishment are subsidiary measures to an injunction to provide information and documents referred to in Art. 182 CPC, with reference to Art. 135 CPC and Art. 79 d) of *Regime Geral das Instituições de Crédito e Sociedades Financeiras*.

<sup>223</sup> **Artigo 17.º Lei Do Cibercrime**

**Apreensão de correio electrónico e registos de comunicações de natureza semelhante Lei n.º 109/2009, de 15 de Setembro Lei Do Cibercrime**

Quando, no decurso de uma pesquisa informática ou outro acesso legítimo a um sistema informático, forem encontrados, armazenados nesse sistema informático ou noutra a que seja permitido o acesso legítimo a partir do primeiro, mensagens de correio electrónico ou registos de comunicações de natureza semelhante, o juiz pode autorizar ou ordenar, por despacho, a apreensão daqueles que se afigurem ser de grande interesse para a descoberta da verdade ou para a prova, aplicando-se correspondentemente o regime da apreensão de correspondência previsto no Código de Processo Penal.

**Article 181 CPC<sup>224</sup> Seizure in a banking establishment**

1 - The judge seizes documents, securities, amounts, amounts and any other objects in banks or other credit institutions, even if in individual safes, when he has well-founded reasons to believe that they are related to a crime and will great interest for the discovery of the truth or for the evidence, even if they do not belong to the accused or are not deposited in his name.

2 - The judge may examine correspondence and any bank documentation in order to discover the objects to be seized under the terms of the previous number. The examination is carried out in person by the judge, assisted, when necessary, by criminal police bodies and by qualified technicians, who are bound by a duty of secrecy in relation to everything that they have learned about and that is not of interest to the test.

**(3) Exception of data specifically retained in accordance with national law (pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council)**

*Transposition deadline: 31/10/2003*

16

Decree-Law No 7 of 7/1/2004 Diário da Republica I Serie A No 5 of 07/01/2004 p. 70 (SG (2004) A/1950 du 19/2/2004). *Official publication: Diaro da Republica I; Number: serie an nr 5; Publication date: 2004-01-07*

Assembly of the Republic Transposes into national law Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2006 concerning the processing of personal data and the protection of privacy in the electronic communications sector. *Official publication: Diaro da Republica; Number: 194 SERIES I-A; Publication date: 2004-08-18; Page: 05241-05245*

See further: Protection of Personal Data and Privacy in Telecommunications, Law No. 41/2004, of August 18<sup>225</sup> or Electronic Commerce in the Internal Market and Processing of Personal Data, Decree No. 7/2004, of January 7<sup>226</sup>.

17

<sup>224</sup> **Artigo 181.º CPP (Apreensão em estabelecimento bancário)**

1 - O juiz procede à apreensão em bancos ou outras instituições de crédito de documentos, títulos, valores, quantias e quaisquer outros objectos, mesmo que em cofres individuais, quando tiver fundadas razões para crer que eles estão relacionados com um crime e se revelarão de grande interesse para a descoberta da verdade ou para a prova, mesmo que não pertençam ao arguido ou não estejam depositados em seu nome.

2 - O juiz pode examinar a correspondência e qualquer documentação bancárias para descoberta dos objectos a apreender nos termos do número anterior. O exame é feito pessoalmente pelo juiz, coadjuvado, quando necessário, por órgãos de polícia criminal e por técnicos qualificados, ficando ligados por dever de segredo relativamente a tudo aquilo de que tiverem tomado conhecimento e não tiver interesse para a prova.

<sup>225</sup> Protecção De Dados Pessoais E Privacidade Nas Telecomuni-Cações, Lei n.º 41/2004, de 18 de Agosto.

<sup>226</sup> Comércio Electrónico No Mercado Interno E Tratamento De Dados Pessoais, DL n.º 7/2004, de 07 de Janeiro.

ee. **Para 1(d)**

**(1) Freezing instrumentalities or proceeds of crime, including assets**



The power to order the freezing of instrumentalities is set both in Art. 178 CPC and Art. 228 CPC (with reference to Art. 227 para 1 b) CPC).<sup>227</sup> Public prosecutors are competent to order the measure of Art. 178 CPC, but not the one of Art. 228. There are doubts about the constitutional conformity of Art. 178 CPC that gives power to public prosecutors to order the freezing of instrumentalities.<sup>228</sup> On Art. 10 of Law No 5/2002 of 11 January, a special regime is provided, in connection with the so-called “extended confiscation”.

**(2) Legislation and Subject to confiscation Status by the trial court**

**18 Article 178 CPC<sup>229</sup> Object and preconditions for Seizure** 1 - Instruments, products or advantages related to the commission of a typical illegal act, as well as all animals, things and objects left by the perpetrator at the crime scene or any other that may be used as evidence, are seized.

<sup>227</sup> See the book of Andrade and Antunes 2017.

<sup>228</sup> See Judgement of the Constitutional Court Nr. 387/2019.

<sup>229</sup> **Artigo 178.º CPP Objeto e pressupostos da apreensão**

1 - São apreendidos os instrumentos, produtos ou vantagens relacionados com a prática de um facto ilícito típico, e bem assim todos os animais, as coisas e os objetos que tiverem sido deixados pelo agente no local do crime ou quaisquer outros suscetíveis de servir a prova.

2 - Os instrumentos, produtos ou vantagens e demais objetos apreendidos nos termos do número anterior são juntos ao processo, quando possível, e, quando não, confiados à guarda do funcionário de justiça adstrito ao processo ou de um depositário, de tudo se fazendo menção no auto, devendo os animais apreendidos ser confiados à guarda de depositários idóneos para a função com a possibilidade de serem ordenadas as diligências de prestação de cuidados, como a alimentação e demais deveres previstos no Código Civil.

3 - As apreensões são autorizadas, ordenadas ou validadas por despacho da autoridade judiciária.

4 - Os órgãos de polícia criminal podem efectuar apreensões no decurso de revistas ou de buscas ou quando haja urgência ou perigo na demora, nos termos previstos no artigo 249.º, n.º 2, alínea c).

5 - Os órgãos de polícia criminal podem ainda efectuar apreensões quando haja fundado receio de desaparecimento, destruição, danificação, inutilização, ocultação ou transferência de animais, instrumentos, produtos ou vantagens ou outros objetos ou coisas provenientes da prática de um facto ilícito típico suscetíveis de serem declarados perdidos a favor do Estado.

6 - As apreensões efectuadas por órgão de polícia criminal são sujeitas a validação pela autoridade judiciária, no prazo máximo de setenta e duas horas.

7 - Os titulares de instrumentos, produtos ou vantagens ou outros objetos ou coisas ou animais apreendidos podem requerer ao juiz a modificação ou a revogação da medida.

8 - O requerimento a que se refere o número anterior é autuado por apenso, notificando-se o Ministério Público para, em 10 dias, deduzir oposição.

9 - Se os instrumentos, produtos ou vantagens ou outros objetos ou coisas ou animais apreendidos forem suscetíveis de ser declarados perdidos a favor do Estado e não pertencerem ao arguido, a autoridade judiciária ordena a presença do interessado e ouve-o.

10 - A autoridade judiciária prescinde da presença do interessado quando esta não for possível.

11 - Realizada a apreensão, é promovido o respetivo registo nos casos e nos termos previstos na legislação registal aplicável.

12 - Nos casos a que se refere o número anterior, havendo sobre o bem registo de aquisição ou de reconhecimento do direito de propriedade ou da mera posse a favor de pessoa diversa da que no processo for considerada titular do mesmo, antes de promover o registo da apreensão a autoridade judiciária notifica o titular inscrito para que, querendo, se pronuncie no prazo de 10 dias.

- 2 - The instruments, products or advantages and other objects apprehended in the terms of the previous paragraph are joined to the process, when possible, and, when not, they are entrusted to the custody of the judicial officer assigned to the process or a depositary, with everything being mentioned in the record.
- 3 - Seizures shall be authorised, ordered or validated by order of the judicial authority.
- 4 - Police bodies may make seizures during searches or when there is urgency or danger in delay, as provided for in Article 249 paragraph 2 sub-paragraph c).
- 5 - Police bodies may also carry out apprehensions when there is a well-founded fear of disappearance, destruction, damage, destruction, concealment or transfer of animals, instruments, products or advantages or other objects or things resulting from the commission of a typical unlawful act that may be declared forfeited to the State.
- 6 - Seizures made by the criminal police are subject to validation by the judicial authority within a maximum period of seventy-two hours.
- 7 - The owners of seized instruments, products or advantages or other objects or things or animals may request the judge to modify or revoke the measure.
- 8 - The request referred to in the previous number shall be registered and the Public Prosecutor's Office shall be notified to lodge an opposition within 10 days.
- 9 - If the seized instruments, products or advantages or other objects or things or animals are susceptible to be declared lost to the State and do not belong to the accused, the judicial authority shall order the presence of the interested party and hear him/her.
- 10 - The judicial authority waives the presence of the interested party when it is not possible.
- 11 - Once the seizure is carried out, the respective registration is promoted in the cases and under the terms foreseen in applicable registry legislation.
- 12 - In cases referred to in the previous paragraph, where the property is registered as having been acquired or recognised as property right or merely as being in mere possession in favour of a person other than the person considered to be its owner in the process, before registering the seizure, the judicial authority shall notify the registered owner so that, if he or she so wishes, he or she can issue a statement within 10 days.

Whether Art. 111 of the Criminal Code applies, is discussed:

19

**Article 111 Criminal Code<sup>230</sup> Instruments, products or advantages belonging to a third party** 1 - Without prejudice to the provisions of the following numbers, confiscation shall not take place if the instruments, proceeds or advantages did not belong to any

<sup>230</sup> **Artigo 111.º CP Instrumentos, produtos ou vantagens pertencentes a terceiro CC**

1 - Sem prejuízo do disposto nos números seguintes, a perda não tem lugar se os instrumentos, produtos ou vantagens não pertencerem, à data do facto, a nenhum dos agentes ou beneficiários, ou não lhes pertencerem no momento em que a perda foi decretada.

2 - Ainda que os instrumentos, produtos ou vantagens pertençam a terceiro, é decretada a perda quando:

of the agents or beneficiaries at the date of the fact, or did not belong to them at the time when confiscation was decreed.

2 - Even if the instruments, proceeds or advantages belong to a third party, forfeiture shall be decreed when

a) their holder has culpably concurred in their use or production, or has derived benefit from the fact;

b) The instruments, products or advantages are, by any means, acquired after the commission of the fact, and the acquirer knows or should have known of their origin; or

c) The instruments, products or advantages, or the value corresponding to them, have, for any reason, been transferred to the third party to avoid the loss decreed under the terms of Articles 109 and 110, and the third party is or should be aware of such purpose.

3 - If the proceeds or advantages referred to in the previous item cannot be appropriated in kind, the forfeiture shall be replaced by payment to the State of the respective value, and such replacement may be made at any time, even during the enforcement stage, within the limits provided for in Article 112-A.

4 - If the instruments, products or advantages consist of inscriptions, representations or records written on paper, on another support or means of audio-visual expression, belonging to a bona fide third party, the forfeiture does not take place and restitution will be made after erasing the inscriptions, representations or records integrating the typical illicit fact. Should this not be possible, the court shall order the destruction of the records and there shall be a right to compensation under the terms of the civil law.

20 The Articles 227 and 228 CPC play a role here as well:

**Article 227 CPC<sup>231</sup> (Economic bail deposit)** 1. The Public Prosecutor's Office shall request economic bail when there is a well-founded fear that the guarantees will be lacking or will substantially diminish

a) O seu titular tiver concorrido, de forma censurável, para a sua utilização ou produção, ou do facto tiver retirado benefícios;

b) Os instrumentos, produtos ou vantagens forem, por qualquer título, adquiridos após a prática do facto, conhecendo ou devendo conhecer o adquirente a sua proveniência; ou

c) Os instrumentos, produtos ou vantagens, ou o valor a estes correspondente, tiverem, por qualquer título, sido transferidos para o terceiro para evitar a perda decretada nos termos dos artigos 109.º e 110.º, sendo ou devendo tal finalidade ser por ele conhecida.

3 - Se os produtos ou vantagens referidos no número anterior não puderem ser apropriados em espécie, a perda é substituída pelo pagamento ao Estado do respetivo valor, podendo essa substituição operar a todo o tempo, mesmo em fase executiva, com os limites previstos no artigo 112.º-A.

4 - Se os instrumentos, produtos ou vantagens consistirem em inscrições, representações ou registos lavrados em papel, noutra suporte ou meio de expressão audiovisual, pertencentes a terceiro de boa-fé, não tem lugar a perda, procedendo-se à restituição depois de apagadas as inscrições, representações ou registos que integrarem o facto ilícito típico. Não sendo isso possível, o tribunal ordena a destruição, havendo lugar à indemnização nos termos da lei civil.

<sup>231</sup> **Artigo 227.º (Caução económica)**

1 - O Ministério Público requer prestação de caução económica quando haja fundado receio de que falem ou diminuam substancialmente as garantias:

a) Of the payment of the monetary penalty, of the costs of the process or of any other debt to the State related to the crime;

b) The forfeiture of the instruments, products and advantages of the typical illicit act or the payment of the value corresponding thereto.

2 - The request shall indicate the terms and the modalities under which the economic guarantee must be provided.

3 - Where there is a founded fear that the guarantees for payment of compensation or other civil obligations derived from the crime are lacking or substantially decreased, the victim may request that the defendant or the civilly liable party provide economic bail, in accordance with the terms of the previous paragraph.

4 - The economic bond provided at the request of the Prosecuting Counsel shall also benefit the injured party.

5 - Economic bond shall remain distinct and autonomous in relation to the bond referred to in Article 197 and shall subsist until the final acquittal decision or until the obligations are extinguished. In the event of conviction, the fine, court costs, procedural costs, compensation and other civil obligations and also the value corresponding to the instruments, proceeds and advantages of the crime shall be paid successively in their value.

6 - The economic bail shall apply to the legal person or equivalent entity.

**Article 228 CPC<sup>232</sup> (Preventive seizure)** 1 - To guarantee the sums referred to in the previous Article, at the request of the Public Prosecution Service or of the injured party,

a) Do pagamento da pena pecuniária, das custas do processo ou de qualquer outra dívida para com o Estado relacionada com o crime;

b) Da perda dos instrumentos, produtos e vantagens de facto ilícito típico ou do pagamento do valor a estes correspondente.

2 - O requerimento indica os termos e as modalidades em que deve ser prestada a caução económica.

3 - Havendo fundado receio de que falem ou diminuam substancialmente as garantias de pagamento da indemnização ou de outras obrigações civis derivadas do crime, o lesado pode requerer que o arguido ou o civilmente responsável prestem caução económica, nos termos do número anterior.

4 - A caução económica prestada a requerimento do Ministério Público aproveita também ao lesado.

5 - A caução económica mantém-se distinta e autónoma relativamente à caução referida no artigo 197.º e subsiste até à decisão final absolutória ou até à extinção das obrigações. Em caso de condenação, são pagas pelo seu valor, sucessivamente, a multa, a taxa de justiça, as custas do processo, a indemnização e outras obrigações civis e, ainda, o valor correspondente aos instrumentos, produtos e vantagens do crime.

6 - A caução económica é aplicável à pessoa coletiva ou entidade equiparada.

<sup>232</sup> **Artigo 228.º (Arresto preventivo) CPC**

1 - Para garantia das quantias referidas no artigo anterior, a requerimento do Ministério Público ou do lesado, pode o juiz decretar o arresto, nos termos da lei do processo civil; se tiver sido previamente fixada e não prestada caução económica, fica o requerente dispensado da prova do fundado receio de perda da garantia patrimonial.

2 - O arresto preventivo referido no número anterior pode ser decretado mesmo em relação a comerciante.

3 - A oposição ao despacho que tiver decretado arresto não possui efeito suspensivo.

4 - Em caso de controvérsia sobre a propriedade dos bens arrestados, pode o juiz remeter a decisão para o tribunal civil, mantendo-se entretanto o arresto decretado.

5 - O arresto é revogado a todo o tempo em que e arguido ou o civilmente responsável prestem a caução económica imposta.

the judge may order seizure, in accordance with the terms of the law on civil procedure; if a guarantee has been previously established and economic security has not been provided, the petitioner shall be exempt from having to prove that there is a well-founded fear of loss of the asset guarantee.

2 - Preventive seizure as provided for in the preceding paragraph may be ordered even in relation to a trader.

3 - Opposition to the order granting the attachment has no suspensive effect.

4 - In the event of controversy as to the ownership of the preserved goods, the judge may refer the decision to the civil court, in the meantime maintaining the ordered seizure.

5 - The attachment is revoked at any time on condition that the defendant or the civilly liable party provide the imposed economic guarantee.

6 - Once the attachment has been ordered, it shall be registered in the cases and under the terms provided for in the applicable registration legislation and its subsequent cancellation shall be promoted when the measure is extinguished.

7 - Preventive seizure is applicable to legal persons or equivalent entities.

**ff. Para 1(e) Interception of electronic communications to and from the suspect or accused person**

21 The CPC and the special provisions in the Portuguese Cybercrime Law may apply.

**(1) Provisions in the CPC and other national laws**

22

**[Excerpt CPC]**

**Chapter IV Interception of telephone conversations**

**Article 187<sup>233</sup> (Admissibility)** 1 - Interception and recording of telephone conversations or communications may only be authorised during the enquiry, if there are reasons to

6 - Decretado o arresto, é promovido o respetivo registo nos casos e nos termos previstos na legislação registal aplicável, promovendo-se o subsequente cancelamento do mesmo quando sobrevier a extinção da medida.

7 - O arresto preventivo é aplicável à pessoa coletiva ou entidade equiparada.

<sup>233</sup> **Das escutas telefónicas**

**Artigo 187.º CPP (Admissibilidade)**

1 - A intercepção e a gravação de conversações ou comunicações telefónicas só podem ser autorizadas durante o inquérito, se houver razões para crer que a diligência é indispensável para a descoberta da verdade ou que a prova seria, de outra forma, impossível ou muito difícil de obter, por despacho fundamentado do juiz de instrução e mediante requerimento do Ministério Público, quanto a crimes:

a) Puníveis com pena de prisão superior, no seu máximo, a 3 anos;

b) Relativos ao tráfico de estupefacientes;

c) De detenção de arma proibida e de tráfico de armas;

d) De contrabando;

e) De injúria, de ameaça, de coacção, de devassa da vida privada e perturbação da paz e do sossego, quando cometidos através de telefone;

f) De ameaça com prática de crime ou de abuso e simulação de sinais de perigo; ou

g) De evasão, quando o arguido haja sido condenado por algum dos crimes previstos nas alíneas anteriores.



believe that the diligence is indispensable for finding out the truth or that evidence would otherwise be impossible or very difficult to obtain, by reasoned order of the investigating judge and at the request of the Public Prosecution Service, in relation to crimes

- a) Punishable by imprisonment for a maximum of more than 3 years;
- b) Related to drug trafficking;
- c) For possession of a prohibited weapon and arms trafficking; d) Smuggling
- d) Smuggling;
- e) Insults, threats, coercion, invasion of privacy and disturbance of peace and quiet, when committed by telephone;
- f) threatening with a crime or abuse and simulation of danger signals; or
- g) Escape, when the accused has been convicted of any of the crimes under the previous sub-paragraphs.

2 - The authorisation referred to in the previous sub-paragraph may be requested from the judge of the places where the telephone conversation or communication may eventually take place, or from the headquarters of the competent entity for criminal investigation, in the case of the following crimes

- a) Terrorism, violent or highly organised crime

2 - A autorização a que alude o número anterior pode ser solicitada ao juiz dos lugares onde eventualmente se puder efectivar a conversação ou comunicação telefónica ou da sede da entidade competente para a investigação criminal, tratando-se dos seguintes crimes:

- a) Terrorismo, criminalidade violenta ou altamente organizada;
- b) Sequestro, rapto e tomada de reféns;
- c) Contra a identidade cultural e integridade pessoal, previstos no título iii do livro ii do Código Penal e previstos na Lei Penal Relativa às Violações do Direito Internacional Humanitário;
- d) Contra a segurança do Estado previstos no capítulo i do título v do livro ii do Código Penal;
- e) Falsificação de moeda ou títulos equiparados a moeda prevista nos artigos 262.º, 264.º, na parte em que remete para o artigo 262.º, e 267.º, na parte em que remete para os artigos 262.º e 264.º do Código Penal, bem como contrafeição de cartões ou outros dispositivos de pagamento e uso de cartões ou outros dispositivos de pagamento contrafeitos, previstos no artigo 3.º-A e no n.º 3 do artigo 3.º-B da Lei n.º 109/2009, de 15 de setembro;
- f) Abrangidos por convenção sobre segurança da navegação aérea ou marítima.

3 - Nos casos previstos no número anterior, a autorização é levada, no prazo máximo de setenta e duas horas, ao conhecimento do juiz do processo, a quem cabe praticar os actos jurisdicionais subsequentes.

4 - A intercepção e a gravação previstas nos números anteriores só podem ser autorizadas, independentemente da titularidade do meio de comunicação utilizado, contra:

- a) Suspeito ou arguido;
- b) Pessoa que sirva de intermediário, relativamente à qual haja fundadas razões para crer que recebe ou transmite mensagens destinadas ou provenientes de suspeito ou arguido; ou
- c) Vítima de crime, mediante o respectivo consentimento, efectivo ou presumido.

5 - É proibida a intercepção e a gravação de conversações ou comunicações entre o arguido e o seu defensor, salvo se o juiz tiver fundadas razões para crer que elas constituem objecto ou elemento de crime.

6 - A intercepção e a gravação de conversações ou comunicações são autorizadas pelo prazo máximo de três meses, renovável por períodos sujeitos ao mesmo limite, desde que se verifiquem os respectivos requisitos de admissibilidade.

7 - Sem prejuízo do disposto no artigo 248.º, a gravação de conversações ou comunicações só pode ser utilizada em outro processo, em curso ou a instaurar, se tiver resultado de intercepção de meio de comunicação utilizado por pessoa referida no n.º 4 e na medida em que for indispensável à prova de crime previsto no n.º 1.

8 - Nos casos previstos no número anterior, os suportes técnicos das conversações ou comunicações e os despachos que fundamentaram as respectivas intercepções são juntos, mediante despacho do juiz, ao processo em que devam ser usados como meio de prova, sendo extraídas, se necessário, cópias para o efeito.

Penal Law Concerning Violations of International Humanitarian Law;

b) Kidnapping, kidnapping and hostage taking;

c) Against cultural identity and personal integrity, provided for in title iii of book ii of the Penal Code and provided for in the Criminal Law Relating to Violations of International Humanitarian Law;

d) Against State security as provided for in chapter I of Title V of book ii of the Penal Code;

e) Counterfeiting currency or securities equivalent to currency provided for in Articles 262, 264 insofar as it refers to Article 262 and 267 insofar as it refers to Articles 262 and 264 of the Penal Code, as well as counterfeiting of cards or other payment devices and use of counterfeit cards or other counterfeit payment devices provided for in Articles 3-A and 3-B(3) of Law 109/2009 of 15 September

f) Covered by a convention on security of air or sea navigation.

3 - In the cases foreseen in the previous number, the authorisation is brought to the attention of the judge of the proceedings within a maximum period of seventy-two hours, who is responsible for carrying out the subsequent jurisdictional acts.

4 - The interception and recording provided for in the previous numbers may only be authorized, regardless of the ownership of the means of communication used, against

a) Suspect or defendant;

b) Persons acting as intermediaries, in relation to whom there are reasonable grounds to believe that they receive or transmit messages intended for or originating from suspects or accused persons; or

c) of crime, with the respective consent, effective or presumed.

5 - It is forbidden to intercept and record conversations or communications between the accused and his or her defender, unless the judge has reasonable grounds to believe that they constitute the object or element of a crime.

6 - Interception and recording of conversations or communications are authorised for a maximum period of three months, renewable for periods subject to the same limit, provided the respective admissibility requirements have been met.

7 - Without prejudice to the provisions of Article 248, the recording of conversations or communications may only be used in another process, already in progress or to be initiated, if it resulted from interception of the means of communication used by the person referred to in no. 4 and to the extent that it is essential to prove a crime provided for in no. 1.

8 - In the cases provided for in the previous number, the technical supports of the conversations or communications and the orders that justify the respective interceptions are joined, by order of the judge, to the proceedings in which they are to be used as evidence, copies being extracted, if necessary, for the purpose.

**Article 188 CPC<sup>234</sup> Operation formalities**

1 - The criminal police body that carries out the interception and recording referred to in the previous article shall draw up the corresponding record and prepare a report in which it indicates the passages relevant to the evidence, succinctly describes its content and explains its scope to discover the truth.

<sup>234</sup> **Artigo 188.º CPP****Formalidades das operações**

1 - O órgão de polícia criminal que efectuar a intercepção e a gravação a que se refere o artigo anterior lavra o correspondente auto e elabora relatório no qual indica as passagens relevantes para a prova, descreve de modo sucinto o respectivo conteúdo e explica o seu alcance para a descoberta da verdade.

2 - O disposto no número anterior não impede que o órgão de polícia criminal que proceder à investigação tome previamente conhecimento do conteúdo da comunicação interceptada a fim de poder praticar os actos cautelares necessários e urgentes para assegurar os meios de prova.

3 - O órgão de polícia criminal referido no n.º 1 leva ao conhecimento do Ministério Público, de 15 em 15 dias a partir do início da primeira intercepção efectuada no processo, os correspondentes suportes técnicos, bem como os respectivos autos e relatórios.

4 - O Ministério Público leva ao conhecimento do juiz os elementos referidos no número anterior no prazo máximo de quarenta e oito horas.

5 - Para se inteirar do conteúdo das conversações ou comunicações, o juiz é coadjuvado, quando entender conveniente, por órgão de polícia criminal e nomeia, se necessário, intérprete.

6 - Sem prejuízo do disposto no n.º 7 do artigo anterior, o juiz determina a destruição imediata dos suportes técnicos e relatórios manifestamente estranhos ao processo:

- a) Que disserem respeito a conversações em que não intervenham pessoas referidas no n.º 4 do artigo anterior;
  - b) Que abranjam matérias cobertas pelo segredo profissional, de funcionário ou de Estado; ou
  - c) Cujas divulgação possa afectar gravemente direitos, liberdades e garantias;
- ficando todos os intervenientes vinculados ao dever de segredo relativamente às conversações de que tenham tomado conhecimento.

7 - Durante o inquérito, o juiz determina, a requerimento do Ministério Público, a transcrição e junção aos autos das conversações e comunicações indispensáveis para fundamentar a aplicação de medidas de coacção ou de garantia patrimonial, à excepção do termo de identidade e residência.

8 - A partir do encerramento do inquérito, o assistente e o arguido podem examinar os suportes técnicos das conversações ou comunicações e obter, à sua custa, cópia das partes que pretendam transcrever para juntar ao processo, bem como dos relatórios previstos no n.º 1, até ao termo dos prazos previstos para requerer a abertura da instrução ou apresentar a contestação, respectivamente.

9 - Só podem valer como prova as conversações ou comunicações que:

- a) O Ministério Público mandar transcrever ao órgão de polícia criminal que tiver efectuado a intercepção e a gravação e indicar como meio de prova na acusação;
- b) O arguido transcrever a partir das cópias previstas no número anterior e juntar ao requerimento de abertura da instrução ou à contestação; ou
- c) O assistente transcrever a partir das cópias previstas no número anterior e juntar ao processo no prazo previsto para requerer a abertura da instrução, ainda que não a requeira ou não tenha legitimidade para o efeito.

10 - O tribunal pode proceder à audição das gravações para determinar a correcção das transcrições já efectuadas ou a junção aos autos de novas transcrições, sempre que o entender necessário à descoberta da verdade e à boa decisão da causa.

11 - As pessoas cujas conversações ou comunicações tiverem sido escutadas e transcritas podem examinar os respectivos suportes técnicos até ao encerramento da audiência de julgamento.

12 - Os suportes técnicos referentes a conversações ou comunicações que não forem transcritas para servirem como meio de prova são guardados em envelope lacrado, à ordem do tribunal, e destruídos após o trânsito em julgado da decisão que puser termo ao processo.

13 - Após o trânsito em julgado previsto no número anterior, os suportes técnicos que não forem destruídos são guardados em envelope lacrado, junto ao processo, e só podem ser utilizados em caso de interposição de recurso extraordinário.

2 - The provisions of the previous paragraph do not prevent the criminal police body carrying out the investigation from being previously aware of the content of the intercepted communication in order to be able to carry out the necessary and urgent precautionary measures to secure the means of evidence.

3 - The criminal police body referred to in paragraph 1 brings to the attention of the Public Prosecutor's Office, every 15 days from the start of the first interception carried out in the process, the corresponding technical support, as well as the respective files and reports.

4 - The Public Prosecutor's Office brings to the attention of the judge the elements referred to in the previous paragraph within a maximum period of forty-eight hours.

5 - To learn about the content of conversations or communications, the judge is assisted, when deemed appropriate, by a criminal police body and appoints, if necessary, an interpreter.

6 - Without prejudice to the provisions of no. 7 of the previous article, the judge orders the immediate destruction of technical supports and reports that are manifestly extraneous to the process:

a) That concern conversations in which the persons referred to in no. 4 of the previous article;

b) That cover matters covered by professional, official or State secrecy; or

c) The disclosure of which could seriously affect rights, freedoms and guarantees;

All parties involved are bound by the duty of secrecy in relation to conversations of which they have become aware.

7 - During the investigation, the judge determines, at the request of the Public Prosecutor's Office, the transcription and addition to the records of the conversations and communications essential to justify the application of coercive or asset guarantee measures, with the exception of the identity and residence term.

8 - Upon completion of the investigation, the assistant and the accused may examine the technical support of the conversations or communications and obtain, at their own expense, a copy of the parts they wish to transcribe to add to the process, as well as the reports provided for in no. 1, until the end of the deadlines for requesting the opening of the investigation or submitting the defence, respectively.

9 - Only conversations or communications may be valid as evidence that:

a) The Public Prosecutor's Office orders the criminal police body that carried out the interception and recording to be transcribed and indicated as evidence in the indictment;

b) The defendant transcribes it from the copies provided for in the previous paragraph and attaches it to the request for opening the investigation or to the defence; or

c) The assistant transcribes it from the copies provided for in the previous number and adds it to the process within the deadline set to request the opening of the instruction, even if he does not request it or does not have the legitimacy to do so.

10 - The court may listen to the recordings to determine the correctness of the transcriptions already made or the addition of new transcriptions to the case file, whenever it deems it necessary to discover the truth and ensure a good decision in the case.

11 - People whose conversations or communications have been listened to and transcribed may examine the respective technical support until the end of the trial hearing.

12 - Technical support relating to conversations or communications that are not transcribed to serve as evidence are kept in a sealed envelope, upon order of the court, and destroyed after the decision that puts an end to the process becomes final.

13 - After the final judgment provided for in the previous paragraph, the technical supports that are not destroyed are kept in a sealed envelope, next to the process, and can only be used in the event of an extraordinary appeal.

#### **Article 189 CPC<sup>235</sup> Extension**

1 - The provisions of articles 187 and 188 are correspondingly applicable to conversations or communications transmitted by any technical means other than the telephone, namely electronic mail or other forms of data transmission via telematics, even if they are stored on a medium digital, and the interception of communications between those present.

2 - The obtaining and addition to the records of data on cell phone location or records of conversations or communications can only be ordered or authorized, at any stage of the process, by order of the judge, in relation to crimes set out in paragraph 1 of article 187 and in relation to the people referred to in paragraph 4 of the same article.

**Article 190 CPC<sup>236</sup> Nullity** The requirements and conditions referred to in articles 187, 188 and 189 are established under penalty of nullity.

**Article 17 Cybercrime Law<sup>237</sup> Seizure of electronic mail and records of communications of a similar nature** When, in the course of a computer search or other legitimate

<sup>235</sup> Artigo 189.º

Extensão

1 - O disposto nos artigos 187.º e 188.º é correspondentemente aplicável às conversações ou comunicações transmitidas por qualquer meio técnico diferente do telefone, designadamente correio electrónico ou outras formas de transmissão de dados por via telemática, mesmo que se encontrem guardadas em suporte digital, e à interceptação das comunicações entre presentes.

2 - A obtenção e junção aos autos de dados sobre a localização celular ou de registos da realização de conversações ou comunicações só podem ser ordenadas ou autorizadas, em qualquer fase do processo, por despacho do juiz, quanto a crimes previstos no n.º 1 do artigo 187.º e em relação às pessoas referidas no n.º 4 do mesmo artigo.

<sup>236</sup> Artigo 190.º

Nulidade

Os requisitos e condições referidos nos artigos 187.º, 188.º e 189.º são estabelecidos sob pena de nulidade.

<sup>237</sup> Artigo 17.º Lei Do Cibercrime

**Apreensão de correio electrónico e registos de comunicações de natureza semelhante**

access to a computer system, electronic mail messages or records of communications of a similar nature are found stored in that computer system or in another to which legitimate access is allowed from the first, the judge may authorise or order, by order, the seizure of those that appear to be of great interest for the discovery of the truth or for evidence, and the system for the seizure of correspondence provided for in the Code of Criminal Procedure shall apply accordingly.

**Article 18 Cybercrime Law<sup>238</sup> Interception of communications**

1 - The interception of communications is admissible in proceedings concerning crimes a) provided for in this law; or

b) in relation to which it is necessary to collect evidence in electronic format, when such crimes are foreseen in Article 187 of the Code of Criminal Procedure.

2 - The interception and recording of computer data transmissions may only be authorised during the enquiry, if there are reasons to believe that the diligence is indispensable to discover the truth or that the evidence would otherwise be impossible or very difficult to obtain, by reasoned order of the investigating judge and at the request of the Public Prosecution Service.

3 - Interception may be aimed at recording data concerning the content of communications or only at collecting and recording traffic data, and the order mentioned in the previous paragraph shall specify the respective scope, according to the concrete needs of the investigation.

4 - In all that is not contradicted by the present article, the interception and recording of computer data transmissions is subject to the regime of interception and recording of

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Quando, no decurso de uma pesquisa informática ou outro acesso legítimo a um sistema informático, forem encontrados, armazenados nesse sistema informático ou noutra a que seja permitido o acesso legítimo a partir do primeiro, mensagens de correio electrónico ou registos de comunicações de natureza semelhante, o juiz pode autorizar ou ordenar, por despacho, a apreensão daqueles que se afigurem ser de grande interesse para a descoberta da verdade ou para a prova, aplicando-se correspondentemente o regime da apreensão de correspondência previsto no Código de Processo Penal.

<sup>238</sup> **Artigo 18.º Lei Do Cibercrime**

**Intercepção de comunicações**

1 - É admissível o recurso à intercepção de comunicações em processos relativos a crimes:

a) Previstos na presente lei; ou

b) Cometidos por meio de um sistema informático ou em relação aos quais seja necessário proceder à recolha de prova em suporte electrónico, quando tais crimes se encontrem previstos no artigo 187.º do Código de Processo Penal.

2 - A intercepção e o registo de transmissões de dados informáticos só podem ser autorizados durante o inquérito, se houver razões para crer que a diligência é indispensável para a descoberta da verdade ou que a prova seria, de outra forma, impossível ou muito difícil de obter, por despacho fundamentado do juiz de instrução e mediante requerimento do Ministério Público.

3 - A intercepção pode destinar-se ao registo de dados relativos ao conteúdo das comunicações ou visar apenas a recolha e registo de dados de tráfego, devendo o despacho referido no número anterior especificar o respectivo âmbito, de acordo com as necessidades concretas da investigação.

4 - Em tudo o que não for contrariado pelo presente artigo, à intercepção e registo de transmissões de dados informáticos é aplicável o regime da intercepção e gravação de conversações ou comunicações telefónicas constante dos artigos 187.º, 188.º e 190.º do Código de Processo Penal.

telephone conversations or communications contained in Articles 187, 188 and 190 of the Code of Criminal Procedure.

**(a) (Scope)**

The article above covers e.g. smuggling and offences punishable by a maximum of more than three years. In addition, it requests the prosecutor to act by reasoned order of the investigating judge or at the request of the Public Prosecution Service. **23**

**(b) Fulfilment of the requirement of the Regulation: “over any electronic communication means that the suspect or accused person is using”**

The article covers computer data and recordings; hence communications and conservations are in the broad radius of Art. 187, 189 CPC and Art. 17, 18 Cybercrime Law. **24**

**(2) Summary to e)**

All in all, this article provides for an *ultima ratio* investigative measure and presents the requisites of the EPPO Regulation. **25**

**gg. Para 1(f) Tracking & Tracing an Object**

Tracking and tracing an object might have been possible by the various articles of the Law No. 1/2005, of January 10, which regulated the use of video cameras (in the public sphere). This law was repealed and replaced by the Law No. 95/2021, of December 29 on rules of the use of and access to video surveillance systems. **26**

**Chapter III Special regimes**

**Article 9<sup>239</sup> Use of portable cameras**

1 - The use of portable cameras by the security forces and services or by ANEPC is subject to authorization by the member of the Government that exercises management **27**

<sup>239</sup> **Capítulo III**

**Regimes especiais**

**Artigo 9.º Lei nº 95/2021 Utilização de câmaras portáteis**

1 - A utilização de câmaras portáteis pelas forças e serviços de segurança ou pela ANEPC está sujeita a autorização do membro do Governo que exerce a direção sobre a entidade requerente, sendo aplicável o disposto nos n.os 3 e 4 do artigo 5.º

2 - As câmaras portáteis instaladas em veículos aéreos só podem captar imagens na vertical, para efeitos da visualização dos espaços de enquadramento e que não permitam a identificação de pessoas em particular.

3 - O pedido de autorização deve ser instruído com os elementos previstos no n.º 1 do artigo 6.º, com exceção da alínea c).

4 - O tratamento e a conservação dos dados recolhidos obedecem aos princípios enunciados na presente lei.

5 - Excecionalmente, quando não seja possível obter em tempo útil a autorização prevista no n.º 1, o dirigente máximo da entidade requerente pode autorizar a utilização de câmaras portáteis, informando, no prazo de 48 horas, o membro do Governo competente, para a obtenção da respetiva ratificação.

6 - Se a ratificação prevista no número anterior não for concedida, o responsável pelo sistema procede à destruição imediata do material gravado.

7 - Sem prejuízo do disposto nos números anteriores, à utilização de câmaras portáteis é aplicável a legislação própria relativa às forças e serviços de segurança e às medidas de combate à criminalidade organizada.

over the requesting entity, the provisions of paragraphs 3 and 4 of Article 5 being applicable

2 - Portable cameras installed in air vehicles can only capture images vertically, for the purpose of viewing the framing spaces and which do not allow the identification of particular people.

3 - The authorization request must be accompanied by the elements provided for in paragraph 1 of Article 6, with the exception of subparagraph c).

4 - The treatment and conservation of collected data comply with the principles set out in this law.

5 - Exceptionally, when it is not possible to obtain the authorization provided for in paragraph 1 in good time, the top manager of the applicant entity may authorize the use of portable cameras, informing, within 48 hours, the competent Government member, to obtaining its ratification.

6 - If the ratification provided for in the previous number is not granted, the person responsible for the system will immediately destroy the recorded material.

7 - Without prejudice to the provisions of the preceding paragraphs, the specific legislation relating to security forces and services and measures to combat organized crime shall apply to the use of portable cameras.

**c) Para 2: Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation, Art. 29**

*Without prejudice to Article 29, the investigation measures set out in paragraph 1 of this Article may be subject to **conditions in accordance with the applicable national law if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.***

**28 Article 180 CPC<sup>240</sup> Apprehension in a lawyer's office or in a doctor's office**

1 - The provisions of paragraphs 5 and 6 of Article 177 are correspondingly applicable to the seizure carried out in a lawyer's office or in a doctor's office.

2 - In the cases referred to in the previous number, the seizure of documents covered by professional secrecy, or covered by medical professional secrecy, is not permitted, under penalty of nullity, unless they themselves constitute the object or element of a crime.

3 - The provisions of paragraph 3 of the previous article are correspondingly applicable.

<sup>240</sup> **Artigo 180.º CPP (Apreensão em escritório de advogado ou em consultório médico)**

1 - À apreensão operada em escritório de advogado ou em consultório médico é correspondentemente aplicável o disposto nos n.os 5 e 6 do artigo 177.º

2 - Nos casos referidos no número anterior não é permitida, sob pena de nulidade, a apreensão de documentos abrangidos pelo segredo profissional, ou abrangidos por segredo profissional médico, salvo se eles mesmos constituírem objecto ou elemento de um crime.

3 - É correspondentemente aplicável o disposto no n.º 3 do artigo anterior.



**Article 182 CPC<sup>241</sup> Professional or employee secrecy and state secrecy**

- 1 - The persons indicated in Articles 135 to 137 shall submit to the judicial authority, when so ordered, the documents or any objects that they have in their possession and that must be seized, unless they invoke, in writing, professional or official or state secret.
- 2 - If the refusal is based on professional or employee secrecy, the provisions of Articles 135, paragraphs 2 and 3, and 136, paragraph 2, are correspondingly applicable.
- 3 - If the refusal is based on State secrecy, the provisions of Article 137, paragraph 3, are correspondingly applicable.

**d) Para 3: Conditions/Thresholds for investigation measures**

*The investigation measures set out in points(c), (e) and (f) of paragraph 1 of this Article may be subject to further conditions, including limitations, provided for in the applicable national law. In particular, Member States may limit the application of points (e) and (f) of paragraph 1 of this Article to specific serious offences. A Member State intending to make use of such limitation shall notify the EPPO of the relevant list of specific serious offences in accordance with Article 117.*

**aa. Conditions and Limitations for investigation measures of Para 1(c), (e) and (f)**

Limitations and conditions exist at least for para 1 (e) related Portuguese legislation, Art. 187, 189 CPC and Art. 17, 18 Cybercrime Law. The interception and recording may only be authorized against specific persons and reasonable grounds to believe that they receive or transmit messages in relation to people in connection with the crimes (suspect or defendant) must exist (para 4, Art. 187 CPC). If there are no reasons at all, or no reasonable grounds for the facts that need to be evaluated for a crime, then the interception and recording is forbidden (para 1, Art. 187 CPC). All in all, the interceptions are limited to three months but may endure longer if it is admissible and thus requested. Using the information in another process is restricted and must be joined by an order of the judge (para 7, Art. 187 CPC).

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**bb. Serious offences Limitation for offences of Para 1(e) and (f)**

The limitations in Art. 187 para 1 e) CPC and in Art. 18 para 1 Cybercrime Law are the following:

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<sup>241</sup> **Artigo 182.º CPP Segredo profissional ou de funcionário e segredo de Estado**

1 - As pessoas indicadas nos artigos 135.º a 137.º apresentam à autoridade judiciária, quando esta o ordenar, os documentos ou quaisquer objectos que tiverem na sua posse e devam ser apreendidos, salvo se invocarem, por escrito, segredo profissional ou de funcionário ou segredo de Estado.

2 - Se a recusa se fundar em segredo profissional ou de funcionário, é correspondentemente aplicável o disposto nos artigos 135.º, n.os 2 e 3, e 136.º, n.º 2.

3 - Se a recusa se fundar em segredo de Estado, é correspondentemente aplicável o disposto no artigo 137.º, n.º 3.

**31 Article 187 CPC<sup>242</sup> Admissibility**

1 - The interception and recording of conversations or telephone communications may only be authorized during the investigation, if there are reasons to believe that the diligence is indispensable for the discovery of the truth or that the evidence would otherwise be impossible or very difficult to obtain. Obtain, by reasoned order of the investigating judge and upon request of the Public Prosecutor's Office, regarding crimes:

- a) Punishable with a maximum prison sentence of 3 years;
- b) Relating to drug trafficking;
- c) Possession of a prohibited weapon and arms trafficking;
- d) Smuggling;
- e) Injury, threat, coercion, violation of private life and disturbance of peace and quiet, when committed over the telephone;
- f) Threatening to commit a crime or abuse and simulation of danger signs; or
- g) Evasion, when the defendant has been convicted of any of the crimes provided for in the preceding paragraphs.

**Article 18 Cybercrime Law<sup>243</sup> Interception of communications**

1 - The interception of communications is admissible in proceedings concerning crimes

- a) provided for in this law; or
- b) in relation to which it is necessary to collect evidence in electronic format, when such crimes are foreseen in Article 187 of the Code of Criminal Procedure. [...]

**cc. Notifications according to the last sentence of para. 3**

**32** A notification according to the last sentence of para 3, Art. 30 EPPO Regulation is missing in the original government document.

<sup>242</sup> **Artigo 187.º CPP (Admissibilidade)**

1 - A intercepção e a gravação de conversações ou comunicações telefónicas só podem ser autorizadas durante o inquérito, se houver razões para crer que a diligência é indispensável para a descoberta da verdade ou que a prova seria, de outra forma, impossível ou muito difícil de obter, por despacho fundamentado do juiz de instrução e mediante requerimento do Ministério Público, quanto a crimes:

- a) Puníveis com pena de prisão superior, no seu máximo, a 3 anos;
- b) Relativos ao tráfico de estupefacientes;
- c) De detenção de arma proibida e de tráfico de armas;
- d) De contrabando;
- e) De injúria, de ameaça, de coacção, de devassa da vida privada e perturbação da paz e do sossego, quando cometidos através de telefone;
- f) De ameaça com prática de crime ou de abuso e simulação de sinais de perigo; ou
- g) De evasão, quando o arguido haja sido condenado por algum dos crimes previstos nas alíneas anteriores. [...]

<sup>243</sup> **Artigo 18.º Lei Do Cibercrime**

**Intercepção de comunicações**

1 - É admissível o recurso à intercepção de comunicações em processos relativos a crimes:

- a) Previstos na presente lei; ou
- b) Cometidos por meio de um sistema informático ou em relação aos quais seja necessário proceder à recolha de prova em suporte electrónico, quando tais crimes se encontrem previstos no artigo 187.º do Código de Processo Penal. [...]

**e) Para 4: Any other measure(s) in the EDP's Member State**

*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.*

The localisation of a person via a mobile phone is a Portuguese measure deriving from Article 252a CPC: **33**

**Article 252a CPC<sup>244</sup> Localisation of [a person via] mobile phones** 1 - The judicial authorities and the criminal police authorities may obtain data on cell location when they are necessary to avert danger to life or serious physical injury. **34**

2 - If the cell location data provided for in the previous number refer to a process in progress, the judge should be notified within forty-eight hours of obtaining it.

3 - If the cell location data provided for in paragraph 1 do not refer to an ongoing process, the communication shall be directed to the judge of the headquarters of the competent entity for criminal investigation.

4 - Obtaining cell location data in violation of the provisions of the preceding paragraphs is null and void.

But this provision refers only to the localization of a person for preventive reasons, such as to avoid danger to life or physical injury. When authorities need to use localization of mobile phones for probatory purposes, para 2 of Art. 189 CPC applies: **35**

**Art. 189 CPC<sup>245</sup> Extension** **36**

[...] 2 - The obtaining and addition to the records of data on cell phone location or records of conversations or communications can only be ordered or authorized, at any stage of the process, by order of the judge, in relation to crimes set out in paragraph 1 of article 187 and in relation to the people referred to in paragraph 4 of the same article.

Another provision that is not requested by the EPPO Regulation: **37**

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<sup>244</sup> **Artigo 252.º CPP A Localização celular**

1 - As autoridades judiciárias e as autoridades de polícia criminal podem obter dados sobre a localização celular quando eles forem necessários para afastar perigo para a vida ou de ofensa à integridade física grave.

2 - Se os dados sobre a localização celular previstos no número anterior se referirem a um processo em curso, a sua obtenção deve ser comunicada ao juiz no prazo máximo de quarenta e oito horas.

3 - Se os dados sobre a localização celular previstos no n.º 1 não se referirem a nenhum processo em curso, a comunicação deve ser dirigida ao juiz da sede da entidade competente para a investigação criminal.

4 - É nula a obtenção de dados sobre a localização celular com violação do disposto nos números anteriores.

<sup>245</sup> **Artigo 189.º CPP Extensão**

[...] 2 - A obtenção e junção aos autos de dados sobre a localização celular ou de registos da realização de conversações ou comunicações só podem ser ordenadas ou autorizadas, em qualquer fase do processo, por despacho do juiz, quanto a crimes previstos no n.º 1 do artigo 187.º e em relação às pessoas referidas no n.º 4 do mesmo artigo.

**Article 19 Cybercrime Law<sup>246</sup> Undercover actions**

1 - The use of covert actions provided for in Law no. 101/2001, of 25 August, under the terms set out therein, is admissible in the course of an investigation into the following crimes:

a) Those provided for in this law;

b) Those committed by means of a computer system, when they carry a maximum prison sentence of more than 5 years or, even if the sentence is less, and if they are intentional, crimes against sexual freedom and self-determination in cases where the offended party is a minor or incapacitated, qualified swindling, computer and communications fraud, abuse of a warranty card or payment card, device or data, racial, religious or sexual discrimination, economic and financial offences, as well as the crimes enshrined in Title IV of the Copyright and Related Rights Code.

2 - Where recourse to computerised means and devices is necessary, the rules laid down for interception of communications shall be observed where applicable.

38 You may also see Law No. 101/2001 of 25 August 2001 in relation to undercover agents.

**f) Para 5: National Procedures and national modalities for taking investigative measures**

*The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 4 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective. **The procedures and the modalities for taking the measures shall be governed by the applicable national law.***

39 The national procedures and modalities for paragraph 5 of Article 30 EPPO Regulation can be presented as follows:

<sup>246</sup> **Artigo 19.º Lei Do Cibercrime**

**Ações encobertas**

1 - É admissível o recurso às ações encobertas previstas na Lei n.º 101/2001, de 25 de agosto, nos termos aí previstos, no decurso de inquérito relativo aos seguintes crimes:

a) Os previstos na presente lei;

b) Os cometidos por meio de um sistema informático, quando lhes corresponda, em abstrato, pena de prisão de máximo superior a 5 anos ou, ainda que a pena seja inferior, e sendo dolosos, os crimes contra a liberdade e autodeterminação sexual nos casos em que os ofendidos sejam menores ou incapazes, a burla qualificada, a burla informática e nas comunicações, o abuso de cartão de garantia ou de cartão, dispositivo ou dados de pagamento, a discriminação racial, religiosa ou sexual, as infrações económico-financeiras, bem como os crimes consagrados no título iv do Código do Direito de Autor e dos Direitos Conexos.

2 - Sendo necessário o recurso a meios e dispositivos informáticos observam-se, naquilo que for aplicável, as regras previstas para a interceção de comunicações.

**aa. Formalities for a House search**

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**[Excerpt CPC]****Article 176<sup>247</sup> (Formalities of the search)**

1 - Before searching, except in the cases mentioned in Article 174, paragraph 5, a copy of the order in which the search is to be made shall be handed to whoever has the availability of the place where the search is to be made, stating that he or she may attend the search and be accompanied or replaced by a person of confidence and who presents himself or herself without delay.

2 - In the absence of the persons referred to in the previous paragraph, the copy shall, whenever possible, be handed to a relative, a neighbour, the doorman or someone substituting him or her.

3 - A search of the premises may be carried out together with or during the search if the person ordering or carrying out the search has reason to assume that the requirements of Article 174(1) are met. The search may also be carried out as laid down in Article 173.

**Article 177<sup>248</sup> (House search)**

1 - The search of an inhabited house or a closed dependency can only be ordered or authorised by the judge and carried out between 7 a.m. and 9 p.m., under penalty of nullity.

**<sup>247</sup> Artigo 176.º CPP (Formalidades da busca)**

1 - Antes de se proceder a busca, é entregue, salvo nos casos do n.º 5 do artigo 174.º, a quem tiver a disponibilidade do lugar em que a diligência se realiza, cópia do despacho que a determinou, na qual se faz menção de que pode assistir à diligência e fazer-se acompanhar ou substituir por pessoa da sua confiança e que se apresente sem delonga.

2 - Faltando as pessoas referidas no número anterior, a cópia é, sempre que possível, entregue a um parente, a um vizinho, ao porteiro ou a alguém que o substitua.

3 - Juntamente com a busca ou durante ela pode proceder-se a revista de pessoas que se encontrem no lugar, se quem ordenar ou efectuar a busca tiver razões para presumir que se verificam os pressupostos do artigo 174.º, n.º 1. Pode igualmente proceder-se como se dispõe no artigo 173.º

**<sup>248</sup> Artigo 177.º CPP (Busca domiciliária)**

1 - A busca em casa habitada ou numa sua dependência fechada só pode ser ordenada ou autorizada pelo juiz e efectuada entre as 7 e as 21 horas, sob pena de nulidade.

2 - Entre as 21 e as 7 horas, a busca domiciliária só pode ser realizada nos casos de:

- a) Terrorismo ou criminalidade especialmente violenta ou altamente organizada;
- b) Consentimento do visado, documentado por qualquer forma;
- c) Flagrante delito pela prática de crime punível com pena de prisão superior, no seu máximo, a 3 anos.

3 - As buscas domiciliárias podem também ser ordenadas pelo Ministério Público ou ser efectuadas por órgão de polícia criminal:

- a) Nos casos referidos no n.º 5 do artigo 174.º, entre as 7 e as 21 horas;
- b) Nos casos referidos nas alíneas b) e c) do número anterior, entre as 21 e as 7 horas.

4 - É correspondentemente aplicável o disposto no n.º 6 do artigo 174.º nos casos em que a busca domiciliária for efectuada por órgão de polícia criminal sem consentimento do visado e fora de flagrante delito.

5 - Tratando-se de busca em escritório de advogado ou em consultório médico, ela é, sob pena de nulidade, presidida pessoalmente pelo juiz, o qual avisa previamente o presidente do conselho local da Ordem dos Advogados ou da Ordem dos Médicos, para que o mesmo, ou um seu delegado, possa estar presente.

6 - Tratando-se de busca em estabelecimento oficial de saúde, o aviso a que se refere o número anterior e feito ao presidente do conselho directivo ou de gestão do estabelecimento ou a quem legalmente o substituir.

2 - Between 9 p.m. and 7 a.m., a house search can only be conducted in cases of

- a) Terrorism or especially violent or highly organised crime;
- b) Consent of the person concerned, documented in any way;
- c) Flagrante delicto for committing a crime punishable by a prison sentence of no more than three years.

3 - Home searches may also be ordered by the Public Prosecutor's Office or conducted by the criminal police body:

- a) In the cases referred to in Article 174(5), between 7 a.m. and 9 p.m.;
- b) In the cases referred to in subparagraphs b) and c) of the previous paragraph, between 9 p.m. and 7 a.m.

4 - The provisions of Article 174(6) shall apply correspondingly in cases where the house search is carried out by the criminal police without the consent of the person concerned and out of flagrante delicto.

5 - Where a search is conducted at a lawyer's office or a doctor's surgery, it shall, under penalty of nullity, be presided over personally by the judge, who shall give prior notice to the president of the local council of the Bar Association or the Medical Association so that he or she or his or her delegate may be present.

6 - In case of a search in an official health establishment, the notice referred to in the previous number shall be given to the chairperson of the directive or management board of the establishment or to the person legally replacing him or her.

**bb. Formalities for seizures**

41

**[Excerpt CPC]**

**Article 183<sup>249</sup> (Copies and certificates)** 1 - A copy of the seized documents may be attached to the file, in which case the original shall be returned. If it becomes necessary to keep the original, a copy can be made or a certificate extracted and delivered to the person who legitimately held it. The copy and the certificate expressly mention the seizure.

2 - A copy of the seizure record is delivered, whenever requested, to the person who legitimately held the seized document or object.

<sup>249</sup> **Artigo 183.º CPP (Cópias e certidões)**

1 - Aos autos pode ser junta cópia dos documentos apreendidos, restituindo-se nesse caso o original. Tornando-se necessário conservar o original, dele pode ser feita cópia ou extraída certidão e entregue a quem legitimamente o detinha. Na cópia e na certidão é feita menção expressa da apreensão.

2 - Do auto de apreensão é entregue cópia, sempre que solicitada, a quem legitimamente detinha o documento ou o objecto apreendidos.

**Article 184<sup>250</sup> (Applying and lifting of seals)** Whenever possible, seized objects are sealed. If possible, the same people who were present at the affixing of the seals are present at the lifting of the seals, who verify that the seals have not been violated or that any alteration has been made to the objects seized.

**cc. Formalities for an Interception, para 1(e)**

**Article 188 CPC<sup>251</sup> (Operation formalities)** 1 - The criminal police body that carries out the interception and recording referred to in the previous article writes the corresponding record and prepares a report in which it indicates the relevant passages for

42

<sup>250</sup> **Artigo 184.º CPP (Aposição e levantamento de selos)**

Sempre que possível, os objectos apreendidos são selados. Ao levantamento dos selos assistem, sendo possível, as mesmas pessoas que tiverem estado presentes na sua aposição, as quais verificam se os selos não foram violados nem foi feita qualquer alteração nos objectos apreendidos.

<sup>251</sup> **Artigo 188.º CPP (Formalidades das operações)**

1 - O órgão de polícia criminal que efectuar a interceptação e a gravação a que se refere o artigo anterior lavra o correspondente auto e elabora relatório no qual indica as passagens relevantes para a prova, descreve de modo sucinto o respectivo conteúdo e explica o seu alcance para a descoberta da verdade.

2 - O disposto no número anterior não impede que o órgão de polícia criminal que proceder à investigação tome previamente conhecimento do conteúdo da comunicação interceptada a fim de poder praticar os actos cautelares necessários e urgentes para assegurar os meios de prova.

3 - O órgão de polícia criminal referido no n.º 1 leva ao conhecimento do Ministério Público, de 15 em 15 dias a partir do início da primeira interceptação efectuada no processo, os correspondentes suportes técnicos, bem como os respectivos autos e relatórios.

4 - O Ministério Público leva ao conhecimento do juiz os elementos referidos no número anterior no prazo máximo de quarenta e oito horas.

5 - Para se inteirar do conteúdo das conversações ou comunicações, o juiz é coadjuvado, quando entender conveniente, por órgão de polícia criminal e nomeia, se necessário, intérprete.

6 - Sem prejuízo do disposto no n.º 7 do artigo anterior, o juiz determina a destruição imediata dos suportes técnicos e relatórios manifestamente estranhos ao processo:

a) Que disserem respeito a conversações em que não intervenham pessoas referidas no n.º 4 do artigo anterior;

b) Que abranjam matérias cobertas pelo segredo profissional, de funcionário ou de Estado; ou

c) cuja divulgação possa afectar gravemente direitos, liberdades e garantias;

ficando todos os intervenientes vinculados ao dever de segredo relativamente às conversações de que tenham tomado conhecimento.

7 - Durante o inquérito, o juiz determina, a requerimento do Ministério Público, a transcrição e junção aos autos das conversações e comunicações indispensáveis para fundamentar a aplicação de medidas de coacção ou de garantia patrimonial, à excepção do termo de identidade e residência.

8 - A partir do encerramento do inquérito, o assistente e o arguido podem examinar os suportes técnicos das conversações ou comunicações e obter, à sua custa, cópia das partes que pretendam transcrever para juntar ao processo, bem como dos relatórios previstos no n.º 1, até ao termo dos prazos previstos para requerer a abertura da instrução ou apresentar a contestação, respectivamente.

9 - Só podem valer como prova as conversações ou comunicações que:

a) O Ministério Público mandar transcrever ao órgão de polícia criminal que tiver efectuado a interceptação e a gravação e indicar como meio de prova na acusação;

b) O arguido transcrever a partir das cópias previstas no número anterior e juntar ao requerimento de abertura da instrução ou à contestação; ou

c) O assistente transcrever a partir das cópias previstas no número anterior e juntar ao processo no prazo previsto para requerer a abertura da instrução, ainda que não a requeira ou não tenha legitimidade para o efeito.

10 - O tribunal pode proceder à audição das gravações para determinar a correcção das transcrições já efectuadas ou a junção aos autos de novas transcrições, sempre que o entender necessário à descoberta da verdade e à boa decisão da causa.

evidence, briefly describes the respective content and explains its reach for the discovery of the truth.

2 - The provisions in the previous number do not prevent the criminal police body carrying out the investigation from previously knowing the content of the intercepted communication in order to be able to carry out the necessary and urgent precautionary acts to ensure the means of evidence.

3 - The criminal police body referred to in paragraph 1, every 15 days from the beginning of the first interception carried out in the process, shall inform the Public Prosecution Service of the corresponding technical supports, as well as the respective records and reports.

4 - The Prosecuting Counsel shall inform the judge of the elements referred to in the previous paragraph within forty-eight hours.

5 - In order to understand the content of conversations or communications, the judge shall be assisted, if he or she deems it appropriate, by the criminal police and, if necessary, shall appoint an interpreter.

6 - Without prejudice to the provisions of paragraph 7 of the previous article, the judge shall order the immediate destruction of technical media and reports manifestly alien to the proceedings:

- a) Which concern conversations in which no persons referred to in paragraph 4 of the previous article take part
- b) which concern matters covered by professional, official or State secrecy; or
- c) The disclosure of which may seriously affect rights, freedoms and guarantees;

All interveners shall be bound to the duty of secrecy in relation to the conversations of which they have become aware.

7 - During the enquiry, the judge shall determine, at the request of the Public Prosecution Service, the transcription and inclusion in the records of the conversations and communications indispensable to justify the application of measures of coercion or asset guarantee, except for the term of identity and residence.

8 - After the enquiry is closed, the assistant and the accused may examine the technical supports of the conversations or communications and obtain, at their own expenses, copies of the parts they wish to transcribe for inclusion in the proceedings, as well as the reports provided for in paragraph 1, up to the end of the deadlines for requesting the opening of the enquiry or presenting the statement, respectively.

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11 - As pessoas cujas conversações ou comunicações tiverem sido escutadas e transcritas podem examinar os respectivos suportes técnicos até ao encerramento da audiência de julgamento.

12 - Os suportes técnicos referentes a conversações ou comunicações que não forem transcritas para servirem como meio de prova são guardados em envelope lacrado, à ordem do tribunal, e destruídos após o trânsito em julgado da decisão que puser termo ao processo.

13 - Após o trânsito em julgado previsto no número anterior, os suportes técnicos que não forem destruídos são guardados em envelope lacrado, junto ao processo, e só podem ser utilizados em caso de interposição de recurso extraordinário.



9 - Only conversations or communications that

- a) The Public Prosecutor's Office orders the criminal police organ that has carried out the interception and recording to transcribe and indicates as evidence in the indictment;
- b) The defendant transcribes from the copies provided for in the previous number and attaches them to the request for the opening of the inquiry or the defence; or
- c) The assistant transcribes from the copies stipulated in the previous paragraph and adds it to the proceedings within the time limit stipulated for requesting the opening of the instruction, even if he or she does not request it or does not have legal capacity to do so.

10 - The court may proceed to hear the recordings in order to determine the correction of transcriptions already made, or the addition of new transcriptions to the case file, whenever it deems necessary for the discovery of the truth and the good decision of the case.

11 - Persons whose conversations or communications have been listened to and transcribed may examine the respective technical media until the end of the trial hearing.

12 - Technical supports concerning conversations or communications that are not transcribed to be used as evidence shall be kept in a sealed envelope, to the order of the court, and destroyed after the decision that terminates the process has become final and unappealable.

13 - After res judicata, as provided in the previous number, the technical supports that are not destroyed shall be kept in a sealed envelope, together with the process, and may only be used in the event of an extraordinary appeal.

**Article 189 CPC** See above → Obtainment of the production of stored computer data, encrypted or decrypted, General Provisions in the CPC.

#### **dd. Formalities for Tracking & Tracing an object, para 1 (f)**

The formalities for the tracking and tracing procedure can be viewed in the Articles 5 et seq. of Law No. 95/2021. 43

### **Law No. 95/2021 of December 29**

#### **Rules for the Use of and Access to Video Surveillance Systems**

##### **Chapter II Fixed chambers**

**Article 5<sup>252</sup> Installation Authorization** 1 - The installation of video surveillance systems using fixed cameras is subject to authorization by the member of the Government who is in charge of the applicant security force or service or by ANEPC. 44

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<sup>252</sup> **Capítulo II Câmaras fixas**  
**Artigo 5.º Lei nº 95/2021**  
**Autorização de instalação**

2 - For the purposes of the previous number, fixed cameras are devices for capturing image and sound, installed in a non-removable structure, with a permanent or lasting nature.

3 - The authorization decision is preceded by the opinion of the National Data Protection Commission (CNPd), which pronounces itself on the request regarding compliance with the rules regarding the security of the processing of the data collected and the provisions of paragraphs 4 to 6 of Article 4 and in Articles 16, 18 to 20 and 22

4 - The opinion referred to in the previous number is issued within 60 days from the date of receipt of the authorization request, after which the opinion is considered favourable.

5 - The competence provided for in paragraph 1 is delegable, in legal terms.

6 - When the video surveillance system to be authorized is intended for critical infrastructures, sensitive points or facilities of interest to defence and security, the opinions referred to in paragraph 3 and the authorization orders are published without mentioning the elements provided for in subparagraphs b), c) and d) of paragraph 1 of Article 6.

**Article 6<sup>253</sup> Authorization request** 1 - The request for authorization to install video surveillance systems is submitted by the top leader of the security force or service or of ANEPC and must be accompanied by the following elements:

1 — A instalação de sistemas de videovigilância com recurso a câmaras fixas está sujeita a autorização do membro do Governo que exerce a direção sobre a força ou serviço de segurança requerente ou a ANEPC.

2 — Para efeitos do número anterior, são consideradas câmaras fixas os dispositivos de captação de imagem e som, instalados em estrutura não amovível, com caráter permanente ou duradouro.

3 — A decisão de autorização é precedida de parecer da Comissão Nacional de Proteção de Dados (CNPd), que se pronuncia sobre o pedido quanto ao cumprimento das regras referentes à segurança do tratamento dos dados recolhidos e do previsto nos n.os 4 a 6 do artigo 4.º e nos artigos 16.º, 18.º a 20.º e 22.º 4 — O parecer referido no número anterior é emitido no prazo de 60 dias a contar da data de receção do pedido de autorização, prazo após o qual o parecer é considerado favorável. 5 — A competência prevista no n.º 1 é delegável, nos termos legais. 6 — Quando o sistema de videovigilância a autorizar se destine a infraestruturas críticas, pontos sensíveis ou instalações com interesse para a defesa e a segurança, os pareceres a que se refere o n.º 3 e os despachos de autorização são publicitados sem menção aos elementos previstos nas alíneas b), c) e d) do n.º 1 do artigo 6.º

<sup>253</sup> **Artigo 6.º Pedido de autorização**

1 - O pedido de autorização para instalação de sistemas de videovigilância é apresentado pelo dirigente máximo da força ou serviço de segurança ou da ANEPC e deve ser instruído com os seguintes elementos:

a) Fundamentos justificativos da necessidade e conveniência da instalação do sistema de vigilância por câmaras de vídeo;

b) Identificação do local e da área abrangidos pela captação;

c) Identificação dos pontos de instalação das câmaras;

d) Características técnicas do equipamento utilizado;

e) Identificação do serviço da força de segurança responsável pela conservação e tratamento dos dados;

f) Procedimentos de informação ao público sobre a existência do sistema;

g) Descrição dos critérios utilizados no sistema de gestão analítica dos dados captados;

h) Mecanismos tendentes a assegurar o correto uso dos dados registados;

i) Comprovativo de aprovação, de capacidade ou de garantia de financiamento da instalação do equipamento utilizado e das respetivas despesas de manutenção;

j) Avaliação de impacto do tratamento de dados sobre a proteção de dados pessoais, prevista no artigo 29.º da Lei n.º 59/2019, de 8 de agosto.

2 - O pedido de autorização para instalação de sistema de videovigilância pode ainda ser apresentado pelo presidente da câmara municipal, que pode promover previamente um processo de consulta pública, cabendo a instrução

- a) Justification of the need and convenience of installing the surveillance system by video cameras;
- b) Identification of the location and area covered by the catchment;
- c) Identification of the camera installation points;
- d) technical characteristics of the equipment used;
- e) Identification of the security force service responsible for the conservation and processing of data;
- f) Procedures for informing the public about the existence of the system;
- g) Description of the criteria used in the analytical management system of the captured data;
- h) Mechanisms to ensure the correct use of recorded data;
- i) Proof of approval, capacity or guarantee of financing for the installation of the equipment used and the respective maintenance costs;
- j) Assessment of the impact of data processing on the protection of personal data, provided for in Article 29 of Law No. 59/2019 of 8 August.

2 - The request for authorization to install a video surveillance system may also be submitted by the mayor, who may previously promote a public consultation process, with the security force having jurisdiction in the respective observation area being responsible for the instruction of the process, applying as regards the decision procedure, the provisions of the previous article shall apply.

3 - Verification of compliance with the provisions of Article 4 is the responsibility of the member of the Government who exercises management over the requesting security force or service or ANEPC.

**Article 7<sup>254</sup> Authorization 1** - The authorization decision contains the following elements:

do processo à força de segurança com jurisdição na respetiva área de observação, aplicando -se, quanto ao procedimento de decisão, o disposto no artigo anterior.

3 - A verificação do cumprimento do disposto no artigo 4.º compete ao membro do Governo que exerce a direção sobre a força ou serviço de segurança requerente ou a ANEPC.

<sup>254</sup> **Artigo 7.º Autorização**

1 - A decisão de autorização contém os seguintes elementos:

- a) Locais e áreas abrangidos pelas câmaras de videovigilância;
- b) Limitações e condições de uso do sistema;
- c) Proibição de captação de sons, exceto quando ocorra perigo concreto para a segurança de pessoas, animais e bens;
- d) Tipo de câmara e as suas especificações técnicas;
- e) Duração da autorização.

2 - A duração máxima da autorização é de três anos, suscetível de renovação por período igual ou inferior, mediante comprovação da manutenção dos fundamentos invocados para a sua concessão ou da existência de novos fundamentos.

3 - O pedido de renovação é apresentado até 60 dias antes de caducar o prazo de duração da autorização ou renovação, podendo manter -se a utilização do sistema, nos termos e limites autorizados, até que seja proferida decisão.

4 - A autorização pode ser suspensa ou revogada, a todo o tempo, mediante decisão fundamentada.

- a) Locations and areas covered by video surveillance cameras;
  - b) Limitations and conditions of use of the system;
  - c) Prohibition of capturing sounds, except when there is a real danger to the safety of people, animals and property;
  - d) Type of camera and its technical specifications;
  - e) Duration of authorization.
- 2 - The maximum duration of the authorization is three years, subject to renewal for an equal or lesser period, upon proof of the maintenance of the grounds invoked for its granting or the existence of new grounds.
- 3 - The renewal request is submitted up to 60 days before the expiration of the authorization or renewal period, and the use of the system may continue, under the authorized terms and limits, until a decision is rendered.
- 4 - The authorization may be suspended or revoked, at any time, by means of a reasoned decision.
- 5 - The minimum technical requirements for the equipment referred to in subparagraph d) of paragraph 1 of the previous article are defined by an order issued by the member of the Government responsible for the area of internal administration.

**Article 8<sup>255</sup> Amendment of the initial authorization** 1 - Whenever there is a change in the elements provided for in paragraph 1 of Article 6, a new authorization process is instructed, in the relevant part, by the competent security force or service or by ANEPC, and presented by the respective top manager.

2 - The alteration is subject to authorization by the member of the Government who is in charge of the requesting security force or service or ANEPC, under the terms of the provisions of Articles 5 and 7.

3 - In cases where the aforementioned authorization in the previous numbers is not granted, the person responsible for the system immediately destroys the recorded material.

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5 - Os requisitos técnicos mínimos do equipamento referido na alínea d) do n.º 1 do artigo anterior são definidos por portaria do membro do Governo responsável pela área da administração interna.

<sup>255</sup> **Artigo 8.º Alteração da autorização inicial**

1 - Sempre que haja alteração de elementos previstos no n.º 1 do artigo 6.º, é instruído novo processo de autorização, na parte relevante, pela força ou serviço de segurança competente ou pela ANEPC, e apresentado pelo respetivo dirigente máximo.

2 - A alteração está sujeita a autorização do membro do Governo que exerce a direção sobre a força ou serviço de segurança requerente ou a ANEPC, nos termos do disposto nos artigos 5.º e 7.º

3 - Nos casos em que a autorização referida nos números anteriores não seja concedida, o responsável pelo sistema procede à destruição imediata do material gravado.

## 2. Article 31 and 32 (omitted)

### Art. 31 Cross-border investigations

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.

#### **Art. 32 Enforcement of assigned measures**

The assigned measures shall be carried out in accordance with this Regulation and **the law of the Member State of the assisting European Delegated Prosecutor**. Formalities and procedures expressly indicated by the handling European Delegated Prosecutor shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.

For an analysis *see* → Volumes on Germany, Austria or Bulgaria.

### 3. Article 33 Pre-trial arrest and cross-border surrender

a) General relation to national law: applicable Codes .....	237	c) Para 2: Cross-border surrender .....	250
b) Para 1: Provisions for arrest and pre-trial detention .....	237	d) Fraud-related peculiarities .....	251
aa. Arrest .....	237	e) Relevant examples and precedents in national case-law .....	251
bb. Pre-trial detention .....	242		

1. The handling European Delegated Prosecutor may order or request the arrest or pre-trial detention of the suspect or accused person **in accordance with the national law applicable in similar domestic cases.**

2. Where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA ( 3 ).



#### a) General relation to national law: applicable Codes

The Criminal Procedure Code is applicable. The Decree no. 28/84 on Anti-Economic Offences and Against Public Health is cited in the following as well.

1

#### b) Para 1: Provisions for arrest and pre-trial detention

##### aa. Arrest

Provisions on arrest can be found in the Portuguese CPC:

2

#### Book IV Coercive and asset guarantee measures

3

##### Title I General provisions

##### Article 191 CPC<sup>256</sup> Principle of legality

1 - The freedom of individuals can only be limited, in whole or in part, as a function of procedural requirements of a precautionary nature, by the coercive measures and asset guarantee provided for by law.

<sup>256</sup> *Livro IV Das medidas de coacção e de garantia patrimonial*

*Título I Disposições gerais*

**Artigo 191.º CPP Princípio da legalidade**

1 - A liberdade das pessoas só pode ser limitada, total ou parcialmente, em função de exigências processuais de natureza cautelar, pelas medidas de coacção e de garantia patrimonial previstas na lei.

2 - Para efeitos do disposto no presente livro, não se considera medida de coacção a obrigação de identificação perante a autoridade competente, nos termos e com os efeitos previstos no artigo 250.º

2 - For the purposes of the provisions of this book, the obligation of identification before the competent authority, under the terms and with the effects provided for in Article 250, is not considered a coercive measure.

### **Article 192 CPC<sup>257</sup> General conditions for the application**

1 - The application of any coercive measure depends on the previous constitution as a defendant, under the terms of Article 58, of the person who is the object of it.

2 - The application of asset guarantee measures depends on the prior constitution as a defendant, under the terms of Article 58, of the person who is the object of them, except for the provisions of paragraphs 3 to 5 of this article.

3 - In the case of the arrest, whenever the previous constitution as a defendant jeopardizes its purpose or its effectiveness, the constitution as a defendant may occur immediately after the application of the measure, by means of a duly substantiated order of the judge, without exceed, in any case, the maximum period of 72 hours from the date of that application.

4 - Failure to constitute a defendant within the maximum period provided for in the previous number determines the nullity of the arrest measure, without prejudice to the provisions of the following number.

5 - If the constitution as a defendant for the purposes of arrest under the terms of paragraphs 2 and 3 has proved to be impossible because the person concerned is absent in an uncertain part and attempts to locate his whereabouts have been frustrated, the same may be waived, by means of a duly substantiated order of the judge, when there are, cumulatively, objective indications of dissipation of the respective assets and well-founded suspicion of the commission of the crime.

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#### <sup>257</sup> **Artigo 192.º CPP**

##### **Condições gerais de aplicação**

1 - A aplicação de qualquer medida de coação depende da prévia constituição como arguido, nos termos do artigo 58.º, da pessoa que dela for objeto.

2 - A aplicação de medidas de garantia patrimonial depende da prévia constituição como arguido, nos termos do artigo 58.º, da pessoa que delas for objeto, ressalvado o disposto nos n.os 3 a 5 do presente artigo.

3 - No caso do arresto, sempre que a prévia constituição como arguido puser em sério risco o seu fim ou a sua eficácia, pode a constituição como arguido ocorrer em momento imediatamente posterior ao da aplicação da medida, mediante despacho devidamente fundamentado do juiz, sem exceder, em caso algum, o prazo máximo de 72 horas a contar da data daquela aplicação.

4 - A não constituição como arguido no prazo máximo previsto no número anterior determina a nulidade da medida de arresto, sem prejuízo do disposto no número seguinte.

5 - Caso a constituição como arguido para efeitos de arresto nos termos dos n.os 2 e 3 se tenha revelado comprovadamente impossível por o visado estar ausente em parte incerta e se terem frustrado as tentativas de localizar o seu paradeiro, pode a mesma ser dispensada, mediante despacho devidamente fundamentado do juiz, quando existam, cumulativamente, indícios objetivos de dissipação do respetivo património e fundada suspeita da prática do crime.

6 - Nenhuma medida de coação ou de garantia patrimonial é aplicada quando houver fundados motivos para crer na existência de causas de isenção da responsabilidade ou de extinção do procedimento criminal.



6 - No coercive measure or asset guarantee is applied when there are well-founded reasons to believe in the existence of causes of exemption from liability or termination of criminal proceedings.

**Article 228 CPC<sup>258</sup> Preventive arrest**

1 - In order to guarantee the amounts referred to in the previous article, at the request of the Public Prosecutor's Office or the injured party, the judge may order the seizure, under the terms of the civil procedure law; if a financial guarantee has been previously fixed and no financial guarantee has been provided, the applicant is exempt from proof of well-founded fear of loss of the patrimonial guarantee.

2 - The preventive arrest referred to in the previous number can be decreed even in relation to a trader.

3 - Opposition to the order that has decreed attachment does not have suspensive effect.

4 - In the event of a dispute over the ownership of the seized assets, the judge may refer the decision to a civil court, while maintaining the decreed seizure.

5 - The arrest is revoked whenever the defendant or the civilly responsible person provides the financial guarantee imposed.

6 - Once the arrest is decreed, the respective registration is promoted in the cases and under the terms provided for in the applicable registration legislation, promoting its subsequent cancellation when the measure is terminated.

7-the preventive arrest is applicable to the legal person or similar entity.

<sup>258</sup> **Artigo 228.º CPP**

**Arresto preventivo**

1 - Para garantia das quantias referidas no artigo anterior, a requerimento do Ministério Público ou do lesado, pode o juiz decretar o arresto, nos termos da lei do processo civil; se tiver sido previamente fixada e não prestada caução económica, fica o requerente dispensado da prova do fundado receio de perda da garantia patrimonial.

2 - O arresto preventivo referido no número anterior pode ser decretado mesmo em relação a comerciante.

3 - A oposição ao despacho que tiver decretado arresto não possui efeito suspensivo.

4 - Em caso de controvérsia sobre a propriedade dos bens arrestados, pode o juiz remeter a decisão para tribunal civil, mantendo-se entretanto o arresto decretado.

5 - O arresto é revogado a todo o tempo em que o arguido ou o civilmente responsável prestem a caução económica imposta.

6 - Decretado o arresto, é promovido o respetivo registo nos casos e nos termos previstos na legislação registal aplicável, promovendo-se o subsequente cancelamento do mesmo quando sobrevier a extinção da medida.

7 - O arresto preventivo é aplicável à pessoa coletiva ou entidade equiparada.

**Article 255 CPC<sup>259</sup> Detention in flagrante delicto**

1 - In case of flagrante delicto, for a crime punishable by imprisonment:

- a) Any judicial authority or police entity makes the arrest;
- b) Any person may proceed with the arrest if one of the entities referred to in the previous paragraph is not present and cannot be summoned in good time.

2 - In the case provided for in subparagraph b) of the preceding paragraph, the person who has carried out the detention immediately surrenders the detainee to one of the entities referred to in subparagraph a), which shall draw up a summary report of the surrender and proceed in accordance with the provisions of Article 259.

3 - In the case of a crime whose procedure depends on a complaint, detention is only maintained when, in an act followed, the holder of the respective right exercises it. In this case, the judicial authority or the police entity raises or orders the collection of a document in which the complaint is registered.

4 - In the case of a crime whose procedure depends on a private accusation, there is no place for detention in flagrante delicto, but only for the identification of the offender.

**Article 256 CPC<sup>260</sup> Flagrante delicto**

1 - It is flagrante delicto every crime that is being committed or has just been committed.

2 - It is also considered flagrante delicto the case in which the agent is, immediately after the crime, pursued by any person or found with objects or signs that clearly show that he has just committed or participated in it.

3 - In the case of a permanent crime, the state of flagrante delicto only persists as long as there are signs that clearly show that the crime is being committed and the agent is participating in it.

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<sup>259</sup> **Artigo 255.º CPP**

**Detenção em flagrante delito**

1 - Em caso de flagrante delito, por crime punível com pena de prisão:

- a) Qualquer autoridade judiciária ou entidade policial procede à detenção;
- b) Qualquer pessoa pode proceder à detenção, se uma das entidades referidas na alínea anterior não estiver presente nem puder ser chamada em tempo útil.

2 - No caso previsto na alínea b) do número anterior, a pessoa que tiver procedido à detenção entrega imediatamente o detido a uma das entidades referidas na alínea a), a qual redige auto sumário da entrega e procede de acordo com o estabelecido no artigo 259.º

3 - Tratando-se de crime cujo procedimento dependa de queixa, a detenção só se mantém quando, em acto a ela seguido, o titular do direito respectivo o exercer. Neste caso, a autoridade judiciária ou a entidade policial levantam ou mandam levantar auto em que a queixa fique registada.

4 - Tratando-se de crime cujo procedimento dependa de acusação particular, não há lugar a detenção em flagrante delito, mas apenas à identificação do infractor.

<sup>260</sup> **Artigo 256.º CPP**

**Flagrante delito**

1 - É flagrante delito todo o crime que se está cometendo ou se acabou de cometer.

2 - Reputa-se também flagrante delito o caso em que o agente for, logo após o crime, perseguido por qualquer pessoa ou encontrado com objectos ou sinais que mostrem claramente que acabou de o cometer ou nele participar.

3 - Em caso de crime permanente, o estado de flagrante delito só persiste enquanto se mantiverem sinais que mostrem claramente que o crime está a ser cometido e o agente está nele a participar.

**Article 258 CPC<sup>261</sup> Arrest Warrants**

1 - The arrest warrants are issued in triplicate and contain, under penalty of nullity:

- a) The date of issue and the signature of the competent judicial authority or criminal police;
- b) The identification of the person to be detained; and
- c) Indication of the fact that motivated the detention and the circumstances that legally justify it.

2 - In case of urgency and danger in delay, the request for detention by any means of telecommunication is admissible, followed immediately by confirmation by warrant, under the terms of the previous number.

3 - The arrest warrant is shown to the detainee and one of the copies is delivered. In the case of the previous number, you are shown the detention order containing the request, the indication of the judicial or criminal police authority that made it and the other requirements referred to in number 1 and delivered the respective copy.

**Article 259 CPC<sup>262</sup> Duty of communication**

Whenever any police entity makes an arrest, it immediately communicates it:

- a) To the judge from whom the arrest warrant originates, if this has the purpose referred to in paragraph b) of Article 254;
- b) To the Public Prosecutor's Office, in the remaining cases.

**<sup>261</sup> Artigo 258.º CPP Mandados de detenção**

1 - Os mandados de detenção são passados em triplicado e contêm, sob pena de nulidade:

- a) A data da emissão e a assinatura da autoridade judiciária ou de polícia criminal competentes;
- b) A identificação da pessoa a deter; e
- c) A indicação do facto que motivou a detenção e das circunstâncias que legalmente a fundamentam.

2 - Em caso de urgência e de perigo na demora é admissível a requisição da detenção por qualquer meio de telecomunicação, seguindo-se-lhe imediatamente confirmação por mandado, nos termos do número anterior.

3 - Ao detido é exibido o mandado de detenção e entregue uma das cópias. No caso do número anterior, é-lhe exibida a ordem de detenção donde conste a requisição, a indicação da autoridade judiciária ou de polícia criminal que a fez e os demais requisitos referidos no n.º 1 e entregue a respectiva cópia.

**<sup>262</sup> Artigo 259.º CPP Dever de comunicação**

Sempre que qualquer entidade policial proceder a uma detenção, comunica-a de imediato:

- a) Ao juiz do qual dimanar o mandado de detenção, se esta tiver a finalidade referida na alínea b) do artigo 254.º;
- b) Ao Ministério Público, nos casos restantes.

**Article 273 CPC<sup>263</sup> Appearance, notification and arrest warrant**

1 - Whenever it is necessary to ensure the presence of any person in the act of investigation, the Public Prosecutor's Office or the criminal police authority to which the investigation has been delegated shall issue an appearance warrant, which includes the identification of the person, the indication of the day, the place and time at which he must present himself and the mention of the sanctions he incurs in the event of an unjustified absence.

2 - The appearance warrant is notified to the interested party at least three days in advance, except in duly substantiated urgent cases, in which it can be left to the notice, notifying only the time necessary for the appearance.

3 - If the warrant refers to the assistant or the complainant with the option of constituting an assistant represented by a lawyer, the latter is informed of the diligence carried out in order to be present.

4 - The provisions of paragraph 2 of Article 116 are correspondingly applicable.

**bb. Pre-trial detention**

4 The CPC holds provisions on pre-trial detention:

**5 Article 193 CPC<sup>264</sup> Principles of necessity, adequacy and proportionality**

1 - The coercive and patrimonial guarantee measures to be applied in particular must be necessary and adequate to the precautionary requirements that the case requires and proportional to the seriousness of the crime and the sanctions that are foreseeably to be applied.

<sup>263</sup> **Artigo 273.º CPP Mandado de comparência, notificação e detenção**

1 - Sempre que for necessário assegurar a presença de qualquer pessoa em acto de inquérito, o Ministério Público ou a autoridade de polícia criminal em que tenha sido delegada a diligência emitem mandado de comparência, do qual conste a identificação da pessoa, a indicação do dia, do local e da hora a que deve apresentar-se e a menção das sanções em que incorre no caso de falta injustificada.

2 - O mandado de comparência é notificado ao interessado com pelo menos três dias de antecedência, salvo em caso de urgência devidamente fundamentado, em que pode ser deixado ao notificando apenas o tempo necessário à comparência.

3 - Se o mandado se referir ao assistente ou ao denunciante com a faculdade de se constituir assistente representado por advogado, este é informado da realização da diligência para, querendo, estar presente.

4 - É correspondentemente aplicável o disposto no n.º 2 do artigo 116.º

<sup>264</sup> **Artigo 193.º CPP**

**Princípios da necessidade, adequação e proporcionalidade**

1 - As medidas de coacção e de garantia patrimonial a aplicar em concreto devem ser necessárias e adequadas às exigências cautelares que o caso requerer e proporcionais à gravidade do crime e às sanções que previsivelmente venham a ser aplicadas.

2 - A prisão preventiva e a obrigação de permanência na habitação só podem ser aplicadas quando se revelarem inadequadas ou insuficientes as outras medidas de coacção.

3 - Quando couber ao caso medida de coacção privativa da liberdade nos termos do número anterior, deve ser dada preferência à obrigação de permanência na habitação sempre que ela se revele suficiente para satisfazer as exigências cautelares.

4 - A execução das medidas de coacção e de garantia patrimonial não deve prejudicar o exercício de direitos fundamentais que não forem incompatíveis com as exigências cautelares que o caso requerer.

2 - Preventive detention and the obligation to remain in the house can only be applied when other coercive measures prove to be inadequate or insufficient.

3 - When a measure of deprivation of liberty is applicable in the case under the terms of the previous number, preference should be given to the obligation to remain in the dwelling whenever it proves to be sufficient to satisfy the precautionary requirements.

4 - The execution of coercive measures and asset guarantee must not prejudice the exercise of fundamental rights that are not incompatible with the precautionary requirements that the case requires.

### **Article 202 CPC<sup>265</sup> Preventive detention**

1 - If the judge considers the measures referred to in the previous articles to be inadequate or insufficient, in this case, the judge may impose preventive detention on the accused when;

- b) There are strong indications of intentional crime that corresponds to violent crime;
- c) There are strong indications of the practice of an intentional crime of terrorism or that corresponds to highly organized crime punishable with a maximum prison sentence of more than 3 years;
- d) There are strong indications of the practice of an intentional crime of offence to qualified physical integrity, qualified theft, qualified damage, computer and communications fraud, abuse of guarantee card or card, payment device or data, receipt, forgery or counterfeiting of document, attack on the safety of road transport, punishable by a maximum prison sentence of more than 3 years;
- e) There are strong indications of the practice of the intentional crime of possession of a prohibited weapon, possession of weapons and other devices, products or substances in prohibited places or crime committed with a weapon, under the terms of the legal

#### <sup>265</sup> **Artigo 202.º CPP Prisão preventiva**

1 - Se considerar inadequadas ou insuficientes, no caso, as medidas referidas nos artigos anteriores, o juiz pode impor ao arguido a prisão preventiva quando:

- a) Houver fortes indícios de prática de crime doloso punível com pena de prisão de máximo superior a 5 anos;
- b) Houver fortes indícios de prática de crime doloso que corresponda a criminalidade violenta;
- c) Houver fortes indícios de prática de crime doloso de terrorismo ou que corresponda a criminalidade altamente organizada punível com pena de prisão de máximo superior a 3 anos;
- d) Houver fortes indícios de prática de crime doloso de ofensa à integridade física qualificada, furto qualificado, dano qualificado, burla informática e nas comunicações, abuso de cartão de garantia ou de cartão, dispositivo ou dados de pagamento, recetação, falsificação ou contrafação de documento, atentado à segurança de transporte rodoviário, puníveis com pena de prisão de máximo superior a 3 anos;
- e) Houver fortes indícios da prática de crime doloso de detenção de arma proibida, detenção de armas e outros dispositivos, produtos ou substâncias em locais proibidos ou crime cometido com arma, nos termos do regime jurídico das armas e suas munições, puníveis com pena de prisão de máximo superior a 3 anos;
- f) Se tratar de pessoa que tiver penetrado ou permaneça irregularmente em território nacional, ou contra a qual estiver em curso processo de extradição ou de expulsão.

2 - Mostrando-se que o arguido a sujeitar a prisão preventiva sofre de anomalia psíquica, o juiz pode impor, ouvido o defensor e, sempre que possível, um familiar, que, enquanto a anomalia persistir, em vez da prisão tenha lugar internamento preventivo em hospital psiquiátrico ou outro estabelecimento análogo adequado, adoptando as cautelas necessárias para prevenir os perigos de fuga e de cometimento de novos crimes.

regime of weapons and their ammunition, punishable by penalty of maximum imprisonment of more than 3 years;

f) In the case of a person who has entered or remains illegally in national territory, or against whom extradition or expulsion proceedings are in progress.

2 - If it appears that the accused subject to preventive detention suffers from a psychic anomaly, the judge may impose, after hearing the defender and, whenever possible, a family member, that, as long as the anomaly persists, preventive internment takes place instead of arrest. In a psychiatric hospital or other suitable similar establishment, adopting the necessary precautions to prevent the dangers of escape and the commission of new crimes.

**Article 210 Failure to take steps to apply preventive detention<sup>266</sup>**

**Article 211 Suspension of the execution of preventive detention<sup>267</sup>**

**Article 213 Re-examination of pre-trial detention and the obligation to remain in the house<sup>268</sup>**

**Article 215 CPC<sup>269</sup> Maximum duration of preventive detention 1 - Pre-trial detention is terminated when, since its inception, the following have elapsed:**

<sup>266</sup> Artigo 210.º CPP Inêxito das diligências para aplicação da prisão preventiva.

<sup>267</sup> Artigo 211.º CPP Suspensão da execução da prisão preventiva.

<sup>268</sup> Artigo 213.º CPP Reexame dos pressupostos da prisão preventiva e da obrigação de permanência na habitação.

<sup>269</sup> **Artigo 215.º CPP Prazos de duração máxima da prisão preventiva**

1 - A prisão preventiva extingue-se quando, desde o seu início, tiverem decorrido:

- a) Quatro meses sem que tenha sido deduzida acusação;
- b) Oito meses sem que, havendo lugar a instrução, tenha sido proferida decisão instrutória;
- c) Um ano e dois meses sem que tenha havido condenação em 1.ª instância;
- d) Um ano e seis meses sem que tenha havido condenação com trânsito em julgado.

2 - Os prazos referidos no número anterior são elevados, respectivamente, para seis meses, dez meses, um ano e seis meses e dois anos, em casos de terrorismo, criminalidade violenta ou altamente organizada, ou quando se proceder por crime punível com pena de prisão de máximo superior a 8 anos, ou por crime:

- a) Previsto no artigo 299.º, no n.º 1 do artigo 318.º, nos artigos 319.º, 326.º, 331.º ou no n.º 1 do artigo 333.º do Código Penal e nos artigos 30.º, 79.º e 80.º do Código de Justiça Militar, aprovado pela Lei n.º 100/2003, de 15 de Novembro;
- b) De furto de veículos ou de falsificação de documentos a eles respeitantes ou de elementos identificadores de veículos;
- c) De falsificação de moeda, títulos de crédito, valores selados, selos e equipamentos ou da respetiva passagem, e de contrafação de cartões ou outros dispositivos de pagamento e uso de cartões ou outros dispositivos de pagamento contrafeitos, previstos nos artigos 3.º-A e 3.º-B da Lei n.º 109/2009, de 15 de setembro;
- d) De burla, insolvência dolosa, administração danosa do sector público ou cooperativo, falsificação, corrupção, peculato ou de participação económica em negócio;
- e) De branqueamento de vantagens de proveniência ilícita;
- f) De fraude na obtenção ou desvio de subsídio, subvenção ou crédito;
- g) Abrangido por convenção sobre segurança da navegação aérea ou marítima.

3 - Os prazos referidos no n.º 1 são elevados, respectivamente, para um ano, um ano e quatro meses, dois anos e seis meses e três anos e quatro meses, quando o procedimento for por um dos crimes referidos no número anterior

- a) Four months without any indictment;
  - b) Eight months without an instructional decision having taken place, having taken place;
  - c) One year and two months without a conviction in the first instance;
  - d) One year and six months without a final conviction.
- 2 - The periods referred to in the previous number are increased, respectively, to six months, ten months, one year and six months and two years, in cases of terrorism, violent or highly organized crime, or when proceeding with a crime punishable by imprisonment for a maximum of 8 years, or for a crime:
- a) Provided for in Article 299, paragraph 1 of Article 318, Articles 319, 326, 331 or paragraph 1 of Article 333 of the Penal Code and Articles 30, 79 and 80 of the Code of Military Justice, approved by Law no. 100/2003 of 15 November;
  - b) Theft of vehicles or falsification of documents relating thereto or vehicle identifiers;
  - c) Counterfeiting of currency, credit instruments, stamped values, stamps and equipment or the respective ticket, and counterfeiting of cards or other payment devices and use of counterfeit cards or other payment devices, provided for in Articles 3- A and 3-B of Law no. 109/2009, of 15 September;
  - d) Fraud, wilful insolvency, harmful administration of the public or cooperative sector, falsification, corruption, embezzlement or economic participation in business;
  - e) Laundering of advantages of illicit origin;
  - f) Fraud in obtaining or diverting subsidy, subvention or credit;
  - g) Covered by convention on the safety of air or maritime navigation.
- 3 - The periods referred to in paragraph 1 are increased, respectively, to one year, one year and four months, two years and six months and three years and four months, when the procedure is for one of the crimes referred to in the previous number and proves to be exceptionally complex, owing, in particular, to the number of defendants or victims or the highly organized nature of the crime.

e se revelar de excepcional complexidade, devido, nomeadamente, ao número de arguidos ou de ofendidos ou ao carácter altamente organizado do crime.

4 - A excepcional complexidade a que se refere o presente artigo apenas pode ser declarada durante a 1.ª instância, por despacho fundamentado, oficiosamente ou a requerimento do Ministério Público, ouvidos o arguido e o assistente.

5 - Os prazos referidos nas alíneas c) e d) do n.º 1, bem como os correspondentemente referidos nos n.os 2 e 3, são acrescentados de seis meses se tiver havido recurso para o Tribunal Constitucional ou se o processo penal tiver sido suspenso para julgamento em outro tribunal de questão prejudicial.

6 - No caso de o arguido ter sido condenado a pena de prisão em 1.ª instância e a sentença condenatória ter sido confirmada em sede de recurso ordinário, o prazo máximo da prisão preventiva eleva-se para metade da pena que tiver sido fixada.

7 - A existência de vários processos contra o arguido por crimes praticados antes de lhe ter sido aplicada a prisão preventiva não permite exceder os prazos previstos nos números anteriores.

8 - Na contagem dos prazos de duração máxima da prisão preventiva são incluídos os períodos em que o arguido tiver estado sujeito a obrigação de permanência na habitação.

4 - The exceptional complexity referred to in this article can only be declared during the 1st instance, by reasoned order, either of its own motion or at the request of the Public Prosecutor's Office, after hearing the defendant and the assistant.

5 - The periods referred to in subparagraphs c) and d) of paragraph 1, as well as those correspondingly referred to in paragraphs 2 and 3, are added by six months if there has been an appeal to the Constitutional Court or if the criminal proceedings suspended for trial in another preliminary question court.

6 - In the event that the defendant has been sentenced to imprisonment in the 1st instance and the conviction has been confirmed on ordinary appeal, the maximum period of preventive detention is raised to half of the sentence that has been fixed.

7 - The existence of several cases against the accused for crimes committed before preventive detention has been applied does not allow exceeding the deadlines provided for in the preceding paragraphs.

8 - In the counting of the maximum duration of preventive detention, the periods in which the defendant has been subject to the obligation to remain in the house are included.

**Article 216 CPC<sup>270</sup> Suspension of the duration of the maximum duration of preventive detention** The duration of the periods foreseen in the previous article is suspended in case of illness of the accused that imposes hospitalization, if his presence is indispensable for the continuation of the investigations.

**Article 217 CPC<sup>271</sup> Release of the accused subject to preventive detention**

1 - The accused subject to preventive detention is released as soon as the measure is extinguished, unless the detention must be maintained by another process.

2 - If the release takes place because the maximum duration of preventive detention has expired, the judge may subject the accused to one or more of the measures provided for in Articles 197 to 200, inclusive.

3 - When it considers that the release of the accused may create danger for the victim, the court informs him, of his own motion or at the request of the Public Prosecutor's Office, of the date on which the release will take place.

<sup>270</sup> **Artigo 216.º CPP**

**Suspensão do decurso dos prazos de duração máxima da prisão preventiva**

O decurso dos prazos previstos no artigo anterior suspende-se em caso de doença do arguido que imponha internamento hospitalar, se a sua presença for indispensável à continuação das investigações.

<sup>271</sup> **Artigo 217.º CPP**

**Libertação do arguido sujeito a prisão preventiva**

1 - O arguido sujeito a prisão preventiva é posto em liberdade logo que a medida se extinguir, salvo se a prisão dever manter-se por outro processo.

2 - Se a libertação tiver lugar por se terem esgotado os prazos de duração máxima da prisão preventiva, o juiz pode sujeitar o arguido a alguma ou algumas das medidas previstas nos artigos 197.º a 200.º, inclusive.

3 - Quando considerar que a libertação do arguido pode criar perigo para o ofendido, o tribunal informa-o, officiosamente ou a requerimento do Ministério Público, da data em que a libertação terá lugar.



**Article 220 Habeas corpus due to illegal detention<sup>272</sup>****Chapter III Detention****Article 254 CPC<sup>273</sup> Purposes**

1 - The detention referred to in the following articles is carried out:

- a) For, within a maximum period of forty-eight hours, the detainee is presented for trial in summary form or is presented to the competent judge for the first judicial interrogation or for the application or execution of a coercive measure; or
- b) To ensure the immediate presence or, if not possible, within the shortest period, but never exceeding twenty-four hours, of the detainee before the judicial authority in a procedural act.

2 – The defendant detained outside the act of committing a crime for the application or execution of the preventive detention measure is always presented to the judge, the provisions of Article 141 being correspondingly applicable.

**Article 255 CPC<sup>274</sup> Detention in flagrante delicto**

1 - In case of flagrante delicto, for a crime punishable by imprisonment:

- a) Any judicial authority or police entity makes the arrest;
- b) Any person may proceed with the arrest if one of the entities referred to in the previous paragraph is not present and cannot be summoned in good time.

<sup>272</sup> Artigo 220.º CPP (Habeas corpus em virtude de detenção ilegal).

<sup>273</sup> **CAPÍTULO III Da detenção**

**Artigo 254.º CPP Finalidades**

1 - A detenção a que se referem os artigos seguintes é efectuada:

a) Para, no prazo máximo de quarenta e oito horas, o detido ser apresentado a julgamento sob forma sumária ou ser presente ao juiz competente para primeiro interrogatório judicial ou para aplicação ou execução de uma medida de coacção; ou

b) Para assegurar a presença imediata ou, não sendo possível, no mais curto prazo, mas sem nunca exceder vinte e quatro horas, do detido perante a autoridade judiciária em acto processual.

2 - O arguido detido fora de flagrante delicto para aplicação ou execução da medida de prisão preventiva é sempre apresentado ao juiz, sendo correspondentemente aplicável o disposto no artigo 141.º

<sup>274</sup> **Artigo 255.º CPP Detenção em flagrante delicto**

1 - Em caso de flagrante delicto, por crime punível com pena de prisão:

a) Qualquer autoridade judiciária ou entidade policial procede à detenção;

b) Qualquer pessoa pode proceder à detenção, se uma das entidades referidas na alínea anterior não estiver presente nem puder ser chamada em tempo útil.

2 - No caso previsto na alínea b) do número anterior, a pessoa que tiver procedido à detenção entrega imediatamente o detido a uma das entidades referidas na alínea a), a qual redige auto sumário da entrega e procede de acordo com o estabelecido no artigo 259.º

3 - Tratando-se de crime cujo procedimento dependa de queixa, a detenção só se mantém quando, em acto a ela seguido, o titular do direito respectivo o exercer. Neste caso, a autoridade judiciária ou a entidade policial levantam ou mandam levantar auto em que a queixa fique registada.

4 - Tratando-se de crime cujo procedimento dependa de acusação particular, não há lugar a detenção em flagrante delicto, mas apenas à identificação do infractor.

2 - In the case provided for in subparagraph b) of the preceding paragraph, the person who has carried out the detention immediately surrenders the detainee to one of the entities referred to in subparagraph a), which shall draw up a summary report of the surrender and proceed in accordance with the provisions of Article 259.

3 - In the case of a crime whose procedure depends on a complaint, detention is only maintained when, in an act followed, the holder of the respective right exercises it. In this case, the judicial authority or the police entity raises or orders the collection of a document in which the complaint is registered.

4 - In the case of a crime whose procedure depends on a private accusation, there is no place for detention in flagrante delicto, but only for the identification of the offender.

### **Article 256 CPC<sup>275</sup> Flagrante delicto**

1 - It is flagrante delicto every crime that is being committed or has just been committed.

2 - It is also considered flagrante delicto the case in which the agent is, immediately after the crime, pursued by any person or found with objects or signs that clearly show that he has just committed or participated in it.

3 - In the case of a permanent crime, the state of flagrante delicto only persists as long as there are signs that clearly show that the crime is being committed and the agent is participating in it.

### **Article 257 CPC<sup>276</sup> Detention outside of flagrante delicto**

1 - Outside of flagrante delicto, detention can only be carried out by order of the judge or, in cases where preventive detention is admissible, of the Public Prosecutor's Office: within the period set for it;

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#### <sup>275</sup> **Artigo 256.º CPP Flagrante delicto**

1 - É flagrante delicto todo o crime que se está cometendo ou se acabou de cometer.

2 - Reputa-se também flagrante delicto o caso em que o agente for, logo após o crime, perseguido por qualquer pessoa ou encontrado com objectos ou sinais que mostrem claramente que acabou de o cometer ou nele participar.

3 - Em caso de crime permanente, o estado de flagrante delicto só persiste enquanto se mantiverem sinais que mostrem claramente que o crime está a ser cometido e o agente está nele a participar.

#### <sup>276</sup> **Artigo 257.º CPP Detenção fora de flagrante delicto**

1 - Fora de flagrante delicto, a detenção só pode ser efectuada por mandado do juiz ou, nos casos em que for admissível prisão preventiva, do Ministério Público:

a) Quando houver fundadas razões para considerar que o visado se não apresentaria voluntariamente perante autoridade judiciária no prazo que lhe fosse fixado;

b) Quando se verifique, em concreto, alguma das situações previstas no artigo 204.º, que apenas a detenção permita acautelar; ou

c) Se tal se mostrar imprescindível para a protecção da vítima.

2 - As autoridades de polícia criminal podem também ordenar a detenção fora de flagrante delicto, por iniciativa própria, quando:

a) Se tratar de caso em que é admissível a prisão preventiva;

b) Existirem elementos que tornem fundados o receio de fuga ou de continuação da actividade criminosa; e

c) Não for possível, dada a situação de urgência e de perigo na demora, esperar pela intervenção da autoridade judiciária.

- b) When there is, in particular, any of the situations provided for in Article 204, which only detention can take care of; or
- c) If this proves to be essential for the protection of the victim.
- 2 - The criminal police authorities may also order detention outside the act of committing a crime, on their own initiative, when:
- a) It is a case in which preventive detention is admissible;
- b) There are elements that make the fear of flight or continuation of criminal activity well founded; and
- c) It is not possible, given the urgency and danger situation in the delay, to wait for the intervention of the judicial authority.

### **Anti-Economic Offences and Against Public Health**

Decree No. 28/84, of January 20<sup>277</sup>

#### **Article 49<sup>278</sup> (Preventive Detention)**

- 1 - In cases of just fear of insolvency of the offender or concealment of assets and the probable fine, determined by the prudent discretion of the judge, is not less than 300,000\$00, the public prosecutor shall, at the time of indictment or equivalent, request the arrest preventive measure on the defendant's assets, in order to guarantee the pecuniary liability he may incur.
- 2 - Preventive arrest may also be requested during the investigation when, in addition to the assumptions set out in the previous number, there are abnormal circumstances that lead to the conviction of the accused being highly probable, such as the absence of the offender in an uncertain part, the abandonment of the respective business or handed over to someone else in the direction of the commercial turnover.
- 3 - The means of defence provided for in the Code of Civil Procedure may be opposed to the arrest, which will be processed by attachment, except for the fact constituting liability.

<sup>277</sup> Infracções Antieconómicas E Contra A Saúde Pública, DL n.º 28/84, de 20 de Janeiro.

<sup>278</sup> **Artigo 49.º DL n.º 28/84**

#### **(Arresto preventivo)**

- 1 - Nos casos de justo receio de insolvência do infractor ou de ocultação de bens e de a multa provável, fixada por prudente arbítrio do juiz, não ser inferior a 300000\$00, requererá o ministério público, no acto da acusação ou equivalente, o arresto preventivo sobre bens do indiciado, a fim de garantir a responsabilidade pecuniária em que ele possa incorrer.
- 2 - O arresto preventivo pode ainda ser requerido durante a instrução quando, além dos pressupostos fixados no número anterior, ocorrerem circunstâncias anormais que levem a considerar como altamente provável a condenação do arguido, como a ausência do infractor em parte incerta, o abandono dos respectivos negócios ou a entregue a outrem da direcção do giro comercial.
- 3 - Ao arresto, que será processado por apenso, podem ser opostos os meios de defesa previstos no Código de Processo Civil, salvo quanto ao facto constitutivo da responsabilidade.

**c) Para 2: Cross-border surrender**

7 → See Law no 65/2003 of 23 August 2003 on the European Arrest Warrant/*Lei n.º 65/2003, de 23 de Agosto, Mandado de Detenção Europeu*

8 The information from the Portuguese Information is as follows:

*Synopsis 3: Portuguese Original Text vs. Unofficial English Translation: Art. 33 para2 EPPO Regulation*

<p>Art. 33 para 2 Portuguese Original</p> <p>“São competentes para emitir um MDE para efeitos de procedimento criminal:</p> <ul style="list-style-type: none"> <li>- Durante o inquérito, o Procurador Europeu Delegado ou o juiz de instrução, a solicitação do Procurador Europeu Delegado;</li> <li>- Durante a instrução, o juiz de instrução;</li> <li>- Em fase de julgamento, o juiz do processo.</li> </ul> <p>Durante o inquérito é competente:</p> <ul style="list-style-type: none"> <li>- O juiz de instrução criminal de Lisboa, quando se trate de factos que tenham sido praticados na área de competência dos tribunais da Relação de Lisboa e de Évora;</li> <li>- O juiz de instrução criminal do Porto, quando se trate de factos que tenham sido praticados na área de competência dos tribunais da Relação de Guimarães, do Porto e de Coimbra.</li> </ul>	<p>Art. 33 para 2: Unofficial English Translation</p> <p><b><i>The following are competent to issue an EAW for the purposes of criminal proceedings:</i></b></p> <ul style="list-style-type: none"> <li>- During the investigation, the European Delegated Public Prosecutor or the investigating judge, at the request of the Delegated European Public Prosecutor;</li> <li>- During the investigation, the investigating judge;</li> <li>- In the trial phase, the judge of the case.</li> </ul> <p>During the investigation, you are responsible for:</p> <ul style="list-style-type: none"> <li>- The Lisbon criminal investigation judge, in the case of facts that have been committed within the competence of the Lisbon and Évora Courts of Appeal;</li> <li>- The criminal investigation judge of Porto, in the case of facts that have been committed in the area of competence of the Courts of Appeal of Guimarães, Porto and Coimbra</li> </ul>
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Para a emissão de um MDE para efeitos de cumprimento de pena: o juiz do tribunal competente para a execução da pena de prisão.” <sup>279</sup>	For the issuance of an MOU for the purpose of serving the sentence: the judge of the court competent for the execution of the prison sentence.
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#### d) Fraud-related peculiarities

- Art. 202 CPC – Preventive detention may be imposed on the accused when (...) there are strong indications of the practice of an intentional crime of computer and communications fraud punishable by a maximum prison sentence of more than 3 years (Art. 202 para 1 d) CPC) **9**
- For fraud, wilful insolvency, harmful administration of the public or cooperative sector, falsification, corruption, embezzlement, or economic participation in business (Art. 215 para 2 d) CPC) as well as for fraud in obtaining or diverting subsidy, subvention or credit (Art. 215 para 2 f) CPC) there is an extended maximum duration of preventive detention, cf. Art. 215 para 2 CPC.
- See the Anti-Economic Offences and Against Public Health, Decree No. 28/84.

#### e) Relevant examples and precedents in national case-law

The Judgment of the STJ of 16-02-2005 deals with the Law on the EAW, Art. 2 scope of application), the control of double incrimination reasons for refusal within a fraud context and can be taken as an example here. **10**

<sup>279</sup> See <https://www.eppo.europa.eu/sites/default/files/2021-11/08-PT.pdf>. Accessed 23 January 2024.



## C. OLAF-Regulation (EU, EURATOM) No 883/2013

### I. Investigation Powers and National Law Related to OLAF in Portugal (Art. 3–8 OLAF Regulation)

#### 1. General Introduction

OLAF's task and role in Portugal as well as its actions are determined primarily by Union law. To understand OLAF's role it is important to take a look on history.<sup>280</sup> The history of OLAF can be traced back to the early 2000s and its predecessor UCLAF.<sup>281</sup> OLAF has a renewed role within the changed anti-fraud architecture of the Union in the 2020s and is an important actor against fraud within the multi-annual framework legislation and the Union's policies, which depend on the action of the Member States and the agreements concluded on the political levels.

In addition to that OLAF and its investigators shall follow internal guidelines<sup>282</sup>, manuals on procedures<sup>283</sup> reports and working arrangements with union partners<sup>284</sup> as well as Administrative Cooperation Agreements (ACAs) with national partners, EU external actors<sup>285</sup>. OLAF issues compendia, researches itself, organises meetings and conferences and workshops for its national partners. All of these non-binding guides and handbooks might be useful in the course of investigations.<sup>286</sup> The statistics on latest actions and the past year can be deduced from the OLAF Reports<sup>287</sup>, equal to the new EPPO's

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<sup>280</sup> See Rocha and Fernandes 2020, pp 11 et seq.

<sup>281</sup> See EU Fraud Commentary, Chronology Part 3 and 4 as well as the Commentary on Art. 1 OLAF Regulation.

<sup>282</sup> See EU Commission (OLAF) 2021; OLAF 2021; OLAF 2016. See all Translations: [https://anti-fraud.ec.europa.eu/guidelines-investigations-olaf-staff\\_en](https://anti-fraud.ec.europa.eu/guidelines-investigations-olaf-staff_en). Accessed 15 December 2023.

<sup>283</sup> Brüner et al. 2009, whereby it is unclear if certain Manuals are really still used by investigators and the Office staff.

<sup>284</sup> OLAF, Working Arrangement between EPPO & OLAF, Point 4: „Exchange of information“, 4.5 and 4.6 (cross double check between the databases for a PIF offence action), 5 („Mutual Reporting and transmission of potential cases“), 5.1, 5.1.1. European Commission - „Agreement establishing the modalities of cooperation between the European Commission and the European Public Prosecutor's Office“ 18 June 2021, Art 5 Para 1, 4, 5 („Reporting by the Commission“) in combination with Annex I Contact points: „information will be transmitted via the head of OLAF to the head of operation at EPPO/central office“, Annex III.A („Information on the Initiation of an Investigation – template“).

<sup>285</sup> Prosecution Office of Hungary and OLAF. See State of Play – July 2022 Administrative Cooperation Arrangements (ACAs) with partner authorities in non-EU countries and territories and counterpart administrative investigative services of International Organisations, online: [https://anti-fraud.ec.europa.eu/system/files/2022-07/list\\_signed\\_acas\\_en.pdf](https://anti-fraud.ec.europa.eu/system/files/2022-07/list_signed_acas_en.pdf). Accessed 15 December 2023.

<sup>286</sup> See European Commission (OLAF) 2011. EU Commission (OLAF), 2017. EU Commission (OLAF) 2022; EU Commission (DG regional Policy), Information Note on Fraud Indicators for ERDF, ESF and CF, online: [https://ec.europa.eu/regional\\_policy/sources/docoffic/cocof/2009/cocof\\_09\\_0003\\_00\\_en.pdf](https://ec.europa.eu/regional_policy/sources/docoffic/cocof/2009/cocof_09_0003_00_en.pdf); EU Commission (DG Policy, U 2) Handbook, The role of Member States' auditors in fraud prevention and detection for EU Structural and Investment Funds Experience and practice in the Member States.

<sup>287</sup> OLAF 2022, OLAF 2022a, OLAF 2022b, which includes a statistical evaluation. The Reports have become longer since the 2000s and have several annexes.

annual report and the PIF Report, which is issued by the EU Commission in close cooperation with OLAF, IBOAs and the EPPO as well as the input from ECA and national AFCOS, governments and researchers.

- 3 The European Anti-fraud office is well accommodated in the Union anti-fraud architecture these days and the academic research is extensive and long lasting since the 2000s.<sup>288</sup>
- 4 Last decade's landmark judgement "*Sigma Orionis SA vs European Commission*", decided by the European General Court<sup>289</sup> clarified the application of national law and Union law<sup>290</sup> in relation to external investigations of OLAF.<sup>291</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).
- 5 Current debates evolve around the effectiveness of investigations regarding digital evidence by virtue of the Regulation 2185/96, which stems in parts from a more analogue society.<sup>292</sup> More and more it becomes clear the analogue society, which is still present in law enforcement and the area of criminal justice in many countries at the beginning of the 2020s is a major concern and a real problem if the digital age crashes in and the analogue structures are obstacles to effective investigations. The access to bank accounts and registers is incredibly important for OLAF investigators as well as their national homologues. The relationship to the EPPO, especially the regional centres of the EDPs in the present country should be close.
- 6 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), which has been part of the current study and answered a questionnaire or commented and reviewed (for some countries that are very prone to frauds or countries that have recently changed their anti-fraud prevention in order to fulfil the requests for a national anti-fraud prevention strategy) Part B. of this chapter.
- 7 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 trials.

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<sup>288</sup> Brüner 2001, pp 17–26; Brüner EuR 2008, pp 859–872; Gellert 2009, pp 85–88.

<sup>289</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>290</sup> See De Bellis 2021, p 431 et seq; Herrnfeld 2021, p 426 et seq.; recently Wouters 2020, p 132 et seq.

<sup>291</sup> De Bellis 2021, p 431 et seq.; see OLAF Website, List of rulings of the Court of Justice of the EU concerning OLAF, <https://shorturl.at/fpsGK>. Accessed 30 September 2023.

<sup>292</sup> See Carrera, Mitsilegas and Stefan 2021.



They concern EPPO cases (see → Art. 23–28 EPPO Regulation) or cases below the thresholds for which the EDPs could exercise their competence and jurisdiction on behalf of the EPPO. This area has been professionally researched by *Luchtman/Vervaele/Ligeti and others* in OLAF studies from the last decade, which we can refer to.<sup>293</sup>

Part. C. of the Compendium Chapter, alike to the first Part. B. on the EPPO and its investigative powers, gives a “*bilingual*” collection of the relevant laws – including the recently adopted on-the-spot checks laws (in relation to Regulation (EC) 2185/96) of certain countries – in relation to investigations and investigative powers as well as examples from Case law and trials, which relied upon evidence gathered by OLAF (Selected Case Studies from our jurisprudence and judgement studies). In addition to the analysis parts of this chapter, it mentions above all the national authorities and the role of the special unit, body, or agency in the countries, which interact with OLAF as AFCOS (e.g. in Germany the AFCOS is part of the Federal Ministry of Finance, Referat E6a).

8

The following pages show the objectives, tasks and major definitions, which shall be recalled for the analysis of the connections to Portuguese national law and the overall structure of an OLAF investigation: What is the aim of it? What is an irregularity? Who does/shall/must interact with OLAF?

9

### 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

<sup>293</sup> See Luchtman/Vervaele 2017; Caeiro and João Costa 2012.

Member States, the sharing of operational experience and best procedural practices in the field of the protection of the financial interests of the Union, and shall support joint anti-fraud actions undertaken by Member States on a voluntary basis.

3. This Regulation shall apply without prejudice to:

(a) Protocol No 7 on the privileges and immunities of the European Union attached to the Treaty on European Union and to the Treaty on the Functioning of the European Union;

(b) the Statute for Members of the European Parliament;

(c) the Staff Regulations;

(d) Regulation (EU) 2016/679 of the European Parliament and of the Council;

(e) Regulation (EU) 2018/1725 of the European Parliament and of the Council

4. Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties ('institutions, bodies, offices and agencies'), the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end, it shall investigate serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations (hereinafter collectively referred to as 'officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members').

4a. The Office shall establish and maintain a close relationship with the European Public Prosecutor's Office (EPPO) established in enhanced cooperation by Council Regulation (EU) 2017/1939 ( 3 ). That relationship shall be based on mutual cooperation, information exchange, complementarity and the avoidance of duplication. It shall aim in particular to ensure that all available means are used to protect the financial interests of the Union through the complementarity of their respective mandates and the support provided by the Office to the EPPO.

5. For the application of this Regulation, competent authorities of the Member States and institutions, bodies, offices and agencies may establish administrative arrangements with the Office. Those administrative arrangements may concern, in particular, the transmission of information, the conduct of investigations and any follow-up action.

Art. 2 of the OLAF Regulation contains definitions, which apply for all assessments of Seconded National Experts, Investigators, AFCOS staff or national authorities managing structural funds or other EU programmes. It might be cited e.g. for an OLAF Report (see → Art. 11 below) in order to subsume a conduct, which was investigated.

10

## **Art. 2 Definitions**

11

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.

**2. Art. 3 External investigations**

a) On the spot-checks and inspections – Renouncing the applicable national law – Para 2, 4 .....	263	(2) Anti-dumping area .....	273
b) Assistance needed, competent authorities and access to information in the Member States, para 5 .....	263	f) National law and “checks and inspections” of OLAF....	274
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 .....	263	aa. Administrative procedure in general .....	274
d) The basic principle of conformity to Regulations 2185/96 and 883/2013 .....	263	bb. Special administrative powers and provisions in certain areas of revenue and expenditure .....	274
aa. Submission: Compliance with Union law .....	263	(1) Administrative provisions in the area of customs duties and VAT= revenue .....	274
bb. Resistance: Assistance in conformity with national procedural rules applicable .....	264	(a) Administrative provisions .....	274
e) Competent authorities....	264	(b) Principle of investigation (General Tax Code) .....	276
aa. Area of managing authorities .....	264	(c) External audit (General Tax Code/Customs Code) .....	276
bb. Judicial Police in administrative investigations .....	268	(d) Fiscal supervision in both areas.....	278
cc. Customs area .....	268	(2) Administrative provisions in the area of structural funds and internal policies (interne Politiken) = expenditure .....	278
(1) Customs duties area in general .....	269	(a) Structural funds ..	279
		(b) Internal policies ..	282
		(3) Administrative provisions in the area of the	

common organization of the markets = expenditure ...	282		
(4) Administrative provisions in the area of direct expenditure .....	282		
cc. Investigative powers ..	283		
(1) Investigative powers in the area of customs duties and VAT (General Tax Code) .....	283		
(2) Investigative powers in the area of structural funds and internal policies.....	289		
(3) Investigative powers in the area of common market organisations.....	305		
(4) Investigative powers in the area of direct expenditure .....	309		
(5) Protection of information .....	310		
(a) Tax secrecy (General Tax Code) .....	310		
(b) Administrative secrecy (Administrative laws).....	313		
(c) Data secrecy (Data protection laws, Customs situation, General Tax Code).....	313		
(d) Official secrecy ...	315		
(6) Investigation reports (General Tax Code) .....	315		
(7) Preservation of Evidence (General Tax Code) .....	318		
g) Single measures .....	318		
		aa. Interviewing/Questioning of “persons concerned” (in relation to suspects/defendants) .....	318
		bb. The taking of statements from Economic Operators .....	318
		cc. Interviewing/Questioning of witnesses.....	318
		dd. Inspections .....	319
		ee. Searches in the various areas of external investigations .....	319
		ff. Seizure of other evidence .....	319
		gg. The Information gathering and seizure of digital forensic evidence including bank account information (General Tax Law).....	321
		(1) General remarks.....	327
		(2) Formal requirements .....	329
		(3) Substantive requirements.....	329
		hh. Digital forensic operations within inspections or on-the-spot checks.....	329
		ii. Investigative missions in third countries .....	333
		h) National procedural rules for “checks and inspections” by the assisting national authority .....	333
		i) Cooperation and mutual assistance agreements.....	333

1. In the areas referred to in Article 1, the Office shall carry out on-the-spot checks and inspections in Member States and, in accordance with cooperation and mutual assistance

agreements and any other legal instrument in force, in third countries and on the premises of international organisations.

2. The Office shall ***carry out on-the-spot checks and inspections in accordance with this Regulation and, to the extent not covered by this Regulation, in accordance with Regulation (EURATOM, EC) No 2185/96.***

3. Economic operators shall cooperate with the Office in the course of its investigations. The Office may request written and oral information, including through interviews.

4. Where, in accordance with paragraph 3 of this Article, the ***economic operator concerned submits*** to an on-the-spot check and inspection authorised pursuant to this Regulation, Article 2(4) of Regulation (EC, Euratom) No 2988/95, the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96 and Article 7(1) of Regulation (Euratom, EC) No 2185/96 ***shall not apply insofar as those provisions require compliance with national law*** and are capable of restricting access to information and documentation by the Office to the same conditions as those that apply to national administrative inspectors.

5. At the request of the Office, the ***competent authority of the Member State*** concerned shall, without undue delay, provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2).

The ***Member State concerned shall ensure***, in accordance with Regulation (Euratom, EC) No 2185/96, that the ***staff of the Office are allowed access to all information, documents and data relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that the staff are able to assume custody of documents or data to ensure that there is no danger of their disappearance.*** Where privately owned devices are used for work purposes, those devices may be subject to inspection by the Office. The Office shall subject such devices to inspection only under the same conditions and to the same extent that national control authorities are allowed to investigate privately owned devices and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

6. Where the staff of the Office find that an ***economic operator resists*** an on-the-spot check and inspection authorised pursuant to this Regulation, namely where the economic operator refuses to grant the Office the necessary access to its premises or any other areas used for business purposes, conceals information or prevents the conduct of any of the activities that the Office needs to perform in the course of an on-the-spot check and inspection, the ***competent authorities, including, where appropriate, law enforcement authorities of the Member State concerned shall afford the staff of the Office the necessary assistance so as to enable the Office to conduct its on-the-spot check and inspection effectively and without undue delay.***

*Article 2(4) of Regulation (EC, EURATOM) No 2988/95*

Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

*The third subparagraph of Article 6(1) of Regulation (EURATOM, EC) No 2185/96*

~~On the spot checks and inspections shall be carried out on the Commission's authority and responsibility by its officials or other servants, duly empowered, hereinafter called 'Commission inspectors'. Persons placed at the disposal of the Commission by the Member States as national experts on secondment may assist in such checks and inspections.~~

~~Commission inspectors shall exercise their powers on production of a written authorization showing their identity and position, together with a document indicating the subject matter and purpose of the on the spot check or inspection.~~

Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the Member State concerned.

*Article 7(1) of Regulation (EURATOM, EC) No 2185/96*

Commission inspectors shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned which are required for the proper conduct of the on-the-spot checks and inspections. They may avail themselves of the same inspection facilities as national administrative inspectors and in particular copy relevant documents.

On-the-spot checks and inspections may concern, in particular:

- professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements held by economic operators,
- computer data,
- production, packaging and dispatching systems and methods,
- physical checks as to the nature and quantity of goods or completed operations,
- the taking and checking of samples,
- the progress of works and investments for which financing has been provided, and the use made of completed investments,
- budgetary and accounting documents,
- the financial and technical implementation of subsidized projects.]

When providing assistance in accordance with this paragraph or with paragraph 5, the competent authorities of Member States ***shall act in accordance with national procedural rules applicable to the competent authority concerned. If such assistance requires authorisation from a judicial authority in accordance with national law***, such authorisation shall be applied for.

7. The Office shall conduct on-the-spot checks and inspections upon production of written authorisation, as provided for in Article 7(2). It shall, at the latest at the start of the on-the-spot check and inspection, inform the economic operator concerned of the procedure applicable to the on-the-spot check and inspection, including the applicable procedural safeguards, and the economic operator's duty to cooperate.

8. In the exercise of the powers assigned to it, the Office shall comply with the procedural guarantees provided for in this Regulation and in Regulation (EURATOM, EC) No 2185/96. In the conduct of an on-the-spot check and inspection, the economic operator concerned shall have the right not to make self-incriminating statements and to be assisted by a person of the economic operator's choice. When making statements during an on-the-spot check and inspection, the economic operator shall be provided with the possibility to use any of the official languages of the Member State where that economic operator is located. The right to be assisted by a person of choice shall not prevent access by the Office to the premises of the economic operator and shall not unduly delay the start of the on-the-spot check and inspection.

9. Where a Member State does not cooperate with the Office in accordance with paragraphs 5 and 6, the Commission may apply the relevant provisions of Union law in order to recover the funds related to the on-the-spot check and inspection in question.

10. As part of its investigative function, the Office shall carry out the checks and inspections provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9(2) of that Regulation in Member States and, ***in accordance with cooperation and mutual assistance agreements and any other legal instrument in force***, in third countries and on the premises of international organisations.

11. During an external investigation, the Office may have access to any relevant information and data, irrespective of the medium on which it is stored, held by the institutions, bodies, offices and agencies, connected with the matter under investigation, where necessary in order to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. For that purpose Article 4(2) and (4) shall apply.

12. Without prejudice to Article 12c (1), where, before a decision has been taken whether or not to open an external investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the competent authorities of the Member States concerned and, where necessary, the institutions, bodies, offices and agencies concerned.

Without prejudice to the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No 2988/95, the competent authorities of the Member States concerned shall ensure that appropriate action is taken, in which the Office may take part, ***in accordance***



**with national law.** Upon request, the competent authorities of the Member States concerned shall inform the Office of the action taken and of their findings on the basis of information referred to in the first subparagraph of this paragraph.

On-the-spot checks have been discussed in the last decade quite thoroughly<sup>294</sup>, but not enough for all countries. For Estonia, it is worth taking a closer look at the applicable provisions. 1

**a) On the spot-checks and inspections – Renouncing the applicable national law – Para 2, 4**

The national law is renounced if the economic operator, the beneficiary, the grant recipient etc. submits to the investigation of the Office. In this case Union law applies. 2

**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.). 3

**c) Resistance by the economic operator vs. law enforcement and effective investigations, para 6 or the new model and the relevance of resistance or conformity of the Economic Operator**

If the economic operator, the beneficiary, the grant recipient etc. resists this conduct has an effect on the applicability of law. The ECJ rules in Sigma Orionis that national law applies in the case of resistance, which means that the investigations need to be in conformity with the national law applicable in similar national investigations. 4

**d) The basic principle of conformity to Regulations 2185/96 and 883/2013**

**aa. Submission: Compliance with Union law**

In the case of compliance of an Estonian Economic Operator Union law applies, thus the Regulation allows OLAF officials to conduct on-the-spot checks without prior information of national authorities. 5

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<sup>294</sup> See Bovend'Eerd 2018.

**bb. Resistance: Assistance in conformity with national procedural rules applicable**

- 6 Does the participant, the personal or Economic operator concerned resist, the Regulation indicates that OLAF has to follow national law and inform national authorities that can provide assistance in conformity with national procedural rules applicable.<sup>295</sup>

**e) Competent authorities**

- 7 The table shows non-extensively the most important competent authorities, which need to be contacted if the Economic operator resists and thus national law applies if OLAF wants to conduct investigations into irregularities:
- 8 Who is responsible depends on which area is affected (direct or shared management) and which type of irregularity or fraud is suspected, as well as in which payment (expenditure) or payment (revenue) area.
- 9 For example, one area of shared management can be presented here:
- General Inspectorate of Finance<sup>296</sup>
  - Central Department of Investigation and Criminal Action and the Audit Office<sup>297</sup>
  - Tax and Customs Authority<sup>298</sup>
  - tax inspection authorities<sup>299</sup>

**aa. Area of managing authorities**

- 10 In general, if the administrative managing authorities are concerned the bodies of the administrative procedure code will be competent. This is depending on the local area and various other questions of competence and jurisdiction.

11 **[Excerpt Administrative Procedure Code]**

**Part II Of the public administration bodies**

**Chapter I Nature and system of organs**

**Article 20<sup>300</sup> Bodies** 1 - Institutionalized centres holding powers and duties for the purposes of performing legal acts attributable to the legal person are bodies of the Public Administration.

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<sup>295</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>296</sup> Inspeção-Geral de Finanças.

<sup>297</sup> Departamento Central de Investigação e Ação Penal e o Tribunal de Contas.


<sup>298</sup> Autoridade Tributária e Aduaneira (AT).

<sup>299</sup> Órgão da administração tributária.

<sup>300</sup> *PARTE II Dos órgãos da Administração Pública*

- 2 - The bodies are, under the terms of the rules that establish them or provide for their institution, singular or collegial and permanent or temporary.
- 3 - The collegiate bodies may adopt their regiment within the framework of the applicable legal and statutory rules.

If it comes to irregularities in the area of customs different authorities will be competent. **12**

*Nota bene:* If you search the contact details of an authority, you can refer to the German site <https://www.zolltarifnummern.de/>. 

In the area of structural funds (see below) the Ministry of Finance has designated e.g. an **authority for the ESF Fund**: **13**

**Finance and Planning**<sup>301</sup>

**Offices of the Minister of Finance and the Secretary of State for Regional Development** (Order No. 5482/2019) **14**

Following the fires that occurred in the Northern and Central regions of mainland Portugal between June and October 2017, an application for a financial contribution from the European Union Solidarity Fund (EUSF), established by Council Regulation (EC) No. No 2012/2002 of the Council of 11 November 2002, as amended by Regulation (EU) No 661/2014 of the European Parliament and of the Council of 15 May 2014. The Portuguese State, in the request submitted to the European Commission, has designated the Agency for Development and Cohesion, I. P., entity in charge of the general technical coordination of Portugal 2020, in accordance with Decree-Law no. 137/2014, of 12 September, as the body responsible for coordinating the implementation of the EUSF, the Managing Authority of the Technical Assistance Operational Programme, the entity responsible for managing the technical assistance operational programme for the 2014–2020 programming period, in accordance with Decree-Law no. 137/2014, of 12 September, and Council of Ministers Resolution no. No. 73-B/2014, of 16 December, as the body responsible for the implementation of the Fund’s financial contribution and the Inspectorate General of Finance, Portugal 2020’s audit authority.

Pursuant to said 137/2012, of 12 September, as the independent audit body responsible for preparing the opinion provided for in Article 8(3) of Council Regulation (EC) No. 2012/2002 of 11 November 2002, as amended. Following the approval of the request for a financial contribution from the EUSF, by Co-Commission Implementing Decision

**CAPÍTULO I Natureza e regime dos órgãos**

**Artigo 20.º Órgãos**

1 - São órgãos da Administração Pública os centros institucionalizados titulares de poderes e deveres para efeitos da prática de atos jurídicos imputáveis à pessoa coletiva.

2 - Os órgãos são, nos termos das normas que os instituem ou preveem a sua instituição, singulares ou colegiais e permanentes ou temporários.

3 - Os órgãos colegiais podem adotar o seu regimento no quadro das normas legais e estatutárias aplicáveis.

<sup>301</sup> FINANÇAS E PLANEAMENTO Gabinetes do Ministro das Finanças e da Secretária de Estado do Desenvolvimento Regional Despacho n.º 5482/2019.

No. C (2018) 3728 of 20 June, Order No. 8460/2018, of 17 August 2018, published in the 2nd series of the Official Gazette, No. 168, of 31 August 2018, of the Secretary of State for Development and Cohesion, amended by Order No. 3932-B/2019, published in the Official Gazette, 2nd series, No. 69, of 8 April, determined to attribute to the Agency for Development and Cohesion, I. P. (Agency, I. P.) the responsibility for certification, payment and control of support to be granted through the EUSF, the Managing Authority of the Technical Assistance Operational Programme the responsibility for the management, monitoring and implementation of the Fund, and also to approve the National Regulations for Implementation of the EUSF, which define the rules for implementation of the Fund. Within this framework, it is also necessary to appoint the independent audit body responsible for drawing up the opinion provided for in Article 8(3) of Council Regulation (EC) No 2012/2002 of 11 November 2002, as amended. Therefore, pursuant to Article 5(6) of Council Regulation (EC) No 2012/2002 of 11 November 2002, as amended by Regulation (EU) No 661/2014 of the European Parliament and of the Council of 15 May 2014, under Commission Implementing Decision No. C (2018) 3728, of 20 June, of the European Commission and Order No. 3876 - C/2019, published in the Official Gazette, Series II, No. 68, of 5 April, it is hereby determined as follows:

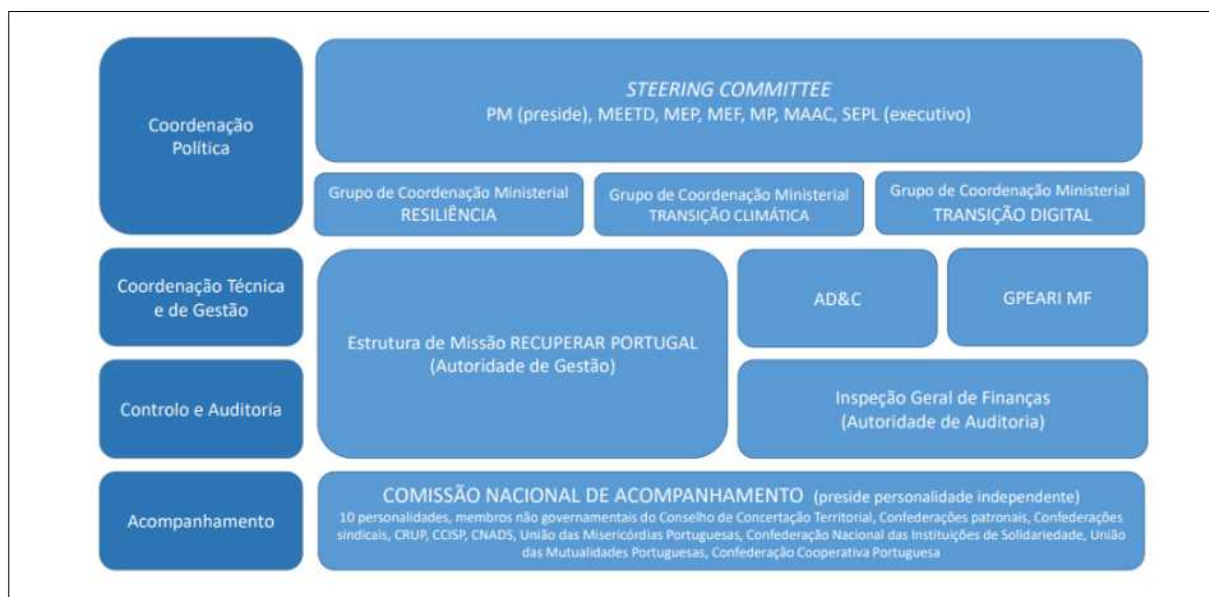
1 - The Inspectorate -General of Finance, audit authority of Portugal 2020, pursuant to Decree-Law No. 137/2012, of 12 September, is the independent audit body responsible for preparing the opinion accompanying the report on the implementation of the financial contribution of the European Union Solidarity Fund, approved by the European Commission by Commission Implementing Decision No. C (2018) 3728, of 20 June, relating to the fires that occurred in mainland Portugal between June and October 2017, which refers to Article 63(7) of Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July.

2 - This Order shall take effect on 31 August 2018. 20 May 2019. – The Minister of Finance, Mário José Gomes de Freitas Centeno – 16 May 2019. – The Secretary of State of Regional Development, Maria do Céu de Oliveira Antunes Albuquerque.”

- 15 Preparing the national resilience plan Portugal has renewed its system of combating fraud and installed new internal competences and laws – although in the area of customs legislation.<sup>302</sup>

<sup>302</sup> See Relatório Sobre O Combate À Fraude E Evasão Fiscais E Aduaneiras 2021, <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=%3D%3DBQAAAB%2BLCAAAAAAABAAzNDYwNg-cAyxRA0AUAAAA%3D> (Accessed 29 January 2024). Rodrigues Lima 2021. Relatório sobre o Combate à Fraude e Evasão Fiscais e Aduaneiras 2021 entregue na Assembleia da República, <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=%3d%3dBQAAAB%2bLCAAAAAAABAAzNDYwMg-cAiiVbyQUAAAA%3d>. Accessed 23 January 2024

The Resilience Plan has as well established this control structure involving most of the Portuguese Managing authorities: 16



Within this structure the General Inspectorate of Finance (IGF) will be one of the most frequent partners of OLAF in order to prepare or carry out external controls. The IGF has since 2004 provided for an Audit Manual (*Manual de Auditoria*), which is nowadays partly not up-to-date anymore but still available on the website of the IGF.<sup>303</sup> 17

<sup>303</sup> See <https://www.igf.gov.pt/institucional1/conselho-coordenador-do-sci/manual-de-auditoria.aspx>. Accessed 23 January 2024

18 The structure of this Audit Manual is as follows:

<b>Part I - SCI Audit Manual</b>	Annex 6 E - Public contracting - Public works contracts
<b>Part II - Annexes to the Audit Manual</b>	<b>SUPPORT TEXTS</b>
Chapter I	Annex 1 A - SIC
Annex 1 - Example of adapting this Manual to the reality of an Organisation	Annex 2 A - POCP specifics
Chapter III - Work programs and legislation	Annex 3 - Accountability
Annex 1 - Accounting system	Annex 6 A - Budget execution - General notions
Annex 2 - Financial Statements	Annex 6 C.1 - Framework on the legal employment relationship and related matters
Annex 4 - Heritage / Fixed Assets	Annex 6 F - Budgetary changes
Annex 5 - Treasury Management	Chapter IV
Annex 6 B - Revenue	Annex 1 - Evaluation Grid of the Performance Indicators System
Annex 6 C - Personnel Expenses	
Annex 6 D - Public procurement - Acquisition of goods and services	

19 The Reports of this authority show that irregularities that lead to an OLAF investigation may result from here, too.<sup>304</sup>

**bb. Judicial Police in administrative investigations**

20 In administrative proceedings or investigations, the Judicial Police has mainly no competence but the Police Act from 2019 states:

**Article 6 Law n° 137/2019<sup>305</sup> Competence in administrative offence matters**  
 The PJ has administrative offence competence in the cases provided for by law.

**cc. Customs area**

21 In the area of customs duties (on the revenue-side) it is the Tax and Customs Authority [*Dautoridade tributária e aduaneira* (DAT)], which is competent to engage with OLAF investigators in case of national investigations on the premises of economic operators.

<sup>304</sup> See <https://www.igf.gov.pt/publicacoes12/resultados-de-auditorias/relatorios-administracao-local-autarquica.aspx>. Accessed 23 January 2024

<sup>305</sup> **Artigo 6.º Competência em matéria contraordenacional Decreto-Lei n.º 137/2019.**  
 A PJ tem competência contraordenacional nos casos previstos na lei.

**(1) Customs duties area in general**

It is worth taking a closer look at the general structure of the (Tax and) Customs Authority.<sup>306</sup> The Customs Authority operates by virtue of an Ordinance (No. 320-A/2011 of December 30), which describes the organization and strategy as well as the sub-departments.

22

**Ordinance No. 320-A/2011, of December 30**

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**Article 19<sup>307</sup> Tax Inspection Planning and Coordination Services Department**

1 - The Directorate of Planning and Coordination Services for Tax Inspection, abbreviated as DSPCIT, ensures the design and planning of policies in the field of tax and customs inspection action.

2 - The DSPCIT, within the scope of its attributions, is responsible, namely:

- a) To prepare, annually, the project of the National Plan for Tax and Customs Inspection Activities (PNAITA), to coordinate the elaboration of regional activity plans of the different organic units of the area of tax and customs inspection and control the execution of said plans;
- b) Prepare the report of activities in the area of tax and customs inspection;
- c) Design, test, operationally manage and propose changes to the information systems used by the tax and customs inspection area;

<sup>306</sup> DL No. 118/2011 of December 15 Tax And Customs Authority.

<sup>307</sup> **Artigo 19.º Direção de Serviços de Planeamento e Coordenação da Inspeção Tributária Portaria n.º 320-A/2011, de 30 de Dezembro Estrutura Nuclear Da Autoridade Tributária E Aduaneira (AT)**

1 - A Direção de Serviços de Planeamento e Coordenação da Inspeção Tributária, abreviadamente designada por DSPCIT, assegura a conceção e planeamento das políticas no domínio do exercício da ação de inspeção tributária e aduaneira.

2 - À DSPCIT, no âmbito das suas atribuições, compete, designadamente:

- a) Elaborar, anualmente, o projeto do Plano Nacional de Atividades da Inspeção Tributária e Aduaneira (PNAITA), coordenar a elaboração dos planos regionais de atividade das diferentes unidades orgânicas da área da inspeção tributária e aduaneira e controlar a execução dos referidos planos;
- b) Elaborar o relatório de atividades da área da inspeção tributária e aduaneira;
- c) Conceber, testar, gerir operacionalmente e propor alterações aos sistemas de informação utilizados pela área da inspeção tributária e aduaneira;
- d) Promover programas de inspeção, tendo em vista áreas de risco previamente identificadas e elaborar os respetivos manuais a usar pelas diferentes unidades orgânicas com competências de inspeção tributária e aduaneira;
- e) Definir procedimentos técnicos de inspeção a adotar pelas diferentes unidades orgânicas com competências de inspeção e pesquisar temas, assuntos e questões relevantes para a respetiva intervenção;
- f) Definir modelos e métodos de pesquisa, inventariação e análise da informação a adotar pelas diferentes unidades orgânicas com competências de inspeção e harmonizar os procedimentos de seleção de contribuintes a controlar;
- g) Promover a seleção de contribuintes e ações de vigilância e fiscalização aduaneira;
- h) Gerir a troca de informações com países comunitários e com países terceiros com os quais Portugal tenha celebrado convenções sobre dupla tributação;
- i) Conceber e atualizar modelos declarativos;
- j) Elaborar pareceres e realizar estudos e trabalhos técnicos relacionados com a respetiva área de intervenção sempre que tal lhe seja solicitado;
- k) Estudar e propor medidas legislativas e regulamentares;
- l) Propor e acompanhar o ciclo de vida dos sistemas de informação, de acordo com a metodologia em vigor;
- m) Assegurar o funcionamento do sistema «e-fatura» e do sistema de gestão do documento eletrónico de transporte.

- d) Promote inspection programs, with a view to previously identified risk areas and prepare the respective manuals to be used by the different organic units with tax and customs inspection powers;
- e) Define technical inspection procedures to be adopted by the different organizational units with inspection powers and research topics, subjects and issues relevant to the respective intervention;
- f) Define models and methods of research, inventory and analysis of information to be adopted by the different organizational units with inspection powers and harmonise the procedures for selecting taxpayers to be controlled;
- g) Promote the selection of taxpayers and customs surveillance and inspection actions;
- h) Manage the exchange of information with EU countries and with third countries with which Portugal has signed double taxation conventions;
- i) Design and update declarative models;
- j) Prepare opinions and carry out studies and technical work related to the respective area of intervention whenever requested;
- k) Study and propose legislative and regulatory measures;
- l) Propose and monitor the life cycle of information systems, in accordance with the methodology in force;
- m) Ensure the operation of the “e-invoice” system and the electronic transport document management system.

**Article 20<sup>308</sup> Customs Anti-Fraud Services Department 1** - The Customs Anti-Fraud Services Directorate, abbreviated as DSAFA, prepares and develops strategic actions to

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**308 Artigo 20.º Direção de Serviços Antifraude Aduaneira Portaria n.º 320-A/2011, de 30 de Dezembro Estrutura Nuclear Da Autoridade Tributária E Aduaneira (AT)**

1 - A Direção de Serviços Antifraude Aduaneira, abreviadamente designada por DSAFA, prepara e desenvolve as ações estratégicas de combate à fraude tributária e aduaneira e assegura a articulação e colaboração com outras entidades com competências inspetivas.

2 - À DSAFA, no âmbito das suas atribuições, compete, designadamente:

- a) Centralizar e proceder ao tratamento integrado de dados aduaneiros e fiscais, de natureza estratégica, necessários à definição das medidas de política de prevenção e repressão da fraude;
- b) Centralizar e proceder ao tratamento integrado de informações de natureza tática ou operacional, tendo em vista a prevenção e repressão da fraude aduaneira e fiscal, designadamente no tráfico de mercadorias cuja comercialização está sujeita a medidas proibitivas ou restritivas, difundindo essas informações, diretamente, pelos serviços operacionais e desconcentrados, por forma a orientar a sua atividade;
- c) Centralizar o tratamento da informação relativa aos controlos, fraudes e irregularidades a fornecer aos serviços da Comissão, nos termos da legislação comunitária;
- d) Gerir a informação relativa aos movimentos de dinheiro líquido na fronteira externa da União Europeia, bem como os movimentos intracomunitários;
- e) Centralizar e difundir a informação no âmbito dos sistemas antifraude nacionais, comunitários e internacionais, de acordo com as normas estabelecidas para cada uma das respetivas aplicações;
- f) Emitir parecer e coordenar as ações necessárias à execução dos acordos de cooperação aduaneira e assistência mútua administrativa de âmbito comunitário e internacional, com incidência direta na prevenção e repressão da fraude aduaneira e fiscal;



combat tax and customs fraud and ensures articulation and collaboration with other entities with inspection powers.

2 - Within the scope of its attributions, DSAFA is responsible, namely:

- a) To centralize and proceed with the integrated processing of customs and fiscal data, of a strategic nature, necessary for the definition of policy measures for the prevention and repression of fraud;
- b) Centralize and proceed with the integrated processing of information of a tactical or operational nature, with a view to preventing and repressing customs and tax fraud, namely in the traffic of goods whose marketing is subject to prohibitive or restrictive measures, disseminating this information directly, by operational and decentralized services, in order to guide their activity;
- c) Centralize the processing of information on controls, fraud and irregularities to be provided to the Commission services, in accordance with Community legislation;
- d) Manage information on cash movements at the European Union's external border, as well as intra-community movements;
- e) Centralize and disseminate information within the scope of national, community and international anti-fraud systems, in accordance with the rules established for each of the respective applications;
- f) Issuing an opinion and coordinating the actions necessary for the execution of customs cooperation and mutual administrative assistance agreements at a community and international level, with a direct impact on the prevention and suppression of customs and tax fraud;
- g) Promoting administrative cooperation between AT and other public or private entities, with a view to the regular exchange of information relating to the fight against fraud;

g) Promover a cooperação administrativa entre a AT e outras entidades públicas ou privadas, tendo em vista a troca regular de informações relativas à luta antifraude;

h) Executar o plano nacional de inspeção e fiscalização aduaneira (PNAITA na vertente aduaneira), ações de vigilância e de fiscalização aduaneira e tributária bem como quaisquer outras atividades operacionais, incluindo as ações de controlo relacionadas com os financiamentos concedidos no âmbito da política agrícola comum;

i) Promover a operacionalização e a otimização de equipamentos de controlo não intrusivo, no exercício do controlo de mercadorias e de meios de transporte, na fronteira externa;

j) Assegurar a execução de diligências de investigação no quadro dos atos de inquérito, nos termos dos artigos 40.º e 41.º do Regime Geral das Infrações Tributárias (RGIT);

k) Promover e coordenar os contactos necessários, no plano nacional, comunitário e internacional, com as entidades competentes, no âmbito da assistência mútua, de investigações e diligências relativas a processos-crime de natureza aduaneira e fiscal, garantindo a necessária articulação com os serviços desconcentrados no mesmo domínio;

l) Colaborar com os organismos competentes, nacionais ou internacionais, na aplicação de normas relativas à comercialização de estupefacientes e de substâncias psicotrópicas e dos respetivos precursores, bem como dos produtos estratégicos;

m) Assegurar a interligação com as alfândegas na área antifraude aduaneira e dos impostos especiais sobre o consumo, coordenando e apoiando a respetiva atividade.

- h) Execute the national customs inspection and inspection plan (PNAITA in the customs area), surveillance and customs and tax inspection actions, as well as any other operational activities, including control actions related to the funding granted under the common agricultural policy;
- i) Promote the operation and optimization of non-intrusive control equipment, in the exercise of control of goods and means of transport, at the external border;
- j) Ensuring the execution of investigative measures within the framework of acts of inquiry, under the terms of Articles 40 and 41 of the General Regime for Tax Infractions (RGIT);
- k) Promoting and coordinating the necessary contacts, at national, community and international levels, with the competent authorities, in the context of mutual assistance, investigations and proceedings relating to criminal proceedings of a customs and fiscal nature, ensuring the necessary articulation with the services deconcentrated in the same domain;
- l) Collaborate with the competent national or international bodies in the application of rules relating to the marketing of narcotic drugs and psychotropic substances and their precursors, as well as strategic products;
- m) Ensure interconnection with customs in the area of customs **anti-fraud and excise duties, coordinating and supporting the respective activity.**

**Article 21<sup>309</sup> Fraud Investigation and Special Actions Department 1** - The Department of Fraud Investigation and Special Actions Services, abbreviated as DSIFAE, prepares and develops strategic actions to combat fraud and tax evasion, as well as ensures articulation and collaboration with other entities with inspection powers.

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<sup>309</sup> **Artigo 21.º Direção de Serviços de Investigação da Fraude e de Ações Especiais Portaria n.º 320-A/2011, de 30 de Dezembro Estrutura Nuclear Da Autoridade Tributária E Aduaneira (AT)**

1 - A Direção de Serviços de Investigação da Fraude e de Ações Especiais, abreviadamente designada por DSIFAE, prepara e desenvolve as ações estratégicas de combate à fraude e evasão tributárias, bem como assegura a articulação e colaboração com outras entidades com competências inspetivas.

2 - À DSIFAE, no âmbito das suas atribuições, compete, designadamente:

- a) Estudar e propor estratégias de luta contra a evasão e fraude fiscais;
- b) Promover a cooperação com entidades públicas ou privadas que disponham de informação relevante;
- c) Centralizar e tratar a informação relativa aos diversos tipos de evasão e fraude tributárias;
- d) Cooperar com outros serviços e entidades com competências inspetivas ou de investigação criminal vocacionadas para a deteção e controlo da evasão e fraude tributárias;
- e) Apurar a situação tributária dos contribuintes, em particular na averiguação de denúncias ou participações e na obtenção de provas relativamente a eventuais crimes tributários, quando existam indícios de evasão e fraude tributárias, por omissão de declarações, inexistência, viciação ou ocultação da contabilidade, de documentos ou de outros elementos de suporte de factos tributários presumivelmente ocorridos;
- f) Coordenar, a nível da área da inspeção tributária, a prestação de apoio técnico aos tribunais, bem como cooperar com a Polícia Judiciária, no acesso e tratamento da informação de natureza tributária e aduaneira utilizando técnicas de auditoria informática e de obtenção de evidências digitais;
- g) Gerir, em colaboração com a DSIVA, o sistema Vat Information Exchange System (VIES);
- h) Gerir o programa comunitário Fiscalis, assegurando os compromissos assumidos perante a Comissão Europeia ou os restantes Estados membros da União Europeia;

2 - DSIFAE, within the scope of its attributions, is responsible, namely:

- a) To study and propose strategies to fight tax evasion and fraud;
- b) Promote cooperation with public or private entities that have relevant information;
- c) Centralize and process information on the various types of tax evasion and fraud;
- d) Cooperate with other services and entities with inspection or criminal investigation powers aimed at detecting and controlling tax evasion and fraud;
- e) Investigate the tax situation of taxpayers, in particular in the investigation of complaints or participations and in obtaining evidence regarding possible tax crimes, when there are indications of tax evasion and tax fraud, omission of declarations, non-existence, tampering or concealment of accounting, of documents or other supporting elements of tax facts presumably occurred;
- f) Coordinate, in the area of tax inspection, the provision of technical support to the courts, as well as cooperate with the Judiciary Police, in accessing and processing tax and customs information using computer auditing techniques and obtaining digital evidence;
- g) Manage, in collaboration with DSIVA, the Vat Information Exchange System (VIES);
- h) Manage the Fiscalis community programme, ensuring the commitments assumed before the European Commission or the other Member States of the European Union;
- i) Ensure administrative cooperation and mutual assistance between European Union Member States through Presence in Administrative Services and Participation in Administrative Investigations, Simultaneous Controls and the Eurofisc Network, in accordance with Regulation (EU) No. 904/2010, of October 7, 2010, as well as, when applicable, in Decree-Law no. 61/2013, of May 10;
- j) Initiate and instruct investigation processes, under the terms of Articles 40 and 41 of the RGIT.

## (2) Anti-dumping area

If the evasion of anti-dumping duties or falsified products are concerned the Decree-Law No. 360/2007, of 2 November<sup>310</sup> may apply.

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i) Assegurar a cooperação administrativa e assistência mútua entre os Estados membros da União Europeia através da Presença nos Serviços Administrativos e Participação nos Inquéritos Administrativos, dos Controlos Simultâneos e da Rede Eurofisc, nos termos previstos no Regulamento (UE) n.º 904/2010, de 7 de outubro de 2010, bem como, quando aplicável, no Decreto-Lei n.º 61/2013, de 10 de maio;

j) Instaurar e instruir processos de inquérito, nos termos dos artigos 40.º e 41.º do RGIT.

<sup>310</sup> See DL n.º 360/2007, de 02 de Novembro, Reformula os procedimentos relativos à intervenção das autoridades aduaneiras em relação a mercadorias suspeitas de violarem certos direitos de propriedade intelectual, dando execução ao Regulamento (CE) n.º 1383/2003, do Conselho, de 22 de Julho, e procede à segunda alteração ao Código da Propriedade Industrial, aprovado pelo Decreto-Lei n.º 36/2003, de 5 de Março/It reformulates the procedures for the intervention of customs authorities in relation to goods suspected of violating certain intellectual property rights, implementing Council Regulation (EC) No. 1383/2003, of 22 July, and makes the second amendment to the Industrial Property Code, approved by Decree-Law no. 36/2003, of 5 March.

**f) National law and “checks and inspections” of OLAF**

**aa. Administrative procedure in general**

- 25** In this area the Criminal Investigation Organisation Act (“*Lei de Organização da Investigação Criminal*”) will not be applicable as it is limited to criminal investigations. Thus, the administrative codes must be determined and researched for provisions alike in administrative matters with the aim of discovering irregularities.
- 26** The Law No. 15/2001, of June 5<sup>th</sup> General Regime for Tax Offences contains provisions on tax offences proceedings, which according to Art. 52 of this law means “the application of fines and ancillary sanctions”. These kinds of actions must be distinguished from the criminal tax proceedings, which are stipulated by Art. 35–50 of this law and can only be conducted by criminal investigative bodies or evocated as well as initiated by the EDPs in case of suspicion for an EU fraud offence (for the EPPO investigations see above → Part A and B).

**bb. Special administrative powers and provisions in certain areas of revenue and expenditure**

**(1) Administrative provisions in the area of customs duties and VAT= revenue**

**(a) Administrative provisions**

- 27** In the area of customs management, the following provisions will apply:
- Circulated letters of the Customs Management Area
  - Licensing Services Directorate (DSL)
  - Customs Regulatory Services Directorate (DSRA)
  - Customs Taxation Services Directorate (DSTA)
- 28** Irregularities and potential fraud with the exemption of VAT might occur. The products, which are really exempt from VAT are enshrined in “Decree-Law No. 31/89” “Exempt from value added tax on imports of certain goods”<sup>311</sup>.
- 29** In the area of VAT irregularities, it is important to keep an eye on the relevant books and obligations to create log books as these may be accessible within the powers of the national partners of OLAF and eventually may constitute evidence (in an OLAF Report):

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<sup>311</sup> Decreto-Lei n.º 31/89 isenta de imposto sobre o valor acrescentado as importações de determinados bens.

**Article 50 VAT Code<sup>312</sup> Record books**

1 - Taxpayers who do not fall within the special regimes provided for in Section IV of this chapter or who do not have organised accounts in accordance with the IRS or IRC Code, shall use the following registration books in order to comply with the requirements of paragraphs 1 of Articles 45 and 48

(a) Goods purchase registration book and or raw materials and consumption registration book;

b) Goods sales logbook and/or manufactured products logbook

c) Registration book of services rendered;

d) Book for recording expenses and transactions related to investment goods

e) Goods, raw materials and consumables registration book, manufactured products and other stocks as at 31 December of each year.

2 - Taxpayers who are not obliged to keep organised accounts for IRS or IRC purposes but who have an accounting system that meets the appropriate requirements for the correct assessment and supervision of the tax may not use the books referred to in paragraph 1, and all the rules of this Code relating to those who keep organised accounts for income tax purposes will apply to them, without prejudice to their being able to benefit from the special exemption regime, provided that the other conditions of Article 53 are met

3 - Taxpayers or their representative associations may adopt record books of a different model from the approved one, adapted to the specific nature of their activities, provided that they are suitable for the correct assessment and monitoring of tax.

4 - The Directorate-General of Taxation may at any time oblige the taxpayers referred to in paragraphs 2 and 3 to adopt the books mentioned in paragraph 1.

<sup>312</sup> **Artigo 50.º Livros de registo Decreto-Lei n.º 102/2008**

1 - Os sujeitos passivos não enquadrados nos regimes especiais previstos na secção iv do presente capítulo ou que não possuam contabilidade organizada nos termos do Código do IRS ou do IRC utilizam, para cumprimento das exigências constantes dos n.os 1 dos artigos 45.º e 48.º, os seguintes livros de registo:

a) Livro de registo de compras de mercadorias e ou livro de registo de matérias-primas e de consumo;

b) Livro de registo de vendas de mercadorias e ou livro de registo de produtos fabricados;

c) Livro de registo de serviços prestados;

d) Livro de registo de despesas e de operações ligadas a bens de investimento;

e) Livro de registo de mercadorias, matérias-primas e de consumo, de produtos fabricados e outras existências à data de 31 de Dezembro de cada ano.

2 - Os sujeitos passivos que, não sendo obrigados a possuir contabilidade organizada para efeitos do IRS ou IRC, possuam, no entanto, um sistema de contabilidade que satisfaça os requisitos adequados ao correcto apuramento e fiscalização do imposto podem não utilizar os livros referidos no n.º 1, aplicando-se aos referidos sujeitos passivos todas as normas constantes do presente Código relativas àqueles que possuam contabilidade organizada para efeitos dos impostos sobre o rendimento, sem prejuízo de poderem beneficiar do regime especial de isenção, desde que preenchidas as demais condições previstas no artigo 53.º

3 - Os sujeitos passivos ou as suas associações representativas podem adoptar livros de registo de modelo diferente do aprovado, adaptados à especificidade das suas actividades, desde que adequados ao correcto apuramento e fiscalização do imposto.

4 - A Direcção-Geral dos Impostos pode em qualquer altura obrigar os sujeitos passivos referidos nos n.os 2 e 3 a adoptar os livros mencionados no n.º 1.

5 - Os livros a que se referem os n.os 2 e 3 do artigo 116.º do Código do IRS substituem os livros referidos no presente artigo.

5 - The books referred to in paragraphs 2 and 3 of Article 116 of the IRS Code replace the books mentioned in this Article.

**(b) Principle of investigation (General Tax Code)**

31 The principle of investigation around customs duties irregularities is enshrined in the tax and the customs code as well as the circulars.

**(c) External audit (General Tax Code/Customs Code)**

32 The normal audit or inspection is determined by Art. 63 of the General Tax Code:

**Article 63<sup>313</sup> Inspection 1** - The competent bodies may, under the terms of the law, carry out all the necessary steps to determine the tax situation of taxpayers, namely:

**<sup>313</sup> Artigo 63.º Lei Geral Tributária Inspeção**

1 - Os órgãos competentes podem, nos termos da lei, desenvolver todas as diligências necessárias ao apuramento da situação tributária dos contribuintes, nomeadamente:

- a) Aceder livremente às instalações ou locais onde possam existir elementos relacionados com a sua actividade ou com a dos demais obrigados fiscais;
- b) Examinar e visar os seus livros e registos da contabilidade ou escrituração, bem como todos os elementos susceptíveis de esclarecer a sua situação tributária;
- c) Aceder, consultar e testar o seu sistema informático, incluindo a documentação sobre a sua análise, programação e execução;
- d) Solicitar a colaboração de quaisquer entidades públicas necessária ao apuramento da sua situação tributária ou de terceiros com quem mantenham relações económicas;
- e) Requisitar documentos dos notários, conservadores e outras entidades oficiais;
- f) Utilizar as suas instalações quando a utilização for necessária ao exercício da acção inspectiva.

2 - O acesso à informação protegida pelo segredo profissional ou qualquer outro dever de sigilo legalmente regulado depende de autorização judicial, nos termos da legislação aplicável.

3 - Sem prejuízo do número anterior, o acesso à informação protegida pelo sigilo bancário e pelo sigilo previsto no Regime Jurídico do Contrato de Seguro faz-se nos termos previstos nos artigos 63.º-A, 63.º-B e 63.º-C.

4 - O procedimento da inspeção e os deveres de cooperação são os adequados e proporcionais aos objetivos a prosseguir, só podendo haver mais de um procedimento externo de fiscalização respeitante ao mesmo sujeito passivo ou obrigado tributário, imposto e período de tributação mediante decisão, fundamentada com base em factos novos, do dirigente máximo do serviço, salvo se o procedimento visar apenas a consulta, recolha de documentos ou elementos ou a confirmação dos pressupostos de direitos que o contribuinte invoque perante a administração tributária e sem prejuízo do apuramento da situação tributária do sujeito passivo por meio de inspeção ou inspeções dirigidas a terceiros com quem mantenha relações económicas.

5 - A falta de cooperação na realização das diligências previstas no n.º 1 só será legítima quando as mesmas impliquem:

- a) O acesso à habitação do contribuinte;
- b) A consulta de elementos abrangidos pelo segredo profissional ou outro dever de sigilo legalmente regulado, com exceção do segredo bancário e do sigilo previsto no Regime Jurídico do Contrato de Seguro, realizada nos termos do n.º 3;
- c) O acesso a factos da vida íntima dos cidadãos;
- d) A violação dos direitos de personalidade e outros direitos, liberdades e garantias dos cidadãos, nos termos e limites previstos na Constituição e na lei.

6 - Em caso de oposição do contribuinte com fundamento nalgumas circunstâncias referidas no número anterior, a diligência só poderá ser realizada mediante autorização concedida pelo tribunal da comarca competente com base em pedido fundamentado da administração tributária.

7 - A notificação das instituições de crédito, sociedades financeiras e demais entidades, para efeitos de permitirem o acesso a elementos cobertos pelo sigilo a que estejam vinculados quando a administração tributária exija fundamentadamente a sua derrogação, deve ser instruída com os seguintes elementos:

- a) Free access to facilities or places where there may be elements related to their activity or to that of other tax obligors;
- b) Examine and review their accounting or bookkeeping books and records, as well as all elements likely to clarify their tax situation;
- c) Access, consult and test your computer system, including documentation on its analysis, programming and execution;
- d) Request the collaboration of any public entities necessary for the determination of its tax situation or of third parties with whom it maintains economic relations;
- e) Request documents from notaries, registrars and other official entities;
- f) Use its facilities when the use is necessary to carry out the inspection.

2 - Access to information protected by professional secrecy or any other legally regulated duty of secrecy depends on judicial authorization, under the terms of applicable legislation.

3 - Without prejudice to the previous number, access to information protected by bank secrecy and by the secrecy provided for in the Legal Regime of the Insurance Contract is made under the terms set out in Articles 63-A, 63-B and 63-C.

4 - The inspection procedure and the duties of cooperation are adequate and proportionate to the objectives to be pursued, and there can only be more than one external inspection procedure concerning the same taxable person or taxable person, tax and tax period by means of a decision, based on based on new facts, of the top manager of the service, unless the procedure is aimed only at consultation, collection of documents or elements or confirmation of the assumptions of rights that the taxpayer invokes before the tax administration and without prejudice to the determination of the tax situation of the subject liability through inspection or inspections directed at third parties with whom it maintains economic relations.

5 - The lack of cooperation in carrying out the steps provided for in paragraph 1 will only be legitimate when they imply:

- a) Access to the taxpayer's housing;
- b) Consultation of elements covered by professional secrecy or another legally regulated duty of secrecy, with the exception of banking secrecy and secrecy provided for in the Legal Regime of the Insurance Contract, carried out under the terms of paragraph 3;
- c) Access to facts about the intimate life of citizens;

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a) Nos casos de acesso directo, cópia da decisão fundamentada proferida pelo director-geral dos Impostos ou pelo director-geral das Alfândegas e dos Impostos Especiais sobre o Consumo, nos termos do n.º 4 do artigo 63.º-B;

b) Nos casos de acesso directo com audição prévia obrigatória do sujeito passivo ou de familiares ou terceiros que se encontrem numa relação especial com o contribuinte, prevista no n.º 5 do artigo 63.º-B, cópia da decisão fundamentada proferida pelo director-geral dos Impostos ou pelo director-geral das Alfândegas e dos Impostos Especiais sobre o Consumo e cópia da notificação dirigida para o efeito de assegurar a referida audição prévia.

8 - As instituições de crédito, sociedades financeiras e demais entidades devem cumprir as obrigações relativas ao acesso a elementos cobertos pelo sigilo a que estejam vinculadas no prazo de 10 dias úteis.

d) Violation of personality rights and other rights, freedoms and guarantees of citizens, under the terms and limits provided for in the Constitution and the law.

6 - In case of opposition by the taxpayer based on some of the circumstances mentioned in the previous number, the diligence can only be carried out with an authorization granted by the court of the competent district based on a reasoned request from the tax administration.

7 - The notification of credit institutions, financial companies and other entities, for the purposes of allowing access to elements covered by the secrecy to which they are bound when the tax administration justifiably requires their derogation, must be accompanied by the following elements:

a) In the case of direct access, copy of the reasoned decision issued by the Director-General of Taxation or by the Director-General of Customs and Special Consumption Taxes, pursuant to paragraph 4 of Article 63-B;

b) In cases of direct access with mandatory prior hearing of the taxable person or family members or third parties who are in a special relationship with the taxpayer, provided for in paragraph 5 of Article 63-B, copy of the reasoned decision given by the director-general of Taxes or by the director-general of Customs and Special Consumption Taxes and copy of the notification addressed for the purpose of ensuring the aforementioned prior hearing.

8 - Credit institutions, financial companies and other entities must comply with the obligations relating to access to elements covered by secrecy to which they are bound within 10 working days.

**(d) Fiscal supervision in both areas**

**33** The fiscal supervision in the area of customs duties irregularities and VAT irregularities as well as potential frauds lies with the Ministry of Finance of Portugal, which as well hosts the national AFCOS (see Art. 12a below).

**(2) Administrative provisions in the area of structural funds and internal policies (interne Politiken) = expenditure**

**34** In the area of structural funds, the National anti-fraud strategy designers have referred to a Manual of OLAF, which can be of help in order to discover irregularities in the financed areas.<sup>314</sup>

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<sup>314</sup> See OLAF, Manual O papel dos auditores dos Estados-Membros na prevenção e de-teção da fraude no âmbito dos Fundos Europeus Estruturais e de Investimento da UE Experiência e prática dos Estados-Membros, <https://poise.portugal2020.pt/documents/10180/19827/O+Papel+dos+Auditores+dos+Estados-Membros+na+Preven%C3%A7%C3%A3o+e+Dete%C3%A7%C3%A3o+da+Fraude.pdf/88786206-4851-4530-ba29-7b1f9f4f6ef6>. Accessed 23 January 2024



**(a) Structural funds**

In 2022, 15 cases within this area were reported to have irregularities and all of them are, if the irregularities constitute a criminal suspicion, investigated by the Central Department of Investigation and Criminal Action and eventually the EPPO (see above Part A in this Chapter, Art. 26 and 27 EPPO Regulation).<sup>315</sup> The situation with structural funds is regulated by different Decree-Laws.<sup>316</sup> The current situation has been facing legislative changes in the past years.<sup>317</sup> For example the Mutual Counter-Guarantee Fund was changed in 2022.<sup>318</sup> 35

The following Decree Laws and provisions are examples for this area: 36

- Budget Framework Law 37
  - Title V Execution of the State Budget and Budget Review and Amendment Process, Chapter I General Regime of Budget Execution, Section I Principles of Budget Execution, Article 52 General principles of revenue and expenditure, **Art. 53 Competence**
  - Title VI Accounting, reporting, control and transparency, Chapter III Control and Responsibilities **Art. 68 (budget execution control) et seq.**
- Decree-Law 54A/2000
- Decree-Law No. 137/2014 of 12 September
- Decree Law No. 159/2014 Establishes the general rules for the implementation of operational programmes and rural development programmes financed by the European structural and investment funds, for the 2014–2020 programming period<sup>319</sup>.

Decree Law no. 159/2014 stipulates Eligibility criteria for beneficiaries in Article 13: 38

**Article 13<sup>320</sup> Eligibility criteria for beneficiaries** Beneficiaries shall declare or provide evidence, if notified, that, where applicable depending on the nature of the beneficiary, 39

<sup>315</sup> See Silveiras 2022, <https://eco.sapo.pt/especiais/ministerio-publico-investiga-15-casos-de-fraude-com-fundos-comunitarios/>: “*Há duas formas de ‘fiscalizar’ os fundos estruturais, sistematiza o antigo diretor-geral do Desenvolvimento Regional: “através dos inputs/despesas ou através dos outputs/resultados”. “A solução tradicional é de fiscalizar os inputs (faturas, recibos, timesheets, contratos, folhas de ordenados, etc), dando implicitamente menos importância à necessidade de atingir resultados desde que o dinheiro ‘tenha sido bem aplicado’”, diz ao ECO Luís Madureira Pires.*”

<sup>316</sup> See <https://sgmj.justica.gov.pt/Servicos/Fundos-europeus/Programas-europeus>. Accessed 23 January 2024.

<sup>317</sup> See for Transparency, potential beneficiaries etc. <https://transparencia.gov.pt/pt/>. Accessed 23 January 2024.

<sup>318</sup> Decreto-Lei n.º 12/2022, de 12 de janeiro Altera o Fundo de Contragarantia Mútuo.

<sup>319</sup> Decreto-Lei n.º 159/2014 Estabelece as regras gerais de aplicação dos pro-gramas operacionais e dos programas de desenvolvimento rural financiados pe-los fundos europeus estruturais e de investimento, para o período de programação 2014-2020.

<sup>320</sup> **Artigo 13.º Critérios de elegibilidade dos beneficiários**

Os beneficiários devem declarar ou comprovar, se para tanto forem notificados, que cumprem, quando aplicável em função da natureza do beneficiário, do apoio ou da medida, a determinar em regulamentação específica, e sem prejuízo de outros previstos na legislação europeia ou na regulamentação específica aplicáveis, os seguintes critérios:

a) Estarem legalmente constituídos;

the support or the measure, to be determined in specific regulations, and without prejudice to others provided for by applicable European legislation or specific regulations, they fulfil the following criteria

- a) To be legally constituted;
- b) To have fulfilled its tax and social security obligations, respectively, towards the tax and social security authorities, to be verified at the time of signing the acceptance document, without prejudice to the definition of a different moment in specific regulations applicable to EAFRD and to EMFF
- c) To be legally able to develop their activities in the territory covered by the OP or RDP and by the type of operations and investments they are applying for
- d) To possess, or be able to assure until the application is approved, the technical, physical and financial means and human resources necessary for the development of the operation
- e) To have fulfilled all obligations related to the recovery of taxes and contributions, within the scope of the ESIF financing
- f) To have a balanced economic and financial situation or to demonstrate that they have the capacity to finance the operation
- g) Not to have submitted the same application, within the framework of which the decision process is still ongoing or where the decision on the application for funding has been favourable, except in situations where the application has been withdrawn
- h) To be certified, within the scope of the ESF, or to use certified training entities, whenever this is required under the terms of paragraphs 3 to 5 of Article 12
- i) They do not own or have owned more than 50% of the capital, by themselves or by their spouse not separated from people and goods, or by their ascendants and descend-

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- b) Terem a situação tributária e contributiva regularizada perante, respetivamente, a administração fiscal e a segurança social, a verificar até ao momento da assinatura do termo de aceitação, sem prejuízo de em regulamentação específica aplicável ao FEADER e ao FEAMP se definir momento distinto;
  - c) Poderem legalmente desenvolver as atividades no território abrangido pelo PO ou PDR e pela tipologia das operações e investimentos a que se candidatam;
  - d) Possuírem, ou poderem assegurar até à aprovação da candidatura, os meios técnicos, físicos e financeiros e os recursos humanos necessários ao desenvolvimento da operação;
  - e) Terem a situação regularizada em matéria de reposições, no âmbito dos financiamentos dos FEEI;
  - f) Apresentarem uma situação económico-financeira equilibrada ou demonstrarem ter capacidade de financiamento da operação;
  - g) Não terem apresentado a mesma candidatura, no âmbito da qual ainda esteja a decorrer o processo de decisão ou em que a decisão sobre o pedido de financiamento tenha sido favorável, exceto nas situações em que tenha sido apresentada desistência;
  - h) Encontrarem-se, no âmbito do FSE, certificados ou recorrerem a entidades formadoras certificadas, quando tal seja exigível nos termos dos n.os 3 a 5 do artigo 12.º;
  - i) Não deterem nem terem detido capital numa percentagem superior a 50 %, por si ou pelo seu cônjuge, não separado de pessoas e bens, ou pelos seus ascendentes e descendentes até ao 1.º grau, bem como por aquele que consigo viva em condições análogas às dos cônjuges, em empresa que não tenha cumprido notificação para devolução de apoios no âmbito de uma operação apoiada por fundos europeus.

ants up to the 1st degree, as well as by the person who lives with them in similar conditions as the spouses, in a company that has not served a notification for returning support within the scope of an operation supported by European funds.

Table 6: Structural funds and national administrative authorities – Cohesion policy acc. to the CF Regulation in Portugal (2021–2027)

Fund	Allocations for Portugal	Managing Authority
The European Regional Development Fund (ERDF) – includes European Territorial Cooperation (Interreg)	Total EU Allocations for Portugal: 11 497 million euros <sup>321</sup>	Agency for Development and Cohesion, I.P.
Just Transition fund	Total EU Allocations for Portugal: 223,8 million euros <sup>322</sup>	/
European Social Fund Plus (ESF+)	Total EU Allocations for Portugal: 7 777 million euros <sup>323</sup>	<b>(For ESF)</b> Agency for Development and Cohesion, I.P.
European Maritime, Fisheries and Aquaculture Fund (EMFAF)	Total EU Allocations for Portugal: 393 million euros	Agency for Development and Cohesion, I.P.
Asylum, Migration and Integration Fund (AMIF)	Total EU Allocations for Portugal: approx. 70 million euros	Coordinated jointly by the General Secretary of the Ministry of Internal Affairs’ delegated authority for AMIF, the High Commission for Migration, and the Immigration and Borders Service.
Internal Security Fund (ISF)	Total EU Allocations for Portugal: approx. 41,4 million euros	/

<sup>321</sup> Breakdown of Cohesion Policy allocations per Member State by the European Commission, see [https://ec.europa.eu/info/sites/default/files/about\\_the\\_european\\_commission/eu\\_budget/cohesion\\_policy.pdf](https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/cohesion_policy.pdf). Accessed 23 January 2024.

<sup>322</sup> Website of the European Commission on the Cohesion policy, see <https://cohesiondata.ec.europa.eu/stories/s/2021-2027-EU-allocations-available-for-programming/2w8s-ci3y/>. Accessed 23 January 2024.

<sup>323</sup> Breakdown of Cohesion Policy allocations per Member State by the European Commission, see [https://ec.europa.eu/info/sites/default/files/about\\_the\\_european\\_commission/eu\\_budget/cohesion\\_policy.pdf](https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/cohesion_policy.pdf). Accessed 23 January 2024.

Border Management and Visa Instrument (BMVI)	Total EU Allocations for Portugal: approx. 68 million euros	/
European Rural Development Fund (EAFRD) * Not part of the CF Regulation anymore (as of 2023)	EU funds for Portugal in 2021 and 2022: 353.5 million euros <sup>324</sup> EU funds for Portugal in MFF 2021–2027 program: 3 903.4 million euros <sup>325</sup>	PDR 2020 Managing Authority (mainland), PRODERAM 2020 Managing Authority (Madeira), PRORURAL+ Managing Authority (Azores) <sup>326</sup>

**(b) Internal policies**

**41** Applicable provisions for the area of internal policies can be found in the Administrative Procedure Code (Art. 115 et seq.) or the Budget Framework Law (see above → Structural funds).

**(3) Administrative provisions in the area of the common organization of the markets = expenditure**

**42** For the area of common organization of the markets the Framework Law on Environmental Contra-Ordinations, Law No. 50/2006 of 29 August can be consulted.

**(4) Administrative provisions in the area of direct expenditure**

**43** The Public Contracts Code (CCP), DL no. 18/2008 of 29 January<sup>327</sup> rules

- in Part II Public procurement, Title I Types and choice of procedures, Chapter I Types of procedures, Art. 16 – the procedures for the formation of contracts,
- in Chapter III, Art. 23 et seq. – the choice of procedure based on material criteria,
- and the Art. 36 – the decision to contract and decision to authorize the expenditure.

<sup>324</sup> Breakdown of European Agricultural Fund for Rural Development per Member State (NextGenerationEU), see [https://ec.europa.eu/info/sites/default/files/about\\_the\\_european\\_commission/eu\\_budget/eafrd\\_-\\_ngeu\\_current\\_0\\_0.pdf](https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/eafrd_-_ngeu_current_0_0.pdf). Accessed 23 January 2024.

<sup>325</sup> Breakdown of European Agricultural Fund for Rural Development per Member State (MFF), see [https://ec.europa.eu/info/sites/default/files/about\\_the\\_european\\_commission/eu\\_budget/eafrd\\_-\\_mff\\_current.pdf](https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/eafrd_-_mff_current.pdf). Accessed 23 January 2024.

<sup>326</sup> European Website on Integration, see [https://ec.europa.eu/migrant-integration/funding/national-level/funds-migrant-integration-portugal\\_en](https://ec.europa.eu/migrant-integration/funding/national-level/funds-migrant-integration-portugal_en). Accessed 23 January 2024.

<sup>327</sup> Código dos Contratos Públicos Decreto-Lei n.º 18/2008.

**cc. Investigative powers**

**(1) Investigative powers in the area of customs duties and VAT (General Tax Code)**

Frequent case examples in this area include tobacco seizures, which are suspected of evading the customs duties.<sup>328</sup>



In this area the Portuguese Customs Authority has published a manual in 2011, which indicates important administrative procedures.<sup>329</sup>

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In the area of anti-dumping duties, the Ministry of Finance and the Customs Authority have as well published a handbook, which includes important provisions on the compensation of missing duties.<sup>330</sup>

45

The General Regime of Tax Offences applies:

46

**Section II Procedure for applying fines**

**Subsection I The administrative phase**

**Article 67<sup>331</sup> Jurisdiction for the initiation and instruction**

1 - The administrative offence proceedings shall be filed at the tax service of the area where the offence was committed:

- a) By tax administrative offence, at the finance service;
- b) By customs offence, at the customs or customs office.

<sup>328</sup> See DAT, Tobacco seizure, <https://info-aduaneiro.portaldasfinancas.gov.pt/pt/noticias/Pages/noticias.aspx> (Accessed 23 January 2024); “On 03.08.2022, the Tax and Customs Authority, through its Sines Customs Delegation, seized 4,872,000 cigarettes that were sophisticatedly concealed in a container with merchandise originating in Singapore and which was unloaded at the Port of Sines, at the end of the last month of July. [...]The goods were immediately seized and the competent criminal procedure was initiated.

This intervention safeguarded the financial interests of the European Union and Portugal, as well as the preservation of public health. If cigarettes had been introduced irregularly for consumption, in addition to the high risks to public health, they would have resulted in an evasion of around 1 million Euros, of which around 900,000 € relate to IST (Tobacco Tax) and VAT.”

<sup>329</sup> MANUAL DO IVA- Vertente Aduaneira, [https://info-aduaneiro.portaldasfinancas.gov.pt/pt/legislacao\\_aduaneira/manuais\\_doelib/Documents/manual\\_iva\\_fev\\_2011.pdf](https://info-aduaneiro.portaldasfinancas.gov.pt/pt/legislacao_aduaneira/manuais_doelib/Documents/manual_iva_fev_2011.pdf). Accessed 23 January 2024.

<sup>330</sup> See MANUAL SOBRE OS DIREITOS ANTI-DUMPING E DE COMPENSAÇÃO, [https://info-aduaneiro.portaldasfinancas.gov.pt/pt/legislacao\\_aduaneira/manuais\\_doelib/Documents/Manual\\_anti\\_dumping\\_ago\\_2015.pdf](https://info-aduaneiro.portaldasfinancas.gov.pt/pt/legislacao_aduaneira/manuais_doelib/Documents/Manual_anti_dumping_ago_2015.pdf). Accessed 23 January 2024.

<sup>331</sup> **SECÇÃO II Processo de aplicação das coimas**

**SUBSECÇÃO I Da fase administrativa**

**Artigo 67.º Competência para a instauração e instrução**

1 - O processo de contra-ordenação será instaurado no serviço tributário da área onde tiver sido cometida a contra-ordenação:

- a) Por contra-ordenação fiscal, no serviço de finanças;
- b) Por contra-ordenação aduaneira, na alfândega ou delegação aduaneira.

2 - Serão instruídos pela Brigada Fiscal da Guarda Nacional Republicana os processos de contra-ordenação que resultem de autos de notícia levantados pelos seus agentes.

3 - Os documentos que sirvam de base ao processo de contra-ordenação tributário serão remetidos ao serviço tributário competente pelos autuantes e participantes ou, no caso das denúncias, por quem as tiver recebido.

2 - The Fiscal Brigade of the Guarda Nacional Republicana will be instructed in cases of administrative offences resulting from notices raised by its agents.

3 - The documents that serve as a basis for the tax administrative offence proceedings will be sent to the competent tax service by the perpetrators and participants or, in the case of complaints, by whoever received them.

**Article 68<sup>332</sup> Registration and filing of documents**

1 - Upon receiving any of the documents that serve as a basis for the tax administrative offence, the competent service proceeds with its registration and assessment.

2 - The registration will contain the serial number assigned to the process, the date of entry and the name of the person accused as an offender.

**Article 69<sup>333</sup> Investigation and instruction**

1 - The investigation and instruction in the administrative offence process are guided by the head of the competent tax service.

2 - The notice issued pursuant to Articles 57 to 59 does not require investigation and instruction in the administrative offence procedure, without prejudice to obtaining other essential elements to prove the defendant's guilt or to demonstrate your innocence.

47 The Complementary Regime of The Inspection Procedure applies as well.

**Article 2<sup>334</sup> Scope 1** - The tax inspection procedure is aimed at observing tax realities, verifying compliance with tax obligations and preventing tax offences.

<sup>332</sup> **Artigo 68.º Registo e autuação dos documentos**

1 - Recebido qualquer dos documentos que sirva de base ao processo de contra-ordenação tributário, o serviço competente procede ao seu registo e autuação.

2 - Do registo constará o número de ordem atribuído ao processo, a data de entrada e o nome do indiciado como infractor.

<sup>333</sup> **Artigo 69.º Investigação e instrução**

1 - A investigação e a instrução no processo de contra-ordenação são orientadas pelo dirigente do serviço tributário competente.

2 - O auto de notícia, levantado nos termos dos artigos 57.º a 59.º, dispensa a investigação e instrução do processo de contra-ordenação, sem prejuízo da obtenção de outros elementos indispensáveis para a prova da culpabilidade do arguido ou para demonstrar a sua inocência.

<sup>334</sup> **Artigo 2.º Âmbito**

1 - O procedimento de inspecção tributária visa a observação das realidades tributárias, a verificação do cumprimento das obrigações tributárias e a prevenção das infracções tributárias.

2 - Para efeitos do número anterior, a inspecção tributária compreende as seguintes actuações da administração tributária:

- a) A confirmação dos elementos declarados pelos sujeitos passivos e demais obrigados tributários;
- b) A indagação de factos tributários não declarados pelos sujeitos passivos e demais obrigados tributários;
- c) A inventariação e avaliação de bens, móveis ou imóveis, para fins de controlo do cumprimento das obrigações tributárias;
- d) A prestação de informações oficiais, em matéria de facto, nos processos de reclamação e impugnação judicial dos actos tributários ou de recurso contencioso de actos administrativos em questões tributárias;
- e) O esclarecimento e a orientação dos sujeitos passivos e demais obrigados tributários sobre o cumprimento dos seus deveres perante a administração fiscal;

2 - For the purposes of the previous number, tax inspection includes the following actions by the tax administration:

- a) Confirmation of the elements declared by taxpayers and other taxpayers;
- b) The investigation of tax facts not declared by taxable persons and other taxpayers;
- c) Inventorying and valuation of goods, movable or immovable, for the purpose of controlling compliance with tax obligations;
- d) The provision of official information, in matters of fact, in the processes of claim and judicial challenge of tax acts or contentious appeal of administrative acts in tax matters;
- e) Clarification and guidance for taxpayers and other taxpayers on the fulfilment of their duties before the tax administration;
- f) Carrying out individual, sectoral or territorial studies on the behaviour of taxpayers and other taxpayers and the evolution of the economic sectors in which their activity operates;
- g) Carrying out technical expertise or examinations of any nature taking into account the purposes referred to in paragraph 1;
- h) Information on the factual assumptions of tax benefits that depend on the granting or recognition of the tax administration, or on rights that the taxable person, other taxpayers and other interested parties invoke before the latter;
- i) The promotion, under the terms of the law, of sanctioning tax offences;
- j) Cooperation under the terms of international conventions or community regulations, within the scope of preventing and repressing evasion and fraud;
- l) Any other verification or investigation actions that the tax administration is legally responsible for.

3 - The inspection procedure may cover, simultaneously with taxable persons and other taxable persons whose tax situation is sought to be investigated, substitutes and joint or

f) A realização de estudos individuais, sectoriais ou territoriais sobre o comportamento dos sujeitos passivos e demais obrigados tributários e a evolução dos sectores económicos em que se insere a sua actividade;

g) A realização de perícias ou exames técnicos de qualquer natureza tendo em conta os fins referidos no n.º 1;

h) A informação sobre os pressupostos de facto dos benefícios fiscais que dependam de concessão ou reconhecimento da administração tributária, ou de direitos que o sujeito passivo, outros obrigados tributários e demais interessados invoquem perante aquela;

i) A promoção, nos termos da lei, do sancionamento das infracções tributárias;

j) A cooperação nos termos das convenções internacionais ou regulamentos comunitários, no âmbito da prevenção e repressão da evasão e fraude;

l) Quaisquer outras acções de averiguação ou investigação de que a administração tributária seja legalmente incumbida.

3 - O procedimento de inspecção pode abranger, em simultâneo com os sujeitos passivos e demais obrigados tributários cuja situação tributária se pretenda averiguar, os substitutos e responsáveis solidários ou subsidiários, as sociedades dominadas do grupo tributado pelo sistema do lucro consolidado, os sócios das sociedades transparentes ou quaisquer outras pessoas que tenham colaborado nas infracções fiscais a investigar.

4 - No caso previsto no número anterior as entidades gozam dos mesmos direitos e estão sujeitas aos mesmos deveres dos sujeitos passivos e demais obrigados tributários.

subsidiary responsible persons, controlled companies of the group taxed by the consolidated profit system, partners of companies transparent or any other persons who have collaborated in the tax offences to be investigated.

4 - In the case provided for in the previous number, entities enjoy the same rights and are subject to the same duties as taxpayers and other taxpayers.

48 The following can be presented regarding inspection acts:

#### **Title IV Inspection Acts**

##### **Chapter I Guarantees for exercising the inspection function**

**Article 28<sup>335</sup> Management guarantees** Within the scope of the inspection procedure and for the effective exercise of the inspection function, the administration makes use of the prerogatives provided for in Article 63 of the General Tax Law, in articles 33 and 34 of Decree-Law 363/78, of 28 of November, and in Article 15 of Decree-Law 249/98, of 11 August, without prejudice to respect for the duty of secrecy and for the constitutionally provided for rights, freedoms and guarantees.

**Article 29<sup>336</sup> Material acts** In the tax inspection procedure, the practice of acts expressly provided for in tax codes and laws is allowed, namely in Article 63 of the General Tax Law, in Articles 124, 125 and 126 of the IRS Code, in Article 108 of the Corporate Income Tax Code, in Articles 77, 78 and 79 of the VAT Code, in Decree-Law 45/89, of 11 February, and in Decree-Law 363/78, of 28 of November.

**Article 30<sup>337</sup> Precautionary measures** 1 - Within the scope of the inspection procedure, appropriate precautionary measures provided for by law may be taken.

<sup>335</sup> **Título IV Actos de inspeção**

**Capítulo I Garantias do exercício da função inspectiva**

**Artigo 28.º Garantias da administração**

No âmbito do procedimento de inspeção e para efectivo exercício da função inspectiva, a administração faz uso das prerrogativas previstas no artigo 63.º da Lei Geral Tributária, nos artigos 33.º e 34.º do Decreto-Lei 363/78, de 28 de Novembro, e no artigo 15.º do Decreto-Lei 249/98, de 11 de Agosto, sem prejuízo do respeito pelo dever de sigilo e pelos direitos, liberdades e garantias constitucionalmente previstos.

<sup>336</sup> **Artigo 29.º Actos materiais**

No procedimento de inspeção tributária é admitida a prática dos actos expressamente previstos nos códigos e leis tributárias, nomeadamente no artigo 63.º da Lei Geral Tributária, nos artigos 124.º, 125.º e 126.º do Código do IRS, no artigo 108.º do Código do IRC, nos artigos 77.º, 78.º e 79.º do Código do IVA, no Decreto-Lei 45/89, de 11 de Fevereiro, e no Decreto-Lei 363/78, de 28 de Novembro.

<sup>337</sup> **Artigo 30.º Medidas cautelares**

1 - No âmbito do procedimento de inspeção, podem ser tomadas as medidas cautelares adequadas previstas na lei.

2 - No caso de apreensão de originais de documentos, nos termos da alínea d) do n.º 1 do artigo 34.º do Decreto-Lei 363/78, de 28 de Novembro, é lavrado o respectivo termo e são autenticadas as fotocópias ou duplicados.

3 - No caso de selagem prevista na alínea e) do n.º 1 do artigo 34.º do Decreto-Lei 363/78, de 28 de Novembro, as instalações não deverão conter bens, documentos ou registos que sejam indispensáveis para o exercício da actividade normal da entidade, nomeadamente bens comercializáveis perecíveis no período em que presumivelmente a selagem se mantiver.



2 - In the case of seizure of original documents, under the terms of paragraph d) of paragraph 1 of Article 34 of Decree-Law 363/78, of 28 November, the respective term is drawn up and the photocopies are authenticated or duplicates.

3 - In the case of sealing provided for in paragraph e) of paragraph 1 of Article 34 of Decree-Law 363/78, of 28 November, the premises must not contain goods, documents or records that are indispensable for the exercise of the entity's normal activity, namely perishable marketable goods in the period in which the sealing is presumably maintained.

4 - Whenever possible, the elements to be sealed are duly autonomous in a place that does not disturb business or professional activity, in a fixed room or in a container and closed with an inviolable device, namely by means of a string or surrounding tape sealed at the ends with the seal of the service carrying out the inspection.

### **Article 31<sup>338</sup> Precautionary measures of a judicial nature**

1 - In the event of fair fear of tax credits being frustrated, of loss or deterioration of documents related to tax obligations, the administration must propose the precautionary measures of attachment or enrolment provided for in the Tax Procedure Code.

2 - The filing of precautionary measures provided for in the previous number is based on information containing:

- a) A description of the facts demonstrating the tax or its probable existence;
- b) The reasons for the well-founded fear of reducing the guarantees for collecting the tax;
- c) A list of sufficient assets to guarantee the collection of the debt and more, with an indication of the value, location and identification of the land registry or other mentions that allow the description to be fulfilled.

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4 - Sempre que possível, os elementos a selar são devidamente autonomizados em local que não perturbe a actividade empresarial ou profissional, em divisão fixa ou em contentor e fechados com dispositivo inviolável, designadamente através de fio ou fita envolvente lacrada nas extremidades com o selo do serviço que proceda à inspecção.

### **<sup>338</sup> Artigo 31.º Providências cautelares de natureza judicial**

1 - Em caso de justo receio de frustração dos créditos fiscais, de extravio ou deterioração de documentos conexos com obrigações tributárias, a administração deve propor as providências cautelares de arresto ou arrolamento previstas no Código de Processo Tributário.

2 - A propositura das providências cautelares previstas no número anterior tem por base informação contendo:

- a) A descrição dos factos demonstrativos do tributo ou da sua provável existência;
- b) A fundamentação do fundado receio de diminuição das garantias de cobrança do tributo;
- c) A relação de bens suficientes para garantir a cobrança da dívida e acrescido, com a indicação do valor, localização e identificação de registo predial ou outras menções que permitam concretizar a descrição.

3 - No caso de arrolamento de bens ou documentos que se pretendam conservar, evitando-se a sua perda ou extravio, destruição ou dissipação, a informação prevista no número anterior deve conter:

- a) Prova sumária do direito relativo aos bens ou documentos que se pretendem arrolar;
- b) Factos que fundamentem o receio de extravio ou destruição.

3 - In the case of listing goods or documents intended to be preserved, in order to avoid their loss or misplacement, destruction or dissipation, the information provided for in the previous number must contain:

- a) Summary proof of the right relating to the goods or documents that are intended to be listed;
- b) Facts that justify the fear of loss or destruction.

## **Chapter II Place, time of the inspection acts and deadline of the procedure**

**Article 34<sup>339</sup> Location of inspection acts** 1 - When the inspection procedure involves checking the accounts, bookkeeping books or other documents related to the activity of the entity to be inspected, the inspection acts are carried out on the premises or premises where the elements are or legally must be located.

2 - At the request of taxpayers or other taxpayers and in the event of a justifiable reason that does not jeopardize the inspection procedure, the inspection acts provided for in the previous number may be carried out elsewhere.

3 - Inspection acts may also be carried out in places where the inspected entity carries out its activity, which contain elements that are complementary or additional to those provided for in paragraph 1.

4 - If the inspected entity does not have facilities or premises to carry out the activity, inspection acts may be carried out at the tax administration service in the area of its domicile or headquarters, without prejudice to the case provided for in paragraph 2.

**Article 35<sup>340</sup> Schedule of inspection acts** 1 - Inspection acts are carried out during the normal hours of operation of the business or professional activity, and must not result in damage to the latter.

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### **<sup>339</sup> CAPÍTULO II Local, horário dos actos de inspecção e prazo do procedimento**

#### **Artigo 34.º Local dos actos de inspecção**

1 - Quando o procedimento de inspecção envolver a verificação da contabilidade, livros de escrituração ou outros documentos relacionados com a actividade da entidade a inspeccionar, os actos de inspecção realizam-se nas instalações ou dependências onde estejam ou devam legalmente estar localizados os elementos.

2 - A solicitação dos sujeitos passivos ou demais obrigados tributários e em caso de motivo justificado que não prejudique o procedimento de inspecção, podem os actos de inspecção previstos no número anterior realizar-se noutra local.

3 - Os actos de inspecção podem também realizar-se em locais do exercício da actividade da entidade inspeccionada que contenham elementos complementares ou adicionais dos previstos no n.º 1.

4 - Caso a entidade inspeccionada não disponha de instalações ou dependências para o exercício da actividade, os actos de inspecção podem realizar-se no serviço da administração tributária da área do seu domicílio ou sede, sem prejuízo do caso previsto no n.º 2.

#### **<sup>340</sup> Artigo 35.º Horário dos actos de inspecção**

1 - Os actos de inspecção realizam-se no horário normal de funcionamento da actividade empresarial ou profissional, não devendo implicar prejuízo para esta.

2 - Mediante acordo com os sujeitos passivos ou demais obrigados tributários e quando circunstâncias excepcionais o justificarem, poderão os actos de inspecção ser praticados fora do horário normal de funcionamento da actividade.

- 2 - Upon agreement with taxable persons or other taxable persons and when exceptional circumstances so justify, inspection acts may be carried out outside the normal opening hours of the activity.
- 3 - The performance of tax inspection acts outside the normal working hours of the activity without the consent of the taxable person or taxable person in question depends on judicial authorization.
- 4 - The provisions of this article do not apply to the control of goods in circulation.

The Code of Procedure and Tax Process applies as well.

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## (2) Investigative powers in the area of structural funds and internal policies

Here, first and foremost the Administrative Procedure Code can be consulted.

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### Part III Administrative procedure

#### Title I Common regime

#### Chapter I General provisions

#### Article 53<sup>341</sup> Initiative

The administrative procedure begins either officially or at the request of interested parties.

#### Article 55<sup>342</sup> Responsible for the direction of the procedure

1 - The direction of the procedure is the responsibility of the competent body for the final decision, without prejudice to the provisions of the following numbers.

2 - The competent body for the final decision delegates to its hierarchical inferior, the power of direction of the procedure, except for legal, regulatory or statutory provisions to the contrary or when the conditions of service or other important reasons, invoked on

3 - A prática de actos de inspecção tributária fora do horário normal de funcionamento da actividade sem consentimento do sujeito passivo ou do obrigado tributário em causa dependem de autorização judicial.

4 - O disposto no presente artigo não se aplica ao controlo dos bens em circulação.

<sup>341</sup> **Parte III Do procedimento administrativo**

**Título I Regime comum**

**Capítulo I Disposições gerais**

**Artigo 53.º Iniciativa**

O procedimento administrativo inicia-se oficiosamente ou a solicitação dos interessados.

<sup>342</sup> **Artigo 55.º Responsável pela direção do procedimento**

1 - A direção do procedimento cabe ao órgão competente para a decisão final, sem prejuízo do disposto nos números seguintes.

2 - O órgão competente para a decisão final delega em inferior hierárquico seu, o poder de direção do procedimento, salvo disposição legal, regulamentar ou estatutária em contrário ou quando a isso obviarem as condições de serviço ou outras razões ponderosas, invocadas fundamentadamente no procedimento concreto ou em diretiva interna respeitante a certos procedimentos.

3 - O responsável pela direção do procedimento pode encarregar inferior hierárquico seu da realização de diligências instrutórias específicas.

4 - No órgão colegial, a delegação prevista no n.º 2 é conferida a membro do órgão ou a agente dele dependente.

5 - A identidade do responsável pela direção do procedimento é notificada aos participantes e comunicada a quaisquer outras pessoas que, demonstrando interesse legítimo, requeiram essa informação.

the basis of the concrete procedure prevent this. Or in an internal directive concerning certain procedures.

3 - The person responsible for directing the procedure may entrust his or her lower hierarchical position with carrying out specific investigative steps.

4 - In the collegiate body, the delegation provided for in paragraph 2 is conferred on a member of the body or an agent dependent on it.

5 - The identity of the person responsible for directing the procedure is notified to the participants and communicated to any other people who, demonstrating a legitimate interest, require this information.

### **Article 58<sup>343</sup> Principle of the inquisitor**

The person responsible for directing the procedure and the other bodies that participate in the investigation may, even if the procedure is initiated on the initiative of the interested parties, carry out any steps that prove to be adequate and necessary for the preparation of a legal and fair decision, even if they concern matters not mentioned in the requests or responses from interested parties.

## **Chapter VI Provisional measures**

### **Article 89<sup>344</sup> Admissibility of provisional measures**

1 - At any stage of the procedure, the competent body for the final decision may, of its own motion or at the request of the interested parties, order the provisional measures that prove necessary, if there is a just fear that, without such measures, a situation of fait accompli may arise. Or if they produce damages that are difficult to repair for the public or private interests involved, and provided that, once these interests have been taken into

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<sup>343</sup> Artigo 58.º CPA

Princípio do inquisitório

O responsável pela direção do procedimento e os outros órgãos que participem na instrução podem, mesmo que o procedimento seja instaurado por iniciativa dos interessados, proceder a quaisquer diligências que se revelem adequadas e necessárias à preparação de uma decisão legal e justa, ainda que respeitantes a matérias não mencionadas nos requerimentos ou nas respostas dos interessados.

<sup>344</sup> CAPÍTULO VI

Das medidas provisórias

Artigo 89.º

Admissibilidade de medidas provisórias

1 - Em qualquer fase do procedimento, pode o órgão competente para a decisão final, oficiosamente ou a requerimento dos interessados, ordenar as medidas provisórias que se mostrem necessárias, se houver justo receio de, sem tais medidas, se constituir uma situação de facto consumado ou se produzirem prejuízos de difícil reparação para os interesses públicos ou privados em presença, e desde que, uma vez ponderados esses interesses, os danos que resultariam da medida se não mostrem superiores aos que se pretendam evitar com a respetiva adoção.

2 - A decisão de ordenar ou alterar qualquer medida provisória não carece de audiência prévia, deve ser fundamentada e fixar prazo para a sua vigência.

3 - A revogação das medidas provisórias deve ser fundamentada.

4 - Os atos administrativos que ordenem medidas provisórias são passíveis de impugnação junto dos tribunais administrativos.

account, the damages that would result from the measure if they do not prove to be greater than those intended to be avoided with the respective adoption.

2 - The decision to order or amend any provisional measure does not require a prior hearing, it must be reasoned and set a period for its validity.

3 - The revocation of provisional measures must be justified.

4-administrative acts that order provisional measures are subject to challenge before the administrative courts.

## **Chapter II Administrative act procedure [...]**

### **Section III Instruction**

#### **Article 115<sup>345</sup> Facts subject to proof**

1 - The person responsible for directing the procedure must seek to ascertain all the facts whose knowledge is adequate and necessary for the taking of a legal and fair decision within a reasonable period, and may, for this purpose, resort to all means of evidence admitted by law.

2 - The well-known facts, as well as the facts that the person responsible for directing the procedure is aware of by virtue of the exercise of his/her duties, do not need proof or allegation.

3-the person responsible for directing the procedure must include in the procedure the facts that he is aware of as a result of the exercise of his functions.

**Article 116<sup>346</sup> Proof by the interested parties** 1 - It is up to the interested parties to prove the facts they have alleged, without prejudice to the duty committed to the person

<sup>345</sup> Capítulo II

Procedimento do ato administrativo

Secção III

Da instrução

Artigo 115.º

Factos sujeitos a prova

1 - O responsável pela direção do procedimento deve procurar averiguar todos os factos cujo conhecimento seja adequado e necessário à tomada de uma decisão legal e justa dentro de prazo razoável, podendo, para o efeito, recorrer a todos os meios de prova admitidos em direito.

2 - Não carecem de prova nem de alegação os factos notórios, bem como os factos de que o responsável pela direção do procedimento tenha conhecimento em virtude do exercício das suas funções.

3 - O responsável pela direção do procedimento deve fazer constar do procedimento os factos de que tenha conhecimento em virtude do exercício das suas funções.

<sup>346</sup> Artigo 116.º

Prova pelos interessados

1 - Cabe aos interessados provar os factos que tenham alegado, sem prejuízo do dever cometido ao responsável pela direção do procedimento nos termos do n.º 1 do artigo anterior.

2 - Quando os elementos de prova dos factos estiverem em poder da Administração, o ónus previsto no número anterior considera-se satisfeito desde que o interessado proceda à sua correta identificação junto do responsável pela direção do procedimento.

3 - Os interessados podem juntar documentos e pareceres ou requerer diligências de prova úteis para o esclarecimento dos factos com interesse para a decisão.

responsible for directing the procedure under the terms of paragraph 1 of the previous article.

2 - When the evidence of the facts is in the possession of the Administration, the burden provided for in the previous number is considered satisfied provided that the interested party proceeds to its correct identification with the person responsible for directing the procedure.

3 - Interested parties may attach documents and opinions or request evidence that is useful to clarify the facts of interest to the decision.

4 - If it is necessary to attach a document issued in a foreign country, the law that governs the production of the special form of this document is the law of the issuing State, gauging the sufficiency of that special form by functional equivalence to the form required by national law.

5 - The expenses resulting from the investigations of evidence are borne by the interested parties who have requested them, without prejudice to the provisions of paragraph 2 of Article 15.

#### **Article 117<sup>347</sup> Request of evidence to interested parties**

1 - The person responsible for directing the procedure may determine to the interested parties the provision of information, the presentation of documents or things, the submission to inspections and collaboration in other means of evidence.

2 - It is legitimate to refuse the determinations provided for in the previous number, when compliance with them:

- a) Involves the violation of professional secrecy or commercial or industrial secret;
- b) Implying the clarification of facts whose disclosure is prohibited or exempted by law;
- c) Import the disclosure of punishable facts, committed by the interested party, by his/her spouse or by his/her ascendant or descendant, brother or similar in the same grades;

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4 - Sendo necessário juntar documento passado em país estrangeiro, a lei que rege a produção da forma especial desse documento é a lei do Estado de emissão, aferindo-se a suficiência daquela forma especial por equiparação funcional à forma exigida pela lei nacional.

5 - As despesas resultantes das diligências de prova são suportadas pelos interessados que as tiverem requerido, sem prejuízo do disposto no n.º 2 do artigo 15.º

<sup>347</sup> Artigo 117.º

Solicitação de provas aos interessados

1 - O responsável pela direção do procedimento pode determinar aos interessados a prestação de informações, a apresentação de documentos ou coisas, a sujeição a inspeções e a colaboração noutros meios de prova.

2 - É legítima a recusa às determinações previstas no número anterior, quando a obediência às mesmas:

- a) Envolver a violação de sigilo profissional ou segredo comercial ou industrial;
- b) Implicar o esclarecimento de factos cuja revelação esteja proibida ou dispensada por lei;
- c) Importar a revelação de factos puníveis, praticados pelo próprio interessado, pelo seu cônjuge ou por seu ascendente ou descendente, irmão ou afim nos mesmos graus;
- d) For suscetível de causar dano moral ou material ao próprio interessado ou a alguma das pessoas referidas na alínea anterior.

d) It is liable to cause moral or material damage to the interested party or to any of the persons referred to in the previous paragraph.

**Article 118<sup>348</sup> Form of provision of information or presentation of evidence**

1 - The provision of information or the presentation of evidence by the interested parties is done in writing, and may also be done orally, when this is admitted, under the terms and conditions established for that purpose.

2 - If the interested party does not reside in the municipality where the body responsible for directing the procedure is headquartered, the verbal provision of information or the presentation of evidence may take place through a body or service based in the municipality of its domicile, determined by the body responsible for the direction of the procedure, unless the interested party prefers to appear before it.

**Article 119<sup>349</sup> Failure to provide evidence**

1 - If the interested parties regularly notified for the verbal provision of information or presentation of evidence do not comply with the notification, a new notification may be carried out or the practice of the act may be waived, as the circumstances advise.

2 - The lack of compliance with the notification is freely assessed for the purposes of evidence, depending on the circumstances of the case, not exempting the administrative body from seeking to investigate the facts, nor from issuing the decision.

3 - When the information, documents or acts requested from the interested party are necessary for the consideration of the request made by him, the procedure must not be followed up, notifying the individual accordingly.

**Article 120<sup>350</sup> Anticipated production of evidence** 1 - If there is a fair fear that it will become impossible or difficult to produce any evidence relevant to the decision, the

<sup>348</sup> Artigo 118.º

Forma da prestação de informações ou da apresentação de provas

1 - A prestação de informações ou a apresentação de provas pelos interessados faz-se por escrito, podendo também ser feita oralmente, quando tal seja admitido, nos termos e condições que para o efeito forem fixados.

2 - Se o interessado não residir no município da sede do órgão responsável pela direção do procedimento, a prestação verbal de informações ou a apresentação de provas pode ter lugar através de órgão ou serviço com sede no município do seu domicílio, determinado pelo órgão responsável pela direção do procedimento, salvo se o interessado preferir comparecer perante este.

<sup>349</sup> Artigo 119.º

Falta de prestação de provas

1 - Se os interessados regularmente notificados para a prestação verbal de informações ou apresentação de provas não derem cumprimento à notificação, pode proceder-se a nova notificação ou prescindir-se da prática do ato, conforme as circunstâncias aconselharem.

2 - A falta de cumprimento da notificação é livremente apreciada para efeitos de prova, consoante as circunstâncias do caso, não dispensando o órgão administrativo de procurar averiguar os factos, nem de proferir a decisão.

3 - Quando as informações, documentos ou atos solicitados ao interessado sejam necessários à apreciação do pedido por ele formulado, não deve ser dado seguimento ao procedimento, disso se notificando o particular.

<sup>350</sup> Artigo 120.º

competent body may, of its own motion or at the reasoned request of the interested parties, proceed with its advance collection.

2 - The anticipated production of evidence may take place before the initiation of the procedure.

51 Additionally, the General Inspection of Agriculture, Sea, Environment and Land Planning DL No. 23/2012 may be consulted.

### **General Inspection of Agriculture, Sea, Environment and Land Planning**

DL No. 23/2012, of February 1st

**Article 2<sup>351</sup> Mission and attributions** 1 - IGAMAOT's mission is to evaluate the performance and management of the services and bodies of the Ministry of the Environment, Spatial Planning and Energy (MAOTE) and the Ministry of Agriculture and the

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Produção antecipada de prova

1 - Havendo justo receio de vir a tornar-se impossível ou de difícil realização a produção de qualquer prova com interesse para a decisão, pode o órgão competente, oficiosamente ou a pedido fundamentado dos interessados, proceder à sua recolha antecipada.

2 - A produção antecipada de prova pode ter lugar antes da instauração do procedimento.

<sup>351</sup> Artigo 2.º

Missão e atribuições

1 - A IGAMAOT tem por missão avaliar o desempenho e a gestão dos serviços e organismos do Ministério do Ambiente, Ordenamento do Território e Energia (MAOTE) e do Ministério da Agricultura e do Mar (MAM), ou sujeitos à tutela dos respetivos ministros, através de ações de auditoria e controlo, bem como assegurar o permanente acompanhamento e avaliação do cumprimento da legalidade nas áreas do ambiente, do ordenamento do território e da conservação da natureza e, ainda, exercer o controlo e auditoria no âmbito da segurança alimentar e o controlo de apoios financiados por fundos nacionais e da União Europeia, a favor da agricultura, das florestas, do desenvolvimento rural e da política do mar.

2 - A IGAMAOT prossegue, designadamente, as seguintes atribuições:

- a) Realizar, com caráter sistemático, auditorias, inspeções e outras ações de controlo à atividade prosseguida pelos organismos, serviços e entidades dependentes do MAOTE e do MAM, ou sujeitos à tutela dos respetivos ministros;
- b) Realizar inquéritos, averiguações e outras ações que lhe sejam superiormente determinadas;
- c) Exercer o controlo financeiro sectorial ao nível do MAOTE e do MAM, no quadro dos objetivos e metas anuais e plurianuais traçadas no âmbito do Sistema de Controlo Interno (SCI) da Administração Financeira do Estado;
- d) Efetuar de forma sistemática o acompanhamento e avaliação do grau de implementação das recomendações formuladas aos organismos, serviços e entidades auditados no âmbito das ações levadas a cabo pela IGAMAOT;
- e) Assegurar a realização de ações de auditoria administrativa e financeira, bem como de inspeção a entidades públicas e privadas em matérias de incidência ambiental, incluindo as relativas ao cumprimento das normas tributárias de taxas e contribuições ambientais, e impor as medidas que previnam ou eliminem situações de perigo grave para a saúde, segurança das pessoas, dos bens e do ambiente;
- f) Proceder a ações de inspeção no âmbito do MAOTE e junto de entidades integradas na administração central e local, de modo a acompanhar e avaliar o cumprimento da legalidade no âmbito do ordenamento do território e conservação da natureza;
- g) Exercer funções próprias de órgão de polícia criminal relativamente aos crimes que se relacionem com o cumprimento da sua missão em matérias de incidência ambiental, sem prejuízo das atribuições de outras entidades;
- h) Instaurar, instruir e decidir processos de contraordenação ambiental, nos termos da lei-quadro das contraordenações ambientais, bem como nos demais casos previstos na lei, e levantar auto de notícia relativo às infrações legalmente definidas;
- i) Coordenar a intervenção do MAM no Sistema Nacional de Auditoria do Plano Nacional de Controlo Plurianual Integrado (PNCP), realizar as auditorias externas e avaliar as auditorias internas aos sistemas de controlo oficial implementados pelos serviços e organismos no domínio da segurança alimentar;



Sea (MAM), or subject to the supervision of the respective ministers, through auditing and control actions, as well as ensuring the permanent monitoring and evaluation of compliance with legality in the areas of the environment, spatial planning and nature conservation, and also exercising control and auditing in the context of food safety and the control of support financed by national and European Union funds, in favour of agriculture, forests, rural development and maritime policy.

2 - IGAMAOT pursues, in particular, the following attributions:

- a) Carry out, on a systematic basis, audits, inspections and other actions to control the activity pursued by bodies, services and entities dependent on MAOTE and MAM, or subject to the supervision of the respective ministers;
- b) Carry out inquiries, investigations and other actions that are determined by superiors;
- c) Exercise sectoral financial control at the level of MAOTE and MAM, within the framework of the annual and multi-annual objectives and targets outlined within the scope of the Internal Control System (SCI) of the State Financial Administration;
- d) Carry out in a systematic way the monitoring and evaluation of the level of implementation of the recommendations made to the bodies, services and entities audited within the scope of the actions carried out by IGAMAOT;

j) Assegurar a coordenação nacional e a execução dos controlos ex post a beneficiários dos apoios financiados pelo Fundo Europeu Agrícola de Garantia (FEAGA), bem como pelo Fundo Europeu Agrícola de Desenvolvimento Rural (FEADER);

k) Exercer as funções de serviço específico previsto no artigo 85.º do Regulamento (UE) n.º 1306/2013, do Parlamento Europeu e do Conselho, de 17 de dezembro;

l) Realizar auditorias aos sistemas de gestão e controlo dos apoios concedidos e das operações financiadas pelos fundos nacionais e da União Europeia, nos setores da agricultura, do desenvolvimento rural, das florestas e do mar;

m) Proceder à instrução de processos disciplinares em serviços e organismos sujeitos à tutela do MAOTE e do MAM, quando determinado;

n) Emitir pareceres e elaborar estudos sobre matérias das suas atribuições, assim como participar na elaboração de diplomas legais;

o) Assegurar a representação nacional, incluindo a participação em grupos de trabalho ou de peritos, nacionais ou internacionais, bem como a articulação com as demais autoridades nacionais, com a Comissão Europeia e com os restantes Estados Membros da União Europeia, e estabelecer relações de cooperação externa, no âmbito das suas atribuições, em articulação, respetivamente, com a Secretaria-Geral do MAOTE ou com o Gabinete de Planeamento, Políticas e Administração Geral, sem prejuízo das competências próprias do Ministério dos Negócios Estrangeiros;

p) Assegurar o acompanhamento das missões de controlo da União Europeia, no âmbito das suas atribuições, incluindo as relativas ao Fundo Europeu Agrícola de Garantia (FEAGA), ao Fundo Europeu Agrícola de Desenvolvimento Rural (FEADER), ao Fundo Europeu dos Assuntos Marítimos e das Pescas (FEAMP) e à segurança alimentar;

q) Coordenar a representação nacional na Rede Europeia para a implementação e aplicação da legislação ambiental vigente (IMPEL - European Network for the Implementation Enforcement of Environmental Law).

r) Proceder a ações de inspeção a entidades públicas e privadas de modo a acompanhar e a avaliar o cumprimento de normas de proteção radiológica e de segurança nuclear, bem como, nesse âmbito, de instaurar, instruir e decidir processos de contraordenação, nos termos da lei-quadro das contraordenações ambientais, e levantar autos de notícias relativos às restantes infrações.

s) Proceder a ações de inspeção em matérias relacionadas com navios e embarcações, sem prejuízo das atribuições de outras entidades.

- e) Ensure the performance of administrative and financial audit actions, as well as inspection of public and private entities in matters of environmental impact, including those relating to compliance with tax rules on environmental fees and contributions, and impose measures to prevent or eliminate situations of serious danger to the health, safety of people, property and the environment;
- f) Carry out inspection actions within the scope of MAOTE and with entities integrated in the central and local administration, in order to monitor and assess compliance with legality within the scope of spatial planning and nature conservation;
- g) Exercise the functions of a criminal police body in relation to crimes that are related to the fulfilment of its mission in matters of environmental impact, without prejudice to the attributions of other entities;
- h) To institute, instruct and decide on environmental infraction proceedings, under the terms of the framework law on environmental offences, as well as in other cases provided for by law, and raise a report on the legally defined infractions;
- i) Coordinate MAM's intervention in the National Audit System of the National Integrated Multiannual Control Plan (PNCPI), carry out external audits and evaluate internal audits of the official control systems implemented by services and bodies in the field of food safety;
- j) Ensure national coordination and the execution of ex post controls on beneficiaries of support financed by the European Agricultural Guarantee Fund (EAGF), as well as by the European Agricultural Fund for Rural Development (EAFRD);
- k) Perform the specific service functions provided for in Article 85 of Regulation (EU) no. 1306/2013, of the European Parliament and of the Council, of 17 December;
- l) Carry out audits of the management and control systems of support granted and operations financed by national and European Union funds, in the agriculture, rural development, forests and sea sectors;
- m) Proceeding with the instruction of disciplinary proceedings in services and bodies subject to the tutelage of MAOTE and MAM, when determined;
- n) Issuing opinions and preparing studies on matters within its attributions, as well as participating in the drafting of legal diplomas;
- o) Ensure national representation, including participation in working groups or experts, national or international, as well as articulation with other national authorities, with the European Commission and with the other Member States of the European Union, and establish relations of external cooperation, within the scope of its attributions, in articulation, respectively, with the General Secretariat of MAOTE or with the Office of Planning, Policies and General Administration, without prejudice to the specific powers of the Ministry of Foreign Affairs;
- p) Ensure the monitoring of the European Union's control missions, within the scope of its attributions, including those relating to the European Agricultural Guarantee Fund

- (EAGF), the European Agricultural Fund for Rural Development (EAFRD), the European Maritime Affairs Fund and of Fisheries (EMFF) and food security;
- q) Coordinate the national representation in the European Network for the implementation and application of current environmental legislation (IMPEL – European Network for the Implementation Enforcement of Environmental Law).
- r) Carry out inspection actions to public and private entities in order to monitor and assess compliance with radiological protection and nuclear safety standards, as well as, in this context, to initiate, instruct and decide administrative offence proceedings, under the terms of framework law for environmental offences, and raise news reports relating to other infractions.
- s) Carry out inspection actions in matters related to ships and vessels, without prejudice to the attributions of other entities.

The Decree-Law no. 54/2000 defines the organic structure for the management, monitoring, evaluation and control of the implementation of CSF III and Community structural interventions in Portugal, in accordance with Council Regulation (EC) No 1260/99 of 21 June 1999:

52

**Decree-Law no. 54-A/2000 of 7 April<sup>352</sup>**

Defines the organic structure for the management, monitoring, evaluation and control of the implementation of CSF III and Community structural interventions in Portugal, in accordance with Council Regulation (EC) No 1260/99 of 21 June 1999<sup>353</sup>

53

**Section IV Monitoring the implementation of operational interventions**

**Article 41<sup>354</sup> Objectives of the control** The objectives of the control to be carried out on the implementation of operational interventions shall be to ascertain that the projects or actions financed have been properly implemented, to prevent and deal with irregularities and to recover any funds lost as a result of an irregularity or negligence.

**Article 42<sup>355</sup> Control bodies** 1 - A national control system for CSF III shall be established, comprising bodies that shall exert controls at three levels in an articulated manner, the first level corresponding to a form of internal control, the second level to a form of external control and the top level to the overall coordination of the control system.

<sup>352</sup> *Decreto-Lei n.º 54-A/2000, de 7 de abril*

<sup>353</sup> See Billwiller 2002, p 211.

<sup>354</sup> Secção IV Controlo da execução das intervenções operacionais  
Artigo 41.º Objectivos de controlo

Constituem objectivos do controlo a exercer relativamente à execução das intervenções operacionais verificar se os projectos ou acções financiados foram empreendidos de forma correcta, prevenir e combater as irregularidades e recuperar os fundos perdidos na sequência de abuso ou negligência.

<sup>355</sup> Artigo 42.º

Órgãos de controlo

2 - High-level financial control is ensured by IGF and includes, namely, the assessment of the management and control systems existing at the different levels of operational interventions, of the management, monitoring and overall assessment and of the organic structure of operational interventions, as well as the promotion of articulation actions between the different entities with responsibilities in the control system.

3 - The second level control covers the analysis and evaluation of the first level control system and, whenever necessary to test its efficiency, the control over the decisions

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1 - É instituído um sistema nacional de controlo do QCA III, constituído por órgãos que ex-erçerão de forma articulada os controlos a três níveis, correspondendo o primeiro nível a uma forma de controlo interno, o segundo nível a uma forma de controlo externo e o alto nível à coordenação global do sistema de controlo.

2 - O controlo financeiro de alto nível é assegurado pela IGF e compreende, designadamente, a avaliação dos sistemas de gestão e de controlo existentes aos diferentes níveis das intervenções operacionais, da gestão, acompanhamento e avaliação global e da estrutura orgânica das intervenções operacionais, bem como a promoção de acções de articulação entre as diferentes entidades com responsabilidades no sistema de controlo.

3 - O controlo de segundo nível abrange a análise e avaliação do sistema de controlo de primeiro nível e, sempre que tal se mostre necessário para testar a eficácia deste, o controlo sobre as decisões tomadas pelos órgãos de gestão das intervenções operacionais e sobre os beneficiários finais, bem como o controlo cruzado, junto de outras entidades envolvidas, a fim de ter acesso às informações consideradas necessárias ao esclarecimento dos factos objecto de controlo.

4 - O controlo de segundo nível é assegurado pelas seguintes entidades:

a) Nas acções financiadas pelo FEDER, pela Direcção-Geral do Desenvolvimento Regional, em articulação com as inspecções-gerais ou outros organismos integrados nos departamentos governamentais com competências atinentes aos sectores envolvidos nas intervenções operacionais em causa, expressamente designados para o efeito pelo membro do Governo correspondente;

b) Nas acções financiadas pelo Fundo Social Europeu, pela entidade responsável pela gestão nacional deste Fundo, em articulação, sempre que tal se justifique, com as inspecções-gerais ou outros organismos integrados nos departamentos governamentais com competências atinentes aos sectores envolvidos nas intervenções operacionais em causa expressamente designados para o efeito pelo membro do Governo correspondente;

c) Nas acções financiadas pelo FEOGA-O, pela Inspeção-Geral e Auditoria de Gestão, do Ministério da Agricultura, do Desenvolvimento Rural e das Pescas, em articulação com o Gabinete de Planeamento e Política Agro-Alimentar, do Ministério da Agricultura, do Desenvolvimento Rural e das Pescas;

d) Nas acções financiadas pelo IFOP, pela Inspeção-Geral e Auditoria de Gestão, do Ministério da Agricultura, do Desenvolvimento Rural e das Pescas.

5 - O controlo de primeiro nível compreende a fiscalização das candidaturas e dos projectos nas suas componentes material, financeira, contabilística, factual e técnico-pedagógica, ou seja, a verificação física e financeira, quer nos locais de realização do investimento e das acções, quer junto das entidades que detêm os originais dos processos técnicos e documentos de despesa.

6 - O controlo de primeiro nível é assegurado pelos órgãos de gestão das intervenções operacionais e, quando necessário, por outros organismos a designar por despacho dos membros do Governo responsáveis pelas intervenções operacionais em causa, consagrando o princípio de segregação de funções.

7 - As intervenções operacionais regionais do âmbito das Regiões Autónomas são controladas por organismos a designar por deliberação do respectivo Governo Regional, no prazo de 30 dias a contar da data da publicação do presente diploma, sem prejuízo das competências atribuídas a organismos de âmbito nacional.

8 - No âmbito do controlo das acções financiadas pelos fundos comunitários, poderá ainda recorrer-se à aquisição de serviços de auditoria externa.

9 - A aquisição dos serviços referidos no número anterior poderá ser efectuada com recurso aos procedimentos de concurso público ou de concurso limitado por prévia qualificação, de acordo com as regras especiais, designadamente em matéria de adjudicação, a definir em legislação específica.

10 - Por despacho dos membros do Governo competentes, podem ser instituídos outros mecanismos de controlo e fiscalização além dos definidos nos números anteriores.

11 - A realização de verificações cruzadas é uma prerrogativa intransmissível dos organismos públicos, não podendo em caso algum ser transferida para entidades diferentes daquelas a que a mesma está legalmente atribuída.

taken by the management bodies of operational interventions and over the final beneficiaries, as well as cross-checking with other entities involved, in order to have access to the information deemed necessary to clarify the facts subject to control.

4 - The second level control is ensured by the following entities

a) In actions financed by the ERDF, by the Directorate-General for Regional Development, in articulation with the inspectorates-general or other bodies integrated in the government departments with competences concerning the sectors involved in the operational interventions in question, expressly designated for the purpose by the corresponding Government member;

b) In the case of actions financed by the European Social Fund, by the entity responsible for the national management of this Fund, in articulation, whenever justifiable, with the Inspectorates-General or other integrated organs of the Government Departments with competencies attached to the sectors involved in the operational interventions in question, expressly designated for the effect by the corresponding member of the Government;

c) In the case of actions financed by the EAGGF-O, by the General Inspectorate and Management Audit, of the Ministry of Agriculture, Rural Development and Fisheries, in liaison with the Planning and Agri-Food Policy Office of the Ministry of Agriculture, Rural Development and Fisheries;

d) In the case of actions financed by the FIG, by the Inspectorate-General and Management Audit, of the Ministry of Agriculture, Rural Development and Fisheries.

5 - First level control comprises the inspection of the applications and projects in their material, financial, accounting, factual and technical-pedagogical components, that is, the physical and financial verification, both at the places where the investment and the actions are carried out and at the entities that hold the originals of the technical files and expenditure documents.

6 - The first level control is ensured by the management bodies of the operational interventions and, when necessary, by other bodies to be designated by order of the members of the Government responsible for the operational interventions in question, consecrating the principle of segregation of functions.

7 - The regional operational interventions within the Autonomous Regions shall be controlled by bodies to be designated by decision of the respective Regional Government within 30 days from the date of publication of the present statute, without prejudice to the competences attributed to national bodies.

8 - Within the scope of control of actions financed by Community funds, the acquisition of external auditing services may also be used.

9 - The acquisition of the services referred to in the previous number may be carried out through public tendering procedures or limited tendering by prior qualification, in accordance with the special rules, namely in matters of adjudication, to be defined in specific legislation.

10 - By order of the competent members of the Government, other control and supervision mechanisms besides those defined in the previous paragraphs may be instituted.

11 - Cross-checking is a non-transferable prerogative of public bodies and may under no circumstances be transferred to entities other than those to which it is legally attributed.

**Article 43<sup>356</sup> Control rights and prerogatives**

1 - The technicians representing the entities that exercise high-level and second-level financial control, when on duty and whenever necessary for the performance of their functions, besides others prescribed by law, shall enjoy the following rights and prerogatives

- a) Access to the services and facilities of the supervised entities;
- b) To use appropriate facilities to perform their functions in conditions of dignity and efficiency, and to obtain the cooperation of officials that may prove indispensable
- c) To correspond with any public or private entities on matters of interest for the exercise of their functions or in order to obtain the elements that prove to be indispensable
- d) Proceed to the examination of any elements held by public services, public or private companies, or obtain their supply, whenever they prove to be indispensable to the performance of the respective tasks.

2 - The technicians representing the entities that exercise first level control, when on duty, and whenever necessary for the performance of their functions, apart from others provided for by law, shall enjoy the right laid down in subparagraph c) of the preceding paragraph.

- 54 The Decree-Law no. 137/2014 establishes a governance model of the European Structural and Investment Funds for the period 2014–2020:

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<sup>356</sup> Artigo 43.º

Direitos e prerrogativas de controlo

1 - Os técnicos que representam as entidades que exercem o controlo financeiro de alto nível e de segundo nível, quando em serviço, e sempre que seja necessário ao desempenho das suas funções, para além de outros previstos na lei, gozam dos direitos e prerrogativas seguintes:

- a) Aceder aos serviços e instalações das entidades objecto de controlo;
- b) Utilizar instalações adequadas ao exercício das suas funções em condições de dignidade e eficácia e obter a colaboração de funcionários que se mostre indispensável;
- c) Corresponder-se com quaisquer entidades públicas ou privadas sobre assuntos de interesse para o exercício das suas funções ou para obtenção dos elementos que se mostrem indispensáveis;
- d) Proceder ao exame de quaisquer elementos em poder de serviços públicos, empresas públicas ou privadas, ou obter aí o seu fornecimento, quando se mostrem indispensáveis à realização das respectivas tarefas.

2 - Os técnicos que representam as entidades que exercem o controlo de primeiro nível, quando em serviço, e sempre que seja necessário ao desempenho das suas funções, para além de outros previstos na lei, gozam do direito previsto na alínea c) do número anterior.

**Decree-Law No. 137/2014<sup>357</sup>**

Establishes the governance model of the European Structural and Investment Funds for the period 2014-2020

**Chapter VI Audit and Control**

**Article 44<sup>358</sup> Audit**

The mission of the audit authority shall be to

- (a) ensure that the management and control systems of OPs function effectively and are set up in accordance with the requirements established in Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013;
- (b) preventing and detecting irregularities and contributing to the correction and recovery of amounts unduly paid under the ESI Funds and the EMFF.

**Article 45<sup>359</sup> Audit Authority**

1 - The IGF is the single audit authority for the ERDF, ESF, CF and EMFF.

2 - The Agency, I.P., and IFAP, I.P., have a segregated audit structure, respectively for the ERDF, ESF and CF and for the EMFF, which shall carry out audits of operations, in liaison with the audit authority, under the terms of the provisions of the following articles.

3 - The exercise of the functions defined for the audit authority, including those referred to in the previous number, may not be delegated.

<sup>357</sup> *Decreto-Lei n.º 137/2014.*

<sup>358</sup> Capítulo VI Auditoria e controlo

Artigo 44.º Auditoria

A autoridade de auditoria tem por missão:

a) Assegurar que os sistemas de gestão e controlo dos PO funcionam de forma eficaz e estão instituídos em conformidade com os requisitos estabelecidos no Regulamento (UE) n.º 1303/2013, do Parlamento Europeu e do Conselho, de 17 de dezembro de 2013;

b) Prevenir e detetar irregularidades, contribuindo para a correção e recuperação dos montantes indevidamente pagos no âmbito dos FEEI e do FEAC.

<sup>359</sup> Artigo 45.º

Autoridade de auditoria

1 - A IGF é a autoridade de auditoria única para os FEDER, FSE, FC e FEAMP.

2 - A Agência, I.P., e o IFAP, I.P., dispõem de uma estrutura segregada de auditoria, respetivamente para os FEDER, FSE e FC e para o FEAMP, que executam as auditorias em operações, em articulação com a autoridade de auditoria, nos termos do disposto nos artigos seguintes.

3 - O exercício das funções definidas para a autoridade de auditoria, incluindo as referidas no número anterior, não é delegável.

4 - O disposto no número anterior não abrange a contratação de serviços, incluindo de auditores externos, a qual segue o regime previsto no artigo 48.º

5 - Sempre que as auditorias sejam efetuadas pelas entidades referidas no n.º 2, compete à autoridade de auditoria garantir que a estrutura em causa tem a independência operacional necessária.

6 - A autoridade de auditoria garante a conformidade do trabalho de auditoria com as normas de auditoria internacionalmente aceites.

7 - Os encargos com a auditoria devem ser incluídos e cofinanciados no âmbito do PO de assistência técnica, sem prejuízo da aplicação das regras gerais de elegibilidade.

4 - The provisions of the preceding paragraph do not cover the contracting of services, including external auditors, which shall follow the regime provided for in Article 48.

5 - Whenever audits are carried out by the entities referred to in paragraph 2, it is the responsibility of the audit authority to guarantee that the structure in question has the necessary operational independence.

6 - The audit authority shall ensure the conformity of the audit work with internationally accepted audit standards.

7 - The costs of the audit must be included and co-financed within the technical assistance OP, without prejudice to the application of the general eligibility rules.

#### **Article 46<sup>360</sup> Segregated audit structures**

1 - The segregated audit structures provided for in No. 2 of the previous article are part of the organic structure of the Agency, I.P., and the IFAP, I.P., respectively, in compliance with the principle of separation of functions and safeguarding of conflicts of interest with the exercise of the remaining responsibilities of those bodies, namely those relating to the certification of expenditure.

2 - The segregated auditing structures are responsible for the execution of audits on operations and ensure

a) Formulation of the annual audit plans for operations, including preparation of the respective samples, in accordance to the parameters defined by the audit authority

b) Conducting audits of operations, either by their own means or with recourse to external auditors

c) Cross-checking with other entities involved, in order to have access to the information deemed necessary to clarify the facts object of audit.

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<sup>360</sup> Artigo 46.º

#### Estruturas segregadas de auditoria

1 - As estruturas segregadas de auditoria, previstas no n.º 2 do artigo anterior, integram a estrutura orgânica, respetivamente da Agência, I.P., e do IFAP, I.P., no respeito do princípio da separação de funções e da salvaguarda de conflitos de interesses com o exercício das restantes atribuições daqueles organismos, designadamente as relativas à certificação de despesa.

2 - As estruturas segregadas de auditoria são responsáveis pela execução das auditorias em operações e asseguram:

a) A formulação dos planos anuais de auditoria a operações, incluindo a elaboração das respetivas amostras, de acordo com os parâmetros definidos pela autoridade de auditoria;

b) A realização de auditorias a operações, com meios próprios ou com recurso a auditores externos;

c) A realização de ações de controlo cruzado, junto de outras entidades envolvidas, para terem acesso às informações consideradas necessárias ao esclarecimento dos factos objeto da auditoria.

3 - Os técnicos que representem as estruturas segregadas de auditoria, sempre que tal seja necessário ao exercício das suas competências e para além de outros previstos na lei, gozam dos seguintes direitos e prerrogativas:

a) Aceder aos serviços e instalações das entidades objeto de auditoria;

b) Utilizar as instalações das entidades objeto de auditoria e obter a colaboração de trabalhadores e restante pessoal que se mostre indispensável para o exercício das suas competências;

c) Corresponder-se com quaisquer entidades públicas ou privadas sobre assuntos de interesse para o exercício das suas competências, ou para obtenção dos elementos que se mostrem indispensáveis;

d) Proceder ao exame de quaisquer elementos em poder, designadamente, de serviços e organismos da Administração Pública e de empresas públicas ou privadas, ou aí garantir que aqueles lhe sejam facultados, quando os mesmos se mostrem indispensáveis à realização das suas competências.



3 - The technical staff representing the segregated audit structures, whenever necessary for the exercise of their competences and besides others prescribed by law, shall have the following rights and prerogatives

- a) To access the services and facilities of the auditees;
- b) To use the facilities of the auditees and to obtain the collaboration of employees and other staff indispensable to the exercise of their powers
- c) To correspond with any public or private entities on matters of interest for the exercise of its powers, or to obtain the elements deemed indispensable
- d) Proceed to examine any elements held, namely, by services and organisms of the Public Administration and public or private companies, or ensure that they are made available to them, whenever they are indispensable to the exercise of their functions.

**Article 47<sup>361</sup> Competences of the Audit Authority** 1 - It is incumbent upon the audit authority

<sup>361</sup> Artigo 47.º

Competências da autoridade de auditoria

1 - Compete à autoridade de auditoria:

- a) Elaborar a estratégia de auditoria;
- b) Elaborar o planeamento anual das auditorias em operações, em conformidade com a estratégia de auditoria;
- c) Identificar os requisitos do sistema de informação para as auditorias em operações, que permita a monitorização de toda a sua atividade;
- d) Elaborar a proposta de orientações sistematizadoras para o exercício da atividade de auditoria;
- e) Promover a realização periódica de encontros de informação com as autoridades de gestão;
- f) Verificar a conformidade do funcionamento do sistema de gestão e controlo de todos os PO;
- g) Garantir a realização de auditorias aos sistemas de gestão e controlo, bem como assegurar a execução de controlos sobre operações;
- h) Elaborar os relatórios anuais e final de controlo e emitir opinião anual e final de controlo;
- i) Assegurar que a autoridade de gestão e a autoridade de certificação recebem todas as informações necessárias sobre as auditorias e controlos efetuados;
- j) Contribuir para a capacitação das autoridades de gestão e de certificação, no âmbito das suas competências e sem prejuízo do respeito por uma adequada segregação de funções;
- k) Emitir parecer sobre a fiabilidade das contas e a legalidade e a regularidade das despesas cujo reembolso foi pedido à Comissão Europeia, bem como sobre o funcionamento dos sistemas de controlo estabelecidos;
- l) Emitir parecer sobre a declaração de gestão referida na alínea a) do n.º 5 do artigo 59.º do Regulamento (UE, Euratom) n.º 966/2012, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012.

2 - São realizadas diretamente pela autoridade de auditoria, ou através do recurso a auditores externos, as auditorias que visem:

- a) Garantir o bom funcionamento do sistema de gestão e de controlo dos PO;
- b) Assegurar que as auditorias das operações, a realizar pelas estruturas segregadas de auditoria da Agência, I.P., e do IFAP, I.P., são realizadas com base numa amostra apropriada e suficiente, segundo normas técnicas e metodológicas internacionalmente aplicáveis.

3 - Cabe ainda à autoridade de auditoria coordenar o tratamento da informação relativa às comunicações de irregularidades no âmbito do Portugal 2020 e exercer as demais competências decorrentes da sua designação como serviço de coordenação antifraude (AFCOS), previsto no Tratado sobre o Funcionamento da União Europeia.

4 - Para efeitos do disposto no número anterior, incumbe à autoridade de auditoria:

- a) Centralizar as informações relativas a irregularidades detetadas;
- b) Promover as ações de articulação que se revelem necessárias;
- c) Elaborar, com a colaboração dos restantes intervenientes, as instruções e normas tendentes a um tratamento uniforme das informações referidas na alínea a).

- a) Prepare the audit strategy
- b) Prepare the annual planning of audits on operations, in accordance with the audit strategy
- c) Identify the requirements of the information system for audits on operations, which enables monitoring of all its activity
- d) To draft systematizing guidelines for the audit activity
- e) To promote periodic information meetings with the managing authorities
- f) To verify the conformity of the functioning of the management and control system of all OPs
- g) Ensuring the performance of audits on the management and control systems, as well as ensuring the implementation of controls on operations;
- h) Drawing up the annual and final control reports and issuing the annual and final control opinion;
- i) Ensuring that the Managing Authority and Certifying Authority receive all necessary information on the audits and controls carried out
- j) To contribute to the capacity building of the Managing and Certifying Authorities, within the scope of its competences and without prejudice to the respect of an adequate segregation of duties;
- k) to give an opinion as to the reliability of the accounts and the legality and regularity of expenditure for which reimbursement has been requested from the European Commission, and on the functioning of the control systems put in place
- (l) deliver an opinion on the management declaration referred to in Article 59(5)(a) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012.

2 - Audits are carried out directly by the audit authority, or through recourse to external auditors, which aim to:

- a) Ensure the proper functioning of the management and control system of the OPs;
- b) Ensure that the audits of operations, to be carried out by the segregated audit structures of the Agency, I.P., and IFAP, I.P., are carried out on the basis of an appropriate and sufficient sample, in accordance with internationally applicable technical and methodological standards.

3 - The audit authority is also responsible for coordinating the processing of information on irregularity communications within the scope of Portugal 2020 and exercising the

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d) Assegurar a cooperação entre as administrações nacionais, as autoridades responsáveis pelas investigações e as autoridades judiciárias, assim como entre estas autoridades e o Organismo Europeu de Luta Anti Fraude (OLAF), em casos de suspeita de fraudes e irregularidades que afetem os interesses financeiros da UE;

e) Acompanhar as investigações e verificações in loco do OLAF, assim como assegurar a implementação das recomendações deste organismo;

f) Liderar a elaboração, a coordenação e a implementação da estratégia nacional antifraude.

5 - Sempre que for considerado adequado, a autoridade de auditoria institui procedimentos específicos para o tratamento das informações e acompanhamento dos processos relativos às irregularidades detetadas, com vista ao integral cumprimento das obrigações decorrentes da aplicação da regulamentação.

other competences arising from its designation as anti-fraud coordination service (AFCOS), provided for in the Treaty on the Functioning of the European Union.

4 - For the purposes of the previous paragraph, the audit authority is responsible for

- a) Centralise the information concerning irregularities detected
- b) Promote the articulation actions that are deemed necessary
- c) To prepare, with the collaboration of the other intervening parties, the instructions and rules tending to a uniform treatment of the information referred to in subpara a)
- d) to ensure cooperation between national administrations, investigating and judicial authorities, and between those authorities and the European Anti-Fraud Office (OLAF), in cases of suspected fraud and irregularities affecting the financial interests of the EU
- e) To follow up on OLAF investigations and on-the-spot checks, as well as to ensure the implementation of OLAF recommendations;
- f) To lead the elaboration, coordination and implementation of the national anti-fraud strategy.

5 - Whenever deemed appropriate, the audit authority shall establish specific procedures for the processing of information and follow-up of cases concerning irregularities detected, with a view to the full compliance with the obligations arising from the application of regulations.

### **(3) Investigative powers in the area of common market organisations**

For the common market organisations area, the following provisions may be applicable **55**

- Framework Law on Environmental Offences (Law No. 50/2006) **56**
  - Title II Right of access and administrative embargoes,
    - Art. 18 Right of access
    - Art. 19 Administrative embargoes
  - Part II Offence process, Title I Precautionary measures
    - Art. 41 Determination of precautionary measures
    - Art. 42 precautionary seizure

See the following Articles from the Framework Law on Environmental Offences: **57**

**Framework Law on Environmental Offences**

Law No. 50/2006, of 29 August<sup>362</sup>

**Title II Right of access and administrative embargoes**

**Article 18<sup>363</sup> Right of access**

1 - The environmental inspection and inspection procedures must not be preceded by communication or notification to the target entities or those responsible for the installations and places to be inspected.

2 - The cases in which, justifiably, prior communication constitutes a fundamental requirement so that the inspection or inspection activity is not conditioned or impaired, are excluded from the previous number, namely:

a) In the case of inspection or inspection procedures that imply the consultation of documentary elements, or others, which must be prepared in advance by those responsible for the spaces referred to in the previous number;

b) When it is necessary for the entity to take steps, with a view to preparing the inspection or inspection.

3 - Whenever there is prior communication, under the terms of the previous number, it must be substantiated in writing.

4-administrative authorities, in the exercise of inspection, inspection or surveillance functions, are allowed free entry into establishments and places where the activities to be inspected are carried out.

5 - Those responsible for the spaces referred to in the previous number are obliged to allow entry and stay to the authorities referred to in the previous number and to present

<sup>362</sup> *Lei Quadro Das Contra-Ordenações Ambientais, Lei n.º 50/2006, de 29 de Agosto*

<sup>363</sup> TÍTULO II

Do direito de acesso e dos embargos administrativos

Artigo 18.º

Direito de acesso

1 - Os procedimentos de inspeção e de fiscalização ambientais não devem ser antecidos de comunicação ou notificação às entidades visadas ou aos responsáveis pelas instalações e locais a inspecionar.

2 - Excetua-se do número anterior os casos em que, justificadamente, a comunicação prévia constitui um requisito fundamental para que a atividade de inspeção ou de fiscalização não fique condicionada ou prejudicada, nomeadamente:

a) Quando se tratem de procedimentos de inspeção ou fiscalização que impliquem a consulta de elementos documentais, ou outros, que devam ser previamente preparados pelos responsáveis dos espaços referidos no número anterior;

b) Quando seja necessário à entidade realizar diligências, com vista à preparação da inspeção ou fiscalização.

3 - Sempre que existir comunicação prévia, nos termos do número anterior, esta deve ser fundamentada por escrito.

4 - Às autoridades administrativas, no exercício das funções inspetivas, de fiscalização ou vigilância, é facultada a entrada livre nos estabelecimentos e locais onde se exerçam as atividades a inspecionar.

5 - Os responsáveis pelos espaços referidos no número anterior são obrigados a facultar a entrada e a permanência às autoridades referidas no número anterior e a apresentar-lhes a documentação, livros, registos e quaisquer outros elementos que lhes forem exigidos, bem como a prestar-lhes as informações que forem solicitadas.

6 - Em caso de recusa de acesso ou obstrução à ação inspetiva, de fiscalização ou vigilância, pode ser solicitada a colaboração das forças policiais para remover tal obstrução e garantir a realização e segurança dos atos inspetivos.

7 - O disposto neste artigo é aplicável a outros espaços afetos ao exercício das atividades inspecionadas, nomeadamente aos veículos automóveis, aeronaves, comboios e navios.

to them the documentation, books, records and any other elements that are required of them, as well as to provide them the information that is requested.

6 - In case of refusal of access or obstruction to inspection, inspection or surveillance, the collaboration of police forces may be requested to remove such obstruction and ensure the performance and safety of inspection acts.

7 - The provisions of this article are applicable to other spaces allocated to the exercise of inspected activities, namely to motor vehicles, aircraft, trains and ships.

## **Part II Offence process**

### **Title I Precautionary measures**

#### **Article 41<sup>364</sup> Determination of precautionary measures**

1 - When it proves necessary for the investigation of the environmental infraction process or when the health, safety of people and goods and the environment are at stake, the administrative authority may determine one or more of the following measures:

- a) Suspension of work or preventive closure of all or part of the polluting unit;
- b) Notification of the accused to cease activities carried out in violation of environmental components;

<sup>364</sup> Parte II Do processo de contraordenação

Título I Das medidas cautelares

Artigo 41.º

Determinação das medidas cautelares

1 - Quando se revele necessário para a instrução do processo de contraordenação ambiental ou quando estejam em causa a saúde, a segurança das pessoas e bens e o ambiente, a autoridade administrativa pode determinar uma ou mais das seguintes medidas:

- a) Suspensão da laboração ou o encerramento preventivo no todo ou em parte da unidade poluidora;
- b) Notificação do arguido para cessar as atividades desenvolvidas em violação dos componentes ambientais;
- c) Suspensão de alguma ou algumas atividades ou funções exercidas pelo arguido;
- d) Sujeição da laboração a determinadas condições necessárias ao cumprimento da legislação ambiental;
- e) Selagem de equipamento por determinado tempo;
- f) Recomendações técnicas a implementar obrigatoriamente quando esteja em causa a melhoria das condições ambientais de laboração;
- g) Imposição das medidas que se mostrem adequadas à prevenção de danos ambientais, à reposição da situação anterior à infração e à minimização dos efeitos decorrentes da mesma.

2 - A determinação referida no número anterior vigora, consoante os casos:

- a) Até à sua revogação pela autoridade administrativa ou por decisão judicial;
- b) Até ao início do cumprimento de sanção acessória de efeito equivalente às medidas previstas no artigo 30.º da presente lei;
- c) Até à superveniência de decisão administrativa ou judicial que não condene o arguido às sanções acessórias previstas no artigo 30.º, quando tenha sido decretada medida cautelar de efeito equivalente;
- d) Até à ultrapassagem do prazo de instrução estabelecido pelo artigo 48.º

3 - Quando se verifique obstrução à execução das medidas previstas no n.º 1 deste artigo, pode ser solicitada pela autoridade administrativa às entidades distribuidoras de energia elétrica a interrupção do fornecimento desta aos arguidos por aquela indicados.

4 - A determinação da suspensão e do encerramento preventivo previstos no n.º 1 podem ser objeto de publicação pela autoridade administrativa, sendo as custas da publicação suportadas pelo infrator.

5 - Quando, nos termos da alínea c) do n.º 1, seja determinada a suspensão total das atividades ou das funções exercidas pelo arguido e este venha a ser condenado, no mesmo processo, em sanção acessória que consista em interdição ou inibição do exercício das mesmas atividades ou funções, é descontado por inteiro no cumprimento da sanção acessória o tempo de duração da suspensão preventiva.

- c) Suspension of one or more activities or functions performed by the accused;
- d) Subjection of the work to certain conditions necessary to comply with environmental legislation;
- e) Sealing equipment for a certain period of time;
- f) Technical recommendations to be implemented mandatorily when the improvement of environmental working conditions is at stake;
- g) Imposition of measures that are adequate to prevent environmental damage, to restore the situation prior to the infraction and to minimize the effects resulting from it.

2 - The determination referred to in the previous number shall apply, depending on the case:

- a) Until its revocation by the administrative authority or by judicial decision;
- b) Until the start of the execution of an accessory sanction with an effect equivalent to the measures provided for in Article 30 of this law;
- c) Until the supervenience of an administrative or judicial decision that does not condemn the defendant to the accessory sanctions provided for in Article 30, when a precautionary measure of equivalent effect has been decreed;
- d) Until the period of investigation established by Article 48 has been exceeded of the latter to the defendants indicated by the former.

4 - The determination of suspension and preventive closure provided for in paragraph 1 may be published by the administrative authority, with the costs of publication being borne by the offender.

5 - When, under the terms of subparagraph c) of paragraph 1, the total suspension of the activities or functions performed by the accused is determined and he is sentenced, in the same process, to an accessory sanction consisting of interdiction or inhibition of the exercise of the same activities or functions, the duration of the preventive suspension is deducted in full from the fulfilment of the accessory sanction.

#### **Article 42<sup>365</sup> Precautionary seizure**

1 - The law may determine the provisional seizure by the administrative authority, under the terms of this law and the general regime for administrative offences, namely of the following assets and documents:

- a) Equipment intended for work;

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<sup>365</sup> Artigo 42.º

##### Apreensão cautelar

1 - A lei pode determinar a apreensão provisória pela autoridade administrativa, nos termos desta lei e do regime geral das contraordenações, nomeadamente dos seguintes bens e documentos:

- a) Equipamentos destinados à laboração;
- b) Licenças, certificados, autorizações, aprovações, guias de substituição e ou outros documentos equiparados;
- c) Animais ou plantas de espécies protegidas ilegalmente na posse de pessoas singulares ou coletivas.

2 - No caso de apreensão nos termos da alínea a) do número anterior, pode o seu proprietário, ou quem o represente, ser designado fiel depositário, com a obrigação de não utilizar os bens cautelarmente apreendidos, sob pena de crime de desobediência qualificada.

b) Licenses, certificates, authorizations, approvals, replacement guides and/or other similar documents;

c) Animals or plants of illegally protected species in the possession of natural or legal persons.

2 - In the case of seizure under the terms of subparagraph a) of the previous number, the owner, or whoever represents him, may be designated the trustee, with the obligation not to use the confiscated goods, under penalty of qualified disobedience.

#### (4) Investigative powers in the area of direct expenditure

- The Public Contracts Code (DL no. 18/2008, of 29 January) can be applicable with the following provisions
  - Part II Public procurement Title I Types and choice of procedures, Chapter I Types of procedures, Art. 16 - Procedures for the formation of contracts
  - Chapter III Choice of procedure based on material criteria, Art. 23 et seq.
  - Decision to contract and decision to authorize the expenditure, Art. 36 Código dos Contratos Públicos Decreto-Lei n.º 18/2008 /Public Procurement Code
  - Part IV Governance and sanctioning regime Chapter I Governance Art. 454-A to 454-C

59

#### **Public Contracts Code, DL no. 18/2008, of 29 January<sup>366</sup>**

#### **Part IV Governance and sanctioning regime**

##### **Chapter I Governance**

##### **Article 454-A<sup>367</sup> Monitoring and monitoring of public contracts**

The Instituto dos Mercados Públicos, do Imobiliário e da Construção, IP, is, under the terms of the law, the body responsible for regulating public contracts and is the reference point for cooperation with the European Commission, for the purposes of the provisions of no. 5 of Article 83 of Directive no. 2014/24/EU, of the European Parliament and of the Council, of 26 February 2014.

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<sup>366</sup> *Código Dos Contratos Públicos (CCP), DL n.º 18/2008, de 29 de Janeiro.*

<sup>367</sup> PARTE IV Governação e regime sancionatório

CAPÍTULO I Governação

Artigo 454.º-A

Acompanhamento e monitorização dos contratos públicos

O Instituto dos Mercados Públicos, do Imobiliário e da Construção, I. P., é, nos termos da lei, o organismo responsável pela regulação dos contratos públicos e é o ponto de referência de cooperação com a Comissão Europeia, para efeitos do disposto no n.º 5 do artigo 83.º da Diretiva n.º 2014/24/UE, do Parlamento Europeu e do Conselho, de 26 de fevereiro de 2014.

**Article 454-B<sup>368</sup> Auditing and supervision of public contracts**

Auditing and inspection of public contracts is the responsibility of the Court of Auditors, the General Inspectorate of Finance and the entities with powers of inspection and internal control, under the terms provided for in specific legislation.

**Article 454-C<sup>369</sup> Duty of collaboration with other authorities**

1 - The contracting entities and the Instituto dos Mercados Públicos, do Imobiliário e da Construção, IP, must promptly provide the collaboration required by the Public Prosecutor's Office, the Competition Authority and the audit and inspection entities referred to in the previous article, for the performance of the respective mission, namely ensuring direct access to public procurement information databases and submitting the requested documents or records.

2 - The information made available under the terms of the previous number may only be used within the scope of the powers of the referred authorities.

**(5) Protection of information**

- 61 The protection of information is highly important as the rights of suspects of administrative offences might be infringed, which can result in the uselessness of gathered evidence in the worst case.

**(a) Tax secrecy (General Tax Code)**

- 62 The General Portuguese Tax Code provides for an article on tax secrecy like many other Member States too:

**Article 64 General Tax Code<sup>370</sup> Confidentiality** 1 - The directors, employees and agents of the tax administration are obliged to keep confidential the data collected on

<sup>368</sup> Artigo 454.º-B

Auditoria e fiscalização dos contratos públicos

A auditoria e a fiscalização dos contratos públicos compete ao Tribunal de Contas, à Inspeção-Geral de Finanças e às entidades com competências de inspeção e controlo interno, nos termos previstos em legislação própria.

<sup>369</sup> Artigo 454.º-C

Dever de colaboração com outras autoridades

1 - As entidades adjudicantes e o Instituto dos Mercados Públicos, do Imobiliário e da Construção, I. P., devem prestar prontamente a colaboração requerida pelo Ministério Público, pela Autoridade da Concorrência e pelas entidades de auditoria e fiscalização referidas no artigo anterior, para o desempenho da respetiva missão, nomeadamente garantindo o acesso direto às bases de dados de informações de contratos públicos e apresentando os documentos ou registos solicitados.

2 - As informações disponibilizadas nos termos do número anterior apenas podem ser utilizadas no âmbito das competências das referidas autoridade

<sup>370</sup> **Artigo 64.ºConfidencialidade Lei Geral Tributária**

1 - Os dirigentes, funcionários e agentes da administração tributária estão obrigados a guardar sigilo sobre os dados recolhidos sobre a situação tributária dos contribuintes e os elementos de natureza pessoal que obtenham no procedimento, nomeadamente os decorrentes do sigilo profissional ou qualquer outro dever de segredo legalmente regulado.



the tax situation of the taxpayers and the elements of a personal nature that they obtain in the procedure, namely those arising from professional secrecy or any other legally required secrecy duty regulated.

2 - The duty of secrecy ceases in the event of:

- a) Authorization of the taxpayer to disclose his tax situation;
- b) Legal cooperation of the tax administration with other public entities, to the extent of its powers;
- c) Mutual assistance and cooperation of the tax administration with the tax administrations of other countries resulting from international conventions to which the Portuguese State is bound, whenever reciprocity is foreseen;
- d) Collaboration with justice under the terms of the Civil Procedure Code and by means of an order issued by a judicial authority, within the scope of the Criminal Procedure Code;
- e) Confirmation of the tax identification number and tax domicile to the entities legally competent to carry out the commercial, land or car registration.

2 - O dever de sigilo cessa em caso de:

- a) Autorização do contribuinte para a revelação da sua situação tributária;
- b) Cooperação legal da administração tributária com outras entidades públicas, na medida dos seus poderes;
- c) Assistência mútua e cooperação da administração tributária com as administrações tributárias de outros países resultante de convenções internacionais a que o Estado Português esteja vinculado, sempre que estiver prevista reciprocidade;
- d) Colaboração com a justiça nos termos do Código de Processo Civil e mediante despacho de uma autoridade judiciária, no âmbito do Código de Processo Penal;
- e) Confirmação do número de identificação fiscal e domicílio fiscal às entidades legalmente competentes para a realização do registo comercial, predial ou automóvel.

3 - O dever de confidencialidade comunica-se a quem quer que, ao abrigo do número anterior, obtenha elementos protegidos pelo segredo fiscal, nos mesmos termos do sigilo da administração tributária.

4 - O dever de confidencialidade não prejudica o acesso do sujeito passivo aos dados sobre a situação tributária de outros sujeitos passivos que sejam comprovadamente necessários à fundamentação da reclamação, recurso ou impugnação judicial, desde que expurgados de quaisquer elementos susceptíveis de identificar a pessoa ou pessoas a que dizem respeito.

5 - Não contende com o dever de confidencialidade:

- a) A divulgação de listas de contribuintes cuja situação tributária não se encontre regularizada, designadamente listas hierarquizadas em função do montante em dívida, desde que já tenha decorrido qualquer dos prazos legalmente previstos para a prestação de garantia ou tenha sido decidida a sua dispensa;
- b) A publicação de rendimentos declarados ou apurados por categorias de rendimentos, contribuintes, sectores de actividades ou outras, de acordo com listas que a administração tributária deve organizar anualmente a fim de assegurar a transparência e publicidade.
- c) A notificação, pela administração tributária, de sujeito passivo que disponibilize uma interface eletrónica para efeitos de acionar a responsabilidade solidária deste.

6 - Para efeitos do disposto na alínea a) do número anterior, considera-se como situação tributária regularizada o disposto no artigo 177.º-A do CPPT.

7 - Para efeitos do disposto na alínea d) do n.º 2, e com vista à realização das finalidades dos processos judiciais, incluindo as dos inquéritos em processo penal, as autoridades judiciárias acedem diretamente às bases de dados da Autoridade Tributária e Aduaneira.

8 - A concretização do acesso referido no número anterior é disciplinada por protocolo a celebrar entre o Conselho Superior da Magistratura, a Procuradoria-Geral da República e a Autoridade Tributária e Aduaneira.

3 - The duty of confidentiality is communicated to whoever, under the terms of the previous number, obtains elements protected by tax secrecy, in the same terms as the secrecy of the tax administration.

4 - The duty of confidentiality does not prejudice the access of the taxable person to data on the tax situation of other taxable persons that are demonstrably necessary to justify the claim, appeal or judicial challenge, provided that they are purged of any elements capable of identifying the person or persons to which they relate.

5 - Does not conflict with the duty of confidentiality:

a) Disclosure of lists of taxpayers whose tax situation is not regularized, namely hierarchical lists according to the amount owed, provided that any of the legally established deadlines for the provision of guarantee has already elapsed or its exemption has been decided;

b) The publication of declared or calculated income by income categories, taxpayers, activity sectors or others, according to lists that the tax administration must organize annually in order to ensure transparency and publicity.

c) The notification, by the tax administration, of a taxable person who provides an electronic interface for the purposes of triggering his joint liability.

6 - For the purposes of the provisions of subparagraph a) of the previous number, the provisions of Article 177-A of the CPPT shall be considered as a regularized tax situation.

7 - For the purposes of subparagraph d) of paragraph 2, and with a view to carrying out the purposes of judicial proceedings, including investigations in criminal proceedings, the judicial authorities directly access the databases of the Tax and Customs Authority.

8 - The implementation of the access referred to in the previous number is governed by a protocol to be signed between the Superior Council for the Judiciary, the Attorney General's Office and the Tax and Customs Authority.

#### **Article 64-A<sup>371</sup> Special confidentiality guarantees**

It is incumbent upon the Minister of Finance to define special rules for the reservation of information to be observed by the tax administration services within the scope of procedures for derogating from the duty of bank secrecy.

**63** The duty of secrecy derives also from the

**Article 22<sup>372</sup> Duty of secrecy** 1 - The tax inspection procedure is confidential, and the officials who intervene in it must keep strictly confidential the facts relating to the tax

<sup>371</sup> **Artigo 64.º-A Garantias especiais de confidencialidade Lei Geral Tributária**

Compete ao Ministro das Finanças definir regras especiais de reserva da informação a observar pelos serviços da administração tributária no âmbito dos processos de derrogação do dever de sigilo bancário.

<sup>372</sup> Artigo 22.º Dever de sigilo

situation of the taxable person or of any entities and other elements of a personal or confidential nature that they become aware of in the exercise or because of its functions.  
 2 - The provisions of the previous number do not affect the legal duties of communicating to other public entities the facts ascertained in the tax inspection.  
 3 - The special duty of secrecy provided for in this article does not cease with the end of the functions and is transmitted to the entities that have access, under the terms of the previous number, to the data obtained by the tax inspection.

**(b) Administrative secrecy (Administrative laws)**

Art. 135 of the Portuguese Criminal Code relates at least to the secret of an employee. 64

**(c) Data secrecy (Data protection laws, Customs situation, General Tax Code)**

The GDPR applies in Portugal.<sup>373</sup> The Customs Code is supplemented by the Union Customs Code. If national law is concerned in relation to administrative matters, the Administrative Procedure Code applies. Art. 18 of this law reads: 65

**Article 18 Administrative Procedure Code<sup>374</sup> Principle of protection of personal data** Individuals have the right to the protection of their personal data and the security and integrity of the media, systems and applications used for this purpose, under the terms of the law. 66

The General Tax Code does not explicitly hold the same but it respects Union law and the Administrative Procedure Law of Portugal. 67

In addition to the aforementioned situation the following laws and provisions may apply: 68

- Article 35 of the Constitution of the Portuguese Republic: 69

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1 - O procedimento da inspeção tributária é sigiloso, devendo os funcionários que nele intervenham guardar rigoroso sigilo sobre os factos relativos à situação tributária do sujeito passivo ou de quaisquer entidades e outros elementos de natureza pessoal ou confidencial de que tenham conhecimento no exercício ou por causa das suas funções.

2 - O disposto no número anterior não prejudica os deveres legais de comunicação a outras entidades públicas dos factos apurados na inspeção tributária.

3 - O dever especial de sigilo previsto no presente artigo não cessa com o termo das funções e transmite-se às entidades que tenham acesso, nos termos do número anterior, aos dados obtidos pela inspeção tributária.

<sup>373</sup> See Amanda Clara Moniz Carvalho/Iara Coimbra Teixeira, OPINIÃO Proteção de dados pessoais, empresas e o Direito Tributário, online: <https://www.conjur.com.br/2022-mar-06/artx-protecao-dados-pessoais-empresas-direito-tributario>. See <https://www.bportugal.pt/page/protecao-de-dados>.

<sup>374</sup> **Artigo 18.º Princípio da proteção dos dados pessoais Código do Procedimento Administrativo (CPA)** Os particulares têm direito à proteção dos seus dados pessoais e à segurança e integridade dos suportes, sistemas e aplicações utilizados para o efeito, nos termos da lei.

## **Portuguese Constitution**

### **Part I Fundamental rights and duties**

#### **Title II Rights, freedoms and guarantees**

#### **Chapter I Personal rights, freedoms and guarantees**

#### **Article 35<sup>375</sup> Use of IT data**

1. All citizens have the right of access to computerized data concerning them, being able to demand their rectification and updating, and the right to know the purpose for which they are intended, under the terms of the law.
2. The law defines the concept of personal data, as well as the conditions applicable to its automated processing, connection, transmission and use, and guarantees its protection, namely through an independent administrative entity.
3. Computers may not be used to process data relating to philosophical or political beliefs, party or trade union affiliation, religious faith, private life and ethnic origin, except with the express consent of the holder, authorization provided for by law with guarantees of non-discrimination or for processing non-individually identifiable statistical data.
4. Access to third party personal data is prohibited, except in exceptional cases provided for by law.
5. The assignment of a single national number to citizens is prohibited.
6. Free access to computer networks for public use is guaranteed to all, the law defining the regime applicable to cross-border data flows and the appropriate forms of protection of personal and other data whose safeguarding is justified by reasons of national interest.
7. Personal data contained in manual files enjoy the same protection as provided for in the previous numbers, under the terms of the law.

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#### <sup>375</sup> **Constituição da República Portuguesa**

#### **Parte I - Direitos e deveres fundamentais**

#### **Título II - Direitos, liberdades e garantias**

#### **Capítulo I - Direitos, liberdades e garantias pessoais**

#### **Artigo 35.º – Utilização da informática**

1. Todos os cidadãos têm o direito de acesso aos dados informatizados que lhes digam respeito, podendo exigir a sua rectificação e actualização, e o direito de conhecer a finalidade a que se destinam, nos termos da lei.
2. A lei define o conceito de dados pessoais, bem como as condições aplicáveis ao seu tratamento automatizado, conexão, transmissão e utilização, e garante a sua protecção, designadamente através de entidade administrativa independente.
3. A informática não pode ser utilizada para tratamento de dados referentes a convicções filosóficas ou políticas, filiação partidária ou sindical, fé religiosa, vida privada e origem étnica, salvo mediante consentimento expresso do titular, autorização prevista por lei com garantias de não discriminação ou para processamento de dados estatísticos não individualmente identificáveis.
4. É proibido o acesso a dados pessoais de terceiros, salvo em casos excepcionais previstos na lei.
5. É proibida a atribuição de um número nacional único aos cidadãos.
6. A todos é garantido livre acesso às redes informáticas de uso público, definindo a lei o regime aplicável aos fluxos de dados transfronteiras e as formas adequadas de protecção de dados pessoais e de outros cuja salvaguarda se justifique por razões de interesse nacional.
7. Os dados pessoais constantes de ficheiros manuais gozam de protecção idêntica à prevista nos números anteriores, nos termos da lei.

The more general laws may apply as well: 70

- Personal Data Protection Law (Law no. 18 August),<sup>376</sup>
- Data Preservation Law (Law no. 32/2008, of 17 July),<sup>377</sup>
- Electronic Communications Law (Law no. 5/2004, of 10 February).<sup>378</sup>

**(d) Official secrecy**

The Portuguese Criminal Procedure Code contains at least provisions on the official secrecy in Art. 136. State secrets are considered in Art. 137. 71

Special secrets stem from customs legislation: 72

**Article 6 Secrecy Ordinance No. 388/2019, of October 28<sup>379</sup>**

The GNR soldiers who access the information contained in the AT information systems, under the terms of this decree, are obliged, without prejudice to other legally established duties, to keep the information they have access to secrecy, and may only use it in the scope of the action that justified this access.

**(6) Investigation reports (General Tax Code)**

The DL No. 433/99, of October 26 Code of Procedure and Tax Process can be consulted here. 73

Further, Art. 57 of the General Regime of Tax Infractions (Law no. 15/2001 of June 5<sup>th</sup>) may play a role: 74

**Article 57<sup>380</sup> Notice – Requirements 1** - The authority or agent of authority who personally verifies the constitutive facts of the tax offence will issue a report, if it is competent to do so, and will immediately send it to the entity that must instruct the process. 75

<sup>376</sup> *Lei de Proteção de Dados Pessoais (Lei n.º 67/98, de 26 de outubro).*

<sup>377</sup> *Lei da Conservação de Dados (Lei n.º 32/2008, de 17 de julho).*

<sup>378</sup> *Lei das Comunicações Eletrónicas (Lei n.º 5/2004, de 10 de fevereiro).*

<sup>379</sup> **Artigo 6.º Sigilo Portaria n.º 388/2019, de 28 de outubro**

Os militares da GNR que acedam à informação constante dos sistemas de informação da AT, nos termos da presente portaria, ficam obrigados, sem prejuízo dos demais deveres legalmente estabelecidos, a guardar sigilo sobre a informação a que tenham acesso, só podendo utilizá-la no âmbito da ação que justificou esse acesso.

<sup>380</sup> Artigo 57.º Auto de notícia - Requisitos

1 - A autoridade ou agente de autoridade que verificar pessoalmente os factos constitutivos da contra-ordenação tributária levantará auto de notícia, se para isso for competente, e enviá-lo-á imediatamente à entidade que deva instruir o processo.

2 - O auto de notícia deve conter, sempre que possível:

- a) A identificação do autuante e do autuado, com menção do nome, número fiscal de contribuinte, profissão, morada e outros elementos necessários;
- b) O lugar onde se praticou a infracção e aquele onde foi verificada;
- c) O dia e hora da contra-ordenação e os da sua verificação;
- d) A descrição dos factos constitutivos da infracção;
- e) A indicação das circunstâncias respeitantes ao infractor e à contra-ordenação que possam influir na determinação da responsabilidade, nomeadamente a sua situação económica e o prejuízo causado ao credor tributário;

2 - The report must contain, whenever possible:

- a) Identification of the offender and the person assessed, mentioning the name, tax number, profession, address and other necessary elements;
- b) The place where the offence was committed and where it was verified;
- c) The day and time of the offence and its verification;
- d) A description of the facts constituting the offence;
- e) Indication of the circumstances concerning the offender and the administrative offence that may influence the determination of responsibility, namely his economic situation and the damage caused to the tax creditor;
- f) Mention of the legal provisions that provide for the offence and determine the respective sanction;
- g) Indication of the witnesses who can testify about the administrative offence;
- h) The signature of the person charged and, failing that, the mention of the reasons for this;
- i) The signature of the notifier, which may be made by seal or other duly authorized means of reproduction, and authentication may be carried out by affixing a white seal or by any suitable form of signature and the issuing service.

76

**Complementary Regime of the Tax Inspection Procedure or Tax Inspection Regulation, Decree-Law 413/98 of December 31**

**Article 62<sup>381</sup> Inspection report 1** - To conclude the procedure, a final report is drawn up with a view to identifying and systematizing the detected facts and their legal and tax classification.

- f) A menção das disposições legais que prevêm a contra-ordenação e cominam a respectiva sanção;
- g) A indicação das testemunhas que possam depor sobre a contra-ordenação;
- h) A assinatura do autuado e, na sua falta, a menção dos motivos desta;
- i) A assinatura do autuante, que poderá ser efectuada por chancela ou outro meio de reprodução devidamente autorizado, podendo a autenticação ser efectuada por aposição de selo branco ou por qualquer forma idónea de assinatura e do serviço emitente.

<sup>381</sup> Artigo 62.º

Relatório de inspecção

1 - Para conclusão do procedimento é elaborado um relatório final com vista à identificação e sistematização dos factos detectados e sua qualificação jurídico-tributária.

2 - O relatório deve conter, tendo em atenção a dimensão e complexidade da entidade inspeccionada, os seguintes elementos:

- a) Identificação da entidade inspeccionada, designadamente denominação social, número de identificação fiscal, local da sede e serviço local a que pertence;
- b) Menção das alterações a efectuar aos dados constantes dos ficheiros da administração tributária;
- c) Data do início e do fim dos actos de inspecção e das interrupções ou suspensões verificadas;
- d) Âmbito e extensão do procedimento;
- e) Descrição dos motivos que deram origem ao procedimento, com a indicação do número da ordem de serviço ou do despacho que o motivou;
- f) Informações complementares, incluindo os principais devedores dos sujeitos passivos e dos responsáveis solidários ou subsidiários pelos tributos em falta;
- g) Descrição dos factos susceptíveis de fundamentar qualquer tipo de responsabilidade solidária ou subsidiária;

2 - The report must contain, taking into account the size and complexity of the entity inspected, the following elements:

- a) Identification of the inspected entity, namely corporate name, tax identification number, location of headquarters and local service to which it belongs;
- b) Mention of changes to be made to the data contained in the files of the tax administration;
- c) Date of beginning and end of the inspection acts and of the interruptions or suspensions verified;
- d) Scope and extension of the procedure;
- e) Description of the reasons that gave rise to the procedure, with an indication of the number of the service order or dispatch that motivated it;
- f) Complementary information, including the main debtors of the taxable persons and of the solidary or subsidiary responsible for the missing taxes;
- g) Description of facts likely to justify any type of joint or several liability;
- h) Unjustified property additions or disproportionate expenses incurred by the taxable or taxable person in the period to which the inspection relates;
- i) Description of tax-relevant facts that change the amounts declared or to be declared subject to taxation, with mention and addition of evidence and legal grounds to support the corrections made;
- j) Indication of the verified infractions, of the notices raised and of the correction documents issued;
- l) Brief description of the results of the inspection acts and proposals made;
- m) Identification of the employees who signed it, mentioning their name, category and professional number;
- n) Other relevant elements.

3 - In the event that the taxable person has submitted a request for a reduction of the fine or proceeded to regularize his tax situation during the inspection procedure, reference will be made to this fact in the report.

h) Acréscimos patrimoniais injustificados ou despesas desproporcionadas efectuadas pelo sujeito passivo ou obrigado tributário no período a que se reporta a inspecção;

i) Descrição dos factos fiscalmente relevantes que alterem os valores declarados ou a declarar sujeitos a tributação, com menção e junção dos meios de prova e fundamentação legal de suporte das correcções efectuadas;

j) Indicação das infracções verificadas, dos autos de notícia levantados e dos documentos de correcção emitidos;

l) Descrição sucinta dos resultados dos actos de inspecção e propostas formuladas;

m) Identificação dos funcionários que o subscreveram, com menção do nome, categoria e número profissional;

n) Outros elementos relevantes.

3 - No caso de o sujeito passivo ter apresentado pedido de redução de coima ou procedido à regularização da sua situação tributária durante o procedimento de inspecção, do facto far-se-á referência no relatório.

4 - Poderão ser elaborados outros tipos de relatórios em caso de procedimentos de inspecção com objectivos específicos, os quais, no entanto, incluirão sempre a identidade das entidades inspeccionadas, os fins dos actos, as conclusões obtidas e a sua fundamentação.

5 - O relatório de inspecção será assinado pelo funcionário ou funcionários intervenientes no procedimento e conterá o parecer do chefe de equipa que intervenha ou coordene, bem como o sancionamento superior das suas conclusões.

4 - Other types of reports may be drawn up in the case of inspection procedures with specific objectives, which, however, will always include the identity of the entities inspected, the purposes of the acts, the conclusions obtained and their justification.

5 - The inspection report will be signed by the official or employees involved in the procedure and will contain the opinion of the team leader who intervenes or coordinates, as well as the superior sanction of his conclusions.

**(7) Preservation of Evidence (General Tax Code)**

77 Section V, Instruction, Art. 114 et seq. Code of Procedure and Tax Process regulates the rules on the instruction process and, therefore, provisions on the means of proof (Art. 115 et seq.). Chapter III handles the precautionary action procedures, Art. 135 et seq.

**g) Single measures**

**aa. Interviewing/Questioning of “persons concerned” (in relation to suspects/defendants)**

78 The following codes can be consulted for this measure:

- 79
- Code of Procedure and Tax Process
  - General Regime of Tax Infractions
  - Complementary Regime of the Tax Inspection Procedure or Tax Inspection Regulation
  - General Tax Code
  - Administrative Procedure Code.

**bb. The taking of statements from Economic Operators**

80 Please consult the above-mentioned codes → Interviewing/Questioning of “persons concerned” (in relation to suspects/defendants).

**cc. Interviewing/Questioning of witnesses**

81 For the interviewing or questioning of a witness Art. 72 General Regime of Tax Infractions is applicable.



### General Regime of Tax Infractions

82

#### Article 72<sup>382</sup> Means of Evidence

1 - The head of the tax service will always attach to the file the official elements available or may be requested to clarify the facts, namely those relating to the tax or contributory status of the defendant.

2 - The witnesses, a maximum of three for each infraction, are not sworn, and the minutes of inquiry must be signed by them or indicate the reasons for the lack of signature.

3 - Witnesses and experts are obliged to appear at the tax service in the area of their residence and to give their opinion on the matter of the case, with an absence or unjustified refusal being punishable by a pecuniary penalty to be set between one fifth and twice the salary of the highest national monthly minimum in effect on the date of the no-show or refusal.

#### dd. Inspections

Please consult the above-mentioned codes → Interviewing/Questioning of “persons concerned” (in relation to suspects/defendants).

83

#### ee. Searches in the various areas of external investigations

Please consult the above-mentioned codes → Interviewing/Questioning of “persons concerned” (in relation to suspects/defendants).

84

#### ff. Seizure of other evidence

The seizure of evidence in the area of tax fraud/irregularities proceedings is governed by **Art. 143 et seq. Tax Procedures & Investigation of Tax Offences Act**. The seizure of assets is possible with **Art. 73 General Regime of Tax Infractions**:

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**Article 73<sup>383</sup> Seizure of assets** 1 - The seizure of assets that have been the object of an administrative offence may be carried out at the time of collection of the notice or during

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<sup>382</sup> Artigo 72.º Meios de prova

1 - O dirigente do serviço tributário juntará sempre ao processo os elementos oficiais de que disponha ou possa solicitar para esclarecimento dos factos, designadamente os respeitantes à situação tributária ou contributiva do arguido.

2 - As testemunhas, no máximo de três por cada infracção, não são ajuramentadas, devendo a acta de inquirição ser por elas assinada ou indicar as razões da falta de assinatura.

3 - As testemunhas e os peritos são obrigados a comparecer no serviço tributário da área da sua residência e a pronunciarem-se sobre a matéria do processo, sendo a falta ou recusa injustificada puníveis com sanção pecuniária a fixar entre um quinto e o dobro do salário mínimo nacional mensal mais elevado em vigor na data da não comparecimento ou da recusa.

<sup>383</sup> Artigo 73.º Apreensão de bens

the course of the proceedings by the entity competent to impose the fine, whenever necessary for the purposes of proof or guarantee of the tax provision, fine or costs.

2 - The provisions of the previous number also apply to the means of transport used in the commission of the offences provided for in Articles 108 and 109, when the merchandise that is the object of the offence consists of the greater value relative to the remaining merchandise transported and provided that this value net of tax exceeds EUR 3750, unless it is proved that the use was carried out without the knowledge and without the negligence of its owners.

3 - Weapons and other instruments used in the commission of the offences referred to in the previous number, or which are destined to serve for that purpose, will also be seized, unless it is proved that the use was carried out without the knowledge and without the negligence of their owners.

4 - The provisions of paragraph 6 of Article 18 para 3 of Article 19 para 3 of Article 20, paras 1 and 2 of Article 38 are correspondingly applicable and Article 39.

5 - In the case of the seizure of liquid money, within the meaning of community and national legislation on movements of liquid money entering and leaving the national territory, the amounts are deposited in a duly authorized credit institution, at the order of the competent authorities.

6 - When the seizure concerns movable property subject to registration, the respective identification documents will also be seized.

7 - The interested party may request the competent tax court to revoke the decision that determined the seizure of assets based on illegality.

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1 - A apreensão de bens que tenham constituído objecto de contra-ordenação pode ser efectuada no momento do levantamento do auto de notícia ou no decurso do processo pela entidade competente para a aplicação da coima, sempre que seja necessária para efeitos de prova ou de garantia da prestação tributária, coima ou custas.

2 - O disposto no número anterior vale também para os meios de transporte utilizados na prática das contra-ordenações previstas nos artigos 108.º e 109.º, quando a mercadoria objecto da infracção consista na parte de maior valor relativamente à restante mercadoria transportada e desde que esse valor líquido de imposto exceda (euro) 3750, salvo se se provar que a utilização foi efectuada sem o conhecimento e sem a negligência dos seus proprietários.

3 - As armas e demais instrumentos utilizados na prática das contra-ordenações referidas no número anterior, ou que estiverem destinados a servir para esse efeito, serão igualmente apreendidos, salvo se se provar que a utilização foi efectuada sem o conhecimento e sem a negligência dos seus proprietários.

4 - São correspondentemente aplicáveis as disposições do n.º 6 do artigo 18.º, do n.º 3 do artigo 19.º, do n.º 3 do artigo 20.º, dos n.os 1 e 2 do artigo 38.º e do artigo 39.º

5 - Tratando-se da apreensão de dinheiro líquido, na acepção da legislação comunitária e nacional sobre movimentos de dinheiro líquido à entrada e à saída do território nacional, os valores são depositados em instituição de crédito devidamente autorizada, à ordem das autoridades competentes.

6 - Quando a apreensão tiver por objecto bens móveis sujeitos a registo, serão igualmente apreendidos os respectivos documentos identificativos.

7 - O interessado pode requerer ao tribunal tributário competente a revogação da decisão que determinou a apreensão de bens com fundamento em ilegalidade.

8 - Autuadas as infracções previstas no presente diploma em matéria de imposto sobre os veículos e de imposto único de circulação, há lugar à apreensão ou imobilização imediata do veículo, bem como à apreensão dos documentos que titulem a respectiva circulação, até ao cumprimento das obrigações tributárias em falta.

8 - Once the infractions provided for in this diploma in terms of vehicle tax and single circulation tax have been reported, the vehicle may be seized or immediately immobilized, as well as the documents that certify its circulation, until the obligations are fulfilled.

**gg. The Information gathering and seizure of digital forensic evidence including bank account information (General Tax Law)**

In the area of VAT irregularities and tax frauds the tax administration has the power to open the bank accounts according to the General Tax Law:

87

**Article 63-A<sup>384</sup> Information relating to financial operations** 1 - Credit institutions and financial companies are subject to automatic information mechanisms regarding the

88

<sup>384</sup> **Artigo 63.º A Informações relativas a operações financeiras  
Lei Geral Tributária Decreto-Lei n.º 398/98**

1 - As instituições de crédito e sociedades financeiras estão sujeitas a mecanismos de informação automática relativamente à abertura ou manutenção de contas por contribuintes cuja situação tributária não se encontre regularizada, nos termos dos n.os 5 e 6 do artigo 64.º, ou inseridos em sectores de risco, bem como quanto às transferências transfronteiras que não sejam relativas a pagamentos de rendimentos sujeitos a algum dos regimes de comunicação para efeitos fiscais já previstos na lei, a transacções comerciais ou efectuadas por entidades públicas, nos termos a definir por portaria do Ministro das Finanças, ouvido o Banco de Portugal.

2 - As instituições de crédito, as sociedades financeiras e as demais entidades que prestem serviços de pagamento estão obrigadas a comunicar à Autoridade Tributária e Aduaneira, até ao final do mês de março de cada ano, através de declaração de modelo oficial, aprovada por portaria do membro do Governo responsável pela área das finanças, as transferências e envio de fundos que tenham como destinatário entidade localizada em país, território ou região com regime de tributação privilegiada mais favorável que não sejam relativas a operações efetuadas por pessoas coletivas de direito público.

3 - A Autoridade Tributária e Aduaneira fica obrigada a publicar anualmente, no seu sítio na Internet, o valor total anual das transferências e envio de fundos, bem como o motivo da transferência, por categoria de operação e de acordo com a respetiva tipologia, quando tenham como destinatários países, territórios e regiões com regime de tributação privilegiada mais favorável.

4 - As instituições de crédito, sociedades financeiras e as demais entidades que prestem serviços de pagamento têm a obrigação de comunicar à Autoridade Tributária e Aduaneira, até ao final do mês de julho de cada ano, através de declaração de modelo oficial, aprovada por portaria do membro do Governo responsável pela área das finanças e ouvido o Banco de Portugal, o valor dos fluxos de pagamentos com cartões de crédito e de débito ou por outros meios de pagamento eletrónico, efetuados por seu intermédio, sem por qualquer forma identificar os mandantes das ordens de pagamento.

5 - Sem prejuízo do disposto no número anterior, as instituições de crédito e sociedades financeiras e as demais entidades que prestem serviços de pagamento têm ainda a obrigação de fornecer, a qualquer momento, a pedido do diretor-geral da Autoridade Tributária e Aduaneira ou do seu substituto legal, ou do conselho diretivo do Instituto de Gestão Financeira da Segurança Social, I. P., as informações respeitantes aos fluxos de pagamentos com cartões de crédito e de débito ou por outros meios de pagamento eletrónico, efetuados por seu intermédio aos sujeitos passivos referidos no número anterior que sejam identificados no referido pedido de informação, sem por qualquer forma identificar os mandantes das ordens de pagamento.

6 - A informação a submeter, nos termos do n.º 1, inclui a identificação das contas, o número de identificação fiscal dos titulares, o valor dos depósitos no ano, o saldo em 31 de Dezembro, bem como outros elementos que constem da declaração de modelo oficial.

7 - A obrigação de comunicação prevista no n.º 2 abrange igualmente as transferências e os envios de fundos efetuados através das respetivas sucursais localizadas fora do território português ou de entidades não residentes com as quais exista uma situação de relações especiais, nos termos do n.º 4 do artigo 63.º do Código do IRC, sempre que a instituição de crédito, sociedade financeira ou entidade prestadora de serviços de pagamento tenha

opening or maintenance of accounts by taxpayers whose tax situation is not regularized, pursuant to paragraphs 5 and 6 of Article 64, or inserted in risk sectors, as well as cross-border transfers that are not related to payments of income subject to any of the reporting regimes for tax purposes already provided for by law, commercial transactions or transactions carried out by public entities, under the terms to be defined by decree of the Minister of Finance, after hearing the Bank of Portugal.

2 - Credit institutions, financial companies and other entities that provide payment services are obliged to communicate to the Tax and Customs Authority, by the end of March of each year, through an official model declaration, approved by decree of the member of the Government responsible for the area of finance, transfers and remittances of funds to an entity located in a country, territory or region with a more favourable privileged tax regime that do not relate to operations carried out by legal persons governed by public law.

3 - The Tax and Customs Authority is obliged to publish annually, on its website, the total annual value of transfers and remittances of funds, as well as the reason for the transfer, by category of operation and according to the respective typology, when have as recipients' countries, territories and regions with a more favourable privileged tax regime.

4 - Credit institutions, financial companies and other entities that provide payment services have the obligation to communicate to the Tax and Customs Authority, until the end of July of each year, through an official model declaration, approved by decree of the member of the Government responsible for the area of finance and after consultation with the Bank of Portugal, the value of payment flows with credit and debit cards or other electronic means of payment, made through it, without in any way identifying the principals of the payment orders.

5 - Without prejudice to the provisions of the previous number, credit institutions and financial companies and other entities that provide payment services are also obliged to provide, at any time, at the request of the Director-General of the Tax and Customs

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ou devesse ter conhecimento de que aquelas transferências ou envios de fundos têm como destinatário final uma entidade localizada em país, território ou região com regime de tributação privilegiada mais favorável.

8 - Os sujeitos passivos do IRS são obrigados a mencionar na correspondente declaração de rendimentos a existência e a identificação de contas de depósitos ou de títulos abertas em instituição financeira não residente em território português ou em sucursal localizada fora do território português de instituição financeira residente, de que sejam titulares, beneficiários ou que estejam autorizados a movimentar.

9 - Para efeitos do disposto no número anterior, entende-se por 'beneficiário' o sujeito passivo que controle, direta ou indiretamente, e independentemente de qualquer título jurídico mesmo que através de mandatário, fiduciário ou interposta pessoa, os direitos sobre os elementos patrimoniais depositados nessas contas.

10 - A obrigação de entrega da declaração prevista no n.º 2 subsiste mesmo que não tenham ocorrido transferências ou envio de fundos abrangidos pela obrigação se comunicação.

11 - O Banco de Portugal deve disponibilizar à Autoridade Tributária e Aduaneira, dentro do prazo previsto no n.º 2, informação por entidade declarante, em número e valor, agregada por destino e motivo, relativa às transferências e envio de fundos que tenham como destinatário entidade localizada em país, território ou região com regime de tributação privilegiada mais favorável, que tenham sido reportadas ao Banco de Portugal pelas entidades referidas no n.º 2.

Authority or the its legal substitute, or from the board of directors of the Instituto de Gestão Financeira da Segurança Social, IP, information regarding the flow of payments with credit and debit cards or other electronic means of payment, made through it to the taxable persons referred to in previous number that are identified in the aforementioned request for information, without in any way identifying the principals of the payment orders.

6 - The information to be submitted, under the terms of paragraph 1, includes the identification of the accounts, the tax identification number of the holders, the value of deposits in the year, the balance on 31 December, as well as other elements contained in the official model statement.

7 - The communication obligation provided for in paragraph 2 also covers transfers and remittances of funds carried out through the respective branches located outside Portuguese territory or from non-resident entities with which there is a situation of special relationship, under the terms of paragraph 4 of Article 63 of the IRC Code, whenever the credit institution, financial company or entity providing payment services has or should have known that those transfers or remittances of funds have as final recipient an entity located in country, territory or region with a more favourable privileged tax regime.

8 - IRS taxpayers are required to mention in the corresponding income statement the existence and identification of deposit or securities accounts opened in a financial institution not resident in Portuguese territory or in a branch located outside the Portuguese territory of a resident financial institution, of which they are holders, beneficiaries or authorized to move.

9 - For the purposes of the preceding paragraph, 'beneficiary' means the taxable person who controls, directly or indirectly, and independently of any legal title, even through an agent, trustee or intermediary, the rights over the assets deposited in these accounts.

10 - The obligation to deliver the declaration provided for in paragraph 2 remains even if there have been no transfers or remittances of funds covered by the obligation to communicate.

11 - The Bank of Portugal shall provide the Tax and Customs Authority, within the period provided for in paragraph 2, information by reporting entity, in number and value, aggregated by destination and reason, regarding transfers and remittances of funds intended to recipient entity located in a country, territory or region with a more favourable privileged tax regime, which have been reported to Banco de Portugal by the entities referred to in paragraph 2.

**Article 63-B<sup>385</sup> Access to bank information and documents 1 - The tax administration has the power to access all banking information or documents, as well as information or**

<sup>385</sup> **Artigo 63.º B Acesso a informações e documentos bancários Lei Geral Tributária**

1 - A administração tributária tem o poder de aceder a todas as informações ou documentos bancários, bem como a informações ou documentos de outras entidades financeiras previstas como tal no artigo 3.º da Lei n.º 25/2008, de 5 de junho, alterado pelos Decretos-Leis n.os 317/2009, de 30 de outubro, e 242/2012, de 7 de novembro, sem dependência do consentimento do titular dos elementos protegidos:

- a) Quando existam indícios da prática de crime em matéria tributária;
- b) Quando se verificarem indícios da falta de veracidade do declarado ou esteja em falta declaração legalmente exigível;
- c) Quando se verificarem indícios da existência de acréscimos de património não justificados, nos termos da alínea f) do n.º 1 do artigo 87.º;
- d) Quando se trate da verificação de conformidade de documentos de suporte de registos contabilísticos dos sujeitos passivos de IRS e IRC que se encontrem sujeitos a contabilidade organizada ou dos sujeitos passivos de IVA que tenham optado pelo regime de IVA de caixa;
- e) Quando exista a necessidade de controlar os pressupostos de regimes fiscais privilegiados de que o contribuinte usufrua;
- f) Quando se verifique a impossibilidade de comprovação e quantificação directa e exacta da matéria tributável, nos termos do artigo 88.º, e, em geral, quando estejam verificados os pressupostos para o recurso a uma avaliação indirecta.
- g) Quando se verifique a existência comprovada de dívidas à administração fiscal ou à segurança social.
- h) Quando se trate de informações solicitadas nos termos de acordos ou convenções internacionais em matéria fiscal a que o Estado português esteja vinculado.
- i) Constitui também fundamento da derrogação do sigilo bancário, em sede de procedimento administrativo de inspeção tributária, a comunicação de operações suspeitas, remetidas à Autoridade Tributária e Aduaneira, pelo Departamento Central de Investigação e Ação Penal da Procuradoria-Geral da República (DCIAP) e pela Unidade de Informação Financeira (UIF), no âmbito da legislação relativa à prevenção e repressão do branqueamento de capitais e financiamento do terrorismo.

2 - A administração tributária tem, ainda, o poder de aceder directamente aos documentos bancários e aos documentos emitidos por outras entidades financeiras previstas como tal no artigo 3.º da Lei n.º 25/2008, de 5 de junho, nas situações de recusa da sua exibição ou de autorização para a sua consulta, quando se trate de familiares ou terceiros que se encontrem numa relação especial com o contribuinte.

3 - (Revogado.)

4 - As decisões da administração tributária referidas nos números anteriores devem ser fundamentadas com expressa menção dos motivos concretos que as justificam e, salvo o disposto no número seguinte e no n.º 13, notificadas aos interessados no prazo de 30 dias após a sua emissão, sendo da competência do diretor-geral da Autoridade Tributária e Aduaneira, ou dos seus substitutos legais, sem possibilidade de delegação.

5 - Os atos praticados ao abrigo da competência definida no n.º 1 são suscetíveis de recurso judicial com efeito meramente devolutivo e, sem prejuízo do disposto no n.º 13, os atos previstos no n.º 2 dependem da audição prévia do familiar ou terceiro e são suscetíveis de recurso judicial com efeito suspensivo, por parte destes.

6 - Nos casos de deferimento do recurso previsto no número anterior, os elementos de prova entretanto obtidos não podem ser utilizados para qualquer efeito em desfavor do contribuinte.

7 - As entidades que se encontrem numa relação de domínio com o contribuinte ficam sujeitas aos regimes de acesso à informação bancária referidos nos n.os 1, 2 e 3.

8 - (Revogado.)

9 - O regime previsto nos números anteriores não prejudica a legislação aplicável aos casos de investigação por infração penal e só pode ter por objecto operações e movimentos bancários realizados após a sua entrada em vigor, sem prejuízo do regime vigente para as situações anteriores.

10 - Para os efeitos desta lei, considera-se documento bancário qualquer documento ou registo, independentemente do respectivo suporte, em que se titulem, comprovem ou registem operações praticadas por instituições de crédito ou sociedades financeiras no âmbito da respectiva actividade, incluindo os referentes a operações realizadas mediante utilização de cartões de crédito.

11 - Para os efeitos desta lei, considera-se documento de outras entidades financeiras, previstas como tal no artigo 3.º da Lei n.º 25/2008, de 5 de junho, qualquer documento ou registo, independentemente do respectivo suporte, que, não sendo considerado documento bancário, titule, comprove ou registre operações praticadas pelas referidas entidades.

documents from other financial entities provided for in Article 3 of Law No. 25/2008, of 5 June, amended by Decree-Laws No. 317/2009, of October 30, and 242/2012, of November 7, without depending on the consent of the owner of the protected elements:

- a) When *there are indications of the practice of a crime in tax matters*;
- b) When there are indications of the lack of veracity of the declaration or the legally required declaration is missing;
- c) When there are indications of the existence of unjustified additions to assets, under the terms of subparagraph f) of paragraph 1 of Article 87;
- d) When it comes to verifying the compliance of documents supporting the accounting records of IRS and IRC taxable persons who are subject to organized accounting or VAT taxable persons who have opted for the cash VAT regime;
- e) When there is a need to control the assumptions of privileged tax regimes that the taxpayer enjoys;
- f) When it is impossible to prove and directly and accurately quantify the taxable amount, under the terms of Article 88, and, in general, when the presuppositions for the use of an indirect assessment are verified.
- g) When there is a proven existence of debts to the tax administration or social security.
- h) In the case of information requested under international agreements or conventions on tax matters to which the Portuguese State is bound.
- i) The communication of suspicious transactions, sent to the Tax and Customs Authority, by the Central Department of Investigation and Criminal Action of the Attorney General's Office (DCIAP) and by the Financial Information Unit (FIU), within the scope of legislation relating to the prevention and repression of money laundering and terrorist financing.

2 - The tax administration also has the power to directly access bank documents and documents issued by other financial entities provided for in Article 3 of Law no. refusal of its exhibition or authorization for its consultation, in the case of family members or third parties who are in a special relationship with the taxpayer.

3 - (Revoked).

4 - The decisions of the tax administration referred to in the previous numbers must be substantiated with express mention of the specific reasons that justify them and, except as provided in the following number and in paragraph 13, notified to the interested par-

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12 - A administração tributária presta ao ministério da tutela informação anual de carácter estatístico sobre os processos em que ocorreu o levantamento do sigilo bancário e do sigilo previsto no Regime Jurídico do Contrato de Seguro, a qual é remetida à Assembleia da República com a apresentação do relatório detalhado sobre a evolução do combate à fraude e à evasão fiscais, previsto no artigo 64.º-B.

13 - Nos casos abrangidos pela alínea h) do n.º 1, não há lugar a notificação dos interessados nem a audição prévia do familiar ou terceiro quando o pedido de informações tenha carácter urgente ou essa audição ou notificação possa prejudicar as investigações em curso no Estado ou jurisdição requerente das informações e tal seja expressamente solicitado por este Estado ou jurisdição.

ties within a period of 30 days after their issuance, being the responsibility of the director-general of the Tax and Customs Authority, or of their legal substitutes, without the possibility of delegation.

5 - The acts performed under the competence defined in paragraph 1 are subject to judicial appeal with a merely devolutive effect and, without prejudice to the provisions of paragraph 13, the acts provided for in paragraph 2 depend on the prior hearing of the family member or third parties and are subject to judicial appeal with suspensive effect by them.

6 - In cases of granting the appeal provided for in the previous number, the evidence obtained in the meantime cannot be used for any purpose to the detriment of the taxpayer.

7 - Entities that are in a domain relationship with the taxpayer are subject to the regimes for access to banking information referred to in paragraphs 1, 2 and 3.

8 - (Revoked)

9 - The regime provided for in the previous numbers does not prejudice the legislation applicable to cases of investigation of criminal offences and can only have as its object banking operations and transactions carried out after its entry into force, without prejudice to the regime in force for the previous situations.

10 - For the purposes of this law, a bank document is considered to be any document or record, regardless of the respective support, in which operations carried out by credit institutions or financial companies within the scope of their activity are titled, substantiated or recorded, including those relating to operations carried out using credit cards.

11 - For the purposes of this law, any document or record, regardless of the respective support, that, not being considered a bank document, title, proof or register operations carried out by the referred entities.

12 - The tax administration provides the Ministry of responsibility with annual statistical information on the processes in which the lifting of bank secrecy and secrecy provided for in the Legal Regime of the Insurance Contract took place, which is sent to the Assembly of the Republic with the presentation of the detailed report on the evolution of the fight against fraud and tax evasion, provided for in Article 64-B.

13 - In the cases covered by subparagraph h) of paragraph 1, there is no need to notify the interested parties or the prior hearing of the family member or third party when the request for information is urgent or such hearing or notification may prejudice the investigations underway in the State or jurisdiction requesting the information and this is expressly requested by that State or jurisdiction.



**(1) General remarks**

The access to this information might be possible but it is restricted and governed by confidentiality, which is enshrined in Art. 64 General Tax Code.

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**Article 64<sup>386</sup> Confidentiality General Tax Code**

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1 - The directors, employees and agents of the tax administration are obliged to keep confidential the data collected on the tax situation of the taxpayers and the elements of a personal nature that they obtain in the procedure, namely those arising from professional secrecy or any other legally required secrecy duty.

2 - The *duty of secrecy ceases in the event of:*

a) Authorization of the taxpayer to disclose his tax situation;

b) Legal cooperation of the tax administration with other public entities, to the extent of its powers;

**<sup>386</sup>Art. 64 Confidencialidade Lei Geral Tributária**

1 - Os dirigentes, funcionários e agentes da administração tributária estão obrigados a guardar sigilo sobre os dados recolhidos sobre a situação tributária dos contribuintes e os elementos de natureza pessoal que obtenham no procedimento, nomeadamente os decorrentes do sigilo profissional ou qualquer outro dever de segredo legalmente regulado.

2 - O dever de sigilo cessa em caso de:

a) Autorização do contribuinte para a revelação da sua situação tributária;

b) Cooperação legal da administração tributária com outras entidades públicas, na medida dos seus poderes;

c) Assistência mútua e cooperação da administração tributária com as administrações tributárias de outros países resultante de convenções internacionais a que o Estado Português esteja vinculado, sempre que estiver prevista reciprocidade;

d) Colaboração com a justiça nos termos do Código de Processo Civil e mediante despacho de uma autoridade judiciária, no âmbito do Código de Processo Penal;

e) Confirmação do número de identificação fiscal e domicílio fiscal às entidades legalmente competentes para a realização do registo comercial, predial ou automóvel.

3 - O dever de confidencialidade comunica-se a quem quer que, ao abrigo do número anterior, obtenha elementos protegidos pelo segredo fiscal, nos mesmos termos do sigilo da administração tributária.

4 - O dever de confidencialidade não prejudica o acesso do sujeito passivo aos dados sobre a situação tributária de outros sujeitos passivos que sejam comprovadamente necessários à fundamentação da reclamação, recurso ou impugnação judicial, desde que expurgados de quaisquer elementos susceptíveis de identificar a pessoa ou pessoas a que dizem respeito.

5 - Não contende com o dever de confidencialidade:

a) A divulgação de listas de contribuintes cuja situação tributária não se encontre regularizada, designadamente listas hierarquizadas em função do montante em dívida, desde que já tenha decorrido qualquer dos prazos legalmente previstos para a prestação de garantia ou tenha sido decidida a sua dispensa;

b) A publicação de rendimentos declarados ou apurados por categorias de rendimentos, contribuintes, sectores de actividades ou outras, de acordo com listas que a administração tributária deve organizar anualmente a fim de assegurar a transparência e publicidade.

c) A notificação, pela administração tributária, de sujeito passivo que disponibilize uma interface eletrónica para efeitos de acionar a responsabilidade solidária deste.

6 - Para efeitos do disposto na alínea a) do número anterior, considera-se como situação tributária regularizada o disposto no artigo 177.º-A do CPPT.

7 - Para efeitos do disposto na alínea d) do n.º 2, e com vista à realização das finalidades dos processos judiciais, incluindo as dos inquéritos em processo penal, as autoridades judiciárias acedem diretamente às bases de dados da Autoridade Tributária e Aduaneira.

8 - A concretização do acesso referido no número anterior é disciplinada por protocolo a celebrar entre o Conselho Superior da Magistratura, a Procuradoria-Geral da República e a Autoridade Tributária e Aduaneira.

c) ***Mutual assistance and cooperation of the tax administration*** with the tax administrations of other countries resulting from international conventions to which the Portuguese State is bound, whenever reciprocity is foreseen;

d) ***Collaboration with justice under the terms of the Civil Procedure Code and by means of an order issued by a judicial authority, within the scope of the Criminal Procedure Code;***

e) Confirmation of the tax identification number and tax domicile to the entities legally competent to carry out the commercial, land or car registration.

3 - The duty of confidentiality is communicated to whoever, under the terms of the previous number, obtains elements protected by tax secrecy, in the same terms as the secrecy of the tax administration.

4 - The duty of confidentiality does not prejudice the access of the taxable person to data on the tax situation of other taxable persons that are demonstrably necessary to justify the claim, appeal or judicial challenge, provided that they are purged of any elements capable of identifying the person or persons to which they relate.

5 - Does not conflict with the duty of confidentiality:

a) Disclosure of lists of taxpayers whose tax situation is not regularized, namely hierarchical lists according to the amount owed, provided that any of the legally established deadlines for the provision of guarantee has already elapsed or its exemption has been decided;

b) The publication of declared or calculated income by income categories, taxpayers, activity sectors or others, according to lists that the tax administration must organize annually in order to ensure transparency and publicity.

c) The notification, by the tax administration, of a taxable person who provides an electronic interface for the purposes of triggering his joint liability.

6 - For the purposes of the provisions of subparagraph a) of the previous number, the provisions of Article 177-A of the CPPT shall be considered as a regularized tax situation.

7 - For the purposes of subparagraph d) of paragraph 2, and with a view to carrying out the purposes of judicial proceedings, including investigations in criminal proceedings, the judicial authorities directly access the databases of the Tax and Customs Authority.

8 - The implementation of the access referred to in the previous number is governed by a protocol to be signed between the Superior Council for the Judiciary, the Attorney General's Office and the Tax and Customs Authority.

**(2) Formal requirements**

See above → (1).

**(3) Substantive requirements**

See above → (1).

**hh. Digital forensic operations within inspections or on-the-spot checks**

Portugal has announced in its Recovery Plan from 2021 that it will draft legislation in this area. The Government planned for: **91**

“Digital Platforms for Criminal and Forensic Investigation

a) Development and modernization of information systems in the area of criminal investigation;

b) Development of the Strategy monitoring information system National Anti-Corruption.”<sup>387</sup>

This is area is of particular interest for the investigations of the digital area. Therefore, Portugal should keep track with the legislative environment. The ECJ will slowly constitute a judiciary area as well for this age.<sup>388</sup> **92**

“In that regard, it should be recalled that, as is apparent from Article 256 (2) paragraph 1, second subparagraph, TFEU and Article 58. In the first paragraph of the Statute of the Court of Justice of the European Union, an appeal against a decision of the General Court is limited to points of law. Consequently, the General Court has exclusive jurisdiction to find and assess the relevant facts, as well as to assess the evidence. The assessment of those facts and evidence does not therefore, except in the case of distortion, constitute a point of law subject, as such, to review by the Court of Justice in the context of an appeal against a decision of the General Court (Judgment of 25 of February 2021, Dalli v. Commission, C-615/19 P, EU: C: 2021:133, paragraph 73 and case law cited). **93**

59 That distortion must be evident from the documents in the file, without it being necessary to carry out a new assessment of the facts and evidence. It is for the appellant to indicate precisely the elements which he considers to have been distorted by the General Court and to demonstrate the errors of analysis which, in his assessment, led to that distortion (Judgment of 4 March 2020, Tulliallan Burlington v. EUIPO, C-155/18 P to C-158/18 P, EU:C:2020:151, paragraph 102 and case law cited).

<sup>387</sup> Portuguese Recovery Plan (PRR Recuperar Portugal, Construindo o futuro), 2021, p 187.

<sup>388</sup> See ECJ, (First Section) 28 October 2021, Case C-650/19 P, ECLI:EU:C:2021:879.

60 Vialto submits, in essence, that, if the General Court had taken into account the annex to the OLAF report on the third day of the on-the-spot inspection, which contains its observations on the course of that day of the inspection, it should have found that Vialto had granted OLAF full access to the requested data.

61 However, it should be noted that that document reproduces Vialto's observations on the course of the inspection, so that it only makes it possible to determine its point of view on that course. However, the General Court specified, in para. 75 of the judgment under appeal, which Vialto maintains had given OLAF officials access to all the data requested.

62 It follows that Vialto's argument does not show that the General Court distorted the relevant facts or evidence, so that argument must be rejected.

63 Third, as regards the alleged failure to state reasons for the finding set out in paragraph 74 of the judgment under appeal, it should be borne in mind that, according to the Court's settled case-law, the obligation to state reasons does not oblige the General Court to provide an exposition that follows, exhaustively and individually, all the steps of the reasoning articulated by the parties to the dispute, and thus may the reasoning of the General Court is implicit, provided that it allows the interested parties to know the reasons why the General Court did not accept their arguments and that the Court of Justice has sufficient evidence to exercise its review (judgment of 25 June 2020, CSUE/KF, C-14/19 P, EU:C:2020:492, paragraph 96 and case law cited).

64 In the present case, the General Court stated, in paragraphs 66 to 73 of the judgment under appeal, the reasons which led him to declare that the data that OLAF requested to collect related to the operations in question and necessary for the proper conduct of the on-the-spot inspection, within the meaning of Article 7 (1). 1 of Regulation no. 2185/96.

65 It is apparent from those figures that such a finding is based, first of all, on the wording of that provision, which, according to the General Court, shows, on the one hand, that OLAF is authorized to have access to all the information and documentation relating to the facts at issue of its investigation and to make copies of the documents necessary to carry out its on-the-spot inspection and, on the other hand, that it has a certain discretion in determining the relevant data for that purpose. Next, the General Court relied on the subject-matter of the investigation carried out in the present case by OLAF and on the data requested, which, according to the General Court, were of the type referred to in that provision. Finally, the General Court referred to the particularities of digital forensic operations, namely the need to index data,

66 That reasoning is sufficient to enable Vialto, on the one hand, to understand the reasons why its arguments were rejected and, on the other hand, for the Court to exercise its review. The inadequacy of reasoning invoked by Vialto must therefore be rejected.

67 Fourth, as regards the alleged error of law relating to the interpretation of Article 7 (1) 1 of Regulation no. 2185/96, it should be noted that the General Court stated, in para. 74 of the judgment under appeal that the data that OLAF requested to be collected in the present case related to the operations in question and were necessary for the proper conduct of the on-the-spot inspection, within the meaning of that provision. Furthermore, the General Court held, in para. 80 of the judgment under appeal, that, by asking Vialto to have access to those data for the purposes of its analysis, OLAF did not infringe that provision.

68 In that regard, Article 7 ( 1 ) 1 of Regulation no. 2185/96 provides that Commission inspectors will have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all information and documentation relating to the operations to be analysed, which may prove necessary for the proper conduct of the inspections and on-site checks. This provision specifies that they can use the same physical means of inspection as national administrative inspectors, namely making copies of the appropriate documents. That provision also provides that on-the-spot inspections and verifications may, *inter alia*, concern computer data.

69 Furthermore, it follows from Article 2 ( 1 ) 1 of Decision 1999/352 and Article 3 (1) 1 of Regulation no. 883/2013 that the competence conferred on the Commission by Regulation no. 2185/96 to carry out on-the-spot inspections and verifications is exercised by OLAF.

70 It follows from the combination of these provisions that, in the context of an on-the-spot inspection, OLAF officials have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all information, including computer data, which necessary for the proper conduct of the on-site inspection and that they can use the same physical means of inspection as the national administrative inspectors and, in particular, make copies of the appropriate documents.

71 Although that provision refers, as regards the conditions governing access by OLAF officials to information, to the law of the Member State concerned, it should be noted that Vialto in no way claims that OLAF has infringed the rules of law of Hungarian language applicable during the on-site inspection in question and which does not present any arguments to that effect.

72 Furthermore, it should be noted that Vialto does not contest the General Court's findings concerning the production of a digital forensic copy, which appear in paragraph 73 of the judgment under appeal, which refers to the explanations contained in paragraph 1. 44 of that judgment. However, the General Court found in those figures, based in particular on Articles 4 and 8 of the OLAF Guidelines, that, in the context of that procedure, the making of a digital forensic copy of the data contained in a storage medium digital is intended to allow data indexing, which in turn allows for keyword searches using software-specific forensic computer to identify documents relevant to the OLAF investigation.

73 To the extent that Vialto seeks, by its arguments, to equate the making of such a digital forensic copy of all data stored on certain digital media to obtaining a copy, within the meaning of Article 7 (1). 1 of Regulation no. 2185/96, of all the documents stored on those supports, it should be noted, as the Advocate General observed in para. 78 of its Opinion that this operation constitutes only an intermediate step in the context of the examination of those data (see, by analogy, Judgment of 16 July 2020, Nexans France and Nexans v. Commission, C-606/18 P, and EU: C: 2020:571, no. 63).

74 Thus, even if carrying out such a copy necessarily implies, on a technical level, temporarily 'copying' all the data in question, at a stage when its relevance has not yet been examined, that operation is covered by the exercise of the right of access to information enshrined in Article 7, no. 1 of Regulation no. O 2185/96, as it only serves to identify documents relevant for the purposes of the investigation. In doing so, OLAF cannot be regarded as making a copy of all the documents in question within the meaning of that provision. In fact, it is clear from the wording and the scheme of the same that the right of an inspector to make copies of the appropriate documents is intended, unlike exercising the right of access to information, to keep the inspector, on a lasting basis, copies of certain documents, among those to which he had access, which he identified as being relevant for the purposes of his investigation, these documents being susceptible of being used later in the scope of this investigation.

75 In those circumstances, it appears that the General Court could correctly consider that the making of that digital forensic copy may be linked to the powers conferred on OLAF under Article 7(1) of the Treaty. 1 of Regulation no. 2185/96, to access the information necessary for the proper conduct of the on-site inspection and to make copies of the appropriate documents.

76 Vialto has not, therefore, shown that the General Court's finding, as set out in paragraphs 16, is vitiated by an error in law. 74 and 80 of the judgment under appeal, according to which the request addressed to Vialto by OLAF in order to be

able to collect the data referred to in paragraph 71 of the judgment *under appeal to carry out a digital forensic operation was not contrary to Article 7 (1). 1 of Regulation no. 2185/96.*

77 Therefore, Vialto’s claim that this finding is vitiated by an error of law must be dismissed.”<sup>389</sup>

## ii. Investigative missions in third countries

The area of structural funds in Portugal thrives in difficult legal settings, what can be assumed by the latest data of the EU Anti-fraud think-tank that operates under the Specialized Investigative Prosecution Office of Portugal and helps the national AFCOS bureau. Portugal has special relationships with Brazil and small islands in the Atlantic, which receive funds from time to time. These projects abroad might require investigators to conduct missions in third countries – possibly together with Portuguese Managing authorities. A recent case of the Portuguese Customs required investigations in African countries to discover **illicit tobacco smuggling**.<sup>390</sup>

94

## h) National procedural rules for “checks and inspections” by the assisting national authority

The national procedural rules for “checks and inspections” depend on the various codes and different financing areas, which were mentioned above. They do not need to be repeated here.

95

## i) Cooperation and mutual assistance agreements

Mutual assistance in Portugal, if it relates to the anti-fraud area – is mainly based on the Regulations issued by the Union:

96

- Customs area: PROTOCOLO sobre assistência mútua entre autoridades administrativas em matéria aduaneira
- Tax area: Lei n.º 98/2017, de 24 de Agosto, Regula a troca automática de informações obrigatória relativa a decisões fiscais prévias transfronteiriças e a acordos prévios sobre preços de transferência e no domínio da fiscalidade, transpondo as Diretivas (UE) 2015/2376, do Conselho, de 8 de dezembro de 2015, e (UE)

<sup>389</sup> See ECJ, (First Section) October 28, 2021, Case C-650/19 P, ECLI:EU:C:2021:879.

<sup>390</sup> See Apreensões de Cigarros em voos procedentes de África, Através da Delegação Aduaneira do Aeroporto Humberto Delgado. online: [https://info.portaldasfinancas.gov.pt/pt/destaques/Documents/Comunicado\\_AT\\_NEWS\\_24.pdf](https://info.portaldasfinancas.gov.pt/pt/destaques/Documents/Comunicado_AT_NEWS_24.pdf) (Accessed 23 January 2024): “The actions in question not only made it possible to avoid the loss of thousands of euros, in terms of customs duties, VAT and tobacco tax, but also fit into the fight against fraud in the defense of public health and the economy of the European Union. Under the terms of the legislation in force, the cigarettes were seized and will be subject to destruction, under customs control.”

2016/881, do Conselho, de 25 de maio de 2016, e procedendo à alteração de diversos diplomas.

- 97 Other agreements, such as one in the area of customs infractions, are bilateral:
- Convention on Mutual Administrative Assistance between Portugal and Spain for the Purpose of Preventing, Investigating and Suppressing Customs Offences (Convenção de Assistência Mútua Administrativa entre Portugal e Espanha com o Fim de Prevenir, Investigar e Reprimir as Infracções Aduaneiras)

### 3. Article 4 Internal investigations

1. Investigations within the institutions, bodies, offices and agencies in the areas referred to in Article 1 shall be conducted *in accordance with this Regulation and with the decisions adopted by the relevant institution, body, office or agency* ('internal investigations'). [...]

8. Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an internal investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the institution, body, office or agency concerned. Upon request, the institution, body, office or agency concerned shall inform the Office of any action taken and of its findings on the basis of such information.

Where necessary, the Office shall also *inform the competent authorities of the Member State concerned*. In this case, the procedural requirements laid down in the second and third subparagraphs of Article 9(4) shall apply. If the competent authorities decide to *take any action on the basis of the information transmitted to them, in accordance with national law*, they shall, upon request, inform the Office thereof.

#### a) References to national law, para 8

- 1 Measures regarding tax irregularities that establish a tax offence can be sanctions. Mostly this area will be determined by sanctions established by secondary law, thus EU Regulations apply.
- 2 The Law No. 15/2001, of June 5<sup>th</sup> General Regime for Tax Offences contains provisions on tax offences proceedings, which according to Art. 52 of this law means "the application of fines and ancillary sanctions". These kinds of actions must be distinguished from the criminal tax proceedings, which are stipulated by Art. 35–50 of this law and can only be conducted by criminal investigative bodies or evocated as well as initiated by the EDPs in case of suspicion for an EU fraud offence (for the EPPO investigations see above Part A in this chapter).



In this regard the national authority may as well see if further offences have been committed and if the conduct refers to national irregularities as well:

3

**Law no 15/2001 of June 5, 2001<sup>391</sup>**

4

**Tax offences**

Article 113 – Refusal to deliver, display or present written documents and fiscally relevant documents

Article 114 – Failure to deliver the tax instalment

Article 115 – Violation of fiscal secrecy

Article 116 – Lack or delay of declarations.

Article 117 – Lack or delay in the presentation or exhibition of documents or statements and communications

Article 118 – Falsification, tampering and alteration of fiscally relevant documents

Article 119 – Omissions and inaccuracies in declarations or other fiscally relevant documents

Article 119-A – Omissions or inaccuracies in binding information requests

Article 119-B – Failure to comply with the rules of communication and due diligence to be applied by financial institutions

Article 120 – Inexistence of accounting or fiscally relevant books

Article 121 – Failure to organize accounting in accordance with accounting standardization rules and delays in their execution

<sup>391</sup> **Contra-ordenações fiscais Lei n.º 15/2001, de 05 de Junho**

Artigo 113.º - Recusa de entrega, exibição ou apresentação de escrita e de documentos fiscalmente relevantes

Artigo 114.º - Falta de entrega da prestação tributária

Artigo 115.º - Violação de segredo fiscal

Artigo 116.º - Falta ou atraso de declarações

Artigo 117.º - Falta ou atraso na apresentação ou exibição de documentos ou de declarações e de comunicações

Artigo 118.º - Falsificação, viciação e alteração de documentos fiscalmente relevantes

Artigo 119.º - Omissões e inexactidões nas declarações ou em outros documentos fiscalmente relevantes

Artigo 119.º-A - Omissões ou inexactidões nos pedidos de informação vinculativa

Artigo 119.º-B - Incumprimento das regras de comunicação e diligência devida a aplicar pelas instituições financeiras

Artigo 120.º - Inexistência de contabilidade ou de livros fiscalmente relevantes

Artigo 121.º - Não organização da contabilidade de harmonia com as regras de normalização contabilística e atrasos na sua execução

Artigo 122.º - Falta de apresentação, antes da respectiva utilização, dos livros de escrituração

Artigo 123.º - Violação do dever de emitir ou exigir recibos ou facturas

Artigo 124.º - Falta de designação de representantes

Artigo 125.º - Pagamento indevido de rendimentos

Artigo 125.º-A - Pagamento ou colocação à disposição de rendimentos ou ganhos conferidos por ou associados a valores mobiliários

Artigo 125.º-B - Inexistência de prova da apresentação da declaração de aquisição e alienação de acções e outros valores mobiliários ou da intervenção de entidades relevantes

Artigo 126.º - Transferência para o estrangeiro de rendimentos sujeitos a tributação

Artigo 127.º - Impressão de documentos por tipografias não autorizadas

Artigo 128.º - Falsidade informática

Artigo 129.º - Violação da obrigação de possuir e movimentar contas bancárias

Article 122 – Failure to present, before their respective use, the books of account  
Article 123 – Violation of the duty to issue or demand receipts or invoices  
Article 124 – Lack of designation of representatives  
Article 125 – Undue payment of income  
Article 125-A – Payment or making available of income or gains conferred by or associated with securities  
Article 125-B – Inexistence of proof of presentation of the declaration of acquisition and disposal of shares and other securities or of the intervention of relevant entities  
Article 126 – Transfer of income subject to taxation abroad  
Article 127 – Printing of documents by unauthorized printers  
Article 128 – Computer forgery  
Article 129 – Violation of the obligation to hold and operate bank accounts

- 5 Any action includes from the point of view of national law the administrative act and the possible revocation and annulment – e.g. in corruption cases.
- 6 The provisions that apply in this regard are enshrined in the Administrative Procedure Code:

<b>SECTION III</b> <sup>392</sup>	
<b>Invalidity of the administrative act</b>	Article 167 – Conditionality’s applica- ble to revocation
Article 161 – Null acts	Article 168 – Conditionality’s applica- ble to administrative annulment
Article 162 – Nullity regime	Article 169 – and competence
Article 163 – Annulable acts and annul- lability regime	Article 170 – Form and formalities
Article 164 – Ratification, reform and conversion	Article 171 – Effects
<b>SECTION IV</b> <sup>393</sup>	Article 172 – Consequences of adminis- trative annulment
<b>Administrative revocation and annul- ment</b>	Article 173 – Amendment and replace- ment of administrative acts
Article 165 – Administrative revocation and annulment	Article 174 – Rectification of adminis- trative acts
Article 166 – Acts not subject to admin- istrative revocation or annulment	<b>SECTION V</b>

## b) Competent authorities

Authority that has allowed the person to work in a European institution and which may exercise disciplinary matters. The Chamber of Deputies on a political level may exercise disciplinary proceedings in a very restricted area.

7

## 4. Article 5 Opening of investigations

[...] 5. If the Director-General decides not to open an investigation, he or she may without delay send any relevant information, as appropriate, to the **competent authorities of the Member State concerned** for appropriate **action to be taken in accordance with Union and national law** or to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules applicable to that institution, body, office or agency. The Office shall agree with that institution, body, office or

### <sup>392</sup> Secção III

#### Da invalidade do ato administrativo

Artigo 161.º - Atos nulos

Artigo 162.º - Regime da nulidade

Artigo 163.º - Atos anuláveis e regime da anulabilidade

Artigo 164.º - Ratificação, reforma e conversão

Artigo 172.º - Consequências da anulação administrativa

Artigo 173.º - Alteração e substituição dos atos administrativos

Artigo 174.º - Retificação dos atos administrativos

### <sup>393</sup> SECÇÃO IV

#### Da revogação e da anulação administrativas

Artigo 165.º - Revogação e anulação administrativas

Artigo 166.º - Atos insuscetíveis de revogação ou anulação administrativas

Artigo 167.º - Condicionalismos aplicáveis à revogação

Artigo 168.º - Condicionalismos aplicáveis à anulação administrativa

Artigo 169.º - Iniciativa e competência

Artigo 170.º - Forma e formalidades

Artigo 171.º - Efeitos

agency, if appropriate, on suitable measures to protect the confidentiality of the source of that information and shall, if necessary, ask to be informed of the action taken.

**a) Competent authorities**

- 1 In any case that evolves around tax irregularities or potential fraud the Director General may make use of Art. 12a OLAF Regulation and ask the Inspectorate General of Finance whom to inform on the national level.

**b) National rules**

2	<b>Administrative Procedure Code</b>
	<p><b>Article 53 Initiative</b> See above → Art. 3 External investigations, Investigative powers in the area of structural funds and internal policies.</p> <p><b>Article 55 Responsible for the direction of the procedure</b> See above → Art. 3 External investigations, Investigative powers in the area of structural funds and internal policies.</p> <p><b>Article 58 Principle of the inquisitor</b> See above → Art. 3 External investigations, Investigative powers in the area of structural funds and internal policies.</p>
3	<b>General Tax Law</b>
	<p><b>Chapter III Procedure</b> <b>Section I Procedure initiation</b> <b>Article 69<sup>394</sup> Impulse</b> 1 - The procedure begins within the deadlines and on the grounds provided for by law, on the initiative of the interested parties or the tax administration.</p>

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<sup>394</sup> CAPÍTULO III Do procedimento  
SECÇÃO I Início do procedimento  
Artigo 69.º Impulso

1 - O procedimento inicia-se nos prazos e com os fundamentos previstos na lei, por iniciativa dos interessados ou da administração tributária.

2 - O início do procedimento dirigido ao apuramento de qualquer situação tributária é comunicado aos interessados, salvo quando a comunicação possa pôr em causa os efeitos úteis que visa prosseguir ou o procedimento incida sobre situações tributárias em que os interessados não estão ainda devidamente identificados.

2 - The beginning of the procedure aimed at determining any tax situation is communicated to the interested parties, except when the communication may jeopardize the useful effects that it aims to continue or the procedure concerns tax situations in which the interested parties are not yet properly identified.

### **Article 70<sup>395</sup> Complaint**

1 - The denunciation of a tax infraction may give rise to the procedure, if the complainant identifies himself or herself and the lack of foundation of the complaint is not manifest.

2 - The complainant is not considered part of the procedure, nor has the legitimacy to complain, appeal or challenge the decision.

3 - The taxpayer has the right to know the content and authorship of unconfirmed malicious complaints about his tax situation.

### **Section II Instruction**

**Article 71<sup>396</sup> Direction of Instruction** 1 - Unless otherwise provided by law, the direction of the investigation is the responsibility of the tax administration body responsible for the decision.

2 - Whenever, under the terms of the law, the investigation is carried out by a body other than the one competent for the decision, it is up to the investigating body to prepare a report defining the content and object of the investigation procedure and containing a proposal for a decision, the conclusions of which are must be notified to interested parties together with this.

### **Article 72<sup>397</sup> Means of proof**

The investigating body may use all the evidence admitted by law to ascertain the facts necessary for the decision of the procedure.

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<sup>395</sup> Artigo 70.º Denúncia

1 - A denúncia de infracção tributária pode dar origem ao procedimento, caso o denunciante se identifique e não seja manifesta a falta de fundamento da denúncia.

2 - O denunciante não é considerado parte do procedimento, nem tem legitimidade para reclamar, recorrer ou impugnar a decisão.

3 - O contribuinte tem direito a conhecer o teor e autoria das denúncias dolosas não confirmadas sobre a sua situação tributária.

<sup>396</sup> SECÇÃO II Instrução

Artigo 71.º Direcção da instrução

1 - A direcção da instrução cabe, salvo disposição legal em sentido diferente, ao órgão da administração tributária competente para a decisão.

2 - Sempre que, nos termos da lei, a instrução for realizada por órgão diferente do competente para a decisão, cabe ao órgão instrutor a elaboração de um relatório definindo o conteúdo e objecto do procedimento instrutório e contendo uma proposta de decisão, cujas conclusões são obrigatoriamente notificadas aos interessados em conjunto com esta.

<sup>397</sup> Artigo 72.º

Meios de prova

O órgão instrutor pode utilizar para o conhecimento dos factos necessários à decisão do procedimento todos os meios de prova admitidos em direito.

**Article 73<sup>398</sup> Presumptions**

The presumptions enshrined in the tax incidence rules always admit evidence to the contrary.

**Article 74<sup>399</sup> Burden of proof**

1 - The burden of proving the facts constituting the rights of the tax administration or taxpayers falls on the person who invokes them.

2 - When the evidence of the facts is in the possession of the tax administration, the burden provided for in the previous number is considered satisfied if the interested party has proceeded to its correct identification with the tax administration.

3 - In case of determination of the taxable amount by indirect methods, the tax administration is responsible for proving the verification of the assumptions of its application, being the taxable person the burden of proving the excess in the respective quantification.

4

**Anti-Economic Offences and Against Public Health**

Decree No. 28/84, of January 20

**Section III Process**

**Article 73<sup>400</sup> Competent Entities**

1 - The inspection of goods and services shall be carried out in the production, manufacture, confection, preparation, import, export, storage, storage, conservation,

<sup>398</sup> Artigo 73.º

Presunções

As presunções consagradas nas normas de incidência tributária admitem sempre prova em contrário.

<sup>399</sup> Artigo 74.º

Ónus da prova

1 - O ónus da prova dos factos constitutivos dos direitos da administração tributária ou dos contribuintes recai sobre quem os invoque.

2 - Quando os elementos de prova dos factos estiverem em poder da administração tributária, o ónus previsto no número anterior considera-se satisfeito caso o interessado tenha procedido à sua correcta identificação junto da administração tributária.

3 - Em caso de determinação da matéria tributável por métodos indirectos, compete à administração tributária o ónus da prova da verificação dos pressupostos da sua aplicação, cabendo ao sujeito passivo o ónus da prova do excesso na respectiva quantificação.

<sup>400</sup> SECÇÃO III Do processo

Artigo 73.º (Entidades competentes)

1 - A fiscalização de bens e serviços exercer-se-á na produção, fabrico, confecção, preparação, importação, exportação, armazenagem, depósito, conservação, transporte, venda por grosso ou a retalho, bem como na prestação de serviços, qualquer que seja o agente económico, incluindo os do sector público.

2 - Sem prejuízo das competências legalmente atribuídas a outras entidades, a fiscalização do cumprimento do disposto neste diploma e a instrução dos processos de contraordenação competem à Autoridade de Segurança Alimentar e Económica (ASAE).

3 - A aplicação das coimas e sanções acessórias compete ao inspetor-geral da ASAE.

4 - As associações de consumidores a que se refere a Lei n.º 29/81, de 22 de Agosto, são admitidas a intervir nos processos por contra-ordenações previstas no presente diploma, quando assim o requeiram, podendo apresentar memoriais, pareceres técnicos e sugerir exames ou outras diligências de prova até que o processo esteja pronto para decisão final.

transport, wholesale or retail sale, as well as in the provision of services, whatever be the economic agent, including those in the public sector.

2 - Without prejudice to the powers legally assigned to other entities, the inspection of compliance with the provisions of this diploma and the instruction of administrative offence proceedings are the responsibility of the Food and Economic Security Authority (ASAE).

3-the application of fines and ancillary sanctions is the responsibility of the inspector general of ASAE.

4 - The consumer associations referred to in Law no. 29/81, of 22 August, are allowed to intervene in the proceedings for administrative offences provided for in this statute, when they so require, and may present memorials, technical opinions and suggest examinations or other evidence steps until the case is ready for a final decision.

#### **Article 74<sup>401</sup> Seizure of objects**

1 - Objects that represent a danger to the community or to the practice of a crime or other administrative offence may be seized.

2 - Seizure may always take place when necessary for the investigation or investigation, for the cessation of illegality or in the event of an offence liable to impose the transfer of its property to the State as an accessory sanction.

3 - Whenever possible, the seizure will be limited to part of the objects.

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<sup>401</sup> Artigo 74.º

(Apreensão de objectos)

1 - Podem ser apreendidos os objectos que representem um perigo para a comunidade ou para a prática de um crime ou de outra contra-ordenação.

2 - A apreensão pode ter sempre lugar quando necessária à investigação ou à instrução, à cessação da ilicitude ou no caso de se indiciar contra-ordenação susceptível de impor a transmissão da sua propriedade para o Estado a título de sanção acessória.

3 - Sempre que possível, a apreensão limitar-se-á a parte dos objectos.

**Article 75<sup>402</sup> Advance sale of seized objects**

1 - The objects seized, as soon as they become unnecessary for the investigation or investigation, may be sold by order of the entity in charge of the same, observing the provisions of Articles 884 and following of the Code of Civil Procedure, provided that there is, in relation to them:

- a) Risk of deterioration;
- b) Convenience of immediate use to supply the market;
- c) Request by the respective owner or legitimate holder for them to be sold.

2 - If any of the circumstances mentioned in the previous number are verified at any other moment of the process, the sales order will be incumbent on the competent authorities for the application of the fine or the judge.

3 - When, under the terms of paragraph 1, the sale of seized objects is carried out, the entity in charge of the investigation shall take the appropriate measures in order to avoid that the sale or the destination given to these goods is liable to give rise to new offences foreseen in this diploma.

4 - The proceeds of the sale will be deposited at Caixa Geral de Depósitos, at the order of the entity that determined it, in order to be delivered, by simple term in the records and without any charges, to those who are entitled to it, or to enter the safes of the State, if the transfer of property to the State is decided.

5 - The seized objects will be rendered useless, whenever it is not possible to use them without violating the provisions of this diploma.

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<sup>402</sup> Artigo 75.º

(Venda antecipada dos objectos apreendidos)

1 - Os objectos apreendidos, logo que se tornem desnecessários para a investigação ou instrução, poderão ser vendidos por ordem da entidade encarregada da mesma, observando-se o disposto nos artigos 884.º e seguintes do Código de Processo Civil, desde que haja, relativamente a eles:

- a) Risco de deterioração;
- b) Conveniência de utilização imediata para abastecimento do mercado;
- c) Requerimento do respectivo dono ou detentor legítimo para que estes sejam alienados.

2 - Verificada alguma das circunstâncias referidas no número anterior em qualquer outro momento do processo, competirá a ordem de venda às entidades competentes para aplicação da coima ou ao juiz.

3 - Quando, nos termos do n.º 1, se proceda à venda de objectos apreendidos, a entidade encarregada da investigação tomará as providências adequadas em ordem a evitar que a venda ou o destino dado a esses bens sejam susceptíveis de originar novas infracções previstas neste diploma.

4 - O produto da venda será depositado na Caixa Geral de Depósitos, à ordem da entidade que a determinou, a fim de ser entregue, por simples termo nos autos e sem quaisquer encargos, a quem a ele tenha direito, ou dar entrada nos cofres do Estado, se for decidida a transmissão da propriedade para este.

5 - Serão inutilizados os objectos apreendidos, sempre que não seja possível aproveitá-los sem violação do disposto neste diploma.

6 - Quando razões de economia nacional o justificarem e não haja prejuízo para a saúde do consumidor, o Governo poderá determinar que os objectos apreendidos não sejam inutilizados nos termos do número anterior e sejam aproveitados para os fins e nas condições que forem estabelecidos.



6 - When reasons of national economy justify it and there is no harm to the health of the consumer, the Government may determine that the objects seized are not rendered useless under the terms of the previous number and are used for the purposes and under the conditions that are established.

**General Regime of Tax Offences, Law No. 15/2001, of June 5<sup>th</sup>/**

*Regime Geral Das Infracções Tributárias, Lei n.º 15/2001, de 05 de Junho*

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**Article 2<sup>403</sup> Concept and types of tax offences**

1 - Any typical, unlawful and culpable fact declared punishable by previous tax law constitutes a tax offence.

2 - Tax offences are divided into crimes and administrative offences.

3 - If the same fact constitutes both a crime and a misdemeanour, the agent will be punished as a crime, without prejudice to the application of the accessory sanctions provided for the misdemeanour.

**Article 52<sup>404</sup> Competence of Tax Authorities**

The application of fines and accessory sanctions, with the exception of the specialties provided for by law, is incumbent upon the following tax authorities

a) In the case of a customs administrative offence, the Director-General of Customs and Excise, the directors of customs and the heads of customs delegations;

b) In the case of tax administrative offences, the application of the fines provided for in Articles 114 and 116 to 126, as well as of the autonomous administrative offences, to the head of the local tax service of the area where the infraction took place and the application of the fines provided for in Articles 114, 118, 119 and 126, when the tax in default is the tax of the area where the infraction took place. The application of the fines provided for in Articles 114, 118, 119 and 126, when the tax due exceeds EUR 25,000, and in Articles 113, 115, 127, 128 and 129 to the Director of Finance of the area where

<sup>403</sup> Artigo 2.º Conceito e espécies de infracções tributárias

1 - Constitui infracção tributária todo o facto típico, ilícito e culposo declarado punível por lei tributária anterior.

2 - As infracções tributárias dividem-se em crimes e contra-ordenações.

3 - Se o mesmo facto constituir simultaneamente crime e contra-ordenação, o agente será punido a título de crime, sem prejuízo da aplicação das sanções acessórias previstas para a contra-ordenação.

<sup>404</sup> Artigo 52.º

Competência das autoridades tributárias

A aplicação das coimas e sanções acessórias, ressalvadas as especialidades previstas na lei, compete às seguintes autoridades tributárias:

a) Tratando-se de contra-ordenação aduaneira ao director-geral das Alfândegas e dos Impostos Especiais sobre o Consumo, aos directores das alfândegas e aos chefes das delegações aduaneiras;

b) Tratando-se de contraordenação fiscal, a aplicação das coimas previstas nos artigos 114.º e 116.º a 126.º, bem como das contraordenações autónomas, ao dirigente do serviço tributário local da área onde a infração teve lugar e a aplicação das coimas previstas nos artigos 114.º, 118.º, 119.º e 126.º, quando o imposto em falta seja superior a (euro) 25 000, e nos artigos 113.º, 115.º, 127.º, 128.º e 129.º ao director de finanças da área onde a infração teve lugar, ou ao director da Unidade dos Grandes Contribuintes, relativamente aos contribuintes cujo acompanhamento permanente seja sua atribuição, competindo-lhes, ainda, a aplicação de sanções acessórias.

the infraction took place, or to the Director of the Large Taxpayers Unit, in relation to taxpayers whose permanent monitoring is their responsibility, and the application of accessory sanctions.

**Article 54<sup>405</sup> Establishment**

The tax infringement process will be initiated when there is suspicion of tax infringement or any other nature for which the tax authorities are competent.

**Article 69 Investigation and instruction**

See above →

Art. 3 External investigations, Investigative powers in the area of customs duties and VAT (General Tax Code).

**6 Complementary Regime of the Tax Inspection Procedure, Decree-Law n.º 413/98 of 31 December / Regime Complementar Do Procedimento De Inspeção Tributária, Decreto-Lei n.o 413/98 de 31 de Dezembro**

**Article 2<sup>406</sup> Scope 1** - The tax inspection procedure aims at the observation of tax realities, the verification of compliance with tax obligations and the prevention of tax infringements.

<sup>405</sup> Artigo 54.º Instauração

O processo de contra-ordenação tributária será instaurado quando haja suspeita de prática de contra-ordenação tributária ou de outra natureza para a qual sejam competentes as autoridades tributárias.

<sup>406</sup> Artigo 2 Âmbito

1 — O procedimento de inspeção tributária visa a observação das realidades tributárias, a verificação do cumprimento das obrigações tributárias e a prevenção das infracções tributárias.

2 — Para efeitos do número anterior, a inspeção tributária compreende as seguintes actuações da administração tributária:

- a) A confirmação dos elementos declarados pelos sujeitos passivos e demais obrigados tributários;
- b) A indagação de factos tributários não declarados pelos sujeitos passivos e demais obrigados tributários;
- c) A inventariação e avaliação de bens, móveis ou imóveis, para fins de controlo do cumprimento das obrigações tributárias;
- d) A prestação de informações oficiais, em matéria de facto, nos processos de reclamação e impugnação judicial dos actos tributários ou de recurso contencioso de actos administrativos em questões tributárias;
- e) O esclarecimento e a orientação dos sujeitos passivos e demais obrigados tributários sobre o cumprimento dos seus deveres perante a administração fiscal;
- f) A realização de estudos individuais, sectoriais ou territoriais sobre o comportamento dos sujeitos passivos e demais obrigados tributários e a evolução dos sectores económicos em que se insere a sua actividade;
- g) A realização de perícias ou exames técnicos de qualquer natureza tendo em conta os fins referidos no n.o 1;
- h) A informação sobre os pressupostos de facto dos benefícios fiscais que dependam de concessão ou reconhecimento da administração tributária, ou de direitos que o sujeito passivo, outros obrigados tributários e demais interessados invoquem perante aquela;
- i) A promoção, nos termos da lei, do sancionamento das infracções tributárias;
- j) A cooperação nos termos das convenções internacionais ou regulamentos comunitários, no âmbito da prevenção e repressão da evasão e fraude;
- l) Quaisquer outras acções de averiguação ou investigação de que a administração tributária seja legalmente incumbida.

2 - For the purposes of the preceding paragraph, the tax inspection includes the following actions of the tax administration

- a) Confirmation of the elements declared by the taxable persons and other a) Confirmation of the elements declared by the taxpayers and other persons liable to tax
- b) Investigation of tax facts not declared by the taxpayers and other parties liable to tax taxable persons and other taxable persons;
- c) Inventorying and evaluating assets, whether movable or immovable, for the purpose of monitoring compliance with tax obligations tax obligations;
- d) providing official information on factual matters in the processes of complaint and judicial review of tax acts or contentious appeals against administrative acts in tax matters
- e) Clarification and guidance for taxpayers and other parties liable to tax on the fulfilment of their duties towards the tax administration;
- f) Carrying out individual, sectorial or territorial studies on the behaviour of taxpayers and other persons liable to tax and on the evolution of the economic sectors in which they operate
- g) Carrying out expert opinions or technical examinations of any nature for the purposes referred to in paragraph 1
- h) Information on the de facto assumptions of tax benefits that are subject to concession or recognition by the tax administration, or of rights that the taxpayer, other persons liable to tax and other interested parties claim from the tax administration
- i) Promote, in accordance with the law, the sanctioning of tax infractions
- j) Cooperation under the terms of international conventions or community regulations within the scope of prevention and repression of evasion and fraud
- l) Any other investigation or enquiry that the tax administration is legally entrusted with.

3 - The inspection procedure may include, simultaneously with the taxpayers and other taxable persons whose tax situation is to be investigated, the substitutes and jointly and severally liable or subsidiary taxpayers, the controlled companies of the group taxed under the consolidated profit system, the shareholders of the transparent companies or any other persons who have collaborated in the tax infringements to be investigated.

4 - In the case provided for in the preceding paragraph, the entities shall enjoy the same rights and be subject to the same duties as the taxpayers and other taxable persons.

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3 — O procedimento de inspecção pode abranger, em simultâneo com os sujeitos passivos e demais obrigados tributários cuja situação tributária se pretenda averiguar, os substitutos e responsáveis solidários ou subsidiários, as sociedades dominadas do grupo tributado pelo sistema do lucro consolidado, os sócios das sociedades transparentes ou quaisquer outras pessoas que tenham colaborado nas infracções fiscais a investigar.

4 — No caso previsto no número anterior as entidades gozam dos mesmos direitos e estão sujeitas aos mesmos deveres dos sujeitos passivos e demais obrigados tributários.

### **Chapter III Classifications of the tax inspection procedure**

#### **Article 12<sup>407</sup> Purposes of the procedure**

1 - The inspection procedure is classified, with regard to its ends, as follows

- a) Verification and verification procedure, aimed at confirming compliance with the obligations of taxable persons and other taxable persons;
- b) Information procedure, aimed at compliance with the legal duties of information or opinion with which the tax inspectorate is legally entrusted.

2 - Whenever the purposes of tax prevention or assistance in complying with the accessory or payment obligations of taxpayers and other persons subject to tax so justify, permanent monitoring shall be ensured in accordance with the general criteria defined by the tax inspectorate.

#### **Article 19<sup>408</sup> Functions within the scope of the inspection procedure**

The following shall exercise functions within the tax inspection procedure

- a) The technical staff of the tax inspection area, namely economist and legal technicians, tax supervisors, tax inspection experts and tax verifier technicians;
- b) Officials of other technical categories of the Directorate General of Taxation, namely specialists in computer auditing and engineers, when providing specialized support for tax inspection activities;
- c) Other officials designated by the Director General of Taxation to carry out or participate in tax inspection activities.

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<sup>407</sup> Capítulo III

Classificações do procedimento de inspeção tributária

Artigo 12.º

Fins do procedimento

1 O procedimento de inspeção classifica-se, quanto aos fins, em:

- a) Procedimento de comprovação e verificação, visando a confirmação do cumprimento das obrigações dos sujeitos passivos e demais obrigados tributários;
- b) Procedimento de informação, visando o cumprimento dos deveres legais de informação ou de parecer dos quais a inspeção tributária seja legalmente incumbida.

2 Sempre que os fins de prevenção tributária ou a assistência no cumprimento das obrigações acessórias ou de pagamento dos sujeitos passivos e demais obrigados tributários o justifiquem, deve ser assegurado o seu acompanhamento permanente de acordo com os critérios gerais definidos pela inspeção tributária.

<sup>408</sup> Artigo 19.o

Funções no âmbito do procedimento de inspeção

Exercem funções no âmbito do procedimento de inspeção tributária:

- a) O pessoal técnico da área da inspeção tributária, designadamente técnicos economistas e juristas, supervisores tributários, peritos de fiscalização tributária e técnicos verificadores tributários;
- b) Os funcionários de outras categorias técnicas da Direcção-Geral dos Impostos, designadamente especialistas em auditoria informática e engenheiros, quando prestem apoio especializado à actividade de inspeção tributária;
- c) Outros funcionários designados pelo director-geral dos Impostos para realizarem ou participarem em acções de inspeção tributária.

**Article 36<sup>409</sup> (Commencement and deadline for the inspection procedure)**

Initiation and deadline for the inspection procedure

1 - The tax inspection procedure may be initiated up to the end of the limitation period of the right to tax assessment or of the sanctioning procedure, without prejudice to the right to examine documents relating to taxable situations already covered by that period, which the taxpayers and other parties liable for tax have the obligation to keep.

2 - The inspection procedure is continuous and must be concluded within a maximum period of six months from the date of notification of its beginning.

3 - The period referred to in the previous paragraph may, in the case of general or multi-purpose procedures, be extended for two further periods of three months in the following circumstances

a) Tax situations of special complexity resulting, namely, from the volume of operations, geographical dispersion or integration in national or international economic groups of the inspected entities;

b) When, during the inspection, a fraudulent concealment of facts or income is detected;

c) Other reasons of an exceptional nature, by means of a reasoned authorization of the Director-General of Taxation.

4 - The extension of the inspection activity shall be notified to the inspected entity with an indication of the foreseeable date on which the procedure will end.

**Decree-Law No 360/99 of 16 September / *Decreto-Lei n.º 360/99***

Approves the organisation of the Directorate-General for Customs and Excise  
(DGAIEC)

**Chapter I Nature, Mission, Scope of Action and Principles**

**Article 1<sup>410</sup> Nature and mission** The Directorate General of Customs and Excise, hereinafter referred to as DGAIEC, is the service of the Ministry of Finance whose mission

<sup>409</sup> **Artigo 36. Início e prazo do procedimento de inspeção**

1 O procedimento de inspeção tributária pode iniciar-se até ao termo do prazo de caducidade do direito de liquidação dos tributos ou do procedimento sancionatório, sem prejuízo do direito de exame de documentos relativos a situações tributárias já abrangidas por aquele prazo, que os sujeitos passivos e demais obrigados tributários tenham a obrigação de conservar.

2 O procedimento de inspeção é contínuo e deve ser concluído no prazo máximo de seis meses a contar da notificação do seu início.

3 O prazo referido no número anterior poderá, no caso de procedimento geral ou polivalente, ser ampliado por mais dois períodos de três meses, nas seguintes circunstâncias:

a) Situações tributárias de especial complexidade resultante, nomeadamente, do volume de operações, da dispersão geográfica ou da integração em grupos económicos nacionais ou internacionais das entidades inspeccionadas;

b) Quando, na acção de inspeção, se apure ocultação dolosa de factos ou rendimentos;

c) Outros motivos de natureza excepcional, mediante autorização fundamentada do director-geral dos Impostos.

4 A prorrogação da acção de inspeção é notificada à entidade inspeccionada com a indicação da data previsível do termo do procedimento.

<sup>410</sup> Capítulo I Natureza, missão, âmbito de intervenção e princípios

Artigo 1.º Natureza e missão

7

is to exercise control over the external border of the Community and over the national customs territory for tax, economic and social protection purposes, namely in the area of culture, the environment and public safety and health, as well as to administer excise duties and other indirect taxes entrusted to it.

**Article 2<sup>411</sup> Scope of intervention**

It shall, in general terms, be incumbent upon the DGAIEC, with regard to the taxes it is responsible for administering

- a) Ensure the settlement, collection and accounting of import and export duties, excise duties and other indirect taxes entrusted to it;
- b) To carry out tax inspections, preventing and combating tax fraud and evasion, namely by controlling the trade in goods and means of transport for tax, economic and social protection purposes, by applying procedures and controls relating to the entry, exit and circulation of goods in the national customs territory, carrying out checks namely checks, inspections and audits, with a view to ensuring the correct application of customs and tax regulations and preventing and repressing customs and tax fraud and evasion and illicit trafficking, namely of narcotics, psychotropic substances and their precursors, strategic products and other products subject to prohibitions or restrictions; [...]

**[Article 6 Access to information in databases prior to the opening of an investigation]**

**Not analysed here.**

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A Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo, a seguir abreviadamente designada por DGAIEC, é o serviço do Ministério das Finanças que tem por missão exercer o controlo da fronteira externa comunitária e do território aduaneiro nacional para fins fiscais, económicos e de protecção da sociedade, designadamente no âmbito da cultura, do ambiente e da segurança e saúde públicas, bem como administrar os impostos especiais sobre o consumo e os demais impostos indirectos que lhe estão cometidos.

<sup>411</sup> Artigo 2.º Âmbito de intervenção

Cabe em geral à DGAIEC, relativamente aos impostos que lhe incumbe administrar:

- a) Assegurar a liquidação, cobrança e contabilização dos direitos de importação e exportação, dos impostos especiais sobre o consumo e dos demais impostos indirectos que lhe estão cometidos;
- b) Exercer a acção de inspecção tributária, prevenindo e combatendo a fraude e evasão fiscais, designadamente controlando as trocas de mercadorias e os meios de transporte para fins fiscais, económicos e de protecção da sociedade, através da aplicação de procedimentos e controlos relacionados com a entrada, saída e circulação das mercadorias no território aduaneiro nacional, procedendo à realização de controlos, designadamente verificações, varejos, inspecções e auditorias, com vista a garantir a correcta aplicação da regulamentação aduaneira e fiscal e prevenindo e reprimindo a fraude e a evasão aduaneiras e fiscais e os tráficos ilícitos, designadamente de estupefacientes, substâncias psicotrópicas e seus precursores, produtos estratégicos e outros produtos sujeitos a proibições ou restrições; [...]

## 5. Article 7 Investigations procedure

1. The Director-General shall direct the conduct of investigations on the basis, where appropriate, of written instructions. Investigations shall be conducted under his or her direction by the staff of the Office designated by him or her. The Director-General shall not personally carry out concrete investigative acts.

2. The staff of the Office shall carry out their tasks on production of a written authorisation showing their identity and their capacity. The Director-General shall issue such authorisation indicating the subject matter and the purpose of the investigation, the legal bases for conducting the investigation and the investigative powers stemming from those bases.

3. The competent authorities of Member States shall give the necessary assistance to enable the staff of the Office to fulfil their tasks in accordance with this Regulation effectively and without undue delay. When providing such assistance, the competent authorities of Member States shall *act in accordance with any national procedural rules applicable to them*.

3a. at the request of the Office, which shall be explained in writing, in relation to matters under investigation, the relevant competent authorities of the Member States shall, *under the same conditions as those that apply to the national competent authorities*, provide the Office with the following:

(a) Information available in the centralised automated mechanisms referred to in Article 32a (3) of Directive (EU) 2015/849 of the European Parliament and of the Council (4);

(b) Where strictly necessary for the purposes of the investigation, the record of transactions.

The request of the Office shall include a justification of the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation. Such request shall refer only to information referred to in points (a) and (b) of the first subparagraph.

Member States shall notify to the Commission the relevant competent authorities for the purposes of points (a) and (b) of the first subparagraph.

4. Where an investigation combines external and internal elements, Articles 3 and 4 shall apply respectively.

5. Investigations shall be conducted continuously over a period which must be proportionate to the circumstances and complexity of the case.

6. Where investigations show that it might be appropriate to take precautionary administrative measures to protect the financial interests of the Union, the Office shall without delay inform the institution, body, office or agency concerned of the investigation in progress. The information supplied shall include the following:

(a) the identity of the official, other servant, member of an institution or body, head of office or agency, or staff member concerned and a summary of the facts in question;

(b) Any information that could assist the institution, body, office or agency concerned in deciding on the appropriate precautionary administrative measures to be taken in order to protect the financial interests of the Union;

(c) Any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or, in the case of an external investigation, within the competence of a national authority, *in accordance with the national rules applicable to investigations*.

The institution, body, office or agency concerned may at any time consult the Office with a view to taking, in close cooperation with the Office, any appropriate precautionary measures, including measures for the safeguarding of evidence. The institution, body, office or agency concerned shall inform the Office without delay about any precautionary measures taken.

7. Where necessary, it shall be for the competent authorities of the Member States, at the Office's request, to take the *appropriate precautionary measures under their national law*, in particular measures for the safeguarding of evidence.

8. If an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating the reasons and, where appropriate, the remedial measures envisaged with a view to speeding up the investigation.

**a) References to national law**

**1 Sources & national sections 1: Overview for Portugal, Art. 7 OLAF Regulation**

Para 3	<p><b>Administrative Procedure Code:</b>                  Part III Administrative procedure                  Title I Common regime                  Chapter I General provisions                  Art. 53 et seq.                  Title II Regulation and administrative act procedure                  Chapter II Administrative act procedure Section I Private initiative                  Art. 102–109  <b>Section II Notifications</b>                  Art. 110–114  <b>Section III Instruction</b>                  Art. 115–120</p> <p><b>General Regime of Tax Offences, Law No. 15/2001, of June 5<sup>th</sup>:</b>  <b>Chapter II Tax offence proceedings</b>                  Section I General provisions                  Art. 51 et seq.</p>
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Section II Process for imposing fines

**Subsection I** Administrative phase

Article 67 – Competence to establish and instruct

Article 68 – Registration and assessment of documents

Article 69 – Investigation and instruction

Article 70 – Notification of the accused

Article 71 – Defence of the accused

Article 72 – Means of proof

Article 73 – Seizure of goods

Article 74 – Evidence of a tax crime

Article 75 – Early payment of the fine

Article 76 – Application of the fine by the head of the tax service and other entities

Article 77 – Filing of the process

Article 78 – Voluntary payment

Article 79 – Requirements for the decision imposing the fine and respective notification

**Complementary Regime of the Tax Inspection Procedure, Decree-Law no. 413/98 of 31 December:**

Chapter II Principles of the tax inspection procedure

Article 5 et seq.

**Part II March of the inspection procedure**

**Title I Beginning of the inspection procedure**

**Chapter I Preparation, programming, planning**

**Article 44<sup>412</sup> Preparation, programming and planning of the inspection procedure** 1 - The inspection procedure is previously prepared, programmed and planned with a view to the objectives to be achieved.

<sup>412</sup> PARTE II Marcha do procedimento de inspecção

TÍTULO I Início do procedimento de inspecção

CAPÍTULO I Preparação, programação, planeamento

Artigo 44.º Preparação, programação e planeamento do procedimento de inspecção

1 - O procedimento de inspecção é previamente preparado, programado e planeado tendo em vista os objectivos a serem alcançados.

2 - A preparação prévia consiste na recolha de toda a informação disponível sobre o sujeito passivo ou obrigado tributário em causa, incluindo o processo individual arquivado nos termos legais na Direcção-Geral dos Impostos, as informações prestadas ao abrigo dos deveres de cooperação e indicadores económicos e financeiros da actividade.

3 - O disposto no número anterior é aplicável, com as necessárias adaptações, às pessoas previstas no n.º 3 do artigo 2.º quando as mesmas sejam incluídas no âmbito do procedimento de inspecção.

4 - A programação e planeamento compreendem a sequência das diligências da inspecção tendo em conta o prazo para a sua realização previsto no presente diploma e a previsível evolução do procedimento.

2 - Prior preparation consists of gathering all available information on the taxable person or taxable person in question, including the individual file filed under legal terms at the Directorate-General for Taxes, the information provided under the duties of cooperation and economic indicators and financial aspects of the activity.

3 - The provisions of the preceding paragraph are applicable, with the necessary adaptations, to the persons referred to in paragraph 3 of Article 2 when they are included in the scope of the inspection procedure.

4 - Programming and planning comprise the sequence of inspection procedures, taking into account the period for carrying them out provided for in this statute and the foreseeable evolution of the procedure.

**Article 45<sup>413</sup> Team building** 1 - Employees are part of inspection teams, the number and composition of which are established, depending on the case, by DSPIT or by regional and local services.

2 - Inspection acts are carried out by one or more officials, depending on their complexity, and guided by the team coordinator.

**Article 46<sup>414</sup> Accreditation** 1 - The beginning of the external inspection procedure depends on the accreditation of the employees and the carrying of the professional card or other identification issued by the services to which they belong.

<sup>413</sup> Artigo 45.º Constituição de equipas

1 - Os funcionários são enquadrados em equipas de inspecção, cujo número e composição são estabelecidos, conforme os casos, pela DSPIT ou pelos serviços regionais e locais.

2 - Os actos de inspecção são realizados por um ou mais funcionários, consoante a sua complexidade, e orientados pelo coordenador da equipa.

<sup>414</sup> Artigo 46.º Credenciação

1 - O início do procedimento externo de inspecção depende da credenciação dos funcionários e do porte do cartão profissional ou outra identificação passada pelos serviços a que pertençam.

2 - Consideram-se credenciados os funcionários da Direcção-Geral dos Impostos munidos de ordem de serviço emitida pelo serviço competente para o procedimento de inspecção ou, no caso de não ser necessária ordem de serviço, de cópia do despacho do superior hierárquico que determinou a realização do procedimento ou a prática do acto.

3 - A ordem de serviço deverá conter os seguintes elementos:

a) O número de ordem, data de emissão e identificação do serviço responsável pelo procedimento de inspecção;  
b) A identificação do funcionário ou funcionários incumbidos da prática dos actos de inspecção, do respectivo chefe de equipa e da entidade a inspecionar;  
c) O âmbito e a extensão da acção de inspecção.

4 - Não será emitida ordem de serviço quando as acções de inspecção tenham por objectivo:

a) A consulta, recolha e cruzamento de elementos;  
b) O controlo de bens em circulação;  
c) O controlo dos sujeitos passivos não registados.

5 - O despacho que determina a prática do acto, quando não seja necessária a ordem de serviço, deve referir os seus objectivos e a identidade da entidade a inspecionar e dos funcionários incumbidos da sua execução.

2 - Employees of the Directorate-General for Taxation who have a service order issued by the competent service for the inspection procedure are considered accredited or, in the event that a service order is not necessary, a copy of the dispatch from the hierarchical superior that determined the performance of the procedure or the practice of the act.

3 - The service order must contain the following elements:

- a) The order number, date of issue and identification of the service responsible for the inspection procedure;
- b) Identification of the official or officials entrusted with carrying out the inspection acts, the respective team leader and the entity to be inspected;
- c) The scope and extent of the inspection action.

4 - A service order will not be issued when the inspection actions are aimed at:

- a) The consultation, collection and crossing of elements;
- b) The control of goods in circulation;
- c) Control of unregistered taxable persons.

5 - The order that determines the performance of the act, when a service order is not necessary, must refer to its objectives and the identity of the entity to be inspected and the officials responsible for its execution.

**Article 47<sup>415</sup> Consequences of lack of accreditation** Opposition to inspection acts based on the lack of accreditation of the officials responsible for carrying them out is legitimate.

## **Chapter II Cooperation and notification to start the procedure**

### **Article 48<sup>416</sup> Cooperation between management and the inspected entity**

1 - In compliance with the provisions of Article 9, the tax administration will seek, whenever possible, the cooperation of the inspected entity to clarify doubts raised within the scope of the inspection procedure.

2 - When the success of the action or the duty of secrecy regarding the tax status of third parties is not at stake, the tax administration must provide the

<sup>415</sup> Artigo 47.º Consequências da falta de credenciação

É legítima a oposição aos actos de inspecção com fundamento na falta de credenciação dos funcionários incumbidos da sua execução.

<sup>416</sup> CAPÍTULO II Cooperação e notificação para início do procedimento

Artigo 48.º Cooperação entre a administração e a entidade inspeccionada

1 - Em obediência ao disposto no artigo 9.º, a administração tributária procurará, sempre que possível, a cooperação da entidade inspeccionada para esclarecer as dúvidas suscitadas no âmbito do procedimento de inspecção.

2 - Quando não estiver em causa o êxito da acção ou o dever de sigilo sobre a situação tributária de terceiros, a administração tributária deve facultar à entidade inspeccionada as informações ou outros elementos que esta lhe solicitar e sejam comprovadamente necessários ao cumprimento dos seus deveres tributários acessórios.

inspected entity with the information or other elements that it requests and are demonstrably necessary for the fulfilment of its tax duties.

**Article 49<sup>417</sup> Notification to start the inspection procedure**

1 - The start of the external inspection procedure must be notified to the taxable person or taxable person at least five days in advance.

2 - Notification for the initiation of the inspection procedure is carried out by letter of notice drawn up in accordance with a model approved by the director-general of taxation, containing the following elements:

- a) Identification of the taxable or taxable person subject to the inspection;
- b) Scope and extent of the inspection to be carried out.

3 - The notice letter will contain an annex containing the rights, duties and guarantees of taxable persons and other taxable persons in the inspection procedure.

**Article 50<sup>418</sup> Prior notification waiver** 1 - There is no need for prior notification of the inspection procedure when:

- a) The procedure only aims at consulting, collecting or crossing documents intended to confirm the tax status of the taxable person or debtor;
- b) The basis of the procedure is the participation or complaint made under the legal terms and these contain evidence of tax fraud;

<sup>417</sup> Artigo 49.º Notificação para início do procedimento de inspecção

1 - O início do procedimento externo de inspecção deve ser notificado ao sujeito passivo ou obrigado tributário com uma antecedência mínima de cinco dias.

2 - A notificação para início do procedimento de inspecção efectua-se por carta-aviso elaborada de acordo com modelo aprovado pelo director-geral dos Impostos, contendo os seguintes elementos:

- a) Identificação do sujeito passivo ou obrigado tributário objecto da inspecção;
- b) Âmbito e extensão da inspecção a realizar.

3 - A carta-aviso conterà um anexo contendo os direitos, deveres e garantias dos sujeitos passivos e demais obrigados tributários no procedimento de inspecção.

<sup>418</sup> Artigo 50.º Dispensa de notificação prévia

1 - Não há lugar a notificação prévia do procedimento de inspecção quando:

- a) O procedimento vise apenas a consulta, recolha ou cruzamento de documentos destinados à confirmação da situação tributária do sujeito passivo ou obrigado tributário;
- b) O fundamento do procedimento for participação ou denúncia efectuada nos termos legais e estas contiverem indícios de fraude fiscal;
- c) O objecto do procedimento for a inventariação de bens ou valores em caixa, testes por amostragem ou quaisquer actos necessários e urgentes para aquisição e conservação da prova;
- d) O procedimento consistir no controlo dos bens em circulação e da posse dos respectivos documentos de transporte;
- e) O procedimento se destine a averiguar o exercício de actividade por sujeitos passivos não registados;
- f) A notificação antecipada do início do procedimento de inspecção for, por qualquer outro motivo excepcional devidamente fundamentado pela administração tributária, susceptível de comprometer o seu êxito.

2 - Nos casos referidos no número anterior, a carta-aviso e o anexo do folheto são entregues no momento da prática dos actos de inspecção.

- c) The object of the procedure is the inventory of goods or cash in cash, sample tests or any necessary and urgent acts for the acquisition and conservation of evidence;
- d) The procedure consists of controlling the goods in circulation and the possession of the respective transport documents;
- e) The procedure is intended to investigate the exercise of activity by unregistered taxable persons;
- f) Advance notification of the initiation of the inspection procedure is, for any other exceptional reason duly substantiated by the tax administration, likely to jeopardize its success.

2 - In the cases referred to in the previous number, the warning letter and the annex to the leaflet are delivered when carrying out the inspection acts.

**Article 51<sup>419</sup> Form of notification** 1 - At the beginning of the inspection procedure, a copy of the service order or dispatch that determined the inspection procedure shall be delivered to the taxpayer or taxable person.

2 - The taxpayer or taxable person or his representative must sign the service order indicating the date of notification.

3 - The service order must be signed by the official accountant or any employee or collaborator present if the taxpayer or taxable person or his representative is not present at the location.

4 - Refusal to sign the service order does not prevent the initiation of the inspection procedure.

**Article 52<sup>420</sup> Representative for relations with the tax administration**

Without prejudice to the duties legally incumbent on him, the taxpayer or taxable person must designate, at the beginning of the external inspection procedure, a person who will coordinate his contacts with the tax administration and ensure compliance with the legal obligations under the terms of this statute.

<sup>419</sup> Artigo 51.º Forma da notificação

1 - Da ordem de serviço ou de despacho que determinou o procedimento de inspeção, será, no início deste, entregue uma cópia ao sujeito passivo ou obrigado tributário.

2 - O sujeito passivo ou obrigado tributário ou o seu representante devem assinar a ordem de serviço indicando a data da notificação.

3 - A ordem de serviço deve ser assinada pelo técnico oficial de contas ou qualquer empregado ou colaborador presente caso o sujeito passivo ou obrigado tributário ou o seu representante não se encontrem no local.

4 - A recusa da assinatura da ordem de serviço não obsta ao início do procedimento de inspeção.

<sup>420</sup> Artigo 52.º Representante para as relações com a administração tributária

Sem prejuízo dos deveres que legalmente lhe incumbem, o sujeito passivo ou obrigado tributário devem designar, no início do procedimento externo de inspeção, uma pessoa que coordenará os seus contactos com a administração tributária e assegurará o cumprimento das obrigações legais nos termos do presente diploma.

**Title II Acts of the inspection procedure**

**Article 53<sup>421</sup> Continuity and suspension of acts**

1 - The practice of inspection acts is continuous, and may only be suspended in case of exceptional and unavoidable priorities of the tax administration recognized in a substantiated order by the head of the service.

2 - Suspension does not affect the legal deadlines for completing the procedure provided for in this diploma.

3 - In the event of suspension, the taxable person or taxable person must be notified of the resumption of the procedure.

**Article 54<sup>422</sup> Presence of the taxable or taxable person**

1 - The taxable person or taxable person, their legal and technical representatives and statutory auditors must be present when carrying out external inspection acts when this is carried out on the taxpayer's premises or premises and their presence is considered indispensable to the discovery of material truth.

2 - Taxable or taxable persons may, whenever they so wish, attend external inspection proceedings provided that the acts are carried out on their premises or premises.

3 - Taxable or taxable persons may be accompanied by a specialized expert.

**Article 55<sup>423</sup> Collection of elements** The collection of elements within the scope of the inspection procedure must comply with objective criteria and contain:

<sup>421</sup> TÍTULO II Actos do procedimento de inspecção

Artigo 53.º Continuidade e suspensão dos actos

1 - A prática dos actos de inspecção é contínua, só podendo suspender-se em caso de prioridades excepcionais e inadiáveis da administração tributária reconhecidas em despacho fundamentado do dirigente do serviço.

2 - A suspensão não prejudica os prazos legais de conclusão do procedimento previstos no presente diploma.

3 - Em caso de suspensão, deve ser notificado ao sujeito passivo ou obrigado tributário o reinício do procedimento.

<sup>422</sup> Artigo 54.º Presença do sujeito passivo ou obrigado tributário

1 - O sujeito passivo ou obrigado tributário, os seus representantes legais e técnicos e revisores oficiais de contas devem estar presentes no momento da prática de actos de inspecção externa quando esta se efectue nas instalações ou dependências de contribuinte e a sua presença for considerada indispensável à descoberta da verdade material.

2 - O sujeito passivo ou obrigado tributário pode, sempre que o pretenda, assistir às diligências da inspecção externa desde que os actos se realizem nas suas instalações ou dependências.

3 - O sujeito passivo ou obrigado tributário pode fazer-se acompanhar por um perito especializado.

<sup>423</sup> Artigo 55.º Recolha de elementos

A recolha de elementos no âmbito do procedimento de inspecção deve obedecer a critérios objectivos e conter:

a) A menção e identificação dos documentos e respectivo registo contabilístico, com indicação, quando possível, do número e data do lançamento, classificação contabilística, valor e emitente;

b) A integral transcrição das declarações, com identificação das pessoas que as profiram e as respectivas funções, sendo as referidas declarações, quando prestadas oralmente, reduzidas a termo.

- a) Mention and identification of the documents and respective accounting records, indicating, when possible, the number and date of entry, accounting classification, value and issuer;
- b) The complete transcription of the declarations, with identification of the persons who uttered them and the respective functions, being the referred declarations, when given orally, reduced to term.

**Article 56<sup>424</sup> Procedure for collecting elements**

1 - Photocopies or extracts will be made at the facilities or facilities where the books or documents are located.

2 - In the event that it is impossible for copies or extracts to be made in the places referred to in the previous number, the books or documents may only be withdrawn for that purpose for a period not exceeding seventy-two hours, and a receipt must be delivered to the taxable person or obligated person.

3 - The corresponding term will be drawn up for inventories and physical counts.

4 - The term referred to in the previous number will be signed by the taxpayer or taxable person or his representative, who will declare whether or not it is the same as the total number of stocks, and may add the observations he deems appropriate.

5 - When the taxpayer or taxable person or his representative refuse to sign, the term will be signed by two witnesses.

6 - In the event that it is impossible for the tax inspection services to collect the signature of the witnesses, the fact shall be stated in the term, of which a copy shall be delivered to the taxable or taxable person.

7 - Whenever sampling tests do not consist of a mere comparison of documents, the respective term will also be drawn up, applying the provisions of paragraphs 4 to 6 of this article, with the necessary adaptations.

<sup>424</sup> Artigo 56.º Procedimento de recolha de elementos

1 - As fotocópias ou extractos serão efectuadas nas instalações ou dependências onde se encontrarem os livros ou documentos.

2 - Em caso de impossibilidade de as cópias ou extractos se efectuarem nos locais referidos no número anterior, os livros ou documentos só podem ser retirados para esse efeito por prazo não superior a setenta e duas horas, devendo ser entregue recibo ao sujeito passivo ou obrigado tributário.

3 - Dos inventários e contagens físicas será lavrado o correspondente termo.

4 - O termo referido no número anterior será assinado pelo sujeito passivo ou obrigado tributário ou seu representante, que declarará ser ou não o mesmo conforme ao total das existências, e poderá acrescentar as observações que entender convenientes.

5 - Quando o sujeito passivo ou obrigado tributário ou seu representante se recusarem a assinar, será o termo assinado por duas testemunhas.

6 - Na impossibilidade de os serviços de inspecção tributária colherem assinatura das testemunhas, constará o facto do termo, do qual será entregue uma cópia ao sujeito passivo ou obrigado tributário.

7 - Sempre que os testes de amostragem não consistirem no mero confronto de documentos, será igualmente lavrado o respectivo termo, aplicando-se o disposto nos n.os 4 a 6 do presente artigo, com as necessárias adaptações.

**Article 57<sup>425</sup> Counting auditing techniques** In inspection acts, accounting auditing techniques may be used, when applicable.

**Article 58<sup>426</sup> Compliance with tax obligations** 1 - The inspected entity may, during the inspection procedure, proceed with the regularization of its tax situation, even when the infractions have been established within the scope of the same procedure.

2 - The regularization, when the taxpayer or taxable person communicates it to the tax administration, is obligatorily mentioned in the final report.

**Article 59<sup>427</sup> Opposition** 1 - In the event of opposition to carrying out any act of inspection, the official shall notify the fact, within a period of five days, to the head of the service, if applicable, substantiating the request to the court of order for carrying out the act.

2 - If the opposition is illegitimate, the provisions of the previous number do not affect the sanctioning procedure applicable to the case.

### **Title III Conclusion and effects of the inspection procedure**

#### **Chapter I Completion of the inspection procedure**

**Article 60<sup>428</sup> Previous hearing** 1 - Once the performance of inspection acts has been completed and if they may give rise to unfavourable tax or tax acts

<sup>425</sup> Artigo 57.º Técnicas de auditoria contabilística

Nos actos de inspecção podem ser utilizadas, quando aplicáveis, técnicas de auditoria contabilística.

<sup>426</sup> Artigo 58.º Cumprimento de obrigações tributárias

1 - A entidade inspeccionada pode, no decurso do procedimento de inspecção, proceder à regularização da sua situação tributária, mesmo quando as infracções tenham sido apuradas no âmbito do mesmo procedimento.

2 - A regularização, quando o sujeito passivo ou obrigado tributário a comunique à administração tributária, é obrigatoriamente mencionada no relatório final.

<sup>427</sup> Artigo 59.º Oposição

1 - Em caso de oposição à realização de qualquer acto de inspecção, o funcionário comunicará o facto, no prazo de cinco dias, ao dirigente do serviço, se for caso disso, propondo fundamentadamente a solicitação ao tribunal de ordem para realização do acto.

2 - O disposto no número anterior não prejudica, caso a oposição seja ilegítima, o procedimento sancionatório que ao caso couber.

<sup>428</sup> TÍTULO III Conclusão e efeitos do procedimento de inspecção

CAPÍTULO I Conclusão do procedimento de inspecção

Artigo 60.º Audição prévia

1 - Concluída a prática de actos de inspecção e caso os mesmos possam originar actos tributários ou em matéria tributária desfavoráveis à entidade inspeccionada, esta deve ser notificada no prazo de 10 dias do projecto de conclusões do relatório, com a identificação desses actos e a sua fundamentação.

2 - A notificação deve fixar um prazo entre 8 e 15 dias para a entidade inspeccionada se pronunciar sobre o referido projecto de conclusões.

3 - A entidade inspeccionada pode pronunciar-se por escrito ou oralmente, sendo neste caso as suas declarações reduzidas a termo.

4 - No prazo de 10 dias após a prestação das declarações referidas no número anterior, será elaborado o relatório definitivo.



to the inspected entity, the latter must be notified within 10 days of the draft report conclusions, with the identification of those acts and their reasoning.

2 - The notification must set a period of between 8 and 15 days for the inspected entity to comment on the aforementioned draft conclusions.

3 - The inspected entity may express its opinion in writing or orally, in which case its declarations will be reduced to a term.

4 - Within a period of 10 days after the provision of the declarations referred to in the previous number, the final report will be drawn up.

#### **Article 61<sup>429</sup> Conclusion of acts**

1 - Inspection acts are considered completed on the date of notification of the due diligence note issued by the official in charge of the procedure.

2 - The report provided for in the following number must be notified to the taxpayer by registered letter with acknowledgment of receipt within 10 days after the deadline referred to in number 4 of the previous article.

3 - The purpose of the due diligence note is to define the date of completion of the acts and, in the cases referred to in paragraph 3 of Article 46, it shall obligatorily indicate the tasks carried out.

#### **Article 62 Inspection report**

#### **Article 63<sup>430</sup> Reasoning for the decision**

1 - The tax or tax acts that result from the report may be based on its conclusions, through adherence or agreement with these, and in all cases the competent entity for its practice must justify the divergence in relation to the conclusions of the report.

2 - The services involved in the inspection procedure must be notified of tax acts or tax-related acts that result from the report, as well as its revision due to a petition, claim or appeal of any nature.

<sup>429</sup> Artigo 61.º Conclusão dos actos

1 - Os actos de inspecção consideram-se concluídos na data de notificação da nota de diligência emitida pelo funcionário incumbido do procedimento.

2 - O relatório previsto no número seguinte deve ser notificado ao contribuinte por carta registada com aviso de recepção nos 10 dias posteriores ao termo do prazo referido no n.º 4 do artigo anterior.

3 - A nota de diligência tem como objectivo a definição da data de conclusão dos actos e, nos casos referidos no n.º 3 do artigo 46.º, indicará obrigatoriamente as tarefas realizadas.

<sup>430</sup> Artigo 63.º Fundamentação da decisão

1 - Os actos tributários ou em matéria tributária que resultem do relatório poderão fundamentar-se nas suas conclusões, através da adesão ou concordância com estas, devendo em todos os casos a entidade competente para a sua prática fundamentar a divergência face às conclusões do relatório.

2 - Aos serviços intervenientes no procedimento de inspecção serão obrigatoriamente comunicados os actos tributários ou em matéria tributária que resultem do relatório, bem como a sua revisão em virtude de petição, reclamação ou recurso de qualquer natureza.

## **Chapter II Effects of the inspection procedure**

### **Article 64<sup>431</sup> Binding effectiveness of the report**

1 - Without prejudice to the special system of tax inspection on the initiative of taxable persons, taxable persons or taxable persons may, for reasons of certainty and security, request the Director-General of Taxation to sanction the conclusions of the inspection report.

2 - The request for sanction may be made within a period of 30 days after notification of the conclusions of the report and shall identify the matters on which the applicant intends to impose sanction.

3 - The request is considered tacitly accepted if the tax administration does not issue a decision within a period of six months.

4 - If the request is expressly or tacitly granted, the tax administration may not proceed in relation to the inspected entity in a sense other than the content of the conclusions of the report within the three years following the date of notification thereof, unless simulation, falsification, violation, concealment or destruction of any fiscally relevant elements relating to the object of the inspection.

The Law No. 15/2001, of June 5th General Regime for Tax Offences contains provisions on tax offences proceedings, which according to Art. 52 of this law means “the application of fines and ancillary sanctions”. Procedural rules to obey in this regard can be found in Art. 51–79 of the Law No. 15/2001, Of June 5th General Regime for Tax Offences.

The Annex of this law in the area of tax offences and sanction includes an Annex, the so-called “Attachment CODE OF TAX PROCEDURE AND PROCESS”. These rules need to be obeyed.

In the area of expenditure, the administrative procedure code will apply.

<sup>431</sup> CAPÍTULO II

Efeitos do procedimento de inspecção

Artigo 64.º

Eficácia vinculativa do relatório

1 - Sem prejuízo do regime especial de fiscalização tributária por iniciativa dos sujeitos passivos, os sujeitos passivos ou obrigados tributários podem, por razões de certeza e segurança, solicitar ao director-geral dos Impostos que sancione as conclusões do relatório da inspecção.

2 - O pedido de sancionamento poderá ser efectuado no prazo de 30 dias após a notificação das conclusões do relatório e identificará as matérias sobre as quais o requerente pretenda que recaia sancionamento.

3 - O pedido considera-se tacitamente deferido se a administração tributária não se pronunciar no prazo de seis meses.

4 - Caso o pedido seja expressa ou tacitamente deferido, a administração tributária não pode proceder relativamente à entidade inspecionada em sentido diverso do teor das conclusões do relatório nos três anos seguintes ao da data da notificação destas, salvo se se apurar posteriormente simulação, falsificação, violação, ocultação ou destruição de quaisquer elementos fiscalmente relevantes relativos ao objecto da inspecção.

	<p>II. Cooperation and notification to initiate the procedure Art. 48–52</p> <p>Title II Acts of the inspection procedure Art. 53–59</p> <p>Title III Conclusion and effects of the inspection procedure Art. 60–64</p>
Para 3a (a) (b)	<p>Complementary Regime of the Tax Inspection Procedure, Decree-Law n.º 413/98 of 31 December:</p> <p>Title II Acts of the inspection procedure Art. 55 Collection of data Art. 56 Data collection procedure</p>
Para 6 (c)	<p>The administrative procedure code may apply, see Art. 3 et seq. (the general principles of administrative proceedings in Portugal). Complementary Regime of the Tax Inspection Procedure, Decree-Law n.º 413/98 of 31 December:</p> <p>Art. 22 Duty of secrecy</p>
Para 7	<p>In the area of tax and customs fraud the Annex of Law n.º 15 2001 applies:</p> <p>“Chapter III Precautionary action proceedings Section I General Provisions Article 135. Precautionary Measures Section II Arrest Article 136 Requirements for the arrest Article 137 Expiry Article 138 for attachment Article 139 Arrest Regime of Tax Offences, Law No. 15/2001, of June 5<sup>th</sup>: Section III Listing Article 140 Listing requirements Article 141 Competence for listing Article 142 Listing Regime Section IV Article 73 Seizure Article 143 Challenge of the seizure goods Section V The challenge to the Complementary Regime of the Tax Inspection Procedure, Decree-Law n.º 413/98 of 31 December: Article 30 precautionary measures Article 31 precautionary measures adopted by the tax administration</p>

	<p>Article 144 Challenge of precautionary measures adopted by the tax administration</p> <p>Chapter IV Action for the recognition of a right or legitimate interest in tax matters</p> <p>Article 145 Recognition of a right or legitimate interest in tax matters judicial nature”</p>
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**b) References to national authorities**

8 The General Regime of Tax Offences refers to the tax authorities:

9 **Article 52 Law 15/2001<sup>432</sup> Powers of the tax authorities**

The application of fines and ancillary sanctions, except for the specialties provided for by law, is the responsibility of the following tax authorities

a): the heads of customs delegations.

b) In the case of a fiscal offence, the imposition of the fines provided for in Articles 114 and 116 to 126, as well as autonomous offences, to the head of the local tax service in the area where the infraction took place and the application of the fines provided for in Articles 114, 118, 119 and 126, when the missing tax exceeds EUR 25,000, and in Articles 113, 115, 127, 128 and 129 to the finance director of the area where the violation took place, or to the director of the Large Taxpayers Unit, in relation to taxpayers whose permanent monitoring is their attribution, and they are also responsible for the application of accessory sanctions.

10 Furthermore, the following authorities can become important in the investigations:

- 11
- Fiscal Brigade of the Republican National Guard<sup>433</sup> (formerly: Guarda Fiscal<sup>434</sup>)
  - General Directorate of Customs and Special Consumption Taxes<sup>435</sup>
  - Finance department of the local tax service<sup>436/</sup>
  - Director of the Large Taxpayers Unit

<sup>432</sup> **Artigo 52.º Competência das autoridades tributárias Lei n.º 15/2001, de 05 de Junho**

A aplicação das coimas e sanções acessórias, ressalvadas as especialidades previstas na lei, compete às seguintes autoridades tributárias:

a) Tratando-se de contra-ordenação aduaneira ao director-geral das Alfândegas e dos Impostos Especiais sobre o Consumo, aos directores das alfândegas e aos chefes das delegações aduaneiras;

b) Tratando-se de contraordenação fiscal, a aplicação das coimas previstas nos artigos 114.º e 116.º a 126.º, bem como das contraordenações autónomas, ao dirigente do serviço tributário local da área onde a infração teve lugar e a aplicação das coimas previstas nos artigos 114.º, 118.º, 119.º e 126.º, quando o imposto em falta seja superior a (euro) 25 000, e nos artigos 113.º, 115.º, 127.º, 128.º e 129.º ao director de finanças da área onde a infração teve lugar, ou ao director da Unidade dos Grandes Contribuintes, relativamente aos contribuintes cujo acompanhamento permanente seja sua atribuição, competindo-lhes, ainda, a aplicação de sanções acessórias.

<sup>433</sup> *Brigada Fiscal da Guarda Nacional Republicana*

<sup>434</sup> Christoph Billwiller, *Die Befugnisse des Europäischen Amtes für Betrugsbekämpfung (OLAF) im Rahmen von Kontrollen bei Wirtschaftsbeteiligten in Portugal*, Mendel Verlag, Aachen 2002, p. 177.

<sup>435</sup> Direcção Geral das Alfândegas e dos Impostos Especiais sobre o Consumo (DGAIEC)

<sup>436</sup> *departamento financeiro do serviço tributário local*

- Directorate of Services for Tax Prevention and Inspection<sup>437</sup>
- Central services of the Director-General for Taxation<sup>438</sup>
- IFAP Institute for Financing Agriculture and Fisheries<sup>439</sup>
- General Inspectorate for Agriculture, Sea, Environment and Territorial Planning<sup>440</sup>

**6. Article 8 Duty to inform the Office [omitted]**

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<sup>437</sup> *Direcção de Serviços de Prevenção e Inspecção Tributária (DSPIT)*

<sup>438</sup> *Direcção-Geral dos Impostos*

<sup>439</sup> *Instituto de Financiamento da Agricultura e Pescas*

<sup>440</sup> *Inspecção-Geral da Agricultura, do Mar, do Ambiente e do Ordenamento do Território (IGAMAOT)*

## II. References to National law in the OLAF Regulation (Art. 9–17 OLAF Regulation)

### 1. Article 9 Procedural guarantees

[...] 3. As soon as an investigation reveals that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, that official, other servant, member of an institution or body, head of office or agency, or staff member *shall be informed to that effect*, provided that this does not prejudice the conduct of the investigation or of any investigative proceedings *falling within the remit of a national judicial authority*.

4. [...] In duly justified cases where necessary to preserve the confidentiality of the investigation or an ongoing or future criminal investigation by the EPPO or a national judicial authority, the Director-General may, where appropriate after consulting the EPPO or *the national judicial authority concerned*, decide to defer the fulfilment of the obligation to invite the person concerned to comment. [...]

#### a) Art. 9 para 3 – remit of a national judicial authority

- 1 Portuguese criminal bodies may have initiated an investigation as well. Thus, the Criminal Procedure Code applies. If it comes to secret investigation measures it is highly important that the secrecy is kept or otherwise the whole measure could be useless.
- 2 Administrative sanctioning authorities or administrative managing authorities may normally not be concerned as they are not a judicial authority.
- 3 If these authorities act on behalf of a prosecutor – in tax and customs criminal proceedings – the same restrictions may apply.
- 4 In some cases, the investigating judge will need to grant authorization in criminal investigations and thus his investigations may be concerned as well.
- 5 It is therefore important to keep close contact with the authorities in Portugal.

#### b) Art. 9 para 4 – national judicial authorities

- 6 The national authority concerned with ongoing criminal investigations will either be listed in the Notification of the Member State to the EPPO or it can be identified via the prosecution offices in Portugal.

**2. Article 10 Confidentiality and data protection [omitted]**

**3. Article 11 Investigation report and action to be taken following investigation**

[...] 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.

**a) References to national law**

**1 Sources & national sections 2: Overview for Portugal, Art. 11 OLAF Regulation**

<b>Para 2</b>	<i>Constituição/Constitution, Decreto-Lei n.º 109-E/2021, de 9 de dezembro Cria o Mecanismo Nacional Anticorrupção e estabelece o regime geral de prevenção da corrupção/ Decree-Law No 109-E/2021 of 9 December Creates the National Anti-Corruption Mechanism and establishes the general regime for the prevention of corruption, Código do Procedimento Administrativo/Code of Administrative Procedure, Decree-Law No. 23/2021, of March 23, Resolução do Conselho de Ministros n.º 97/2020, Tax Procedures Act, Lei n.º 15/2001</i>
<b>Para 2 (a)</b>	<p>See tax offences proceedings of a non-criminal nature, Art. 51 et seq. Tax Procedures &amp; Investigations of Tax Offences Act/<i>Lei n.º 15/2001</i><sup>441</sup></p> <p>Tax offences of a non-criminal nature are subject to the tax offence process, except in cases where the knowledge of the offences falls to the ordinary courts, in which case the provisions of Chapter I of Part II of this law are correspondingly applicable.</p>
<b>Para 2 (b)</b>	<p>Book Three of the Portuguese CPC contains provisions on the relevance of evidence and the value of it in a criminal trial.</p> <p>Art. 124–127 PCPC.VI Articles 151–163 relate to the evidence of qualified experts. It remains questionable if an OLAF report can be considered as a qualified expert evidence.</p> <p>Chapter VII. relates to the evidence given by certificates.</p> <p>Chapter VII From the documentary evidence</p> <p><b>Article 164 (Admissibility)</b></p> <p>1 - Evidence by document is admissible, meaning a statement, sign or notation embodied in writing or any other technical means, under the terms of criminal law.</p> <p>2 - The attachment of documentary evidence is made of its own motion or upon request, and a document containing an anonymous statement cannot be attached, unless it is itself the object or element of the crime.</p>

<sup>441</sup> **Artigo 51.º Âmbito Lei n.º 15/2001**

Ficam sujeitas ao processo de contra-ordenação tributário as infracções tributárias sem natureza criminal, salvo nos casos em que o conhecimento das contra-ordenações caiba aos tribunais comuns, caso em que é correspondentemente aplicável o disposto no capítulo I da parte II desta lei.



**Article 165 (When documents can be attached)**

1 - The document must be attached during the investigation or investigation and, if this is not possible, it must be attached until the end of the hearing.

2 - In any case, the possibility of an adversary proceeding is ensured, for which the court may grant a period not exceeding eight days.

3 - The provisions of the preceding paragraphs are correspondingly applicable to the opinions of lawyers, juriconsults or technicians, which can always be added until the end of the hearing.

**b) Annex: Example of an Investigation Report cited in a Portuguese Judgment**

“The sentence referred to includes the following factual judgment:

Proven facts

A) An inspection was carried out on the company “B.....”, and an **Inspection Report was prepared** on 08/05/2018, with the following content:

**I - Conclusions of the Inspection Action**

1. As a result of the investigation carried out by OLAF (European Anti- Fraud Office ) and the Malaysian authorities at its request, concerning the transshipment through Malaysia of goods from China with a view to **evading payment of anti-dumping duties (OLAF CASE OF/ 2010/0697)** communicated to MS through the AM 2010/016 **mutual assistance process**, it was concluded that **the goods (steel screws) exported to the European community packed in containers FSCU7572497 and FSCU7594095, on 04/03/2010 and containers EMCU3473792 and EMCU3704485, as of 24/04/2010, are of non-preferential Chinese origin.**

AB..... was identified as the recipient (importer) of these exports, specifically through DAU No. 21366530 of 12-05-2010 and No. 21690121 of 09-06-2010, both from Leixões Customs, in which the Malaysian origin was (falsely) declared.

It should be noted that, pursuant to Article 11(2) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013, the **evidence collected by OLAF and communicated to the MS due to mutual assistance can be used in national administrative procedures** under the same conditions as national inspectors (inspections).

2. Changing the origin of goods declared from Malaysia to China implies the application of the provisions of Council Regulation (EC) No. 1890/2005 of 14 November and Council Regulation (EC) No. 91/2009 of January 26, which on the date of acceptance of the import declarations, impose the application of a definitive anti-dumping duty on these goods (rates respectively of 27.4% and 85% ad valorem), when declared as originating in China.

Likewise, this change implies the loss of the benefit of preferential tariff measures, provided for in Art. e) Article 20(3) of Council Regulation (EEC) No. 2913/92, of 12 October, establishing the Community Customs Code (CAC), intended for goods that comply with the rules of



preferential origin, in within the meaning of Article 27 of that diploma, and an ad valorem conventional duty rate of 3.7% must be applied.

3. In this sense, the following amounts are proposed for settlement:

[IMAGE]

This results in a debt (antidumping duties + conventional duties + VAT) in the amount of €83,921.69 (eighty-three thousand, nine hundred and twenty-one euros and sixty-nine cents).

4. The **customs debt** in question was incurred pursuant to Article 201(1)(a) of the Community Customs Code (CAC), established by Council Regulation (EEC) No. 2913/92 of 12 October 1992.

The import declaration in question was presented in the form of indirect representation by DO A..... - NIF ....., being holder of the regime (importer) B.....

Pursuant to the 2nd indent of paragraph 2 of Art. 5 of the CAC, in the indirect representation modality, the representative acts in his own name but on behalf of others. Pursuant to paragraph 18 of Article 4 of the CAC, the declarant is the person who makes the customs declaration on his behalf or the person in whose name the declaration is made. Pursuant to paragraph 21 of Art. 4 of the CAC, the holder of the regime is the person on whose behalf the customs declaration was made.

When a debt is incurred under the terms of paragraph 1 of Article 201 of the CAC, the debtor is the declarant. In the case of indirect representation, the person on whose behalf the customs declaration is made is also considered the debtor (CAC, Art. 201, no. 3).

From the combination of the above-mentioned articles, it can be concluded that the declarant (DO A.....) and the importer (B.....) are both debtors. Under the terms of Article 213 of the CAC, they are jointly and severally debtors.

5. The **acts in question** (“**false declarations of origin**”) and the amounts in question are subsumable in the **crime of smuggling** p. and p. by subparagraph d) of paragraph 1 of Article 92 of the RGIT.

6. The customs debt was incurred in national territory as a result of acts that, at the time they were carried out, were subject to repressive judicial procedures, so the period of 3 years, provided for in paragraph 3 of Article 221 of the CAC, for its communication to debtors by the national customs authority is extended to 8 years, in accordance with the provisions of paragraph 4 of that article, in conjunction with Article 99 of the Customs Reform.

## Chapter II – Objectives, and Extension of the Inspection Action

### A. Credential and period in which the action took place

This inspection action has the nature of an internal procedure, took place under the cover of process No. OI201700086, having been authorized by order of 2017/10/17, of the Head of Division of the North Operational Division of DSAFA, having its beginning occurred on 12/27/2017.

### B. Reason, scope and extent

The present **action originates from a certificate extracted from the investigation process 4/14.6 ARLSB** (where evidence of evasion of anti-dumping duties by importer B.....) is investigated, as authorized by the Exma. Prosecutor of the Public Prosecutor's Office responsible for the Investigation, issued in order of 21/04/2017 and based on the evidence provided by OLAF, within the scope of the investigation process OLAF CASE OF/2010/0697, AM 2010/016-(2012)S01, which concludes that the goods exported to the European community packed in containers FSCU7572497 and FSCU7594095, on 04/03/2010 and containers EMCU3473792 and EMCU3704485, on 04/24/2010, were of non-preferential origin Chinese.

This merchandise was addressed in Portugal to Company B..... LDA - NIF .....

Scope: DAU No. 21366530 of 05-12-2010 and 21690121 of 06-09-2010, both from Leixões Customs

Extension: A of the statements themselves

### C. Other Situations

Not applicable to the specific case.

- Operator Characterization

Designation: B..... LDA

Headquarters: PLACE ....., STS 4825-..... AGRELA

NIF:.....

Legal Type: Limited Company Share Capital: 150,000.00 Euros

Activity: CAE 46740 - Wholesale of hardware, hand tools and plumbing and heating items.

- Controls Performed

### IV.1 - Elements Declared at the Time of Import

The documentation inherent to the import process in question was collected, the information being detailed in the following table.

Table I - Import Declaration

[IMAGE]

From which it can be concluded that at the time of importation it was declared:

- that the supplier was C..... LTD. (Malaysia)
- that the goods consisted of steel screws of codes 7318129090, 7318156199, 7318158999 and 7318159089
- that the origin was Malaysia
- that the consignments in question were GSP preference recipients (200)

#### **IV.2 - Elements Provided by OLAF (Final Report OF/2010/0697 and AM 2010/016-(2012)S1)**

By Council Regulation (EC) No. 91/2009 of 26 January, the EU imposed a definitive anti-dumping duty (DAD) on certain fasteners made of steel other than stainless steel originating in the People's Republic of China. Following the introduction of these measures, trade statistics indicated, in parallel with the fall in the volume of exports from China to the EU, a significant increase in exports from China to Malaysia and imports into the EU from Malaysia of these products.

In addition, information received from EU trade/industry sources and Dutch, Spanish and German customs in 2009 resulted in the opening of a general coordination case (OF/2009/0774) in November 2009 and transmission of AM 2010/ 002 of 18 February 2010 to Member States in relation to steel screws other than stainless steel trafficked through Malaysia, Thailand and Indonesia.

Imports of such products originating in Malaysia were not subject to trade measures until July 2011. Following a European Commission / DG Trade anti-circumvention investigation, the anti-dumping duties were then extended for imports of the same products shipped from Malaysia, whether declared as originating in Malaysia or not, by Council Implementing Regulation No. 723/2011 of 18 July, preceded by Commission Regulation No. 966/2010 of 27 October.

#### **A - Products**

The products covered by this investigation are certain fasteners made of iron or steel, other than stainless steel, falling within CN codes 7318 12 90, 7318 14 91, 7318 14 99, 7318 15 59, 7518 15 69, 7318 15 81, 7318 15 89, ex 7318 15 90, ex 7318 21 00 and ex 7318 22 00.

Imports of such products, when originating in the People's Republic of China, are subject to DAD at rates between 26.5% and 85.0% under Council Regulation (EC) No. 91/2009 of 26 January. Imports of such products when genuinely originating/manufactured in Malaysia were not subject to these DAD measures until the entry into force of the aforementioned Anti-Dumping Regulation 723/2011 of 18 July 2011.

The majority of shipments imported into the EU from Malaysia were covered by the FORM A Preferential Certificates of Origin (SPG) issued by the Malaysian Ministry of Trade and Industry and benefited from the 0% preferential duty rate instead of the third country rate of 3.7% of rights.

### **B - Preferred origin**

The steel fasteners in question were exported from Malaysia to the EU under the Generalized System of Preferences (GSP). These preferential tariff measures were adopted unilaterally by the EU and goods imported into the EU must meet the origin criteria set out in Commission Regulation (EEC) No 2454/93 of 2 July 1993 (OJ L 253, 11.10.1993, with subsequent changes).

The preferential rule of origin applicable to steel fasteners (Article 76 of Commission Regulation (EC) No 2454/93 of 2 July 1993, as amended and Annex 13-A) is its “manufacture from materials of any heading other than that of the product” (i.e. change of tariff heading (CN) between the materials used and the final product).

Therefore, the transshipment through Malaysia of Chinese products cannot confer the Malaysian preferential origin of the product.

### **C - Non-preferred origin**

For the application of EU trade policy, including anti-dumping measures, non-preferential rules of origin are used to determine whether a product originates in a particular country. The legal basis for non-preferential rules of origin is Article 22–26 of the Community Customs Code. Under Article 23, products originating in a country are those obtained or produced in that country.

According to Article 24, when two or more countries are involved in the production, the goods are considered to originate in the country where they underwent their last substantial transformation, economically justified or working in a company equipped for that purpose and which resulted in the manufacture of a new product or representing an important manufacturing step. In addition, the list rules that may be used when interpreting Article 24 (provided this does not result in a change to this Article (C-373/08 Hoesch Metals, page 41)) provide that a processing or work resulting in a “change code” (NC) is sufficient to verify the origin of the country where this processing or work was carried out – in the present case Malaysia.

Thus, the transshipment of the product in a specific country cannot verify the origin of that country.

### **D - Investigation carried out and evidence collected**

D.1. Investigative activities carried out on imports into the EU of steel fasteners from selected suppliers/exporters

D.2. The initial assessment (I/013665, dated 11/21/09) concluded that there was substance to the aforementioned claims. OLAF opened a coordination process on 24 November 2009 (OF 2009/0774, ref I/013666) and a communication AM 2010/002 was sent on 22/02/2010 to the Member States to alert them to this suspicion fraud, providing everyone with available information about fraud.

D.3. As part of this initial coordination case, the OLAF Council accepted the possibility of taking a decision to open an additional external investigation into imports from Malaysia, if information or evidence provided by Member States in response to the AM communication or information from other (commercial) sources so justified. In this context, in light of the above assessment and given that OLAF needed the support of the Malaysian authorities to assist in the conduct of the investigations carried out by the Member States, a separate external investigation was opened to specifically address the Malaysian traffic on 04/10 /2010 process OF 2010/0697, after a new AM (2010/016) was communicated to the Member States

#### **E - Communication AM 2010/016-(2012)S01**

As part of requests for assistance made to the Malaysian authorities, **OLAF endeavoured to receive data on imports (ZB1) and exports (ZB2 / K8)** of steel screws of code HS 7318 carried out in free zones, in the period between February 1, 2009 and October 29, 2010.

Following the various contacts made, the Malaysian authorities provided OLAF with two sets of data, one on imports and the other on exports, from Malaysian companies involved in the transshipment of Chinese steel fasteners through the Port Klang free zone.

In possession of this information, **OLAF compared the incoming movements, imports** made from China to the Port Klang free zone (ZB1), **with the outgoing movements** from that same free zone to EU Member States (ZB2),

This information was filtered to contain only the elements that had China as their country of origin and EU Member States as their destination.

As a **final result** of the analysis/crossing of this information, it was possible to obtain a table with the transshipments of Chinese steel screws that occurred in the Port Klang Free Zone in the indicated period and that had as final destination the MS. Subsequently, with this information, specific tables were prepared for each MS.

Subsequently, OLAF, through AM 2010/016-(2012)S01, communicated these results to the 25 Member States concerned, in order to identify shipments of Chinese fasteners imported from Malaysia that were allegedly falsely declared to originate in Malaysia and that correspond to the transshipments listed in Annex 3 of this AM Submission.

From the information contained in the annexes of that AM, containers FSCU7572497 and FSCU7594095 were identified, on 04/03/2010 and containers EMCU3473792 and

EMCU3704485, on 04/24/2010, loaded with steel screws, which carried out transshipment in the Free Zone of Port Klang bound for Portugal.

AB..... was identified as the recipient (importer) of the aforementioned exports, specifically through DAU No. 21366530 of 12-05-2010 and 21690121 of 09-06-2010, both from the Leixões Customs, in which it was declared (falsely) the origin Malaysia.

#### **F – Conclusions**

Conventional and anti-dumping customs duties on these imports of steel fasteners originating in China were evaded by incorrectly declaring the product as Malaysian preferential origin and presenting for customs purposes Malaysian preferential origin SPG certificates, FORM A.

The **evidence gathered** shows that the Chinese screws were merely transhipped into the Port Klang or Penang Free Zones. These transshipment activities consisted of consolidating the goods after their arrival from the People's Republic of China into new containers and shipping them to the EU. This occurred in Free Zones where the manufacture, processing or working of goods is not allowed. The activities allowed in the Free Zones are: direct transshipment, consolidation, trade/resale, distribution and regional storage.

These **facts** demonstrate that Chinese fasteners have not undergone any manufacturing process in Malaysia and therefore do not meet the criterion of preferential origin (see point B). Therefore, in light of the absence of any manufacturing activity in Malaysia, the alleged Malaysian manufacturers/exporters in applying for the issuance of the GSP certificates of preferential origin, the FORM A, provided an incorrect description of the facts by claiming that the fasteners exported to the EU had Malaysian preferential origin status, i.e. it was sufficiently worked or processed in accordance with Article 76 of the Commission Regulation. (EEC) No 2454/93 (amended).

**As a result**, the Malaysian Preferred Origin GSP FORM A certificates presented on import into the EU - while authentic - were incorrect and therefore invalid. When requested by a Member State for the subsequent verification of GSP certificates in the present case, the Malaysian Ministry of Trade and Industry generally responded by using the information exchange with OLAF (detailed in point D) and advised the Member State in concerned to consult OLAF on the true origin of the goods.

There is no information available to indicate that the Malaysian authorities were aware or should have been aware that the goods did not meet the origin criterion. SPG certificates were issued in good faith on the basis of information provided to the Ministry of Commerce and Industry.

Furthermore, the verified facts show that the non-preferential origin criterion was not met, as the Chinese screws were merely transhipped in the Free Zones in Malaysia. Consequently, the

fasteners have not undergone working or processing within the meaning of Article 24 of the Community Customs Code.

Conventional duties and anti-dumping duties are therefore recoverable under the Community Customs Code and its implementing regulations (Council Regulation (EEC) No 2913/92 and Commission Regulation (EEC) No 2454/93, changed).

**Evidence collected by OLAF** may be used in **additional administrative and/or criminal proceedings** in the Member States concerned.

Annex I of this report contains Final Report OF/2010/0697/B1, AM 2010/016-(2012)S01 and identification of the transshipment movement related to containers FSCU7572497, FSCU7594095, EMCU3473792 and EMCU3704485.

(...)

Pursuant to Article 201(2) of the CCC, the customs debt is deemed to have been incurred on the date of acceptance of the customs declaration.

For the purposes of applying all the provisions governing the customs procedure for which the goods were declared (release for free circulation and consumption), the date of acceptance of the declaration was taken into account, in accordance with the provisions of Article 67 of the CAC.

In the calculation of customs duties, the rate defined in Commission Regulation (EU) No. 1031/2008 of 19 September 2008 was applied, which, as of 01/01/2009, amended Annex I of Regulation (EEC) No. 2658/87 of the Council, of 23 July 1987, on tariff and statistical nomenclature and customs tariff.

The VAT amount calculated results from the application of the VAT rate provided for in Art. c) of paragraph 1 of Article 18 of the VAT Code on the value of customs duties (conventional duties) and anti-dumping duties, in accordance with the provisions of al. a) of paragraph 2 of Article 17 of the same legal diploma (under the terms of paragraph c) of paragraph 1 of Article 7 of the CIVA, VAT on importation is due and becomes chargeable at the time determined by the applicable provisions to customs duties (date of acceptance of the customs declaration).

Under the terms of Article 5, in conjunction with paragraph 3 of Article 201 and 213, all of the Community Customs Code, approved by Regulation (EEC) n° 2913/92, of the Council of 12 October 1992, the customs broker was notified A....., NIF ....., as joint and several debtors.



## Chapter VII - Verified Infractions

The irregularity described in Chapters I and V, with the financial consequences shown in Chapter VI, constitutes an infraction under the terms of al. d) of n° 1 of Article 92 of the General Regime of Tax Infractions (RGIT), approved by Law n° 15/2001, of June 5, due to the value of the tax instalment.

## Chapter VIII - Other Relevant Elements

The DAU's in question were accepted when the CAC was in force. However, as in the situation in question, the DAU's are not at risk of expiry, it is understood to grant the most favourable period of prior hearing to the taxable person, provided for in the CAU and the respective Delegated Regulation (EU) 2015/2446 of the Commission of 28 of July 2015 (ADCAU), which provides for a period of 30 days.

## Chapter IX - Right of Prior

The Draft Report was sent through the letters DON 077/2018, DON 078/2018 and DON 079/2018 of 25 January of the current year, respectively, to the Economic Operator and the Indirect Representative (the latter notified at the professional address and at the tax address), for the purposes of exercising **the right to a prior hearing** under the terms of Article 60 of Decree-Law n° 413/98 of 31 December (RCPITA).

In the aforementioned notifications, a period of 30 days was set for exercising the right to be heard. In the aforementioned period, no position was received in these services by the Economic Operator.

Regarding the Indirect Representative, he only received the letter sent to the professional address, having exercised the right to be heard through his representative on 03/01/2018, presenting the following arguments:

I. The Official Dispatcher (hereinafter, "Dispatcher") was never heard or even approached during the inspection action on whose conclusions he is now called upon to pronounce. Neither was the Customs Broker constituted a defendant, or heard as a witness or in any other capacity, called to investigation No. 4/14 6ARLSB, whose existence, moreover, he was completely unaware of (and continues to be absolutely unaware of) until about 3 months ago.

Indeed, the Customs Broker does not see, in the slightest, the reason why he is notified to comment on a draft conclusion regarding an inspection action that originates a criminal investigation concerning and evasion of payment of anti-dumping duties, in which, in addition to clearing the goods, he did nothing or participated in anything else. The only relevant mention is in point 4 where it reads: «The declaration in question was submitted in the form of indirect representation by DO A....., B.....»

II. Indeed, the report does not show that the Customs Broker has practiced any irregularity in filling in the DAU's in question or that he has intervened in any way intentionally or negligently; Nor does it appear that the documents that instructed the clearance processes are false or forged.

Moreover, it is OLAF itself that ensures that the FORM A certificates of origin are authentic.

It is not clear, therefore, what is the basis for concluding that there may be grounds for notifying the Customs Broker of the proposed a posteriori settlement after the period provided for in Article 221(3) of the CAC has elapsed.

III. It should also be noted, as a matter of fact, that the intended settlement of duties affects goods whose tariff classification is expressly excluded from the invoked regulations.

IV. In view of the above, and because no irregularity can be attributed to the Official Broker, who scrupulously and in good faith complied with all the rules for filling in the DAUs in question, this procedure must be filed, even under penalty of violation of the EC instructions. transmitted in 2008 by the Customs Code Committee following the ECJ "Beemsterboer" judgment.

Inspection position:

With regard to these points, I would like to state the following:

1. The present action results from a certificate extracted from the Investigation Process No. 4/14.6 ARLSB, which is in progress at the District Attorney's Office of the District of Porto (DIAP – Santo Tirso Section), regarding the evasion of payment of duties antidumping, on the company; B.....

2. The hearing of the official customs agent derives from his intervention in the processes in question, as an indirect representative.

Pursuant to the 2nd indent of paragraph 2 of Art. 5 of the CAC, in the indirect representation modality, the representative acts in his own name but on behalf of others. Pursuant to paragraph 18 of Art. 4 of the CAC, the declarant is the person who makes the customs declaration on his behalf or the person in whose name the declaration is made. Pursuant to no. 21 of Art. 4 of the CAC, the holder of the regime is the person on whose behalf the customs declaration was made.

When a debt is constituted under the terms of paragraph 1 of Art. 201 of the CAC, the debtor is the declarant. In the case of indirect representation, the person on whose behalf the customs declaration is made is also considered liable (CAC, art 201, n° 3).

From the combination of the above-mentioned articles, it can be concluded that the declarant (DO A.....) and the importer B.....), are both debtors.

Pursuant to Art. 213 of the CAC, are jointly and severally debtors.

3. Regarding the tariff codes subject to settlement in this action, the following are provided for in Regulation (EC) No. 1890/2005:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of stainless-steel fasteners and components falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70, originating in the RFC, Indonesia, Taiwan, Thailand and Vietnam. and in Regulation (EC) No. 91/2009:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of certain screws of iron or steel, other than stainless steel, i.e. wood screws (excluding base screws), self-tapping screws, other screws and bolts (including nuts and washers or washers, excluding screws, cut in the mass, of a shank thickness not exceeding 6 mm and excluding screws and pins or bolts for fixing railway elements) and washers or washers, originating in of the People's Republic of China, classified under CN codes 7318 12 90, 7318 14 91, 7318 14 99, 7318 15 59, 7318 15 69, 7318 15 81, 7318 15 89, ex 7318 15 90, ex 7318 21 00 and ex 2 7310 2 (TA-RIC codes 7318 15 90 19, 7318 15 90 69, 7318 15 90 89, 7318 21 00 29, 7318 21 00 99, 7318 22 00 29 and 7318 22 00 99).

4. The elements contained in the report are sufficient for the addressee to understand what is at stake (tampering of Chinese origin, with a view to evading the DAD that applied to the screws of that origin at the time).

5. With regard to the ECJ's "Beemsterboer" judgment, it redefines the rules applied to requests for *a posteriori* control of certificates of origin.

EC legislation establishes that the importer can only be held liable for uncollected import duties as a result of the presentation of a certificate of origin that appears to be invalid, when it can be established that the issuance of the certificate was based on incorrect information provided by the exporter. The European Court of Justice has ruled that the burden of proof lies with the customs authorities of the EC Member States.

In this regard, unless there is evidence that the exporter has provided an incorrect description of the facts in order to obtain a certificate of preferential origin and provided that the person responsible for the payment has acted in good faith and complied with all the provisions established by the legislation in force as regards the customs declaration, the customs authorities of the importing Member State cannot collect the amount in question.

However, if the Customs authorities of the Member State of importation establish, on the basis of other evidence (e.g. OLAF investigation or national investigation), that the certificate in question was issued on the basis of an incorrect presentation of the facts by the exporter and that the authorities of the third country were not in a position to know that the goods did not meet the conditions to give them originating status, the “Beemsterboer” judgment is not applicable.

In the present case, this action results from a certificate extracted from the Investigation Procedure No. 4/14.6 ARLSB, and not from the a posteriori control of certificates of origin, so the content of the “Beemsterboer” judgment is not applicable. (TAXUD/2006/ 1222-End)

In this sense, and because nothing has been added to the facts presented by the notified parties, the conclusions presented in the Draft Report are maintained, thus becoming definitive.”<sup>442</sup>

Summarizing the citation, it is first of all interesting to note that the principle applies that **many other investigation proceedings can result from a particular investigation**, as the judgement states that "action originates from a certificate extracted from the investigation process”.

- 7 The cited judgement primarily shows how OLAF's actions are used in national court proceedings. OLAF, as an anti-fraud authority, has access to many European databases and gathers intelligence by checking and comparing different shipments of goods (e.g. container shipments).
- 8 Deliveries intended and declared for delivery in European ports were compared with deliveries originating from the port of origin and the protocols there. The case from the judgement refers to **suspected frauds and tampering with preferential origin status**, a **common scheme of fraudsters** in this sector, which is highly regulated.<sup>443</sup> How can these terms be explained?

## “2. WHAT IS NON-PREFERENTIAL ORIGIN?”

Non-preferential origin merely confers an ‘economic’ nationality on goods and does not confer any benefit on them. Non-preferential origin is obtained either by the goods being ‘wholly obtained’ (The concept of ‘wholly obtained’ is explained in the explanation for Article 5.) in one country or, when two or more countries are involved in the manufacture of a product, origin is obtained in the country where the last substantial, economically justified working or processing is carried out. Non-preferential origin is used, for example, in determining whether or not goods are subject to anti-dumping measures or

<sup>442</sup> Judgment of the Supreme Administrative Court, Process: 0736/19.2BEPRT, Agreement Date:05.18.2022.

<sup>443</sup> For more information on this matter see A User's Handbook into the Rules of Preferential Origin used in trade between the European Community, other European Countries and the countries participating to the Euro-Mediterranean Partnership, [https://taxation-customs.ec.europa.eu/system/files/2016-09/handbook\\_en\\_0.pdf](https://taxation-customs.ec.europa.eu/system/files/2016-09/handbook_en_0.pdf).

quantitative restrictions and for statistical purposes. It can also be used to determine origin in the context of the ‘origin marking’ (i.e. the ‘made in’ label) of goods.

### 3. WHAT IS PREFERENTIAL ORIGIN?

Preferential origin is conferred on goods from particular countries when they have fulfilled certain criteria. Preferential origin criteria generally demand that goods undergo more working or processing than is required to obtain non-preferential origin. However, wholly obtained goods (See explanation to Article 5) can also benefit from preferential origin status.”<sup>444</sup>

With the definition of these terms in mind, the judgement revealed various differences and divergences, so that the customs authorities took action and initiated legal proceedings when they suspected an under-declaration and thus an irregularity or fraud. They involved OLAF for further data on the subject matter. 9

OLAF’s investigations and the report served as evidence in the proceedings and have the same status as evidence from a national authority. 10

### 4. 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. [...]

<sup>444</sup> Ibid, p. 8.

**a) Art. 12 para 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law)**

**1 Competent authorities**

See above → Institutions, Organization of the criminal justice system in Portugal.

**2 Appropriate action acc. to national law**

- National follow-up acc. to the Administration Procedure Act or General Tax Law
- National follow-up acc. to the special administrative laws e.g. General Regime of Tax Offences Law No. 15/2001, Complementary Regime of the Tax Inspection Procedure Decree-Law n.º 413/98, Budget Framework Law, Public Contracts Code (CCP) DL no. 18/2008

**b) Art. 12 para 2 OLAF Regulation (judicial authorities of the Member State concerned)**

**3 Which are these national authorities?**

- See above → Institutions, Organization of the criminal justice system in Portugal.

**4 - Especially for Economic Crime:**

- Food and Economic Safety Authority / *Autoridade de Segurança Alimentar e Económica (ASAE)*<sup>445</sup>
- General Finance Inspectorate / *Inspeção-Geral de Finanças*
- Directorate-General for Economic Inspection, Art. 51 Anti-Economic Offences and Against Public Health, Decree No. 28/84, of January 20

**5 - Especially for corruption offences:**

- Public Ministry Central Department of Investigation and Criminal Action (DCIAP) / *Departamento Central de Investigação e Ação Penal (DCIAP)*

**c) Art. 12 para 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned)**

**6** 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.

**7 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.

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<sup>445</sup> Official Website of the ASAE, see <https://www.asae.gov.pt/>.

**d) Art. 12 para 4 OLAF Regulation (Providing evidence in court proceedings before national courts and tribunals in conformity with national law)**

The Administrative Procedure Code (*Código do Procedimento Administrativo*) will apply if providing evidence in court proceedings before national administrative courts and tribunals. And the Criminal Procedure Code (*Código De Processo Penal*) might apply if providing evidence in national court proceedings before criminal courts and tribunals.

8

**Code of Administrative Procedure**

9

**Article 115<sup>446</sup> Facts subject to proof**

1 - The person responsible for directing the procedure must seek to ascertain all the facts whose knowledge is adequate and necessary for the taking of a legal and fair decision within a reasonable period, and may, for this purpose, resort to all means of evidence admitted by law.

2 - The well-known facts, as well as the facts that the person responsible for directing the procedure is aware of by virtue of the exercise of his/her duties, do not need proof or allegation.

3-the person responsible for directing the procedure must include in the procedure the facts that he is aware of as a result of the exercise of his functions.

**Article 116<sup>447</sup> Proof by the interested parties** 1 - It is up to the interested parties to prove the facts they have alleged, without prejudice to the duty committed to the person responsible for directing the procedure under the terms of paragraph 1 of the previous article.

<sup>446</sup> Capítulo II Procedimento do ato administrativo  
Secção III Da instrução

Artigo 115.º Factos sujeitos a prova

1 - O responsável pela direção do procedimento deve procurar averiguar todos os factos cujo conhecimento seja adequado e necessário à tomada de uma decisão legal e justa dentro de prazo razoável, podendo, para o efeito, recorrer a todos os meios de prova admitidos em direito.

2 - Não carecem de prova nem de alegação os factos notórios, bem como os factos de que o responsável pela direção do procedimento tenha conhecimento em virtude do exercício das suas funções.

3 - O responsável pela direção do procedimento deve fazer constar do procedimento os factos de que tenha conhecimento em virtude do exercício das suas funções.

<sup>447</sup> Artigo 116.º Prova pelos interessados

1 - Cabe aos interessados provar os factos que tenham alegado, sem prejuízo do dever cometido ao responsável pela direção do procedimento nos termos do n.º 1 do artigo anterior.

2 - Quando os elementos de prova dos factos estiverem em poder da Administração, o ónus previsto no número anterior considera-se satisfeito desde que o interessado proceda à sua correta identificação junto do responsável pela direção do procedimento.

3 - Os interessados podem juntar documentos e pareceres ou requerer diligências de prova úteis para o esclarecimento dos factos com interesse para a decisão.

4 - Sendo necessário juntar documento passado em país estrangeiro, a lei que rege a produção da forma especial desse documento é a lei do Estado de emissão, aferindo-se a suficiência daquela forma especial por equiparação funcional à forma exigida pela lei nacional.

5 - As despesas resultantes das diligências de prova são suportadas pelos interessados que as tiverem requerido, sem prejuízo do disposto no n.º 2 do artigo 15.º

2 - When the evidence of the facts is in the possession of the Administration, the burden provided for in the previous number is considered satisfied provided that the interested party proceeds to its correct identification with the person responsible for directing the procedure.

3 - Interested parties may attach documents and opinions or request evidence that is useful to clarify the facts of interest to the decision.

4 - If it is necessary to attach a document issued in a foreign country, the law that governs the production of the special form of this document is the law of the issuing State, gauging the sufficiency of that special form by functional equivalence to the form required by national law.

5 - The expenses resulting from the investigations of evidence are borne by the interested parties who have requested them, without prejudice to the provisions of paragraph 2 of Article 15.

#### **Article 117<sup>448</sup> Request of evidence to interested parties**

1 - The person responsible for directing the procedure may determine to the interested parties the provision of information, the presentation of documents or things, the submission to inspections and collaboration in other means of evidence.

2 - It is legitimate to refuse the determinations provided for in the previous number, when compliance with them:

- a) Involves the violation of professional secrecy or commercial or industrial secret;
- b) Implying the clarification of facts whose disclosure is prohibited or exempted by law;
- c) Import the disclosure of punishable facts, committed by the interested party, by his/her spouse or by his/her ascendant or descendant, brother or similar in the same grades;
- d) It is liable to cause moral or material damage to the interested party or to any of the persons referred to in the previous paragraph.

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<sup>448</sup> Artigo 117.º Solicitação de provas aos interessados

1 - O responsável pela direção do procedimento pode determinar aos interessados a prestação de informações, a apresentação de documentos ou coisas, a sujeição a inspeções e a colaboração noutros meios de prova.

2 - É legítima a recusa às determinações previstas no número anterior, quando a obediência às mesmas:

- a) Envolver a violação de sigilo profissional ou segredo comercial ou industrial;
- b) Implicar o esclarecimento de factos cuja revelação esteja proibida ou dispensada por lei;
- c) Importar a revelação de factos puníveis, praticados pelo próprio interessado, pelo seu cônjuge ou por seu ascendente ou descendente, irmão ou afim nos mesmos graus;
- d) For suscetível de causar dano moral ou material ao próprio interessado ou a alguma das pessoas referidas na alínea anterior.



**Article 118<sup>449</sup> Form of provision of information or presentation of evidence**

1 - The provision of information or the presentation of evidence by the interested parties is done in writing, and may also be done orally, when this is admitted, under the terms and conditions established for that purpose.

2 - If the interested party does not reside in the municipality where the body responsible for directing the procedure is headquartered, the verbal provision of information or the presentation of evidence may take place through a body or service based in the municipality of its domicile, determined by the body responsible for the direction of the procedure, unless the interested party prefers to appear before it.

**Article 119<sup>450</sup> Failure to provide evidence**

1 - If the interested parties regularly notified for the verbal provision of information or presentation of evidence do not comply with the notification, a new notification may be carried out or the practice of the act may be waived, as the circumstances advice.

2-the lack of compliance with the notification is freely assessed for the purposes of evidence, depending on the circumstances of the case, not exempting the administrative body from seeking to investigate the facts, nor from issuing the decision.

3 - When the information, documents or acts requested from the interested party are necessary for the consideration of the request made by him, the procedure must not be followed up, notifying the individual accordingly.

**Article 120<sup>451</sup> Anticipated production of evidence**

1 - If there is a fair fear that it will become impossible or difficult to produce any evidence relevant to the decision, the competent body may, of its own motion or at the reasoned request of the interested parties, proceed with its advance collection.

<sup>449</sup> Artigo 118.º Forma da prestação de informações ou da apresentação de provas

1 - A prestação de informações ou a apresentação de provas pelos interessados faz-se por escrito, podendo também ser feita oralmente, quando tal seja admitido, nos termos e condições que para o efeito forem fixados.

2 - Se o interessado não residir no município da sede do órgão responsável pela direção do procedimento, a prestação verbal de informações ou a apresentação de provas pode ter lugar através de órgão ou serviço com sede no município do seu domicílio, determinado pelo órgão responsável pela direção do procedimento, salvo se o interessado preferir comparecer perante este.

<sup>450</sup> Artigo 119.º Falta de prestação de provas

1 - Se os interessados regularmente notificados para a prestação verbal de informações ou apresentação de provas não derem cumprimento à notificação, pode proceder-se a nova notificação ou prescindir-se da prática do ato, conforme as circunstâncias aconselharem.

2 - A falta de cumprimento da notificação é livremente apreciada para efeitos de prova, consoante as circunstâncias do caso, não dispensando o órgão administrativo de procurar averiguar os factos, nem de proferir a decisão.

3 - Quando as informações, documentos ou atos solicitados ao interessado sejam necessários à apreciação do pedido por ele formulado, não deve ser dado seguimento ao procedimento, disso se notificando o particular.

<sup>451</sup> Artigo 120.º Produção antecipada de prova

1 - Havendo justo receio de vir a tornar-se impossível ou de difícil realização a produção de qualquer prova com interesse para a decisão, pode o órgão competente, oficiosamente ou a pedido fundamentado dos interessados, proceder à sua recolha antecipada.

2 - A produção antecipada de prova pode ter lugar antes da instauração do procedimento.

2 - The anticipated production of evidence may take place before the initiation of the procedure.

10

### Criminal Procedure Code

#### Article 124 CPC et seq.

See above → Art. 28 EPPO Reg., Provisions in relation to the Gathering Evidence.

#### Article 292 CPC<sup>452</sup> Admissible evidence

1 - All evidence that is not prohibited by law is admissible in the instruction.

2 - The investigating judge interrogates the accused and hears the victim, even if he has not become an assistant, when he deems it necessary and whenever they so request.

### 5. Article 12a Anti-fraud coordination services

1. Each Member State shall, for the purposes of this Regulation, designate a service (the ‘anti-fraud coordination service’) to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, *in accordance with national law*, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation. [...]

#### a) The role of AFCOS

1 In the self-presentation the national AFCOS has the following tasks and ensures the investigative actions of OLAF in Portugal:

2 “The **Inspectorate General of Finance (IGF)** holds the assignment of the Anti-Fraud Coordination Service (AFCOS), in Portugal, by designation of the Minister of State and Finance, through Order No. 07/14/MEF, of 10/jan/2014.

All Member States (MS), of the European Union (EU), designate an AFCOS, pursuant to Article 3(4) of Regulation No. 883/2013, of September 11, to facilitate effective cooperation and exchange of information with the European Commission’s (EC) European Anti-Fraud Office (OLAF), which is responsible for investigating cases of fraud, corruption and other illegal activities damaging the EU budget, and which contributes to the EC’s anti-fraud strategy.

The AFCOS mandate includes national coordination of legislative, administrative, and investigative measures related to the protection of the EU’s financial interests, as well as cooperation with OLAF and other MS according to Article 325 of the

<sup>452</sup> Artigo 292.º Provas admissíveis

1 - São admissíveis na instrução todas as provas que não forem proibidas por lei.

2 - O juiz de instrução interroga o arguido e ouve a vítima, mesmo que não se tenha constituído assistente, quando o julgar necessário e sempre que estes o solicitarem.

Treaty on the Functioning of the European Union (TFEU), which stipulates that in order to combat fraud affecting the EU's financial interests, MS shall take the same measures as they take to protect their own financial interests.

The IGF, which also assumes the role of national interlocutor for the EC in the areas of financial control and protection of financial interests in the European Budget, pursuant to Article 11(2)(d) of Decree-Law No 117/2011 of 15 December and Article 2(2)(d) of Decree-Law No 96/2012 of 23 April, performs the following duties as AFCOS

- Representation of Portugal in meetings consultative committee for the coordination of the fight against fraud (COCOLAF) and its subgroups;
- Coordination of the national response to the annual report, foreseen in Article 325 of the TFEU, prepared by OLAF in collaboration with the MS, and presented to the Council and the European Parliament;
- Reporting cases of irregularities and suspected fraud in EU funds;
- Participation in on-the-spot missions carried out by OLAF and providing information within the scope of ongoing investigations, under the terms of Regulation no. 2185/96, of 11 November;
- Carrying out audits or controls to verify the effective recovery of amounts unduly paid, as well as promoting the processing of complaints with a community incidence, with the aim of contributing to the prevention and correction of cases of fraud and other illegal activities prejudicial to the national or community budget.”<sup>453</sup>

## **b) Organisation of AFCOS**

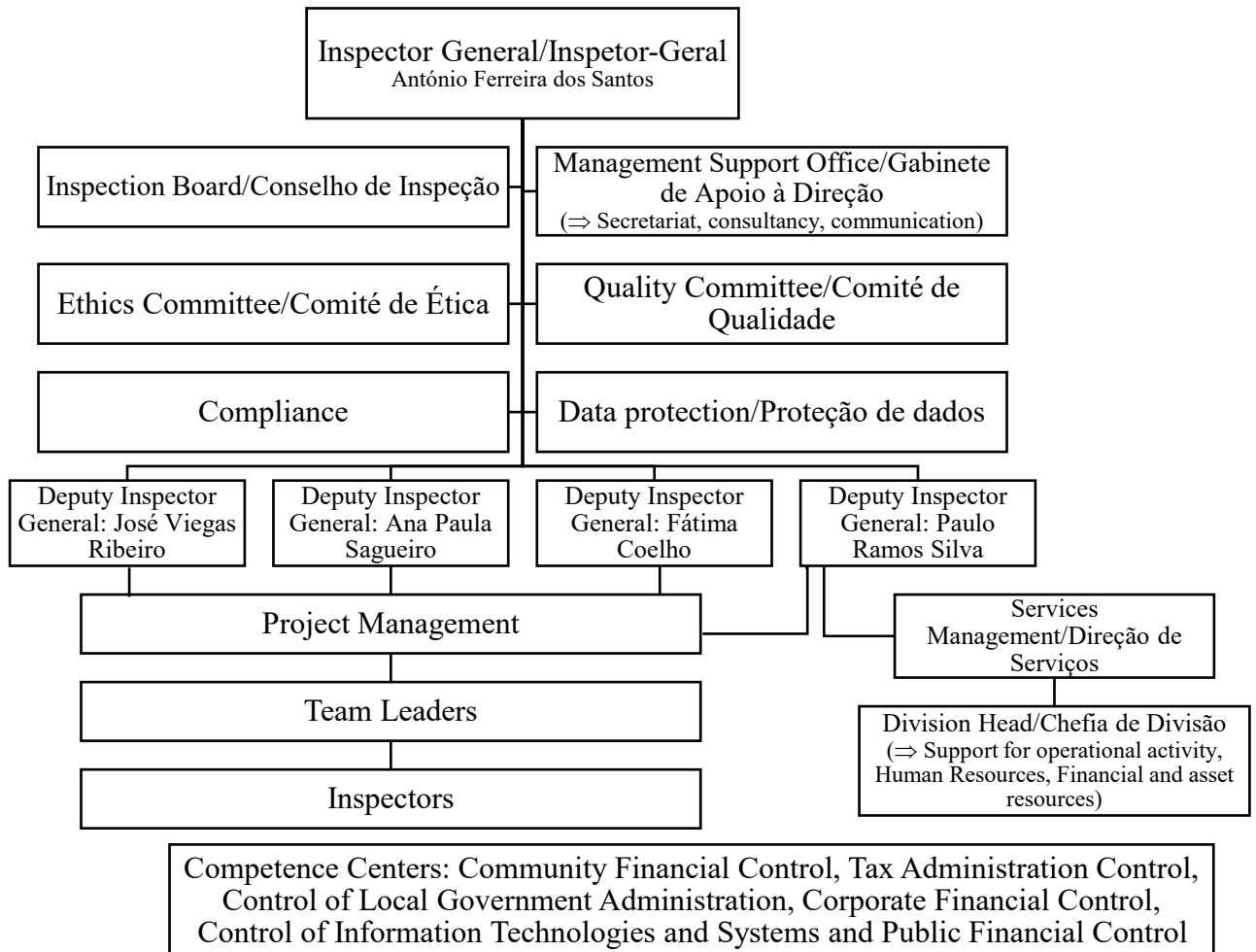
The organisational chart of the Office is as follows:

**3**

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<sup>453</sup> A Inspeção-Geral de Finanças detém a atribuição de Serviço de Coordenação Antifraude (Anti-Fraud Coordination Service – AFCOS), em Portugal, por designação da Senhora Ministra de Estado e das Finanças, através do Despacho n° 07/14/MEF, de 10/jan/2014.

Figure 3: Organisation of the AFCOS Office in Portugal



Source: <https://www.igf.gov.pt/institucional1/apresentacao111/estrutura-organica.aspx>.

- 4 It is worth mentioning that the General Tax Law contains an article obliging the Portuguese Parliament in confrontation with the Parliament to present a detailed report on tax fraud at the end of June of each year:
- 5 **Article 64-B<sup>454</sup> Combating fraud and tax evasion** 1 - The Government presents to the Assembly of the Republic, by the end of June of each year, a detailed report on the

<sup>454</sup> **Artigo 64.º-B Combate à fraude e à evasão fiscais**

1 - O Governo apresenta à Assembleia da República, até ao final do mês de junho de cada ano, um relatório detalhado sobre a evolução do combate à fraude e à evasão fiscais em todas as áreas da tributação, explicitando os resultados alcançados, designadamente quanto ao valor das liquidações adicionais realizadas, bem como quanto ao valor das coletas recuperadas nos diversos impostos.

evolution of the fight against fraud and tax evasion in all areas of taxation, explaining the results achieved, namely with regard to the value of additional settlements carried out, as well as the value of collections recovered in the various taxes.

2 - The report provided for in the previous number must contain, in particular:

- a) The degree of execution of the multi-annual plans to combat tax and customs fraud and evasion approved by the Government;
- b) The results obtained with the use of the different legal instruments to combat fraud and tax evasion, namely:
  - i) In the legislative scope;
  - ii) In the criminal sphere;
  - iii) In the operational scope;
  - iv) Within the scope of the institutional relationship with other national and international public entities; and
  - v) Within the scope of the relationship with the taxpayer;
- c) Relevant statistical information on the performance of tax inspection, tax justice, other areas of the Tax and Customs Authority and other entities that collaborate in the fight against tax and customs fraud and evasion.
- d) The evolution of the amounts of transfers and remittances of funds when the recipients are countries, territories and regions with a more favourable privileged tax regime, pursuant to paragraph 3 of Article 63-A, as well as the results of the action tax inspection, tax justice, other areas of the Tax and Customs Authority and other entities that collaborate in the fight against tax and customs fraud and evasion in this matter, namely in terms of the number of inspections carried out, differences detected, corrections to the matter taxable amount, settlement of the corresponding tax and remittance to the Public Ministry.

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2 - O relatório previsto no número anterior deve conter, designadamente:

- a) O grau de execução dos planos plurianuais de combate à fraude e evasão fiscais e aduaneiras aprovados pelo Governo;
- b) Os resultados obtidos com a utilização dos diversos instrumentos jurídicos para o combate à fraude e à evasão fiscais, nomeadamente:
  - i) No âmbito legislativo;
  - ii) No âmbito penal;
  - iii) No âmbito operacional;
  - iv) No âmbito do relacionamento institucional com outras entidades públicas nacionais e internacionais; e
  - v) No âmbito do relacionamento com o contribuinte;
- c) A informação estatística relevante sobre a atuação da inspeção tributária, da justiça tributária, de outras áreas da Autoridade Tributária e Aduaneira e de outras entidades que colaboram no combate à fraude e evasão fiscais e aduaneiras.
- d) A evolução dos montantes de transferências e envio de fundos quando tenham como destinatários países, territórios e regiões com regime de tributação privilegiada mais favorável, nos termos do n.º 3 do artigo 63.º-A, bem como os resultados da ação da inspeção tributária, da justiça tributária, de outras áreas da Autoridade Tributária e Aduaneira e de outras entidades que colaboram no combate à fraude e evasão fiscais e aduaneiras relativamente a esta matéria, designadamente quanto a número de inspeções realizadas, divergências detetadas, correções à matéria coletável, liquidação de imposto correspondente e remessa ao Ministério Público.

[Article 12b–12d omitted]

#### 6. Article 12e (The Office’s support to the EPPO)

1. In the course of an investigation by the EPPO, and at the request of the EPPO in accordance with Article 101(3) of Regulation (EU) 2017/1939, the Office shall, in accordance with its mandate, support or complement the EPPO’s activity, in particular by:

- (a) providing information, analyses (including forensic analyses), expertise and operational support;
- (b) facilitating coordination of specific actions of *the competent national administrative authorities* and bodies of the Union; [...]

See above → Institutions, Organization of the criminal justice system in Portugal.

[Article 12f–g omitted]

#### 7. Article 13 Cooperation of the Office with Eurojust and Europol

1. [...] Where this may support and strengthen coordination and cooperation between *national investigating and prosecuting authorities*, or where the Office has forwarded to the competent authorities of the Member States information giving grounds for suspecting the existence of fraud, corruption or any other illegal activity affecting the financial interests of the Union in the form of serious crime, it shall transmit relevant information to Eurojust, within the mandate of Eurojust. [...]

See above → Institutions, Organization of the criminal justice system in Portugal.

[Article 14–16 omitted]

#### 8. Article 17 Director-General

4. The Director-General shall report regularly, and at least annually, to the European Parliament, to the Council, to the Commission and to the Court of Auditors on the findings of investigations carried out by the Office, the action taken and the problems encountered, whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and of informants, and, where appropriate, *national law applicable to judicial proceedings*. Those reports shall also include an assessment of the *actions taken by the competent authorities of Member States* and the institutions, bodies, offices and agencies, following reports and recommendations drawn up by the Office. [...]

7. The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating, inter alia, to the respect of procedural guarantees and fundamental rights of the persons concerned and *of the national law of the Member*

**States concerned**, with particular reference to Article 11(2). The legality check shall be carried out by Office staff who are experts in law and investigative procedures. Their opinion shall be annexed to the final investigation report.

The supervisory committee found that **OLAF's country mini-profiles** provided already some information on criminal and administrative law in each Member State but were not enough to fully compensate for the unit's problems with the expertise in national laws.<sup>455</sup> The committee also reviewed **OLAF's legality check procedures**, emphasizing the importance of expertise in all EU Member States' legal systems. They recognized the positive impact of good relations between investigators and reviewers on the quality of checks and reviews. The **legality check in OLAF ensures compliance** with legal rules and addresses any breaches swiftly. It provides information for management to address rule violations and maintain investigative integrity. A legal analysis is not possible without listing the breached provisions, and a legal assessment paper concludes each case.

**a) National law applicable to judicial proceedings**

Applicable codes are, for example, the CPC, the Tax Process and Procedure Code and the Administrative Procedure Code. 1

Actions following a recommendation in the area of tax offences might be: 2

**Article 52 Law no. 15/2001<sup>456</sup> Competence of tax authorities** 3

The application of fines and additional sanctions, except for the specialties provided for by law, is the responsibility of the following tax authorities:

- a) In the case of a customs offence, the director-general of Customs and Excise Taxes, customs directors and heads of customs delegations;
- b) In the case of a tax offence, the application of the fines provided for in Articles 114 and 116 to 126, as well as autonomous offences, to the head of the local tax service in the area where the offence took place and the application of the fines provided for in Articles 114, 118, 119 and 126, when the missing tax is greater than EUR 25,000, and in Articles 113, 115, 127, 128 and 129 to the finance director of the area where the

<sup>455</sup> Supervisory Committee, Opinion No 2/2015, Legality check and review in OLAF, p. 6 et seq.

<sup>456</sup> **Artigo 52.º Competência das autoridades tributárias Lei n.º 15/2001**

A aplicação das coimas e sanções acessórias, ressalvadas as especialidades previstas na lei, compete às seguintes autoridades tributárias:

- a) Tratando-se de contra-ordenação aduaneira ao director-geral das Alfândegas e dos Impostos Especiais sobre o Consumo, aos directores das alfândegas e aos chefes das delegações aduaneiras;
- b) Tratando-se de contraordenação fiscal, a aplicação das coimas previstas nos artigos 114.º e 116.º a 126.º, bem como das contraordenações autónomas, ao dirigente do serviço tributário local da área onde a infração teve lugar e a aplicação das coimas previstas nos artigos 114.º, 118.º, 119.º e 126.º, quando o imposto em falta seja superior a (euro) 25 000, e nos artigos 113.º, 115.º, 127.º, 128.º e 129.º ao director de finanças da área onde a infração teve lugar, ou ao director da Unidade dos Grandes Contribuintes, relativamente aos contribuintes cujo acompanhamento permanente seja sua atribuição, competindo-lhes, ainda, a aplicação de sanções acessórias.»

infraction took place, or to the director of the Large Taxpayers Unit, in relation to taxpayers whose permanent monitoring is their responsibility, and they are also responsible for applying sanctions accessories.”

levied by the tax authorities. The application of the fines provided for in Articles 114, 118, 119 and 126, when the tax in default is greater than EUR 25,000, and in Articles 113, 115, 127, 128 and 129 to the Director of Finance of the area where the infraction took place, or to the Director of the Large Taxpayer Unit, in relation to taxpayers whose permanent monitoring is their responsibility, and the application of accessory sanctions.

- 4 The following provisions annexed to the Law No 433/99 (Tax Process and Procedure Code) are applicable in national judicial proceedings for tax and customs irregularities or potential fraud:

Title III Tax judicial proceedings	Article 105 - Selection of Processes with priority progress and joining
Chapter I	Article 106 - Tacit rejection
General provisions	Article 107 - Petition addressed to the delegator or sub-delegator
SECTION I	Article 108 - Initial petition requirements
The nature and form of tax judicial proceedings	Article 109 - Expenses for producing evidence
Article 96 - Object	SECTION III
Article 97 - Tax judicial proceedings	The objection
Article 97-A - Value of the case	Article 110 - Dispute
SECTION II	Article 111 - Organization of the administrative process
Nullities in tax judicial proceedings	SECTION IV
Article 98 - Irremediable nullities	Initial knowledge of the request
Chapter II	Article 112 - Revocation of the contested act
The objection process	Article 113 - Immediate acknowledgment of the request
SECTION I	SECTION V
General provisions	Instruction
Article 99 - Grounds for objection	Article 114. <sup>o</sup> - Evidence measures
Article 100 - Questions about the tax fact and use of indirect methods	Article 115 - Means of evidence
Article 101 - Subsidiary allegation of defects	Article 116 - Technical opinions. Expert proof
SECTION II	Article 117 - Challenge based on a mere error in the quantification of the taxable
Article 102 - Judicial challenge. Submission deadline	
Article 103 - Presentation. Local. Suspensive effect	
Article 104 - Accumulation of requests and coalition of authors	



amount or the assumptions for applying indirect methods

Article 118 - Witnesses

Article 119 - Testimony of witnesses

Article 120 - Notification for allegations

Article 121 - View of the Public Prosecutor's Office

SECTION VI

The sentence

Article 122 - Conclusion of the case.

Verdict

Article 122.<sup>o</sup>-A - Trial in extended formation and preliminary consultation for the Supreme Administrative Court

Article 123 - Sentence. Object

Article 124 - Order of knowledge of defects in the sentence

Article 125 - Nullities of the sentence

Article 126 - Notification of the sentence

SECTION VII

Incidents

Article 127 - Incidents

Article 128 - Processing and adjudication of incidents

Article 129 - Assistance incident

Article 130 - Admission of the qualification incident

SECTION VIII

Challenges to acts of self-assessment, tax substitution and payments on account

Article 131 - Challenge in case of self-assessment

Article 132.<sup>o</sup> - Challenge in case of withholding tax

Article 133 - Challenge in case of payment on account

Article 133-A - Challenge based on tariff classification, origin or customs value of goods

Article 134 - Object of the objection

**b) Internal advisory and control procedure: Legality check involving national law**

The legality check involving national law will be based on the aforementioned codes and the provisions that relate to the area concerned (customs or tax, revenue or expenditure irregularities, see → Art. 3 OLAF Regulation above).

5

**[Article 18–21]**



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*Art. 22–26*

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Accessed 23 January 2024.

## Index

- a case of European dimension See Art. 27 EPPO Regulation, Evocation
- Active Corruption 103
- AFCOS 79
  - mandate 384
  - organizational chart 385
- animus lucri faciendi 111
- Anti-Corruption Report 108
- Arrest in flagrante delicto situation 91
- arrest warrants 177, 241
- arresto preventivo 80
- Asset Recovery Office 151
- Assistance by criminal police bodies 139
- audit 276
- bank accounts 321
- carousel fraud 82
- case management system 121
- Central Criminal Investigation Units 150
- Central Department of Criminal Investigation and Action 84
- Central Office 78
- COCOLAF 385
- Código De Processo Penal 40, 88, 89, 90, 91, 92, 93, 98, 120, 134, 139, 140, 141, 142, 143, 149, 157, 158, 159, 160, 161, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 381
- Código Penal 88
- contact points 78
- cooperation with OLAF 384
- corruption offences 119
- crime of fraud 110
  - objective type 110
  - subjective type 110
- criminal law
  - sovereignty of the state 77
- Criminal police authorities 152
- Cybercrime Law (Law 109/2009, of 15 September) 80
- Decentralized Criminal investigation Units 150
- Decision to initiate an investigation or to evoke a case 121
- EPPO
  - competence 120
  - Introduction to the legal scenery by Oliveira e Silva 77
  - notification pursuant to Art. 117 145
  - transferring information to 85
- EPPO Adoption Law 89
- EU funds 82
- European Chief Prosecutor 81
- European Delegated Prosecutor 77
- false statements 104
- Falsification or forgery of a document 100
- Financial Intelligence Unit 79
- Flagrancy investigation 91
- flagrante delicto 176
- focus of the criminal activity 120
- Forgery by an official 101
- fraud
  - burla 110
  - expenditure frauds 116
  - in obtaining subsidies 116
- Fraud 106
- freezing of instrumentalities and proceeds of crime 80
- funds

- agricultural 117
- General Inspection of Finances 84
- harmonised PIF Directive
  - Implementation legal area 93
- helicopter view 82
- house searches 80
- illicit tobacco smuggling 333
- Immunity provisions 189
- in accordance with the applicable
  - national law 87
- indictment 108
- initiation of an investigation 92
- inquérito 79
- Inspectorate General of Finance 384
- Internal Rules on Procedure 95
- investigating judge 160
- investigation phases 91
- judicial police 150
- juiz de instrução criminal 80
- Laura Kövesi 81
- Law 112/2019 80
- Law 49/2008, of 27 August 79
- limitation period 128
- magistrates 78
- maximum duration of preventive detention 244
- Ministério Público 84
- Missing Trade Intra-Community (MTIC) 81
- Model Rules 78
- Money Laundering 101
- national criminal police 148
- news of a tax crime 155
- normal investigation 92
- Normal investigation 91
- OLAF
  - in Portugal 253
  - internal guidelines 253
- on-the-spot missions 385
- Operation Admiral 81, 83
- order or authorize 161
- órgãos de polícia criminal 79
- own initiative 139
- Passive corruption 103
- PIF Directive 82
- PIF offences 100
- PIF Report 254
- Police 79
- political commitment 77
- Portuguese criminal justice system 89
- Portuguese Public Ministry 145
- precluding effect 127
- pre-trial criminal proceedings 98
- preventive detention 243
- principle of investigation 276
- proprio motu 85
- Public Prosecution Service 79
- public prosecutors 77
- reasonable grounds to believe that 87
- recovery of amounts 385
- refrain from actions 126
- Républica Portuguesa 84
- responsibility of the Public Prosecutor's Office 158
- source of information 94
- special forces 85
- Statute on Deputies 189
- statute of limitations 127
- Suspension of prescription 129
- Tax fraud 104
- Tax Investigations Unit 154
- tax police authorities 154
- VAT fraud 79
- VAT irregularities 274
- Verification of information 95





This **Portuguese EPPO/OLAF volume** provides a comprehensive overview of EU and Portuguese law in the context of criminal investigations into EU fraud offences. It deals with the actions of the EPPO regional offices in Portugal, including their tasks, provisions, and methods. The text also addresses the Union law of the European Public Prosecutor's Office and its future prospects. The third part of this volume discusses the investigative missions of the European Anti-Fraud Office (OLAF) in Portugal.

While this volume is written in English, its footnotes reproduce the original Portuguese legislation in the local language. Easily navigable with the help of specific symbols, which guide you to further relevant information, it is designed as a quick reference tool for academics, students, practitioners and other interested readers. Prof Dr Sandra Oliveira e Silva acted as the national expert for this volume.

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