

THE EPPO/OLAF

V

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

Cyprus



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Volume V – Cyprus

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with Annotations by National Experts,
Volumes I (Austria) – XXVII (Sweden)

Volume V – Cyprus

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The EPPO/OLAF Compendium of National Procedures

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Preface and Acknowledgements

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

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

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

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

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

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

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

Giessen/Germany, in November 2023

Pierre Hauck & Jan-Martin Schneider

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Executive Summary:

While Part A displays a collection of various materials, Part B focuses on the description and presentation of both Union Law and Cypriot Law related to criminal investigations concerning EU Fraud offences and the actions of the EPPO regional offices relating to the start and the conduction of investigations in Cyprus. Questions such as, who is involved, which provisions apply, how is the investigation carried out, are given an answer. Included are explanations concerning the potential action of the EPPO in Cyprus, as well as examples from recent cases of EU fraud.

The Union Law for the European Public Prosecutor's Office is compared to the current situation: Is this situation feasible for the future? The defence is covered with information and provisions relating to the defence in EPPO customs, tax or subsidy fraud cases.

The last Part C of the is a compendium for OLAF's investigations. It is intended, for its part, to focus on the on-the-spot-checks carried out by the European Anti-Fraud Office (OLAF) according to Regulation 2185/96, *Sigma Orionis* Jurisprudence, national law and with its numerous national partners as part of external investigations. In order to present the laws, the body of the text of the whole chapter is translated into English while the footnotes take up the original text in Greek and the parts in between contain explanations, steps to carry out, tips and further information.

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Abbreviations

AFCOS	Anti-fraud coordination service
AGRC	Attorney General of the Republic of Cyprus
CFR	Charter of Fundamental Rights
CJEU/ECJ	Court of Justice of the European Union/European Court of Justice
COCOLAF	Advisory Committee for the Coordination of Fraud Prevention
CPC	Criminal Procedure Code
CyCC	Cyprus Criminal Code
EAEC	European Atomic Energy Community
EAFO	European Alternative Fuels Observatory
EAFRD	European agricultural fund for rural development
EAGF	European agricultural guarantee fund
EASA	European Union Aviation Safety Agency
EAW	European Arrest Warrant
EBA	European Banking Authority
EC	European Communities
EC Euratom	European Communities, European Atomic Energy Community
ECA	European Court of Auditors
ECB	European Central Bank
ECHA	European Chemicals Agency
ECHR/ECtHR	European Court of Human Rights
ECJ	European Court of Justice
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
EP	European Prosecutor
EPPO	European Public Prosecutor's Office
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
GC (aka CFI ex-2009)	General Court of the EU / formerly Court of First Instance
infra	See below
MOCAS	Cypriot Unit for Combating Money Laundering
MS	Member States
OAFCN (-Member)	OLAF Anti-Fraud Communicators' Network
OLAF	European Anti-fraud office
POEU	Publications Office of the European Union

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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.

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

Chapter A. starts with a collection of material for Part. B and C. of the compendium chapter on Cypriot laws relating to the investigations of the EPPO and OLAF. It is important to analyse legal decisions written by courts as these decisions limit or extend the scope e.g. for investigation measures. Therefore it is recommended that EDPs and Seconded National Experts (SNEs) keep themselves – in addition to this overview and summary – themselves up-to-date with the most recent national and EU jurisprudence.¹

I. Collection of Cases concerning PIF Investigations (B. and C.)

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

Table 1 Cases with Relevance for an EPPO Investigation in Cyprus



Courts	Relevant for Articles of	Judgement, ECLI etc.	Case Summary and Content
	EPPO Regulation		
CJEU and National Courts	Art. 22–26	Avila Management Services Limited and another v. Stepanek and others.	Fraud case.
		Supreme Court of Cyprus, Criminal Appeals No. 102/16, 103/16, 106/16 December 13, 2017 [Nikolatos, P., Parparinos, Liatsos, Ceo], ECLI:CY:AD:2017:B457. Supreme Court of Cyprus, ECLI:CY:AD:2017:B457, Secondary Jurisdiction Criminal Appeals NO. 102/16, 103/16, 106/16 December 13, 2017	Customs control, tobacco products, Larnaca District Court I, fraud. Possession of duty-free goods, fraudulent evasion of duty and taxes, possession of duty-free goods, false

¹ The EU offers special Websites, e.g. the Anti-Fraud Knowledge Center, the ERA offers courses and workshops, the Website EPPO-Lex enumerates relevant decisions and the ECJ and the ECtHR (HUDOC) present the most relevant case law via databases. By reading it, you can search even more specifically. EDPs need to follow nevertheless the EPPO's Code of Ethics for the Members of the College and the European Delegated Prosecutors and the of the College with Rules on conditions of employment of the EDPs, as amended by Decision of 24 March 2021 of the College of the EPPO. The Case-Law database offers access to judgements: <https://www.cylaw.org/advanced.html>.

		<p>[Nikolatos, P., Parparinos, Liatsos, Ceo] Criminal Appeal No. 102/2016 (fig. With 103/106 and 106/16) Between: Panickou Abraam Appellants – v. – Police Respondent</p> <p>Criminal Appeal No. 103/2016 (fig. With 102/106 and 106/16) Between: Giorgos Garivaldinou Appellants – v. – Police Respondent</p> <p>Criminal Appeal No. 106/2016 (fig. With 102/106 and 103/16) Between: Kosta Zaloumi Appellants – v. – POLICE</p>	<p>declaration, obtaining a license by false representations, money laundering and conspiracy to commit fraud in violation of provisions of the Criminal Code KEF. 154, of the Customs Code Law 94(I)/2004 and the 2017 Law on the Prevention and Combating of Money Laundering from Illegal Activities Law 188(I)/2007.</p>
	30		
	Para 1 a	<p>District Court of Nicosia, ECLI:CY:AD:2019:D461 A Notable Court of Cyprus Primary Jurisdiction (Political Application No. 139/2019 November 5, 2019 [T. T. ECONOMOU, D/STIS]</p>	<p>Search measures, house search. Search Warrant.</p>
		<p>Supreme Court in Psaras and Another v. the Republic (1987) 2 CLR 132.</p>	<p>Referring to search measures and the requirements of protection of the accused.</p>
		<p>Supreme Court, Enotiades v. the Police (1986) 2 CLR 64</p>	<p>Consent for Search must be given freely.</p>

	Para 4	Supreme Court, Police v. Georgiades (1983) 2 CLR 33	“Testimony obtained in violation of the fundamental
			rights and liberties of the individual is inadmissible to prove the criminal liability of an accused in a court. Case.”
ECtHR			
	EPPO		
	Art. 30 Para 1 a	Kucera v. Slovakia, No. 48666/99, July 17, 2007	Consent for a search measure? Freely given consent to enter premises for search.
		Bostan v. the Republic of Moldova, 2020, §§ 21–30	Police entering Home. Requirement of Lawfulness.

Source. The authors, ECJ Search Tool.

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



Table 2 Cases with Relevance for an OLAF Investigation in Cyprus

Relates to following Art. of the Regulation	Court, Judgement, ECLI, etc.	Content
Art. 1–2, Material Scope of OLAF and typical investigation Areas	Supreme Court of Cyprus, ECLI:CY:AD:2019:C6, Minister of Finance and others v. Panipsos Ltd, Appeal No 227/12, 15.1.2019.	Appeal accepted, import duties, anti-dumping duties and value added tax, totalling €109,561, OLAF, investigation, bicycles, fraud, Malaysia, customs clearance shipping, production of the false statement, government revenue, collection of duties, C - 47/16 Valsts ie Āemu mumu dienests, 16.3.2017, C – 409/10 Afasia Knits Deutschland, 15.12.2011, Republic of Cyprus through the Ministry of Finance through the Department of Customs v. J oan-nou & Paraskevaides (Overseas) Ltd, S.A. No. 197/2010, 12.9.2016.
	Supreme Court of Cyprus, Ecli:cy:ad:2014:d511, Review Jurisdiction (Case No. 1300/2010) July 11, 2014 [Nathanail, Director] In reference to Article 146 of the Constitution Tassos Aletras Ltd, Applicants – and – Republic of Cyprus, through 1. Ministry Of Finance, 2. Director Of The Customs Department.	Mistake on both sides, customs case, imposition of the amount of €49,762 in taxes and duties, incorrect declaration, the import duty and VAT were not paid correctly, anti-dumping duty avoided, legal certificate of origin of the bicycles from Malaysia.

	Skoullou v. Minister of Finance (2004) 3 A.A.D. 530.	Administration must take those measures, even revocable, to collect the public debts, good faith, proof of illegality needed.
	Frakapor Co Ltd v. of Democracy, sub. No. 1499/99, dated 12.7.2001.	Administration must take those measures, even revocable, to collect the public debts, good faith, proof of illegality needed.
	Dimokratia v. Alexandros Soleas and Sons Ltd (2005) 3 A.A.D. 284.	Administration must take those measures, even revocable, to collect the public debts, good faith, proof of illegality needed.
	Alexandros Soleas and Sons Ltd v. Democracy (1993) 4 A.A.D. 803.	Administration must take those measures, even revocable, to collect the public debts, good faith, proof of illegality needed.
	Michalos Dimitriou Ltd et al. Republic Law (2009) 3 A.A.D. 675.	Administration must take those measures, even revocable, to collect the public debts, good faith, proof of illegality needed.
Art. 1–4	ECJ, C-615/19 P, 25.2.2021, John Dalli v. European Commission, ECLI:EU:C:2021:133.	Allegedly illegal conduct of the European Commission and the European Anti-Fraud Office (OLAF), Procedural rules governing the OLAF investigation, Opening of an investigation, Right to be heard
	Supreme Court of Cyprus, Criminal Appeals No. 102/16, 103/16, 106/16 December 13, 2017 [Nikolatos, P., Parparinos, Liatsos, Ceo], ECLI:CY:AD:2017:B457.	Customs control, tobacco products, Larnaca District Court I, fraud.

	Minister of Finance et al. v. Panipsos Ltd, Review Appeal No. 227/12, 15/1/2019.	
	Republic of Cyprus, through the Director of the Customs Department v. L Nemitsas Ltd, Review Appeal No. 65/2014, 20/1/2021.	
Art. 3 (Right to be heard, digital forensic evidence)		
Art. 4 Internal Investigations	Judgment of the Court (First Chamber) of 10 June 2021. Judgment of the Court (First Chamber) of 10 June 2021. European Commission v. Fernando De Esteban Alonso. Case C-591/19 P. ECLI:EU:C:2021:468.	Appeal, Civil service, Internal investigation by the European Anti-fraud Office (OLAF), Forwarding of information by OLAF to the national judicial authorities, Filing of a complaint by the European Commission, Concepts of an official who is ‘referred to by name’ and ‘implicated’, Failure to inform the interested party, Commission’s right to file a complaint with the national judicial authorities before the conclusion of OLAF’s investigation, Action for damages.
Art. 7	ECJ, C-650/19 P, Vialto Consulting Kft. v. European Commission, ECLI:EU:C:2021:879.	Appeal, Investigation by the European Anti-Fraud Office (OLAF), On-the-spot checks, Regulation (Euratom, EC) No 2185/96, Article 7, Access to computer data, Digital forensic operation, Principle of legitimate expectations, Right to be heard, non-material damage

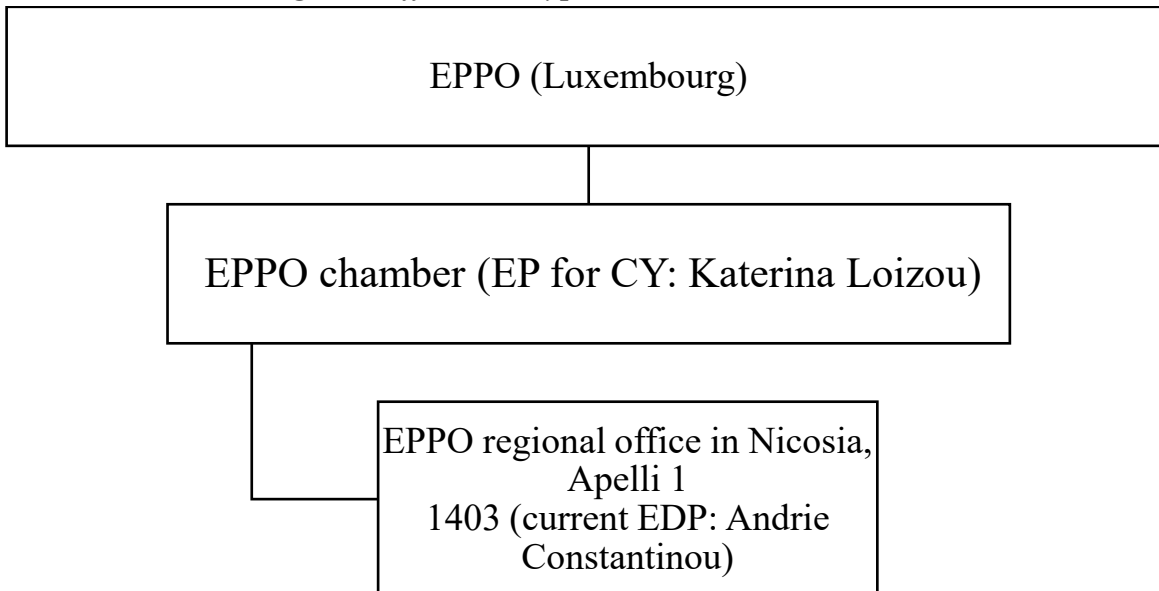
	<p>First Instance: GC, Case T-617/17, 7.9.2017, Vialto Consulting v. Commission, ECLI:EU:T:2019:446.</p>	<p>Article 7(1) of Regulation (EC) No 2185/96, Principle of sound administration, Legitimate expectations, Proportionality, Right to be heard; National public procurement, Devolved management, Decision of a national authority, Investigations by OLAF, Non-material damage, Sufficiently serious breach of a rule of law conferring rights on individuals.</p>
Art. 10	<p>Judgment of the General Court (Eighth Chamber) of 26 May 2016. International Management Group v. European Commission. Case T-110/15. Digital reports (Court Reports - general) ECLI:EU:T:2016:322</p> <p>Judgment of the Court of First Instance (Second Chamber) of 30 May 2006. Bank Austria Creditanstalt AG v. Commission of the European Communities. Case T-198/03. ECLI:EU:T:2006:136</p>	<p>Access to documents, Regulation (EC) No 1049/2001, Documents relating to an OLAF investigation, Access refused, Exception concerning the protection of the purpose of inspections, investigations, and audits, Obligation to carry out a specific and individual examination, Category of documents.</p>

Source: The authors.

II. Institutions

1. The EPPO in Cyprus

Table 3 The EPPO regional offices in Cyprus



Source: EPPO Website and National Expert.

2. Organisation of the criminal justice system in Cyprus

1 The relevant authorities are the following:

Table 4 for Cyprus: National authorities involved in PIF investigations

<p>Criminal investigative and prosecution authorities Ministry of Justice and Public Order Police Attorney General’s Office</p>	<p>Administrative authorities Customs and Excise Department Tender Review Authority AFCOS body Verifications and Certification Directorate of the Treasury of the Republic of Cyprus as Certifying authority in the structural funds area Administrative Verification Units e.g. OP Thalassa Fisheries Department</p>
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Source: National Expert.

3. AFCOS – The Partner of OLAF in Cyprus

2 See the information below → Art. 12a OLAF Regulation in Part. C.

III. Sources of law

The following pages present a list of the applicable sources of law. The Cypriot Basic Legislation in full length can be obtained via http://www.cylaw.org/nomoi/0_index.html. 3

1. General national Laws in relation to EPPO and OLAF

The EPPO & PIF-Investigation related Laws and administrative Documents are: 4


- Ο περί Ποινικού Κώδικα Νόμος (ΚΕΦ. 154)/The Criminal Code, Chapter 154.
- Ο περί Ποινικής Δικονομίας Νόμος Νόμος (ΚΕΦ. 155)/The Criminal Procedure Law, Chapter 155.
- Ο Περί Τμήματος Φορολογίας Νόμος του 2014 (70(I)/2014)/ The Tax Department Law of 2014 (70(I)/2014).
- The Code of Ethics and Conduct of the Tax Departement. October 2021.
- Κ.Δ.Π 95/2010 (in Greek) – V.A.T Regulations 2010 (Tax Refund to taxable persons established in E.U Member States).
- Ο Περί Φόρων Κατανάλωσης Νόμος του 2004 (91(I)/2004)/ The Consumption Tax Law aka Customs and Excise Law of 2004 (91(I)/2004) last amended 2022.
- Ο περί Διατήρησης Τηλεπικοινωνιακών Δεδομένων με Σκοπό τη Διερεύνηση Σοβαρών Ποινικών Αδικημάτων Νόμος του 2007 (183(I)/2007)/The Retention of Telecommunications Data for the Purpose of Investigating Serious Criminal Offenses Law of 2007 (183(I)/2007).
- Ο περί της Καταπολέμησης της Απάτης και της Πλαστογραφίας μέσω Πληρωμής πλην των Μετρητών Νόμος του 2021 (51(I)/2021)/The Anti-Fraud and Counterfeiting of Non-Cash Payment Instruments Act of 2021 (51(I)/2021).
- Ο περί της Συμμετοχής της Κυπριακής Δημοκρατίας στο Ευρωπαϊκό Σύστημα Πληροφοριών Ποινικού Μητρώου (ECRIS) Νόμος του 2022 (Ν. 123(I)/2022)/The Participation of the Republic of Cyprus in the European Criminal Records Information System (ECRIS) Law of 2022 (L. 123(I)/2022).
- Ο περί Αποδείξεως Νόμος (ΚΕΦ.9)/The Evidence Law (CHAP. 9).
- The Retention of Telecommunications Data for the Purpose of Investigating Serious Criminal Offenses Law of 2007 (183(I)/2007)/ Ο περί Διατήρησης Τηλεπικοινωνιακών Δεδομένων με Σκοπό τη Διερεύνηση Σοβαρών Ποινικών Αδικημάτων Νόμος του 2007 (183(I)/2007)

The most relevant national Laws concerning OLAF investigations are: 5

- Ο Περί Τμήματος Φορολογίας Νόμος του 2014 (70(I)/2014)/ The Tax Department Law of 2014 (70(I)/2014).
- The Code of Ethics and Conduct of the Tax Departement. October 2021.

- Κ.Δ.Π 95/2010 (in Greek) – V.A.T Regulations 2010 (Tax Refund to taxable persons established in E.U Member States).
- Ο Περί Φόρων Κατανάλωσης Νόμος του 2004 (91(I)/2004)/ The Consumption Tax Law aka Customs and Excise Law of 2004 (91(I)/2004) last amended 2022.
- Ο περί των Γενικών Αρχών του Διοικητικού Δικαίου Νόμος του 1999 (N. 158(I)/1999)/ The General Principles of Administrative Law, Law of 1999 (158(I)/1999).
- The 2012 Law on Administrative Cooperation in the Tax Sector (205(I)/2012)/ Ο Περί Διοικητικής Συνεργασίας στον Τομέα της Φορολογίας Νόμος του 2012 (205(I)/2012)
- The Fiscal Responsibility and Fiscal Framework Law of 2014 (20(I)/2014)/ Ο Περί της Δημοσιονομικής Ευθύνης και του Δημοσιονομικού Πλαισίου Νόμος του 2014 (20(I)/2014)
- Law N.11(I)/2017 on the Regulation of Concession Contract Award Procedures and Related Matters
- Law of 2011 L.173(I)/2011 on the Coordination of the Procedures for the Conclusion of Certain Contracts for Projects, Supplies and the Provision of Services Concluded by Contracting Authorities or Contracting Bodies in the Defence and Security Sectors and Related Matters
- Laws of 2010 to 2017 on Appeal Procedures in the field of Public Procurement (Consolidated Text) L.104 (I)/2010.

2. National laws: Law 2021 (Law 2 (I) / 2021) – Cypriot Act for the Implementation of the European Public Prosecutor’s Office

 *Nota bene:* The Acts of the Member States on the Implementation of the European Public Prosecutor’s Office normally contain provisions that may affect all Sections 26–33 of the EPPO Regulation. The Cypriot Adoption Law contains such provisions:

6 Synopsis 1 Cypriot EPPO Adoption Law vs. Unofficial English Translation

<p>Προοίμιο. Επίσημη Εφημερίδα της Ε.Ε.: L 283, 31.10.2017, σ.1.</p> <p>Για σκοπούς εφαρμογής των άρθρων 13, 17, 22, 24, 25(2), 25(3), 25(4), 25(6), 28(3), 28(4), 87, 117 της πράξης της Ευρωπαϊκής Ένωσης με τίτλο “Κανονισμός (ΕΕ) 2017/1939 του Συμβουλίου, της 12^{ης} Οκτωβρίου 2017,</p>	<p>Preamble. Official Journal of the EUSR L 283, 31.10.2017, p. 1</p> <p>For the purposes of applying Articles 13, 17, 22, 24, 25 (2), 25 (3), 25 (4), 25 (6), 28 (3), 28 (4), 87, 117 of the European Parliament Entitled “Council Regulation (EU) 2017/1939 of 12 October</p>
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<p>σχετικά με την εφαρμογή ενισχυμένης συνεργασίας για τη σύσταση της Ευρωπαϊκής Εισαγγελίας“,</p> <p>Η Βουλή των Αντιπροσώπων ψηφίζει ως ακολούθως:</p>	<p>2017 on the implementation of enhanced cooperation for the establishment of the European Public Prosecutor’s Office“,</p> <p>The House of Representatives votes as follows:</p>
<p>Συνοπτικός τίτλος.</p> <p>1. Ο παρών Νόμος θα αναφέρεται ως ο περί της Εφαρμογής του Κανονισμού (ΕΕ) 2017/1939 του Συμβουλίου, της 12^{ης} Οκτωβρίου 2017, σχετικά με την Εφαρμογή Ενισχυμένης Συνεργασίας για τη Σύσταση της Ευρωπαϊκής Εισαγγελίας, Νόμος του 2021.</p>	<p>Title of the EPPO Adoption Law. 1.</p> <p>This Law will be referred to as the Law on the Implementation of Council Regulation (EU) 2017/1939 of 12 October 2017, on the Implementation of Enhanced Cooperation for the Establishment of the European Public Prosecutor’s Office, Law of 2021.</p>
<p>Ερμηνεία. 2. (1) Στον παρόντα Νόμο, εκτός εάν από το κείμενο προκύπτει διαφορετική έννοια– “εθνική εποπτική αρχή“ σημαίνει τον Επίτροπο Προστασίας Δεδομένων Προσωπικού Χαρακτήρα, όπως προβλέπεται στο άρθρο 8·</p> <p>“Εποπτεύων Ευρωπαίος Εισαγγελέας“ σημαίνει τον ευρωπαίο εισαγγελέα ο οποίος ενεργεί για λογαριασμό του αρμοδίου μονίμου τμήματος της Ευρωπαϊκής Εισαγγελίας και εποπτεύει τις έρευνες και τις διώξεις για τις οποίες είναι υπεύθυνος ο Ευρωπαίος Εντεταλμένος Εισαγγελέας, σύμφωνα με το άρθρο 12 του Κανονισμού (ΕΕ) 2017/1939· “Κανονισμός (ΕΕ) 2017/1939“ σημαίνει τον Κανονισμό (ΕΕ) 2017/1939 του Συμβουλίου, της 12^{ης} Οκτωβρίου 2017, σχετικά με την εφαρμογή ενισχυμένης συνεργασίας για τη σύσταση της Ευρωπαϊκής Εισαγγελίας.·</p>	<p>Reference. 2. (1) In this Act, unless a different meaning is derived from the text; “national supervisory authority” means the Commissioner for Personal Data Protection, as provided for in Article 8·</p> <p>“Supervising European Prosecutor” means the European Public Prosecutor acting on behalf of the competent Permanent Division of the European Public Prosecutor’s Office and supervising the investigations and prosecutions for which the European Public Prosecutor is responsible, in accordance with Article 12 of the Rules 2017 / 1939· Regulation (EU) 2017/1939” means Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of enhanced cooperation or the establishment of the European Public Prosecut(2) Any terms contained in this Law and not specifically defined in it, have the meaning</p>

<p>(2) Οποιοδήποτε όροι περιέχονται στον παρόντα Νόμο και δεν ορίζονται ειδικά σε αυτόν, έχουν την έννοια που αποδίδεται σε αυτούς από τον Κανονισμό (ΕΕ) 2017/1939.</p>	<p>given to them by Regulation (EU) 2017/1939.or’s Office.</p>
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7 The next table continues the foregoing table and starts with Art. 3 of the EPPO Adoption Law:

<p>Αρμόδια αρχή. 3. (1) Ως αρμόδια αρχή για την εφαρμογή του Κανονισμού (ΕΕ) 2017/1939 ορίζεται ο Γενικός Εισαγγελέας της Δημοκρατίας.</p> <p>(2) Ο Γενικός Εισαγγελέας της Δημοκρατίας κοινοποιεί τις απαραίτητες πληροφορίες στην Ευρωπαϊκή Εισαγγελία, σύμφωνα με τις διατάξεις του άρθρου 117 του Κανονισμού.</p>	<p>Competent authority 3. (1) The competent authority for the implementation of Regulation (EU) 2017/1939 is appointed the Attorney General of the Republic.</p> <p>(2) The Advocate General of the Republic shall communicate the necessary information to the European Public Prosecutor’s Office, in accordance with the provisions of Rule 117 of the Rules of Procedure.</p>
<p>Διορισμός και παύση του Ευρωπαϊού Εντεταλμένου Εισαγγελέα. 4. (1) Ο Ευρωπαίος Εντεταλμένος Εισαγγελέας διορίζεται σύμφωνα με τις διατάξεις του άρθρου 17 του Κανονισμού (ΕΕ) 2017/1939.</p>	<p>Appointment and termination of the European Attorney General 4. (1) The European delegated prosecutor shall be appointed in accordance with the provisions of Article 17 of Regulation (EU) 2017/1939.</p>
<p>(2) Στη θέση του Ευρωπαϊού Εντεταλμένου Εισαγγελέα διορίζεται πρόσωπο το οποίο κατέχει τη θέση του Δικηγόρου της Δημοκρατίας στη Νομική Υπηρεσία της Δημοκρατίας ή ανώτερη αυτής θέση στην Υπηρεσία αυτή και προτείνεται για διορισμό από τον Γενικό Εισαγγελέα της Δημοκρατίας.</p> <p>(3) Ο Ευρωπαίος Εντεταλμένος Εισαγγελέας, από την ημέρα διορισμού του έως την παύση του,</p>	<p>(2) A person who holds the position of Lawyer of the Republic in the Legal Service of the Republic or a higher position in this Service is appointed to the position of the European Prosecutor and is proposed for appointment by the Attorney General of the Republic.</p> <p>(3) The European delegated prosecutor, from the day of his appointment until his dismissal, is an active member of the Legal Service of the Republic.</p>

<p>είναι ενεργό μέλος της Νομικής Υπηρεσίας της Δημοκρατίας</p> <p>(4) Ο Ευρωπαίος Εντεταλμένος Εισαγγελέας παύεται για τους λόγους που προβλέπονται στο άρθρο 17 του Κανονισμού (ΕΕ) 2017/1939 και σύμφωνα με τη διαδικασία που προβλέπεται στο εν λόγω άρθρο.</p>	<p>(4) The European Prosecutor shall be dismissed for the reasons provided for in Article 17 of Regulation (EU) 2017/1939 and in accordance with the procedure laid down in that Article.</p>
<p>Αρμοδιότητες Ευρωπαίου Εντεταλμένου Εισαγγελέα.</p> <p>5. (1) Ο Ευρωπαίος Εντεταλμένος Εισαγγελέας ασκεί τις αρμοδιότητές του, σύμφωνα με τις διατάξεις του Κανονισμού (ΕΕ) 2017/1939.</p> <p>(2) Ο Ευρωπαίος Εντεταλμένος Εισαγγελέας-</p> <p>(α) ενεργεί για λογαριασμό της Ευρωπαϊκής Εισαγγελίας στη Δημοκρατία·</p> <p>(β) προϊστάται της ποινικής έρευνας και είναι αρμόδιος για τη δίωξη ποινικών αδικημάτων τα οποία εμπίπτουν στο πεδίο εφαρμογής του περί της Καταπολέμησης, μέσω του Ποινικού Δικαίου, της Απάτης εις Βάρος των Οικονομικών Συμφερόντων της Ευρωπαϊκής Ένωσης Νόμου, παρέχοντας ανάλογα τις κατάλληλες οδηγίες σε οποιαδήποτε αρμόδια αρχή η οποία αναλαμβάνει τη διερεύνηση των αδικημάτων αυτών·</p> <p>(γ) δύναται να ασκεί παράλληλα τα καθήκοντά του ως νομικός λειτουργός</p>	<p>Responsibilities of the European General Attorney</p> <p>5. (1) The European delegated prosecutor shall exercise his powers in accordance with the provisions of Regulation (EU) 2017/1939.</p> <p>(2) The European Delegated Prosecutor (shall)</p> <p>(a) act on behalf of the European Public Prosecutor’s Office in the Republic;</p> <p>(b) is in charge of the criminal investigation and is responsible for the prosecution of criminal offenses falling within its scope of the Anti-Fraud Act, through the Criminal Law Act, providing appropriate guidance to any competent authority to investigate such offenses;</p> <p>(c) may at the same time exercise his duties as a legal officer in the Legal Service</p>

στη Νομική Υπηρεσία της Δημοκρατίας, εφόσον αυτό δεν τον εμποδίζει να εκπληρώνει τις υποχρεώσεις του, σύμφωνα με τις διατάξεις του Κανονισμού (ΕΕ) 2017/1939, και ενημερώνει τον Εποπτεύοντα Ευρωπαϊό Εισαγγελέα σχετικά με τα εν λόγω καθήκοντα.

(3) Σε περίπτωση κατά την οποία ο Ευρωπαίος Εντεταλμένος Εισαγγελέας κωλύεται να εκπληρώσει τα καθήκοντά του λόγω του ότι ασκεί τέτοια καθήκοντα κατά την παράλληλη ενασχόλησή του ως νομικός λειτουργός στη Νομική Υπηρεσία της Δημοκρατίας, ενημερώνει τον Εποπτεύοντα Ευρωπαϊό Εισαγγελέα, ο οποίος διαβουλεύεται με τον Γενικό Εισαγγελέα της Δημοκρατίας, σύμφωνα με τις διατάξεις της παραγράφου (3) του άρθρου 13 του Κανονισμού (ΕΕ) 2017/1939.

(4) Ο Εποπτεύων Ευρωπαίος Εισαγγελέας δύναται όπως προτείνει στο μόνιμο τμήμα της Ευρωπαϊκής Εισαγγελίας την εκ νέου ανάθεση υπόθεσης σε άλλον Ευρωπαϊό Εντεταλμένο Εισαγγελέα στη Δημοκρατία ή τη διεξαγωγή των ερευνών από τον ίδιο προσωπικά, σύμφωνα με τις παραγράφους του άρθρου 28 του Κανονισμού (ΕΕ) 2017/1939.

of the Republic, provided that this does not prevent him from fulfilling his obligations, in accordance with the provisions of Regulation (EU) 2017/1939, and shall inform the Supervising European Prosecutor thereof. with those tasks.

(3) In the event that the European delegated prosecutor is prevented from performing his or her duties by reason of the fact that he or she is performing such duties as a legal officer in the Legal Service of the Republic, he / she shall inform the Supervisor Prosecutor of the Republic, in accordance with the provisions of paragraph (3) of Article 13 of Regulation (EU) 2017/1939.

(4) The Supervising European Prosecutor may, as he proposes to the Permanent Division of the European Public Prosecutor's Office, reassign a case to another European Prosecutor in the Republic or conduct his own investigations, in accordance with paragraphs (3) and (4) of the Article 28 of Regulation (EU) 2017/1939.

Σχέση μεταξύ Ευρωπαϊκής Εισαγγελίας και Γενικού Εισαγγελέα της Δημοκρατίας 6.

(1) Η Ευρωπαϊκή Εισαγγελία διαβουλεύεται, κατά περίπτωση, με τον Γενικό Εισαγγελέα της Δημοκρατίας, προκειμένου να διαπιστώσει εάν τυγχάνουν εφαρμογής τα κριτήρια που καθορίζονται στην παράγραφο (2) του άρθρου 25 του Κανονισμού (ΕΕ) 2017/1939.

(2) Η Ευρωπαϊκή Εισαγγελία, κατ' εφαρμογήν των διατάξεων της παραγράφου (3) του άρθρου 25 του Κανονισμού (ΕΕ) 2017/1939, κατόπιν διαβούλευσης με τον Γενικό Εισαγγελέα της Δημοκρατίας, παραπέμπει υπόθεση για χειρισμό της από τον ίδιο.

(3) Με τη συγκατάθεση του Γενικού Εισαγγελέα της Δημοκρατίας, η Ευρωπαϊκή Εισαγγελία δύναται να ασκεί την αρμοδιότητά της για τις αξιόποινες πράξεις που αναφέρονται στο άρθρο 22 του Κανονισμού (ΕΕ) 2017/1939 σε περιπτώσεις που διαφορετικά θα αποκλείονταν λόγω της εφαρμογής του στοιχείου (β) της παραγράφου (3) του άρθρου 25 του Κανονισμού (ΕΕ) 2017/1939, εφόσον η Ευρωπαϊκή Εισαγγελία είναι καταλληλότερη για την έρευνα ή τη δίωξη.

(4) Σε περίπτωση διαφωνίας μεταξύ της Ευρωπαϊκής Εισαγγελίας και του Γενικού Εισαγγελέα, σχετικά με το κατά πόσο αξιόποινη πράξη εμπίπτει στο πεδίο εφαρμογής της παραγράφου (2) ή

Relationship between European Prosecution and the Attorney General of the Republic. 6.

(1) The European Public Prosecutor's Office shall, on a case-by-case basis, consult with the Attorney General of the Republic in order to determine whether the criteria set out in paragraph (2) of Article 25 of Regulation (EU) 2017/1939 apply.

(2) The European Public Prosecutor's Office, pursuant to the provisions of paragraph (3) of Article 25 of Regulation (EU) 2017/1939, after consultation with the Attorney General of the Republic, shall refer a case for its handling by him.

(3) With the consent of the Attorney General of the Republic, the European Public Prosecutor's Office may exercise its jurisdiction over the criminal offenses referred to in Article 22 of Regulation (EU) 2017/1939 in cases which would otherwise be excluded due to the application of the item (b) of paragraph (3) of Article 25 of Regulation (EU) 2017/1939, if the European Public Prosecutor's Office is more suitable for investigation or prosecution.

(4) In the event of a dispute between the European Public Prosecutor and the Advocate General as to whether a criminal offense falls within the scope of Article 22 (2) or (3) or Article 22 (2) or (3) 25

(3) του άρθρου 22 ή της παραγράφου (2) ή (3) του άρθρου 25 του Κανονισμού (ΕΕ) 2017/1939, ο Γενικός Εισαγγελέας της Δημοκρατίας, αποφασίζει τον αρμόδιο για τη διερεύνηση της υπόθεσης.

Γνωστοποίηση 7. (1) Ο Γενικός Εισαγγελέας της Δημοκρατίας γνωστοποιεί, χωρίς αδικαιολόγητη καθυστέρηση, στην Ευρωπαϊκή Εισαγγελία, κάθε αξιόποινη συμπεριφορά για την οποία η Ευρωπαϊκή Εισαγγελία θα μπορούσε να ασκήσει την αρμοδιότητά της, σύμφωνα με το άρθρο 22 και τις παραγράφους (2) και (3) του άρθρου 25 του Κανονισμού (ΕΕ) 2017/1939.

(2) Σε περίπτωση κατά την οποία έχει αρχίσει ποινική έρευνα για αξιόποινη πράξη στη Δημοκρατία για την οποία η Ευρωπαϊκή Εισαγγελία θα μπορούσε να ασκήσει την αρμοδιότητά της όπως προβλέπεται στο άρθρο 22 και στις παραγράφους (2) και (3) του άρθρου 25 του Κανονισμού (ΕΕ) 2017/1939, ή σε περίπτωση που, σε οποιοδήποτε στάδιο από την έναρξη ποινικής έρευνας, ο Γενικός Εισαγγελέας της Δημοκρατίας εκτιμά ότι η έρευνα αφορά τέτοια αξιόποινη πράξη, ο Γενικός Εισαγγελέας της Δημοκρατίας ενημερώνει χωρίς αδικαιολόγητη καθυστέρηση την Ευρωπαϊκή Εισαγγελία, ώστε αυτή να αποφασίσει κατά πόσο θα ασκήσει το δικαίωμα ανάληψης της υπόθεσης, σύμφωνα με το

of Regulation (EU) 2017/1939, the Attorney General of the Republic, decides the person responsible for the investigation of the case.

Notification 7. (1) The Advocate General of the Republic shall notify the European Public Prosecutor's Office without undue delay of any criminal conduct for which the European Public Prosecutor's Office could exercise its jurisdiction in accordance with Article 22 and paragraphs (2) and (3) of Article 25 of Regulation (EU) 2017/1939.

(2) In the event that a criminal investigation has been initiated into a criminal offense in the Republic for which the European Public Prosecutor's Office could exercise its jurisdiction as provided for in Rule 22 and paragraphs (2) and (3) of Rule 25 of the Rules of Procedure (EU) 2017/1939, or in the event that, at any stage since the initiation of a criminal investigation, the Advocate General of the Republic considers that the investigation concerns such a criminal act, the Advocate General shall inform the European Public Prosecutor's Office without undue delay so that it to decide whether to exercise the right to take over the case, in accordance with Article 27 of Regulation (EU) 2017/1939.

άρθρο 27 του Κανονισμού (ΕΕ) 2017/1939.

(3) Ο Γενικός Εισαγγελέας της Δημοκρατίας ενημερώνει την Ευρωπαϊκή Εισαγγελία σε περίπτωση που αποφασίσει τη διεξαγωγή ποινικής έρευνας για αξιόποινη πράξη, όπως ορίζεται στο άρθρο 22 του Κανονισμού (ΕΕ) 2017/1939, και φρονεί ότι η Ευρωπαϊκή Εισαγγελία θα μπορούσε να μην ασκήσει την αρμοδιότητά της, σύμφωνα με την παράγραφο (3) του άρθρου 25 του Κανονισμού (ΕΕ) 2017/1939.

(4) Η γνωστοποίηση περιλαμβάνει τουλάχιστον περιγραφή των πραγματικών περιστατικών, εκτίμηση της ζημίας που προκλήθηκε ή ενδέχεται να προκληθεί, τα ποινικά αδικήματα που ενδέχεται να προκύπτουν και κάθε διαθέσιμη πληροφορία σχετικά με πιθανά θύματα, υπόπτους και τυχόν άλλα εμπλεκόμενα πρόσωπα.

(5) Ο Γενικός Εισαγγελέας της Δημοκρατίας ενημερώνει την Ευρωπαϊκή Εισαγγελία για τις περιπτώσεις στις οποίες δεν είναι δυνατόν να εκτιμηθεί κατά πόσο πληρούνται τα κριτήρια της παραγράφου (2) του άρθρου 25 του Κανονισμού (ΕΕ) 2017/1939.

(6) Σε περίπτωση που περιέλθει εις γνώσιν της Ευρωπαϊκής Εισαγγελίας ότι ενδέχεται να έχει διαπραχθεί αξιόποινη πράξη που δεν εμπίπτει στο πεδίο αρμοδιοτήτων της Ευρωπαϊκής

(3) The Advocate General of the Republic shall inform the European Public Prosecutor's Office in the event that he decides to conduct a criminal investigation into a criminal offense as defined in Article 22 of Regulation (EU) 2017/1939, and considers that the European Public Prosecutor's Office could not evocate or exercise its competence, in accordance with paragraph (3) of Rule 25 of the Rules of Procedure (EU) 2017/1939.

(4) The disclosure shall include at least a description of the facts, an assessment of the damage caused or likely to be caused, the criminal offenses that may arise and any available information concerning potential victims, suspects and any other persons involved.

(5) The Advocate General of the Republic informs the European Public Prosecutor's Office about the cases in which it is not possible to assess whether the criteria of paragraph (2) of Article 25 of Regulation (EU) 2017/1939 are met.

(6) In the event that the European Public Prosecutor's Office becomes aware that a criminal act may not have been committed that does not fall within the remit

<p>Εισαγγελίας, αυτή ενημερώνει χωρίς αδικαιολόγητη καθυστέρηση τον Γενικό Εισαγγελέα της Δημοκρατίας και διαβιβάζει σε αυτόν όλα τα σχετικά στοιχεία.</p> <p>Εθνική 8. Ως εθνική εποπτική αρχή ορίζεται ο Επίτροπος Προστασίας Δεδομένων Προσωπικού Χαρακτήρα, ο οποίος διορίζεται δυνάμει των διατάξεων του άρθρου 19 του περί της Προστασίας των Φυσικών Προσώπων Έναντι της Επεξεργασίας των Δεδομένων Προσωπικού Χαρακτήρα και της Ελεύθερης Κυκλοφορίας των Δεδομένων αυτών Νόμου.</p>	<p>of the European Public Prosecutor’s Office, it shall inform the Advocate General of the Republic without undue delay and shall forward all relevant information to him by the competent authority in the European Prosecution.</p> <p>National Data Officer 8. The National Supervisory Authority is the Commissioner for Personal Data Protection, who is appointed under the provisions of Article 19 of the Law on the Protection of Individuals Against the Processing of Personal Data and the Free Movement of Such Data.</p>
<p>Εξουσία έκδοσης 9. Το Υπουργικό Συμβούλιο δύναται να εκδίδει Κανονισμούς για τη ρύθμιση οποιουδήποτε θέματος χρήζει ή είναι δεκτικό καθορισμού για την καλύτερη εφαρμογή των διατάξεων του</p>	<p>Issuing Authority 9. The Council of Ministers may issue Regulations for the regulation of any issue that needs or is subject to determination for the better implementation of its provisions.</p>

B. EPPO-Regulation

I. Foreword to the Cypriot judicial system related to the EPPO by M. Katsoginannou

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1. Introductory Remarks to the protection of the EU's financial interests by means of criminal law in Cyprus

The efficient protection of European Union's financial interests is a priority for the EU, and consequently, the fight against criminal offences affecting the Union's budget, is, without any doubt, enhanced at criminal procedural level through the establishment and operation of the European Public Prosecutor's Office (EPPO) and its integration into the domestic judicial systems of the participating Member States. EPPO, as a result of lengthy discussions and consultations², is the EU's independent and decentralised, trans-national prosecution office. It has the responsibility³ to combat criminal offences affecting the financial interests of the Union – the so-called “PIF offences”⁴ – and to undertake the investigation, to carry out the prosecution of EU financial crimes, as well as to bring to justice, perpetrators who have committed crimes against the EU's budget *lato sensu*, as the latter is specified by article 2 par. 1 (a) of the Directive (EU) 2017/1371. The Cypriot criminal legislature, in compliance with the relevant applicable Union law and the fundamental rights and principles of EU, ensures an effective protection for the Union's financial interests, as it will be explained below. The impact of Europeanisation on Cypriot Criminal Justice is obvious⁵. One of the most significant and latest legislative developments is that Cyprus integrated the EPPO into its judicial system, through Law No 2(I)/2021 (vid. infra). 1

However, there is a difficult balance between the national authorities of the Member States and the European Public Prosecutor's Office, given that, as it is stated in the EPPO Regulation's Preamble (recital nr. 12), there is, on the one hand, EPPO operating as a single office – to overcome the obstacle of the fragmentation of national prosecutions of the above crimes –, and on the other hand the provision for the minimum possible interference and “intrusion” into the Member States' legal orders, in accordance with 2

² It was described, by Professor *Valsamis Mitsilegas*, as a „rocky road”, as the European Prosecution is „between coordination and centralisation”, see *Mitsilegas* 2016, p. 83 (pp 83–123).

³ On the competence of the EPPO and the jurisdictional scope of the Member States, as well as the relative issues that have arisen, see inter alios, *Diez/Herlin-Karnel* 2018, pp 1204–1209.

⁴ Such as fraud, corruption, money laundering, misappropriation and other relative unlawful activities, under Directive (EU) 2017/1371, in combination with the Council Regulation (EU) 2017/1939 (the so-called „EPPO Regulation”), vid. infra.

⁵ On the Europeanisation of Criminal Law, see inter alios, *Satzger* 2016, p. 771 et seq.

the principle of subsidiarity. Nevertheless, this is part of the broader concept concerning the process of incorporating EU Directives into the domestic legal orders of its Member States⁶, as well as the “cultivation” of the *collaborative model* in order to establish criminal provisions within a supranational organisation such as the EU⁷.

2. European and national (Cypriot) legal framework

a) Legislative background. Integration, legal harmonisation and implementation laws

- 3 *Article 86* of the Treaty on the Functioning of the European Union (TFEU) is the legal basis for the establishment of EPPO. The legislative background for the functioning of the European Public Prosecutor’s Office is the so-called “*EPPO Regulation*”, i.e. the Council *Regulation (EU) 2017/1939 (12.10.2017)*, that implements enhanced cooperation on the establishment of the European Public Prosecutor’s Office, that started to exercise its competence on 1.6.2021. In Cyprus, the Regulation was ratified by the *Law No 2(I)/2021*⁸, which entered into effect on 27.1.2021 (vid. infra). In addition thereto, the *Directive (EU) 2017/1371 (5.7.2017)* “on the fight against fraud to the Union’s financial interests by means of criminal law”, that was transposed into the national (Cypriot) legal order through the *Law No 69(I)/2020*⁹, specifies the so-called “PIF offences”, by setting the base for the definition of crimes that affect the Union’s financial interests (Art. 3 et seq.), namely fraud (Art. 3), money laundering (Art. 4 par. 1), corruption (passive and active, Art. 4 par. 2), misappropriation (mainly Art. 4 par. 3), (serious) offences against the common value added tax (hereinafter: VAT) system with total damage of at least 10.000.000 € (Art. 2 par. 2). The latter should be seen in conjunction with *Law No 95(I)/2000* on “Value Added Tax” and *Law No 91(I)/2004* (“The Consumption Tax Law”), as last amended with *Law No 199(I)/2022*, as well as *Law No 94(I)/2004* (“Customs Code”)¹⁰, as last amended with *Law No 18(I)/2022*. The Directive underlines the need for the criminalisation of these behaviours at national level, by the Member States.

⁶ For the emerging issues, see also, the ECJ (European Court of Justice) case-law in the judgments *Taricco I* [C-105/14 (Grand Chamber), 8.9.2015] and *Taricco II* [Case C-42/17 (Grand Chamber), 5.12.2017], known as „Taricco saga”. See, inter alios, *Piccirilli* 2018, pp 814–833; *Mitsilegas* 2018, pp 38–42. However, cf. ECJ judgment *Melloni* (C-399-11, 26.2.2013) and the so-called „Melloni doctrine”; see, inter alios, *Viganò* 2018, pp 18–23.

⁷ *Kaiafa-Gbandi* 2018, pp 575–582 (pp 576, 582). See also, *Hauck* 2021, pp 543–632; *Heger*, idem, pp 195–248; *Öberg* 2021, pp 164–181.

⁸ „On the implementation of Council Regulation (EU) 2017/1939 of 12 October 2017 on the enhanced cooperation for the establishment of the European Public Prosecutor’s Office adopted in accordance with Article 52 of the Constitution of the Republic of Cyprus”.

⁹ Available at: http://www.cylaw.org/nomoi/arith/2020_1_069.pdf (Accessed 15 December 2023).

¹⁰ See in this respect, the case-law of the Supreme Court of the Republic of Cyprus, *Minister of Finance and others v. Panipos Ltd*, Appeal No. 227/12, 15.12.2019 (ECLI:CY:AD:2019:C6)· *Tassos Aletras Ltd v. Republic of Cyprus*, No 1300/2010, 11.7.2014 (ECLI:CY:AD:2014:D511)· *Panikos Avraam and others v. Police*, Criminal Appeals Nos 102/16, 103/16, 106/16, 13.12.2017 (ECLI:CY:AD:2017:B457), vid. infra.

It is worth noting that the above criminal offences, which are within the mandate of the EPPO, have to be punishable by a maximum sanction of at least four years of imprisonment, in accordance with the relevant domestic law [see → Directive (EU) 2017/1371, Preamble, recital nr. 18 and Art. 7, 12].

The Cypriot criminal law is fully in harmony with the EU legal framework in this regard. In accordance with the Union law requirements, the above conducts constitute offences, that are, consequently, punishable under the Cypriot Criminal Code (Chapter 154) and Special Criminal Laws. In principle, their basic material elements are primarily established in the Cypriot Criminal Code (hereinafter: “CyCC”). 4

Specifically, the relative legislative provisions exist in the first place, in the CyCC in articles 300 (*fraud* – with further *ad hoc* specific provisions in Special Criminal Laws, vid. infra), 63A and 63B par.3 (*criminal organisation*), 255 that should be read in conjunction with articles 259, 262 and 267 (*lato sensu* misappropriation/embezzlement)¹¹. Then, comes the combination of articles 100 et seq. CyCC (“*corruption*”, i.e. *active and passive bribery*) in conjunction on the one hand with the provisions of the so-called *Prevention of Corruption Law (Chapter 161) [4.5.1920]*, as it was last amended by *Law No. 97(I)/2012 (6.7.2012)*¹², and on the other hand with *Law No. 23(III)/2000 (14.7.2000)*, that ratified the *Criminal Law Convention on Corruption (27.1.1999)*¹³, as well as with *Law No. 2(III)/2004 (13.2.2004)*¹⁴, ratifying the EU Convention *on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (25.6.1997)*¹⁵. Furthermore, *Law No. 188(I)/2007 on the prevention and suppression of money laundering activities* [as last amended by *Law No. 40(I)/2022*], makes an explicit reference to the relative offences and their constituent elements¹⁶. 5

It should be noted that *more specific provisions* on corruption (Art. 2, 5) and fraud (Art. 2, 4), for the *ad hoc* protection of EU financial interests in such cases, exist in the Cypriot 6

¹¹ It should be noted herein, that the Cypriot CC doesn’t differentiate between theft and misappropriation/embezzlement in particular, the latter is an unknown concept as an offence per se, in CyCC. However, according to settled case-law, misappropriation/embezzlement is part of theft lato sensu. In particular, pursuant to judgment *Charalampos Soteriou (Pambos) v. The Republic* (1962), 1 CLR 188 (with reference, *mutatis mutandis*, to the section 17 of the English Larceny Act, 1916), misappropriation/embezzlement stems from the combination of articles 255, 259, 262 and 267 CyCC.

¹² O.J. par. I(I), No. 4344, 6.7.2012.

¹³ See also *Law No. 25(III)/2008* [O.J. par. I(III), No. 4112, 31.12.2008], which ratified the UN Convention against Corruption (31.10.2003). See Georgios N. Rostantis, *The Fight against Corruption in the European Union*, p. 19.

¹⁴ O.J. par. I(III), No. 3810, 13.2.2004.

¹⁵ OJ C 195, 25.6.1997, p. 1.

¹⁶ See also, the Cypriot case-law: Supreme Court of Cyprus, *Panikos Avraam and others v. Police*, Criminal Appeals Nos 102/16, 103/16, 106/16, 13.12.2017, op.cit.

special criminal law for “euro-fraud”, namely the *Law No. 69(I)/2020* (“on the fight against fraud to the Union’s financial interests by means of criminal law”), that ratified the *Directive (EU) 2017/1371*. Moreover, this law includes special provisions for VAT revenue fraud, in cases of serious offenses, which are connected with the territory of two or more Member States (transnational offences) and affect the financial interests of the EU, causing a total damage of at least 10.000.000 € [see → Art. 3 par. 2 and Art. 4 subpar. d of *Law No. 69(I)/2020*]¹⁷. The legislator also provides under this Law, a high level of protection in those cases that the above offences have been committed within the framework of a criminal organisation (Art. 2, 4, 5, 6) conduct that constitutes an aggravating circumstance (Art. 11). Worth noting that special mention is made of the criminal liability of legal persons (Art. 7, 10), which exists in Cypriot legal order, whereas not all Member States recognise the liability of legal entities for criminal offences (e.g. Greece). This fact may create a gap between the effectiveness of the possible enforcement methods between the Member States, as well as the criminal repression in this field. Moreover, there is also a legislative provision for the forms of participation in the above crimes (Art. 6).

- 7 Hence, all these provisions have a common narrower scope than the -above mentioned- more general provisions of CyCC, as they put into the spotlight the protection of the Union’s financial interests (Art. 3).
- 8 The *Law No 2(I)/2021 (27.1.2021)*¹⁸, on the implementation of enhanced cooperation for the establishment of the European Public Prosecutor’s Office, that – as it was stated above – ratified the “EPPO Regulation” (vid. supra), deals with more procedural issues. In the first place, the Law establishes the general guidelines and provides clarity on the interpretation of certain concepts and basic notions (Art. 2), such as the “National Supervisory Authority” that – in Cyprus – is the Commissioner for Personal Data Protection as provided in article 8 of the Law, the “Supervising European Prosecutor”, by defining the responsibilities attached to this post, namely the action on behalf of the relevant permanent section of the European Public Prosecutor’s Office and the supervision of the investigations and prosecutions for which the European Public Prosecutor is responsible, in accordance with article 12 of Regulation (EU) 2017/1939. The competent authority for the implementation of the “EPPO Regulation” is the Attorney General of the Republic of Cyprus (hereinafter: AGRC), who shall communicate the necessary information to the European Public Prosecutor’s Office (Art. 3). Furthermore, the Law provides the appropriate safeguards for the appointment and dismissal of the European Delegated Prosecutor (EDP), in accordance with the provisions of Article 17 of EPPO

¹⁷ See further, inter alios, *Sieber* 1996, pp 357–395; *M. Kaiafa-Gbandi* 2018, pp 575–582.

¹⁸ Available at: http://www.cylaw.org/nomoi/arith/2021_1_002.pdf (Accessed 15 December 2023).

Regulation. The EDP should be an Advocate at the Law Office of the Republic of Cyprus or person holding a senior position in this Office (Art. 4).

The European Delegated Prosecutor, acting on behalf of the European Public Prosecutor's Office in the Republic, undertakes the criminal investigation and is responsible for the prosecution of criminal offences falling within the scope of the Law No. 69(I)/2020 (vid. supra). In this context, the EDP gives the appropriate instructions to any competent authority which carries out the investigation of such offences, while at the same time, he/she may exercise his/her duties as a lawyer at the Law Office of the Republic of Cyprus, provided that this does not prevent him/her from fulfilling his/her obligations (Art. 5). As far as the relationship between the European Public Prosecutor's Office and the Attorney General of the Republic is concerned, it is worth mentioning that emphasis is given to the consultation between them, in order to determine – where appropriate – whether the criteria set out in par. 2 of Art. 25 of the Regulation apply (Art. 6 par. 1).

The EPPO, in accordance with the Art. 25 par. 3 of the Regulation, after consultation with the Attorney General of the Republic, refers the case for handling by him. However, in case of disagreement between them, as to whether a criminal offense falls within the scope of Art. 22 par. 2 or 3 or Art. 23 par. 3 or Art. 25 of the Regulation, the AGRC, decides who is responsible for the investigation of the case (Art. 6 paras 2–4). It is important to note that pursuant to Art. 7 of the Law, the Attorney General shall notify the EPPO – without undue delay – of any criminal conduct, for which the EPPO could exercise its jurisdiction, according to Art. 22 paras 2 and 3 and Art. 25 of the Regulation, as well as of the cases in which it is not possible to assess whether the criteria of Art. 25 par. 2 of the Regulation are met.

This notification shall include at least a description of the facts, an assessment of the damage caused or likely to be caused, the criminal offenses that may arise and any available information concerning potential victims, suspects and any other persons involved (idem, par. 4). A notification should also take place in case that the AGRC decides to conduct a criminal investigation into a criminal offence as defined in Art. 22 of the Regulation and considers that EPPO might not exercise its competence, in accordance with Art. 25 par. 3 of the Reg. Finally, mention is made of the issuing of Regulations, by the Council of Ministers, for any matter that needs – or is amenable to – determination for the better implementation of the Law's provisions [Art. 9 of Law 2(I)/2021]. Furthermore, the Law makes reference to the issuing firstly, of Decrees by the Minister of Justice and Public Order, in the cases mentioned in article 10, namely for the application of the provisions of the Law 2(I)/2021, secondly, of Regulations, pursuant to this Law and also to the implementation of Delegated Acts, issued by the European Commission.

b) Further coordinating bodies and support of EPPO operational activities in Cyprus

- 12** Given that EPPO, having a specific structure, is a two-level authority, there is on the one hand, the central level, with its headquarters in Luxembourg and on the other hand, the decentralised level, having a registered office in each participating EU country. The latter as far as Cyprus is concerned, is located in Nicosia (Law Office of the Republic of Cyprus). In Cyprus, there is one active European Prosecutor (Katerina Loizou, since July 2020) and one National European Delegated Prosecutor (Andrie Constantinou, since 26.5.2021).
- 13** EPPO investigations are facilitated through its close cooperation with other EU bodies and, above all, with the EU Anti-Fraud Office (OLAF), Eurojust and Europol. As it is outlined in article 50 of the Eurojust Regulation¹⁹, Eurojust supports and cooperates with EPPO in various ways, such as by responding to the requests for support from the latter, without undue delay, by making regular meetings to discuss issues of common interest, providing services of common interest to the EPPO, informing the EPPO of relevant cross-border cases and associating it with its activities in operational matters relevant to its competences etc. Contrary to EPPO that carries out *criminal* investigations, OLAF remains responsible for the relative administrative investigations into irregularities and fraud affecting the EU's financial interests, in all EU countries. So, OLAF has also a consultative and coordinating role. This cooperation ensures the widest possible protection of the EU budget. According to Art. 12a of the OLAF Regulation²⁰, each Member State shall designate an “*Anti-Fraud Coordination Service*” (“*AFCOS*”), in order to facilitate the effective cooperation, coordination and exchange of information with the Office.
- 14** In Cyprus, the AFCOS tasks are carried out by the *Verifications and Certification Directorate* within the *Treasury of the Republic*, which is –*inter alia*– responsible to collect any irregularities that are detected either by the Directorate or by any other responsible body, in the course of verifications or audits and also to notify OLAF, according to the provisions of the relevant regulations²¹.

¹⁹ See <https://www.eurojust.europa.eu/about-us/organisation/eurojust-legal-framework>. (Accessed 15 December 2023).

²⁰ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013, concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

²¹ See for further details: http://www.treasury.gov.cy/treasury/treasurynew.nsf/page62_en/page62_en?OpenDocument. (Accessed 15 December 2023).

In addition, the cooperation between the Office, Eurojust and Europol is facilitated with the assistance of the national investigating and prosecuting authorities that – pursuant to Art. 13 of the OLAF Regulation – support and strengthen the coordination and collaboration. At this regard, apart from the Ministry of Justice and Public Order, the Attorney General’s Office and the Police (especially the “*Economic Crime Investigation Office*”), particular reference should be made to the *Unit for Combating Money Laundering*, known as “*MOCAS*”, which is the Financial Intelligence Unit (FIU) of Cyprus. MOCAS is the national centre that receives, requests, analyses and disseminates disclosures of suspicious transactions and of other relevant information concerning suspected money laundering and terrorist financing²². 15

c) The effect of EPPO operational activities in Cyprus – The functional impact of EPPO in numbers

According to the latest official data (31.12.2022, EPPO Annual Report 2022, European Public Prosecutor’s Office, 2023)²³, there were no opened investigations in 2022 as far as Cyprus is concerned. However, since year 2021²⁴, there are still, for the time being, *three (3) pending investigations* overall (vid. infra). Officially, according to EPPO Annual Report, there is also *one (1) active cross-border investigation*²⁵. Nevertheless, the transnational dimension of the related crimes, may affect these facts and figures at any time. For instance, fraud and money laundering investigations, concerning EU funds, are currently conducted throughout the territories of other EU Member States that have links –*inter alia*– to Cyprus. At the present time, there are ten (10) ongoing investigations in Romania with links to Cyprus, Portugal and Spain²⁶. It is also worth noting that there are in Cyprus fifteen (15) incoming and three (3) outgoing requests for assisting measures, assigned to European Delegated Prosecutors (EDPs) in a different Member State²⁷. 16

Moreover, there were two (2) received reports (i.e. complaints) from national authorities, but there were no opened investigations in 2022. At present, as it was stated above, 17

²² For more details, see: http://www.law.gov.cy/law/mokas/mokas.nsf/mokas10_en/mokas10_en?OpenDocument. (Accessed 15 December 2023).

²³ Available at <https://www.eppo.europa.eu/en/news/annual-report-2022-eppo-putsspotlight-revenue-fraud>, p. 22 (Accessed 15 December 2023).

²⁴ EPPO 2021 Annual Report, POEU, 2022, p. 22. See Report 2023, p. 22–23.

²⁵ Ibid.

²⁶ See <https://www.eppo.europa.eu/en/news/fraud-concerning-eu-funds-10-searches-romania-links-cyprus-portugal-and-spain>. Accessed 15 December 2023) and <https://www.eppo.europa.eu/en/news/medical-rehabilitation-centre-romaniabusinessman-and-company-indicted-fraud-and-money>. (Accessed 15 December 2023).

²⁷ EPPO Annual Report 2022, Publications Office of the European Union, 2022, p. 22. See data based on combined information from both pp 4, 22, Annual Report 2022, op.cit.

according to EPPO's official statistical data on the operational activities, the *three (3)* out of 1117 *active investigations* that are *related to Cyprus*, concern 1.5 million estimated total damage to the financial interests of the EU²⁸. In particular, these cases concern the crimes of *non-procurement expenditure fraud (research and innovation programmes)*, as well as *procurement expenditure fraud, corruption (bribery)* and *misappropriation (embezzlement)*. However, it is notable that, for the year 2021, three (3) out of 515 investigations on fraud and corruption cases affecting the financial interests of the EU, which were conducted by the European Public Prosecutor's Office (EPPO), concerned Cyprus²⁹. It is noteworthy that – under the establishment of the EPPO – no relative judgment has been issued till now, regarding Cyprus.

- 18 Hence, according to the European Chief Prosecutor's, Laura Codruța Kövesi, media announcement, in January 2023, the number of the pending fraud cases against the EU budget, concerning the Republic of Cyprus were particularly high; amounting to around 10% of the total fraud cases under EPPO investigation³⁰. Moreover, this workload is the reason why Kövesi identified a deficiency that needs to be remedied and therefore she stressed the need for fulltime appointed prosecutors in Cyprus, regarding that they perform their duties from the premises of the Law Office of the Republic of Cyprus.

3. Critical approach in *nuce*

- 19 EPPO reflects a *sui generis* coexistence of EU law and the Member States national criminal laws (see also Art. 5 par. 3 Reg.). Given the fact that it recently became fully operational, as well as the general difficulties and delays, experienced by all Member States the last years, due to the impact of Covid-19 on judicial cooperation³¹, Cyprus has successfully responded to the new demands and EPPO operational requirements, as national authorities invest diligently a great deal of time and effort in this area.
- 20 Cyprus has really come a long way and goes in the right direction, even though there is still room for improvements. The legislative adjustment in all Member States, highlights

²⁸ See data, based on combined information from both pp 4, 22, Annual Report 2022, op.cit.

²⁹ Data based on combined information from both pp 5, 22, Annual Report 2021, op.cit.

³⁰ See <https://knews.kathimerini.com.cy/en/news/europe-s-chief-prosecutordrops-by-to-check-on-cyprus> and <https://euobserver.com/eu-political/150737>. (Accessed 15 December 2023).

³¹ See the relevant information, gathered by the European Judicial Network (EJN) Secretariat, on the EJN website (<https://www.ejn-crimjust.europa.eu/ejn2021/Home/EN>) [Accessed 15 December 2023]. Especially for the impact of the pandemic on the Cypriot judicial proceedings, see: *Loizou and Christofi*, The impact of the COVID-19 pandemic on the operation of the Cypriot courts: technological challenges and the maintenance of Rule of Law – a comparative analysis with other common law jurisdictions (posted on 11.6.2020), available at: <https://law-blog.uclancyprus.ac.cy/the-impact-of-the-covid-19-pandemic-on-the-operation-of-the-cypriot-courts-technological-challenges-and-the-maintenance-of-rule-of-law-a-comparative-analysis-with-other-common-law-jurisdict/>. (Accessed 15 December 2023).

the existing problems³². Consequently, questions are being raised as to how the EU legislator decided to regulate the emerging issues of the judicial review, according to Art. 42 par.1 of the EPPO Regulation, with regard to the question of whether the transfer of the relevant judicial review from the Union courts to the national courts, is compatible with the EU law³³. This point deserves specific attention, though it does not seem to raise problems in Cyprus, or at least not as much as in other Member States, that have different judicial systems³⁴ (such as Greece, Belgium).

Following the previous observation concerning the judicial review, there also arises the issue of whether this EU legislative option ensures a coherent and effective judicial protection, pursuant to articles 19 par. 1 of the Treaty on European Union (TEU) and 47 par. 1 of the EU Charter of Fundamental Rights (CFR). Within this framework, the preliminary ruling procedure (Art. 42 par. 2 Reg.), as a nexus between ECJ and national courts, is of prime importance³⁵. That being the case, the jurisdictional cooperation between the national courts and the ECJ, is expected to lead to the coherent implementation of the EPPO Regulation. However, the above listed issues are part of a broad subject area that goes beyond the scope of this study.

21

4. Conclusion

The harmonised protection of the financial interests of EU through the revolutionary body of EPPO, that has such great potentials, is a really important development. The above approach indicated that Cyprus, as a participating EU Member State, has made significant steps not only at legislative, but also at operational level, and now supports EPPO investigations and its scope. Cyprus has put an enormous amount of effort and good will, has conferred tasks and responsibilities to certain authorities and has paid increasing attention so as to serve the purpose of the prosecution of the EU financial crimes and consequently the more efficient and successful protection of EU financial interests.

22

However, as briefly described above, the challenge of ensuring adequate guarantees of judicial protection is being raised. Therefore, national courts and authorities should be

23

³² See inter alios, *Zimianitis* 2021, p. 65–66; *Mitsilegas* 2021, pp 245–264.

³³ *M. Böse* 2019, pp 191–203.

³⁴ For a comprehensive analysis of the Cypriot Criminal Procedural Law, see *Pikis* 2013 [in Greek]; *Satolias* 2017 [in Greek].

³⁵ See generally, inter alios, *Jacobs and Minder* 2019, pp 1214–1231.

further encouraged to interact with the relative European bodies, and – whenever necessary– with ECJ, within the institutional dialogue, bringing together the EU and the Member States’ legal orders.

- 24** In addition, as *European Chief Prosecutor (ECP) Laura Kövesi* recognised, much still remains to be done also at European level, as there is a need for organisational and legal adjustments, as well as assignment of dedicated and specialised financial fraud investigators to the related cases, in all the participating Member States and mainly a revision of the EPPO Regulation is required³⁶.
- 25** In the light of the analysis made within the framework of this brief study, it is undeniable that the Republic of Cyprus has demonstrated a high degree of Europeanisation so far. This is vital for the State’s ability to continue on the path towards European integration. It follows that, although some aspects could be criticised, the overall evaluation of the new harmonised protection of the EU financial interests in the Cypriot legal system, is positive. After all, progress and challenges always go hand in hand.

II. The Initiation of Criminal investigations according to the EPPO Regulation

- 26** The next part focuses on the initiation of criminal investigations according to the EPPO Regulation based on national law. In 2019 and 2020 the Cypriot Government and the Department of European Union Law (hereinafter “TDEE“) started to design the legal setting for EPPO actions in Cyprus i.e. on Cypriot territory, which is since Cyprus joined the EPPO enhanced cooperation mechanism EPPO territory. The competent authority for the implementation of Regulation (EU) 2017/1939 was appointed the Attorney General of the Republic.³⁷ Since 1.6.2021 Cypriot EDPs³⁸ are investigating EU frauds on their own.³⁹ In 2021 the regional office was set up in Nicosia. The office can be contacted quite easily.⁴⁰ The office was already involved in investigations and took first steps on its own.⁴¹ A judgement was not reached as of 2022. Speaking of the Cypriot

³⁶ Speech of the European Chief Prosecutor, Laura Kövesi, at the Legal Affairs Committee of the Bundestag – published on 9 November 2022, <https://shorturl.at/fsFR5> (Accessed 4 October 2023).

³⁷ Naziris 2023, p. 21: the “Attorney General” origins from ‘British Legal Adviser of the Government’ of 1878.

³⁸ They are Lawyers of the Republic in the Legal Service of the Republic or a higher position in this Service and were appointed to the position of the European Prosecutor as proposed for appointment by the Attorney General of the Republic.

³⁹ Currently Cyprus has one EDP. Mrs. Andrie Constantinou is investigating on behalf of the EPPO on Cypriot territory under the supervision by Mrs. European Prosecutor Katerina Loizou.

⁴⁰ See Apelli 1 1403, Nicosia Cyprus, Phone: (+357) 22 889109. An E-Mail can be requested via the Legal Service of the Republic. Crime Reports may be either submitted via the national authorities or the EPPO Headquarters (even via a Online-Report/Web-Document).

⁴¹ See <https://bit.ly/3jZy1TN>: “30.11.2022 18:31 Investigation of international VAT tax fraud by the European Public Prosecutor’s Office with the participation of Cyprus: The Department of Taxation informs that in the context

Justice system⁴² it can be remarked that the current Government is investing in the Prosecution Service for the future.⁴³

The aims of punishment in all areas of crime, so to speak the *telos* of criminal law and how it may be used in the area of the expenses of the Union, are a part of academic debate in Cyprus.⁴⁴ **27**

The following chapter shall offer an introduction into the applicable laws and provisions. First of all, a Synopsis of the Cypriot EPPO Adoption Law was presented. Secondly the Chapter takes a close look at the national provisions that remain applicable. **28**

One focus of the Chapter is on examining **Cypriot investigative powers scenery**. These are regulated in the EU Regulation in Art. 30 and have already been examined partly by other studies in the past. They are important to the EPPO and foreign EDPs, as well as the lawyers and defence attorneys, as well as ordinary Union citizens who import or export things to Cyprus and trade with all over the world. **29**

For example, special customs regulations already apply at the ports of Cyprus, which can give rise to fraud at the expense of the Union. For example, an anti-dumping duty could apply, whereby officials could suspect that this was not paid and that this was done knowingly and with deceptive intent. This behaviour would then call for rapid i.e. urgent investigative action by the officers. A decision must be made as to whether there is a suspicion of a crime. **30**

If this is not the case, there can at least be the suspicion of an administrative violation, which calls OLAF, the administrative anti-fraud authority, into action (see → Part C. and Art. 12e OLAF Regulation⁴⁵).⁴⁶ **31**

of the fight against tax fraud, the European Public Prosecutor's Office in cooperation with 14 countries of the European Union, including Cyprus, recently carried out simultaneous investigations in the above countries, with the aim of uncovering a complex fraud system. PA. (Carousel fraud) in the field of selling popular electronic goods. As the competent Authority for the investigation of cases of this kind, the Tax Department participated in this investigation where it collected useful data and information which will be sent to the E.U. for further analysis and processing.”

⁴² General Information on Cyprus and its justice system can be obtained here free of charge: <http://defensewiki.ibj.org/index.php?title=Cyprus>. Accessed 15 December 2023.

⁴³ See George Michaelidis, Cyprus will produce prosecutors - Legal Service Academy, 10.12.2022, online: <https://www.offsite.com.cy/eidiseis/topika/i-kypros-tha-bgazei-eisaggeleis-akadimia-nomikis-ypiresias>. Accessed 15 December 2023.

⁴⁴ *Kapardis* 2020, pp 217 et seq. and see *Dionysopoulou* 2020, pp 113 et seq.

⁴⁵ See *Hauck*, EU Frauds, Commentary, Art. 12e OLAF.

⁴⁶ In the past OLAF has e.g. found irregularities in the Procurement Area OLAF: Waste and mismanagement of refugee funds in Greece. See <https://www.newmoney.gr/roh/palmos-oikonomias/ellada/olaf-spatales-kai-kakodiaxeirisi-sta-kondilia-gia-to-prosfigiko-stin-ellada/>. Accessed 15 December 2023.

- 32** If there is a suspicion of a crime, Art. 26 and 27 of the EPPO Regulation apply (see → Part B.). As these two articles refer to national law numerous times, the manual will present the national regulations in Greek and English to enable understanding and finding the right national regulations.
- 33** Art. 26 explains the process of the so-called EPPO Crime Reports, i.e. reports to the EPPO from Cypriot or other natural and legal persons. Art. 28 is dedicated to the specific conduct of the investigations. Art. 29 deals with the national provisions for immunities of Members of Parliament, which may become important in relation to activities. Finally, the fundamental articles follow: Art. 30–32 EPPO Regulation. Art. 33 refers to the law of detention and investigation and is important because fraud investigations can often take longer than expected. To secure the potential criminal process, the suspects are therefore secured.

[...]

SECTION 1

Rules on investigations

1. Article 26 Initiation of investigations and allocation

1. Article 26 Initiation of investigations and allocation	constituting the Material Scope	71
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1. Where, **in accordance with the applicable national law**, there are **reasonable grounds to believe that** an offence within the competence of the EPPO is being or has been committed, a European Delegated Prosecutor in a Member State which **according to its national law** has jurisdiction over the offence shall, without prejudice to the rules set out in Article 25(2) and (3), initiate an investigation and note this in the case management system.

2. Where upon verification in accordance with Article 24(6), the EPPO decides to initiate an investigation, it shall without undue delay inform the authority that reported the criminal conduct in accordance with Article 24(1) or (2).

3. Where no investigation has been initiated by a European Delegated Prosecutor, the Permanent Chamber to which the case has been allocated shall, under the conditions set out in paragraph 1, instruct a European Delegated Prosecutor to initiate an investigation.

4. A case shall as a rule be initiated and handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competences of the EPPO have been committed, the Member State where the bulk of the offences has been committed. A European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation where a deviation from the rule set out in the previous sentence is duly justified, taking into account the following criteria, in order of priority:

- (a) the place of the suspect’s or accused person’s habitual residence;
- (b) the nationality of the suspect or accused person;
- (c) the place where the main financial damage has occurred.

5. Until a decision to prosecute under Article 36 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:

- (a) reallocate the case to a European Delegated Prosecutor in another Member State;
- (b) merge or split cases and, for each case choose the European Delegated Prosecutor handling it,

if such decisions are in the general interest of justice and in accordance with the criteria for the choice of the handling European Delegated Prosecutor in accordance with paragraph 4 of this Article.

6. Whenever the Permanent Chamber is taking a decision to reallocate, merge or split a case, it shall take due account of the current state of the investigations.

7. The EPPO shall inform the competent national authorities without undue delay of any decision to initiate an investigation.

Table 5 Overview Box: Art. 26 EPPO Regulation (PIF offences etc.)

Overview	
Relevant national law	Sources: The main Laws that will apply are Τον Ποινικό Κώδικα, Κεφ. 154/The Criminal Code, Chapter 154; Τον Περί Ποινικής Δικονομίας Νόμο, Κεφ.155/The Criminal Procedure Law, Chapter 155. Ο Περί Τμήματος Φορολογίας Νόμος του 2014 (70(I)/2014)/ The Tax Department Law of 2014 (70(I)/2014). The Code of Ethics and Conduct of the Tax Departement. October 2021. Κ.Δ.Π 95/2010 (in Greek) – V.A.T Regulations 2010 (Tax Refund to taxable persons established in E.U Member States). Ο Περί Φόρων Κατανάλωσης Νόμος του 2004 (91(I)/2004)/ The Consumption Tax Law aka Customs and Excise Law of 2004 (91(I)/2004) last amended 2022.
An offence within the competence of the EPPO	For the text of the offences that are mentioned by Art. 26 EPPO Regulation “an offence within...” see below → Art. 26. The Regulation covers offences affecting the financial interests of the EU (see Athanasia Dionysopoulou, Jean Monnet Network on EU Law Enforcement Working Paper Series No. 07/22, Jean Monnet Network on EU Law Enforcement) https://shorturl.at/gJKSY .
Liability and Sanctions for legal persons	S. 7 and 10 of ΝΟΜΟΣ ΠΟΥ ΠΡΟΝΟΕΙ ΓΙΑ ΤΗΝ Καταπολεμηση, Μεσω Του Ποινικου Δικαιου, Τησ Απατησ Εισ Βαροσ Των Οικονομικων Συμφεροντων Τησ Ευρωπαϊκησ Ενωσησ”/Number 69 (I) of 2020 Law Providing to Fight, through Criminal Law, Fraud at the Expense of the economic interests of the European Union”.
Competence of an EDP	See s. 5 of the Cypriot EPPO Adoption Act (presented below in full length. For details and the Greek version see above → “Sources of Law”. Cf. ss. from the Cypriot Criminal Code and cf. Art. 11 of the PIF Directive

Jurisdiction	<p>Application within and outside the Territorial Dominion</p> <p>Application of the Criminal Code, etc.</p> <p>5. (1) The Criminal Code and any other law constituting an offense shall apply to all offenses committed—</p> <ul style="list-style-type: none">(a) within the territory of the Republic, or(b) within the Sovereign Base Areas, from Cyprus against or in relation to Cyprus, or(c) in any foreign country by a citizen of the Republic while he is in the service of the Republic, or(d) in any foreign country by a citizen of the Republic, if the offense is punishable in the Republic by imprisonment exceeding two years and the act or omission constituting the offense is also an offense under the law of the country where it was committed, or(e) in any foreign country by any person if the offense—<ul style="list-style-type: none">(i) is treason or an offense against the security of the Republic or the Constitutional Order, or(ii) is piracy, or(iii) is linked to the currency or paper money of the Republic, or(iv) involves illegal trafficking of dangerous drugs, or(v) is one of the offenses to which, by virtue of any International Treaty or Convention binding the Republic, the law of the Republic applies, or(vi) has as one of its constituent elements an act or omission, the object of which is immovable property situated in the Republic, including conspiracy, or attempt or incitement or attempt to incite another to commit an offense which has as one of its elements elements act or omission the object of which is immovable property located in the Republic, or(vii) caused harm or damage to property or deprived or seized property located outside the Republic and belonging directly or indirectly to the Republic or to a person who has his permanent residence in the Republic or to a company that has its registered office in the Republic or in trust, governed by Cypriot law, or(viii) concerns the illegal detention of a minor outside the borders of the Republic. <p>(2) A criminal prosecution shall not be instituted in the Republic in respect of an offense committed in a foreign country, if the accused after being tried in such country for such offense has been convicted or acquitted.</p>
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(3) For the purposes of this article–
 “Cypriot” means a citizen of the Republic or a person who, by virtue of the Citizenship Ordinances of the Republic in force from time to time, would be entitled to become a citizen of the Republic and includes any group of persons, organized into a legal entity or not, whether registered or operating under the laws of the Republic or is under the control of citizens of the Republic or persons who would be entitled to become citizens of the Republic
 “foreign country” means any country outside the Republic and includes the Sovereign Base Areas and any ship or aircraft registered in such country or Area

“Sovereign Base Areas” means the Sovereign Base Area of Akrotiri and the Sovereign Base Area of Dekelia as defined in Article 1 of the Treaty Establishing the Republic of Cyprus signed at Nicosia on the 16th day of August, 1960
 “territory of the Republic” includes its territorial waters, the airspace over the Republic and its territorial waters and any ship or aircraft registered in the Republic wherever it is located, unless, by virtue of international law, such ship or aircraft is subject to at the relevant time, due to its location, in the exclusive jurisdiction of foreign law.

Trial of offenses committed in a foreign country

6. (1) An offense committed in a foreign country, in respect of which the Penal Code or any other law of the Republic applies pursuant to article 5, shall be tried by the competent Court of Nicosia District.
 (2) For the purposes of this article, “foreign country” has the meaning assigned to that term in subsection (3) of article 5.

Source: The authors.

a) Initiation of Investigations by virtue of Art. 26 Para 1 EPPO Regulation

Art. 26 needs to be seen independent from Art. 27. Art. 26 stands on its own and describes a **principle of legality at Union level**, which has the effect of protecting the Unions’s (own) financial interests. The main task of Cypriot EDPs is clearly indicated by the EPPO Adoption Law:

34

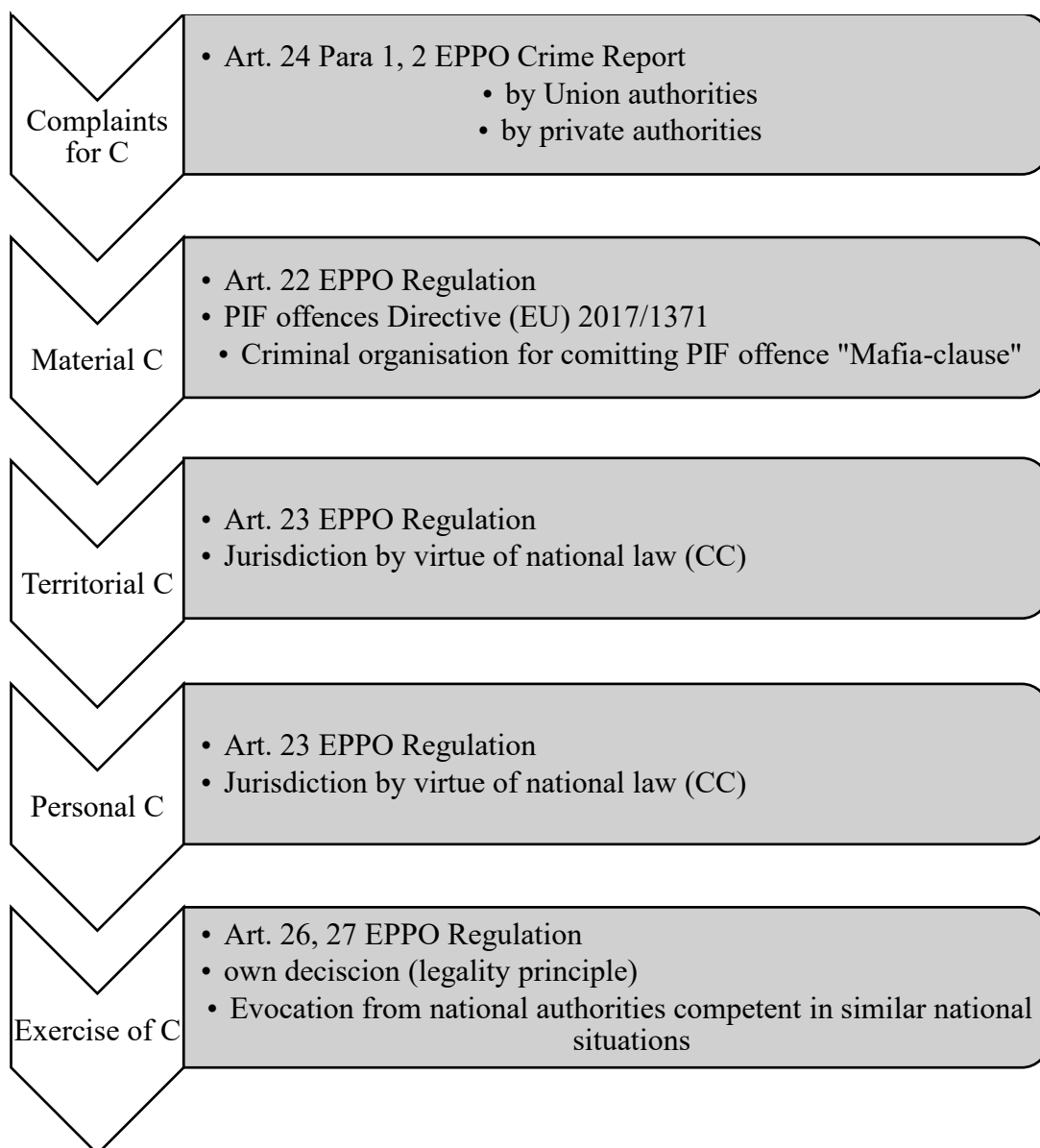
- 35 **5. [Powers and Tasks of the Cypriot EDPs]⁴⁷**
- (1) The European delegated prosecutor shall exercise his powers in accordance with the provisions of Regulation (EU) 2017/1939.
- (2) The European Delegated Prosecutor (shall)
- (a) act on behalf of the European Public Prosecutor’s Office in the Republic;
- (b) is in charge of the criminal investigation and *is responsible for the prosecution of criminal offenses falling within its scope of the Anti-Fraud Act, through the Criminal Law Act*, providing appropriate guidance to any competent authority to investigate such offenses;
- (c) may at the same time exercise his duties as a legal officer in the Legal Service of the Republic, provided that this does not prevent him from fulfilling his obligations, in accordance with the provisions of Regulation (EU) 2017/1939, and shall inform the Supervising European Prosecutor thereof with those tasks.
- (3) In the event that the European delegated prosecutor is prevented from performing his or her duties by reason of the fact that he or she is performing such duties as a legal officer in the Legal Service of the Republic, he / she shall inform the Supervisor Prosecutor of the Republic, in accordance with the provisions of paragraph (3) of Article 13 of Regulation (EU) 2017/1939.
- (4) [...]
- 36 In reality the Cypriot Police might have already started an investigation into fraudulent conduct, see s. 4 et seq. Criminal Procedure Code.⁴⁸ The EPPO has tried to establish a special system for the transfer of information regarding the exercise of competence and the transposition of information, the so-called **EPPO Crime Reports Scheme**:

⁴⁷ For the original Greek version and wording see above „Sources of Law“, Synopsis.

⁴⁸ Nota bene: The preliminary investigation, which was once enshrined in s. 92 et seq. Criminal Procedure Code does not exist anymore. The Criminal Procedure Code (Chapter 155 of the Laws of Cyprus) of Cyprus stems from 1948 – thus from a time before the independence – and it still features prominent parts of the British criminal process, see Naziris 2023, p. 20 <https://shorturl.at/anAOU>.

This task can be visualised as follows:

Figure 1 EPPO - Exercise of competence in general



C = Competence

CC = Criminal Code

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

38 The EPPO Annual Report 2021 provides information on the exercise of jurisdiction under Articles 26 and 27 EPPO Reg. in Cyprus.

b) Relevant sources of the indications for a criminal offense falling within the competence of the EPPO

39 For the EPPO in Luxembourg, the EPPO’s College Chair, the European Chief Prosecutor and the Chambers with the European Prosecutors, who only decide on cases, which do not belong to their jurisdiction of origin, thus mostly foreign, national law it is important that the whole office, which operates as a single legal office according to the legislators Regulation – even if it is highly decentralized – needs well-structured information channels. The EPPO has a strong IT support, which includes the IT User Service, the Security and Facilities Operation Team and the Helpdesk, which is annexed to the aforementioned Team.⁴⁹ As the EPPO operates highly sensitive personal data (see for an analysis of how to operate with such data FRA 2018) and information from across Europe and even international data from Europol, Interpol and other third states, e.g. the U.S., the United Kingdom, African States and South East Asia it needs to follow strict Union law requisites and Internal Rules. The Strategy and Executive Office included a Legal Service, which handles common civil servants matters and EPPO peculiarities, including the Working Arrangements, which are a tool to gather even more information e.g. about VAT carousels in third countries. Thus the following citation proves to be highly important and the EPPO is measured by whether it implements and achieves these goals:

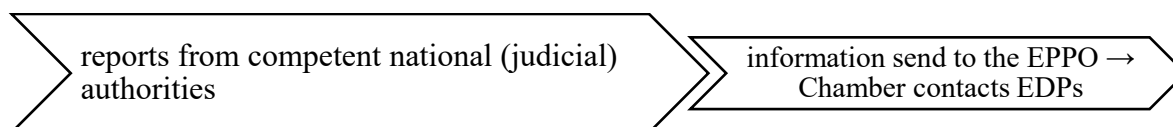
40 “In order to achieve its goals, the EPPO will need to establish smart information flows between the central office in Luxembourg, delegated prosecutors, and national authorities and, at the same time, avoid causing delays in the information exchange. [...] In this regard, some of the existing EU mechanisms concerning de facto reporting of PIF crimes seem to be obsolete, as well as national law duties to report such information to a national prosecution office in advance or in parallel to the EPPO.”⁵⁰

⁴⁹ See <https://www.eppo.europa.eu/en/structure-and-characteristics>. Accessed 15 December 2023.

⁵⁰ *Klement* 2021, pp 51–52.

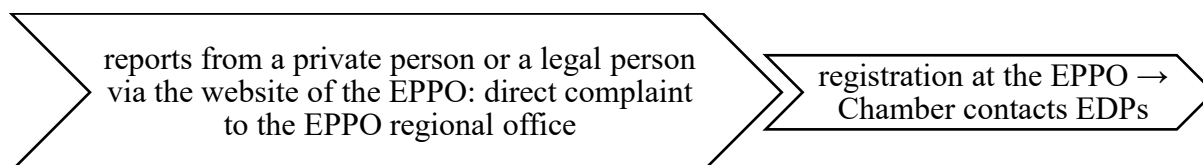
A distinction can be made between the direct and the indirect path for the transfer of information related to the competence: 41

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



Caption: Art. 24 Para 8⁵¹

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



Caption: **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. OLAF will either way report conduct that falls in the EPPO’s competence by virtue of Art. 12c OLAF Reg.

aa. Determination of the competence and verification of Crime Reports

The first task of the EDPS in a regional office is to determine whether the EPPO has competence and jurisdiction or can obtain competence and exercise jurisdiction (see below → Art. 27). These are formal but essential questions. They are determined by means of Union secondary legislation, the so-called **Internal Rules on Procedure [of the EPPO]** adopted by **and Supplemented by Decisions 085/2021 of 11/08/2021, 026/2022 of 29/06/2022 and 010/2024 of 7/02/2024 of the College of the EPPO** of that College.⁵² This depends on the criteria of the Regulation (see → Art. 22, 23). 43

There are rules issued by the EPPO Chamber but they apply for the Right of evocation stipulated by Art. 27. Art. 26 Para 5 and 6 refer to special rules on splitting or merging

⁵¹ Disclaimer: Be aware that Cyprus has not issued a special notification pursuant to Art. 117 EPPO Regulation to the EPPO. See <https://www.eppo.europa.eu/en/documents?keywords=&category=16>. Accessed 15 December 2023.

⁵² See Brodowski, in Herrfeld et al. 2020, Art. 21 EPPO Regulation, pp. 138–144 on the telos of IPR.

cases on Cypriot territory if different regional offices have initiated an investigation in similar cases.

(1) The Union standards (Art. 24 Para 6 et seq. EPPO Regulation)

- 44** For the EPPO to be competent, the requirements of the Regulation must be met. 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. The IRP rules state the following:

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

1. The verification for the purpose of initiating an investigation shall assess whether:
 - a) the reported conduct constitutes a criminal offence falling under the material, territorial, personal and temporal competence of the EPPO;
 - b) *there are reasonable grounds under the applicable national law* to believe that an offence is being or has been committed;
 - c) there are obvious legal grounds that bar prosecution;
 - d) where applicable, the conditions prescribed by Article 25(2), (3) and (4) of the Regulation are met.
2. The verification for the purpose of evocation shall additionally assess:
 - a) the maturity of the investigation;
 - b) the relevance of the investigation with regard to ensuring the coherence of the EPPO's investigation and prosecution policy;
 - c) the cross-border aspects of the investigation;
 - d) the existence of any other specific reason, which suggests that the EPPO is better placed to continue the investigation.
3. The *verification shall be carried out using all sources of information available* to the EPPO as well as any sources *available to the European Delegated Prosecutor, in 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.

The requirements of Art. 25 para. 2 and 3 must be observed but the EDPs can still initiate an investigation “without prejudice to the rules set out in Article 25(2) and (3)”. 45

The provisions, jurisdiction (e.g. territory), thresholds i.e. Art. 34 para 3-“€-numbers” (below 100.000 the Permanent Chamber may refer the case to MS) of the Regulation and orders of the Luxembourg Chamber must exist for the exercise of competence. 46

Article 22 Material competence of the EPPO

PIF Implementation (see below → II. (1)).

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 47

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

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 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 48

information that could establish an initial suspicion for a PIF offence depends on the suspected concrete offence. Two sources can **help to understand the transfer of information**: Notification of the Government from 2021 by virtue of Art. 117 EPPO Regulation⁵³.

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

- 49 If several countries are concerned, the country with the focus of the criminal activity will lead the investigations. The Internal Rules of Procedure apply in addition.

(3) Jurisdiction of the European Delegated Prosecutor

- 50 The Jurisdiction of the Cypriot EDP encompasses the whole territory of Cyprus, which belongs to the EU. The regional office is in Nicosia.

bb. How to assess and verify the suspicion level according to Art. 26 Para 1 and the CPC for a criminal offense falling within the competence of the EPPO

- 51 The initial suspicion is only to determine the impetus, the ball that gets the criminal proceedings rolling if saying it by using a metaphor.
- 52 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 the *Cypriot PIF Implementation Law*, is addressed by Union law and the communication with the national authorities and Art. 40 Para 3 IRP [2020.003 EPPO]. Next to this the EDPs need to follow the **Operational Guidelines on Investigation, Evocation Policy and Referral of Cases**.⁵⁴

The PIF offences will now be presented with their full references, texts and objectives.

⁵³ 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.

⁵⁴ See Decision of 21/04/2021 Adopting Operational Guidelines, Amended by Decision 007/2022 of 07/02/2022 and by Decision 026/2022 of 29/06/2022 of the College of the EPPO. These guidelines outline the criteria for linked offences, EPPO's sources of criminal reports, competence, conflict resolution, investigation priorities, and cross-border investigations. The guidelines emphasize the need for coherence in prosecution policy and effective combat against crimes impacting the EU's financial interests and reputation.

(1) The PIF offences in Cyprus – the Fraud Laws constituting the Material Scope*Sources and national sections 1: PIF Offences in Cyprus*

CC fraud offences	Cyprus Implementation Act for the PIF Directive.	Tax and Customs (Decree/Code) offences
<ul style="list-style-type: none"> •PART III OFFENSES AGAINST THE EXERCISE OF LEGAL AUTHORITY •Tithing and Abuse of Power •100. Tithing of a public official •101. Secondment by public officer •102. Gift giving as a show of favour by a public official •103. Officials charged with the management of property of a special nature or with special duties •104. False claims by public officers •105. Abuse of power •105A. Influencing competent authority •Various Criminal Offenses against the Public Authority •133. Fraud and abuse of trust by a public official •134. Neglect of official duty •135. Breach of official secret and disclosure of state secret •False Representations •297. Definition of false representations •298. Securing goods by false representations •299. Securing execution of deed by false representations •300. Fraud •300A. Pyramid promotion scheme •301. Securing credit, etc. by false representations •302. Conspiracy to embezzle •313. False accounts for the purpose of embezzlement •314. False accounts by public officers 	<ul style="list-style-type: none"> •For the provisions from the Implementation Law see below: Next section. 	<ul style="list-style-type: none"> •PART VIII FORGERY, COIN COPYING, FORGERY, SIMILAR CRIMINAL OFFENSES AND FORGERY •Definitions •331. Definition of forgery •332. Document •333. Preparation of forged document •334. Intent to stalk •Penalty of Forgery •335. General penalty of forgery •336. Imprisonment for life •337. Imprisonment of ten years •338. Imprisonment of seven years •339. To put into circulation forged documents •340. To put into circulation canceled or in any other way invalid documents •341. To cause the execution of a document by false representations •Ο περί της Διεθνούς Σύμβασης για Αμοιβαία Διοικητική Συνδρομή για την Πρόληψη, Διερεύνηση και Καταστολή Τελωνειακών Αδικημάτων (Κυρωτικός) Νόμος του 2002 (Ν. 2(III)/2002)/The International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Suppression of Customs Offenses

(a) PIF Acquis Provisions from the Cypriot Criminal Code

53

Definition of false representations

297.⁵⁵ A false representation is any representation of fact, past or present, made by word, document or conduct, which is false in fact and which the person making the representation knows to be false or does not believe to be true.

Securing goods by misrepresentation

298.⁵⁶ (1) Whoever, by any false representation and with the purpose of extortion, acquires from another anything that may be the object of theft, or is the object of theft, or incites another to deliver such thing to any person, is guilty of a felony and is subject to five years imprisonment.

(2) Whoever attempts to commit the offense set forth in subsection (1) of this section is guilty of a felony and is liable to imprisonment for five years.

Securing the execution of a document under false pretences

299.⁵⁷ Whoever, by any false representation and with the intention of inciting, incites another to execute, issue, accept, endorse, alter or destroy the whole or part of a security or to write, impress or affix a name or seal on paper or parchment, with the intention as thereafter becomes or is converted into a security or suffers the use or treatment of a security, is guilty of a felony and liable to imprisonment for five years.

Fraud

300. Whoever, by fraudulent trick or contrivance, obtains from another anything which may be the object of theft, or induces another to deliver to any person money or goods, or a sum of money greater than that which would be paid, or a quantity of goods greater

⁵⁵ Ορισμός ψευδών παραστάσεων

297. Ψευδής παράσταση είναι οποιαδήποτε παράσταση γεγονότος, παρελθόντος ή παρόντος, που γίνεται με λόγια, με έγγραφο ή με συμπεριφορά, η οποία είναι ψευδής στην πραγματικότητα και την οποία εκείνος που παριστάνει γνωρίζει ότι είναι ψευδής ή δεν πιστεύει ότι είναι αληθινή.

⁵⁶ Εξασφάλιση αγαθών με ψευδείς παραστάσεις

298. (1) Όποιος με οποιαδήποτε ψευδή παράσταση και με σκοπό καταδολίευσης, αποκτά από άλλο οτιδήποτε που δύναται να αποτελέσει αντικείμενο κλοπής, ή αποτελέσει αντικείμενο κλοπής, ή υποκινεί άλλο να παραδώσει σε οποιοδήποτε πρόσωπο τέτοιο πράγμα, είναι ένοχος κακούργηματος και υπόκειται σε φυλάκιση πέντε χρόνων.

(2) Όποιος αποπειράται να διαπράξει το αδίκημα που ορίζεται στο εδάφιο (1) του παρόντος άρθρου είναι ένοχος κακούργηματος και υπόκειται σε φυλάκιση πέντε χρόνων.

⁵⁷ Εξασφάλιση εκτέλεσης αξιογράφου με ψευδείς παραστάσεις

299. Όποιος, με οποιαδήποτε ψευδή παράσταση και με σκοπό καταδολίευσης, υποκινεί άλλο να εκτελέσει, εκδώσει, αποδεχτεί, οπισθογραφήσει, μεταβάλει ή καταστρέψει ολόκληρο ή μέρος, αξιόγραφο ή να γράψει, αποτυπώσει ή να επιθέσει όνομα ή σφραγίδα σε χαρτί ή περιγαμινή, με σκοπό όπως μετά από αυτό να καταστεί αυτό ή να μετατραπεί σε αξιόγραφο ή να τύχει της χρήσης ή της μεταχείρισης αξιογράφου, είναι ένοχος κακούργηματος και υπόκειται σε φυλάκιση πέντε χρόνων.

than that which would be surrendered but for such trick or contrivance, is guilty of a felony and liable to imprisonment for five years.

The following provisions from the Cypriot Criminal Code might apply in addition and in combination with the material offences cited above and they must be read as an interpretation of Art. 5 PIF Directive 2017/1731⁵⁸:

54

Chapter 154 Criminal Code of Cyprus

55

Participation in Offenses

Authors

20.⁵⁹ When a criminal offense is committed, each of the following shall be deemed to have participated in the commission and shall be deemed to be guilty thereof and may be prosecuted as an accessory under the following:

- (a) the person who actually carries out the act or omission, which constitutes the criminal offence
- (b) one who commits or omits to commit something with a view to enabling another to commit a criminal offense or to assist another in the commission of such an offense
- (c) one who aids or abets another in the commission of a criminal offence
- (d) one who advises or instigates another to commit a criminal offence.

In the fourth case, the culprit may be prosecuted either as the perpetrator of the criminal offense or for the criminal offense of advising or promoting the commission of such an offence.

A conviction for the offense of counseling or aiding and abetting the commission of a criminal offense carries the same consequences in all respects as a conviction for the commission of such an offence.

⁵⁸ See Naziris 2023, pp. 7-8 et seq.

⁵⁹ Αυτουργοί

20. Όταν διαπράττεται ποινικό αδίκημα, καθένας από τους ακόλουθους θεωρείται ότι συμμετέσχε στη διάπραξη και θεωρείται ότι είναι ένοχος για αυτό και δύναται να διωχτεί ως αυτουργός σύμφωνα με τα ακόλουθα:

- (α) εκείνος που διενεργεί πράγματι την πράξη ή παράλειψη, η οποία συνιστά το ποινικό αδίκημα
- (β) εκείνος που διαπράττει ή παραλείπει να διαπράξει κάτι με σκοπό να καταστήσει δυνατή τη διάπραξη ποινικού αδικήματος από άλλο ή να παρέχει βοήθεια για τη διάπραξη τέτοιου αδικήματος από άλλον
- (γ) εκείνος που παρέχει βοήθεια σε άλλον ή που παρακινεί αυτόν κατά τη διάπραξη ποινικού αδικήματος
- (δ) εκείνος που συμβουλεύει ή που προάγει άλλον για διάπραξη ποινικού αδικήματος.

Στην τέταρτη περίπτωση ο υπαίτιος δύναται να διωχτεί είτε ως αυτουργός του ποινικού αδικήματος είτε σε ποινικό αδίκημα της παροχής συμβουλής ή της προαγωγής για διάπραξη τέτοιου αδικήματος.

Καταδίκη για το αδίκημα της παροχής συμβουλής ή της προαγωγής για διάπραξη ποινικού αδικήματος, συνεπάγει ίδιες συνέπειες από κάθε άποψη, καθώς και καταδίκη για διάπραξη τέτοιου αδικήματος.

Εκείνος που προάγει άλλο στη διενέργεια πράξης ή παράλειψης τέτοιας φύσης ώστε, αν γινόταν από τον ίδιο θα διενεργείτο από αυτό κάποιο ποινικό αδίκημα, είναι ένοχος ποινικού αδικήματος του ίδιου είδους και υπόκειται στην ίδια ποινή, όπως αν είχε διενεργήσει ο ίδιος τέτοια πράξη ή παράλειψη δύναται να διωχτεί δε όπως αν είχε διενεργήσει το ίδιος τέτοια πράξη ή παράλειψη.

A person who encourages another to commit an act or omission of such a nature that, if it were done by him, a criminal offense would be committed by him, is guilty of a criminal offense of the same kind and subject to the same penalty as if he himself had carried out such an act or omission may to be prosecuted as if he himself had carried out such act or omission.

Criminal offenses committed by accomplices in pursuit of a common purpose

21.⁶⁰ If two or more form a common intention for the joint pursuit of some illegal purpose and in the pursuit of that purpose a criminal offense is committed of such a nature that its commission was a possible consequence of the pursuit of the above purpose, each of them, is deemed to have committed the criminal offence.

Advise another to commit a criminal offence

22.⁶¹ If a person commits a criminal offense with the advice of another, it is immaterial whether the criminal offense committed is actually the same or different from that for which the advice was given, or whether it was committed in the manner indicated or in a different manner, provided that in each of the cases constituting the incidents, the criminal offense committed, is a possible consequence of the execution of the advice. In each case, the person providing the advice is deemed to have advised the other to commit the criminal offense that was actually committed.

Synergy after commission

23.⁶² Whoever knowing that another is guilty of a criminal offense gives asylum or assistance to him with a view to enabling him to escape punishment becomes an accomplice after the commission.

⁶⁰ Ποινικά αδικήματα που διαπράχθηκαν από συναυτουργούς κατά την επιδίωξη κοινού σκοπού

21. Αν δύο ή περισσότεροι διαμορφώσουν κοινή πρόθεση για την επιδίωξη από κοινού κάποιου παράνομου σκοπού και κατά την επιδίωξη του σκοπού αυτού διαπραχτεί ποινικό αδίκημα τέτοιας φύσης, ώστε η διάπραξη του να ήταν πιθανή συνέπεια της επιδίωξης του πιο πάνω σκοπού, ο κάθε ένας από αυτούς, θεωρείται ότι διέπραξε το ποινικό αδίκημα.

⁶¹ Να συμβουλεύει άλλον για διάπραξη ποινικού αδικήματος

22. Αν κάποιος διαπράξει με τη συμβουλή άλλου ποινικό αδίκημα, είναι αδιάφορο αν το ποινικό αδίκημα που διαπράχθηκε είναι πράγματι το ίδιο ή διαφορετικό από εκείνο το οποίο του εδόθηκε η συμβουλή ή αν διαπράχθηκε με τον τρόπο που υποδείχτηκε ή με διαφορετικό τρόπο, νοουμένου ότι σε κάθε μια από τις περιπτώσεις που συνιστούν τα περιστατικά, το ποινικό αδίκημα που διαπράχθηκε, είναι πιθανή συνέπεια εκτέλεσης της συμβουλής. Σε κάθε μια περίπτωση, εκείνος που παρέχει τη συμβουλή θεωρείται ότι συμβούλευσε τον άλλο για διάπραξη του ποινικού αδικήματος που πράγματι διαπράχθηκε.

⁶² Συνέργεια μετά τη διάπραξη

23. Όποιος εν γνώσει του ότι άλλος είναι ένοχος ποινικού αδικήματος παρέχει άσυλο ή βοήθεια σε αυτό με σκοπό να παράσχει σε αυτό τη δυνατότητα να διαφύγει την τιμωρία καθίσταται συνεργός μετά τη διάπραξη.

A wife does not become an accomplice after the commission of a criminal offense committed by her husband, who gives shelter or assistance thereto with a view to enabling her husband to escape punishment, nor that she gives, in the presence and with the authorization of her husband, asylum or assistance to a third party, who is guilty of a criminal offense in the commission of which her husband also participated, with a view to providing such third party with the opportunity to escape punishment the spouse does not become an accomplice after commission in connection with a criminal offense committed by his wife, who provides asylum or assistance to her with a view to enabling her to escape punishment.

Penalty for aiding and abetting after the commission of a felony

24.⁶³ An accomplice after the commission of a felony is guilty of a felony and is liable, unless otherwise provided, to imprisonment for three years.

Penalty for aiding and abetting after the commission of a misdemeanour

25.⁶⁴ An accomplice after the commission of a misdemeanour is guilty of a misdemeanour.

Attempts and crimes alike as regulated and requested by Art. 5 PIF Directive are regulated at the end of the Cypriot Criminal Code:

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PART IX ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMES

Attempts

366. Definition of attempt

367. Attempt to commit criminal offences

368. Penalty for attempting to commit certain felonies

369. Failure to prevent felony

370. Incitement to commit a criminal offence

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Η σύζυγος δεν καθίσταται συνεργός μετά τη διάπραξη συναφώς με ποινικό αδίκημα που διαπράχτηκε από το σύζυγο της, η οποία παρέχει άσυλο ή βοήθεια σε αυτό με σκοπό να παράσχει στο σύζυγο της τη δυνατότητα να διαφύγει την τιμωρία, και ούτε ότι παρέχει, με την παρουσία και με την εξουσιοδότηση του συζύγου της, άσυλο ή βοήθεια σε τρίτο, ο οποίος είναι ένοχος ποινικού αδικήματος στη διάπραξη του οποίου συμμετείχε και ο σύζυγος της, με σκοπό να παράσχει σε τέτοιο τρίτο πρόσωπο τη δυνατότητα να διαφύγει την τιμωρία ο σύζυγος δεν καθίσταται συνεργός μετά τη διάπραξη συναφώς με ποινικό αδίκημα που διαπράχτηκε από τη σύζυγο του, ο οποίος παρέχει άσυλο ή βοήθεια σε αυτή με σκοπό να παράσχει σε αυτή τη δυνατότητα να διαφύγει την τιμωρία.

⁶³ Ποινή συνέργειας μετά τη διάπραξη κακουργήματος

24. Ο συνεργός μετά τη διάπραξη κακουργήματος είναι ένοχος κακουργήματος και υπόκειται, αν δεν προνοείται κάποια άλλη ποινή σε φυλάκιση τριών χρόνων.

⁶⁴ Ποινή συνέργειας μετά τη διάπραξη πλημμελήματος

25. Ο συνεργός μετά τη διάπραξη πλημμελήματος είναι ένοχος πλημμελήματος

(b) Special Cypriot Implementation Law for Directive 2017/1371

58 Cyprus implemented the Directive with the following law:

Αριθμός 69(I) του 2020 “ΝΟΜΟΣ ΠΟΥ ΠΡΟΝΟΕΙ ΓΙΑ ΤΗΝ ΚΑΤΑΠΟΛΕΜΗΣΗ, ΜΕΣΩ ΤΟΥ ΠΟΙΝΙΚΟΥ ΔΙΚΑΙΟΥ, ΤΗΣ ΑΠΑΤΗΣ ΕΙΣ ΒΑΡΟΣ ΤΩΝ ΟΙΚΟΝΟΜΙΚΩΝ ΣΥΜΦΕΡΟΝΤΩΝ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ.”

Translation: Number 69 (I) of 2020 “Law providing to Fight, through criminal law, fraud at the expense of the economic interests of the European Union” Art. 14 of this new law repeals the old law that related to the PIF Convention.”

59 The following synopsis presents the official text of the transposition Cypriot law and an unofficial translation:

Official Text⁶⁵	Translation (not official)
<p>E.E. Παρ. I(I) N. 69(I)/2020 Αρ. 4762, 16.6.2020 Ο περί της Καταπολέμησης, μέσω του Ποινικού Δικαίου, της Απάτης εις Βάρος των Οικονομικών Συμφερόντων της Ευρωπαϊκής Ένωσης Νόμος του 2020 εκδίδεται με δημοσίευση στην Επίσημη Εφημερίδα της Κυπριακής Δημοκρατίας σύμφωνα με το Άρθρο 52 του Συντάγματος. Αριθμός 69(I) του 2020 ΝΟΜΟΣ ΠΟΥ ΠΡΟΝΟΕΙ ΓΙΑ ΤΗΝ ΚΑΤΑΠΟΛΕΜΗΣΗ, ΜΕΣΩ ΤΟΥ ΠΟΙΝΙΚΟΥ ΔΙΚΑΙΟΥ, ΤΗΣ ΑΠΑΤΗΣ ΕΙΣ ΒΑΡΟΣ ΤΩΝ ΟΙΚΟΝΟΜΙΚΩΝ ΣΥΜΦΕΡΟΝΤΩΝ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ</p>	<p>I. (I) Law 69 (I) / 2020 No. 4762, June 16, 2020 On the criminal fight against financial fraud detrimental to the European Union’s Interests</p> <p>The Act will be published in the Official Journal of the European Union Republic of Cyprus under Article 52 of the Constitution. Number 69 (I) from 2020 LAW COMBATING BY CRIMINAL LAW, FRAUD AT COST OF THE ECONOMIC INTERESTS OF THE EUROPEAN UNION</p>
<p>Προοίμιο. Για σκοπούς εναρμόνισης με την πράξη της Ευρωπαϊκής Ένωσης με τίτλο Επίσημη Εφημερίδα της</p>	<p>Preamble. Authorized for the purpose of harmonization with EU law</p>

⁶⁵ Cf. for the original here: http://www.cylaw.org/nomoi/arith/2020_1_069.pdf and here: http://www.cylaw.org/nomoi/indexes/2020_1_69.html. See Naziris 2023, pp. 8–18.

E.E.: L198, 28.7.2017, σ.29. “Οδηγία 2017/1371/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 5ης Ιουλίου 2017, σχετικά με την καταπολέμηση, μέσω του ποινικού δικαίου, της απάτης εις βάρος των οικονομικών συμφερόντων της Ένωσης“, Η Βουλή των Αντιπροσώπων ψηφίζει ως ακολούθως:

Συνοπτικός τίτλος.

1. Ο παρών Νόμος θα αναφέρεται ως ο περί της Καταπολέμησης, μέσω του Ποινικού Δικαίου, της Απάτης εις Βάρος των Οικονομικών Συμφερόντων της Ευρωπαϊκής Ένωσης Νόμος του 2020.

Ερμηνεία. Επίσημη Εφημερίδα της ΕΕ: L 56, 4.3.1968, σ.1.

2. Στον παρόντα Νόμο, εκτός εάν από το κείμενο προκύπτει διαφορετική έννοια – “απάτη“ έχει την έννοια που αποδίδεται στον όρο αυτό από το άρθρο 4· “δημόσιος λειτουργός“ σημαίνει: (α) τον υπάλληλο της Ευρωπαϊκής Ένωσης ή τον κρατικό υπάλληλο, περιλαμβανομένου κάθε κρατικού υπαλλήλου άλλου κράτους μέλους και κάθε κρατικού υπαλλήλου τρίτης χώρας· (β) κάθε άλλο πρόσωπο στο οποίο έχει ανατεθεί και το οποίο ασκεί δημόσιο λειτούργημα στο οποίο περιλαμβάνεται η διαχείριση των οικονομικών συμφερόντων της Ευρωπαϊκή

Official newspaper I.: L198, 28.7.2017, S.29. “Directive 2017/1371 / EU of the European Parliament and of the Council of 5th July 2017, to combat, through criminal law, financial fraud affecting the European Union’s interests “

Summary

Title.

1. This law is referred to as the Law on Combating, through the Criminal Law, fraud against the financial interests of Union from 2020.

Interpretation and Definitions Official Journal of the EU: L 56, 4.3.1968, σ.1.

2. In this law, unless the text indicates a different meaning – “Fraud“ has the meaning set out in Article 4. “Official“ means:

a) an official of the European Union or an official, including an official an official from another Member State and an official from a third country;
 (b) any other person to whom he has been entrusted and who holds public office. This includes the management of European financial interests Union in the Member States or in third countries or to take decisions on such matters Interests - “Criminal Organization” means an Organization that has been set up and structured for a certain period of time or an

Ένωσης στα κράτη μέλη ή σε τρίτες χώρες ή η λήψη αποφάσεων αναφορικά με τα εν λόγω συμφέροντα·

“εγκληματική οργάνωση” σημαίνει την εγκαθιδρυμένη επί ένα χρονικό διάστημα και διαρθρωμένη ένωση περισσοτέρων των δύο προσώπων που δρουν από κοινού, προκειμένου να τελέσουν αξιόποινες πράξεις οι οποίες επισύρουν ποινή στερητική της ελευθερίας ή μέτρο ασφαλείας στερητικό της ελευθερίας μεγίστης διάρκειας τουλάχιστον τεσσάρων ετών, με σκοπό να προσπορισθούν, άμεσα ή έμμεσα, οικονομικό ή άλλο υλικό όφελος.

“ενεργητική δωροδοκία” σημαίνει την πράξη προσώπου που υπόσχεται, προσφέρει ή δίνει, άμεσα ή με τη μεσολάβηση τρίτου, πάσης φύσεως ωφέλημα σε δημόσιο λειτουργό, για τον ίδιο ή για τρίτο πρόσωπο, προκειμένου να ενεργήσει ή να παραλείψει να ενεργήσει σύμφωνα με τα καθήκοντά του ή κατά την άσκηση των αρμοδιοτήτων του, κατά τρόπο που ζημιώνει ή ενδέχεται να ζημιώσει τα οικονομικά συμφέροντα της Ευρωπαϊκής Ένωσης·

“κρατικός υπάλληλος” σημαίνει τον “δημόσιο λειτουργό” όπως αυτός ορίζεται στο άρθρο 4 του Ποινικού Κώδικα και περιλαμβάνει κάθε πρόσωπο που κατέχει εκτελεστικό, διοικητικό ή δικαστικό αξίωμα σε εθνικό ή τοπικό επίπεδο: Νοείται ότι, όσον αφορά

Association of more than two people acting together to perform offenses punishable by imprisonment or security measures imprisonment for a period not exceeding four years with a view to directly or indirectly offer financial or other significant benefits.

- “Active Bribery” means the act of a person who promises, offers or gives directly or through a third party, useful to an officer, to yourself for any third party to act or not act in accordance with his duties or the exercise of his powers in a way that is harmful or possible harm the financial interests of the European Union;

- “Official” within the meaning of Article 4 Criminal Code includes any person who holds an executive, administrative or judicial position Office at national or local level:

- It is understood that in relation to legal proceedings before a court in the Republic on involvement of an official from another Member State or an official from a third-party Country, the Court of the Republic applies the definition of official who included in this law;

. “Member State” means a Member State of the European Union;

- “Legal person” means any legal person with legal personality that is recognized as being those according to the relevant provisions of the laws of the Republic or according to Union law, excluding government agencies or other entities governed by public law and the public International organizations

δικαστικές διαδικασίες ενώπιον δικαστηρίου στη Δημοκρατία στις οποίες εμπλέκεται κρατικός υπάλληλος άλλου κράτους μέλους ή κρατικός υπάλληλος τρίτης χώρας, το δικαστήριο της Δημοκρατίας εφαρμόζει τον ορισμό του κρατικού υπαλλήλου που περιλαμβάνεται στον παρόντα Νόμο·

“κράτος μέλος” σημαίνει κράτος μέλος της Ευρωπαϊκής Ένωσης·

“νομικό πρόσωπο” σημαίνει κάθε οντότητα με νομική προσωπικότητα η οποία αναγνωρίζεται ως τέτοια δυνάμει των σχετικών διατάξεων νόμων της Δημοκρατίας ή βάσει του ενωσιακού δικαίου, εξαιρουμένων των κρατικών υπηρεσιών ή άλλων οργανισμών δημοσίου δικαίου και των δημόσιων διεθνών οργανισμών· “οικονομικά συμφέροντα της Ευρωπαϊκής Ένωσης” σημαίνει το σύνολο των εσόδων, δαπανών και στοιχείων ενεργητικού που καλύπτονται, αποκτώνται μέσω ή οφείλονται στον προϋπολογισμό της Ευρωπαϊκής Ένωσης ή στους προϋπολογισμούς των θεσμικών και λοιπών οργάνων και οργανισμών της Ευρωπαϊκής Ένωσης, που έχουν ιδρυθεί δυνάμει των Συνθηκών της Ευρωπαϊκής Ένωσης ή στους προϋπολογισμούς των οποίων αυτά ασκούν άμεσα ή έμμεσα τη διαχείριση και εποπτεία· “παθητική δωροδοκία” σημαίνει τη πράξη δημόσιου λειτουργού ο οποίος ζητά ή λαμβάνει, άμεσα ή έμμεσα ή με τη μεσολάβηση τρίτου, για τον ίδιο ή για

- “European Union’s Financial Interests” means total income, expenditure and assets acquired under or as a result of the budget of the European Union or in the budgets of the institutions, bodies and Institutions of the European Union established in accordance with their Treaties with the European Union or in whose households they directly or indirectly manage and/or supervise;

- “Passive Bribery” means the act of an officer who requests or receives directly, indirectly or through the mediation of a third party for themselves, or for a third party of any kind, benefits or promises of such a benefit, in terms of an act or omission, in accordance with its duties or in the exercise of its powers, in a way which harms or is likely to harm the European Union’s financial interests;

- “EU Official” means a person [Official newspaper I.: L 56, March 4th, 1968, S.1.] who

- (a) is an employee or member of any other personnel contractually hired by the European Union in terms of its personnel rules officials and the regulations that apply to other European employees

- Union Regulation (EEC, Euratom, ECSC) No. 259/68 as amended or replaced.

- b) are seconded to the European Union by a Member State or a public or private body and performs tasks similar to civil servants or other staff of the Union:

Without prejudice to the provisions on privileges and immunities, of course in

τρίτο πρόσωπο, πάσης φύσεως
 ωφελήματα ή δέχεται υπόσχεση τέτοιου
 ωφελήματος, προκειμένου να ενεργήσει,
 ή να παραλείψει να ενεργήσει σύμφωνα
 με τα καθήκοντά του ή κατά την άσκηση
 των αρμοδιοτήτων του, κατά τρόπο που
 ζημιώνει ή ενδέχεται να ζημιώσει τα
 οικονομικά συμφέροντα της Ευρωπαϊκής
 Ένωσης· “υπάλληλος της Ευρωπαϊκής
 Ένωσης” σημαίνει πρόσωπο που
 (α) είναι υπάλληλος ή μέλος του λοιπού
 προσωπικού που προσλαμβάνεται με
 σύμβαση από την Ευρωπαϊκή Ένωση,
 κατά την έννοια του Κανονισμού
 υπηρεσιακής κατάστασης των
 υπαλλήλων και του καθεστώτος που
 εφαρμόζεται στο λοιπό προσωπικό της
 Ευρωπαϊκής Ένωσης που θεσπίζεται
 στον Κανονισμό (ΕΟΚ, Ευρατόμ,
 ΕΚΑΧ) αριθ. 259/68 του Συμβουλίου,
 όπως αυτός εκάστοτε τροποποιείται ή
 αντικαθίσταται. ή
 (β) που αποσπάται στην Ευρωπαϊκή
 Ένωση από κράτος μέλος ή από δημόσιο
 ή ιδιωτικό φορέα και ασκεί καθήκοντα
 αντίστοιχα με εκείνα που ασκούν οι
 υπάλληλοι ή το λοιπό προσωπικό
 της Ένωσης: Νοείται ότι, με την
 επιφύλαξη των διατάξεων αναφορικά με
 τα προνόμια και τις ασυλίες που
 περιέχονται στα Πρωτόκολλα αριθ. 3 και
 αριθ. 7 των Συνθηκών της Ευρωπαϊκής
 Ένωσης, τα μέλη των θεσμικών και
 λοιπών οργάνων και οργανισμών της
 Ευρωπαϊκής Ένωσης που
 δημιουργούνται δυνάμει των Συνθηκών
 αυτών, καθώς και το προσωπικό αυτών
 των οργάνων, εξομοιώνονται με τους

Protocols No. 3 and no. 7 of the Euro-
 pean Treaties Union, the members of the
 institutions and bodies of the European
 Union Association and employees cre-
 ated under these contracts. These bodies
 are treated as officials of the European
 Union, provided. The personnel regula-
 tions mentioned in paragraph (a) do not
 apply.

- “Misappropriation” means the act of an
 official who, directly or indirectly, who
 uses or misdirects assets contrary to the
 purpose of said assets in a way which is
 designed to harm the financial interests
 of the European Union.

υπαλλήλους της Ευρωπαϊκής Ένωσης, εφόσον ο αναφερόμενος στην παράγραφο (α) Κανονισμός υπηρεσιακής κατάστασης δεν ισχύει γι' αυτούς· “υπεξαίρεση“ σημαίνει την πράξη δημόσιου λειτουργού στον οποίο έχει ανατεθεί, άμεσα ή έμμεσα, η διαχείριση πόρων ή στοιχείων ενεργητικού, κατά την οποία δεσμεύει ή εκταμιεύει πόρους ή ιδιοποιείται ή χρησιμοποιεί στοιχεία ενεργητικού σε αντίθεση με το σκοπό για τον οποίο αυτά πρ

Σκοπός και πεδίο εφαρμογής του παρόντος Νόμου.

3. (1) Ο παρών Νόμος θεσπίζει κανόνες σχετικά με τον ορισμό των ποινικών αδικημάτων και κυρώσεων όσον αφορά την καταπολέμηση της απάτης και άλλων παράνομων δραστηριοτήτων εις βάρος των οικονομικών συμφερόντων της Ευρωπαϊκής Ένωσης, με σκοπό την ενίσχυση της προστασίας κατά των ποινικών αδικημάτων που θίγουν τα εν λόγω οικονομικά συμφέροντα, σύμφωνα με το κεκτημένο της Ευρωπαϊκής Ένωσης σε αυτόν τον τομέα.

(2) Αναφορικά με τα έσοδα που προκύπτουν από τους ιδίους πόρους ΦΠΑ, ο παρών Νόμος εφαρμόζεται μόνο στα σοβαρά αδικήματα κατά του κοινού συστήματος ΦΠΑ και τα αδικήματα αυτά θεωρούνται σοβαρά όταν οι εκούσιες ενέργειες ή παραλείψεις που ορίζονται στην

Purpose and scope of application of the present Law.

3. (1) This law establishes rules for the definition of criminal offenses and sanctions to combat fraud and other illegal activities against the financial interests of the European Union and to strengthen the protection against criminal offenses affecting these financial interests, in line with the European Union acquis in this area.

(2) This Act applies to income from VAT resources and applies only to serious violations of the common VAT system. These are taken seriously when the voluntary actions or omissions are set out in Article 4 (d) is related to the territory of two or more Member States and contain a total loss of at least ten million euros (10,000,000 euros).

παράγραφο (δ) του άρθρου 4, συνδέονται με το έδαφος δύο ή περισσότερων κρατών μ

Απάτη.

4. Πρόσωπο διαπράττει απάτη εις βάρος των οικονομικών συμφερόντων της Ευρωπαϊκή Ένωσης και είναι ένοχο ποινικού αδικήματος, όταν εκ προθέσεως:

(α) Σε σχέση με τις δαπάνες που δεν σχετίζονται με δημόσιες συμβάσεις, ενεργεί ή παραλείπει να ενεργήσει σχετικά με-

(i) τη χρήση ή την υποβολή ψευδών, ανακριβών ή ελλιπών δηλώσεων ή εγγράφων, με αποτέλεσμα την υπεξαίρεση ή την εσφαλμένη παρακράτηση πόρων ή στοιχείων ενεργητικού που προέρχονται από τον προϋπολογισμό της Ευρωπαϊκή Εή από προϋπολογισμούς των οποίων η διαχείριση ασκείται από την Ευρωπαϊκή Ένωση ή για λογαριασμό της, ή

(ii) την αποσιώπηση πληροφοριών κατά παράβαση ειδικής υποχρέωσης με τα ίδια ως ανωτέρω αποτελέσματα, ή

(iii) την κατάχρηση αυτών των πόρων ή στοιχείων ενεργητικού, για σκοπούς άλλους από αυτούς για τους οποίους χορηγήθηκαν αρχικώς,

(β) σε σχέση με δαπάνες που σχετίζονται με δημόσιες συμβάσεις, ενεργεί ή παραλείπει να ενεργήσει, τουλάχιστον όταν η ενέργεια ή η παράλειψη διαπράττεται με σκοπό την απόκομιση παράνομου περιουσιακού

Fraud.

4. A person commits fraud against the financial interests of the European Union and is guilty of a criminal offense if they deliberately:

(a) in relation to acts and omissions in relation to expenses not related to public contracts.

(i) the use or transmission of false, inaccurate or incomplete statements or documents; which leads to the embezzlement or misappropriation of resources or European Union budget assets or from budgets managed by the European Union or on its behalf or

(ii) the concealment of information that violates a specific obligation as above, or

(iii) the misuse of these resources or assets for any other purpose from those for whom they were originally granted,

(b) acts or neglects in relation to public procurement expenses act, at least if the act or omission is committed for the purpose of obtaining an illegal property advantage for the perpetrator or anyone

οφέλους για τον δράστη ή άλλον, ζημιώνοντας τα οικονομικά συμφέροντα της Ευρωπαϊκής Ένωσης, σχετικά με-

(i) τη χρήση ή την υποβολή ψευδών, ανακριβών ή ελλιπών δηλώσεων ή εγγράφων, με αποτέλεσμα την υπεξαίρεση ή την εσφαλμένη παρακράτηση πόρων ή στοιχείων ενεργητικού που προέρχονται από τον προϋπολογισμό της Ένωσης ή από προϋπολογισμούς των οποίων η διαχείριση ασκείται από την Ένωση ή για λογαριασμό της· ή

(ii) την αποσιώπηση πληροφοριών κατά παράβαση ειδικής υποχρέωσης, με τα ίδια ως ανωτέρω αποτελέσματα· ή

(iii) την κατάχρηση αυτών των πόρων ή στοιχείων ενεργητικού, για σκοπούς άλλους από αυτούς για τους οποίους χορηγήθηκαν αρχικώς, η οποία ζημιώνει τα οικονομικά συμφέροντα της Ευρωπαϊκής Ένωσης,

(γ) σε σχέση με έσοδα, εκτός από αυτά που προκύπτουν από τους ιδίους πόρους ΦΠΑ όπως αναφέρονται στην παράγραφο (δ), ενεργεί εκ προθέσεως ή παραλείπει να ενεργήσει σχετικά με τη-

(i) τη χρήση ή την υποβολή ψευδών, ανακριβών ή ελλιπών δηλώσεων ή εγγράφων, με αποτέλεσμα την παράνομη μείωση των πόρων του προϋπολογισμού της Ευρωπαϊκής Ένωσης ή των προϋπολογισμών των οποίων η διαχείριση ασκείται από την Ευρωπαϊκή Ένωση ή για λογαριασμό της· ή

else who harms the financial interests of the European Union,

(i) the use or transmission of false, inaccurate or incomplete statements or documents; which leads to the embezzlement or misappropriation of resources or assets from the Union budget or from households managed by the Union or from their account or

(ii) the obfuscation of information in violation of a particular obligation with the same as above results or (iii) the misuse of these resources or assets, in a way harmful to the financial interests of the European Union, for any purpose other than those purposes for which they were originally granted,

(c) in relation to income, other than their own VAT sources, acts intentionally or does not act in accordance with paragraph (d) act on the;

(i) use or transmission of false, inaccurate or incomplete statements or documents; which leads to an illegal reduction in its budget European Union or Managed Households by or on behalf of the European Union;

(ii) την αποσιώπηση πληροφοριών κατά παράβαση ειδικής υποχρέωσης, με τα ίδια ως ανωτέρω αποτελέσματα ή
(iii) την κατάχρηση ενός νομίμως αποκτηθέντος ευεργετήματος, με τα ίδια αποτελέσματα,

(δ) σε σχέση με έσοδα που προκύπτουν από τους ίδιους πόρους ΦΠΑ, ενεργεί ή παραλείπει να ενεργήσει σε διάπραξη διασυνοριακών πρακτικών εξαπάτησης σχετικά με-

(i) τη χρήση ή την υποβολή ψευδών, ανακριβών ή ελλιπών δηλώσεων ή εγγράφων που σχετίζονται με τον ΦΠΑ, με αποτέλεσμα τη μείωση των πόρων του προϋπολογισμού της Ευρωπαϊκής Ένωσης ή

(ii) την απόκρυψη πληροφοριών που συνδέονται με τον ΦΠΑ, κατά παράβαση ειδικής υποχρέωσης, με τα ίδια ως ανωτέρω αποτελέσματα. ή
(iii) την ορθή παρουσίαση των δηλώσεων ΦΠΑ για τους σκοπούς της δόλιας συγκάλυψης της μη καταβολής ή

Ενεργητική και παθητική δωροδοκία.

5. (1) Πρόσωπο που εκ προθέσεως διαπράττει ενεργητική ή παθητική δωροδοκία είναι ένοχο ποινικού αδικήματος.

(2) Ανεξαρτήτως των διατάξεων του εδαφίου (2) του άρθρου 135 του Ποινικού Κώδικα, δημόσιος λειτουργός ο οποίος υπεξαιρεί εκ προθέσεως, είναι ένοχος ποινικού αδικήματος.

(ii) obfuscation of information in violation of a particular obligation with the same results as above or

(iii) abuse of a legally acquired service by oneself results,

(d) in relation to VAT own resource receipts, acts or omissions act in cross-border fraudulent practices

(i) the use or transmission of false, inaccurate or incomplete statements or documents related to VAT, which leads to a reduction in resources European Union budget or

(ii) obfuscation of VAT-related information in violation of a specific commitment, with the same results as above,

(iii) correct presentation of the VAT return for fraudulent purposes Concealment of non-payment or illegal acquisition / creation VAT refund rights.

Active and Passive Corruption.

5. (1) A person who intentionally commits active or passive bribery is guilty of a punishable act.

(2) Without prejudice to the provisions of Article 135, paragraph 2, of the Criminal Code, an officer who intentionally embezzled is guilty of a crime.

Υποκίνηση, υποβοήθηση, συνέργεια και απόπειρα.

6. (1) Πρόσωπο το οποίο υποκινεί, υποβοηθεί ή συνεργάζεται με οποιοδήποτε άλλο πρόσωπο για τη διάπραξη των αδικημάτων που αναφέρονται στα άρθρα 4 και 5 είναι ένοχο ποινικού αδικήματος και, σε περίπτωση καταδίκης του, υπόκειται στην ίδια ποινή φυλάκισης που επισύρουν τα εν λόγω αδικήματα για τον αυτουργό.

(2) Πρόσωπο που αποπειράται να διαπράξει τα αδικήματα που αναφέρονται στα άρθρα 4 και 5 είναι ένοχο ποινικού αδικήματος και, σε περίπτωση καταδίκης του, υπόκειται στην ίδια ποινή φυλάκισης που επισύρουν τα εν λόγω αδικήματα για τον αυτουργό.

Ευθύνη νομικών προσώπων.

7. (1) Νομικό πρόσωπο είναι ένοχο για τη διάπραξη ποινικού αδικήματος που προβλέπεται στα άρθρα 4, 5 και 6 σε περίπτωση που το αδίκημα διαπράττεται προς όφελος του νομικού προσώπου από οποιοδήποτε πρόσωπο το οποίο ενεργεί είτε ατομικά, είτε ως μέλος οργάνου του νομικού αυτού προσώπου και το οποίο κατέχει στο νομικό αυτό πρόσωπο ιθύνουσα θέση, υπό την ιδιότητα-

(α) Εντολοδόχου εκπροσώπησης του νομικού προσώπου· ή

(β) πληρεξουσίου λήψης αποφάσεων εξ ονόματος του νομικού προσώπου· ή

Incitement, aiding and abetting, and attempt.

6. (1) A person who motivates, supports or works with another person in relation to the commission of an offense in terms of Articles 4 and 5, if convicted, will be given the same sentence as they receive these offenses for the perpetrator.

(2) A person who attempts to commit the offenses referred to in Articles 4 and 5 is guilty of a crime and, if convicted, is subject to the same penalty imprisonment for these crimes as the perpetrator.

Responsibility of legal Persons.

7. (1) A legal person is guilty of having committed an intended criminal offense under Articles 4, 5 and 6 in the event that the offense is committed in favour of the legal person by any person who acts either individually or as a member of their body. This legal person, and whomsoever holds a leading position in that legal person is,

(a) a representative of the legal person or

(b) someone with power of attorney to make decisions on behalf of the legal person, or

(γ) πληρεξουσίου άσκησης ελέγχου εντός του νομικού προσώπου.

(2) Νομικό πρόσωπο είναι ένοχο για τη διάπραξη ποινικού αδικήματος που προβλέπεται στα άρθρα 4, 5 και 6, σε περίπτωση που η έλλειψη εποπτείας ή ελέγχου από το πρόσωπο που καθορίζεται στο εδάφιο (1) έχει καταστήσει δυνατή τη διάπραξη του εν λόγω αδικήματος από πρόσωπο το οποίο τελεί υπό την εξουσία του προσώπου που καθορίζεται στο εδάφιο (1) προς όφελος του νομικού προσώπου.

(3) Άνευ επηρεασμού των διατάξεων των εδαφίων (1) και (2), η ευθύνη του νομικού προσώπου δεν αποκλείει την άσκηση ποινικής δίωξης εναντίον των φυσικών προσώπων που διαπράττουν τα αδικήματα που προβλέπονται στα άρθρα 4, 5 και 6 ή/και των προσώπων που συμμετέχουν στη διάπραξη των αδικημάτων αυτών.

Κυρώσεις για φυσικά πρόσωπα.

8. Πρόσωπο το οποίο προβαίνει στη διάπραξη οποιουδήποτε ποινικού αδικήματος που προβλέπεται στα άρθρα 4, 5 και 6 είναι ένοχο ποινικού αδικήματος και, σε περίπτωση καταδίκης του-

(α) Υπόκειται σε ποινή φυλάκισης που δεν υπερβαίνει τα επτά (7) έτη ή/και σε χρηματική ποινή που δεν υπερβαίνει τις πενήντα χιλιάδες ευρώ (€50.000) ή/και στις δύο αυτές ποινές, όταν η ζημιά ή το όφελος υπερβαίνει τις εκατό χιλιάδες ευρώ (€100.000),

(c) someone with a power of attorney that exercises control within the legal person.

(2) A legal person is guilty of an offense in Articles 4, 5 and 6 in the event of a lack of supervision or control by the person who, according to paragraph 1, made it possible to commit the offense in question through a person under the authority of the person referred to in paragraph 1 and that offense is beneficial to the legal person.

(3) Without prejudice to the provisions of paragraphs 1 and 2, liability under the law shall apply and does not exclude criminal proceedings against natural persons who commit the offenses provided for in Articles 4, 5 and 6 and/or the persons who participate in the commission of these crimes.

Sanctions for natural Persons.

8. A person who commits a crime in terms of the offenses provided for in Articles 4, 5 and 6 can be punished, and if convicted, by

(a) subject to a maximum prison sentence of seven (7) years and/or a fine of a maximum of 50.000 euros if the loss or benefit exceeds one hundred thousand euros (€ 100,000),

(β) υπόκειται σε ποινή φυλάκισης που δεν υπερβαίνει τα τέσσερα (4) έτη ή/και σε χρηματική ποινή που δεν υπερβαίνει τις τριάντα χιλιάδες ευρώ (€30.000) ή και στις δύο αυτές ποινές, όταν η ζημιά ή το όφελος υπερβαίνει τις δέκα χιλιάδες ευρώ (€10.000), αλλά δεν είναι μεγαλύτερα από τις εκατό χιλιάδες ευρώ (€100.000),

(γ) υπόκειται σε χρηματική ποινή που δεν υπερβαίνει τις δέκα χιλιάδες ευρώ (€10.000) όταν η ζημιά ή το όφελος είναι μικρότερα από τις δέκα χιλιάδες ευρώ (€10.000).

Άσκηση πειθαρχικής εξουσίας.

9. Η ποινική δίωξη δυνάμει των διατάξεων των άρθρων 4, 5 και 6

Κυρώσεις για νομικά πρόσωπα.

10. (1) Νομικό πρόσωπο το οποίο καταδικάζεται για τη διάπραξη οποιουδήποτε αδικήματος που προβλέπεται στα άρθρα 4, 5 και 6 υπόκειται σε χρηματική ποινή που δεν υπερβαίνει τις πεντακόσιες χιλιάδες ευρώ (€500.000).

(2) Το δικαστήριο δύναται επιπρόσθετα από οποιαδήποτε άλλη ποινή να διατάξει:

- (α) Την προσωρινή ή οριστική απαγόρευση της άσκησης εμπορικής δραστηριότητας,
- (β) δικαστική εκκαθάριση, και

(b) can be punished with a maximum imprisonment of four (4) years and/or a fine a fine not exceeding thirty thousand euros or both; if the loss or gain exceeds ten thousand euros, but it is not more than one hundred thousand euros (€ 100,000 euros),

(c) is fined a maximum of ten thousand euros if the loss or benefit is less than ten thousand euros.

Exercising disciplinary Power.

9. Prosecution according to the provisions of Articles 4, 5 and 6 does not affect the exercise of disciplinary/administrative authority over a civil servant by the competent authority.

Sanctions for legal persons.

10. (1) A legal person convicted of a criminal offense according to Articles 4, 5 and 6, a maximum fine can be imposed of five hundred thousand euros.

(2) In addition to any other judgment, the court may order the following:

- (a) the temporary or permanent ban on business activity;
- (b) the liquidation and

(γ) το προσωρινό ή το οριστικό κλείσιμο των εγκαταστάσεων που χρησιμοποιήθηκαν για τη διάπραξη του αδικήματος.

73(I) του 2016. Επίσημη Εφημερίδα, Παράρτημα Τρίτο (I) 23.4.2016.

(3) Νομικό πρόσωπο το οποίο καταδικάζεται για τη διάπραξη οποιουδήποτε αδικήματος που προβλέπεται στα άρθρα 4, 5 και 6, δύναται να αποκλειστεί από τη συμμετοχή του σε δημόσιους διαγωνισμούς, σύμφωνα με τις διατάξεις του περί της Ρύθμισης των Διαδικασιών Σύναψης Δημοσίων Συμβάσεων και για Συναφή Θέματα Νόμου και των περί της Διαχείρισης της Εκτέλεσης Δημοσίων Συμβάσεων και των Διαδικασιών Αποκλεισμού των Οικονομικών Φορέων από Διαδικασίες Σύναψης Δημοσίων Συμβάσεων Κανονισμών, οι οποίοι έχουν εκδοθεί δυνάμει του Νόμου αυτού.

(4) Η αρμόδια αρχή δύναται να αποφασίσει, όπως νομικό πρόσωπο το οποίο καταδικάζεται για τη διάπραξη οποιουδήποτε αδικήματος που προβλέπεται στα άρθρα 4, 5 και 6 αποκλειστεί από τη λήψη δημοσίων παροχών ή ενισχύσεων, σύμφωνα με την ισχύουσα νομοθεσία.

Επιβαρυντικές περιστάσεις.

11. Το δικαστήριο κατά την άσκηση των εξουσιών του για την επιμέτρηση και την επιβολή ποινής, λαμβάνει υπόψη ως επιβαρυντική περίσταση τη διάπραξη οποιουδήποτε ποινικού αδικήματος που

(c) the temporary or permanent closure of the undertaking

73 (I) from 2016. Official Newspaper, Annexation Third (I) April 23, 2016.

(3) A legal person convicted of a crime committed under the provisions set out in Articles 4, 5 and 6 may be excluded from their participation in the public offers in accordance with the provisions governing the award procedure for public procurement and related legal issues and enforcement management Procurement procedure and exclusion procedure for economic operators from procedure for finalizing government procurement rules issued under those rules of it.

(4) The competent authority may decide that a legal person after conviction under Articles 4, 5 and 6, may be excluded from receiving any public service or grant under applicable law.

Aggravating Circumstances.

11. The court in the exercise of its measuring and enforcement powers considers the commission of a criminal offense under Articles 4, 5 and 6 as an aggravating

προβλέπεται στα άρθρα 4, 5 και 6, στο πλαίσιο εγκληματικής οργάνωσης.

Ανάκτηση ποσών.

12. Ο παρών Νόμος δεν θίγει την ανάκτηση- (α) Σε επίπεδο Ευρωπαϊκής Ένωσης, αχρεωστήτως καταβληθέντων ποσών στο πλαίσιο της τέλεσης των ποινικών αδικημάτων, που αναφέρονται στις παραγράφους (α), (β) και (γ) του άρθρου 4 ή στο άρθρο 5 ή στο εδάφιο (1) του άρθρου 6· (β) σε εθνικό επίπεδο, μη καταβληθέντος ΦΠΑ στο πλαίσιο της τέλεσης των ποινικών αδικημάτων που αναφέρονται στο άρθρο 4, ή στο άρθρο 5 ή στο εδάφιο (1) του άρθρου 6.

Δικαιοδοσία δικαστηρίων. υπηρεσιακή του ιδιότητα.

13. (1) Χωρίς επηρεασμό των διατάξεων του άρθρου 5 του Ποινικού Κώδικα και παρά τις διατάξεις του άρθρου 6 του Ποινικού Κώδικα, τα δικαστήρια της Δημοκρατίας έχουν δικαιοδοσία να εκδικάζουν τα αδικήματα των άρθρων 4, 5 και 6 εφόσον τα αδικήματα έχουν διαπραχθεί-

(α) Εξ ολοκλήρου ή εν μέρει στη Δημοκρατία· ή
(β) από πολίτη της Δημοκρατίας· ή
(γ) από δημόσιο λειτουργό, όπως καθορίζεται στον παρόντα Νόμο.

(2) Η δικαιοδοσία του δικαστηρίου να εκδικάζει ποινικά αδικήματα δυνάμει των άρθρων 4, 5 και 6 επεκτείνεται και στις περιπτώσεις που τα ποινικά αδικήματα έχουν διαπραχθεί εκτός της Δημοκρατίας:

circumstance in the context of a criminal organization.

Restoration Amounts.

12. This law does not affect the recovery of;
(a) amounts wrongly paid at EU level – under the commission of the offenses referred to in paragraphs (a), (b) and (c) Article 4 or Article 5 or Article 6 Paragraph 1 Number 1;
(b) unpaid VAT at national level in the context of the commission of criminal offenses under Article 4 or Article 5 or Article 6 Paragraph 1 Number 1.

Jurisdiction/Courts.

13. (1) Without affecting the provisions of Article 5 of the Criminal Code and notwithstanding Article 6 of the Criminal Code, the courts of the Republic have jurisdiction to try the offenses referred to in Articles 4, 5 and 6 when the offenses have been committed; a) in whole or in part in the republic or b) by a citizen of the republic or (c) by an official within the meaning of this Act.

(2) The jurisdiction of the court to judge criminal offenses under Article 4, 5 and 6 extends to cases where offenses were committed outside of the Republic:

(α) Από πρόσωπο που έχει τη συνήθη διαμονή του στη Δημοκρατία· ή
 (β) προς όφελος νομικού προσώπου εγκατεστημένου στη Δημοκρατία· ή
 (γ) από πρόσωπο το οποίο βρίσκεται στην υπηρεσία της Δημοκρατίας και ενεργεί υπό την

**Κατάργηση. 37(III) του 2003.
 (Κυρωτικός) Νόμος του 2003
 καταργείται.**

14. Με την έναρξη της ισχύος του παρόντος Νόμου, ο περί της Σύμβασης για την Προστασία των Οικονομικών Συμφερόντων των Ευρωπαϊκών Κοινοτήτων και των Πρωτοκόλλων αυτής.

(a) by a person who has their habitual residence in the republic, or
 (b) in favour of a legal person established in the republic or
 (c) by a person who is in the service of the Republic and under its official capacity.

Abolition of the Law 37 (III) from 2003.

14. With the entry into force of this Act, the Protection Convention the financial interests of the European Communities and their protocols.
 The (ratification) law of 2003 is hereby repealed.

The Cypriot Implementation Act is a lengthy and a *quite verbatim* transposition.⁶⁶

(c) Criminal Customs Law Offences

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XIX CRIMINAL OFFENSES

89. Offenses regarding the Director, authorised officers, etc.
90. Refusal of person to appear for examination
91. Fraudulent avoidance of payment of duty or tax, etc
92. False statements
93. Illegal possession, trade in goods, etc.
94. Failure to pay duty or tax
95. Violation of provisions of the customs legislation
96. Violation of terms or restrictions of the Director's license or approval, etc
97. Failure to register in the Registry
98. Offense in relation to the obligation to keep books, records and data
99. Failure to keep accompanying declaration documents
100. Prohibitory provisions and limitations
101. Illegal transportation, concealment, loading, etc. of goods from Private temporary warehouses, etc

⁶⁶ Cf. for the same observations with regard to the Hellenic Republic and its implementation discussions Xanthaki and Vournos 2020, pp 101 (101et seq.).

102. Failure to present baggage for examination by passenger
102A. Refusal or failure to disclose information

(d) VAT Act Offences

The Cypriot VAT Act contains offences and sanctions that might apply in addition to the aforementioned sections from the Special Implementation Law and the Criminal Code:

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Administrative and criminal sanctions

45. Infringements

45A. Inaccuracies in recapitulative statements

45B. Failure to submit a recapitulative statement

46. Tax offences

46A. Special provisions for tax returns for which VAT was paid until 10 December 2013

47. Offences concerning the Superintendent, the officers, etc.

48. Criminal liability of consultants, etc.



Art. 46 shall be reproduced here for the sake of consistency:

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Tax offences

46. (1) Any person *who is engaged in fraudulent evasion of VAT* or takes steps to *fraudulently evade the payment of VAT*, whether by himself or by any other person, is guilty of a criminal offence and shall be liable to a fine of up to three times the amount of VAT due or to imprisonment for up to *three years or to both such penalties*.

(2) Any reference in subsection (1) above or subsection (6) below to non-payment of VAT includes a reference to collateral—

(a) Payment of VAT credit balance; a tax refund pursuant to section 27 30A or 42 of this Act or section 31 of the 1990 Act; a tax refund in accordance with regulations issued pursuant to Article 12D(5); or a tax refund under Article 30, and any reference in those subparagraphs to the amount of VAT shall be interpreted—in relation to the VAT itself or to a VAT credit balance, as a reference to the sum of the amount (if any) falsely claimed with an input tax deduction and the amount (if any) by which less output tax was falsely declared, and in relation to a tax refund falling under paragraphs (b), (c) or (d) above, as a reference to the amount falsely claimed with a tax refund.

(3) Any person—

(a) With the intent to defraud, produce, deliver or send for the purposes of this Law or otherwise use for those purposes any document that is untrue in an essential element; in providing any information for the purposes of this Law, make any statement which he

knows to be untrue in an essential element or recklessly make a statement which is untrue in an essential element;

is guilty of a criminal offence and is liable to a fine of up to three times the amount of VAT due or to imprisonment for up to three years or to both of these penalties.

(4) The reference in subsection 3(a) above to the production, delivery, dispatch or otherwise use of a document which is untrue in an essential element, with the intention of deception, includes a reference to the delivery, dispatch or otherwise use of such a document, with the intention of ensuring that a device will respond to the document as if it were a true document. The reference in subsections (3)(a) and (4) above to the production, delivery or dispatch of a document includes a reference to any act resulting in a document being produced, delivered or sent.

(5A) Without prejudice to the provisions of subsections (3) and (5), any person who for the purposes of this Law:

(a) produces, delivers or sends or otherwise uses any document which is untrue as to its essential element, or

(b) in providing information, make any statement which is untrue as to its essential element;

is guilty of a criminal offence and is liable to a fine of up to one thousand pounds.

(6) Where the conduct of a person during any specified period of time also results in the commission by him of one or more offences under the preceding provisions of this section, he shall, regardless of whether the elements of the offence or offences are known or not, he or she is guilty of a criminal offence and shall be liable to a fine of up to three times the amount of VAT due or to imprisonment for up to three years or to both such penalties.

(7) Any person who acquires possession of any goods or trades in any goods, or accepts the supply of any services, having reason to believe that the payment of VAT applicable to the supply of goods or services, the acquisition of goods from another Member State or the importation of goods from a place outside Member States has been or will be avoided; is guilty of a criminal offence and is liable to a fine of up to five thousand pounds or to imprisonment of up to twelve months or both.

(8) Any person who delivers goods or provides services in contravention of a condition imposed under subsection 3(2) of the Tenth Annex, is guilty of a criminal offence and shall be liable to a fine of up to five thousand pounds or to imprisonment for up to twelve months or both.

(9) Any person who fails to pay the VAT shown on his tax return as payable in respect of any period within the period provided for by Regulations issued under section 20(1) is guilty of a criminal offence and is liable to a fine of up to five thousand pounds or to imprisonment for up to twelve months or to both such penalties.

(10) Any person who fails to file a tax return for a specified tax period within the time limit provided for by Regulations issued under section 20(1) is guilty of a criminal offence and is liable to a fine of up to five thousand pounds or to imprisonment for up to twelve months or both.

(10A) Any person who fails or refuses to pay to the Registrar any amount of additional tax or pecuniary charge or interest imposed under the provisions of this Law or the Regulations issued pursuant thereto is guilty of a criminal offence and shall be liable to a fine of up to ten per cent (10%) of the amount due.

(11) Any person who fails or refuses to pay to the Registrar any amount of VAT certified in accordance with the provisions of sections 49 and 49A, within thirty days of receipt of the relevant notice, is guilty of a criminal offence and shall be liable to a fine of up to five thousand pounds or to imprisonment for up to twelve months or to both such penalties.

(11A) Any person who fails to issue a legal receipt and to deliver a legal receipt at the time of the transaction in accordance with regulations adopted pursuant to paragraph 1A(1) of the Tenth Annex is guilty of an offence and if convicted, is liable to a fine of up to one thousand seven hundred euros (€1700) or to a term of imprisonment of up to three (3) years or to both such penalties.

(11B) Any person who fails to submit to the Registrar a Recapitulative Statement under section 42C(2) is guilty of a criminal offence and is liable to a fine of up to eight hundred and fifty euros (€850).

(12) Notwithstanding the provisions of any other law, the criminal court which finds any person guilty of failing to pay to the Registrar any sum due under the provisions of this Law, including pecuniary charges and interest, shall have the power, in addition to imposing a penalty, to issue an order ordering the convicted person to pay the said amount to the Registrar.

(13) Notwithstanding the provisions of any other law, an injunction issued under subsection (12) shall be deemed to be a decision of a civil court and may be drawn up, signed and enforced as a judgment in an action in accordance with the provisions of the Civil Procedure Law.

(14) Articles 87, 88 and 121 of the Customs Code Laws of 2004 shall apply *mutatis mutandis* in relation to criminal offences provided for in this Law and any reference in those articles to duty or tax shall be interpreted as a reference to VAT, any reference to the Director shall be construed as a reference to the Registrar of VAT and the reference in section 88 to the provisions of section 89(3), (4) and (5) of the Customs Code Laws of 2004 shall be construed as a reference to section 47 of this Law.

(15) Subject to the provisions of the preceding subsections of this section, any person who refuses or omits or neglects to comply with the obligations imposed by the provisions of the Tenth Annex or any regulations or decrees issued on the basis of this Annex shall be guilty of a criminal offence and shall be liable to a fine of up to five thousand pounds (L.C. 5,000) or imprisonment for up to twelve (12) months or to both such penalties.

(16) A person who has applied, by false information, for a reduced rate to be applied for the acquisition of a dwelling in accordance with the provisions of Table C of the Fifth Annex, and has paid tax at the reduced rate, is obliged to pay the difference between the amounts of tax resulting from the application of the two rates, reduced and normal, on the value of the dwelling and is additionally guilty of a criminal offence and is liable to be sentenced to a fine which shall not exceed twice the amount which he is required to pay under this subparagraph or imprisonment for not more than three years, or both of those penalties.

(e) Money Laundering Law

63 The following provisions from the Prevention and Combating of Money Laundering Law of 2007 (188(I)/2007) last amended 2022 should be presented in full length:

64 **Certain offences**

3. This Law applies in relation to offenses listed below and which for the purposes of this Law will be called specified offences:

- (a) Money Laundering Offenses;
- (b) predicate offences.

Money laundering offences

4.⁶⁷ (1) Any person who (a) knows or (b) should have known that any form of property is the proceeds of illegal activities, takes any of the following actions:

⁶⁷ Αδικήματα νομιμοποίησης εσόδων από παράνομες δραστηριότητες

4. (1) Κάθε πρόσωπο το οποίο ενώ (α) γνωρίζει ή (β) όφειλε να γνωρίζει ότι οποιασδήποτε μορφής περιουσία αποτελεί έσοδο από παράνομες δραστηριότητες, προβαίνει σε οποιασδήποτε από τις πιο κάτω ενέργειες:

- (i) Μετατρέπει, μεταβιβάζει, ή μετακινεί τέτοια περιουσία με σκοπό να αποκρύψει ή, να συγκαλύψει την παράνομη προέλευσή της ή να παράσχει με οποιοδήποτε τρόπο βοήθεια σε πρόσωπο το οποίο είναι αναμειγμένο στη διάπραξη του γενεσιουργού αδικήματος για να προβεί το πρόσωπο αυτό σε οποιαδήποτε από τις πιο πάνω πράξεις και ενέργειες ή άλλως ενεργεί για να αποφύγει τις νομικές συνέπειες των πράξεων και ενεργειών του
- (ii) αποκρύπτει ή συγκαλύπτει την αληθή φύση, την πηγή, τον τόπο, τη διάθεση, την κίνηση, τα δικαιώματα σε σχέση με περιουσία ή με την κυριότητα αυτή
- (iii) αποκτά, κατέχει ή χρησιμοποιεί τέτοια περιουσία

(iv) συμμετέχει, συμπράττει, συνεργάζεται, συνωμοτεί για να διαπραχθεί, ή αποπειράται να διαπράξει και παρέχει συνδρομή και βοήθεια, καθοδήγηση ή συμβουλή στη διάπραξη οποιουδήποτε από τα αδικήματα που αναφέρονται πιο πάνω·

(v) παρέχει πληροφορίες σχετικά με έρευνες που γίνονται για νομιμοποίηση εσόδων γενεσιουργού αδικήματος με σκοπό να δυνηθεί το πρόσωπο που αποκόμισε όφελος από τη διάπραξη γενεσιουργού αδικήματος να διατηρήσει τα έσοδα ή τον έλεγχο των εσόδων από τη διάπραξη του εν λόγω αδικήματος, διαπράττει αδίκημα τιμωρούμενο με φυλάκιση δεκατεσσάρων ετών ή με χρηματική ποινή μέχρι πεντακόσιες χιλιάδες ευρώ (500000) ή και με τις δύο αυτές ποινές στην περίπτωση (α) πιο πάνω, και με φυλάκιση πέντε ετών ή με χρηματική ποινή μέχρι πενήντα χιλιάδες ευρώ (50000) ή και με τις δύο αυτές ποινές στην περίπτωση (β) πιο πάνω.

(2) Για σκοπούς του εδαφίου (1)

(α) Δεν έχει καμιά σημασία κατά πόσο οι παράνομες δραστηριότητες υπόκεινται ή όχι στη δικαιοδοσία των Κυπριακών Δικαστηρίων·

(β) τα αδικήματα νομιμοποίησης εσόδων από παράνομες δραστηριότητες δύνανται να διαπραχθούν και από τους δράστες γενεσιουργών αδικημάτων·

(γ) η γνώση, πρόθεση ή σκοπός που απαιτούνται ως στοιχεία αδικημάτων που αναφέρονται στο εδάφιο (1) δύνανται να συναχθούν από αντικειμενικές πραγματικές περιστάσεις·

(δ) δεν απαιτείται προηγούμενη ή ταυτόχρονη καταδίκη για γενεσιουργό αδίκημα, από το οποίο προήλθαν έσοδα·

(ε) δεν απαιτείται να αποδειχθεί η ταυτότητα του προσώπου που διέπραξε τις παράνομες δραστηριότητες από τις οποίες προήλθαν τα έσοδα·

(στ) καταδίκη για τα αναφερόμενα στο εδάφιο (1) αδικήματα είναι δυνατή σε περίπτωση που με βάση αντικειμενικές πραγματικές περιστάσεις στοιχειοθετείται ότι η περιουσία προήλθε από παράνομες δραστηριότητες, χωρίς να απαιτείται η στοιχειοθέτηση όλων των πραγματικών στοιχείων ή όλων των περιστάσεων που σχετίζονται με τις εν λόγω παράνομες δραστηριότητες.

(3)(α) Νομικό πρόσωπο δύναται να υπέχει ευθύνη για τη διάπραξη οποιουδήποτε εκ των αναφερόμενων στο εδάφιο (1) αδικημάτων, το οποίο τελείται προς όφελός του από οποιουδήποτε πρόσωπο το οποίο ενεργεί ατομικά ή ως μέλος οργάνου του νομικού προσώπου και κατέχει διευθυντική θέση εντός αυτού, βάσει-

(i) εξουσίας εκπροσώπησης του νομικού προσώπου,

(ii) εξουσίας λήψης αποφάσεων για λογαριασμό του νομικού προσώπου, ή

(iii) εξουσίας άσκησης ελέγχου εντός του νομικού προσώπου.

(β) Νομικό πρόσωπο υπέχει ευθύνη για τη διάπραξη οποιουδήποτε εκ των αναφερόμενων στο εδάφιο (1) αδικημάτων σε περίπτωση που η απουσία εποπτείας ή ελέγχου από πρόσωπο που καθορίζεται στην παράγραφο (α) κατέστησε δυνατή τη διάπραξη του αδικήματος προς όφελος του εν λόγω νομικού προσώπου από πρόσωπο το οποίο τελεί υπό την εξουσία του.

(γ) Η δύναμη των διατάξεων των παραγράφων (α) και (β) ευθύνη νομικού προσώπου δεν αποκλείει την ποινική δίωξη φυσικού προσώπου το οποίο είναι αυτουργός, ηθικός αυτουργός ή συνεργός στη διάπραξη οποιουδήποτε εκ των αναφερόμενων στο εδάφιο (1) αδικημάτων.

(4) Σε περίπτωση καταδίκης για αδίκημα που προβλέπεται στην παράγραφο (i), (ii) ή (iii) του εδαφίου (1), οι ακόλουθες περιστάσεις θεωρούνται επιβαρυντικές:

(α) Το αδίκημα διαπράχθηκε στο πλαίσιο εγκληματικής οργάνωσης:

Νοείται ότι, για τους σκοπούς της παρούσας παραγράφου, „εγκληματική οργάνωση” έχει την έννοια που αποδίδεται στον όρο αυτό στο άρθρο 1 της πράξης της Ευρωπαϊκής Ένωσης με τίτλο „Απόφαση-Πλαίσιο 2008/841/ΔΕΥ του Συμβουλίου, της 24ης Οκτωβρίου 2008, για την καταπολέμηση του οργανωμένου εγκλήματος”·

(β) το πρόσωπο είναι υπόχρεη οντότητα και έχει διαπράξει το αδίκημα κατά την άσκηση της επαγγελματικής του δραστηριότητας· και

(γ) η περιουσία που είναι αντικείμενο νομιμοποίησης εσόδων από παράνομες δραστηριότητες είναι σημαντικής αξίας.

(5) Σε περίπτωση που η διάπραξη οποιουδήποτε εκ των προβλεπόμενων στο εδάφιο (1) αδικημάτων υπόκειται στη δικαιοδοσία περισσότερων του ενός κρατών μελών της Ευρωπαϊκής Ένωσης και οποιουδήποτε από τα εν λόγω κράτη μέλη δύναται εγκύρως να ασκήσει ποινική δίωξη βάσει των ίδιων πραγματικών περιστατικών, τα εν λόγω κράτη μέλη συνεργάζονται, προκειμένου να αποφασίσουν ποιο από αυτά θα προβεί στην ποινική δίωξη του υπόπτου, με σκοπό να συγκεντρωθεί η διαδικασία σε ένα και μόνο κράτος μέλος:

- (i) Converts, transfers, or moves such property for the purpose of concealing or, concealing its illegal origin or in any way assisting a person who is complicit in the commission of the predicate offense to carry out such person in any of the above acts and actions or otherwise acts to avoid the legal consequences of his acts and actions;
 - (ii) conceals or disguises the true nature, source, place, disposition, movement, rights in respect of property or ownership thereof;
 - (iii) acquires, owns or uses such property;
 - (iv) participates in, abets, cooperates in, conspires to commit, or attempts to commit and provides aid and assistance, guidance or counsel in the commission of any of the offenses listed above;
 - (v) provides information about money laundering investigations with a view to enabling the person who obtained a benefit from the commission of the offense to retain the proceeds or control of the proceeds of the offence;
- commits an offense punishable by imprisonment of fourteen years or a fine of up to five hundred thousand euros (€ 500000) or both of these penalties in case (a) above, and by imprisonment of five years or a fine of up to 50.000 euros(€ 50000) or with both of these penalties in case (b) above.
- (2) For the purposes of subsection (1)
- (a) Whether or not the illegal activities are subject to the jurisdiction of the Cyprus Courts is irrelevant;
 - (b) money laundering offenses may also be committed by the perpetrators of predicate offences;

Νοείται ότι, για τον πιο πάνω σκοπό δύναται να λαμβάνονται υπόψη οι ακόλουθοι παράγοντες:

- (α) Το κράτος μέλος στο έδαφος του οποίου διαπράχθηκε το αδίκημα·
- (β) η υπηκοότητα ή ο τόπος διαμονής του υπόπτου·
- (γ) η χώρα καταγωγής του θύματος ή των θυμάτων· και
- (δ) το κράτος μέλος στο έδαφος του οποίου εντοπίστηκε ο ύποπτος:

Νοείται περαιτέρω ότι, κατά περίπτωση και σύμφωνα με το άρθρο 12 της πράξης της Ευρωπαϊκής Ένωσης με τίτλο „Απόφαση-Πλαίσιο 2009/948/ΔΕΥ του Συμβουλίου, της 30ής Νοεμβρίου 2009, για την πρόληψη και το διακανονισμό συγκρούσεων δικαιοδοσίας σε ποινικές υποθέσεις”, το ζήτημα παραπέμπεται στην Eurojust:

Νοείται έτι περαιτέρω ότι, για τους σκοπούς του παρόντος εδαφίου, „Eurojust” σημαίνει τη μονάδα που εγκαθιδρύθηκε με την πράξη της Ευρωπαϊκής Ένωσης με τίτλο „Απόφαση 2002/187/ΔΕΥ του Συμβουλίου, της 28ης Φεβρουαρίου 2002, σχετικά με τη σύσταση της Eurojust, προκειμένου να ενισχυθεί η καταπολέμηση των σοβαρών μορφών εγκλήματος”.

(6) Το Δικαστήριο δύναται, επιπρόσθετα από τη χρηματική ποινή που προβλέπεται στο εδάφιο (1), να επιβάλει σε νομικό πρόσωπο το οποίο καταδικάζεται για τη διάπραξη οποιουδήποτε εκ των αναφερόμενων στο εδάφιο (1) αδικημάτων-

- (α) αποκλεισμό από δημόσιες παροχές ή ενισχύσεις·
- (β) προσωρινό ή μόνιμο αποκλεισμό από την πρόσβαση σε δημόσια χρημα-τοδότηση, συμπεριλαμβανομένων διαγωνισμών, επιχορηγήσεων και συμβάσεων παραχώρησης·
- (γ) προσωρινή ή οριστική απαγόρευση της άσκησης εμπορικής δραστηριότητας·
- (δ) δικαστική εκκαθάριση· και
- (ε) προσωρινό ή οριστικό κλείσιμο των εγκαταστάσεων που χρησιμοποιήθηκαν για τη διάπραξη του αδικήματος.

(c) the knowledge, intent or purpose required as elements of offenses referred to in subsection (1) may be inferred from objective facts;

(d) no prior or concurrent conviction for a predicate offense from which proceeds were derived is required;

(e) it is not required to prove the identity of the person who committed the illegal activities from which the proceeds were derived;

(f) conviction for the offenses referred to in subsection (1) is possible in the event that, based on objective factual circumstances, it is established that the property came from illegal activities, without requiring the establishment of all factual elements or all circumstances related to the due to illegal activities.

(3)(a) A legal entity may be liable for the commission of any of the offenses referred to in subsection (1), which is committed for its benefit by any person acting individually or as a member of a body of the legal entity and holding a managerial position within that, based on-

(i) power of attorney of the legal entity,

(ii) power to make decisions on behalf of the legal entity, or

(iii) power to exercise control within the legal entity.

(b) A legal person is liable for the commission of any of the offenses referred to in subsection (1) in the event that the absence of supervision or control by a person specified in paragraph (a) made it possible for the offense to be committed for the benefit of that legal person by a person under his authority.

(c) By virtue of the provisions of paragraphs (a) and (b), the liability of a legal person does not exclude the criminal prosecution of a natural person who is the perpetrator, moral perpetrator or accomplice in the commission of any of the offenses referred to in subsection (1).

(4) In case of conviction for an offense provided for in paragraph (i), (ii) or (iii) of subsection (1), the following circumstances are considered aggravating:

(a) The offense was committed as part of a criminal organization:

Provided that, for the purposes of this paragraph, “criminal organization” has the meaning attributed to this term in article 1 of the act of the European Union entitled “Framework Decision 2008/841/JHA of the Council, of 24 October 2008, to fight organized crime”;

(b) the person is a liable entity and has committed the offense in the course of his professional activity; and

(c) the laundered property is of significant value.

(5) In the event that the commission of any of the offenses provided for in subsection (1) is subject to the jurisdiction of more than one member state of the European Union and any of the said member states may validly prosecute based on the same facts, the

said member states cooperate in order to decide which of them will proceed with the criminal prosecution of the suspect, with the aim of concentrating the procedure in a single member state:

Provided that, for the above purpose, the following factors may be taken into account:

- (a) The Member State in whose territory the offense was committed;
- (b) the nationality or place of residence of the suspect;
- (c) the country of origin of the victim or victims; and
- (d) the Member State in whose territory the suspect was located:

It is further understood that, as the case may be and in accordance with article 12 of the act of the European Union entitled “Framework Decision 2009/948/JHA of the Council, of November 30, 2009, on the prevention and settlement of conflicts of jurisdiction in criminal matters”, the matter is referred to Eurojust:

Provided further that, for the purposes of this subsection, “Eurojust” means the unit established by the act of the European Union entitled “Council Decision 2002/187/JHA of 28 February 2002 on the establishment of Eurojust, in order to strengthen the fight against serious forms of crime”.

(6) The Court may, in addition to the monetary penalty provided for in subsection (1), impose on a legal person who is convicted of committing any of the offenses referred to in subsection (1)

- (a) exclusion from public benefits or aid;
- (b) temporary or permanent exclusion from access to public funding, including tenders, grants and concession contracts;
- (c) temporary or permanent prohibition of the exercise of commercial activity;
- (d) judicial winding up; and
- (e) temporary or permanent closure of the premises used for the commission of the offence.

(f) Public Procurement Related Offences

65 The Regulations on Public Procurement of the Republic of Cyprus stipulate at least an inextricably linked offence:

66 Offences

91. (1) A person who provides to any other person, any information, written or oral, that has come to his knowledge in the course of the exercise of his duties or the execution of the powers conferred on him by this Law and/or the Regulations issued thereunder is guilty of an offence, unless such disclosure is made:

- (a) In relation to the proper exercise of the duties, whether of this or another person, under this Law and/or the Regulations issued under it on the basis of an explicit instruction from a competent authority;

(b) in connection with an investigation of any criminal offence or for the purposes of any proceedings before any Court. Subject to subsection (1), a person who, without legal authority, provides or receives any information in connection with a contract award procedure is guilty of an offence.

(3) An offence shall be any person who, without lawful authority, whether personally or through any other person, or on behalf of any other person, seeks or attempts:

(a) To obtain or elicit from any person referred to in subsection (1) any information which is not to be disclosed or provided in accordance with the provisions thereof; or to influence the judgment or decision, final or otherwise, of any authority, body or committee or any member thereof, or any person or officer, in the exercise of the duties or powers granted to them under this Law and/or the Regulations issued thereunder, in relation to any procedure, examination, clarification, evaluation, assessment or anything made in connection with a contract award procedure.

(3A) A person who makes a false declaration in a document in the context of a public procurement procedure is guilty of an offence:

It is understood that, for the purposes of this subparagraph, “false statement” means the representation of an event past or present which is in fact false and about which the person making such a statement knows that it is false or does not believe that it is true.

(4) A person who is guilty of an offence under any of the provisions of subsections (1), (2), (3) and (3A) shall, if convicted, be liable to imprisonment for a period not exceeding two years or to a fine not exceeding EUR 4 000, or both.

(5) No criminal prosecution for an offence under this section shall be brought except with the approval of the Attorney General of the Republic.

(2) Methods of investigation, collecting information and documenting the initiation of an investigation for an indictment (Art. 34 et seq. EPPO Regulation, Art. 40 Para 3 IRP)

(a) Impetus of fraud knowledge patterns

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

- National level: Cyprus Statistics.
- EU-level: PIF Reports, Rule of law Report, “Impact of Organised Crime on the EU’s Financial Interests” etc.⁶⁸

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⁶⁸ See the „Impact of Organised Crime on the EU’s Financial Interests”, 2022, [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697019/IPOL_STU\(2021\)697019_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697019/IPOL_STU(2021)697019_EN.pdf). Accessed 15 December 2023.



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

(b) Special national databases for PIF offences/Digital investigations, Art. 40 Para 3 IRP 2020.003

68 The Cypriot EDP operates or is connected to various Databases that might be of use if an investigation into EU frauds takes place. An individual may request the erasure of personal data in certain cases.⁶⁹ The EPPO has access to the relevant information systems established a regulated by the Customs Law, see → ss. 117. Service of notices, 118. Evidence by certificate, 119. Customs Register and the Maintenance of books and records, s. 120.

cc. Examples and precedents

69 There are distinct 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* → C.) 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:

70 All information, which is not taken from a judgement, is taken from the EPPO's first crime report (published March 2022) and serves as a basis for explaining the initial suspicion scenarios in this area. References can be made to national case law.

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

(1) Revenue frauds

71 Revenue frauds are manifold. First, the scheme should be identified. For this, it is worthwhile to compare the suspected behaviour with known behaviour patterns. From a legal as well as a police point of view, the overview of crime patterns is useful. Especially in Covid-times there has been an increase in fraud conduct characteristics. Assessment can also be based on known cases and the professional groups suspected in these cases e.g.

⁶⁹ See <https://www.police.gov.cy/police/police.nsf/All/2EE7A74EAC3DFFE0C22585F10019FA05?OpenDocument>. Accessed 15 December 2023.

VAT revenue frauds.⁷⁰ The Cypriot Tax Department collected useful evidence in a carousel fraud case in November 2022 and made some experiences with the EPPO and the subsequent cooperation mechanism.⁷¹

(2) Money laundering with PIF crimes

Cypriot money laundering legislation and especially enforcement have been widely discussed since the end of 2023.⁷² Above we looked at the regulations (→ bb. (1) (e)). The Prevention and Combating of Money Laundering Law of 2007 (188(I)/2007) last amended 2022 applies in addition to the above-mentioned Implementation Law regarding Directive (EU) 2017/1371. The Unit for Combating Money Laundering (MOKAS) has a special role in the area of Money laundering with money derived or originating from PIF crimes.⁷³ Cyprus needs to improve its enforcement by reducing paper firms.

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c) Actions if “Decision to open a case” (Regulation & Rules in IRP, 2020.003 EPPO)

If he/she decides to initiate an investigation he/she **must note this in the case management system** (Art. 45 Para 1 EPPO Regulation, 38 IRP⁷⁴). In addition, the numerous obligations to provide information from Art. 24 Para 3 to 8.

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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**:

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- “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 offenses, 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

⁷⁰ See The Cypriot Tax Department, Rules on VAT Refunds, https://www.mof.gov.cy/mof/tax/taxdep.nsf/tax01_en/tax01_en?opendocument. Accessed 15 December 2023. The applicable law is K.Δ.Π 95/2010 (in Greek) - V.A.T Regulations 2010 (Tax Refund to taxable persons established in E.U. Member States).

⁷¹ The question was concerning carousel fraud in the field of selling popular electronic goods.

⁷² See ICIJ 2023, <https://www.icij.org/investigations/cyprus-confidential/>. Accessed 15 December 2023.

⁷³ See http://www.law.gov.cy/law/mokas/mokas.nsf/index_en/index_en?OpenDocument. Accessed 15 December 2023.

⁷⁴ See <https://www.eppo.europa.eu/sites/default/files/2020-12/2020.003%20IRP%20-%20final.pdf>. Accessed 15 December 2023.

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

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

Article 41: Decision to initiate an investigation or to evoke a case

1. Where, following the verification, the European Delegated Prosecutor decides to exercise EPPO’s competence by initiating an investigation or evoking a case, a case file shall be opened and it shall be assigned an identification number in the index of the case files (hereinafter the Index). A permanent link to the related registration under Article 38(1) above shall be automatically created by the Case Management System.

If an investigation procedure is to be started, the competent national authorities must be informed:

2. The corresponding reference in the Index shall contain, to the extent available:

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 online 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.

76 The usual national rules on filing an indictment are thus partly superseded:

Type of indictment

38. Every indictment in the prescribed form is signed by or on behalf of the person who recites it and when the indictment is recited by a Government Department this indictment is signed by a representative of the Department. It states the name of the Court before which the summary trial will be held or which will refer the case to the Criminal Court and also includes the following details:

- (a) the name and description of the accused as known to the accuser reasonably sufficient to establish the identity of the accused;
- (b) the criminal offense or criminal offenses with which the defendant is charged which include the particulars set out in section 39.

Provisions regarding the drawing up of indictments

39.⁷⁵ The following provisions shall apply to every indictment and regardless of any Law or rule of practice, the indictment, subject to the provisions of that Law, shall not

⁷⁵ Διατάξεις αναφορικά με τη σύνταξη κατηγορητηρίων 39. Οι ακόλουθες διατάξεις εφαρμόζονται σε κάθε κατηγορητήριο και ανεξάρτητα από οποιοδήποτε Νόμο ή κανόνα πρακτικής, το κατηγορητήριο, τηρουμένων των διατάξεων του Νόμου αυτού, δεν επιδέχεται ένσταση σε σχέση με τον τύπο ή το περιεχόμενο αυτού αν είναι συνταγμένο σύμφωνα με τις διατάξεις του Νόμου αυτού-

(α) εκτίθεται στο κατηγορητήριο σε χωριστή παράγραφο που καλείται κατηγορία η διατύπωση του ποινικού αδικήματος που βρίσκεται στο κατηγορητήριο ή όταν προσάπτονται κατηγορίες για περισσότερα από ένα ποινικά αδικήματα η διατύπωση καθενός τέτοιου ποινικού αδικήματος

(β) όταν το κατηγορητήριο περιλαμβάνει περισσότερες από μία κατηγορίες, οι κατηγορίες αριθμούνται κατά σειρά
(γ) η κατηγορία στο κατηγορητήριο περιγράφει εν συντομία σε κοινή γλώσσα το ποινικό αδίκημα για το οποίο κατηγορείται ο κατηγορούμενος, αποφεύγοντας, στο μέτρο του δυνατού τη χρήση τεχνικών όρων και χωρίς απαραίτητα να εκτίθενται όλα τα ουσιώδη στοιχεία του ποινικού αδικήματος, και περιλαμβάνει αναφορά στο άρθρο του νομοθετήματος που δημιουργεί το ποινικό αδίκημα. Όταν κάποιο αδίκημα συνίσταται από πράγμα το οποίο απαγορεύεται από το συνδυασμένο αποτέλεσμα περισσότερων του ενός νομοθετημάτων, το κατηγορητήριο περιλαμβάνει αναφορά και στα δύο αυτά νομοθετήματα και αν το ποινικό αδίκημα ορίζεται από ένα και η ποινή προβλέπεται από άλλο νομοθέτημα γίνεται επίσης αναφορά στο νομοθέτημα που προβλέπει την ποινή

(δ) όταν το νομοθέτημα που συνιστά το ποινικό αδίκημα αναφέρει ότι το ποινικό αδίκημα είναι η τέλεση ή η παράλειψη τέλεσης οποιασδήποτε από τις διάφορες πράξεις διαζευκτικά ή η τέλεση ή η παράλειψη τέλεσης οποιασδήποτε πράξης με οποιαδήποτε από τις διάφορες ιδιότητες, ή με οποιαδήποτε από τις διάφορες προθέσεις ή διατυπώνει οποιοδήποτε μέρος του ποινικού αδικήματος διαζευκτικά, οι πράξεις, παραλείψεις, ιδιότητες ή προθέσεις, ή άλλα ζητήματα που συνιστούν τη διάζευξη στο νομοθέτημα δύνανται να διατυπωθούν διαζευκτικά στην κατηγορία που προσάπτεται για το εν λόγω ποινικό αδίκημα

(ε) σε οποιαδήποτε κατηγορία για ποινικό αδίκημα, δεν είναι αναγκαίο να αντικρούεται οποιαδήποτε εξαίρεση ή απαλλαγή από την εφαρμογή ή επιφύλαξη ή περιορισμό στην εφαρμογή του νομοθετήματος που δημιουργεί το ποινικό αδίκημα

(στ) αν το ποινικό αδίκημα για το οποίο προσάπτεται κατηγορία συνίσταται από οποιαδήποτε πράξη που σχετίζεται με περιουσία ή σε περιουσία, δεν είναι αναγκαίο να αναφερθεί ότι η περιουσία ανήκει σε συγκεκριμένο πρόσωπο, εκτός όταν αυτό απαιτηθεί για το σκοπό περιγραφής ποινικού αδικήματος που εξαρτάται από ειδική ιδιοκτησία περιουσίας ή από ειδική αξία περιουσίας, και είτε γίνεται είτε όχι τέτοια αναφορά, είναι αρκετό για την κατηγορία να αποδείξει τέτοια γεγονότα ως προς την ιδιοκτησία ώστε να καταδεικνύεται ότι ο κατηγορούμενος διέπραξε το αδίκημα για το οποίο κατηγορείται

be open to objection in relation to its form or content if it is drawn up in accordance with the provisions of that Law -

(a) set out in the indictment in a separate paragraph called a charge the statement of the criminal offense contained in the indictment or where more than one criminal offense is charged the statement of each such criminal offense

(b) where the indictment includes more than one count, the counts shall be numbered consecutively

(c) the charge in the indictment briefly describes in common language the criminal offense with which the accused is charged, avoiding, as far as possible, the use of technical terms and without necessarily setting out all the essential elements of the criminal offense, and includes a reference to article of the legislation creating the criminal offense. When an offense consists of a thing prohibited by the combined effect of more than one piece of legislation, the indictment includes reference to both of those pieces of legislation and if the criminal offense is defined by one and the penalty is provided for by another piece of legislation, reference is also made to the piece of legislation providing for penalty

(d) where the enactment constituting the criminal offense states that the criminal offense is the doing or failing to do any of the various acts divulgingly or the doing or failing to do any of the acts in any of the various capacities, or in any of the different intentions or states any part of the criminal offense disjunctively, the acts, omissions, qualities or intentions, or other matters constituting disjunctive in the legislation may be disjunctively stated in the charge of the said criminal offense

(ζ) δεν είναι αναγκαίο ή δεν χρησιμοποιείται βεβαιότητα ή λεπτομέρεια αναφοράς σχετικά με έγγραφα, γεγονότα, πράγματα, πρόσωπα, τόπους, χρόνο ή οποιοδήποτε άλλο ζήτημα, στο κατηγορητήριο μεγαλύτερη από αυτή που είναι εύλογα επαρκή για το σκοπό παροχής ειδοποίησης στον κατηγορούμενο για αυτά.

Γεγονότα και έγγραφα δύνανται να καταρτιστούν ως παράρτημα και αντίγραφα αυτών δύνανται να συναφθούν στο κατηγορητήριο αν η μέθοδος αυτή είναι κατάλληλη

(η) δεν είναι αναγκαίο κατά την αναφορά οποιασδήποτε πρόθεσης καταδολίευσης, απάτης ή βλάβης να αναφέρεται πρόθεση να καταδολιευθεί, εξαπατηθεί ή βλαφτεί συγκεκριμένο πρόσωπο, εκτός αν το νομοθέτημα που δημιουργεί το αδίκημα καθιστά την πρόθεση να καταδολιευθεί, εξαπατηθεί ή βλαφτεί συγκεκριμένο πρόσωπο ουσιαστικό στοιχείο του ποινικού αδικήματος

(θ) όταν ο κατηγορούμενος κατηγορείται για ποινική κατάχρηση εμπιστοσύνης, δόλια ιδιοποίηση περιουσίας, δόλια παραποίηση λογαριασμών, δόλιο σφετερισμό ή δεκασμό ή κατάχρηση αξιώματος, είναι αρκετό να οριστεί το συνολικό ποσό σε σχέση με το οποίο υπάρχει ισχυρισμός ότι το ποινικό αδίκημα διαπράχθηκε και οι ημερομηνίες μεταξύ των οποίων υπάρχει ισχυρισμός ότι διαπράχθηκε αυτό χωρίς ορισμό συγκεκριμένων επί μέρους ποσών ή ακριβών ημερομηνιών

(ι) όταν το κατηγορητήριο περιλαμβάνει προηγούμενη καταδίκη για ποινικό αδίκημα αυτή πρέπει να περιλαμβάνεται στο τέλος της κατηγορίας με αναφορά ότι ο κατηγορούμενος καταδικάστηκε προηγουμένως για το εν λόγω ποινικό αδίκημα σε ορισμένο χρόνο και τόπο χωρίς να εκτεθούν οι λεπτομέρειες του αδικήματος:

Νοείται ότι κανένα λάθος στην έκθεση του ποινικού αδικήματος ή των λεπτομερειών που απαιτούνται να αναφερθούν στο κατηγορητήριο δεν θεωρείται σε οποιοδήποτε στάδιο της υπόθεσης ως μη συμμόρφωση προς τις διατάξεις του Νόμου αυτού εκτός αν σύμφωνα με τη γνώμη του Δικαστηρίου, ο κατηγορούμενος πράγματι παραπλανήθηκε λόγω του λάθους αυτού.

(e) in any charge of a criminal offence, it is not necessary to object to any exemption or exemption from the application or reservation or limitation in the application of the legislation creating the criminal offence;

(f) if the criminal offense charged consists of any act relating to property or to property, it is not necessary to state that the property belongs to a particular person, except where this is required for the purpose of describing a criminal offense subject to special ownership of property or of special value of property, and whether or not such reference is made, it is sufficient for the prosecution to prove such facts as to the ownership as to show that the accused committed the offense charged

(g) no more certainty or detail of reference is necessary or used concerning documents, facts, things, persons, places, time or any other matter, in the indictment than is reasonably sufficient for the purpose of giving notice to the accused thereof.

Facts and documents may be annexed and copies thereof may be attached to the indictment if this method is appropriate

(h) it is not necessary in stating any intent to harass, defraud or harm that an intention to harass, defraud or harm a particular person be stated, unless the legislation creating the offense makes the intention to harass, deceive or harm a particular person an essential element of the criminal offence

(i) where the defendant is charged with criminal breach of trust, fraudulent misappropriation of property, fraudulent falsification of accounts, fraudulent usurpation or embezzlement or abuse of office, it is sufficient to set out the total amount in respect of which the criminal offense is alleged to have been committed and the dates among which there is an allegation that this was committed without specifying specific amounts or exact dates

(j) where the indictment includes a previous conviction for a criminal offense it must be included at the end of the charge with a reference to the fact that the accused was previously convicted of the said criminal offense at a certain time and place without setting out the particulars of the offence:

Provided that no error in the statement of the criminal offense or of the particulars required to be stated in the indictment shall at any stage of the case be deemed to be a non-compliance with the provisions of this Act unless in the opinion of the Court the accused was actually misled by the error his.

d) Consequences of the “Decision to open a case”

- 77 If this decision has been achieved, the EDPs will need to plan on how to conduct the investigation and gather the relevant evidence in order to collect all information that is

necessary to prove a criminal offence i.e., a criminal liability and the elements that constitute the whole concept of crime in general in court. Crime in general means an unjust act, imputable to the offender, which is punishable by law.

A PIF offence will need to be assessed therefore by the relevant conditions for a crime in general i.e. the elements of a particular PIF offence of Cyprus.⁷⁶ **78**

The basics of Cypriot criminal law can still be read in a short publicly available report from the International Affairs Division of the United States Army⁷⁷. In addition, the depth of this law area can be studied in e.g. a special volume or a short article.⁷⁸ The authors point at the fact that the Criminal Code stems from the British Colonial Code.⁷⁹ **79**
 Since the independence of Cyprus in 1959 and the enactment of the constitution, the laws were systematically collected and revised.⁸⁰ Norton and Bartlett mentioned that Cyprus became part of the ECHR since 1950.⁸¹ The EU's competence in the area of criminal law of the 21st century have changed parts of the Cypriot constitution⁸² and the criminal law – especially Directives in the PIF area.⁸³

The rules on criminal responsibility are as well similar to rules of the German criminal code. The Cypriot CC contains general provisions on criminal liability⁸⁴ e.g. on attempt and participation.⁸⁵ The rule that e.g. the ignorance of the law is no excuse exists as well in section 17 of the German criminal code. **80**

Therefore EDPs in Cyprus will need to focus similar to other EPPO countries on the *actus reus* and the *mens rea* conditions of the relevant PIF offence.⁸⁶ In other words: What German criminal justice calls “*Tatbestand*” i.e. the concrete conditions of an offence⁸⁷, in relation to the German substantive criminal law enshrined in the Criminal Code or partly in ancillary (not: secondary) criminal law (*Nebenstrafrecht* e.g. *Abgabenerdnung*) needs to be assessed according to the requirements that the legislator set up, which includes the concretisation of the objective elements (*actus reus*, see above) of **81**

⁷⁶ See above → the Introduction by Katsogiannou, who refers to the relevant implementation by virtue of the PIF Directive (EU) 2017/371.

⁷⁷ United States. Army. International Affairs Division 1964, p. 20 et seq.

⁷⁸ Neocleous and Melides et al. called “Neocleous's Introduction to Cyprus Law”.

⁷⁹ Ibid, 33

⁸⁰ Ibid, p. 20 et seq.

⁸¹ Ibid, p. 21.

⁸² See Shaelou and Kombos 2019, pp 1373–1432.

⁸³ See above I. Foreword and Introduction. See as well Comprehensive monitoring report on Cyprus's preparations for membership, <https://shorturl.at/hDH24>; Naziris 2023, <https://shorturl.at/anAOU>.

⁸⁴ United States. Army. International Affairs Division 1964, p. 33.

⁸⁵ See Naziris 2023, p. 14 <https://shorturl.at/anAOU>.

⁸⁶ See for the common terms in comparing criminal law and criminal procedure Child, Simester, Spencer et al. 2022, Chapter 4 et seq.; Chapter 5, Chapter 15 on Fraud (relevant for Ireland, Malta, Cyprus).

⁸⁷ Bohlander 2009, 29 et seq.

the crime⁸⁸, the subjective elements (*mens rea*, see above)⁸⁹ as well as the unlawfulness of the conduct (i.e. no written or unwritten justifications/justificatory defences⁹⁰ must intervene) and last but not least the guilt of the offender, which is given if the potential perpetrator is not excused for his/her conduct in relation to a PIF offence.⁹¹

- 82** Similar or the same conditions exist in relation to the general part of the offense (i.e., a PIF offence, Art. 22 EPPO Regulation, Art. 1–5 PIF Directive) in every country in the EU, with a divide running where common law differs and civil law countries encounter.
- 83** In addition, it is important to determine how the indictment should look like: Are several people involved and is there not an isolated act, but possibly a complicity (*Mittäterschaft*) or an indirect perpetrator (*mittelbare Täterschaft*)? In addition, the questions of the criminal liability of a participant must be clarified in order to be able to determine whether an incitement (*Anstiftung*) to a PIF offence or an abetting (*Beihilfe*) to such an act exists.⁹²
- 84** If there is no success to a crime, the question arises as to whether a criminal offense can be determined because of the *attempt* of a PIF offence.⁹³
- 85** For all of these questions and purposes, the EDPs can additionally to the present presentations, analysis and manual references rely on the existing legal commentaries on the penal codes of the EU Member States and the code of criminal procedures of the Member States, which participate in the EPPO, insofar as national law is concerned, e.g. in the concept of a criminal offence or the start of an investigation. Investigations can be based on the areas of current funding schemes.⁹⁴

⁸⁸ These include in the most criminal law systems questions of causal links, Authorship, causality, “scientific causation” (emphasis added to the cited book) adequacy, limitation of an endless *sine qua non formula*, etc., see recently Walen/Weiser 2022 57–94.

⁸⁹ See only out of many Safferling 2008 who points at the fact that the traditional German terms are “Intention” and culpability. But even if the terminology is not congruent and differs in detail, it can be said that these are elements of the subjective offense that occur in continental European criminal codes and are also required separately by the PIF Directive for PIF offenses.

⁹⁰ This is a worldwide recognized condition as a basic element of the concept of crime, see Stasi 2021, 31–47.

⁹¹ See Eser 1987, pp 17–65, online: <https://d-nb.info/112342229X/34>. Accessed 15 December 2023. He refers to the historical implications and the differences between the common law and civil law approach; Bohlander, 2009, 29 et seq., 77 et seq. (Rechtswidrigkeit), 115 et seq. (“Guilt and Excusatory Defences”).

⁹² See Hauck, EU Fraud Commentary, Commentary on PIF Directive, Art. 5. For the various translations of these terms see the EUR-Lex database translations of the PIF Directive 2017/1371.

⁹³ See Hauck, EU Fraud Commentary, Commentary on PIF Directive, Art. 5.

⁹⁴ See Cypriot Information Portal for Funding Programmes 2023, <https://www.fundingprogrammesportal.gov.cy/en/funding-programmes/>.

2. Article 27 Right of evocation

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1. Upon receiving all relevant information in accordance with Article 24(2), the EPPO shall take its decision on whether to exercise its right of evocation as soon as possible, but no later than 5 days after receiving the information from the national authorities and shall inform the national authorities of that decision. The European Chief Prosecutor may in a specific case take a reasoned decision to prolong the time limit by a maximum period of 5 days, and shall inform the national authorities accordingly.

2. During the periods referred to in paragraph 1, the national authorities shall refrain from taking **any decision under national law** that may have the effect of precluding the EPPO from exercising its right of evocation.

The national authorities shall take any urgent measures necessary, **under national law**, to ensure effective investigation and prosecution.

3. If the EPPO becomes aware, by means other than the information referred to in Article 24(2), of the fact that an investigation in respect of a criminal offence for which it could be competent is already undertaken by the competent authorities of a Member State, it shall inform these authorities without delay. After being duly informed in accordance with Article 24(2), the EPPO shall take a decision on whether to exercise its right of evocation. The decision shall be taken within the time limits set out in paragraph 1 of this Article.

4. The EPPO shall, where appropriate, consult the competent authorities of the Member State concerned before deciding whether to exercise its right of evocation.

5. Where the EPPO exercises its right of evocation, the competent authorities of the Member States shall transfer the file to the EPPO and refrain from carrying out further acts of investigation in respect of the same offence.

6. The right of evocation set out in this Article may be exercised by a European Delegated Prosecutor from any Member State whose competent authorities have initiated an investigation in respect of an offence that falls within the scope of Articles 22 and 23. Where a European Delegated Prosecutor, who has received the information in accordance with Article 24(2), considers not to exercise the right of evocation, he/she shall inform the competent Permanent Chamber through the European Prosecutor of his/her Member State with a view to enabling the Permanent Chamber to take a decision in accordance with Article 10(4).

7. Where the EPPO has refrained from exercising its competence, it shall inform the competent national authorities without undue delay. At any time in the course of the proceedings, the competent national authorities shall inform the EPPO of any new facts which could give the EPPO reasons to reconsider its decision not to exercise competence.

The EPPO may exercise its right of evocation after receiving such information, provided that the national investigation has not already been finalised and that an indictment has not been submitted to a court. The decision shall be taken within the time limit set out in paragraph 1.

8. Where, with regard to offences which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute at Union level, it shall in accordance with Article 9(2), issue general guidelines allowing the European Delegated Prosecutors to decide, independently and without undue delay, not to evoke the case.

The guidelines shall specify, with all necessary details, the circumstances to which they apply, by establishing clear criteria, taking specifically into account the nature of the offence, the urgency of the situation and the commitment of the competent national authorities to take all necessary measures in order to fully recover the damage to the Union's financial interests.

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

- 1 If the EDPs do not exercise the EPPO's competence by virtue of the Union's legality principle in due time on their own and hereby on behalf (*proprio motu*) of the Union

and the Union's interests by analysing the *notitiae crimini europea*, i.e. the obligatory European PIF offences notices, which are sent to the European Prosecution Office in order to inform that a PIF offence is alleged or has been committed, the EDPs and the Chambers must decide on the evocation of cases from the national authorities on to the level of the Union competence. If the national prosecutor or a national office vested with investigative powers have already started investigating or the relevant person has taken any steps applying national law afterwards, these actions may have a precluding effect on the Right of evocation of the EPPO (cf. Para 2 of Art. 27 EPPO Regulation).

Nota bene: In addition to that, if reading the following provisions one can take into account that some of them will apply as well to the EDPs if they want to file an indictment by virtue of the EPPO Regulation, i.e. the area, which is not in the focus of this compendium as the country chapters have the focal point on the start of investigations, the phase, in which, most likely a huge number of operations will cease already.

But the same provisions that apply to the national authorities while standing still until the EPPO has decided to exercise its right of evocation or not (Art. 27) will apply in cases of EPPO indictments (Art. 34 et seq.) and preclude the filing of formal accusation by virtue of national law before a national court. The EPPO Adoption Law stipulates the following:

7. [Notification in possible Evocation Cases/Duty to make notification]

(1) The Advocate General of the Republic shall notify the European Public Prosecutor's Office without undue delay of any criminal conduct for which the European Public Prosecutor's Office could exercise its jurisdiction in accordance with Article 22 and paragraphs (2) and (3) of Article 25 of Regulation (EU) 2017/1939.

(2) In the event that a criminal investigation has been initiated into a criminal offense in the Republic for which the European Public Prosecutor's Office could exercise its jurisdiction as provided for in Rule 22 and paragraphs (2) and (3) of Rule 25 of the Rules of Procedure (EU) 2017/1939, or in the event that, at any stage since the initiation of a criminal investigation, the Advocate General of the Republic considers that the investigation concerns such a criminal act, the Advocate General shall inform the European Public Prosecutor's Office without undue delay so that it to decide whether to exercise the right to take over the case, in accordance with Article 27 of Regulation (EU) 2017/1939.

(3) The Advocate General of the Republic shall inform the European Public Prosecutor's Office in the event that he decides to conduct a criminal investigation into a criminal offense as defined in Article 22 of Regulation (EU) 2017/1939, and considers that the

European Public Prosecutor’s Office could not its competence, in accordance with paragraph (3) of Rule 25 of the Rules of Procedure (EU) 2017/1939.

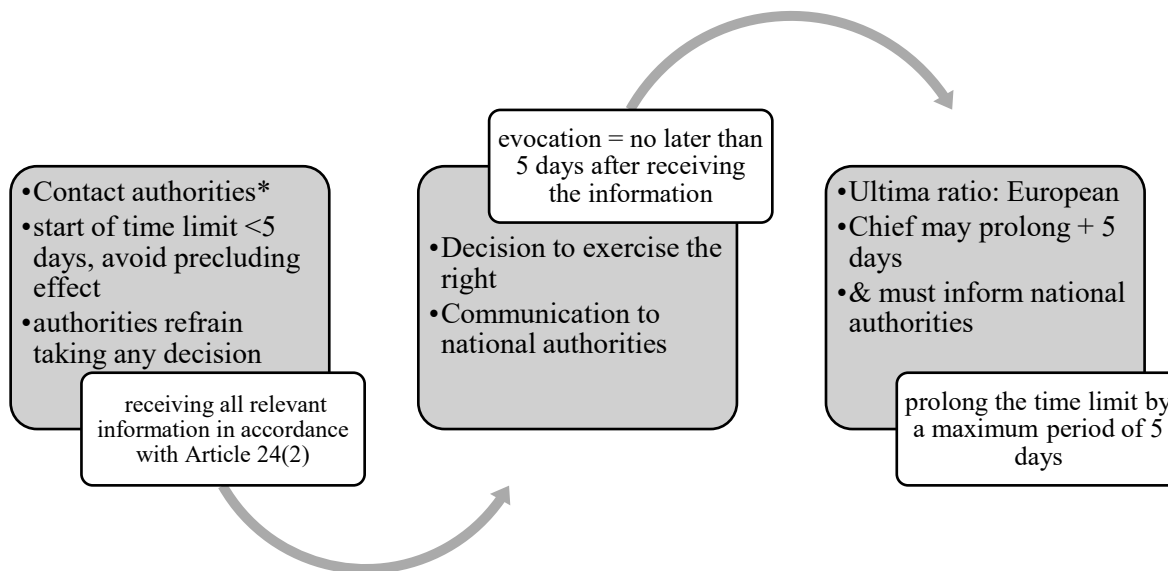
(4) The disclosure shall include at least a description of the facts, an as-assessment of the damage caused or likely to be caused, the criminal offenses that may arise and any available information concerning potential victims, suspects and any other persons involved.

(5) The Advocate General of the Republic informs the European Public Prosecutor’s Office about the cases in which it is not possible to assess whether the criteria of paragraph (2) of Article 25 of Regulation (EU) 2017/1939 are met.

(6) In the event that the European Public Prosecutor’s Office becomes aware that a criminal act may not have been committed that does not fall within the remit of the European Public Prosecutor’s Office, it shall inform the Advocate General of the Republic without undue delay and shall forward all relevant information to him by the competent authority in the European Prosecution.

- 4 The whole process for the national authorities obliged to make notifications to the EPPO can be visualised with the help of this Figure:

Figure 4 Right of evocation/time limits/refrain taking decisions that have a precluding effect



Caption: Cypriot Authorities⁹⁵

⁹⁵ Tax Department, VAT Department, Cypriot Police, Cypriot Customs Organization, Government Offices, Offices of the Ministries containing Payment Offices for EU budget related money flows, national prosecution authorities (Public Prosecutors (District of Nicosia) Address: Corner Apelli & Pavlou Nirvana 1080 Nicosia

a) Provisions with a precluding effect for the Right of evocation, Para 2

aa. Statute of limitations

Special provisions in summary trials

Statute of limitations on charges in summary trials in certain cases

Article 88 CPC⁹⁶ Subject to the provisions of any other law fixing a longer period within which a charge of a criminal offense may be brought, no charge may be brought against any person for a criminal offense for which he may be imposed -

(a) Imprisonment not exceeding three (3) months or a fine not exceeding eight hundred and fifty-four euros (€854) and/or both of these penalties after the expiration of six (6) months from the date of commission criminal offence,

(b) a prison sentence not exceeding twelve (12) months or a fine not exceeding one thousand seven hundred and eight euros (€1,708) and/or both of these sentences after the lapse of twelve (12) months from the date of commission criminal offence.

5

bb. Amnesty or Pardon

Cypriot Constitution

Article 53⁹⁷ 1. The President or the Vice-President of the Republic shall have the right to exercise the prerogative of mercy with regard to persons belonging to their respective Community who are condemned to death.

6

No. Tel. 22802300 No. Fax: 22802317 Public Prosecutors (District of Limassol) Address: Prosecutor's Office of Limassol Leontiou A', 186 A 3020 Limassol No. Tel. 25805476 No. Fax: 25805789 Public Prosecutors (District of Larnaca) Address: Larnaca Prosecutor's Office 6057 Giannou Kranidioti Avenue Larnaca No. Tel. 24804167 No. Fax: 24804089 Public Prosecutors (Paphos District) Address: Paphos Prosecutor's Office N. Nikolaidis New Government Buildings Building D, 2nd floor Paphos No. Tel. 26804545 No. Fax: 26306398 that have already initiated an investigation in urgent cases, etc.

⁹⁶ Ειδικές διατάξεις σε συνοπτικές δίκες

Παραγραφή κατηγοριών σε συνοπτικές δίκες σε ορισμένες περιπτώσεις

88. Τηρουμένων των διατάξεων οποιουδήποτε άλλου νόμου με τις οποίες καθορίζεται μεγαλύτερο χρονικό διάστημα εντός του οποίου δύναται να προσαφθεί κατηγορία για ποινικό αδίκημα, καμιά κατηγορία δε δύναται να προσαφθεί εναντίον οποιουδήποτε προσώπου για ποινικό αδίκημα για το οποίο δύναται να επιβληθεί -

(α) Ποινή φυλάκισης που δεν υπερβαίνει τους τρεις (3) μήνες ή χρηματική ποινή που δεν υπερβαίνει τα οκτακόσια πενήντα τέσσερα ευρώ (€854) ή/και οι δύο αυτές ποινές μετά την πάροδο έξι (6) μηνών από την ημέρα της διάπραξης του ποινικού αδικήματος,

(β) ποινή φυλάκισης που δεν υπερβαίνει τους δώδεκα (12) μήνες ή χρηματική ποινή που δεν υπερβαίνει τα χίλια επτακόσια οκτώ ευρώ (€1.708) ή/και οι δύο αυτές ποινές μετά την πάροδο δώδεκα (12) μηνών από την ημέρα της διάπραξης του ποινικού αδικήματος.

⁹⁷ ΑΡΘΡΟΝ 53 ΣΥΝΤΑΓΜΑ

53.- 1. Ο Πρόεδρος ή ο Αντιπρόεδρος της Δημοκρατίας έχουν το δικαίωμα απονομής χάριτος εις άτομα καταδικασθέντα εις θάνατον και ανήκοντα εις την κοινότητα εκατέρου αυτών.

2. Οσάκις το βλαβέν πρόσωπον και ο καταδικασθείς είναι μέλη διαφόρων κοινοτήτων η χάρις απονέμεται εκ συμφώνου υπό τε του Προέδρου και του Αντιπροέδρου της Δημοκρατίας, εν περιπτώσει δε διαφωνίας αυτών, υπερισχύει η επιεικεστέρα γνώμη.

2. Where the person injured and the offender are members of different Communities such prerogative of mercy shall be exercised by agreement between the President and the Vice-President of the Republic; in the event of disagreement between the two the vote for clemency shall prevail.

3. In case the prerogative of mercy is exercised under paragraph 1 or 2 of this Article the death sentence shall be commuted to life imprisonment.

4. The President and the Vice-President of the Republic shall, on the unanimous recommendation of the Attorney-General and the Deputy Attorney-General of the Republic, remit, suspend, or commute any sentence passed by a court in the Republic in all other cases.

Article 47 The executive power exercised by the President and the Vice-President of the Republic conjointly consists of the following matters that is to say:

- a. determining the design and colour of the flag of the Republic as in Article 4 provided;
- b. creation or establishment of the honours of the Republic;
- c. appointment by an instrument signed by them both of the members of the Council of Ministers as in Article 46 provided;
- d. promulgation by publication in the official Gazette of the Republic of the decisions of the Council of Ministers as in Article 57 provided;
- e. promulgation by publication in the official Gazette of the Republic of any law or decision passed by the House of Representatives as in Article 52 provided;
- f. appointments in Articles 112, 115, 118, 124, 126, 131, 133, 153 and 184 provided and of appointments made under Article 13 1;
- g. institution of compulsory military service as in Article 129 provided;
- h. reduction or increase of the security forces as in Article 130 provided;
- i. exercise of the prerogative of mercy in capital cases where the injured party and the convicted person are members of different Communities as in Article 53 provided; remission, suspension and commutation of sentences as in Article 53 provided;
- j. right of reference to the Supreme Constitutional Court as in Article 140 provided;
- k. publication in the official Gazette of the Republic of decisions of the Supreme Constitutional Court as in Articles 137, 138, 139 and 143 provided; [...].

3. Διά της απονομής χάριτος κατ' εφαρμογήν της πρώτης ή της δευτέρας παραγράφου του παρόντος άρθρου η ποινή του θανάτου μετατρέπεται εις ποινήν ισοβίων δεσμών.

4. Ο Πρόεδρος και ο Αντιπρόεδρος της Δημοκρατίας μειώνουσιν, αναστέλλουσιν ή μετατρέπουσιν οιαδήποτε ποινήν επιβληθείσαν υπό οιοσδήποτε δικαστηρίου εν τη Δημοκρατία κατόπιν συμφώνου γνώμης του γενικού εισαγγελέως της Δημοκρατίας και του βοηθού γενικού εισαγγελέως της Δημοκρατίας.

cc. Prosecution before the trial court

See below → “Provisions on Defence in PIF Crime Matters”.

7

dd. Opposing legal validity (and *ne bis in idem*)

The *ne bis in idem principle* is enshrined in s. 19 of the Criminal Code of the Republic of Cyprus:

8

No one is twice criminally responsible for the same criminal offence

9

19.⁹⁸ No one may be criminally liable twice, either under the provisions of this Code or under the provisions of any other law, for the same act or omission, except in the case where such act or omission caused death of another, in which case the culprit may be convicted of the criminal offense for which he is guilty by reason of causing such death, regardless of whether he has already been convicted of another criminal offense consisting of the act or omission committed by him.

The Criminal Procedure Code holds equally:

10

PART III PROCEDURE DURING PROSECUTION

11

Persons convicted or acquitted are not tried again for the same criminal offence

35.⁹⁹ Whoever has been tried once by a competent Court for a criminal offense and has been convicted or acquitted of that criminal offense, so long as such conviction or acquittal remains in force, shall not be tried again on the same facts for the same criminal offense.

The Cypriot Constitution contains the same requisites in Art. 12. The rules on appeals need to be taken into account:

12

Part V Appeals, Legal Questions Reserved, Etc.

13

There is no appeal in criminal cases except as provided in the following:

⁹⁸ Κανένας δεν είναι δύο φορές ποινικά υπεύθυνος για το ίδιο ποινικό αδίκημα

19. Κανένας δεν δύναται να είναι δύο φορές ποινικά υπεύθυνος, είτε δυνάμει των διατάξεων του Κώδικα αυτού είτε δυνάμει των διατάξεων οποιουδήποτε άλλου νόμου, για την ίδια πράξη ή παράλειψη, εκτός της περίπτωσης κατά την οποία, ότι από τέτοια πράξη ή παράλειψη προκλήθηκε ο θάνατος άλλου, οπότε ο υπαίτιος δύναται να καταδικαστεί για το ποινικό αδίκημα για το οποίο, είναι ένοχος λόγω της πρόκλησης τέτοιου θανάτου, ανεξάρτητα του ότι ήδη έχει καταδικαστεί για άλλο ποινικό αδίκημα που συνίσταται από την πράξη ή παράλειψη που διαπράχθηκε από αυτόν.

⁹⁹ ΜΕΡΟΣ ΙΙΙ ΔΙΑΔΙΚΑΣΙΑ ΚΑΤΑ ΤΗ ΔΙΩΣΗ

Εισαγωγικά

Πρόσωπα που καταδικάστηκαν ή αθωώθηκαν δεν δικάζονται εκ νέου για το ίδιο ποινικό αδίκημα

35. Όποιος δικάστηκε μια φορά από αρμόδιο Δικαστήριο για ποινικό αδίκημα και καταδικάστηκε ή αθωώθηκε για αυτό το ποινικό αδίκημα, εφόσον αυτή η καταδίκη ή η αθώωση παραμένει σε ισχύ, δε δικάζεται εκ νέου βάσει των ίδιων γεγονότων για το ίδιο ποινικό αδίκημα.

131. (1) Subject to the provisions of any other legislation in force from time to time, no appeal may be made from a decision or decree of a Court conducting criminal proceedings except as provided by this Law.

(2) An acquittal decision may not be appealed except with the recommendation or written approval of the Attorney General of the Republic, as provided for in this Law.

ee. Abatement of action (dispense with prosecution)

14 Withdrawal of indictment

91.¹⁰⁰ Subject to the provisions of section 154, if an accuser in a summary trial, at any time before a final order is made, satisfies the Court that there are sufficient grounds for allowing him to withdraw the charge, the Court may permit him to withdraw her, and for this reason acquits the accused:

Provided that, if the charge is so withdrawn before the plea of the accused thereto, the accused shall be acquitted but such discharge shall not operate as an acquittal.

b) Urgent measures of national authorities for securing an investigation and prosecution

15 The **Cypriot Police** houses different Departments, Units and Directorates. They have following offices:

16 The **Crime Combatting Department** consists of various **Sub-Departments** and can therefore be called highly specialised. The problem with the Sub-Departments might despite the high level of specialisation overlap, so that in an EU fraud case good internal communication is important to act quickly if urgent measures e.g. like a search measure on a premise are necessary:

- “Office for Combating Organised Crime”¹⁰¹
- Cybercrime Subdivision¹⁰²

¹⁰⁰ Ανάκληση κατηγορητηρίου

91. Τηρουμένων των διατάξεων του άρθρου 154, αν κατηγορος σε συνοπτική δίκη, σε οποιοδήποτε χρόνο πριν από την έκδοση τελικού διατάγματος, ικανοποιήσει το Δικαστήριο ότι υφίστανται επαρκείς λόγοι για να του επιτραπεί να αποσύρει την κατηγορία, το Δικαστήριο δύναται να επιτρέψει σε αυτόν να αποσύρει αυτήν, και για το λόγο αυτό αθώνει τον κατηγορούμενο:

Νοείται ότι, αν η κατηγορία αποσυρθεί με αυτό τον τρόπο πριν από την απολογία του κατηγορούμενου σε αυτή, ο κατηγορούμενος απαλλάσσεται αλλά αυτή η απαλλαγή δεν ισχύει ως αθώωση.

¹⁰¹ „It mainly deals with the collection, evaluation and the utilisation of information and intelligence, related to Criminal Groups and Organized Crime. It is stressed that members of the Office, represent Cyprus at the Working Group of the Council of the EU, General Matters and Evaluations (except Schengen matters) – „GENVAL” – Council of the EU – Brussels and at the Working Group of EUROPOL, The Hague – for Organized Crime Threat Assessment (OCTA).“

¹⁰² Contact: Office for Combating Cyber Crime tel. +35722808200 Email: cybercrime@police.gov.cy. “The specialised body for cybercrime investigation is the Office for Combating Cybercrime of Cyprus Police. The Office was established in September 2007 based on Police Order No. 3/45 in order to implement the Law on the Convention on Cybercrime (Ratifying Law) L.22(III)/2004.”

- Economic Crime Investigation Office¹⁰³
- Prosecution Office¹⁰⁴
- Crime Intelligence Bureau¹⁰⁵
- Criminal Investigation Department (CID OPS)¹⁰⁶
- Crime Prevention Office¹⁰⁷

The **European Union & International Relations Sub-Directorate** is responsible for all European Law related matters if the Crime Combatting Department is not competent.¹⁰⁸ **17**

The **Finance Directorates** including the EU Funding Office is only responsible if the Cypriot police itself receives EU funding for a project e.g. testing a new tool etc. **18**

The **Customs and Excise Department** will be able to take urgent measures in the area of customs fraud cases e.g. if the Customs and Excise Law applies. This law contains provisions on audits that might be conducted prior to a criminal suspicion.¹⁰⁹ **19**

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

The potentially competent authorities in Cyprus are: **20**

¹⁰³ “It investigates serious and complex cases and responds to requests by foreign countries for information and co-operation concerning the investigation of cases of fraud.

The Office investigates cases that are submitted by Police Units and Government Services to the Commander of Crime Combating Department.”

¹⁰⁴ “The Prosecution Office provides direct legal advice to police detectives and investigators. It advises them on issues concerning Criminal Law, Criminal Procedure and Evidence.”

¹⁰⁵ “The main duties of Crime Intelligence Bureau are the electronic filing, processing, gathering and evaluation of information related to criminal activity and criminals.”

¹⁰⁶ “Responsible for investigating exceptionally serious cases, including cases where investigations extend to more than one District or abroad”

¹⁰⁷ See https://www.police.gov.cy/police/police.nsf/dmldept3_en/dmldept3_en?opendocument. Accessed 15 December 2023.

¹⁰⁸ Contact Details Tel.: 22-607800, Fax: 22-607894, Email: euipcd@police.gov.cy.

¹⁰⁹ Part XV General Powers, Etc

126. Power to demand information and produce records, books, documents or evidence

127. Power to conduct audits

128. Power to enter premises

129. Power to conduct search for hidden pipes, etc

130. Power to demand facilities, etc

131. Power to take samples

132. Power to prohibit use of certain substances in goods subject to excise duty

133. Power to enter and search immovable property, etc


134. Power to search premises in which anything subject to confiscation is found


135. Power to search vehicles and vessels

136. Power of personal inquiry

137. Power to compromise offences

138. Guarantees and guarantee

 Tax Department, the VAT Department, the Cypriot, the Cypriot Customs Organisation, the Government Offices, the Offices of the Ministries containing Payment Offices for EU budget related money flow and the national prosecution authorities.

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Public Prosecutors (Paphos District) Address: Paphos Prosecuor's Office N. Nikolaidis New Government Buildings Building D, 2nd floor Paphos No. Tel. 26804545 No. Fax: 26306398 that have already initiated an investigation in urgent cases, etc.


d) Provisions regarding the finalisation of the national investigation, Para 7

- 21** The finalisation of the investigation is highlighted with the decision to begin with an indictment the procedure before the trial court:

Initiation of criminal proceedings and method of compelling appearance

Beginning with an indictment

37.¹¹⁰ Subject to the provisions of any other Law, the criminal prosecution of a person begins with an indictment that is read against that person before a Court.

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

¹¹⁰ Έναρξη ποινικής διαδικασίας και τρόπος εξαναγκασμού εμφάνισης Έναρξη με κατηγορητήριο

37. Τηρουμένων των διατάξεων οποιουδήποτε άλλου Νόμου, η ποινική δίωξη προσώπου αρχίζει με κατηγορητήριο που απαγγέλλεται εναντίον του προσώπου αυτού ενώπιον Δικαστηρίου.

3. Article 28 Conducting the investigation

3. Article 28 Conducting the investigation.....	119	measures for “those national authorities” ..	124
a) The handling EDP conducting the investigative measures, Para 1	122	c) Ensuring compliance with national law.....	127
b) Instructions and assignment of investigative measures for “those national authorities”	122	aa. Via the general investigation provisions	127
(1) Criminal and judicial police area	122	bb. Via national administrative decrees/regulations under criminal procedural law	129
(2) Tax area	123	d) Urgent measures in accordance with national law necessary to ensure effective investigations	129
(3) Customs area	123		
(4) Visualisation of Instructions and assignment of investigative			

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.

- 1 As part of the introduction to Art. 28 EPPO Regulation in this compendium chapter, which is relevant to all EDPs and also affects the academic and political debate about specialised investigative personnel, the following can be said: The conduct of investigations is dependent on **instruction relationships**, whereby in contrast to the dependency in classically national systems, in the area of EU anti-fraud investigations the **EPPO** (i.e. the college level) has **supervisory powers** as it is a supranational, independent body.
- 2 In her speech for the first anniversary of the EPPO, given at the conference “EPPO one year in action – Towards Resolving Complexity and Bringing Added Value”¹¹¹ in the *Hémicycle* in Luxembourg on 1st June 2022, Laura Kövesi outlined that in order to **enhance the detection rates of EU fraud** specialised customs units and specialised financial experts, groups of specialised EU investigators educated in the typologies of EU frauds are needed to enhance the conduct of investigations. She underlined that these

¹¹¹ Organized by the University of Luxembourg (Prof. Katalin Ligeti), ECLAN and the EPPO.

special units could be set up tomorrow and that doing so depended only on political will.¹¹²

As long as there are no special units in all countries as the first Attorney General of the EPPO requested, the detection rates depend on the conduct of investigations and the cooperation with established national authorities – especially the assignment and instruction of investigative tasks to “those national authorities”. The situation in the present country chapter will be analysed below, stating the cooperation level and important actions to be taken. **3**

The investigations on national level and at Union-level must be distinguished. Especially at the Union level, the investigation is different than at the national level. In many cases, investigations will be conducted in Union institutions (EU IBOAs). The EPPO has started to set up working arrangements for this type of investigation. For example, it established one with the European Investment Bank, which provides for cooperation with the in-house fraud detection service (“a kind of internal investigation commission”). In the following we shall focus on the national investigations level regarding Cyprus. **4**

For the different PIF offences, the specific country system provides different investigative bodies acting by virtue of different national codes such as the General Tax Code, the police laws and the customs laws including the customs administration laws. It depends, for the analysis of Art. 28 EPPO Regulation, on whether a centrally governed country of the EU is affected or whether there is a federal system with differentiated competences of the federal units. **5**

In addition, the lawfulness of the action is particularly important as a generalisation of all instructions from the staff, which are made available to the EPPO and the EDPs from the national resource area. **6**

¹¹² EPPO, European Public Prosecutor's Office One Year In Action, <https://www.youtube.com/watch?v=v2oUUyTEPFU>. Accessed 15 December 2023.; Laura Kövesi, So kommt die EU im Kampf gegen Verbrecherbanden in die Offensive, Die Welt (Welt am Sonntag), Stand: 05.06.2022, <<https://shorturl.at/aoE39>>: „Ich fordere deshalb alle zuständigen nationalen Behörden auf, diese bewährte Praxis zu übernehmen und zur Unterstützung unserer Ermittlungen spezialisierte Einheiten einzurichten, die Finanz-, Steuer- und Zollfahnder vereinen. Ich schlage vor, dass wir eine Elitetruppe hoch qualifizierter Finanzbetrugsermittler innerhalb der EU bilden, die über die EPPO länderübergreifend arbeitet. Dafür muss man kein Gesetz ändern; es ist eine reine Organisationsentscheidung der zuständigen nationalen Behörden. Es kann schon morgen geschehen“. This statements were republished by various newspapers and journals across Europe (see eg Figaro article in the French country chapter).

a) The handling EDP conducting the investigative measures, Para 1


- 7 The typical situation is that the handling EDP is conducting the investigative measure in Cyprus, Art. 28 para 1 EPPO Regulation. He/she will eventually depart with the police on an inspection or search on foreign and private premises etc. This implicates that the EDP cannot handle the investigation alone.

b) Instructions and assignment of investigative measures for “those national authorities”

- 8 He/she will need according to Art. 28 EPPO Regulation to **instruct certain experts** from the police, tax or customs and assign investigative measures to them as they are “those national authorities. The tasks and competence of these authorities are regulated by various Cypriot Acts:

(1) Criminal and judicial police area


Police Investigation Authorities 1

	Criminal Procedure Code
Part II Criminal Investigation and Pre-Prosecution Procedure	
Investigation of criminal offences	
Investigators	
<p>4.¹¹³ (1) Any police officer may conduct an investigation in relation to the commission of a criminal offence.</p> <p>(2) The Council of Ministers or the Attorney General of the Republic may authorise any person, by name or office, whom it considers suitable for the purpose, to conduct investigations in relation to the commission of any criminal offence.</p> <p>(3) A police officer or a person authorised under subsection (2) who conducts an investigation in relation to the commission of a criminal offense is hereinafter referred to in this Law as an “investigator”.</p>	


¹¹³ Ανακριτές

4. (1) Οποιοσδήποτε αστυνομικός δύναται να διεξάγει ανάκριση σε σχέση με τη διάπραξη ποινικού αδικήματος.
 (2) Το Υπουργικό Συμβούλιο ή ο Γενικός Εισαγγελέας της Δημοκρατίας δύναται να εξουσιοδοτήσει οποιοδήποτε πρόσωπο, με το όνομα ή το αξίωμα του, το οποίο θεωρεί κατάλληλο για το σκοπό, να διεξάγει ανακρίσεις σε σχέση με τη διάπραξη οποιουδήποτε ποινικού αδικήματος.
 (3) Αστυνομικός ή πρόσωπο εξουσιοδοτημένο δυνάμει του εδαφίου (2) που διεξάγει ανάκριση σε σχέση με τη διάπραξη ποινικού αδικήματος στο εξής στο Νόμο αυτό αναφέρεται ως „ανακριτής”.

(2) Tax area*Tax Investigation authorities 1*

	Law
<p>The following three Laws apply: The Tax Department Law of 2014 (70(I)/2014)/Ο Περί Τμήματος Φορολογίας Νόμος του 2014 (70(I)/2014) The Code of Ethics and Conduct of the Tax Department. October 2021. Κ.Δ.Π 95/2010 (in Greek) - V.A.T Regulations 2010 (Tax Refund to taxable persons established in E.U Member States)</p>	

(3) Customs area*Customs Investigation Authorities 1*

	The Customs Code Law of 2004 (94(I)/2004)
<p>Customs prosecution Power for customs prosecution 87.¹¹⁴ (1) Criminal prosecutions for offenses in violation of customs legislation or other legislation, as well as any procedure for the collection of duties, taxes, or monetary penalties or for the declaration of confiscation of vessels or other means of transport or goods, are referred to in this Law as “customs prosecutions“ and are carried out, in accordance with the instructions of the Attorney General of the Republic. (2) Customs prosecution is conducted in the name of the Director in all Courts. In the event of an appeal, when the appealed decision concerns a duty or a tax or a fine against a vessel or a means of transport or goods, the person who filed an appeal must, as long as the appeal is pending, file the amount payable with the Court, in accordance</p>	

¹¹⁴ Ο Περί Τελωνειακού Κώδικα Νόμος του 2004 (94(I)/2004)

Τελωνειακή δίωξη

Εξουσία για τελωνειακή δίωξη

87. (1) Οι ποινικές διώξεις για αδικήματα κατά παράβαση της τελωνειακής νομοθεσίας ή της άλλης νομοθεσίας, καθώς και οποιαδήποτε διαδικασία για είσπραξη των δασμών, φόρων, ή χρηματικών ποινών ή για την κήρυξη εις δήμευση σκαφών ή άλλων μεταφορικών μέσων ή εμπορευμάτων, αναφέρονται στον παρόντα Νόμο ως «τελωνειακές διώξεις» και ασκούνται, σύμφωνα με τις οδηγίες του Γενικού Εισαγγελέα της Δημοκρατίας.

(2) Η τελωνειακή δίωξη ασκείται στο όνομα του Διευθυντή σε όλα τα Δικαστήρια. Σε περίπτωση έφεσης, όταν η εφεσιβαλλόμενη απόφαση αφορά δασμό ή και φόρο ή πρόστιμο εναντίον σκάφους ή μεταφορικού μέσου ή εμπορευμάτων, το πρόσωπο που καταχώρησε κατάθεση έφεση πρέπει όπως, για όσο χρόνο η έφεση εκκρεμεί, να καταθέσει στο Δικαστήριο το πληρωτέο, σύμφωνα με την πρωτόδικη απόφαση ποσό, εκτός αν το δικαστήριο που εκδικάζει την έφεση διατάξει διαφορετικά.

(3) Μάρτυρας ο οποίος εμφανίζεται για λογαριασμό του Διευθυντή ή όταν ο Διευθυντής εμφανίζεται ως μάρτυρας σε τελωνειακή δίωξη, δεν υποχρεώνεται να αποκαλύψει το γεγονός ότι έλαβε οποιαδήποτε πληροφορία ή τη φύση της ή το όνομα του προσώπου που έδωσε σε αυτόν την πληροφορία.

with the first instance judgment amount, unless the court hearing the appeal orders otherwise.

(3) A witness who appears on behalf of the Director or where the Director appears as a witness in a customs prosecution, shall not be required to disclose the fact that he received any information or the nature of it or the name of the person who gave him the information.

Compromise of offences

88.¹¹⁵ (1) With the exception of the case of criminal offenses in accordance with subsections (3), (4) and (5) of article 89(3), (4) and (5) of this Law, the Director may settle any offense or act, which he or she wanted to commit, or which he or she is reasonably suspected of having been committed by any person in derogation or violation of the provisions of customs or other legislation, on terms determined by him, at his discretion, and he has full authority as he accepts from this person a monetary payment, which does not exceed the maximum monetary penalty provided by the customs or other legislation as mentioned above for this offense or act.

(2) Upon payment of this amount to the Director, it is prohibited to take further judicial measures for this offense or act against the person who compromised, and if he is in custody, he is released.

(4) Visualisation of Instructions and assignment of investigative measures for “those national authorities”

- 9 The following visualisation presents the arrow of instructions and assignment of investigative tasks:

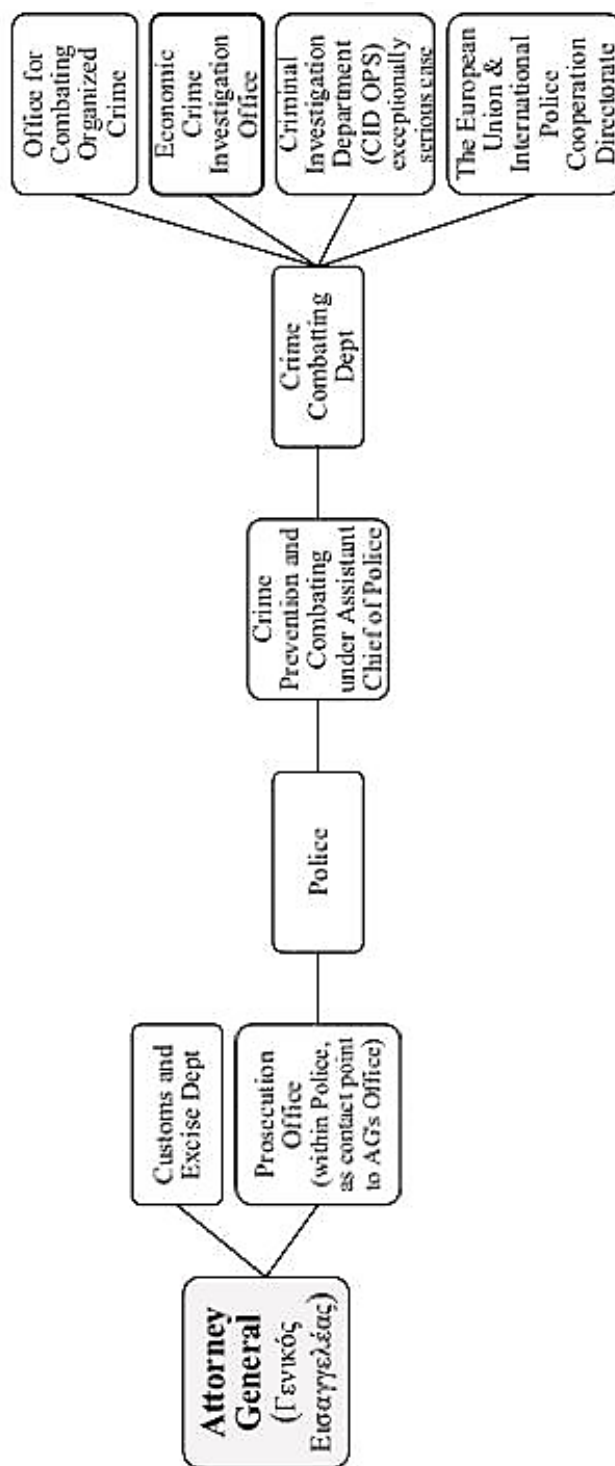
¹¹⁵ Ο Περί Τελωνειακού Κώδικα Νόμος του 2004 (94(I)/2004)

Συμβιβασμός αδικημάτων

88. (1) Με εξαίρεση την περίπτωση ποινικών αδικημάτων σύμφωνα με τα εδάφια (3), (4) και (5) του άρθρου 89(3), (4) και (5) του παρόντος Νόμου, ο Διευθυντής δύναται να συμβιβάζει οποιοδήποτε αδίκημα ή πράξη, το οποίο ή η οποία ήθελε διαπραχθεί, ή για το οποίο ή την οποία υπάρχει εύλογη υποψία ότι διαπράχθηκε από κάποιο πρόσωπο κατά παρέκκλιση ή παράβαση των διατάξεων της τελωνειακής ή της άλλης νομοθεσίας, με όρους που καθορίζονται από αυτόν, κατά την κρίση του, έχει δε πλήρη εξουσία όπως αποδέχεται από το πρόσωπο αυτό χρηματική πληρωμή, η οποία δεν υπερβαίνει την ανώτατη χρηματική ποινή που προβλέπεται από την τελωνειακή ή την άλλη νομοθεσία όπως αναφέρεται πιο πάνω για το αδίκημα ή την πράξη αυτή.

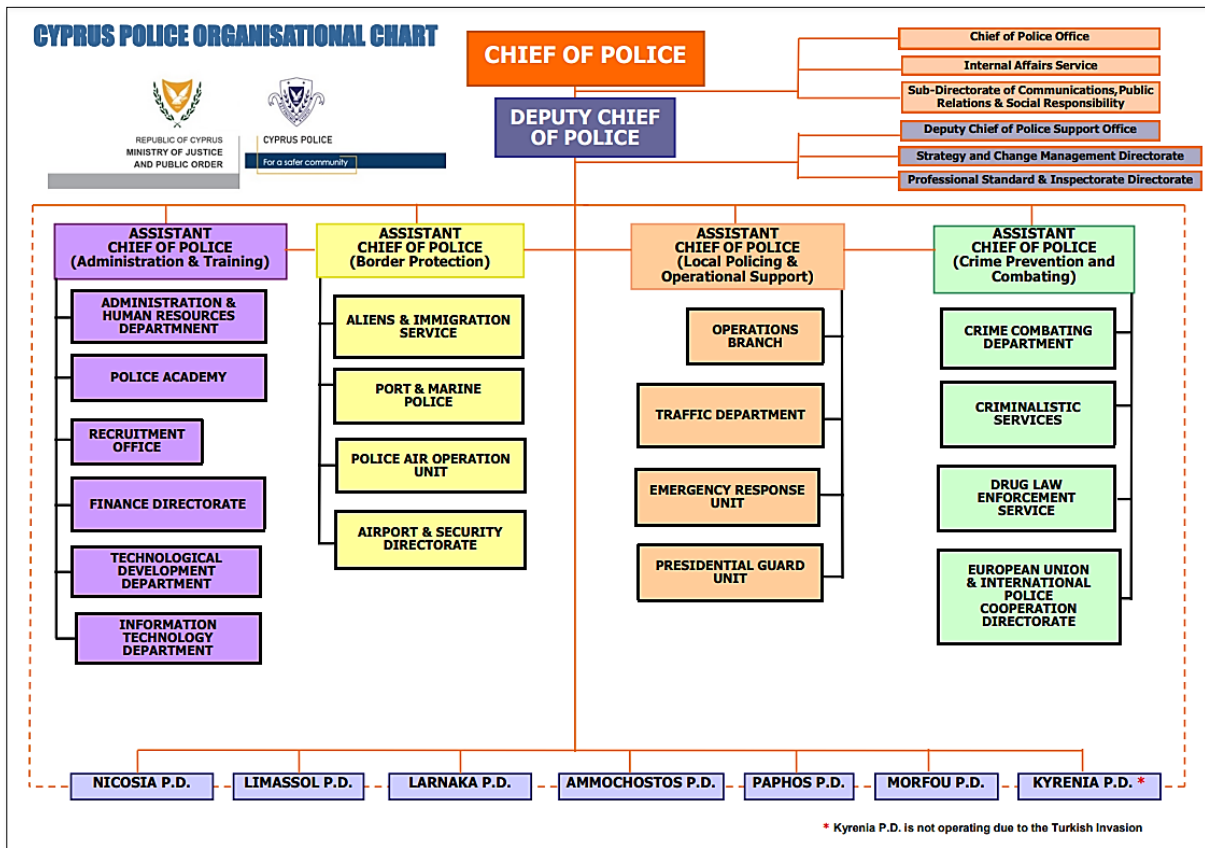
(2) Με την πληρωμή του ποσού αυτού στο Διευθυντή, απαγορεύεται η λήψη περαιτέρω δικαστικών μέτρων για το αδίκημα ή την πράξη αυτή εναντίον του προσώπου που συμβιβάσθηκε, αν δε αυτός τελεί υπό κράτηση αφήνεται ελεύθερος.

Figure 5 Cypriot Police Organigram



Cf. Source: Official Website of the Cypriot Police.

Figure 6 Cyprus Police Organisational Chart



Cf. Cypriot Police Structure 2022 .

- 10 This organisational chart presents a comprehensive picture of the Cyprus Police, meticulously detailing the hierarchy and structure of the police force in the Republic of Cyprus. At the apex of the chart is the Chief of Police, directly overseeing the Deputy Chief of Police Office and the Internal Affairs Service, including a Sub-Directorate dedicated to Communications, Public Relations, and Social Responsibility. The Deputy Chief of Police is depicted as playing a significant role, with a support office aimed at enhancing the operational efficacy of the force.
- 11 Further down the hierarchy, the chart splits into various directorates and departments, highlighting the specialized divisions within the Cyprus Police. Notable among these are the Strategy and Change Management Directorate, the Professional Standard & Inspectorate Directorate, and sections dedicated to Administration and Training, Border Protection, Local Policing & Operational Support, and Crime Prevention and Combating. The organisational structure extends to encompass critical operational units such as the Aliens & Immigration Service, the Operations Department, and the Crime Combating Branch. Each unit is shown to contribute to the overarching mission of the Cyprus Police for a safer community, as stated in the chart's caption.

Moreover, the chart illustrates the educational and operational support elements of the Cyprus Police, including the Police Academy, the Police Air Operation Unit, and specialized departments like the Traffic Department and the Drug Law Enforcement Service. The inclusion of the Technological Development Department and the European Union & International Police Cooperation Unit underscores the force's commitment to modernization and international collaboration. **12**

The bottom of the chart mentions local police departments across various districts in Cyprus, noting that the Kyrenia P.D. is currently non-operational due to the Turkish Invasion, adding a historical and geopolitical dimension to the organisational overview. **13**

This detailed organisational chart not only serves as an informative tool for EDPs, Seconded Experts to OLAF or defence lawyers or any interested person about the Cyprus Police's internal structure but also reflects the comprehensive efforts and diverse responsibilities undertaken by the force to maintain public order and safety in the Republic of Cyprus – not to forget the role of the police in fighting crime – especially PIF crimes detrimental to the EU's financial interests. **14**

c) Ensuring compliance with national law

aa. Via the general investigation provisions

Article 113 Constitution¹¹⁶

The Attorney General of the Republic, assisted by the Assistant Attorney General of the Republic, is the legal advisor of the Republic, the President of the Republic, the Vice President of the Republic, the Council of Ministers and the ministers, and exercises any other authority and performs any other service or duty determined or assigned to him by the Constitution or by law.

The Attorney General of the Republic has the power in his judgment in the public interest to initiate, conduct, undertake and continue or interrupt any procedure or order the

¹¹⁶ ΑΡΘΡΟΝ 113

Ο γενικός εισαγγελεύς της Δημοκρατίας, βοηθούμενος υπό του βοηθού γενικού εισαγγελέως της Δημοκρατίας είναι ο νομικός σύμβουλος της Δημοκρατίας, του Προέδρου της Δημοκρατίας, του Αντιπροέδρου της Δημοκρατίας, του Υπουργικού Συμβουλίου και των υπουργών, ασκεί δε πάσαν ετέραν εξουσίαν και εκτελεί πάσαν ετέραν υπηρεσίαν ή καθήκον καθοριζόμενον ή ανατιθέμενον εις αυτόν διά του Συντάγματος ή διά νόμου.

Ο γενικός εισαγγελεύς της Δημοκρατίας έχει εξουσίαν κατά την κρίσιν αυτού προς το δημόσιον συμφέρον να κινεί, διεξάγει, επιλαμβάνηται και συνεχίζει ή διακόπτει οιαδήποτε διαδικασίαν ή διατάσσει δίωξιν καθ' οιουδήποτε προσώπου εν τη Δημοκρατία δι' οιονδήποτε αδίκημα. Η τοιαύτη εξουσία δύναται να ασκείται υπό του γενικού εισαγγελέως της Δημοκρατίας είτε αυτοπροσώπως είτε δι' υπαλλήλων υπαγομένων εις αυτόν ενεργούντων υπό και συμφώνως προς τας οδηγίας αυτού.

prosecution of any person in the Republic for any crime. Such authority may be exercised by the Attorney General of the Republic either in person or by employees subordinate to him acting under and in accordance with his directives.

15

Criminal Procedure Code

Investigation of criminal offences

5.¹¹⁷ (1) Every investigator may demand from any person, whom he has reason to consider aware of the facts or incidents of the criminal offense for which he is conducting investigations, to attend at such a place and time as the investigator reasonably wished to designate for the purpose of examining and taking a statement from him in relation to the criminal offence.

(2) The investigator may record any statement of the person being examined, which is then read to the person who then signs it or, if illiterate, puts his mark on it and if that person refuses to act in this way, the investigator notes the refusal at the end of the statement also stating the reason for it, if ascertained, and the statement is then signed by the investigator.

(3) Any such deposition, if proven to have been made wilfully, is admissible as testimony in any criminal proceeding against the person who testified.

(4) Whoever, without reasonable cause, refuses to appear at such a place and time as the investigator wishes to set, is guilty of a criminal offense and liable to imprisonment not exceeding one year or to a fine not exceeding one thousand pounds or to these two penalties.

16

For the **Customs Code Law of 2004 (94(I)/2004)** see above → under Customs area.

¹¹⁷ Ανάκριση ποινικών αδικημάτων

5. (1) Κάθε ανακριτής δύναται να απαιτήσει από οποιοδήποτε πρόσωπο, το οποίο αυτός έχει λόγο να θεωρεί ενήμερο των γεγονότων ή περιστατικών του ποινικού αδικήματος για το οποίο διεξάγει ανακρίσεις, να παραστεί σε τέτοιο τόπο και χρόνο ως ο ανακριτής ήθελε εύλογα ορίσει για το σκοπό εξέτασης και λήψης κατάθεσης από αυτό σε σχέση με το ποινικό αδίκημα.

(2) Ο ανακριτής δύναται να καταγράψει οποιαδήποτε κατάθεση του εξεταζόμενου προσώπου, η οποία τότε διαβάζεται στο πρόσωπο αυτό που στη συνέχεια την υπογράφει ή αν είναι αναλφάβητο, θέτει το σημείο του σε αυτήν και αν το πρόσωπο αυτό αρνείται να ενεργήσει με αυτό τον τρόπο, ο ανακριτής σημειώνει την άρνηση στο τέλος της κατάθεσης αναφέροντας επίσης το λόγο της, αν εξακριβώθηκε, και η κατάθεση στη συνέχεια υπογράφεται από τον ανακριτή.

(3) Κάθε τέτοια κατάθεση, αν αποδειχτεί ότι έγινε θεληματικά, είναι δεκτή ως μαρτυρία σε οποιαδήποτε ποινική διαδικασία εναντίον του προσώπου που κατέθεσε.

(4) Όποιος, χωρίς εύλογη αιτία, αρνείται να παραστεί σε τέτοιο τόπο και χρόνο ως ήθελεν ορίσει ο ανακριτής, είναι ένοχος ποινικού αδικήματος και υπόκειται σε φυλάκιση που δεν υπερβαίνει το ένα έτος ή σε χρηματική ποινή που δεν υπερβαίνει τις χίλιες λίρες ή και στις δύο αυτές ποινές.

bb. Via national administrative decrees/regulations under criminal procedural law

The Criminal Procedure Procedural Regulation (249/1953) applies. There are now further publicly available decrees.

17

d) Urgent measures in accordance with national law necessary to ensure effective investigations

19.¹¹⁸ Type, content and duration of validity of an arrest warrant CPC

(1) Every arrest warrant bears the signature of the judge who issues it, the date and time of issuance, as well as the judge's certification that he is reasonably satisfied that there is a need to issue the warrant.

(2) Every such document shall state briefly the criminal offense or matter for which it is issued, name or otherwise describe the person to be arrested and direct the police officer or other person to whom it is directed to arrest the person against whom it is issued and to bring the same before the Court which issued the warrant or other Court having jurisdiction over the case, to plead guilty to the criminal offense or matter referred to in the warrant and to be further dealt with according to law.

(3) Every such warrant is usually directed generally to all police officers, but the Magistrate issuing such warrant may, if its immediate execution is necessary and there is no police officer immediately available, direct it to any other person or persons, and the person it or persons execute it, and when the warrant is addressed to more than one police officer or more than one person, it may be executed by all or by any or by more than one of them.

(4) Any such warrant shall remain in force until executed or set aside by a judge.

¹¹⁸ Ο περί Ποινικής Δικονομίας Νόμος (ΚΕΦ.155)

Τύπος, περιεχόμενο και διάρκεια ισχύος εντάλματος σύλληψης

19. (1) Κάθε ένταλμα σύλληψης φέρει την υπογραφή του δικαστή που το εκδίδει, την ημερομηνία και ώρα εκδόσεως, καθώς επίσης και βεβαίωση του δικαστή ότι έχει ικανοποιηθεί λογικά για την ύπαρξη της ανάγκης εκδόσεως του εντάλματος.

(2) Κάθε τέτοιο έγγραφο αναφέρει σε συντομία το ποινικό αδίκημα ή ζήτημα για το οποίο εκδίδεται, κατονομάζει ή με άλλο τρόπο περιγράφει το πρόσωπο που θα συλληφθεί και διατάσσει τον αστυνομικό ή άλλο πρόσωπο προς το οποίο αυτό απευθύνεται να συλλάβει το πρόσωπο εναντίον του οποίου εκδίδεται και να προσάγει αυτό ενώπιον του Δικαστηρίου που έκδωσε το ένταλμα ή άλλου Δικαστηρίου αρμόδιου για την περίπτωση, για να απολογηθεί στο ποινικό αδίκημα ή ζήτημα που αναφέρεται στο ένταλμα και να τύχει περαιτέρω μεταχείρισης σύμφωνα με το νόμο.

(3) Κάθε τέτοιο ένταλμα συνήθως απευθύνεται γενικά προς όλους τους αστυνομικούς, αλλά ο Δικαστής που εκδίδει τέτοιο ένταλμα δύναται, αν είναι αναγκαία η άμεση εκτέλεση του και δεν υπάρχει αμέσως διαθέσιμος αστυνομικός, να απευθύνει αυτό προς οποιοδήποτε άλλο πρόσωπο ή πρόσωπα, και το πρόσωπο αυτό ή πρόσωπα το εκτελούν, όταν δε το ένταλμα απευθύνεται σε περισσότερους από ένα αστυνομικούς ή περισσότερα από ένα πρόσωπα, αυτό δύναται να εκτελεστεί από όλους ή από οποιοδήποτε ή από περισσότερους του ενός από αυτούς.

(4) Κάθε τέτοιο ένταλμα παραμένει σε ισχύ μέχρις ότου εκτελεστεί ή ακυρωθεί από δικαστή.

Search of persons and places without a warrant

25.¹¹⁹ (1) Every police officer may, without a warrant-

(a) to detain and search any person whom he reasonably suspects to be carrying, transporting or concealing an article or document in relation to which a criminal offense is about to be committed or is being committed or has recently been committed

(b) enter and search any place-

(j) if he has reason to believe that a criminal offense punishable by death or imprisonment exceeding two years is being committed or is being committed therein, or has recently been committed, or that any instrument with which he has recently any such criminal offense is committed

(ii) if the occupier of the premises requests the assistance of the police

(iii) if anyone in that place requests the assistance of the police and there is reason to believe that an offense is being committed within it

(v) in any case in which he may enter and search any place without a warrant by virtue of any legislation in force from time to time.

(2) Anything found during a search conducted under subsection (1) of this section which could be seized if the search was conducted under a warrant may be seized and treated in the same manner as if it were a thing seized in the course of an investigation under a warrant, the provisions of section 32 being applied, mutatis mutandis, to any such thing.

¹¹⁹ Έρευνα προσώπων και τόπων χωρίς ένταλμα

25. (1) Κάθε αστυνομικός δύναται, χωρίς ένταλμα-

(α) να κατακρατήσει και ερευνήσει οποιοδήποτε τον οποίο αυτός εύλογα υποπτεύεται ότι φέρει, μεταφέρει ή αποκρύπτει αντικείμενο ή έγγραφο σε σχέση με το οποίο πρόκειται να διαπραχτεί ή διαπράττεται ή έχει πρόσφατα διαπραχτεί ποινικό αδίκημα

(β) να εισέλθει και ερευνήσει οποιοδήποτε τόπο-

(i) αν έχει λόγο να πιστεύει ότι σε αυτό πρόκειται να διαπραχτεί ή διαπράττεται, ή έχει πρόσφατα διαπραχτεί ποινικό αδίκημα που τιμωρείται με θανατική ποινή ή με φυλάκιση που υπερβαίνει τα δύο έτη ή ότι δύναται να βρεθεί σε αυτό οποιοδήποτε όργανο με το οποίο έχει πρόσφατα διαπραχτεί οποιοδήποτε τέτοιο ποινικό αδίκημα

(ii) αν ο κάτοχος του τόπου ζητά τη βοήθεια της αστυνομίας

(iii) αν οποιοσδήποτε στον τόπο αυτό ζητά τη βοήθεια της αστυνομίας και υπάρχει λόγος να πιστεύεται ότι διαπράττεται αδίκημα εντός αυτού

(iv) σε οποιαδήποτε περίπτωση κατά την οποία δύναται να εισέλθει και ερευνήσει οποιοδήποτε τόπο χωρίς ένταλμα δυνάμει οποιοσδήποτε νομοθετήματος που ισχύει εκάστοτε.

(2) Οτιδήποτε βρεθεί κατά τη διάρκεια έρευνας που διεξάγεται δυνάμει του εδαφίου (1) του άρθρου αυτού το οποίο θα μπορούσε να κατασχεθεί αν η έρευνα διεξαγόταν δυνάμει εντάλματος, δύναται να κατασχεθεί και τύχει μεταχείρισης κατά τον ίδιο τρόπο ως αν αυτό ήταν πράγμα που κατασχέθηκε κατά τη διάρκεια έρευνας δυνάμει εντάλματος, εφαρμοζομένων των διατάξεων του άρθρου 32, με τις αναγκαίες προσαρμογές, σε οποιοδήποτε τέτοιο πράγμα.

26.¹²⁰ Power to search means of transport

(1) Without prejudice to any other power granted by this Law or by any other Law-

(a) a police officer or

(b) any member of the Forces of the Republic who is specifically authorized for this purpose by his commander, may, on reasonable suspicion, stop and search any means of transport for the purpose of ascertaining whether any explosive material, offensive weapon or other instrument of violence.

(2) Anything found in the course of a search conducted under subsection (1) of this section which could be seized if the search was conducted under a warrant may be seized and treated in the same manner as if it were a thing seized in the course of an investigation under a warrant, the provisions of section 32 shall apply, *mutatis mutandis*, to any such thing:

Provided that any explosive, offensive weapon or other article or document found during any such search which is subject to confiscation under the provisions of any other Law in force from time to time shall be confiscated.

(3) Any person in charge of a means of transport called by virtue of subsection (1) to stop and allow that means of transport to be searched, who refuses to stop or allow this search or who obstructs a police officer, or a member of the Armed Forces of the Republic is guilty of a criminal offense and shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand pounds or to both.

¹²⁰ Εξουσία για έρευνα μεταφορικών μέσων

26. (1) Άνευ επηρεασμού οποιασδήποτε άλλης εξουσίας που χορηγείται από το Νόμο αυτό ή από οποιοδήποτε άλλο Νόμο-

(α) αστυνομικός ή

(β) οποιοδήποτε μέλος των Δυνάμεων της Δημοκρατίας το οποίο εξουσιοδοτείται ειδικά για το σκοπό αυτό από τον αρχηγό του, δύναται, με εύλογη υποψία, να ανακόψει και ερευνήσει οποιοδήποτε μεταφορικό μέσο για το σκοπό εξακρίβωσης κατά πόσο παράνομα μεταφέρεται σε αυτό οποιαδήποτε εκρηκτική ύλη, επιθετικό όπλο ή άλλο όργανο βιαιότητας.

(2) Οτιδήποτε βρεθεί κατά τη διάρκεια έρευνας που διεξάγεται δυνάμει του εδαφίου (1) του άρθρου αυτού το οποίο θα μπορούσε να κατασχεθεί αν η έρευνα διεξαγόταν δυνάμει εντάλματος, δύναται να κατασχεθεί και τύχει μεταχείρισης με τον ίδιο τρόπο ως αν αυτό ήταν πράγμα που κατασχέθηκε κατά τη διάρκεια έρευνας δυνάμει εντάλματος, εφαρμοζομένων των διατάξεων του άρθρου 32, με τις αναγκαίες προσαρμογές, σε οποιοδήποτε τέτοιο πράγμα:

Νοείται ότι οποιαδήποτε εκρηκτική ύλη, επιθετικό όπλο ή άλλο αντικείμενο ή έγγραφο που ανευρίσκεται κατά τη διάρκεια οποιασδήποτε τέτοιας έρευνας το οποίο υπόκειται σε κατάσχεση δυνάμει των διατάξεων οποιοδήποτε άλλου Νόμου που ισχύει εκάστοτε, κατάσχεται.

(3) Κάθε υπεύθυνος μεταφορικού μέσου καλούμενος δυνάμει του εδαφίου (1) να σταματήσει και επιτρέψει όπως το μεταφορικό αυτό μέσο ερευνηθεί, ο οποίος αρνείται να σταματήσει ή επιτρέψει την έρευνα αυτή ή ο οποίος παρεμποδίζει αστυνομικό, ή μέλος των Δυνάμεων της Δημοκρατίας είναι ένοχος ποινικού αδικήματος και υπόκειται σε φυλάκιση για περίοδο που δεν υπερβαίνει τους έξι μήνες ή σε χρηματική ποινή που δεν υπερβαίνει τις χίλιες λίρες ή και στις δύο αυτές ποινές.

Type and duration of search warrant

28.¹²¹ (1) Every search warrant bears the signature of the judge who issues it, the date and time of issuance, as well as a certification by the judge that he has been reasonably satisfied of the existence of the need to issue the warrant.

(2) Every such warrant is usually directed generally to all police officers⁰ but the Magistrate issuing such warrant may, if its immediate execution is necessary, and there is no police officer immediately available, direct it to any other person or persons, and the person it or persons execute it, and when the warrant is addressed to more than one police officer or more than one person, it may be executed by all of them, or by any or by more than one of them.

(3) Every such warrant shall remain in force until executed or set aside by a Magistrate.

¹²¹ Τύπος και διάρκεια ισχύος εντάλματος έρευνας

28. (1) Κάθε ένταλμα έρευνας φέρει την υπογραφή του δικαστή που το εκδίδει, την ημερομηνία και ώρα εκδόσεως, καθώς επίσης και βεβαίωση του δικαστή ότι έχει ικανοποιηθεί λογικά για την ύπαρξη της ανάγκης εκδόσεως του εντάλματος.

(2) Κάθε τέτοιο ένταλμα συνήθως απευθύνεται γενικά προς όλους τους αστυνομικούς⁰ αλλά ο Δικαστής που εκδίδει τέτοιο ένταλμα δύναται, αν η άμεση εκτέλεση του είναι αναγκαία, και δεν υπάρχει αμέσως διαθέσιμος αστυνομικός, να απευθύνει αυτό σε οποιοδήποτε άλλο πρόσωπο ή πρόσωπα, και το πρόσωπο αυτό ή πρόσωπα εκτελούν αυτό, όταν δε το ένταλμα απευθύνεται σε περισσότερους από ένα αστυνομικούς ή περισσότερα από ένα πρόσωπα, αυτό δύναται να εκτελεστεί από όλους, ή από οποιοδήποτε ή από περισσότερους του ενός από αυτούς.

(3) Κάθε τέτοιο ένταλμα παραμένει σε ισχύ μέχρις ότου εκτελεστεί ή ακυρωθεί από Δικαστή.

4. Article 29 Lifting privileges or immunities

- | | |
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|---|---|

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

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

According to Article 29, the European Chief Prosecutor must ask for the revocation of privileges or immunities granted to individuals under investigation by the EPPO in compliance with national legal procedures. This also holds true for those covered by the EU's rules on related subjects.

a) National privilege and immunity provisions, Para 1

The privilege against self-incrimination is regulated by the Criminal Procedure Code:

Right to remain silent and right not to incriminate oneself

3C.¹²² (1) The suspect or the accused has the right to remain silent regarding the criminal act for which he is suspected or prosecuted.

¹²² Δικαίωμα σιωπής και δικαίωμα μη αυτοενοχοποίησης

3Γ.(1) Ο ύποπτος ή ο κατηγορούμενος έχει το δικαίωμα σιωπής σε ότι αφορά την αξιόποινη πράξη για την οποία είναι ύποπτος ή διώκεται.

(2)(α) Ο ύποπτος ή ο κατηγορούμενος έχει το δικαίωμα της μη αυτοενοχοποίησης.

(β) Το δικαίωμα της μη αυτοενοχοποίησης συνίσταται στη μη υποχρέωση του υπόπτου ή κατηγορουμένου να προσκομίσει αποδεικτικά στοιχεία ή έγγραφα ή να παράσχει πληροφορίες που μπορεί να οδηγήσουν στην αυτοενοχοποίησή του, όταν αυτός καλείται να προβεί σε δήλωση ή να απαντήσει σε ερωτήσεις.

(2)(a) The suspect or accused person has the right not to incriminate himself.
(b) The right not to incriminate oneself consists in the non-obligation of the suspect or accused to produce evidence or documents or to provide information that may lead to self-incrimination, when called upon to make a statement or answer questions.
(c) The exercise of the right not to incriminate oneself shall not prevent the competent authorities from gathering evidence which may be lawfully obtained from the suspect or accused through the exercise of powers of lawful compulsion and which exists independently of the will of the suspect or accused.
(3) The exercise by the suspect or accused of the right to remain silent and/or not to incriminate himself shall not be used against him nor shall it be considered in itself as evidence that the suspect or accused has committed the criminal act:
It is understood that the provisions of this subsection do not affect the provisions of the Evidence Law regarding the assessment of evidence by the courts.

b) Immunity provisions

aa. Parliamentary privilege or immunity

4 The relevant provisions are anchored in the Constitution:

bb. National Legislation

5 **Article 45**

1. The President or the Vice-President of the Republic shall not be liable to any criminal prosecution during his term of office except under the provisions of this Article.
2. The President or the Vice-President of the Republic may be prosecuted for high treason on a charge preferred by the Attorney-General and the Deputy Attorney-General of the Republic before the High Court upon a resolution of the House of Representatives carried by a secret ballot and a majority of three fourths of the total number of Representatives: Provided that no such resolution shall be taken and no item shall be entered on the agenda or debated in the House of Representatives in connexion therewith unless the proposal for such resolution is signed by at least one-fifth of the total number of Representatives.

(γ) Η άσκηση του δικαιώματος της μη αυτοενοχοποίησης δεν εμποδίζει τις αρμόδιες αρχές από τη συγκέντρωση αποδεικτικών στοιχείων τα οποία μπορούν να ληφθούν νόμιμα από τον ύποπτο ή κατηγορούμενο μέσω άσκησης εξουσιών νόμιμου καταναγκασμού και τα οποία υφίστανται ανεξάρτητα από τη βούληση του υπόπτου ή κατηγορουμένου.

(3) Η άσκηση από τον ύποπτο ή κατηγορούμενο του δικαιώματος σιωπής ή/και της μη αυτοενοχοποίησης δεν χρησιμοποιείται εναντίον του ούτε θεωρείται από μόνη της απόδειξη ότι ο ύποπτος ή ο κατηγορούμενος έχει διαπράξει την αξιόποινη πράξη:

Νοείται ότι οι διατάξεις του παρόντος εδαφίου δεν επηρεάζουν τις διατάξεις του περί Αποδείξεως Νόμου αναφορικά με την εκτίμηση των αποδεικτικών στοιχείων από τα δικαστήρια.

3. The President or the Vice-President of the Republic may be prosecuted for an offence involving dishonesty or moral turpitude upon a charge preferred by the Attorney-General and the Deputy Attorney-General of the Republic before the High Court with the leave of the President of the High Court.

4. The President or the Vice-President of the Republic upon being prosecuted under paragraph 2 or 3 of this Article shall be suspended from the performance of any of the functions of his office and thereupon the provisions of paragraph 2 of Article 36 shall apply.

The President or the Vice-President of the Republic on any such prosecution shall be tried by the High Court; on his conviction his office shall become vacant and on his acquittal he shall resume the performance of the functions of his office

5. Subject to paragraphs 2 and 3 of this Article the President or the Vice-President of the Republic shall not be liable to prosecution for any offence committed by him in the execution of his functions but he may be prosecuted for any other offence committed during his term of office after he ceases to hold office. 6. No action shall be brought against the President or the Vice-President of the Republic in respect of any act or omission committed by him in the exercise of any of the functions of his office: Provided that nothing in this paragraph contained shall be construed as in any way depriving any person of the right to sue the Republic as provided by law.

Article 106

1. A member of a Communal Chamber shall not be liable to civil or criminal proceedings in respect of any statement made or vote given by him in the Chamber.

2. A member of a Communal Chamber cannot without the leave of the High Court, be prosecuted, arrested or imprisoned, so long as he continues to be a member. Such leave is not required in the case of an offence punishable with death or imprisonment for five years or more in case the offender is taken in the act. In such a case the High Court, being notified forthwith by the competent authority, decides whether it should grant or refuse leave for the continuation of the prosecution or detention, as the case may be, so long as he continues to be a member.

3. If the High Court refuses to grant leave for the prosecution of a member of a Communal Chamber, the period during which such member cannot thus be prosecuted shall not be reckoned for the purposes of any period of prescription for the offence in question.

4. If the High Court refuses to grant leave for the enforcement of a sentence of imprisonment imposed on a member of a Communal Chamber by a competent court, the enforcement of such sentence shall be postponed until he ceases to be such member.

cc. Provisions on the lifting of immunities?

- 6 The leave of the High Court is necessary to prosecute against Legislators. Thus the EPPO Chief Prosecutor needs to ask the Court to grant the leave.

c) Immunities and Privileges under union law, Para 2

- ✍ *Nota bene:* Union law differs from national law and is not researched here in-depth. Cf. an EU-Commentary for this particular area and the legal questions that might arise.
- 7 **Under Union law** the following situation evolves: The protocol, which is mentioned below will apply if the immunity or a privilege of a Union official needs to be lifted.
- 8 It applies the consolidated version of the Treaty on the Functioning of the European Union.
- 9 The **Protocol (No 7)**, which was mentioned, can be found in the **annex of the TFEU**. It contains the special rules on the **privileges and immunities of the European Union** (OJ C 326, 26.10.2012, p. 266–272).¹²³

¹²³ Cf. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12012E/PRO/07>.

III. Relevant National Law with a Special Focus on Investigation Measures

[...]

SECTION 2

Rules on investigation measures and other measures

1. Article 30 Rules on investigation measure

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1. At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:

- (a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;
- (b) obtain the production of any relevant object or document either in its original form or in some other specified form;
- (c) obtain the production of stored computer data, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council;
- (d) freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the judgement ordering confiscation.
- (e) intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using;
- (f) track and trace an object by technical means, including controlled deliveries of goods.

2. Without prejudice to Article 29, the investigation measures set out in paragraph 1 of this Article may be subject to conditions in accordance with the applicable national law

if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.

3. The investigation measures set out in points(c), (e) and (f) of paragraph 1 of this Article may be subject to further conditions, including limitations, provided for in the applicable national law. In particular, Member States may limit the application of points (e) and (f) of paragraph 1 of this Article to specific serious offences. A Member State intending to make use of such limitation shall notify the EPPO of the relevant list of specific serious offences in accordance with Article 117.

4. The European Delegated Prosecutors shall be entitled to request or to order any other measures in their Member State that are available to prosecutors under national law in similar national cases, in addition to the measures referred to in paragraph 1.

5. The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 4 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective. The procedures and the modalities for taking the measures shall be governed by the applicable national law.

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 are mostly **codified** in the Criminal Procedure Code of Cyprus but they are not altogether codified within this Code as some of the fundamentals required to combat EU frauds can also be found *in praxi* or in judgements (law of the courts). 1

Cyprus is a **special legal area** (see → Introduction), as sometimes the legislation and the interpretation of the law will need to take in account Common-law jurisprudence and thus old English Law¹²⁴. 2

Criminal Procedure Code, Chapter 155

When does English Law apply?

3. With respect to matters of criminal procedure for which there is no special provision in this Act or in any other legislation in force from time to time, each Court shall apply in criminal proceedings, the law in force in England from time to time and rules of practice relating to criminal procedure. 3

¹²⁴ See Naziris 2023, p. 20, footnote 91 commenting on the debate that this provision would rung against the Cypriot Constitution, see <https://shorturl.at/anAOU>.

a) Member States shall ensure that the European Delegated Prosecutors are entitled to order or request



Nota bene: The **authorisation** of an EDP (the “handling” EDP in one of the MS) to order or request could/should or must be enshrined in the new adoption laws which the Member States enacted to be fully operational for the EPPO and its tasks. As most of the Member States either amended their Criminal Procedure Code or their Code of the Organisation of the Judiciary and/or the Prosecutors Act, the relevant provision(s) is (are) presented in the following.

b) Investigation measures

- 4 The investigation measures stem either from the Criminal Procedure Code, the Tax Regulation or the Customs Law 2004 as amended 2022.

aa. Para 1(a)

(1) Search measures

- 5 For all search measures the EDP must respect that a warrant needs to be obtained according to the law:

6 **Search warrants**

27.¹²⁵ When a judge is satisfied by a sworn written statement that there is reasonable cause to believe that in any place there is-

(a) anything in which or in relation to which a criminal offense has been committed or is suspected of having been committed or

(b) anything which there is reasonable cause to believe will provide evidence of the commission of a criminal offence; or

¹²⁵ Εντάλματα έρευνας

27. Όταν δικαστής ικανοποιείται με ένορκη έγγραφη δήλωση ότι υπάρχει εύλογη αιτία να πιστεύεται ότι σε οποιοδήποτε τόπο υπάρχει-

(α) οτιδήποτε στο οποίο ή σε σχέση με το οποίο διαπράχθηκε ποινικό αδίκημα ή υπάρχει υποψία ότι διαπράχθηκε ή

(β) οτιδήποτε για το οποίο υπάρχει εύλογη αιτία να πιστεύεται ότι θα παρέχει απόδειξη ως προς τη διάπραξη ποινικού αδικήματος ή

(γ) οτιδήποτε για το οποίο υπάρχει εύλογη αιτία να πιστεύεται ότι προορίζεται να χρησιμοποιηθεί για το σκοπό διάπραξης ποινικού αδικήματος, ο δικαστής δύναται σε οποιοδήποτε χρόνο να εκδώσει ένταλμα (το οποίο αναφέρεται στο νόμο αυτό ως „ένταλμα έρευνας”), που εξουσιοδοτεί το πρόσωπο που κατονομάζεται σε αυτό-

(ι) να ερευνήσει τον τόπο αυτό προς ανεύρεση οποιουδήποτε τέτοιου πράγματος και να κατάσχει και μεταφέρει αυτό ενώπιον του Δικαστηρίου από το οποίο εκδόθηκε το ένταλμα έρευνας ή ενώπιον άλλου Δικαστηρίου για να τύχει αυτό μεταχείρισης σύμφωνα με το νόμο και

(ιι) να συλλάβει και να προσαγάγει ενώπιον Δικαστή τον κάτοχο της οικίας ή του τόπου όπου βρέθηκε το πράγμα ή οποιοδήποτε πρόσωπο εντός ή περίξ της οικίας αυτής ή του τόπου το οποίο κατέχει τέτοιο πράγμα, αν ο Δικαστής κρίνει σκόπιμο να διατάξει με αυτό τον τρόπο στο ένταλμα.

(c) anything which there is reasonable cause to believe is intended to be used for the purpose of committing a criminal offence, the judge may at any time issue a warrant (referred to in this Act as a “search warrant”) authorizing the person named in it

(j) search such place for any such thing and seize and bring the same before the Court from which the search warrant was issued or before another Court to be dealt with according to law and

(ii) to arrest and bring before a Magistrate the owner of the house or place where the thing was found or any person in or about such house or place in possession of such thing, if the Magistrate thinks fit to so order in the warrant.

(a) Search any premises or land

Entrance to a closed place

30.¹²⁶ (1) Where a place subject to search is closed, every person residing therein or in charge thereof shall, on the demand of a police officer or other person having power of search, permit free entry to such police officer or person and to provide every reasonable facility to conduct an investigation thereof.

(2) If it is not possible to secure entry in this way to such a place, the police officer or other person with investigative powers may proceed in accordance with the manner specified in subsection (2) of article 11.

(3) When there is a reasonable suspicion of any person in or around that place that he is concealing on him any object for which a search should have been conducted, that person may be searched. If the person to be searched is a woman, she is searched by a woman and may be taken to a police station for this purpose.

7


¹²⁶ Είσοδος σε κλειστό τόπο

30. (1) Όταν τόπος που υπόκειται σε έρευνα είναι κλειστός, καθένας που διαμένει σε αυτόν ή είναι υπεύθυνος για αυτόν, κατά την απαίτηση αστυνομικού ή άλλου προσώπου που έχει εξουσία έρευνας, πρέπει να επιτρέψει ελεύθερη είσοδο στον αστυνομικό αυτό ή το πρόσωπο και να παρέχει κάθε εύλογη διευκόλυνση προς διεξαγωγή έρευνας σε αυτό.

(2) Αν δεν δύναται να εξασφαλιστεί είσοδος με τον τρόπο αυτό σε τέτοιο τόπο, ο αστυνομικός ή άλλο πρόσωπο που έχει εξουσία έρευνας δύναται να προχωρήσει σύμφωνα με τον τρόπο που καθορίζεται στο εδάφιο (2) του άρθρου 11.

(3) Όταν υπάρχει εύλογη υποψία για οποιοδήποτε πρόσωπο εντός ή πέριξ του τόπου αυτού ότι κρύβει πάνω του οποιοδήποτε αντικείμενο για το οποίο έπρεπε να διεξαχθεί έρευνα, το πρόσωπο αυτό δύναται να ερευνηθεί. Αν το πρόσωπο που πρόκειται να ερευνηθεί είναι γυναίκα, αυτή ερευνάται από γυναίκα και δύναται να μεταφερθεί σε αστυνομικό σταθμό για το σκοπό αυτό.

Next the Customs Code Law establishes one investigation power rules in relation to searches:

8		The Customs Code Law of 2004 (94(I)/2004)
<p>Entry and search of buildings</p> <p>79. Power to enter and search premises</p> <p>80. Power to search premises in which anything subject to confiscation is found</p> <p>81. Special regulation in relation to the Criminal Procedure Law</p>		

(b) Search any means of transport

9	<p>Power to search means of transport</p> <p>26.¹²⁷ (1) Without prejudice to any other power granted by this Law or by any other Law</p> <p>(a) a police officer or</p>
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¹²⁷ **Εξουσία για έρευνα μεταφορικών μέσων**

26. (1) Άνευ επηρεασμού οποιασδήποτε άλλης εξουσίας που χορηγείται από το Νόμο αυτό ή από οποιοδήποτε άλλο Νόμο-

(α) αστυνομικός ή

(β) οποιοδήποτε μέλος των Δυνάμεων της Δημοκρατίας το οποίο εξουσιοδοτείται ειδικά για το σκοπό αυτό από τον αρχηγό του, δύναται, με εύλογη υποψία, να ανακόψει και ερευνήσει οποιοδήποτε μεταφορικό μέσο για το σκοπό εξακρίβωσης κατά πόσο παράνομα μεταφέρεται σε αυτό οποιαδήποτε εκρηκτική ύλη, επιθετικό όπλο ή άλλο όργανο βιαιότητας.

(2) Οτιδήποτε βρεθεί κατά τη διάρκεια έρευνας που διεξάγεται δυνάμει του εδαφίου (1) του άρθρου αυτού το οποίο θα μπορούσε να κατασχεθεί αν η έρευνα διεξαγόταν δυνάμει εντάλματος, δύναται να κατασχεθεί και τύχει μεταχείρισης με τον ίδιο τρόπο ως αν αυτό ήταν πράγμα που κατασχέθηκε κατά τη διάρκεια έρευνας δυνάμει εντάλματος, εφαρμοζομένων των διατάξεων του άρθρου 32, με τις αναγκαίες προσαρμογές, σε οποιοδήποτε τέτοιο πράγμα:

Νοείται ότι οποιαδήποτε εκρηκτική ύλη, επιθετικό όπλο ή άλλο αντικείμενο ή έγγραφο που ανευρίσκεται κατά τη διάρκεια οποιασδήποτε τέτοιας έρευνας το οποίο υπόκειται σε κατάσχεση δυνάμει των διατάξεων οποιουδήποτε άλλου Νόμου που ισχύει εκάστοτε, κατάσχεται.

(3) Κάθε υπεύθυνος μεταφορικού μέσου καλούμενος δυνάμει του εδαφίου (1) να σταματήσει και επιτρέψει όπως το μεταφορικό αυτό μέσο ερευνηθεί, ο οποίος αρνείται να σταματήσει ή επιτρέψει την έρευνα αυτή ή ο οποίος παρεμποδίζει αστυνομικό, ή μέλος των Δυνάμεων της Δημοκρατίας είναι ένοχος ποινικού αδικήματος και υπόκειται σε φυλάκιση για περίοδο που δεν υπερβαίνει τους έξι μήνες ή σε χρηματική ποινή που δεν υπερβαίνει τις χίλιες λίρες ή και στις δύο αυτές ποινές.

(4) Στην έννοια του άρθρου αυτού-

„εκρηκτική ύλη” σημαίνει πυρίτιδα, νιτρογλυκερίνη, δυναμίτιδα, βαμβακοπυρίτιδα, εκρηκτική σκόνη ανατινάξεων, βροντώδη υδράργυρο ή άλλα βροντώδη μέταλλα, έγχρωμα πυροτεχνήματα και κάθε άλλη ύλη, παρόμοια με τα πιο πάνω ή όχι, η οποία χρησιμοποιείται ή κατασκευάζεται με σκοπό την παραγωγή πρακτικού αποτελέσματος με έκρηξη ή πυροτεχνικό αποτέλεσμα, και περιλαμβάνει πυροτεχνήματα ομίχλης, πυροτεχνήματα γενικά, πυροσωλήνες, πύραυλους, κασιούλια, πυροκροτητές, φυσίγγια, τυρομαχικά κάθε είδους, και κάθε διασκευή ή παρασκεύασμα οποιασδήποτε εκρηκτικής ύλης όπως ορίζεται πιο πάνω και οποιαδήποτε συσκευή, μηχανή ή εργαλείο ή μέρος αυτών, ή υλικά που χρησιμοποιούνται ή είναι προορισμένα να χρησιμοποιηθούν ή διασκευασμένα προς πρόκληση ή υποβοήθηση πρόκλησης οποιασδήποτε έκρηξης σε εκρηκτική ύλη ή με εκρηκτική ύλη

„μεταφορικό μέσο” σημαίνει αεροσκάφος, ζώο, άμαξα, σκάφος, σιδηροδρομικό βαγόνι, ποδήλατο, μηχανοκίνητο όχημα κάθε είδους ή οποιοδήποτε άλλο όχημα που χρησιμοποιείται για τη μεταφορά προσώπων ή αγαθών

„επιθετικό όπλο” σημαίνει αντικείμενο που κατασκευάζεται ή διασκευάζεται για χρήση προς πρόκληση σωματικής βλάβης ή προοριζόμενο από το πρόσωπο που το μεταφέρει για τέτοια χρήση από αυτό.

(b) any member of the Forces of the Republic who is specifically authorized for this purpose by his commander, may, on reasonable suspicion, stop and search any means of transport for the purpose of ascertaining whether any explosive material, offensive weapon or other instrument of violence.

(2) Anything found in the course of a search conducted under subsection (1) of this section which could be seized if the search was conducted under a warrant may be seized and treated in the same manner as if it were a thing seized in the course of an investigation under a warrant, the provisions of section 32 shall apply, mutatis mutandis, to any such thing:

Provided that any explosive, offensive weapon or other article or document found during any such search which is subject to confiscation under the provisions of any other Law in force from time to time shall be confiscated.

(3) Any person in charge of a means of transport called by virtue of subsection (1) to stop and allow that means of transport to be searched, who refuses to stop or allow this search or who obstructs a police officer, or a member of the Armed Forces of the Republic is guilty of a criminal offense and shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand pounds or to both.

(4) In the sense of this article-


“explosive“ means gunpowder, nitroglycerine, dynamite, cotton candy, explosive blasting powder, thunder mercury or other thunder metals, colored fireworks and any other matter, similar to the above or not, which is used or manufactured for the purpose of producing a practical effect with an explosion or pyrotechnic effect, and includes fog fireworks, fireworks in general, fire tubes, rockets, capsules, detonators, cartridges, ammunition of any kind, and any preparation or preparation of any explosive as defined above and any device, machine or tool or part thereof, or materials used or intended to be used or prepared to cause or assist in causing any explosion in or with an explosive

“conveyance“ means an aircraft, animal, carriage, boat, railway carriage, bicycle, motor vehicle of any kind or any other vehicle used for the carriage of persons or goods;

“assault weapon” means an article manufactured or prepared for use to cause bodily harm or intended by the person carrying it for such use by him.’

10 In addition, the Customs Law provides for the following provision:

Sources & national sections 1 The Customs Code Law of 2004 (94(I)/2004)

	<p>The Customs Code Law of 2004 (94(I)/2004)</p>
<p>Power to search vehicles and vessels</p> <p>82A.¹²⁸ Notwithstanding any other power granted under customs or other legislation, any officer authorized to ascertain or secure compliance with customs or other legislation may search any stationary vehicle or vessel or stop and search any vehicle or vessel for the purpose of detaining or confiscating as goods subject to confiscation which-</p> <p>(a) subject to a duty or tax which has not been paid or for which no guarantee has been lodged;</p> <p>(b) are unlawfully transported from one place to another;</p> <p>(c) are subject to confiscation under customs or other legislation:</p> <p>It is understood that the provisions of this article also apply to any vehicle or vessel transporting anything, for which there is a reasonable suspicion that it is being used or has been used or may be used for the purpose of committing an offense in violation of customs or other legislation</p>	

(c) Search any private home

11 See above → (a).

¹²⁸ Εξουσία έρευνας οχημάτων και σκαφών

82Α. Ανεξάρτητα από οποιαδήποτε άλλη εξουσία παραχωρείται δυνάμει της τελωνειακής ή και της άλλης νομοθεσίας, οποιοσδήποτε εξουσιοδοτημένος λειτουργός για τη διαπίστωση ή την εξασφάλιση της τήρησης της τελωνειακής ή και της άλλης νομοθεσίας, δύναται να ερευνά οποιοδήποτε μη ευρισκόμενο σε κίνηση όχημα ή σκάφος ή να σταματά και ερευνά οποιοδήποτε όχημα ή σκάφος με σκοπό την κατακράτηση ή κατάσχεση ως υποκείμενα εις δήμευση εμπορεύματα που-

(α) υπόκεινται σε δασμό ή και φόρο που δεν έχει καταβληθεί ή για τον οποίο δεν κατατέθηκε εγγύηση·


(β) μεταφέρονται παράνομα από κάποιο τόπο σε άλλο·

(γ) υπόκεινται σε δήμευση δυνάμει της τελωνειακής ή και της άλλης νομοθεσίας·

Νοείται ότι, οι διατάξεις του παρόντος άρθρου εφαρμόζονται και σε οποιοδήποτε όχημα ή σκάφος μεταφέρει οτιδήποτε, για το οποίο υπάρχει εύλογη υποψία ότι χρησιμοποιείται ή χρησιμοποιήθηκε ή δυνατόν να χρησιμοποιηθεί με σκοπό τη διάπραξη αδικήματος κατά παράβαση της τελωνειακής ή και της άλλης νομοθεσίας.

(d) Search any clothes and any other personal property*Sources & national sections 2 The Customs Code Law of 2004 (94(I)/2004) 2*

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	The Customs Code Law of 2004 (94(I)/2004)
<p>Power of personal inquiry/search</p> <p>83.¹²⁹ (1) In case there is a reasonable suspicion that a person is transporting any merchandise-</p> <p>(a) which is subject to duty or tax, which has not been paid or for which security has not been provided; and/or</p> <p>(b) for the entry or import or exit or export of which a prohibitory provision or restriction is in force from time to time by virtue of customs or other legislation,</p> <p>any authorized officer may physically search the person and any goods carried on him.</p> <p>(2) A person who is to be investigated, in accordance with the provisions of subsection (1), may demand that he be brought before the head of the authorized officer conducting the investigation, who examines the reasons on which the suspicion is based and decides against how long the personal investigation will be conducted or not.</p> <p>(3) The in-person search is conducted by an authorized officer of the same sex.</p>	

(e) Search any computer system

See below → the provisions of the Data Retention Law.

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¹²⁹ Εξουσία προσωπικής έρευνας

83. (1) Σε περίπτωση που υπάρχει εύλογη υποψία ότι πρόσωπο μεταφέρει οποιοδήποτε εμπόρευμα-

(α) το οποίο υπόκειται σε δασμό ή και φόρο, ο οποίος δεν έχει καταβληθεί ή για τον οποίο δεν παρασχέθηκε εγγύηση· ή/και

(β) για την είσοδο ή εισαγωγή ή έξοδο ή εξαγωγή του οποίου τελεί εκάστοτε σε ισχύ απαγορευτική διάταξη ή περιορισμός δυνάμει της τελωνειακής ή και της άλλης νομοθεσίας,

οποιοσδήποτε εξουσιοδοτημένος λειτουργός δύναται να ερευνά σωματικά το πρόσωπο και κάθε εμπόρευμα που μεταφέρεται επ' αυτού.

(2) Πρόσωπο στο οποίο πρόκειται να διενεργηθεί έρευνα, σύμφωνα με τις διατάξεις του εδαφίου (1), δύναται να απαιτεί την προσαγωγή του στον προϊστάμενο του εξουσιοδοτημένου λειτουργού που διεξάγει την έρευνα, ο οποίος εξετάζει τους λόγους στους οποίους βασίζεται η υποψία και αποφασίζει κατά πόσο θα διενεργηθεί η προσωπική έρευνα ή όχι.

(3) Η έρευνα σε πρόσωπο διενεργείται από ίδιου φύλου εξουσιοδοτημένο λειτουργό.

(2) Conservatory measures: necessary to preserve their integrity/necessary to avoid the loss/necessary to avoid the contamination of evidence

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Detention or disposal of things seized pursuant to a search warrant

32.¹³⁰ (1) When, during the execution of a search warrant, anything is seized and brought before a Judge, as provided for in article 27, this thing, subject to the provisions of subsection (2) of this article, may be seized by such a person as the Judge wished to appoint, always taking reasonable care for its preservation until the conclusion of any criminal proceedings which may be instituted in connection therewith.

(2) When anything seized by virtue of a search warrant and produced before a Magistrate is subject to wear and tear or is harmful, that thing may immediately be disposed of in such manner as the Magistrate may direct.

(3) If the Magistrate is of the opinion that anything seized under a search warrant is no longer required for any criminal proceedings, then unless authorized or required by him or any other Law to otherwise provide, he shall order—

(a) as the thing or any part thereof shall be returned to the person who appears to the Judge to be entitled to it and, if that person is the defendant, as returned to him or to such other person as the defendant may designate, or

(b) such thing, if it belongs to the defendant, or part thereof, is used to pay any costs or compensation which the defendant is ordered to pay.

¹³⁰ Κατακράτηση ή διάθεση πραγμάτων που κατασχέθηκαν δυνάμει εντάλματος έρευνας

32. (1) Όταν, κατά την εκτέλεση εντάλματος έρευνας, κατασχεθεί οτιδήποτε και προσκομιστεί ενώπιον Δικαστή, όπως προβλέπεται στο άρθρο 27, το πράγμα αυτό, τηρουμένων των διατάξεων του εδαφίου (2) του άρθρου αυτού, δύναται να κατακρατηθεί από τέτοιο πρόσωπο ως ο Δικαστής ήθελε ορίσει, λαμβανόμενης πάντοτε εύλογης φροντίδας για τη διατήρηση του μέχρι την αποπεράτωση οποιασδήποτε ποινικής διαδικασίας η οποία είναι δυνατό να διεξαχθεί σε σχέση με αυτό.

(2) Όταν οτιδήποτε που κατασχέθηκε δυνάμει εντάλματος έρευνας και προσκομίστηκε ενώπιον Δικαστή υπόκειται σε φθορά ή είναι επιβλαβές, το πράγμα αυτό δύναται αμέσως να διατεθεί με τέτοιο τρόπο όπως ο Δικαστής ήθελε ορίσει.

(3) Αν ο Δικαστής είναι της γνώμης ότι οτιδήποτε που κατασχέθηκε δυνάμει εντάλματος έρευνας δεν απαιτείται πλέον για οποιαδήποτε ποινική διαδικασία, τότε εκτός αν εξουσιοδοτείται ή υποχρεώνεται από αυτόν ή οποιοδήποτε άλλο Νόμο να διαθέσει αυτό διαφορετικά, διατάσσει-

(α) όπως το πράγμα ή οποιοδήποτε μέρος του επιστραφεί στο πρόσωπο το οποίο φαίνεται στο Δικαστή ότι έχει δικαίωμα σε αυτό και, αν το εν λόγω πρόσωπο είναι ο κατηγορούμενος, όπως επιστραφεί στον ίδιο ή σε τέτοιο άλλο πρόσωπο ως ο κατηγορούμενος ήθελε ορίσει ή

(β) όπως το πράγμα αυτό, αν ανήκει στον κατηγορούμενο, ή μέρος αυτού, χρησιμοποιηθεί για την πληρωμή οποιωνδήποτε εξόδων ή αποζημιώσεων τα οποία ο κατηγορούμενος διατάχθηκε να πληρώσει.

Seizure of property not mentioned in the warrant

33.¹³¹ If during the search of a place pursuant to a warrant, the person authorized to conduct the search finds property that is not mentioned in the warrant but in relation to which there is reasonable cause to believe that a criminal offense has been committed or is intended to be committed, he may confiscate the property it and to bring it before the Judge who issued the warrant, who may issue such a decree regarding the retention or disposition of the property as he deems appropriate.

bb. Para 1(b)**(1) Obtainment of the production of any relevant object or document**

See below → under (2).

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(2) Either in its original form or in some other specified form

Production of any relevant object	Order for production of documents 6. ¹³² (1) The investigator may, during the investigation for a criminal offense, if he considers the presentation of a document necessary or desirable for the purposes of the investigation, issue a written order to the person in whose possession or control the such document is or is believed to be, requiring him to produce the document at such reasonable place and time as may be specified in the order.
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¹³¹ Κατάσχεση περιουσίας που δεν αναφέρεται στο ένταλμα

33. Αν κατά την έρευνα κάποιου τόπου δυνάμει εντάλματος, ο εξουσιοδοτημένος να διεξάγει την έρευνα βρει περιουσία που δεν αναφέρεται στο ένταλμα αλλά σε σχέση με την οποία υπάρχει εύλογη αιτία να πιστευτεί ότι διαπράχθηκε ή σκοπεύεται να διαπραχτεί ποινικό αδίκημα, αυτός δύναται να κατάσχει την περιουσία αυτή και να τη μεταφέρει ενώπιον του Δικαστή που έκδωσε το ένταλμα, ο οποίος δύναται να εκδώσει τέτοιο διάταγμα αναφορικά με την κατακράτηση ή διάθεση της περιουσίας ως ήθελε φανεί σε αυτόν σκόπιμο.

¹³² Διαταγή παρουσίας εγγράφων

6. (1) Ο ανακριτής δύναται κατά τη διάρκεια της ανάκρισης για ποινικό αδίκημα, αν αυτός θεωρεί την παρουσίαση κάποιου εγγράφου αναγκαία ή επιθυμητή για τους σκοπούς της ανάκρισης, να εκδώσει γραπτή διαταγή στο πρόσωπο υπό την κατοχή ή τον έλεγχο του οποίου βρίσκεται το έγγραφο αυτό ή πιστευτεί ότι βρίσκεται, απαιτώντας από αυτό την παρουσίαση του εγγράφου σε τέτοιο εύλογο τόπο και χρόνο ως ήθελε καθοριστεί στη διαταγή.

(2) Κάθε πρόσωπο που καλείται βάσει γραπτής διαταγής δυνάμει του παρόντος άρθρου να παρουσιάσει έγγραφο, θεωρείται ότι συμμορφώθηκε με τη διαταγή, αν προκάλεσε, την παρουσίαση του εγγράφου αντί να παρεβρεθεί αυτοπροσώπως για να το παρουσιάσει.

(3) Όποιος χωρίς εύλογη αιτία, όταν διαταχτεί δυνάμει του παρόντος άρθρου να παρουσιάσει οποιοδήποτε έγγραφο, αρνείται να ενεργήσει με τον τρόπο αυτό, είναι ένοχος ποινικού αδικήματος και υπόκειται σε φυλάκιση που δεν υπερβαίνει τα τρία χρόνια ή σε χρηματική ποινή που δεν υπερβαίνει τις χίλιες πεντακόσιες λίρες ή και στις δύο αυτές ποινές.

(4) Οι διατάξεις του άρθρου αυτού δεν εφαρμόζονται για οποιοδήποτε έγγραφο για την παρουσίαση του οποίου απαιτείται από το Νόμο αυτό ή από άλλο Νόμο ένταλμα του Υπουργικού Συμβουλίου ή διάταγμα του Δικαστηρίου.

	<p>(2) Any person who is summoned under an order in writing under this section to produce a document shall be deemed to have complied with the order if he causes the document to be produced instead of attending in person to produce it.</p> <p>(3) Whoever without reasonable cause, when ordered under this section to produce any document, refuses to do so shall be guilty of a criminal offense and liable to imprisonment for a term not exceeding three years or to a fine not exceeding one thousand five hundred pounds, or to both such penalties.</p> <p>(4) The provisions of this article do not apply to any document for the presentation of which a warrant of the Council of Ministers or a decree of the Court is required by this Law or by another Law.</p> <p>Power of Magistrate in respect of documents or things the possession of which is unlawful</p> <p>34.¹³³ If, by virtue of a search warrant, a document or thing is produced before a Judge whose use or possession is illegal, the Judge may, in the absence of any legal justification demonstrated by the person possessing it, cause its seizure, mutilation, or destruction of such document or thing notwithstanding that no person is prosecuted in relation thereto.</p> <p>See below, → Articles 2527 may also be applicable.</p>
Its original form	See above first column.
In some other specified form	See above first column.
Production of any relevant document	Articles 252 Article 34

¹³³ Εξουσία Δικαστή σχετικά με έγγραφα ή πράγματα των οποίων η κατοχή είναι παράνομη

34. Αν δυνάμει εντάλματος έρευνας, προσκομίζεται ενώπιον Δικαστή έγγραφο ή πράγμα του οποίου η χρήση ή η κατοχή είναι παράνομη, ο Δικαστής δύναται, ελλείψει κάποιας νόμιμης δικαιολογίας που θα αποδειχτεί από το πρόσωπο που το κατέχει, να προκαλέσει την κατάσχεση, παραμόρφωση, ή καταστροφή του εγγράφου αυτού ή του πράγματος ανεξάρτητα του ότι κανένα πρόσωπο δεν διώκεται σε σχέση με αυτό.

Its original form**Search of persons and places without a warrant**

25.¹³⁴ (1) Every police officer may, without a warrant-

(a) to detain and search any person whom he reasonably suspects to be carrying, transporting or concealing an article or document in relation to which a criminal offense is about to be committed or is being committed or has recently been committed

(b) enter and search any place-

(i) if he has reason to believe that a criminal offense punishable by death or imprisonment exceeding two years is being committed or is being committed therein, or has recently been committed, or that any instrument with which he has recently any such criminal offense is committed

(ii) if the occupier of the premises requests the assistance of the police

(iii) if anyone in that place requests the assistance of the police and there is reason to believe that an offense is being committed within it

(iv) in any case in which he may enter and search any place without a warrant by virtue of any legislation in force from time to time.

(2) Anything found during a search conducted under subsection (1) of this section which could be seized if the search was conducted under a warrant may be seized and treated in the same manner as if it were a thing seized in the course of an investigation under a warrant, the provisions of section 32 being applied, mutatis mutandis, to any such thing.

¹³⁴ Έρευνα προσώπων και τόπων χωρίς ένταλμα

25. (1) Κάθε αστυνομικός δύναται, χωρίς ένταλμα-

(α) να κατακρατήσει και ερευνήσει οποιοδήποτε τον οποίο αυτός εύλογα υποπτεύεται ότι φέρει, μεταφέρει ή αποκρύπτει αντικείμενο ή έγγραφο σε σχέση με το οποίο πρόκειται να διαπραχτεί ή διαπράττεται ή έχει πρόσφατα διαπραχτεί ποινικό αδίκημα

(β) να εισέλθει και ερευνήσει οποιοδήποτε τόπο-

(i) αν έχει λόγο να πιστεύει ότι σε αυτό πρόκειται να διαπραχτεί ή διαπράττεται, ή έχει πρόσφατα διαπραχτεί ποινικό αδίκημα που τιμωρείται με θανατική ποινή ή με φυλάκιση που υπερβαίνει τα δύο έτη ή ότι δύναται να βρεθεί σε αυτό οποιοδήποτε όργανο με το οποίο έχει πρόσφατα διαπραχτεί οποιοδήποτε τέτοιο ποινικό αδίκημα

(ii) αν ο κάτοχος του τόπου ζητά τη βοήθεια της αστυνομίας

(iii) αν οποιοσδήποτε στον τόπο αυτό ζητά τη βοήθεια της αστυνομίας και υπάρχει λόγος να πιστεύεται ότι διαπράττεται αδίκημα εντός αυτού

(iv) σε οποιαδήποτε περίπτωση κατά την οποία δύναται να εισέλθει και ερευνήσει οποιοδήποτε τόπο χωρίς ένταλμα δυνάμει οποιοδήποτε νομοθετήματος που ισχύει εκάστοτε.

(2) Οτιδήποτε βρεθεί κατά τη διάρκεια έρευνας που διεξάγεται δυνάμει του εδαφίου (1) του άρθρου αυτού το οποίο θα μπορούσε να κατασχεθεί αν η έρευνα διεξαγόταν δυνάμει εντάλματος, δύναται να κατασχεθεί και τύχει μεταχείρισης κατά τον ίδιο τρόπο ως αν αυτό ήταν πράγμα που κατασχέθηκε κατά τη διάρκεια έρευνας δυνάμει εντάλματος, εφαρμοζομένων των διατάξεων του άρθρου 32, με τις αναγκαίες προσαρμογές, σε οποιοδήποτε τέτοιο πράγμα.

Power to search means of transport

26.¹³⁵ (1) Without prejudice to any other power granted by this Law or by any other Law-

(a) a police officer or

(b) any member of the Forces of the Republic who is specifically authorized for this purpose by his commander, may, on reasonable suspicion, stop and search any means of transport for the purpose of ascertaining whether any explosive material, offensive weapon or other instrument of violence.

(2) Anything found in the course of a search conducted under subsection (1) of this section which could be seized if the search was conducted under a warrant may be seized and treated in the same manner as if it were a thing seized in the course of an investigation under a warrant, the provisions of section 32 shall apply, mutatis mutandis, to any such thing:

Provided that any explosive, offensive weapon or other article or document found during any such search which is subject to confiscation under the provisions of any other Law in force from time to time shall be confiscated.

[...]

Search warrants

27.¹³⁶ When a judge is satisfied by a sworn written statement that there is reasonable cause to believe that in any place there is-

¹³⁵ Εξουσία για έρευνα μεταφορικών μέσων

26. (1) Άνευ επηρεασμού οποιασδήποτε άλλης εξουσίας που χορηγείται από το Νόμο αυτό ή από οποιοδήποτε άλλο Νόμο-

(α) αστυνομικός ή

(β) οποιοδήποτε μέλος των Δυνάμεων της Δημοκρατίας το οποίο εξουσιοδοτείται ειδικά για το σκοπό αυτό από τον αρχηγό του, δύναται, με εύλογη υποψία, να ανακάνει και ερευνήσει οποιοδήποτε μεταφορικό μέσο για το σκοπό εξακρίβωσης κατά πόσο παράνομα μεταφέρεται σε αυτό οποιαδήποτε εκρηκτική ύλη, επιθετικό όπλο ή άλλο όργανο βιαιότητας.

(2) Οτιδήποτε βρεθεί κατά τη διάρκεια έρευνας που διεξάγεται δυνάμει του εδαφίου (1) του άρθρου αυτού το οποίο θα μπορούσε να κατασχεθεί αν η έρευνα διεξαγόταν δυνάμει εντάλματος, δύναται να κατασχεθεί και τύχει μεταχείρισης με τον ίδιο τρόπο ως αν αυτό ήταν πράγμα που κατασχέθηκε κατά τη διάρκεια έρευνας δυνάμει εντάλματος, εφαρμοζομένων των διατάξεων του άρθρου 32, με τις αναγκαίες προσαρμογές, σε οποιοδήποτε τέτοιο πράγμα:

Νοείται ότι οποιαδήποτε εκρηκτική ύλη, επιθετικό όπλο ή άλλο αντικείμενο ή έγγραφο που ανευρίσκεται κατά τη διάρκεια οποιασδήποτε τέτοιας έρευνας το οποίο υπόκειται σε κατάσχεση δυνάμει των διατάξεων οποιοδήποτε άλλου Νόμου που ισχύει εκάστοτε, κατάσχεται.

[...]

¹³⁶ Εντάλματα έρευνας

(a) anything in which or in relation to which a criminal offense has been committed or is suspected of having been committed or

(b) anything which there is reasonable cause to believe will provide evidence of the commission of a criminal offence; or

(c) anything which there is reasonable cause to believe is intended to be used for the purpose of committing a criminal offence, the judge may at any time issue a warrant (referred to in this Act as a “search warrant”) authorizing the person named in it-

(i) search such place for any such thing and seize and bring the same before the Court from which the search warrant was issued or before another Court to be dealt with according to law and

(ii) to arrest and bring before a Magistrate the owner of the house or place where the thing was found or any person in or about such house or place in possession of such thing, if the Magistrate thinks fit to so order in the warrant.

Source: The authors.

cc. Para 1(c)

(1) Obtainment of the production of stored computer data, encrypted or de-crypted

(a) General Provisions in the CPC

The CPC does not specify the obtainment of the production of stored computer data.

17

27. Όταν δικαστής ικανοποιείται με ένορκη έγγραφη δήλωση ότι υπάρχει εύλογη αιτία να πιστεύεται ότι σε οποιοδήποτε τόπο υπάρχει-

(α) οτιδήποτε στο οποίο ή σε σχέση με το οποίο διαπράχθηκε ποινικό αδίκημα ή υπάρχει υποψία ότι διαπράχθηκε ή

(β) οτιδήποτε για το οποίο υπάρχει εύλογη αιτία να πιστεύεται ότι θα παρέχει απόδειξη ως προς τη διάπραξη ποινικού αδικήματος ή

(γ) οτιδήποτε για το οποίο υπάρχει εύλογη αιτία να πιστεύεται ότι προορίζεται να χρησιμοποιηθεί για το σκοπό διάπραξης ποινικού αδικήματος, ο δικαστής δύναται σε οποιοδήποτε χρόνο να εκδώσει ένταλμα (το οποίο αναφέρεται στο νόμο αυτό ως „ένταλμα έρευνας”), που εξουσιοδοτεί το πρόσωπο που κατονομάζεται σε αυτό-

(i) να ερευνήσει τον τόπο αυτό προς ανεύρεση οποιουδήποτε τέτοιου πράγματος και να κατάσχει και μεταφέρει αυτό ενώπιον του Δικαστηρίου από το οποίο εκδόθηκε το ένταλμα έρευνας ή ενώπιον άλλου Δικαστηρίου για να τύχει αυτό μεταχείρισης σύμφωνα με το νόμο και

(ii) να συλλάβει και να προσαγάγει ενώπιον Δικαστή τον κάτοχο της οικίας ή του τόπου όπου βρέθηκε το πράγμα ή οποιοδήποτε πρόσωπο εντός ή πέριξ της οικίας αυτής ή του τόπου το οποίο κατέχει τέτοιο πράγμα, αν ο Δικαστής κρίνει σκόπιμο να διατάξει με αυτό τον τρόπο στο ένταλμα.

(b) Special Provisions in Data Retention Law

18 Cyprus offers special provisions on the obtainment:

The Retention of Telecommunications Data for the Purpose of Investigating Serious Criminal Offenses Law of 2007 (183(I)/2007)

Obligation to retain data [Data Retention Law]

3.¹³⁷ Every service provider has an obligation to maintain, in accordance with the provisions of this Law, the data if it is produced or processed by it within its jurisdiction during the provision of the specified services:

It is understood that the obligation to retain data also includes unsuccessful calls, but does not extend to the retention of data regarding calls in which a connection to the destination number is not achieved.

Communication type identification data categories

9.¹³⁸ Each service provider has an obligation to maintain the following data that is necessary to determine the type of communication and in particular, regarding -

- (a) Fixed network telephony and mobile telephony, the telephone service used
- (b) E-mail and internet telephony, the telephone service used.

Equipment identification data categories

10.¹³⁹ Each service provider has an obligation to maintain the following data that is necessary to identify the users' communication equipment or their alleged communication equipment and in particular, regarding -

¹³⁷ Υποχρέωση διατήρησης δεδομένων

3. Κάθε παροχέας υπηρεσιών έχει υποχρέωση να διατηρεί, σύμφωνα με τις διατάξεις του παρόντος Νόμου, τα δεδομένα εφόσον αυτά παράγονται ή υποβάλλονται σε επεξεργασία από αυτόν στο πλαίσιο της δικαιοδοσίας του κατά την παροχή των προσδιοριζόμενων υπηρεσιών:

Νοείται, ότι η υποχρέωση διατήρησης δεδομένων περιλαμβάνει και τις ανεπιτυχείς κλήσεις, αλλά δεν επεκτείνεται στη διατήρηση δεδομένων αναφορικά με κλήσεις κατά τις οποίες δεν επιτυγχάνεται σύνδεση με τον αριθμό προορισμού.

¹³⁸ Κατηγορίες δεδομένων προσδιορισμού είδους επικοινωνίας

9. Κάθε παροχέας υπηρεσιών έχει υποχρέωση να διατηρεί τα ακόλουθα δεδομένα που είναι αναγκαία για τον προσδιορισμό του είδους της επικοινωνίας και ειδικότερα, αναφορικά με -

- (α) Την τηλεφωνία σταθερού δικτύου και κινητή τηλεφωνία, τη χρησιμοποιηθείσα τηλεφωνική υπηρεσία.
- (β) το ηλεκτρονικό ταχυδρομείο και την τηλεφωνία μέσω διαδικτύου, την χρησιμοποιηθείσα τηλεφωνική υπηρεσία.

¹³⁹ Κατηγορίες δεδομένων προσδιορισμού εξοπλισμού

10. Κάθε παροχέας υπηρεσιών έχει υποχρέωση να διατηρεί τα ακόλουθα δεδομένα που είναι αναγκαία για τον προσδιορισμό του εξοπλισμού επικοινωνίας των χρηστών ή του φερόμενου ως εξοπλισμού επικοινωνίας τους και ειδικότερα, αναφορικά με -

- (α) Την τηλεφωνία σταθερού δικτύου, τους τηλεφωνικούς αριθμούς του καλούντος και του καλουμένου.

- (a) Landline telephony, the telephone numbers of the caller and the called party
- (b) Mobile telephony:
 - (i) the caller's telephone number;
 - (ii) the callee's telephone number;
 - (iii) the international mobile subscriber identity (IMSI) of the caller;
 - (iv) the caller's International Mobile Equipment Identity (IMEI);
 - (v) the international mobile subscriber identity (IMSI) of the callee, and
 - (vi) the international mobile equipment identity (IMEI) of the callee
- (c) the prepaid anonymous service:
 - (i) the date and time of initial service activation, and
 - (ii) the location code (cell identity code) from which the activation took place
- (d) the internet and internet e-mail and telephone services:
 - (i) the telephone number of the caller for telephone access, and
 - (ii) the digital subscriber line (DSL) or other termination of the communication source.

Location data and mobile communications equipment

11.¹⁴⁰ Each service provider has an obligation to maintain the data necessary to determine the location of the mobile communication equipment and in particular -

- (a) The location code (cell identification code) when the communication was initiated;
- (b) the data identifying the geographic location of the cells based on the location codes (cell identification codes) during the time period for which the communications data is retained.

(β) τη κινητή τηλεφωνία: (i) τον τηλεφωνικό αριθμό καλούντος, (ii) τον τηλεφωνικό αριθμό καλουμένου, (iii) τη διεθνή ταυτότητα συνδρομητή κινητής τηλεφωνίας (IMSI) καλούντος, (iv) τη διεθνή ταυτότητα εξοπλισμού κινητής τηλεφωνίας (IMEI) του καλούντος, (v) τη διεθνή ταυτότητα συνδρομητή κινητής τηλεφωνίας (IMSI) του καλουμένου, και (vi) τη διεθνή ταυτότητα εξοπλισμού κινητής τηλεφωνίας (IMEI) του καλουμένου· (γ) την προπληρωμένη ανώνυμη υπηρεσία: (i) την ημερομηνία και ώρα αρχικής ενεργοποίησης της υπηρεσίας, και (ii) τον κωδικό θέσης (κωδικός ταυτότητας κυψέλης) από την οποία πραγματοποιήθηκε η ενεργοποίηση· (δ) το διαδίκτυο και τις υπηρεσίες ηλεκτρονικού ταχυδρομείου και τηλεφωνίας μέσω διαδικτύου: (i) τον τηλεφωνικό αριθμό του καλούντος για την πρόσβαση μέσω τηλεφώνου, και (ii) την ψηφιακή συνδρομητική γραμμή (DSL) ή άλλη απόληξη της πηγής επικοινωνίας.

¹⁴⁰ Δεδομένα προσδιορισμού θέσης και εξοπλισμού κινητής επικοινωνίας

11. Κάθε παροχέας υπηρεσιών έχει υποχρέωση να διατηρεί τα δεδομένα που είναι αναγκαία για τον προσδιορισμό της θέσης του εξοπλισμού κινητής επικοινωνίας και ειδικότερα -

- (α) Τον κωδικό θέσης (κωδικός ταυτότητας κυψέλης) κατά την έναρξη της επικοινωνίας·
- (β) τα στοιχεία προσδιορισμού της γεωγραφικής θέσης των κυψελών βάσει των κωδικών θέσης (κωδικών ταυτότητας της κυψέλης) κατά τη διάρκεια του χρονικού διαστήματος για το οποίο διατηρούνται τα δεδομένα των επικοινωνιών.

Retention period

13.¹⁴¹ Each service provider has an obligation to retain data in relation to fixed network telephony, mobile telephony, internet and e-mail and internet telephony services for a period of 6 months.

(2) Obtainment of banking account data and traffic data

19 In money laundering cases the disclosure rules might apply:

Disclosure Order

45. (1) Without prejudice to the provisions of other Laws, in relation to obtaining information or documents in the course of conducting investigations into the possibility of the commission of offences, for the purposes of analysing financial transactions or investigating the commission of specified offences, or in connection with an investigation into verification of income or means, including the identification of other relevant assets for the purpose of seizure and/or confiscation, the court may, upon unilateral application of the case investigator, issue a disclosure order in accordance with the provisions of this Part.

(2) For the purposes of this article, an investigation includes an investigation conducted abroad and an investigator of the case in relation to an investigation conducted abroad includes any investigator pursuant to the relevant law of the Republic who cooperates with the investigator of the case.

(3) A person to whom a disclosure order is addressed pursuant to article 46 has an obligation to immediately notify the investigator of any subsequent change in the information already provided pursuant to this article and/or any subsequent information concerning the subject of the disclosure order.

dd. Para 1(d) Freezing instrumentalities or proceeds of crime, including assets

20 The Prevention and Combating of Money Laundering Act provides for this opportunity:

Part II Confiscation Orders, Interim Orders and Other Measures

A. Orders of Forfeiture

An inquiry to ascertain whether the accused had any income

¹⁴¹ Χρονικό διάστημα διατήρησης

13. Κάθε παροχέας υπηρεσιών έχει υποχρέωση να διατηρεί τα δεδομένα σε σχέση με την τηλεφωνία σταθερού δικτύου, την κινητή τηλεφωνία, το διαδίκτυο και τις υπηρεσίες ηλεκτρονικού ταχυδρομείου και τηλεφωνίας μέσω διαδικτύου για περίοδο 6 μηνών.

6.¹⁴² (1) A court which has convicted a person of a specified offense before imposing a sentence shall make an inquiry to ascertain whether the accused has derived any proceeds of unlawful activity or of a money laundering offense by following the procedure laid down in this Part of the Act or the procedure referred to in Part VI.

(2) In order to follow the procedure defined by this Part, the Attorney General decides and submits a relevant application to the Court. The Court may issue a confiscation order if the procedure under this Part is followed or impose a corresponding pecuniary penalty if the procedure is followed under Part VI.

Order of confiscation

8.¹⁴³ (1) In a case where the court, after conducting an investigation under this Part, finds that the accused has earned income, before imposing a penalty either for the offense for which he has been convicted or for other offenses which the court may take into account in imposition of sentence-

¹⁴² ΜΕΡΟΣ ΙΙ ΔΙΑΤΑΓΜΑΤΑ ΔΗΜΕΥΣΗΣ, ΠΡΟΣΩΡΙΝΑ ΔΙΑΤΑΓΜΑΤΑ ΚΑΙ ΑΛΛΑ ΜΕΤΡΑ

A. Διατάγματα Δήμευσης

Έρευνα για διαπίστωση αν ο κατηγορούμενος είχε έσοδα

6. (1) Δικαστήριο το οποίο έχει καταδικάσει πρόσωπο για καθορισμένο αδίκημα προτού επιβάλει ποινή προβαίνει σε έρευνα για να διαπιστώσει αν ο κατηγορούμενος απεκόμισε οποιαδήποτε έσοδα από παράνομες δραστηριότητες ή αδίκημα νομιμοποίησης εσόδων από παράνομες δραστηριότητες ακολουθώντας τη διαδικασία που καθορίζει το παρόν Μέρος του Νόμου ή τη διαδικασία που αναφέρεται στο Μέρος VI.

(2) Για να ακολουθηθεί η διαδικασία που καθορίζει το Μέρος αυτό αποφασίζει ο Γενικός Εισαγγελέας ο οποίος και υποβάλλει σχετική αίτηση στο Δικαστήριο. Το Δικαστήριο δύναται να εκδώσει διάταγμα δήμευσης αν ακολουθηθεί η διαδικασία δυνάμει του Μέρους αυτού ή να επιβάλει ανάλογη χρηματική ποινή αν ακολουθηθεί η διαδικασία δυνάμει του Μέρους VI.

¹⁴³ Διάταγμα δήμευσης

8. (1) Σε περίπτωση όπου το δικαστήριο μετά τη διεξαγωγή έρευνας δυνάμει του Μέρους αυτού διαπιστώσει ότι ο κατηγορούμενος απεκόμισε έσοδα, προτού επιβάλει ποινή είτε για το αδίκημα για το οποίο έχει καταδικαστεί είτε για άλλα αδικήματα τα οποία το δικαστήριο δύναται να λάβει υπόψη στην επιβολή της ποινής-

(α) Εκδίδει διάταγμα δήμευσης του προϊόντος του αδικήματος, το οποίο βρίσκεται στην κατοχή του κατηγορουμένου ή τρίτου προσώπου, όπως καθορίζεται στο εδάφιο (1) του άρθρου 13 ή/και για την είσπραξη του ποσού των εσόδων όπως αυτά υπολογίζονται και εξακριβώνονται δυνάμει του άρθρου 7·

(β) εκδίδει διάταγμα δήμευσης μέσων·

και ακολούθως επιβάλλει οποιαδήποτε από τις ποινές τις οποίες έχει αρμοδιότητα να επιβάλει.

(2) Η έκδοση διατάγματος δήμευσης δεν επηρεάζεται από οποιαδήποτε πρόνοια άλλων νόμων η οποία περιορίζει την αρμοδιότητα του δικαστηρίου στην επιβολή χρηματικών ποινών.

(3) Σε περίπτωση που, ως αποτέλεσμα καθορισμένου αδικήματος, θύμα ή παραπονούμενος του αδικήματος αυτού έχει αξιώσεις κατά του προσώπου εναντίον του οποίου εκδόθηκε διάταγμα δήμευσης, το διάταγμα αυτό ή η πιθανή εκτέλεσή του, δεν εμποδίζει το εν λόγω θύμα ή παραπονούμενο να διεκδικήσει τις αξιώσεις του με αστική αγωγή κατά του εν λόγω προσώπου.

(4) (α) Ο Γενικός Εισαγγελέας δύναται να μην υποβάλει αίτηση στο Δικαστήριο για έκδοση διατάγματος δήμευσης εάν ικανοποιηθεί ότι το θύμα ή ο παραπονούμενος έχει εγείρει οποιαδήποτε αστική διαδικασία εναντίον του κατηγορουμένου σε σχέση με ζημιά ή απώλεια που έχει υποστεί από τη διάπραξη του αδικήματος.

(β) Σε περίπτωση που έχει εγερθεί οποιαδήποτε αστική διαδικασία, οποιοδήποτε διάταγμα δήμευσης που δυνατό να έχει εκδοθεί δύναται να μην εκτελεστεί και ακολούθως το σχετικό διάταγμα δέσμευσης ή επιβάρυνσης ή δήμευσης ακυρώνεται από το Δικαστήριο, μετά από αίτηση του Γενικού Εισαγγελέα.

(a) Issue a decree for the confiscation of the proceeds of the crime, which is in the possession of the accused or a third person, as specified in subsection (1) of article 13 and/or for the collection of the amount of revenue as calculated and ascertained pursuant to article 7'

(b) issue a decree confiscating means;

and thereafter imposes any of the penalties it has jurisdiction to impose.

(2) The making of a confiscation order shall not be affected by any provision of other laws which limits the power of the court to impose pecuniary penalties.

(3) In the event that, as a result of a specified offence, a victim or complainant of such offense has claims against the person against whom a confiscation order has been issued, such order or its possible execution, shall not prevent said victim or complainant from claiming his claims in a civil action against said person.

(4) (a) The Attorney-General may not apply to the Court for a confiscation order if he is satisfied that the victim or complainant has instituted any civil proceedings against the accused in respect of damage or loss suffered by him as a result of the commission of the offence.

(b) In the event that any civil proceedings have been instituted, any confiscation decree that may have been issued may not be enforced and subsequently the relevant seizure or encumbrance or confiscation decree is annulled by the Court, upon application by the Attorney General.

- 21 In addition,¹⁴⁴ the Law on the Operations of Credit Institutions (66(I)/1997) might apply. As well as s. 9 (a) and (b) of the Tax Collection Law of 1962 (31/1962) relating to tax debts. The VAT Act 1995 contains special investigation measures in Annex 10. But they do not directly relate to criminal financial investigations.

ee. Para 1(e) Interception of electronic communications to and from the suspect or accused person

- 22 The interception of electronic communications is not regulated in the CPC, but in the Retention of Telecommunications Data for the Purpose of Investigating Serious Criminal Offenses Law of 2007 (183(I)/2007).

- 23 **Data access order [Retention of Telecommunications Data for the Purpose of Investigating Serious Criminal Offenses Law of 2007 (183(I)/2007)]**

¹⁴⁴ See Menelaos Kyprianou, Michael Kyprianou, The Asset Tracing and Recovery Review: Cyprus, The Law Reviews, 15.9.2022, online: <https://thelawreviews.co.uk/title/the-asset-tracing-and-recovery-review/cyprus>.

4.¹⁴⁵ (1) (a) Subject to the provisions of subsections (2) and (3) and subject to the provisions of paragraph (b), a police investigator may obtain data related to the investigation of a serious criminal offence, provided first obtain a relevant decree from the Court.

¹⁴⁵ Διάταγμα πρόσβασης σε δεδομένα

4.(1) (α) Τηρουμένων των διατάξεων των εδαφίων (2) και (3) και με την επιφύλαξη των διατάξεων της παραγράφου (β), αστυνομικός ανακριτής, δύναται να εξασφαλίσει δεδομένα που έχουν σχέση με τη διερεύνηση σοβαρού ποινικού αδικήματος, εφόσον προηγουμένως εξασφαλίσει από το Δικαστήριο σχετικό διάταγμα.

(β) Σε περίπτωση απαγωγής προσώπου, ο αστυνομικός ανακριτής δύναται, με επιστολή του προς τον παροχέα τηλεπικοινωνιακών υπηρεσιών, να εξασφαλίσει δεδομένα που έχουν σχέση με τη διερεύνηση απαγωγής του εν λόγω προσώπου, χωρίς να έχει εκ των προτέρων εξασφαλίσει διάταγμα από το Δικαστήριο, νοουμένου ότι για το σκοπό αυτό έχει εκ των προτέρων εξασφαλίσει εγγράφως την έγκριση του Γενικού Εισαγγελέα της Δημοκρατίας και εφόσον έθεσε υπόψη του τις πληροφορίες και τα στοιχεία που απαιτούνται σύμφωνα με το εδάφιο (3) για σκοπούς της ένορκης δήλωσης:

Νοείται ότι το αργότερο μέσα σε σαράντα οκτώ (48) ώρες από την ημερομηνία πρόσβασης σε δεδομένα, ως ανωτέρω, ο αστυνομικός ανακριτής υποχρεούται να εξασφαλίσει από το Δικαστήριο σχετικό διάταγμα και σε περίπτωση άρνησης έκδοσης τέτοιου διατάγματος από το Δικαστήριο ο αστυνομικός ανακριτής υποχρεούται, μέσα σε σαράντα οκτώ (48) ώρες από την ημερομηνία της άρνησης του Δικαστηρίου, να καταστρέψει τα δεδομένα τα οποία εξασφάλισε και να ενημερώσει πάραυτα την εποπτική αρχή που καθορίζεται στις διατάξεις του άρθρου 15.

(2) Ο Γενικός Εισαγγελέας της Δημοκρατίας δύναται, κατόπιν αιτήματος αστυνομικού ανακριτή να εγκρίνει αίτηση έκδοσης του διατάγματος που καθορίζεται στο εδάφιο (1), εφόσον ικανοποιηθεί ότι η έκδοση του διατάγματος δύναται να παράσχει ή να έχει παράσχει μαρτυρία για τη διάπραξη σοβαρού ποινικού αδικήματος.

(3) Η αίτηση για έκδοση του διατάγματος που καθορίζεται στο εδάφιο (1) γίνεται εγγράφως, εγκρίνεται από το Γενικό Εισαγγελέα της Δημοκρατίας και συνοδεύεται από ένορκη δήλωση του αστυνομικού ανακριτή, η οποία περιέχει τις ακόλουθες πληροφορίες και στοιχεία:

(α) Την πλήρη ιδιότητα του αστυνομικού ανακριτή·

(β) πλήρη και εμπεριστατωμένη έκθεση γεγονότων και περιστατικών στα οποία βασίζεται η αίτηση η οποία απαραίτητα πρέπει να περιλαμβάνει -

(i) τις λεπτομέρειες του σοβαρού ποινικού αδικήματος που διαπράχθηκε, διαπράττεται ή αναμένεται να διαπραχθεί,

(ii) γενική περιγραφή της χρονικής περιόδου για την οποία απαιτείται πρόσβαση σε δεδομένα,

(iii) την ταυτότητα του προσώπου που διέπραξε ή αναμένεται να διαπράξει το αδίκημα και στου οποίου τα δεδομένα επιδιώκεται η πρόσβαση,

(iv) το όνομα, τη διεύθυνση και το επάγγελμα, αν είναι γνωστά, όλων των προσώπων η πρόσβαση στα δεδομένα των οποίων κρίνεται ότι εύλογα θα υποβοηθήσει στην διερεύνηση σοβαρού ποινικού αδικήματος·

(γ) έκθεση ως προς τη χρονική περίοδο για την οποία κρίνεται σκόπιμη η πρόσβαση στα δεδομένα και πλήρη περιγραφή των γεγονότων τα οποία στηρίζουν εύλογη υποψία ή πεποίθηση ότι είναι δυνατό να ακολουθήσουν και επιπρόσθετες επικοινωνίες στα δεδομένα των οποίων κρίνεται σκόπιμη η πρόσβαση για τη διερεύνηση σοβαρού ποινικού αδικήματος·

(δ) έκθεση των γεγονότων που αφορούν όλες τις προηγούμενες αιτήσεις οι οποίες καταχωρήθηκαν για έκδοση διατάγματος, στις οποίες εμπλέκονται οποιαδήποτε πρόσωπα τα οποία αναφέρονται στην αίτηση·

(ε) έκθεση που να παραθέτει τα μέχρι τούδε αποτελέσματα της διερεύνησης ή λογική εξήγηση για την αποτυχία λήψης τέτοιων αποτελεσμάτων, όταν η αίτηση αφορά παράταση της ισχύος διατάγματος·

Νοείται ότι, ο Δικαστής δύναται να ζητήσει την παρόχη περαιτέρω λεπτομερειών ή στοιχείων ή μαρτυρίας για υποστήριξη αίτησης με τη μορφή συμπληρωματικής ένορκης δήλωσης ή ενόρκης μαρτυρικής κατάθεσης ή άλλως πώς.

(4) Ο Δικαστής δύναται να εκδόσει το διάταγμα που καθορίζεται στις διατάξεις του εδαφίου (1), όπως ζητήθηκε με την αίτηση ή με τέτοιες τροποποιήσεις ή με τέτοιους όρους, με το οποίο να εξουσιοδοτείται η πρόσβαση στα δεδομένα, εφόσον ικανοποιηθεί ότι με βάση τα γεγονότα τα οποία υποβλήθηκαν:

(b) In the event of abduction of a person, the police investigator may, by letter to the telecommunications service provider, obtain data related to the investigation of the abduction of the person in question, without having previously obtained an order from the Court, provided that for this purpose he has in advance secured the approval of the Attorney General of the Republic in writing and having brought to his attention the information and data required in accordance with subsection (3) for the purposes of the affidavit:

Provided that within forty-eight (48) hours at the latest from the date of access to data, as above, the police investigator is obliged to secure a relevant decree from the Court and in case of refusal to issue such a decree by the Court, the police investigator is obliged, within forty-eight (48) hours from the date of the Court's refusal, to destroy the data it secured and to immediately inform the supervisory authority specified in the provisions of article 15.

(2) The Attorney General of the Republic may, at the request of a police investigator, approve an application for the issuance of the decree specified in subsection (1), if he is satisfied that the issuance of the decree may provide or has provided evidence of the commission of a serious criminal offense.

(3) The application for issuance of the decree specified in subsection (1) shall be made in writing, approved by the Attorney General of the Republic and accompanied by a sworn statement of the police investigator, which contains the following information and data:

(a) The full status of a police investigator

(b) a full and detailed statement of facts and circumstances on which the application is based which must necessarily include -

(i) the details of the serious criminal offense committed, being committed or expected to be committed;

(ii) general description of the time period for which access to data is required;

(iii) the identity of the person who committed or is expected to commit the offense and to whose data access is sought,

(iv) the name, address and occupation, if known, of all persons access to whose data is reasonably believed to assist the investigation of a serious criminal offense;

(c) a report as to the period of time for which access to the data is deemed appropriate and a full description of the facts which support a reasonable suspicion or belief that additional communications to which access to the data is deemed appropriate for the investigation of serious of a criminal offence;

(α) Υπάρχει εύλογη υποψία ή πιθανότητα, ότι πρόσωπο διαπράττει, διέπραξε ή αναμένεται να διαπράξει σοβαρό ποινικό αδίκημα·

(β) υπάρχει εύλογη υποψία ή πιθανότητα, ότι συγκεκριμένα δεδομένα συνδέονται ή είναι συναφή με σοβαρό ποινικό αδίκημα.

(d) a statement of the facts relating to all previous applications registered for a decree involving any persons named in the application;

(e) a report setting out the results of the investigation to date or a reasonable explanation for the failure to obtain such results, where the application is for an extension of the validity of an order:

Provided that, the Judge may request the provision of further details or evidence or testimony in support of an application in the form of a supplementary affidavit or sworn testimony or otherwise.

(4) The Judge may issue the order specified in the provisions of subsection (1), as requested by the application or with such amendments or on such terms, authorizing access to the data, provided he is satisfied that based on the facts submitted:

(a) There is a reasonable suspicion or possibility that a person is committing, has committed or is expected to commit a serious criminal offence;

(b) there is a reasonable suspicion or possibility that specific data is connected or relevant to a serious criminal offence.

ff. Para 1(f) Tracking & Tracing an Object

The tracking & tracing of an object is possible on the basis of the Customs Law:

24

Monitoring

82. Any officer authorized to establish or ensure compliance with customs or other legislation may monitor a person, building, vehicle, vessel and goods, if there is reasonable suspicion to believe that an offense is being committed or has been committed or is about to be committed in customs or other legislation or that proof of the commission or possible commission of such an offense will be found or for the provision of assistance following a written request from a competent authority of another member state pursuant to Articles 11 and 16 of the Convention on Mutual Assistance and Cooperation between the Customs Services, which was sanctioned by the Convention on Mutual Assistance and Cooperation between the Customs Services (Sanction) Law.

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.*¹⁴⁶

- 25 Special restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation are the search measure. LLP protected items can only be searched or seized if the Bar accepts this.

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.

- 26 The thresholds can be determined from the law texts above.

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.

- 27 To compel witnesses is another powerful tool and possibility for an investigation:

Compulsion to appear and examine witnesses

Issuance of witness summons

49.¹⁴⁷ (1) If in any criminal proceeding the Court is satisfied that a person may give material evidence for the charge or the defence, the Court may issue a summons to that

¹⁴⁶ The conditions, which are printed in italics stem from Union law.

¹⁴⁷ Εξαναγκασμός παράστασης και εξέτασης μαρτύρων

Έκδοση κλήσης μάρτυρα

49. (1) Αν σε οποιαδήποτε ποινική διαδικασία το Δικαστήριο είναι ικανοποιημένο ότι κάποιο πρόσωπο ενδέχεται να δώσει ουσιώδη μαρτυρία για τα την κατηγορία ή την υπεράσπιση, το Δικαστήριο δύναται να εκδώσει κλήση στο πρόσωπο αυτό η οποία να απαιτεί από αυτό να παραστεί ενώπιον του Δικαστηρίου σε χρόνο και τόπο που αναφέρεται στην κλήση, για να δώσει μαρτυρία σε σχέση με την υπόθεση και για να μεταφέρει μαζί του οποιοδήποτε ορισμένο έγγραφο ή πράγμα και οποιοδήποτε άλλο έγγραφο ή πράγμα που αφορά την υπόθεση το οποίο δυνατό να βρίσκεται στην κατοχή ή την εξουσία ή τον έλεγχο αυτού:

Νοείται ότι, αν το Δικαστήριο ικανοποιείται με ένορκη απόδειξη ότι οποιοδήποτε πρόσωπο το οποίο ενδέχεται να δώσει ουσιώδη μαρτυρία δεν θα παραστεί να δώσει μαρτυρία με κλήτευση τότε, αντί της έκδοσης κλήσης, το Δικαστήριο δύναται να εκδώσει από την αρχή ένταλμα για τη σύλληψη του προσώπου αυτού:

Νοείται περαιτέρω ότι οποιοδήποτε πρόσωπο παρόν στο Δικαστήριο και εξαναγκασμένο να καταθέσει ως μάρτυρας, είτε είναι διάδικος ή όχι, δύναται να εξαναγκαστεί από το Δικαστήριο να δώσει μαρτυρία και να παρουσιάσει οποιοδήποτε έγγραφο ή πράγμα που βρίσκεται στην κατοχή ή την εξουσία του, με τον ίδιο τρόπο

person requiring him to appear before it Court at a time and place stated in the summons, to give evidence in relation to the case and to carry with him any specified document or thing and any other document or thing relating to the case which may be in his possession or power or the control thereof:

Provided that, if the Court is satisfied on affidavit that any person who may give material evidence will not appear to give evidence under subpoena then, in lieu of issuing a summons, the Court may issue a warrant for the arrest of such person:

Provided further that any person present in Court and compelled to testify as a witness, whether a party or not, may be compelled by the Court to give evidence and produce any document or thing in his possession or power, in the same manner and subject to the same regulations as if he had been summoned to attend and give evidence or produce such document or thing and may be punished in like manner for any refusal to obey an order of the Court.

(2) If the accuser is not a public official, no person to whom the summons is addressed shall be required to attend unless reasonable travel and maintenance expenses are offered to him or deposited with the Recorder of the Court issuing the summons, which is noted in the summons.

(3) The provisions of article 46 apply to the service of a witness summons pursuant to this article with the necessary adjustments.

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.***

και τηρουμένων των ίδιων κανονισμών ωσάν να είχε κλητευθεί να παραστεί και δώσει μαρτυρία ή να παρουσιάσει τέτοιο έγγραφο ή πράγμα και δύναται να επιβληθεί σε αυτό ποινή κατά παρόμοιο τρόπο για οποιαδήποτε άρνηση του να υπακούσει σε διαταγή του Δικαστηρίου.

(2) Αν ο κατηγορος δεν είναι δημόσιος λειτουργός κανένα πρόσωπο προς το οποίο απευθύνεται η κλήση δεν υποχρεώνεται να παραστεί εκτός αν προσφέρονται σε αυτό ή καταθέτονται στον Πρωτοκολλητή του Δικαστηρίου που εκδίδει την κλήση εύλογα οδοιπορικά και έξοδα συντήρησης, που γίνεται για αυτό σημείωση στην κλήση.

(3) Οι διατάξεις του άρθρου 46 εφαρμόζονται σε επίδοση κλήσης μάρτυρα δυνάμει του άρθρου αυτού με τις αναγκαίες προσαρμογές.

aa. Search

28

Type and duration of search warrant

28.¹⁴⁸ - (1) Every search warrant bears the signature of the judge who issues it, the date and time of issuance, as well as a certification by the judge that he has been reasonably satisfied of the existence of the need to issue the warrant.

(2) Every such warrant is usually directed generally to all police officers but the Magistrate issuing such warrant may, if its immediate execution is necessary, and there is no police officer immediately available, direct it to any other person or persons, and the person it or persons execute it, and when the warrant is addressed to more than one police officer or more than one person, it may be executed by all of them, or by any or by more than one of them.

(3) Every such warrant shall remain in force until executed or set aside by a Magistrate.

Execution of a search warrant

29. (1) A search warrant may be issued and executed on any day including a Sunday or a public holiday, and it must be executed between five o'clock in the morning and eight o'clock at night, but the Judge may, at his discretion, authorise the execution of the warrant at any time.

(2) Where the Magistrate authorises the execution of a search warrant at any time other than that between five in the morning and eight at night, such authorisation may be included in the warrant at the time of its issue or may be endorsed thereon by any Magistrate under any time subsequent to issue but prior to execution.

bb. Retention of Data

29

Prohibition of disclosure of content [Data Retention Law]

12. The retention of data related to the content of communication and the disclosure of the content of communication is prohibited and no provision of this Law can be interpreted in a way contrary to this prohibition.

Data protection and security

¹⁴⁸ Τύπος και διάρκεια ισχύος εντάλματος έρευνας

28. (1) Κάθε ένταλμα έρευνας φέρει την υπογραφή του δικαστή που το εκδίδει, την ημερομηνία και ώρα εκδόσεως, καθώς επίσης και βεβαίωση του δικαστή ότι έχει ικανοποιηθεί λογικά για την ύπαρξη της ανάγκης εκδόσεως του εντάλματος.

(2) Κάθε τέτοιο ένταλμα συνήθως απευθύνεται γενικά προς όλους τους αστυνομικούς0 αλλά ο Δικαστής που εκδίδει τέτοιο ένταλμα δύναται, αν η άμεση εκτέλεση του είναι αναγκαία, και δεν υπάρχει αμέσως διαθέσιμος αστυνομικός, να απευθύνει αυτό σε οποιοδήποτε άλλο πρόσωπο ή πρόσωπα, και το πρόσωπο αυτό ή πρόσωπα εκτελούν αυτό, όταν δε το ένταλμα απευθύνεται σε περισσότερους από ένα αστυνομικούς ή περισσότερα από ένα πρόσωπα, αυτό δύναται να εκτελεστεί από όλους, ή από οποιοδήποτε ή από περισσότερους του ενός από αυτούς.

(3) Κάθε τέτοιο ένταλμα παραμένει σε ισχύ μέχρις ότου εκτελεστεί ή ακυρωθεί από Δικαστή.

14. (1) The provisions of this Law are applied, observing the provisions of the Processing of Personal Data (Protection of the Individual) Law and especially the provisions of articles 4 and 10 thereof, which are also applied with regard to the data maintained in accordance with this Law and the provisions of Part 14 of the Regulation of Electronic Communications and Postal Services Law.

(2) Without prejudice to the provisions of subsection (1), each service provider -

(a) Ensures that the retained data is of the same quality and enjoys the same protection and security as the data contained in the network·

(b) protect the retained data, by taking appropriate organisational and technical measures, against accidental or unlawful destruction or loss, alteration, unauthorised or unlawful storage, processing, access or disclosure.

(c) ensure that only specifically authorised personnel have access to the retained data and maintain a register of authorised personnel as well as a file, which records any access by personnel to the retained data, the date and time, as well as the purpose of the access·

(d) destroys the retained data at the end of the retention period, excluding those for which access has been ordered by the Court and which it is obliged to keep separately.

Keeping statistics

17. (1) The Chief of Police keeps statistical data regarding the implementation of the provisions of this Law and specifically keeps data regarding -

(a) The circumstances in which access to data was provided to police investigators

(b) the period of time between the date the data is retained and the date the request for access to the data is made;

(c) the cases for which it was not possible to satisfy the request for access to the data:

It is understood that the statistics may not include personal data.

(2) The Chief of Police shall transmit annually to the Commission of the European Communities the statistical data that he maintains in accordance with subsection (1) and shall notify them to the Commissioner for Personal Data Protection.

2. Article 33 Pre-trial arrest and cross-border surrender

2. Article 33 Pre-trial arrest and cross-border surrender....	164
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1. The handling European Delegated Prosecutor may order or request the arrest or pre-trial detention of the suspect or accused person **in accordance with the national law applicable in similar domestic cases**.

2. Where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA.

a) General relation to national law: applicable Codes

- 1 In conformity with the national law that applies in comparable domestic matters, the European Delegated Prosecutor may order or request the suspect's or accused person's arrest or pre-trial custody.
- 2 The Criminal Procedure Code and the fundamental rights enshrined in the Constitution are applicable. In addition, the Charter of Fundamental Rights applies. The purpose or *telos* of the provisions is to allow **criminal proceedings to be safeguarded**. Criminal prosecution also includes preliminary proceedings.
- 3 The following part starts with the provisions on arrest by police authorities. The use of coercive power is allowed to find the fugitive and arrest him/her.



The EDP and the police investigators are aware that some of the following measures require a warrant or an authorization. Therefore it is important to read the full provisions.

b) Para 1: Provisions for arrest and pre-trial detention

aa. Arrest

Arrest¹⁴⁹

9. (1) During the arrest, the police officer or other person making the arrest must actually touch the person to be arrested or restrain him, unless there is verbal or physical submission to the detention.

(2) If the person to be forcibly arrested resists the attempt to arrest him or tries to escape it, the police officer or other person making the arrest may use all the necessary means to achieve this:

It is understood that no provision contained in this article is considered to justify the use of force greater than that which is reasonably required under the circumstances in which it was used or that which was necessary for the arrest of the culprit.

(3) Unless the person who is arrested is arrested on his own charge or pursued immediately after the commission of a criminal offense or escapes from lawful custody, the police officer or other person making the arrest shall inform him of the reason for the arrest.

Investigation for arrest procedure

10.¹⁵⁰ (1) When a person is arrested, the police officer who makes the arrest or to whom the arrested person is delivered may search him, using such force as is reasonably nec-

¹⁴⁹ Σύλληψη και έρευνα Σύλληψη

9. (1) Κατά τη σύλληψη, ο αστυνομικός ή άλλο πρόσωπο που προβαίνει σε αυτή, πρέπει πράγματι να αγγίξει το άτομο που θα συλληφθεί ή να περιορίσει αυτό, εκτός αν υπάρχει με λόγια ή με έργα υποταγή στην κράτηση.

(2) Αν το πρόσωπο που θα συλληφθεί βίαια αντιστέκεται στην προσπάθεια σύλληψης του ή αποπειράται να διαφύγει αυτήν, ο αστυνομικός ή άλλο πρόσωπο που προβαίνει στη σύλληψη δύναται να χρησιμοποιήσει όλα τα αναγκαία μέσα προς επίτευξη αυτής:

Νοείται ότι καμιά διάταξη που περιέχεται στο άρθρο αυτό δεν θεωρείται ότι δικαιολογεί τη χρήση βίας μεγαλύτερης από αυτή που απαιτείται εύλογα υπό τις περιστάσεις υπό τις οποίες χρησιμοποιήθηκε ή από αυτή που ήταν αναγκαία για τη σύλληψη του υπαίτιου.

(3) Εκτός αν το πρόσωπο που συλλαμβάνεται, συλλαμβάνεται επί αυτοφώρω ή καταδιώκεται αμέσως μετά τη διάπραξη ποινικού αδικήματος ή αποδρά από νόμιμη κράτηση, ο αστυνομικός ή άλλο πρόσωπο που προβαίνει στη σύλληψη πληροφορεί αυτό για το λόγο της σύλληψης.

¹⁵⁰ Έρευνα συλληφθέντα

10. (1) Όταν συλλαμβάνεται πρόσωπο, ο αστυνομικός ο οποίος προβαίνει στη σύλληψη ή στον οποίο το πρόσωπο που συλληφθηκε παραδίδεται δύναται να το ερευνήσει, χρησιμοποιώντας τέτοια βία η οποία είναι ευλόγως αναγκαία για το σκοπό αυτό και δύναται να κατέσχει κάθε αντικείμενο ή έγγραφο που βρέθηκε στην κατοχή του προσώπου αυτού το οποίο ο αστυνομικός έχει επαρκή λόγο να πιστεύει ότι δύναται να αποτελέσει ουσιώδη μαρτυρία εναντίον του προσώπου που ερευνήθηκε ή άλλου προσώπου, σε ποινική κατηγορία και δύναται, σε κάθε περίπτωση, να αφαιρέσει από το πρόσωπο που συλληφθηκε οποιοδήποτε όργανο βίας ή άλλο επιθετικό όπλο το οποίο το πρόσωπο αυτό έχει μαζί του.

essary for this purpose and may confiscate any object or document found in the possession of that person which the police officer has sufficient reason to believe may constitute material evidence against the person searched or another person, in a criminal charge and may, in any case, remove from the person arrested any instrument violence or other offensive weapon that the person has with him.

(2) When it is necessary to search a woman, the search is conducted by a woman.

(3) Where property has been seized or taken from any person under this section and he is discharged on the ground that there is no sufficient cause to believe that he has committed a criminal offence, the property so taken shall be returned to him by the person having the liability unless such person has sufficient reason to believe that such property may constitute material evidence against any other person in a criminal charge.

Area search in pursuit of a fugitive

11.¹⁵¹ (1) If any person, having authority to make an arrest whether by virtue of a warrant or not, has reason to believe that the person to be arrested has entered or is within any premises, any person residing in such premises or the person in charge thereof, upon application, must permit free entry to the person having such authority, and afford every reasonable facility for making a search therein for the discovery of the person sought for arrest.

(2) If entry to this area cannot be obtained by virtue of subsection (1) of this article, anyone who has the authority to make an arrest may enter this area and search it in order to find the person to be arrested and to gain entry thereto, may break open any outer or inner door or window of any house or premises, which are either under the charge of the person to be arrested or any other person, or gain entry into such house or premises by any other means.

(2) Όταν είναι αναγκαίο να ερευνηθεί γυναίκα, η έρευνα διεξάγεται από γυναίκα.

(3) Όταν περιουσία κατασχέθηκε ή αφαιρέθηκε από οποιοδήποτε πρόσωπο δυνάμει του άρθρου αυτού και αυτό απολύεται για το λόγο ότι δεν υπάρχει επαρκής αιτία να πιστευτεί ότι διέπραξε ποινικό αδίκημα, η περιουσία που αφαιρέθηκε με τον τρόπο αυτό επιστρέφεται σε αυτό από το πρόσωπο που έχει την ευθύνη της εκτός αν το πρόσωπο αυτό έχει επαρκή λόγο να πιστεύει ότι η περιουσία αυτή δύναται να αποτελέσει ουσιώδη μαρτυρία εναντίον οποιουδήποτε άλλου προσώπου σε ποινική κατηγορία.

¹⁵¹ Έρευνα χώρου κατά την καταδίωξη προσώπου που διαφεύγει τη σύλληψη

11. (1) Αν οποιοσδήποτε, που έχει εξουσία να προβεί σε σύλληψη είτε δυνάμει εντάλματος ή όχι, έχει λόγο να πιστεύει ότι το πρόσωπο που θα συλληφθεί έχει εισέλθει ή βρίσκεται εντός οποιουδήποτε χώρου, καθένας που διαμένει σε αυτό το χώρο ή ο υπεύθυνος αυτού, κατόπι αίτησης, πρέπει να επιτρέψει ελεύθερη είσοδο στο πρόσωπο που έχει την εξουσία αυτή και να παρέχει κάθε εύλογη διευκόλυνση για τη διεξαγωγή έρευνας σε αυτό για ανακάλυψη του αναζητούμενου προς σύλληψη.

(2) Αν η είσοδος στο χώρο αυτό δεν δύναται να επιτευχθεί δυνάμει του εδαφίου (1) του άρθρου αυτού, καθένας που έχει εξουσία να προβεί στη σύλληψη δύναται να εισέλθει στο χώρο αυτό και να ερευνηθεί αυτό για την ανεύρεση εκείνου που θα συλληφθεί και για να επιτύχει είσοδο σε αυτό, δύναται να διαρρήξει οποιαδήποτε εξωτερική ή εσωτερική πόρτα ή παράθυρο οποιασδήποτε οικίας ή χώρου, που βρίσκονται είτε υπό την ευθύνη εκείνου που θα συλληφθεί ή άλλου προσώπου ή να επιτύχει είσοδο στην οικία αυτή ή χώρο με οποιοδήποτε άλλο τρόπο.

Arrested persons are taken to a police station or to a place of reception of arrested persons

13.¹⁵² Whoever is arrested, whether with or without a warrant, must be transported with all reasonable diligence to a police station or other place of reception of arrested persons and, without delay, be informed in a language he understands of the reasons for his arrest, including the criminal act alleged or alleged to have committed.

Every such person, while in custody, must be afforded reasonable facilities to obtain legal advice to make motions to secure release on bail and otherwise to make arrangements for his defence or release;

Provided that, the arrested person is immediately informed regarding any change in the information provided, in accordance with the decree of this article, which significantly affects his position as a suspect.

Arrest by a police officer without a warrant in some cases

14.¹⁵³ (1) A police officer may, without a warrant, arrest any-

¹⁵² Συλλαμβανόμενοι μεταφέρονται σε αστυνομικό σταθμό ή σε τόπο παραλαβής συλλαμβανομένων 13. Όποιος συλλαμβάνεται, είτε με ένταλμα είτε χωρίς ένταλμα, πρέπει να μεταφέρεται με κάθε εύλογη σπουδή σε αστυνομικό σταθμό ή άλλο τόπο παραλαβής συλληφθέντων και, χωρίς καθυστέρηση να πληροφορείται σε κατανοητή από αυτόν γλώσσα για τους λόγους της σύλληψής του, περιλαμβανομένης της αξιόποινης πράξης την οποία φέρεται ή κατηγορείται ότι διέπραξε.

Σε κάθε τέτοιο πρόσωπο, ενώ τελεί υπό κράτηση, πρέπει να παρέχονται εύλογες διευκολύνσεις για να εξασφαλίσει νομική συμβουλή για να προβεί σε διαβήματα για εξασφάλιση απόλυσης με εγγύηση και διαφορετικά για να προβεί σε διευθετήσεις για την υπεράσπιση ή απόλυση του:

Νοείται ότι, ο συλληφθείς πληροφορείται αμέσως αναφορικά με οποιαδήποτε αλλαγή στην παρεχόμενη, σύμφωνα με το διάταγμα του παρόντος άρθρου ενημέρωση, η οποία επηρεάζει σημαντικά τη θέση του ως υπόπτου.

¹⁵³ Σύλληψη από αστυνομικό χωρίς ένταλμα σε ορισμένες περιπτώσεις

14. (1) Αστυνομικός δύναται, χωρίς ένταλμα, να συλλάβει οποιοδήποτε-

(α) τον οποίο βάσει εύλογης αιτίας υποπτεύεται ότι διέπραξε ποινικό αδίκημα τιμωρούμενο με θανατική ποινή ή φυλάκιση για περίοδο που υπερβαίνει τα δύο έτη

(β) ο οποίος διαπράττει στην παρουσία του ποινικό αδίκημα τιμωρούμενο με φυλάκιση

(γ) ο οποίος παρεμποδίζει αστυνομικό, κατά την εκτέλεση των καθηκόντων του, ή ο οποίος απέδρασε ή αποπειράται να αποδράσει από νόμιμη κράτηση

(δ) στην κατοχή του οποίου βρίσκεται οτιδήποτε για το οποίο δύναται εύλογα να υπάρξει υποψία ότι είναι κλοπιμαίο και για το οποίο δύναται εύλογα να υπάρξει υποψία ότι διέπραξε ποινικό αδίκημα αναφορικά με αυτό

(ε) τον οποίο βάσει εύλογης αιτίας υποπτεύεται ότι είναι λιποτάκτης από Ναυτικό, Στρατό ή Αεροπορία της Δημοκρατίας

(στ) τον οποίο υποπτεύεται βάσει εύλογης αιτίας ότι είχε σχέση με οποιαδήποτε πράξη που τελέστηκε σε οποιοδήποτε τόπο εκτός της Δημοκρατίας η οποία, αν εγίνετο στη Δημοκρατία θα ετιμωρείτο ως ποινικό αδίκημα και για την οποία αυτός δυνάμει νόμου ή διατάγματος του οποίου η ισχύς επεκτάθηκε στη Δημοκρατία υπόκειται σε σύλληψη και κράτηση στη Δημοκρατία

(ζ) για τον οποίο έχει εύλογη αιτία να πιστεύει ότι εκδόθηκε από Δικαστήριο ένταλμα σύλληψης

(η) ο οποίος δεν έχει εμφανείς πόρους συντήρησης και αδυνατεί να δώσει επαρκείς εξηγήσεις για τον εαυτό του

(θ) ο οποίος βρίσκεται να λαμβάνει προφυλάξεις για απόκρυψη της παρουσίας του υπό περιστάσεις οι οποίες παρέχουν λόγο να πιστεύεται ότι λαμβάνει τις προφυλάξεις αυτές με σκοπό τη διάπραξη ποινικού αδικήματος

(ι) τον οποίο αυτός διατάσσεται από δικαστή να συλλάβει δυνάμει των διατάξεων του άρθρου 16

- (a) who on reasonable grounds is suspected of having committed a criminal offense punishable with death or imprisonment for a term exceeding two years
- (b) who commits in his presence a criminal offense punishable by imprisonment
- (c) who obstructs a police officer in the execution of his duties, or who has escaped or attempts to escape from lawful custody
- (d) in whose possession is anything which may reasonably be suspected to be stolen and which may reasonably be suspected of having committed a criminal offense in relation thereto
- (e) who on reasonable grounds is suspected of being a deserter from the Navy, Army or Air Force of the Republic
- (f) whom he suspects on reasonable grounds to have been connected with any act done in any place outside the Republic which, if done in the Republic, would be punishable as a criminal offense and for which he by virtue of a law or decree the force of which extended to Republic subject to arrest and detention in the Republic
- (g) for whom he has reasonable cause to believe that a warrant of arrest has been issued by a Court
- (h) who has no apparent means of maintenance and is unable to give an adequate account of himself
- (i) who is found to be taking precautions to conceal his presence under circumstances which give reason to believe that he is taking such precautions for the purpose of committing a criminal offense
- (j) whom he is ordered by a judge to arrest under the provisions of article 16
- (k) who is suspected on reasonable grounds of having committed a criminal offense punishable by imprisonment and who refuses to give his name and address or gives a name or address which the officer suspects to be false
- (l) who may be arrested without a warrant under any law for the time being in force.
- (2) The power conferred on a police officer to make an arrest without a warrant cannot be exercised in relation to a criminal offense if the legislation creating the criminal offense provides that the offender cannot be arrested without a warrant, except in the case of in which the criminal offense is committed in the presence of the police officer and

(ια) τον οποίο υποπτεύεται βάσει εύλογης αιτίας ότι διέπραξε ποινικό αδίκημα τιμωρούμενο με φυλάκιση και ο οποίος αρνείται να δώσει το όνομα και τη διεύθυνση του ή δίνει όνομα ή διεύθυνση τα οποία ο αστυνομικός υποπτεύεται ότι είναι ψευδή

(ιβ) ο οποίος δύναται να συλληφθεί χωρίς ένταλμα δυνάμει οποιουδήποτε νομοθετήματος το οποίο βρίσκεται εκάστοτε σε ισχύ.

(2) Η εξουσία η οποία παρέχεται σε αστυνομικό να προβαίνει σε σύλληψη χωρίς ένταλμα δεν μπορεί να ασκηθεί σε σχέση με ποινικό αδίκημα αν το νομοθέτημα το οποίο δημιουργεί το ποινικό αδίκημα προβλέπει ότι ο υπαίτιος δεν δύναται να συλληφθεί χωρίς ένταλμα, παρά μόνο στην περίπτωση κατά την οποία το ποινικό αδίκημα διαπράττεται στην παρουσία του αστυνομικού και ο υπαίτιος αρνείται να δώσει το όνομα και τη διεύθυνση του ή δίνει όνομα ή διεύθυνση τα οποία ο αστυνομικός υποπτεύεται ότι είναι ψευδή, σε αυτή την περίπτωση ο αστυνομικός αυτός δύναται να ασκήσει τέτοια εξουσία ανεξάρτητα από τις διατάξεις του νομοθετήματος αυτού.

the offender refuses to give his name and address or gives a name or address which the police officer suspects to be false, in which case that police officer may exercise such power regardless of the provisions of this legislation.

Arrest by warrant or pursuant to a judge's order

16.¹⁵⁴ A judge may personally arrest or order the arrest of anyone in his presence-

- (a) who is caught committing a criminal offense in his presence
- (b) for the arrest of which he is at the time and in the circumstances competent to issue a warrant and may treat the person so arrested in the same manner as if he had been duly brought before him under the provisions of of this Law to receive further treatment in accordance with the Law.

Treatment of persons arrested without a warrant

17.¹⁵⁵ When a person is taken into custody without a warrant for another criminal offense or an offense punishable by death, the officer in charge of the police station to which that person is brought may-

- (a) in any case, and must, if it does not appear practicable to bring such person before a Court within twenty-four hours of the time he was taken into custody, cause inquiries to be made into the case and unless the criminal offense appears to be liable to be of a

¹⁵⁴ Σύλληψη κατά διαταγή ή δυνάμει διαταγής δικαστή

16. Δικαστής δύναται αυτοπροσώπως να συλλάβει ή να διατάξει τη σύλληψη οποιουδήποτε στην παρουσία του-

- (α) ο οποίος καταλαμβάνεται να διαπράττει ποινικό αδίκημα στην παρουσία του
- (β) για τη σύλληψη του οποίου αυτός είναι κατά τον εν λόγω χρόνο και υπό τις περιστάσεις αρμόδιος να εκδώσει ένταλμα και δύναται να μεταχειριστεί το πρόσωπο που συλλήφθηκε με τον τρόπο αυτό κατά τον ίδιο τρόπο ωσάν αυτός είχε προσαχθεί κανονικά ενώπιον του δυνάμει των διατάξεων του Νόμου αυτού για να τύχει περαιτέρω μεταχείρισης σύμφωνα με το Νόμο.

¹⁵⁵ Μεταχείριση προσώπων που συλλήφθηκαν χωρίς ένταλμα

17. Όταν πρόσωπο τίθεται υπό κράτηση χωρίς ένταλμα για άλλο ποινικό αδίκημα ή αδίκημα τιμωρούμενο με θανατική ποινή, ο υπεύθυνος του αστυνομικού σταθμού προς τον οποίο το πρόσωπο αυτό προσάγεται δύναται-

- (α) σε οποιαδήποτε περίπτωση, και πρέπει, αν δεν φαίνεται πρακτικά δυνατή η προσαγωγή του προσώπου αυτού ενώπιον Δικαστηρίου εντός είκοσι τεσσάρων ωρών από το χρόνο που τέθηκε υπό κράτηση, να προκαλέσει τη διεξαγωγή ανακρίσεων για την υπόθεση και εκτός αν το ποινικό αδίκημα φαίνεται στον υπεύθυνο ότι είναι σοβαρού χαρακτήρα, να απολύσει το πρόσωπο που συλλήφθηκε αφού αυτός υπογράψει εγγυητικό γραμμάτιο με ή χωρίς εγγυητές, για εύλογο ποσό ότι θα εμφανιστεί ενώπιον του Δικαστηρίου σε χρόνο και τόπο που έχει προσδιοριστεί στο εγγυητικό γραμμάτιο, αλλά οποτεδήποτε πρόσωπο συνεχίζει να τελεί υπό κράτηση πρέπει να προσάγεται ενώπιον δικαστού μόλις αυτό καταστεί πρακτικά δυνατό
- (β) αν φαίνεται σε αυτόν ότι οι ανακρίσεις για την υπόθεση δεν δύνανται να συμπληρωθούν αμέσως, να απολύσει το εν λόγω πρόσωπο αφού αυτό αναλάβει προσωπική υποχρέωση, με ή χωρίς εγγυητές για εύλογο χρηματικό ποσό, για να εμφανιστεί σε τέτοιο αστυνομικό σταθμό και κατά τέτοιο χρόνο όπως προσδιορίζεται στην προσωπική υποχρέωση, εκτός αν λάβει προηγουμένως γραπτή ειδοποίηση από τον αξιωματικό της αστυνομίας τον υπεύθυνο για τον εν λόγω αστυνομικό σταθμό ότι η παρουσία του δεν είναι αναγκαία
- (γ) να απολύσει πρόσωπο που έχει συλληφθεί λόγω υποψίας διάπραξης ποινικού αδικήματος, όταν μετά τις δέουσες αστυνομικές ανακρίσεις, προκύπτει κατά την άποψη αυτού, μαρτυρία ανεπαρκής για να προσαχθεί κατηγορία.

serious nature, to release the person arrested after he signs a bond with or without sureties, for a reasonable sum to appear before the Court at a time and place specified in the bond, but whenever the person continues to be in custody must be brought before a judge as soon as practicable

(b) if it appears to him that the inquiries in the case cannot be completed immediately, discharge the said person on his giving a personal bond, with or without sureties for a reasonable sum of money, to appear at such police station and at such time as specified in the personal undertaking, unless he receives prior written notice from the police officer in charge of the said police station that his presence is not necessary

(c) to discharge a person who has been arrested on suspicion of having committed a criminal offence, when, after due police inquiries, it appears in his opinion that there is insufficient evidence to incriminate him.

Issuance of an arrest warrant

18.¹⁵⁶ (1) Where a judge is satisfied by a written affidavit that there is reasonable suspicion that a person has committed an offence, or where the arrest or detention is reasonably considered to be necessary to prevent the commission of an offense or escape after the commission thereof, the judge may issue warrant (to be referred to in this Act as an arrest warrant) authorizing the arrest of the person against whom the warrant is directed. (2) An arrest warrant may be issued on any day including a Sunday or public holiday.

Type, content and duration of validity of an arrest warrant

19.¹⁵⁷ (1) Every arrest warrant bears the signature of the judge who issues it, the date and time of issuance, as well as the judge's certification that he is reasonably satisfied that there is a need to issue the warrant.

¹⁵⁶ Έκδοση εντάλματος σύλληψης

18. (1) Όταν δικαστής ικανοποιείται με γραπτή ένορκη δήλωση ότι υπάρχει εύλογη υπόνοια να πιστεύεται ότι ένα πρόσωπο διέπραξε αδίκημα ή όταν η σύλληψη ή η κράτηση θεωρηθεί εύλογως αναγκαία για παρεμπόδιση διαπράξεως αδικήματος ή αποδράσεως μετά τη διάπραξη αυτού, ο δικαστής δύναται να εκδώσει ένταλμα (που θα αναφέρεται στον παρόντα Νόμο ως ένταλμα σύλληψεως) το οποίο να εξουσιοδοτεί τη σύλληψη του ατόμου εναντίον του οποίου στρέφεται το ένταλμα.

(2) Ένταλμα σύλληψης δύναται να εκδοθεί σε οποιαδήποτε ημέρα περιλαμβανόμενης Κυριακής ή δημόσιας αργίας.

¹⁵⁷ Τύπος, περιεχόμενο και διάρκεια ισχύος εντάλματος σύλληψης

19. (1) Κάθε ένταλμα σύλληψεως φέρει την υπογραφή του δικαστή που το εκδίδει, την ημερομηνία και ώρα εκδόσεως, καθώς επίσης και βεβαίωση του δικαστή ότι έχει ικανοποιηθεί λογικά για την ύπαρξη της ανάγκης εκδόσεως του εντάλματος.

(2) Κάθε τέτοιο έγγραφο αναφέρει σε συντομία το ποινικό αδίκημα ή ζήτημα για το οποίο εκδίδεται, κατονομάζει ή με άλλο τρόπο περιγράφει το πρόσωπο που θα συλληφθεί και διατάσσει τον αστυνομικό ή άλλο πρόσωπο προς το οποίο αυτό απευθύνεται να συλλάβει το πρόσωπο εναντίον του οποίου εκδίδεται και να προσάγει αυτό ενώπιον του Δικαστηρίου που έκδωσε το ένταλμα ή άλλου Δικαστηρίου αρμόδιου για την περίπτωση, για να απολογηθεί

(2) Every such document shall state briefly the criminal offense or matter for which it is issued, name or otherwise describe the person to be arrested and direct the police officer or other person to whom it is directed to arrest the person against whom it is issued and to bring the same before the Court which issued the warrant or other Court having jurisdiction over the case, to plead guilty to the criminal offense or matter referred to in the warrant and to be further dealt with according to law.

(3) Every such warrant is usually directed generally to all police officers, but the Magistrate issuing such warrant may, if its immediate execution is necessary and there is no police officer immediately available, direct it to any other person or persons, and the person it or persons execute it, and when the warrant is addressed to more than one police officer or more than one person, it may be executed by all or by any or by more than one of them.

(4) Any such warrant shall remain in force until executed or set aside by a judge.

Irregularities in warrant

20.¹⁵⁸ No irregularity or defect in the substance or form of a warrant of arrest, and no inconsistency between it and the indictment, or between either of them and the evidence adduced by the prosecution at the inquiry or trial, affects the validity of any proceeding against the hearing or thereafter, but any such discrepancy appears to the Court to be such that the accused was deceived or misled thereby, the Court may, on the application of the accused, adjourn the hearing to another date and in the meantime remand the accused or to release him on bail.

Referral to police custody

24. When it is proved to a judge that the investigation into the commission of a criminal offense for which a person has been arrested has not been completed, at the request of a

στο ποινικό αδίκημα ή ζήτημα που αναφέρεται στο ένταλμα και να τύχει περαιτέρω μεταχείρισης σύμφωνα με το νόμο.

(3) Κάθε τέτοιο ένταλμα συνήθως απευθύνεται γενικά προς όλους τους αστυνομικούς, αλλά ο Δικαστής που εκδίδει τέτοιο ένταλμα δύναται, αν είναι αναγκαία η άμεση εκτέλεση του και δεν υπάρχει αμέσως διαθέσιμος αστυνομικός, να απευθύνει αυτό προς οποιοδήποτε άλλο πρόσωπο ή πρόσωπα, και το πρόσωπο αυτό ή πρόσωπα το εκτελούν, όταν δε το ένταλμα απευθύνεται σε περισσότερους από ένα αστυνομικούς ή περισσότερα από ένα πρόσωπα, αυτό δύναται να εκτελεστεί από όλους ή από οποιοδήποτε ή από περισσότερους του ενός από αυτούς.

(4) Κάθε τέτοιο ένταλμα παραμένει σε ισχύ μέχρις ότου εκτελεστεί ή ακυρωθεί από δικαστή.

¹⁵⁸ Αντικανονικότητες σε ένταλμα

20. Καμιά αντικανονικότητα ή μειονέκτημα σε σχέση με την ουσία ή τον τύπο εντάλματος σύλληψης και καμιά ασυμφωνία μεταξύ αυτού και του κατηγορητηρίου ή μεταξύ καθενός από αυτά και της απόδειξης που προσάχθηκε από την κατηγορία κατά την ανάκριση ή τη δίκη, επηρεάζει το κύρος οποιασδήποτε διαδικασίας κατά την ακροαματική διαδικασία ή μεταγενέστερα, αλλά οποιαδήποτε τέτοια ασυμφωνία φαίνεται στο Δικαστήριο ότι είναι τέτοια ώστε ο κατηγορούμενος να εξαπατήθηκε ή παραπλανήθηκε με αυτή, το Δικαστήριο δύναται, μετά από αίτηση του κατηγορούμενου, να αναβάλει την ακροαματική διαδικασία για άλλη ημερομηνία και εν τω μεταξύ να προφυλακίσει τον κατηγορούμενο ή να τον απολύσει με εγγύηση.

police officer of the rank of constable or higher, it is lawful for the judge, whether or not he has jurisdiction to take the of the criminal offense for which the investigations are being carried out, to refer, from time to time, the arrested person to police custody for a period not exceeding eight days in any case as the Court deems appropriate, counting as the first day thereof the day immediately following the referral.

bb. Pre-trial detention

5

Constitution

Article 11¹⁵⁹

1. Everyone has the right to liberty and personal security.
2. No one is deprived of this freedom, except when and as the law prescribes in the following cases:
 - (a) detention of a person after his conviction by a competent court,
 - (b) arresting or detaining a person for failure to comply with a lawful court order;
 - (c) of arresting or detaining a person acting for the purpose of bringing him before the competent authority according to law on the reasonable suspicion that he has committed a crime or when the arrest or detention is considered reasonably necessary to prevent the commission of a crime or escape after committing it,
 - (d) restraint of a minor by virtue of a legal order for the purpose of reformative supervision or legal detention for the purpose of bringing him before the competent legal authority,
 - (e) confining persons to prevent the spread of contagious diseases, mentally ill persons, alcoholics, drug addicts or vagrants, and

¹⁵⁹ ΑΡΘΡΟΝ 11 1. Έκαστος έχει το δικαίωμα ελευθερίας και προσωπικής ασφαλείας. 2. Ουδείς στερείται της ελευθερίας αυτού, ειμή ότε και όπως ο νόμος ορίζει εις τας περιπτώσεις: (α) κρατήσεως ατόμου μετά την καταδίκην αυτού υπό αρμοδίου δικαστηρίου, (β) σύλληψεως ή κρατήσεως ατόμου λόγω μη συμμορφώσεως προς νόμιμον διαταγήν δικαστηρίου, (γ) σύλληψεως ή κρατήσεως ατόμου ενεργουμένης προς τον σκοπόν προσαγωγής αυτού ενώπιον της αρμοδίας κατά νόμον αρχής επί τη ευλόγω υπονοία ότι διέπραξεν αδίκημα ή οσάκις η σύλληψις ή κράτησις θεωρηθή ευλόγως αναγκαία προς παρεμπόδισιν διαπράξεως αδικήματος ή αποδράσεως μετά την διάπραξιν αυτού, (δ) περιορισμού ανηλικού δυνάμει νομίμου διαταγής προς τον σκοπόν αναμορφωτικής επιβλέψεως ή νομίμου κρατήσεως προς τον σκοπόν προσαγωγής αυτού ενώπιον της αρμοδίας κατά νόμον αρχής, (ε) περιορισμού ατόμων προς παρεμπόδισιν επεκτάσεως μεταδοτικών νόσων, ατόμων ασθενών διανοητικώς, αλκοολικών, τοξικομανών ή αλητών, και (στ) σύλληψης ή κράτησης ατόμου προς παρεμπόδιση της χωρίς άδεια εισόδου στο έδαφος της Δημοκρατίας ή σύλληψης ή κράτησης πολίτη της Δημοκρατίας προς το σκοπό της έκδοσης ή παράδοσής του με βάση ευρωπαϊκό ένταλμα σύλληψης ή σύμφωνα με διεθνή σύμβαση που δεσμεύει τη Δημοκρατία, υπό τον όρο ότι τέτοια σύμβαση εφαρμόζεται αντίστοιχα και από τον αντισυμβαλλόμενο. Η σύλληψη ή η κράτηση όμως οποιουδήποτε προσώπου προς το σκοπό έκδοσης ή παράδοσής του δεν είναι δυνατή εάν το αρμόδιο κατά νόμο όργανο ή αρχή έχει ουσιώδη λόγο να πιστεύει ότι το αίτημα της έκδοσης ή παράδοσης έγινε με σκοπό την ποινική δίωξη ή την τιμωρία προσώπου συνεπεία της φυλής, της θρησκείας, της εθνικότητας, της εθνοτικής καταγωγής, των πολιτικών πεποιθήσεων ή των νόμιμων κατά το διεθνές δίκαιο διεκδικήσεων συλλογικών ή ατομικών δικαιωμάτων.

(f) arrest or detention of a person to prevent unauthorized entry into the territory of the Republic or arrest or detention of a foreigner against whom actions were taken for the purpose of deportation or extradition or arrest or detention of a citizen of the Republic for the purpose of extradition or surrender based on European arrest warrant or in accordance with an international convention binding the Republic, provided that such convention is applied accordingly by the counterparty. However, the arrest or detention of any person for the purpose of extradition or surrender is not possible if the legally competent body or authority has substantial reason to believe that the request for extradition or surrender was made for the purpose of criminal prosecution or punishment of a person as a result of race, religion, nationality, ethnic origin,

3.¹⁶⁰ With the exception of imprisonment, when and as defined by law, a punishable offense of its own, no one is arrested, either following a reasoned judicial warrant issued in accordance with the formulas prescribed by law, or on the basis of a European arrest warrant.

4. Every arrested person is informed at the time of his arrest in a language he understands of the reasons for his arrest and is entitled to the services of a lawyer of his choice.

5. The arrested person is brought before the judge as soon as possible immediately after his arrest, but no later than within twenty-four hours of his arrest, as long as he was not released earlier.

6. The judge, before whom the arrested person was brought, quickly enters into an investigation of the reasons for the arrest in a language understood by the arrested person and, as soon as possible, but no later than within three days of such bringing, or dismisses the arrested person under the appropriate conditions in his judgment or orders his detention, if the interrogation regarding the commission of the offense for which he

¹⁶⁰ 3. Εξαιρουμένου του δια φυλακίσεως, ότε και όπως ο νόμος ορίζει, τιμωρουμένου αυτοφώρου αδικήματος, ουδείς συλλαμβάνεται, ειμή κατόπιν ητιολογημένου δικαστικού εντάλματος εκδοθέντος συμφώνως προς τους υπό του νόμου προδιαγεγραμμένους τύπους, ή με βάση ευρωπαϊκό ένταλμα σύλληψης. 4. Πας συλλαμβανόμενος πληροφορείται κατά την στιγμήν της σύλληψεως αυτού εις καταληπτήν υπ' αυτού γλώσσαν τους λόγους της σύλληψεως αυτού και δικαιούται να τύχη των υπηρεσιών συνηγόρου της εκλογής αυτού. 5. Ο συλληφθείς προσάγεται ενώπιον του δικαστού ως οϊόν τε συντομώτερον ευθύς μετά την σύλληψιν αυτού, πάντως δε το βραδύτερον εντός είκοσι τεσσάρων ωρών από της σύλληψεως, εφ' όσον δεν αφεθή πρότερον ελεύθερος. 6. Ο δικαστής, ενώπιον του οποιού προσήχθη ο συλληφθείς, χωρεί ταχέως εις διερεύνησιν των λόγων της σύλληψεως εις καταληπτήν υπό του συλληφθέντος γλώσσαν και, ως οϊόν τε συντομώτερον, πάντως δε το βραδύτερον εντός τριών ημερών από της τοιαύτης προσαγωγής, ή απολύει τον συλληφθέντα υπό τους κατά την κρίσιν αυτού καταλλήλους όρους ή διατάσσει την κράτησιν αυτού, οσάκις η περί της διαπράξεως του αδικήματος ανάκρισις, δι' ο συνελήφθη, δεν συνεπληρώθη και δύναται να διατάσση εκάστοτε την κράτησιν αυτού επί περιόδον χρόνου μη υπερβαίνουσαν τας οκτώ ημέρας. Ο συνολικός χρόνος όμως της τοιαύτης κρατήσεως δέον να μη υπερβαίνη τους τρεις μήνας από της ημερομηνίας της σύλληψεως, μετά την παρέλευσιν των οποιών παν άτομον ή αρχή έχουσα υπό κράτησιν τον συλληφθέντα απολύει αυτόν παρευθύς. Πάσα κατά τα ανωτέρω απόφασις του δικαστού υπόκειται εις έφεσιν. 7. Πας στερηθείς της ελευθερίας αυτού δια σύλληψεως ή κρατήσεως δικαιούται να προσφύγη εις το αρμόδιον δικαστήριον, ίνα τούτο κρίνη ταχέως την νομιμότητα της κρατήσεως και διατάξη την απόλυσιν αυτού, εάν η κράτησις δεν είναι νόμιμος. 8. Ο κατά παράβασιν των διατάξεων του παρόντος άρθρου συλληφθείς ή κρατηθείς έχει αγώγιμον δικαίωμα προς αποζημίωσιν.

was arrested has not been completed and may order his detention for a period of time not exceeding eight days. However, the total time of such detention must not exceed three months from the date of arrest, after which any person or authority having custody of the arrested person shall immediately release him. All the above decisions of the judge are subject to appeal.

7. Anyone deprived of his liberty by arrest or detention has the right to appeal to the competent court, so that it quickly judges the legality of the detention and orders his dismissal, if the detention is not legal.

8. Anyone arrested or detained in violation of the provisions of this article has the right to compensation.

6 Criminal Procedure Code

Issuance of an arrest warrant

18.¹⁶¹ (1) Where a judge is satisfied by a written affidavit that there is reasonable suspicion that a person has committed an offence, or where the arrest or detention is reasonably considered to be necessary to prevent the commission of an offense or escape after the commission thereof, the judge may issue warrant (to be referred to in this Act as an arrest warrant) authorizing the arrest of the person against whom the warrant is directed. (2) An arrest warrant may be issued on any day including a Sunday or public holiday.

Referral to police custody

24. When it is proved to a judge that the investigation into the commission of a criminal offense for which a person has been arrested has not been completed, at the request of a police officer of the rank of constable or higher, it is lawful for the judge, whether or not he has jurisdiction to take the of the criminal offense for which the investigations are being carried out, to refer, from time to time, the arrested person to police custody for a period not exceeding eight days in any case as the Court deems appropriate, counting as the first day thereof the day immediately following the referral.

¹⁶¹ Έκδοση εντάλματος σύλληψης 18. (1) Όταν δικαστής ικανοποιείται με γραπτή ένορκη δήλωση ότι υπάρχει εύλογη υπόνοια να πιστεύεται ότι ένα πρόσωπο διέπραξε αδίκημα ή όταν η σύλληψη ή η κράτηση θεωρηθεί ευλόγως αναγκαία για παρεμπόδιση διαπράξεως αδικήματος ή αποδράσεως μετά τη διάπραξη αυτού, ο δικαστής δύναται να εκδώσει ένταλμα (που θα αναφέρεται στον παρόντα Νόμο ως ένταλμα σύλληψεως) το οποίο να εξουσιοδοτεί τη σύλληψη του ατόμου εναντίον του οποίου στρέφεται το ένταλμα. (2) Ένταλμα σύλληψης δύναται να εκδοθεί σε οποιαδήποτε ημέρα περιλαμβανόμενης Κυριακής ή δημόσιας αργίας.

Adjournment and pre-trial detention

48 Any Court may, if it deems it appropriate to adjourn any case before it and on the basis of such adjournment it may, subject to the provisions of subsection (2) of article 157, either dismiss the accused under such conditions as it deems reasonable or to detain him.

c) Para 2: Cross-border surrender

Competent authorities:¹⁶²

(a) competent District Judge

(b) District Judge of Nicosia (Nicosia District Court, Χαράλαμπου Μούσκου, Λευκωσία 1102, Κύπρος (Charalambou Mouskou, Nicosia 1102, Cyprus.)

Article 11(1) (3) of Law 133(I)/2004

7

¹⁶² European Judicial Network, Fiches Belges: Cyprus, see <https://www.ejnforum.eu/cp/e-evidence-fiche/223/0>, latest accessed 12.1.2024.

3. Some provisions on Defence laws

- 1 The subsequent provisions, delineated in the concluding section within Part B. pertaining to the European Public Prosecutor's Office (EPPO) regulations in Cyprus, center on provisions and actions related to the so-called rubric of **defence laws**.

a) Specialised legal law firms

- 2 At the moment there are no specialised firms that only procure EU fraud cases but all criminal lawyers might be contacted, or be appointed by the Court, as they are qualified to defend their clients on the basis of Cypriot national law. It will often be questionable whether a necessary defence lawyer needs to be appointed.

b) Defence in the investigation phase

- 3 The main provision regarding defence stems from the **Cypriot Constitution**:

Article 12

1. No person shall be held guilty of any offence on account of any act or omission which did not constitute an offence under the law at the time when it was committed; and no person shall have a heavier punishment imposed on him for an offence other than that expressly provided for it by law at the time when it was committed.
2. A person who has been acquitted or convicted of an offence shall not be tried again for the same offence. No person shall be punished twice for the same act or omission except where death ensues from such act or omission.
3. No law shall provide for a punishment which is disproportionate to the gravity of the offence.
4. Every person charged with an offence shall be presumed innocent until proved guilty according to law.
5. Every person charged with an offence has the following minimum rights:-
 - a. to be informed promptly and in a language which he understands and in detail of the nature and grounds of the charge preferred against him;
 - b. to have adequate time and facilities for the preparation of his defence;
 - c. to defend himself in person or through a lawyer of his own choosing or, if he has no sufficient means to pay for legal assistance, to be given free legal assistance when the interests of justice so require;
 - d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.
6. A punishment of general confiscation of property is prohibited.

First of all, the suspect or accused has a right to have access to a lawyer, which is regulated by the **Criminal Procedure Code**: 4

Appointment of a lawyer by the Court

5

64.¹⁶³ (1) The Court, before which an accused is tried on the basis of an indictment or an indictment registered in a Criminal Court or during the hearing of an appeal from a decision of a Criminal Court, may appoint a lawyer to defend the accused or the appellant, as the case may be, if the seriousness, difficulty, or other circumstances of the case render it desirable in the interests of justice, and the Court should appoint counsel to defend an undefended person who is tried for a criminal offense punishable by death.

(2) An advocate appointed by the Court shall receive from the public treasury such remuneration as the Court, subject to the general order of the Supreme Court, may wish to grant.

aa. The Input from the Regulation 2017/1939

(1) Access to national case file

Right of suspect and accused to access their case documents

7.¹⁶⁴ (1) A person, who is arrested and detained, is entitled to request that he or his lawyer be granted timely access to the essential documents, which are relevant to the

¹⁶³ Ορισμός δικηγόρου από Δικαστήριο

64. (1) Το Δικαστήριο, ενώπιον του οποίου δικάζεται κατηγορούμενος βάσει κατηγορητηρίου ή κατηγορητηρίου που καταχωρίστηκε σε Κακούργιοδικείο ή κατά την ακροαματική διαδικασία έφεσης από απόφαση Κακούργιοδικείου, δύναται να ορίσει δικηγόρο για να υπερασπίσει τον κατηγορούμενο ή τον εφεσεύοντα, ανάλογα με την περίπτωση, αν η σοβαρότητα, η δυσκολία ή άλλα περιστατικά της υπόθεσης καθιστούν αυτό επιθυμητό προς το συμφέρον της δικαιοσύνης και το Δικαστήριο πρέπει να ορίσει δικηγόρο για να υπερασπίσει μη υπερασπιζόμενο πρόσωπο το οποίο δικάζεται για ποινικό αδίκημα που τιμωρείται με θανατική ποινή.

(2) Δικηγόρος που ορίστηκε από το Δικαστήριο λαμβάνει από το δημόσιο ταμείο τέτοια αμοιβή, την οποία το Δικαστήριο, τηρούμενης της γενικής διαταγής του Ανωτάτου Δικαστηρίου, ήθελε χορηγήσει.

¹⁶⁴ Δικαίωμα υπόπτου και κατηγορουμένου σε πρόσβαση στα έγγραφα της υπόθεσής του

7.(1) Πρόσωπο, το οποίο συλλαμβάνεται και κρατείται, δικαιούται να ζητήσει όπως χορηγηθεί εγκαίρως στο ίδιο ή το δικηγόρο του πρόσβαση στα ουσιώδη έγγραφα, που είναι σχετικά με τη συγκεκριμένη υπόθεση και βρίσκονται στην κατοχή της κατηγορούσας αρχής και τα οποία είναι απαραίτητα για την αποτελεσματική αμφισβήτηση της νομιμότητας της σύλληψης και της κράτησής του.

Για τους σκοπούς του παρόντος εδαφίου «ουσιώδη έγγραφα» θεωρούνται το αντίγραφο του εντάλματος σύλληψης και κράτησης και το αντίγραφο της αίτησης και της ένορκης δήλωσης βάσει των οποίων εκδόθηκε το ένταλμα.

(2) Όταν κλήση ή ένταλμα που εκδόθηκε δυνάμει του άρθρου 44 του παρόντος Νόμου επιδοθεί στον κατηγορούμενο, αυτός δικαιούται με γραπτό αίτημά του προς την κατηγορούσα αρχή να έχει δωρεάν πρόσβαση στις καταθέσεις και τα έγγραφα που λήφθηκαν κατά τη διερεύνηση της υπόθεσης αναφορικά με το υπό εκδίκαση ποινικό αδίκημα, προκειμένου να διασφαλιστεί ο δίκαιος χαρακτήρας της διαδικασίας και η προετοιμασία της υπεράσπισης του κατηγορουμένου:

specific case and are in the possession of the prosecuting authority and which are necessary for effectively challenging the lawfulness of his arrest and detention.

For the purposes of this subsection, “material documents“ are considered to be the copy of the warrant of arrest and detention and the copy of the application and affidavit on the basis of which the warrant was issued.

(2) When a summons or warrant issued pursuant to article 44 of this Law is served on the accused, he is entitled, by his written request to the prosecuting authority, to have free access to the statements and documents obtained during the investigation of the case regarding the adjudication of a criminal offence, in order to ensure the fairness of the proceedings and the preparation of the defence of the accused:

Provided that, if new material comes into the possession of the prosecuting authority, which it intends to use in the proceedings, the accused is granted further access to this material.

(3) In the event that the accused requests in writing the provision of copies of such material, the fee shall be paid, which is determined from time to time by the Chief of Police, with the approval of the Minister of Justice and Public Order.

(4) By way of derogation from the provisions of subsection (2), as long as the right to a fair trial is not affected, access to a part of the depositions and documents obtained during the investigation of the case is not permitted, if it is likely to seriously endanger the life or fundamental rights of another person, or in the event that such refusal is considered absolutely necessary to protect an important public interest, or that access may compromise the conduct of an investigation or seriously harm the national security of the Republic.

(5) In a case where, by virtue of the provisions of subsection (4), the prosecuting authority does not grant the accused access to part of the statements and documents

Νοείται ότι, εφόσον, περιέλθει στην κατοχή της κατηγορούσας αρχής νέο υλικό, το οποίο αυτή προτίθεται να χρησιμοποιήσει στη διαδικασία, παραχωρείται στον κατηγορούμενο περαιτέρω πρόσβαση στο υλικό αυτό.

(3) Σε περίπτωση κατά την οποία ο κατηγορούμενος αιτείται γραπτώς την παροχή αντιγράφων τέτοιου υλικού, καταβάλλεται το τέλος, το οποίο καθορίζεται εκάστοτε από τον Αρχηγό Αστυνομίας, με την έγκριση του Υπουργού Δικαιοσύνης και Δημοσίας Τάξεως.

(4) Κατά παρέκκλιση από τις διατάξεις του εδαφίου (2), εφόσον δεν θίγεται το δικαίωμα σε δίκαιη δίκη, δεν επιτρέπεται η πρόσβαση σε τμήμα των καταθέσεων και των εγγράφων που λήφθηκαν κατά τη διερεύνηση της υπόθεσης, αν αυτή ενδέχεται να θέσει σε σοβαρό κίνδυνο τη ζωή ή τα θεμελιώδη δικαιώματα άλλου προσώπου, ή στην περίπτωση που τέτοια άρνηση θεωρείται απολύτως απαραίτητη για την προστασία σημαντικού δημοσίου συμφέροντος, ή που η πρόσβαση ενδέχεται να διακυβεύσει τη διεξαγωγή έρευνας ή να βλάψει σοβαρά την εθνική ασφάλεια της Δημοκρατίας.

(5) Σε περίπτωση κατά την οποία δυνάμει των διατάξεων του εδαφίου (4) η κατηγορούσα αρχή δεν παρέχει στον κατηγορούμενο πρόσβαση σε τμήμα των καταθέσεων και των εγγράφων που λήφθηκαν κατά τη διερεύνηση της υπόθεσης, αυτός δύναται κατά την πρώτη δικάσιμο της υπόθεσής του να ζητήσει από το εκδικάζον δικαστήριο να εξετάσει τους λόγους της άρνησης αυτής και να εκδώσει οποιοδήποτε διάταγμα ήθελε υπό τις περιστάσεις κρίνει πρέπον.

Για τους σκοπούς του παρόντος άρθρου, στον όρο «αντίγραφο» περιλαμβάνονται φωτοαντίγραφα των καταθέσεων και των εγγράφων στην κατάσταση στην οποία αυτά βρίσκονται.

obtained during the investigation of the case, he may, at the first hearing of his case, request by the trial court to consider the reasons for such refusal and to pass any decree it wished under the circumstances it thought fit.

For the purposes of this article, the term “copy“ includes photocopies of depositions and documents in the state in which they are found.

Right of the accused to access the documents and/or evidentiary material of the accuser in private criminal proceedings

7A. [Not displayed here].

(2) Access to EPPO case file

The access to the EPPO case file is ruled by Art. 45 EPPO Regulation.

6

bb. Defence while investigation is under-way, Art. 28–33 EPPO Regulation

A search measure may be contested by an appeal:

7

Appeal against a decision of a court given under section 32(1).

8

32.A¹⁶⁵ (1) Every court decision, which is issued by virtue of subsection (1) of article 32, is subject to appeal.

(2) An appeal pursuant to this article shall be made by filing a notice of appeal with the Recorder of the District Court against whose decision the appeal is made within ten days of the date on which the decision was issued.

Regarding interceptions the suspect may request compensation if its privacy rights were violated:

9

Cypriot Constitution

Article 15

1. Every person has the right to respect for his private and family life.
2. There shall be no interference with the exercise of this right except such as is in accordance with the law and is necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person.

10

¹⁶⁵ Έφεση κατά απόφασης δικαστηρίου που εκδίδεται δυνάμει του άρθρου 32(1).

32.A(1) Κάθε απόφαση δικαστηρίου, η οποία εκδίδεται δυνάμει του εδαφίου (1) του άρθρου 32, υπόκειται σε έφεση.

(2) Έφεση δυνάμει του άρθρου αυτού ασκείται με την καταχώριση ειδοποίησης έφεσης στον Πρωτοκολλητή του Επαρχιακού Δικαστηρίου εναντίον της απόφασης του οποίου ασκείται η έφεση εντός δέκα ημερών από την ημερομηνία κατά την οποία εκδόθηκε η απόφαση.

Article 17

1. Every person has the right to respect for, and to the secrecy of, his correspondence and other communication if such other communication is made through means not prohibited by law.

2. There shall be no interference with the exercise of this right, unless such interference is permitted in accordance with the law, in the following cases:

A. Of convicted or unconvicted prisoners.

B. Following a court order issued pursuant to the provisions of the law, upon an application by the Attorney-General of the Republic, and interference shall constitute a measure which is necessary in a democratic society only in the interests of the security of the Republic or for the prevention, investigation or prosecution of the following serious criminal offences:

a. Premeditated murder or homicide,

b. trafficking in adult or minor human beings and offences relating to child pornography,

c. trade, supply, cultivation or production of narcotic drugs, psychotropic substances or dangerous drugs,

d. offences relating to coin or bank note of the Republic, and

e. offences relating to corruption in respect of which, in case of conviction, a sentence of imprisonment of five years or more is provided.

C. Following a court order issued in accordance with the provisions of the law, for the investigation or prosecution of a serious criminal offence in respect of which, in case of conviction, a sentence of imprisonment of five years or more is provided and the interference concerns access to relevant electronic communication data of movement and position and to relevant data which are necessary for the identification of the subscriber or and the user.

11 An investigation might cause interferences with the rights of a data subject:

Right to compensation [Data Retention Act]

16.¹⁶⁶ The provisions of article 17 of the Processing of Personal Data (Protection of the Individual) Law also apply in cases where any data subject has suffered damage due to a violation of any provision of this Law.

¹⁶⁶ Δικαίωμα αποζημίωσης

16. Οι διατάξεις του άρθρου 17 του περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμου εφαρμόζονται και στις περιπτώσεις όπου οποιοδήποτε υποκείμενο των δεδομένων έχει υφιστάται ζημία λόγω παράβασης οποιασδήποτε διάταξης του παρόντος Νόμου.

Offenses and penalties

19.¹⁶⁷ (1) A service provider who violates the provisions of articles 3 and 6 to 11 and subsection (2) of article 14 of this Law is guilty of an offense and, in case of conviction, is liable to imprisonment for up to three years or to a fine of up to LK 10,000 or both of these penalties.

(2) In case of repeated violation by a service provider of the provisions of articles 3, 5, 6 to 11 and 12 of this Law, the Court may order the revocation of the service provider's operating license.

(3) A person who violates the provisions of article 12 of this Law is guilty of an offense and, in case of conviction, is subject to a prison sentence of up to five years or a fine of up to LK 15,000 or to both of these penalties.

(4) A person who, either acting in the context of authorized service or acting in the context of non-authorized service, with the intention -

(a) obtains or attempts to obtain access to data maintained pursuant to the provisions of this Law, without a decree of the Court or without the approval of the Attorney General of the Republic, in accordance with the provisions of article 4,

(b) communicates data of which it has become aware, to any third parties in relation to the process of investigating a serious criminal offence,

(c) alters data that came into his possession, and/or

(d) violates its obligations, as defined in paragraph (b) of subsection (1) of article 4 and in article 20, for data destruction,

¹⁶⁷ Αδικήματα και ποινές

19.(1) Παροχέας υπηρεσιών που παραβιάζει τις διατάξεις των άρθρων 3 και 6 έως 11 και του εδαφίου (2) του άρθρου 14 του παρόντος Νόμου είναι ένοχος αδικήματος και, σε περίπτωση καταδίκης, υπόκειται σε ποινή φυλάκισης μέχρι τρία έτη ή σε χρηματική ποινή ύψους μέχρι LK 10.000 ή και στις δύο αυτές ποινές.

(2) Σε περίπτωση επανειλημμένης παραβίασης από παροχέα υπηρεσιών των διατάξεων των άρθρων 3, 5, 6 έως 11 και 12 του παρόντος Νόμου, το Δικαστήριο δύναται να διατάξει την ανάκληση της άδειας λειτουργίας του παροχέα υπηρεσιών.

(3) Πρόσωπο το οποίο παραβιάζει τις διατάξεις του άρθρου 12 του παρόντος Νόμου είναι ένοχο αδικήματος και, σε περίπτωση καταδίκης, υπόκειται σε ποινή φυλάκισης μέχρι πέντε έτη ή σε χρηματική ποινή ύψους μέχρι LK 15.000 ή και στις δύο αυτές ποινές.

(4) Πρόσωπο το οποίο, είτε ενεργεί στο πλαίσιο εντεταλμένης υπηρεσίας είτε ενεργεί στο πλαίσιο μη εντεταλμένης υπηρεσίας, με πρόθεση -

(α) αποκτά ή επιχειρεί απόκτηση πρόσβασης σε δεδομένα που διατηρούνται δυνάμει των διατάξεων του παρόντος Νόμου, χωρίς διάταγμα του Δικαστηρίου ή χωρίς έγκριση του Γενικού Εισαγγελέα της Δημοκρατίας, σύμφωνα με τις διατάξεις του άρθρου 4,

(β) κοινοποιεί δεδομένα για τα οποία έλαβε γνώση, σε οιαδήποτε τρίτα πρόσωπα ως προς τη διαδικασία διερεύνησης σοβαρού ποινικού αδικήματος,

(γ) αλλοιώνει δεδομένα τα οποία περιήλθαν στην κατοχή του, ή/και

(δ) παραβαίνει τις υποχρεώσεις του, όπως αυτές καθορίζονται στην παράγραφο (β) του εδαφίου (1) του άρθρου 4 και στο άρθρο 20, για καταστροφή δεδομένων,

είναι ένοχο αδικήματος και, σε περίπτωση καταδίκης, υπόκειται σε ποινή φυλάκισης μέχρι πέντε έτη ή σε χρηματική ποινή ύψους μέχρι LK 15.000 ή και στις δύο αυτές

is guilty of an offense and, on conviction, is liable to imprisonment for up to five years or to a fine of up to LK 15,000 or to both.

Privacy Policy for Private Communications

22. Nothing in this Act affects or may be deemed to affect the application of the provisions of the Privacy Protection of Private Communications (Conversation Monitoring) Act.

c) Defence in Indictment Phase and the Trial Phase

12 The courts need to have jurisdiction. The defence might challenge this position. The Cypriot PIF Implementation Law stipulates the following:

13 **Jurisdiction/Courts**

13. (1) Without affecting the provisions of Article 5 of the Criminal Code and notwithstanding Article 6 of the Criminal Code, the courts of the Republic have jurisdiction to try the offenses referred to in Articles 4, 5 and 6 when the offenses have been committed;

- a) in whole or in part in the republic or
- b) by a citizen of the republic or
- (c) by an official within the meaning of this Act.

(2) The jurisdiction of the court to judge criminal offences under Article 4, 5 and 6 extends to cases where offenses were committed outside of the the Republic:

- a) by a per-son who has their habitual residence in the republic, or
- b) in favour of a legal per-son established in the republic or
- (c) by a person who is in the service of the Republic and under its official capacity.

14 The Criminal Procedure Code clearly states that:

Presentation of indictment to a Judge and registration

43.¹⁶⁸ (1) Every indictment shall be presented to a Judge of the Court in which the indictment is pronounced.

(2) After studying the indictment the Judge may order that it be registered or, if he refuses to give such an order, he must, if so requested by the person making the charge

¹⁶⁸ Παρουσίαση κατηγορητηρίου σε Δικαστή και καταχώρηση

43. (1) Κάθε κατηγορητήριο παρουσιάζεται σε Δικαστή του Δικαστηρίου στο οποίο το κατηγορητήριο απαγγέλλεται.

(2) Κατόπιν μελέτης του κατηγορητηρίου ο Δικαστής δύναται να διατάξει όπως αυτό καταχωριστεί ή, αν αρνείται να δώσει τέτοια διαταγή, αυτός πρέπει, αν παρακληθεί με αυτό τον τρόπο από το πρόσωπο που απαγγέλλει την κατηγορία εντός δέκα ημερών από την ημερομηνία της άρνησης, να δώσει σε αυτό βεβαίωση της άρνησης, και το πρόσωπο αυτό δύναται, εντός δέκα ημερών από την ημερομηνία της εξασφάλισης της βεβαίωσης να ζητήσει από το Ανώτατο Δικαστήριο ή Δικαστή του Ανωτάτου Δικαστηρίου την έκδοση διατάγματος που να διατάσσει την καταχώριση του κατηγορητηρίου και, αν το διάταγμα εκδοθεί, το κατηγορητήριο καταχωρίζεται ανάλογα.

within ten days from the date of the refusal, give him a certificate of denial, and such person may, within ten days from the date of securing the certificate, apply to the Supreme Court or a Judge of the Supreme Court for the issuance of a decree ordering the entry of the indictment and, if the decree is issued, the indictment is registered accordingly.

General provisions as to answers and procedure in all trials, summary or non-summary

Application to an indictment or to an indictment registered in a Criminal Court 62.¹⁶⁹ The person to be tried on an indictment or indictment entered in a Criminal Court, when present, shall be brought before the Court without bond unless the Court otherwise orders, and the indictment or indictment entered in a Criminal Court shall be read therein by the Judge or other officer of the Court, who may, if necessary, explain the matter and its content, and that person is required to answer it immediately:

Provided that the accused may, before answering, request that he be provided with a copy of the indictment or the indictment registered in the Criminal Court and the Court shall see to it that he is provided with such a copy or he may request an extension of time to respond and the Court may grant extension of time under such conditions as it may deem appropriate.

Presence of accused during trial

63.¹⁷⁰ (1) The accused has the right to be present in Court throughout the trial as long as he behaves decently.

¹⁶⁹ Γενικές διατάξεις ως προς τις απαντήσεις και διαδικασία σε όλες τις δίκες, συνοπτικές και μη Αίτηση σε κατηγορητήριο ή σε κατηγορητήριο που καταχωρίστηκε σε Κακούργιοδικείο

62. Το πρόσωπο που θα δικάσεται βάσει κατηγορητηρίου ή κατηγορητηρίου που καταχωρίστηκε σε Κακούργιοδικείο, όταν είναι παρόν, τοποθετείται ενώπιον του Δικαστηρίου χωρίς δεσμά εκτός αν το Δικαστήριο διατάξει διαφορετικά και το κατηγορητήριο ή το κατηγορητήριο που καταχωρίστηκε σε Κακούργιοδικείο διαβάζεται σε αυτό από το Δικαστή ή άλλο λειτουργό του Δικαστηρίου, ο οποίος δύναται, αν είναι αναγκαίο, να εξηγήσει το ζήτημα και το περιεχόμενο του, και το πρόσωπο αυτό καλείται να απαντήσει σε αυτό αμέσως:

Νοείται ότι ο κατηγορούμενος δύναται, προτού απαντήσει να ζητήσει όπως εφοδιαστεί με αντίγραφο του κατηγορητηρίου ή του κατηγορητηρίου που καταχωρίστηκε στο Κακούργιοδικείο και το Δικαστήριο μεριμνά ώστε να εφοδιαστεί αυτός με τέτοιο αντίγραφο ή αυτός δύναται να ζητήσει παράταση χρόνου για να απαντήσει και το Δικαστήριο δύναται να παραχωρήσει παράταση χρόνου υπό τέτοιους όρους ως ήθελε θεωρήσει σκόπιμο.

¹⁷⁰ Παρουσία κατηγορούμενου κατά τη διάρκεια της δίκης

63. (1) Ο κατηγορούμενος δικαιούται να είναι παρών στο Δικαστήριο καθόλη τη διάρκεια της δίκης εφόσον συμπεριφέρεται ευπρεπώς.

(2) Αν ο κατηγορούμενος δεν συμπεριφέρεται ευπρεπώς, το Δικαστήριο δύναται, κατά τη διακριτική του εξουσία, να διατάξει όπως ο κατηγορούμενος μεταφερθεί και παραμείνει υπό κράτηση και να συνεχίσει τη δίκη στην απουσία του προβαίνοντας σε τέτοιες διευθετήσεις οι οποίες κατά την κρίση του φαίνονται επαρκείς για την

(2) If the accused does not behave decently, the Court may, in its discretion, order that the accused be transported and remain in custody and continue the trial in his absence by making such arrangements as in its judgment appear adequate for informing the accused about what was exchanged during the trial and for the preparation of his defence.

(3) The Court may, if it deems it appropriate, allow the accused to remain outside the Court during all or part of the trial, under such conditions as it deems appropriate.

Interpretation of testimony to the accused

65. (1) When testimony is given in a language not understood by the accused and he is present, it shall be interpreted to him in a public session of the Court in a language understood by him:

Provided that when he is defended by a lawyer, the interpretation may, with the consent of the lawyer and the approval of the Court, be omitted.

(2) When documents are filed for the purposes of formal evidence, it is left to the discretion of the Court to interpret such part of them as appears necessary.

(3) The Court may check the interpreter's ability in such a way as it deems appropriate and may make him take an oath, as it deems appropriate, that he will perform the interpretation well and truly.

Objection to the indictment or indictment entered in the Criminal Court

66. Any objection to the indictment or to an indictment entered in a Criminal Court to any prima facie formal defect thereof shall be taken immediately after the indictment or indictment entered in the Criminal Court has been read to the accused and before he answers thereto but not later.

Answers to the indictment

67. When the accused is called to answer, he may or may not plead guilty or make any special apology as specified in article 69 of this Law and his answer shall be registered by the Court.

Plea or not guilty

68. (1) If the accused pleads guilty and the Court is satisfied that he understood the nature of his answer, it proceeds as if the accused had been convicted by a decision of the Court.

ενημέρωση του κατηγορούμενου για όσα ανταλλάχθηκαν κατά τη δίκη και για την προετοιμασία της υπεράσπισης του.

(3) Το Δικαστήριο δύναται, αν θεωρεί αυτό κατάλληλο, να επιτρέψει στον κατηγορούμενο να παραμένει εκτός του Δικαστηρίου καθόλη τη διάρκεια ή μέρος της δίκης, με τέτοιους όρους ως αυτό ήθελε θεωρήσει σκόπιμο.

(2) If the accused does not plead guilty, the Court proceeds with the hearing of the case, in the manner provided by article 74.

(3) If the accused refuses, or does not answer immediately or because of physical disability is unable to answer, the Court proceeds in the same way as if he had not pleaded guilty.

Special answers

69.¹⁷¹ (1) The accused may, before answering the indictment or the indictment registered in a Criminal Court, claim-

(a) that the Court before which he is called upon to answer has no jurisdiction and that another Court has jurisdiction in respect of him or of the criminal offense with which he is charged, and, if the plea is accepted, the Court refers the case to be tried before the Court of the Republic which has jurisdiction over the offender or the criminal offense

(b) that he has previously been convicted or acquitted, as the case may be, on the same facts of the same criminal offense

(c) that he was pardoned for his criminal offence.

(2) If any of the allegations in paragraphs (b) or (c) of subsection (1) of this article is made but is denied as to the actual truth thereof, the Court shall judge whether such allegation is actually true or not.

If the Court decides that the facts alleged by the defendant do not prove the allegation, or that the allegation is actually false, the defendant is required to answer the indictment or indictment filed in Criminal Court.

¹⁷¹ Ειδικές απαντήσεις

69. (1) Ο κατηγορούμενος δύναται, προτού απαντήσει στο κατηγορητήριο ή το κατηγορητήριο που καταχωρίστηκε σε Κακουργιοδικείο, να ισχυριστεί-

(α) ότι το Δικαστήριο ενώπιον του οποίου αυτός καλείται να απαντήσει δεν έχει δικαιοδοσία και ότι άλλο Δικαστήριο έχει δικαιοδοσία σε σχέση με αυτόν ή για το ποινικό αδίκημα για το οποίο αυτός κατηγορείται, και, αν ο ισχυρισμός γίνει αποδεκτός, το Δικαστήριο παραπέμπει την υπόθεση για να εκδικαστεί ενώπιον του Δικαστηρίου της Δημοκρατίας το οποίο έχει δικαιοδοσία για τον υπαίτιο ή για το ποινικό αδίκημα

(β) ότι έχει προηγουμένως καταδικαστεί ή αθωωθεί ανάλογα με την περίπτωση, βάσει των ίδιων γεγονότων για το ίδιο ποινικό αδίκημα

(γ) ότι έτυχε χάριτος για το ποινικό του αδίκημα.

(2) Αν καθένας από τους ισχυρισμούς των παραγράφων (β) ή (γ) του εδαφίου (1) του άρθρου αυτού προβληθεί αλλά προβάλλεται άρνηση ως προς την πραγματική αλήθεια αυτού, το Δικαστήριο δικάζει κατά πόσο ο ισχυρισμός αυτός είναι πράγματι αληθινός ή όχι.

Αν το Δικαστήριο αποφασίσει ότι τα γεγονότα που ισχυρίζεται ο κατηγορούμενος δεν αποδεικνύουν τον ισχυρισμό, ή ότι ο ισχυρισμός είναι πράγματι ψευδής, ο κατηγορούμενος υποχρεώνεται να απαντήσει στο κατηγορητήριο ή το κατηγορητήριο που καταχωρίστηκε σε Κακουργιοδικείο.

Witnesses leave the Court during the hearing

73.¹⁷² If the accused does not plead guilty, the Court orders all witnesses to leave the Court:

Means that-

- (a) the Court may permit witnesses on matters of their specialty and such technicians to remain before the Court and
- (b) failure to comply with the provisions of this article does not invalidate the procedure.

Acquittal or conviction

77.¹⁷³ (1) At the end of the hearing, the Court examines the entire case and issues its decision and, for this purpose, may adjourn the trial.

(2) When the Court consists of more than one Judge, unless the majority of the Court finds the accused guilty, he shall be acquitted.

(3) If the accused is found guilty, the Court sentences him and, in compliance with the provisions of articles 78 and 79, proceeds to study the penalty that will be imposed on him.

In deciding on the sentence to be imposed, in the case where the Court is composed of more than one judge and there is a tie, the president of the Court has an additional or casting vote.

If the Court acquits the accused, he is immediately released from custody unless he was acquitted by reason of insanity.

¹⁷² Οι μάρτυρες εγκαταλείπουν το Δικαστήριο κατά τη διάρκεια της ακροαματικής διαδικασίας
73. Αν ο κατηγορούμενος δεν ομολογήσει ενοχή, το Δικαστήριο διατάσσει όπως όλοι οι μάρτυρες, εγκαταλείψουν το Δικαστήριο:

Νοείται ότι-

- (α) το Δικαστήριο δύναται να επιτρέψει σε μάρτυρες για θέματα της ειδικότητας τους και τέτοιους τεχνικούς να παραμείνουν στο Δικαστήριο και
- (β) παράλειψης συμμόρφωσης με τις διατάξεις του άρθρου αυτού δεν καθιστά άκυρη τη διαδικασία.

¹⁷³ Αθώωση ή καταδίκη

77.- (1) Στο τέλος της ακροαματικής διαδικασίας το Δικαστήριο μελετά ολόκληρη την υπόθεση και εκδίδει την απόφαση του και, για το σκοπό αυτό δύναται να αναβάλει τη δίκη.

(2) Όταν το Δικαστήριο απαρτίζεται από περισσότερους του ενός δικαστές, εκτός αν η πλειοψηφία του Δικαστηρίου κρίνει τον κατηγορούμενο ένοχο, αυτός αθωώνεται.

(3) Αν ο κατηγορούμενος βρεθεί ένοχος το Δικαστήριο τον καταδικάζει και τηρουμένων των διατάξεων των άρθρων 78 και 79, προχωρεί στη μελέτη της ποινής που θα του επιβληθεί.

Κατά τη λήψη απόφασης για την ποινή που θα επιβληθεί, σε περίπτωση κατά την οποία το Δικαστήριο απαρτίζεται από περισσότερους του ενός δικαστές και υπάρχει ισοψηφία, ο πρόεδρος του Δικαστηρίου έχει πρόσθετη ή νικώσα ψήφο.

(4) Αν το Δικαστήριο αθώοσει τον κατηγορούμενο αυτός απολύεται αμέσως από την κράτηση εκτός αν αθωώθηκε λόγω φρενοπάθειας.

Conviction

78.¹⁷⁴ If the Court finds the accused guilty, or if the accused pleads guilty, it is the duty of the judge or other officer of the Court to ask him if he has anything to say why he should not be punished according to law, but the failure to ask does not affect the validity of the process.

Special provisions for trials based on an indictment registered in a Criminal Court**A trial before a Criminal Court is brought on the basis of an indictment registered in a Criminal Court**

107. No one shall be tried for any criminal offense which is not tried summarily, although it is possible that he has been referred to a trial, except on the basis of an indictment registered by the Attorney General of the Republic in the Criminal Court before which this person is about to be tried.

The indictment filed in Criminal Court may charge the accused with any charge revealed by the statements taken during the investigation of the case

108. In any such indictment registered in a Criminal Court, the Attorney General of the Republic may bring against the accused any charge which, in the opinion of the Attorney General of the Republic, is disclosed by the statements taken during the investigation of the case and delivered to the accused in accordance with article 94 of this Law, either in addition to the criminal offence, or in substitution of the criminal offence, for which the accused was referred to trial.

Type of indictment registered in Criminal Court

109. Every indictment registered in a Criminal Court must be in the prescribed form and signed by the Attorney General of the Republic, mention the name of the Criminal Court in which it is to be registered and also include the following details:

- (a) the name and description of the accused person arraigned in a Criminal Court;
- (b) the name of the referring judge and the date of reference;
- (c) the criminal or criminal offenses with which the accused is charged which include the particulars set out in section 39 which applies mutatis mutandis to the formulation of charges registered in a Criminal Court as it applies to the formulation of indictments;

¹⁷⁴ 78. Αν το Δικαστήριο βρει τον κατηγορούμενο ένοχο ή αν ο κατηγορούμενος ομολογήσει ενοχή, είναι καθήκο του δικαστή ή άλλου λειτουργού του Δικαστηρίου να ερωτήσει αυτόν αν έχει να πει οτιδήποτε γιατί δεν θα έπρεπε να του επιβληθεί ποινή σύμφωνα με το νόμο, αλλά η παράλειψη να ερωτηθεί δεν επηρεάζει το έγκυρο της διαδικασίας.

(d) the names of the witnesses whom the prosecution intends to call which are endorsed on the last page of the indictment entered in a Criminal Court.

- 15 In the indictment is brought the main trial starts and the national law applies in full regard for these actions of the EDP e.g. the national jurisprudence for determining and measuring the penalty such as *Hassan v. Police* (2006) 2 AAD 356 will apply.
- 16 In a case, which involved different allegations against one person, the defence accused the prosecution of abusing the process.
- 17 Most of the time these applications are rejected. It is therefore advisable as a defence attorney to find out whether further proceedings against the accused are ready for a decision or whether they will be heard soon if e.g. police investigate a traffic offense in connection with a tax or customs offense.
- 18 If different authorities are responsible for completing the procedure and criminal and administrative measures can also be brought to a conclusion, there is a mixed situation in which EPPO and OLAF have to coordinate:



“Taking into account [...] *R v. South East Hampshire Magistrates' Court, ex parte CPS* [1998] Crim. L.R. 422, DC (see Archbold, *Criminal Pleading, Evidence and Practice*, 2015, Sweet & Maxwell, paras. 4-88, p. 387) and the decision in *Metaferios Gerolemos N. Gerolemou Ltd, v. 1. Pekris Brothers (General) Ltd*, etc. (2013) 2 AAD 591 I conclude that the accused may have suffered by registering individual charge sheets (10736/15, 116/15 and now 1232/17). However, their registration has not been legally oppressive or abusive. If there is any abuse at all, it is more likely on the balance of probabilities that it is caused by the first registration of traffic case 21533/17 after two years from the disputed date, parallel to the present case which is older and more serious and offset enabling him to defend himself in two different courts for the events of the same disputed date. However, the defendant in this case should file the application 21533/17. This court cannot stay a case that is not pending before it. For all of the reasons set out above, I conclude that the defendant's pre-trial motion should be dismissed for abuse of process.”¹⁷⁵

¹⁷⁵ See ECLI:CY:EDLAR:2019:B8 ΕΠΑΡΧΙΑΚΟ ΔΙΚΑΣΤΗΡΙΟ ΛΑΡΝΑΚΑΣ Ενώπιον: Α. Πανταζή, Ε.Δ. Αρ. Υπόθεσης: 1232/2017 Μεταξύ: Διευθυντή Τμήματος Τελωνείων v. XXXXX Θεολόγου.

d) Request of Erasure of Personal Data in Police Databases

19



REQUEST FOR ACCESS / ERASURE / RECTIFICATION / RESTRICTION OF PROCESSING, IN DATA KEPT IN DATABASES OF CYPRUS POLICE

(Reg. EU 2016/679, N. 125(I)/2018 and N. 44(I)/2019)

Every citizen (data subject) may become aware of the personal data concerning him/her and/or request the correction, erasure or restriction of their processing. Before submitting your request, consult the special section “Protection of personal data“, on the website of the Police (<http://www.police.gov.cy>).

The exercise of the above rights is provided free of charge and requests are processed as soon as possible. However, in the event that manifestly unfounded or excessive requests are submitted, especially due to their repetitive nature, a reasonable fee may be imposed (Articles 15 to 18 Reg. EU 2016/679 and Articles 14, 16 & 18 Law 44(I)/2019).

The data subject’s request may not be satisfied, under conditions established by law.

The request can be submitted in one of the following ways:

- by hand at any Police Station
- by regular mail to:
Chief of Police, Antistratigos Evangelos Florakis Street, Police Headquarters, 1478 Nicosia
- by e-mail, to the e-address: police@police.gov.cy
- by fax, to the number: (+357) 22808598

Personal information

Full name	
Date of Birth	
I.D. or A.R.C. number	
Residence Address	
Street	
Number	

City / Village	
Postcode	
Contact info	
Phone number	
E-mail	
Representative's details (where applicable)	
Relationship with the data subject (ie lawyer / person having custody / guardianship) *	<i>* in the case of a minor, the request is made by one parent, but requires the sig- nature of both parents exercising joint parental custody</i>
Full name	
I.D. or A.R.C. number	
Phone number	
E-mail	
Request Description	
Right to request (select accordingly)	
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> access correction erasure restriction of processing	
Please specify the request (description/object of the request, reasons for erasure/correction, etc)	

Reference Number (where applicable) Please indicate if you have a reference number from a previous contact or with the Police, for the purpose of facilitating the examination of the request (eg case / complaint number etc)			
Accompanying documents			
For the purpose of verifying the data recorded, each request is accompanied by:			
(i) for the person concerned (select accordingly)			
<input type="checkbox"/> a copy of Identity Card (ID) or			
<input type="checkbox"/> Passport or			
<input type="checkbox"/> Alien Registration Card (A.R.C.)			
(ii) additionally, in case of representation, a relevant authorization document (power of attorney/lawyer or third person authorization document, which specifies the person to act on behalf of the date subject) must be submitted. In case of authorization of a third party, it is necessary to certify the signature of the authorizing person (by a competent certifying officer).			
<i>When the request is submitted by e-mail, all documents must be sent scanned</i>			
Applicant's or representative's Signature (delete accordingly)		Date	----/-- --/-- ----

Caution: The declaration of false information constitutes a criminal offense (article 117, Penal Code (Chapter 154)).

Source: Taken from the Cypriot Government and Police Webpage:

[https://www.police.gov.cy/police/police.nsf/All/F8DF28D44D63B5B6C22585EB00214F81/\\$file/ast159eng.pdf?OpenElement](https://www.police.gov.cy/police/police.nsf/All/F8DF28D44D63B5B6C22585EB00214F81/$file/ast159eng.pdf?OpenElement). Accessed 4 October 2023.

C. OLAF-Regulation (EU, EURATOM) No 883/2013

I. General Introduction

1. Investigation Powers and National Law Related to OLAF in Cyprus (Art. 1– 8 OLAF Regulation)

OLAF's task and role in Cyprus as well as its actions are determined primarily by Union law. The history of OLAF can be traced back to the early 2000s and its predecessor UCLAF.¹⁷⁶ OLAF has a renewed role within the changed anti-fraud architecture of the Union in the 2020s and is an important actor against fraud within the multi-annual framework legislation and the Union's policies, which depend on the action of the Member States and the agreements concluded on the political levels. **1**

In addition to that OLAF and its investigators shall follow internal guidelines¹⁷⁷, manuals on procedures¹⁷⁸ reports and working arrangements with union partners¹⁷⁹ as well as Administrative Cooperation Agreements (ACAs) with national partners, EU external actors¹⁸⁰. 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.¹⁸¹ The statistics on latest actions and the past year can be deduced from the OLAF Reports¹⁸², equal to the new EPPO's annual report and the PIF Report, which is issued by the EU Commission in close cooperation with OLAF, IBOAs and the EPPO as well as the input from ECA and national AFCOS, governments and researchers. **2**

¹⁷⁶ See EU Fraud Commentary, Chronology Part 3 and 4 as well as the Commentary on Art. 1 OLAF Regulation.

¹⁷⁷ See EU Commission (OLAF) 2021; OLAF 2021; OLAF 2016. See all Translations: https://anti-fraud.ec.europa.eu/guidelines-investigations-olaf-staff_en. Accessed 15 December 2023.

¹⁷⁸ Brüner et al. 2009, whereby it is unclear if certain Manuals are really still used by investigators and the Office staff.

¹⁷⁹ 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“).

¹⁸⁰ 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://shorturl.at/fCF27>. Accessed 15 December 2023.

¹⁸¹ 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; 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.

¹⁸² OLAF 2022, OLAF 2022a, OLAF 2022b, which includes a statistical evaluation. The Reports have become longer since the 2000s and have several annexes.

- 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.¹⁸³
- 4 Last decade's landmark judgement "*Sigma Orionis SA vs European Commission*", decided by the European General Court¹⁸⁴ clarified the application of national law and Union law¹⁸⁵ in relation to external investigations of OLAF.¹⁸⁶ 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.¹⁸⁷ 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.

¹⁸³ Brüner 2001, 17–26; Brüner 2008, 859–872; Gellert 2009, 85–88.

¹⁸⁴ 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.

¹⁸⁵ See De Bellis 2021, 431 et seq; Herrnfeld 2021, p 426 et seq.; recently Wouters 2020, 132 et seq.

¹⁸⁶ De Bellis 2021, 431 et seq.; see OLAF Website, List of rulings of the Court of Justice of the EU concerning OLAF, <https://shorturl.at/fpsGK>, last consulted 30.9.2023.

¹⁸⁷ 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.¹⁸⁸

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, here: Referat E6a).

8

The following pages show the objectives, tasks and major definitions, which shall be recalled for the analysis of the connections to Cypriot 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

¹⁸⁸ See Luchtman and Vervaele 2017.

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.

- 10** Art. 2 of the OLAF Regulation contains definitions, which apply for all assessments of Seconded National Experts, Investigators, AFCOS staff or national authorities managing structural funds or other EU programmes. It might be cited e.g. for an OLAF Report (see → Art. 11 below) in order to subsume a conduct, which was investigated.

Art. 2 Definitions

The definitions have legal value and force. They stem from the original legislator of the Regulation. They are open to interpretation by parties and courts:

For the purposes of this Regulation:

- (1) ‘financial interests of the Union’ shall include revenues, expenditures and assets covered by the budget of the European Union and those covered by the budgets of the institutions, bodies, offices and agencies and the budgets managed and monitored by them;
- (2) ‘irregularity’ shall mean ‘irregularity’ as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95;
- (3) ‘fraud, corruption and any other illegal activity affecting the financial interests of the Union’ shall have the meaning applied to those words in the relevant Union acts and the notion of ‘any other illegal activity’ shall include irregularity as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95;
- (4) ‘administrative investigations’ (‘investigations’) shall mean any inspection, check or other measure undertaken by the Office in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation; those investigations shall not affect the powers of the EPPO or of the competent authorities of Member States to initiate and conduct criminal proceedings;
- (5) ‘person concerned’ shall mean any person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the Union and who is therefore subject to investigation by the Office;
- (6) ‘economic operator’ shall have the meaning applied to that term by Regulation (EC, Euratom) No 2988/95 and Regulation (Euratom, EC) No 2185/96;
- (7) ‘administrative arrangements’ shall mean arrangements of a technical and/or operational nature concluded by the Office, which may in particular aim at facilitating the cooperation and the exchange of information between the parties thereto, and which do not create additional legal obligations;
- (8) ‘member of an institution’ means a member of the European Parliament, a member of the European Council, a representative of a Member State at ministerial level in the Council, a member of the Commission, a member of the Court of Justice of the European Union (CJEU), a member of the Governing Council of the European Central Bank or a member of the Court of Auditors, with respect to the obligations imposed by Union law in the context of the duties they perform in that capacity.

2. Art. 3 External investigations

The next part of the compendium on Cyprus deals with Art. 3 of the OLAF Regulation, which explains how external investigations require the interaction with relevant national law. This part is structured as follows:

<ul style="list-style-type: none"> a) On the spot-checks and inspections – Renouncing the applicable national law – Para 2, 4203 b) Assistance needed, competent authorities and access to information in the Member States, Para 5203 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 Operator203 d) The Basic Principle of Conformity to Regulations 2185/96 and 883/2013204 <ul style="list-style-type: none"> aa. Submission: Compliance with Union Law204 bb. Resistance: Assistance in conformity with national procedural rules applicable204 e) Competent authorities204 f) National law and “checks and inspections” of OLAF in Cyprus205 <ul style="list-style-type: none"> aa. Administrative procedure in general205 	<ul style="list-style-type: none"> bb. Special administrative powers and provisions in certain areas of revenue and expenditure 210 <ul style="list-style-type: none"> (1) Administrative provisions..... 210 <ul style="list-style-type: none"> (a) Administrative provisions in the area of customs duties and value added tax (VAT) = revenue 210 <ul style="list-style-type: none"> (aa) Principle of investigation (General Tax Code and Customs Law) 211 (bb) External audit (General Tax Code and Customs Law) 211 (cc) Tax and customs investigation (Customs Code General Tax Code) 212 (dd) Fiscal supervision 213 (b) Administrative provisions in the area of structural funds and
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Art. 3 External investigations

[...] 2. The Office shall *carry out on-the-spot checks and inspections in accordance with this Regulation and, to the extent not covered by this Regulation, in accordance with Regulation (Euratom, EC) No 2185/96.*

4. Where, in accordance with paragraph 3 of this Article, the *economic operator concerned submits* to an on-the-spot check and inspection authorised pursuant to this Regulation, Article 2(4) of Regulation (EC, Euratom) No 2988/95, the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96 and Article 7(1) of Regulation (Euratom, EC) No 2185/96 *shall not apply insofar as those provisions require compliance with national law* and are capable of restricting access to information and documentation by the Office to the same conditions as those that apply to national administrative inspectors.

5. At the request of the Office, the *competent authority of the Member State* concerned shall, without undue delay, provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2).

The *Member State concerned shall ensure*, in accordance with Regulation (Euratom, EC) No 2185/96, that the *staff of the Office are allowed access to all information, documents and data relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that the staff are able to assume custody of documents or data to ensure that there is no danger of their disappearance.* Where privately owned devices are used for work purposes, those devices may be subject to inspection by the Office. The Office shall subject such devices to inspection only under the same conditions and to the same extent that national control authorities are allowed to investigate privately owned devices and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

6. Where the staff of the Office find that an *economic operator resists* an on-the-spot check and inspection authorised pursuant to this Regulation, namely where the economic operator refuses to grant the Office the necessary access to its premises or any other areas used for business purposes, conceals information or prevents the conduct of any of the activities that the Office needs to perform in the course of an on-the-spot check and inspection, the *competent authorities, including, where appropriate, law enforcement authorities of the Member State concerned shall afford the staff of the Office the necessary assistance so as to enable the Office to conduct its on-the-spot check and inspection effectively and without undue delay.*

Article 2(4) of Regulation (EC, Euratom) No 2988/95

Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96

Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the Member State concerned.

Article 7(1) of Regulation (Euratom, EC) No 2185/96

Commission inspectors shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned which are required for the proper conduct of the on-the-spot checks and inspections. They may avail themselves of the same inspection facilities as national administrative inspectors and in particular copy relevant documents.

On-the-spot checks and inspections may concern, in particular:

- professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements held by economic operators,
- computer data,
- production, packaging and dispatching systems and methods,
- physical checks as to the nature and quantity of goods or completed operations,
- the taking and checking of samples,
- the progress of works and investments for which financing has been provided, and the use made of completed investments,
- budgetary and accounting documents,
- the financial and technical implementation of subsidized projects.]

When providing assistance in accordance with this paragraph or with paragraph 5, the competent authorities of Member States ***shall act in accordance with national procedural rules applicable to the competent authority concerned. If such assistance requires authorisation from a judicial authority in accordance with national law***, such authorisation shall be applied for.

10. As part of its investigative function, the Office shall carry out the checks and inspections provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9(2) of that Regulation in Member States and, ***in accordance with cooperation and mutual assistance agreements and any other legal instrument in force***, in third countries and on the premises of international organisations.

12. Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an external investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial

interests of the Union, it may inform the competent authorities of the Member States concerned and, where necessary, the institutions, bodies, offices and agencies concerned.

Without prejudice to the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No 2988/95, the competent authorities of the Member States concerned shall ensure that appropriate action is taken, in which the Office may take part, *in accordance with national law*. Upon request, the competent authorities of the Member States concerned shall inform the Office of the action taken and of their findings on the basis of information referred to in the first subparagraph of this paragraph.

On-the-spot checks (e.g. a search within a warehouse suspected of tax-avoidance with tobacco products) have been discussed in the last decade quite thoroughly¹⁸⁹, but not enough for all countries. A definition and the content of a check can be found in Art. 7 Council Regulation No 2185/96. For Cyprus, it is worth taking a closer look at the applicable provisions. Other stakeholders from the OAFCN network have developed a 10-step model that was discussed at anti-fraud conferences and on the web, so it should be noted that it can be read in combination with the Cyprus regulations now discussed.¹⁹⁰ 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 influences the applicability of law. The ECJ rules in Sigma Orionis that national law 4

¹⁸⁹ See Bovend'eerdt 2018.

¹⁹⁰ See Anti-Fraud-Knowledge Center, 10 steps model - Assisting OLAF's investigators during on-the-spot checks, <https://shorturl.at/fhxCM>.

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.

d) The Basic Principle of Conformity to Regulations 2185/96 and 883/2013

aa. Submission: Compliance with Union Law

- 5 In the case of compliance of an Cypriot Economic Operator Union law applies, thus the Regulation allows OLAF officials to conduct on-the-spot checks without prior information of national authorities.

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 must follow national law and inform national authorities that can aid in conformity with national procedural rules applicable.¹⁹¹

e) Competent authorities

- 7 Table 4 above and figure 10 below show 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 → see above A.II. (e.g. OP Thalassa in the Fisheries sector¹⁹²).
- 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. The ministries of the Republic of Cyprus are responsible for EU programmes. The Regulation on Public Procurement states in Art. 86:

¹⁹¹ 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.“

¹⁹² See https://www.moa.gov.cy/moa/opf/opf2014.nsf/index_en/index_en?OpenDocument.

Administrative cooperation¹⁹³

86. (1) The Competent Public Procurement Authority shall offer mutual support to the Member States and shall take measures for effective cooperation with them in order to ensure the exchange of information on matters referred to in Articles 39, 40, 41, 57, 59, 62 and 64.

(2) In relation to subsection (1), the Competent Public Procurement Authority shall ensure the confidentiality of the information exchanged in accordance with the Processing of Personal Data (Protection of Individuals) Law, and any law relating to access to documents.

f) National law and “checks and inspections” of OLAF in Cyprus

National law is the primary basis for checks and inspections by OLAF on Cypriot territory. OLAF investigators will need to act hand in hand with national investigators if the situations present themselves as explained above under Art. 3. External Investigations. The competent Authority (e.g. Customs Authority, VAT Offices, Tenders Revision Authority, Attorney General of the Republic, Competent Public Procurement Authority etc. – their competence depends on the irregularity or potential fraud suspected) will perform the action alongside OLAF as a supervising and coordination authority with its own aim it is on clarifying the case on behalf of the Union. OLAF as an independent authority will draw its own conclusions from the case.

9

aa. Administrative procedure in general

In the area of the administrative procedure in general the General Principles of Administrative Laws apply. The Law has the following structure:

10

PART I INTRODUCTORY PROVISIONS

1. Short title
2. Interpretation

PART II ADMINISTRATIVE ACTS

3. Adoption of administrative acts
4. Entry into force of administrative acts
5. Information on the means of treatment
6. Initiation of legal effects of administrative acts

7. Retroactive effect of administrative acts

PART III THE PRINCIPLE OF LEGALITY

8. Legal frameworks of administrative action
9. Relevant legislative regime
10. Exercise of competence within a reasonable time
11. Time limits

¹⁹³ **Διοικητική συνεργασία** 86. (1) Η Αρμόδια Αρχή Δημοσίων Συμβάσεων προσφέρει αμοιβαία υποστήριξη στα κράτη μέλη και λαμβάνει μέτρα για την αποτελεσματική συνεργασία μαζί τους, προκειμένου να διασφαλίσει την ανταλλαγή των πληροφοριών σχετικά με ζητήματα που αναφέρονται στα άρθρα 39, 40, 41, 57, 59, 62 και 64.

(2) Σε σχέση με το εδάφιο (1) η Αρμόδια Αρχή Δημοσίων Συμβάσεων διασφαλίζει τον εμπιστευτικό χαρακτήρα των πληροφοριών που ανταλλάσσονται σύμφωνα με τον περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμο, και κάθε σχετικό με την πρόσβαση σε έγγραφα νόμο.

12. Recognition of acts of other institutions
13. Observance of formalities
14. Administrative coercion
15. Lawfulness of the institution
16. Acts of an institution on leave, suspension or pre-retirement leave
- Competence of the institution
18. Hierarchical control
- Acts requiring approval
- PART IV THE COLLECTIVE ADMINISTRATIVE BODIES
20. Establishment of a College
- Composition and sessions of the College
22. Change in composition
23. Quorum
24. Keeping minutes
25. Decision-making
- PART V REASONS FOR ADMINISTRATIVE ACTS
26. Reasons to be taken
27. Acts that do not need a statement of reasons
28. Sufficient statement of reasons
29. Completion and replenishment of the statement of reasons
30. Subsequent statement of reasons
31. Incorrect legal reasoning
32. Multiple or disjunctive etiologies
- PART VI RIGHT OF PETITION
33. Scope of the right of petition
34. Appeal to the Supreme Court
35. Nature of the thirty-day period
36. Infringement of failure to reply as a negative decision
37. Request a copy
- PART VII PRINCIPLE OF EQUALITY
38. Scope of the principle of equality
39. Non-recognition of equality in illegality
40. Gender equality
- 11** This area regards discretionary powers as a source of administrative action. These actions might concern the Economic operators. The administrative procedure in any area
41. Equal access to public functions
- PART VIII PRINCIPLES OF NATURAL JUSTICE
42. Principle of non-discrimination
43. Right to be heard
- PART IX PROPER EXERCISE OF DISCRETIONARY POWER
44. Exercise of discretion
45. Adequate research
46. Fallacy
47. Elements of judgment
48. Misuse of powers
49. Terms and conditions
- PART X PRINCIPLES OF GOOD ADMINISTRATION
50. Content of the principles of good administration
51. Principle of good faith
52. Principle of proportionality
53. Search for undue
54. Withdrawal of administrative acts
55. Competence and form of revocation
56. Suspension and termination of enforcement
- PART XI COMPLIANCE OF THE ADMINISTRATION WITH JUDGMENTS OF THE SUPREME COURT AND RES JUDICATA
57. Effects of a judgment annulling.
58. Factual and legal status at the time of the review
59. Res judicata
- PART XII REGULATORY ACTS
60. Principles governing the exercise of regulatory power
61. Type of regulatory acts
62. Power to issue decrees
63. Validity of the provisions of this Law

of expenses or revenue might lead to a suspicion of an irregularity. If this is the case, the administrative powers apply and the concerned and competent body in Cyprus must act to carry out clarifications of the circumstances discovered (e.g. during an external, audit, see below).

The General Principles of Administrative Law (Law of 1999) (158(I)/1999)

Part IX Proper Exercise of Discretionary Power

Exercise of discretion

44. (1) The administrative body to which the exercise of discretionary power has been entrusted by law has the legal obligation to exercise it.

(2) It is not permissible for the competent administrative body to be substituted or directed in the exercise of its discretionary power by another body.

(3) The competent body is not allowed to decide in advance and in a general manner its discretionary power for the cases that will arise in the future.

(4) A governing body shall not be prohibited from exercising its discretion in a case, on the basis of general policy or criteria which it has pre-established for similar cases, so long as the policy or criteria which it has laid down are consistent with law, and to consider in particular each case that is presented before it and more specifically to examine whether the special circumstances of the case justify a deviation from the general policy or the criteria that it has drawn up.

(5) It is not prohibited for the competent administrative body in the exercise of its discretionary power to be guided by circulars or general administrative instructions issued by hierarchically superior bodies and which determine the general policy of the government on a subject, as long as these circulars or instructions do not conflict with the law.

(6) The competent body is allowed to exercise its discretion based on formulas and commitments that it has determined and which are not imposed, but not prohibited by law.

Adequate research

45. (1) The administration, when exercising its discretionary power, must conduct an adequate investigation of all facts related to the case.

(2) The extent of the investigation depends on the circumstances of each case. It is up to the competent administrative body to choose the appropriate way to conduct the investigation. The investigation can be conducted either by the competent administrative body or through another body or person.”

The administrative bodies need to pay attention to the requirement of hearing the potential citizen or person concerned of a measure e.g. an administrative act aiming at proving a factor handing over papers, or claiming recovery. This is foreseen by Art. 43 of the GAL:

14 Right to be heard

43. (1) The right to be heard shall be granted, except in cases expressly provided for by law, to any person who will be affected by the adoption of an act or by the adoption of an administrative measure which is of a disciplinary nature or which is in the nature of a sanction or which is otherwise of an unfavourable nature. An administrative body intending to base its decision on allegations against a person should give that person the opportunity to present its views on those allegations.

(3) The right to be heard shall be exercised either in person or by a lawyer chosen by the person concerned.

(4) The person concerned need not be heard orally. It is sufficient, if requested by him, to set out his views in writing, unless the law provides otherwise.

(5) The right to be heard is also recognised in the case of a hierarchical appeal, unless the legislative provision providing for the exercise of the hierarchical appeal expressly allows the competent body not to grant the right to be heard.

(6) Any person entitled to be heard may, at his written request, examine the information contained in the relevant administrative file. The relevant management body may, by means of a reasoned decision, reject all or part of the request if its satisfaction would be contrary to the service interest or the interest of a third person.

15 It should be taken into account that other areas are regulated by more specific laws such as the Regulation on Public Procurement for the Republic of Cyprus: The Regulation of Public Procurement Procedures and Related Matters Law of 2016 (73(I)/2016)¹⁹⁴. The awarding procedures for public contracts are a common area of irregularities and potential frauds. Art. 71 regulates on the procedure of subcontracting. Subcontracts pose a potential threat to the budget as they are often used by fraudsters to conceal the flow of the money obtained from a public institution for a certain aim. Subsidy frauds may occur as well (see above → Part. B. The EPPO in Cyprus).

16 The Enforcement in the Area of Public Procurement in Cyprus is regulated by Art. 86 of the aforementioned Regulation on Public Procurement:

17 Enforcement

83. (1) In order to ensure the correct and effective application of this Law, as well as of the other rules and practices applicable to public procurement, the Competent Public Procurement Authority shall perform at least the following tasks:

(a) Monitor the application of the rules on public procurement procedures; where it identifies, on its own initiative or upon receipt of information, specific breaches or systemic problems, it shall have the power to make relevant corrective recommendations and/or

¹⁹⁴ Ο περί της Ρύθμισης των Διαδικασιών Σύναψης Δημοσίων Συμβάσεων και για Συναφή Θέματα Νόμος του 2016 (73(I)/2016).

suggestions to the contracting authority. In the event of non-compliance by the contracting authority with such recommendations or suggestions, the Competent Public Procurement Authority may, if it considers it appropriate: to refer to the Tenders Revision Authority specific violations of Article 29, for a relevant decision, which may be preceded by the adoption of interim measures, when the interested parties, whether organized or not, as well as other persons or bodies did not have access to the appeal procedures in accordance with the Review Procedures in the Field of Public Procurement Law, refer to the Attorney General of the Republic specific violations of the legislative rules on public procurement procedures, except in the case referred to in subparagraph (i), for an opinion to be issued, when interested parties, whether organised or not, as well as other persons or bodies have not had access to the review procedures, in accordance with the Review Procedures in the Field of Public Procurement Law; to refer to the Council of Ministers, through a relevant proposal of the Minister of Finance, systemic or other problems for taking appropriate measures, which are proposed, after consultation with the Audit Office of the Republic and after taking into account the views of the contracting authority; provide information on the practical implementation of the Republic's strategic policies to the Commission, upon its request; may incorporate the data collected in a relevant annual report, which it shall publish by 31 March of each year;

(e) ensure that information and guidance on the interpretation and application of European Union law on public procurement procedures is provided free of charge in order to assist contracting authorities and economic operators, in particular SMEs, in the correct application of the relevant rules; provide support to contracting authorities in the design and conduct of procurement procedures. The results of the monitoring activities referred to in subsection (1) shall be made available to the public by appropriate means of information.

(3) (a) The Competent Public Procurement Authority is designated as the reference point for the cooperation of the Republic with the Commission in the application of the law on public procurement procedures. Without prejudice to the generality of paragraph (a), the Competent Public Procurement Authority shall transmit to the Commission by 18 April 2017 and every three years thereafter a monitoring report including, as appropriate:

(i) Information on the most frequent causes of incorrect application or legal uncertainty, including possible structural or recurrent problems in the application of the rules; level of participation of SMEs in public procurement procedures, as well as the prevention, detection and appropriate reporting of fraud, corruption, conflicts of interest and other comparable serious irregularities in the field of contracts.

(4) (a) Notwithstanding any instructions to departmental file officers within the meaning of the State Archives Law and the Regulations issued under it, at least during the duration of the contract, contracting authorities shall keep copies of all contracts concluded and the value of which is equal to or greater than:

(i) EUR 1 000 000 in the case of public supply contracts or public service contracts; EUR 10 000 000 in the case of public works contracts.

(b) Contracting authorities shall grant access to such contracts: contracting authorities may refuse access to specific documents or data, to the extent and under the conditions laid down in the Processing of Personal Data (Protection of Individuals) Law, on access to documents and data protection, and in Union law on access to documents.

bb. Special administrative powers and provisions in certain areas of revenue and expenditure

(1) Administrative provisions

(a) Administrative provisions in the area of customs duties and value added tax (VAT) = revenue

Customs Area

18 The Cypriot Customs Agency operates in the area of customs Duties¹⁹⁵. It acts based on the Cypriot Customs Law.

VAT Area

19 The Officers of the Registrar¹⁹⁶ of Value Added Tax operate in the area of VAT revenue duties. The administrative provisions in the area of VAT in the Republic of Cyprus are important for the assessment of an irregularity and the potential audit or check on-the-spot. Regularly the Officers of the Registrar must know these rules by heart and they are obliged to inform OLAF if OLAF investigates in their area and needs the help of the Offices for VAT.

¹⁹⁵ They might as well be regulated in the Consumption Tax Law of 2004 (91(I)/2004), http://www.cylaw.org/nomoi/enop/non-ind/2004_1_91/index.html.

¹⁹⁶ Registrar of Value Added Tax, exercise of authority and performance of duties

4.—(1) The Council of Ministers appoints a civil servant who holds a permanent position in the Civil Service as Registrar of Value Added Tax, who in this capacity is responsible for the faithful and effective implementation of the provisions of this Law.

(2) Any act or anything that the Superintendent is obliged or authorized to do under any law may be performed by any officer or other person acting under the authority of the Superintendent;

(3) Any person, whether an officer or not, who by order or consent of the Superintendent participates in the performance of any act or duty relating to delegated authority which by law is required to be performed by an officer, shall be deemed to be a competent officer for the performance of that act or duty.

(4) Any person who is considered to be the officer in charge under subsection (3) above shall have all the powers of an officer with respect to the act or duty performed or to be performed as referred to in that subsection.

(aa) Principle of investigation (General Tax Code and Customs Law)

Art. 76 of the Cypriot Customs Law enables officers to carry out inspections.

(bb) External audit (General Tax Code and Customs Law)

External audits are conducted on a **regular basis** in both areas i.e. customs and tax – as well as VAT area¹⁹⁷. They may lead to **indications** of irregularities or fraud worth being investigated further by national authorities and/or OLAF¹⁹⁸:

20

Customs Law

Visit, inspection and control

Power of entry, visit, inspection and inspection

75. At any time the authorized officers enter and visit any place subject to customs surveillance such as customs storage warehouses, temporary storage warehouses, free zones and all kinds of facilities, to inspect and control the goods found in them and to carry out checks of the records, books, documents or data, even if these are kept in computerized form, of any natural or legal person.

Power to carry out inspections

76. The authorized officers, in order to ascertain or ensure compliance with customs or other legislation, may carry out checks on all goods related to the entry or import, exit or export, or handling or depositing in places of business activity and on of any records, books, documents or data, even if kept in computerized form, of any natural or legal person, the authorized officers have the power to request any information related to the above.

21

¹⁹⁷ Cf. ADMINISTRATIVE COURT, (*Case No. 129/2019*), December 20, 2022, [MICHAEL, DDD] Between A. DEMETRIOU CONSTRUCTIONS LTD Applicants AND 1. REPUBLIC OF CYPRUS THROUGH THE VALUE ADDED TAX OFFICER 2. MINISTRY OF FINANCE, ECLI:CY:DD:2022:509: „The petitioners carried out a tax audit of the applicants for the tax periods from 1.4.2007 to 30.4.2018, from which a debt of the applicants emerged that was not paid, with the result that on 27.7.2018 the petitioners issued a tax certificate amounting to €101,927.17. The applicant submitted an objection on 21.9.2018 which, after being examined, was rejected with the contested decision.”

¹⁹⁸ See e.g. the Cyprus Audit Reports, 2012, p. 727: „As mentioned in more detail in our previous Reports, from the control of the above program, which was carried out in April–May 2010, serious weaknesses and omissions were found which created, in our opinion, reasonable suspicions of possible fraud and misuse of Community and national resources. For this reason, the case was referred, by our letter date 14.5.2010, to the Attorney General, with notification to the Anti-Fraud Service of European Commission (OLAF), who, after its evaluation, gave instructions to the Police for conducting a criminal investigation. At the same time, by our letter dated 6.7.2010, we informed him about this Agency Commissioner on the matter, which we also brought before the Accountant General, as Coordinator of the Cypriot AFCOS and the General Director of the YEFT on 12.7.2010 [...].

Power to use appropriate scientific means for audit purposes

77. The authorized officers during the control to establish or ensure compliance with the customs or other legislation, may use any appropriate scientific or other mechanical means or other device.

(cc) Tax and customs investigation (Customs Code/General Tax Code)


- 22 The customs (Revenue Offices) and tax departments closely **obey the national law**.¹⁹⁹ If they discover a tax debt or customs debt, they will carry out inspections of administrative nature to clarify the facts.²⁰⁰ The inspections itself might lead to the **discovery of an irregularity** or irregularities. For the discovery of irregularities exist international and European standard procedures. OLAF itself has described the various tasks in Handbooks designed for national authorities. These handbooks contain common procedures and actions that may lead to the discovery of real irregularity and fraud cases. The following overview gives an introduction into the inspection and control powers, which are then further examined and presented in full length below.
- 23 Typical cases in this area include **avoidance of taxes and customs** e.g. for cigarettes, e-bikes and other products, which are often imported via South-East-Asia. In a case “a

¹⁹⁹ Gellert 2021 gives introduction to customs law (but focuses on German national law).

²⁰⁰ See how it started e.g. in Supreme Court of Cyprus, Review Jurisdiction (Case No. 743/2010) September 27, 2012 [NATHANAIL, Director] In reference to Article 146 of the constitution Panipos Ltd, Applicants, - and - Republic of Cyprus, through (1) Minister of Finance and (2) Director of Customs Department: „On 24.3.2000, the Customs Department sent the applicants a relevant ex-post certificate of customs debt and other customs debt under no. 160/09, by which the applicants were required to pay as a debt to the Republic of Cyprus import duties, anti-dumping duties and VAT, totalling €109,561.00, monetary charge €10,956.00 plus 8% interest from the day that the amount and financial charge became payable until 31.12.2009, while from 1.1.2010 until the date of payment of the amount, the interest was fixed at 5.35%. The above affidavit signed by an officer for the Deputy Director of the Customs Department was, as stated in the letter. "From the facts and the law as set forth below.“ The relevant subsequent certification with the letter dated 24.3.2010, he goes on to state that on the basis of evidence held by the Customs Department, the particular bicycles that had been imported had a country of origin in the People's Republic of China and not Malaysia. As a result of the applicants' declarations, the relevant import duties, anti-dumping duties and VAT were not paid. The specific goods fall, as mentioned, in the code Taric 8712003000, on the basis of which an import duty is imposed at a rate of 14% and an anti-dumping duty at a rate of 48.50%. Additionally, VAT is imposed. on the basis of articles 15 and 17 of the Value Added Tax Law no. 95(I)/2000, as amended. [...] [and how OLAF came to play a role in the case:] According to the applicants, it is indicative of the fact that they had no way of knowing what the Customs Department subsequently attributed to them, is also the fact that specialized investigations by the competent authorities of the European Anti-Fraud Office (European Anti-Fraud Office - OLAF) were needed to establish that bicycles of Chinese origin, during the period 2006-2008, were imported into the free zones of Malaysia and from there into the European Union on the basis of new invoices and bills of lading with the aim of avoiding the payment of the necessary fees and duties. Yes, OLAF also carried out on-site investigations in Malaysia to ascertain the above. But no evidence from the subsequent investigation by the Customs reveals any involvement of the applicants in the exportation from China, or, through it, of the goods, or involvement in any falsification of documents or the creation of false documents from China or Malaysia. [...] [In the end:] It would be expected in the light of all the above that the Customs Department, after the OLAF report, would indicate all the facts to the applicants, drawing their attention to future transactions from Malaysia and in particular with the company CL Domain . But not to impose duties, taxes and interest on them afterwards. In light of the above, the appeal succeeds and the contested act is annulled with costs in favour of the applicants and against the respondents, as will be calculated by the Registrar and approved by the Court.“

team of customs officials accompanied by police officers found a large quantity of raw and processed tobacco and cigarettes in a warehouse in found in the Aradippou industrial area, for which there was reasonable suspicion that they were duty-free, as there was no warning in Greek or Turkish about the harmfulness of smoking, an indication that the relevant duties and taxes had not been paid for them In addition, boxes of tobacco were identified with their country of origin as Bangladesh and no evidence of payment of associated duties and taxes was provided. A tobacco grinder and a tobacco and cigarette machine were also found. When a group of Customs Department officials and police officers entered the warehouse, they found the defendant there and he was arrested at 12:00 for spontaneous offenses. By October, 2015, midnight, 72 boxes with a total tobacco content of 10.9 tonnes and 63 boxes containing 10,000 cigarettes were counted in the presence of the accused; on October, 2015 the counting was continued in the presence of the accused. When the application for the arrest of the defendant (suspect on October 2015) was made, the total sales value of the cigarettes and tobacco products found had not yet been determined. The avoided taxes and duties related to the cigarettes and tobacco products already counted were estimated at approximately €2,000,000. Two other warehouses where there was evidence that the suspect was storing tobacco and cigarettes were also searched. Fifteen customs officers were working to fully investigate the case, but more may be needed. The investigation of the case would include obtaining statements from the owner of the warehouse, the suspect's close family and friends, the suspect's employees, associates and customers, as well as the suspect himself, and the investigation would also be extended abroad with the contribution of the European Office for Combating fraud (OLAF).” (Larnaca Court, ECLI:CY:EDLAR:2019:B8)

Sources & national sections 3 Overview of Cypriot investigative powers in the area of Customs Duties

	Overview of investigative powers
<p>Customs Code 2004 as amended 2022 Part V Powers of Officers – Obligations of Persons in Relation to Ports and Airports, Maritime and Air Transport</p> <p>Real investigations: Part XVIII General Powers</p> <ul style="list-style-type: none"> - Visit, inspection and control - Information - Entry and search of buildings <p>Monitoring and search of vehicles, boats, etc. - Personal search</p>	

(dd) Fiscal supervision

- 24 The customs authorities and the whole tax sector are supervised by the Ministry of Finance. The Ministry of Finance has a Directorate of Economic Policy and European Affairs²⁰¹ and a Directorate of Budget and Financial Control.²⁰²

(b) Administrative provisions in the area of structural funds = expenditure

(aa) Structural funds

- 25 Two examples for the **omnipresent EU-(co-)funds** are e.g. the Energy fund and the Home Affairs Funds.²⁰³ The Ministry of Interior has even an own department called “European Funds Unit²⁰⁴” (EFU).²⁰⁵ The structure has the following process: The Cypriot government has **selected responsible ministries** for each area of the so-called structural funds (period 2021-2027), which are responsible for a specific EU-fund. For example, the already mentioned Ministry of the Interior is responsible for the Asylum and Migration Fund.²⁰⁶ All projects that are eligible for funding and apply for EU funds in this area go through a special tender and management process within this ministry. The ministry, in turn, has a general department, but it has designated special administrative bodies that examine the specific allocation of funds on behalf of the ministry, i.e. in the business area.
- 26 Generally speaking, the Fiscal Responsibility and Fiscal Framework Law (20(I)/2014) can be consulted for the whole area as it contains rules for all fund areas:

27 **Powers of the Auditor General**

16²⁰⁷ In compliance with the provisions of paragraph 1 of article 116 of the Constitution, the Auditor General controls and inspects all the accounts of the Republic and exercises

²⁰¹ It includes the Tax Policy Unit, which deals mainly with the formulation of tax policy based on European and international developments. It cooperates with the Department of Taxation and the Department of Customs mainly on matters of administrative and management control, the joint promotion of bills or policies and related work and the consideration of requests from organizations and citizens.

²⁰² See <https://bit.ly/3Eq7y9p>. Accessed 15 December 2023.

²⁰³ See <https://resecfund.org.cy/en/diaxeirisi>. Fund for Renewable Energy Sources and Energy Saving Law of 2022 (Law 108(I)/2022). The Fund is under the management and administration of the Management Committee of the Renewable Energy Sources and Energy Conservation Fund. There are such responsible bodies for each fund.

²⁰⁴ European Funds Unit 10 Mnasiadou str, 1st, 3rd, 4th floor 1065 Nicosia.

²⁰⁵ The European Funds Unit of the Ministry of Interior is responsible for the management of European Funds to implement projects falling within the competences of the Ministry of Interior. The Unit has as well the competences of the Intermediary for the Structural Funds – Regional Development Fund and acts as Successful Tenderer for the Rural Development Fund.

²⁰⁶ See https://www.moi.gov.cy/MOI/eufundunit.nsf/generalinfoefu_en/generalinfoefu_en.

²⁰⁷ Αρμοδιότητες του Γενικού Ελεγκτή

16. Τηρουμένων των διατάξεων της παραγράφου 1 του άρθρου 116 του Συντάγματος, ο Γενικός Ελεγκτής ελέγχει και επιθεωρεί όλους τους λογαριασμούς της Δημοκρατίας και ασκεί κάθε άλλη εξουσία και εκτελεί κάθε άλλη υπηρεσία ή καθήκον, όπως καθορίζεται από τις διατάξεις του παρόντος Νόμου.

any other authority and performs any other service or duty, as determined by the provisions of this Law.

Internal Control Systems and Internal Audit.

80.²⁰⁸(1) Every economic entity shall make the necessary arrangements for the implementation and operation of an internal control system for the activities under its responsibility, in accordance with the provisions of the Income and Expenditure Management and the Accounting Law of the Republic, such as it is amended or replaced from time to time.

(2) Ministries set up control units, which may undertake internal control, investigations and verifications, at the level of administration, which are subordinate to and accountable to the head of the economic operator.

(3) The internal audit of economic entities is carried out by the Internal Audit Service, which was established pursuant to article 8 of the Law on Internal Audit, as amended or replaced from time to time.

(4) The Director of Internal Audit, who is appointed pursuant to the provisions of article 3 of the Law on Internal Audit, as amended or replaced from time to time, determines the internal audit standards, which are applied by the Internal Audit Service and apply to all internal units' audit, in the cases of internal audits.

External Audit and right of access to the accounts by the Auditor General

81.²⁰⁹ (1) In compliance with the provisions of subsections (1) and (2) of article 116 of the Constitution, the Auditor General audits the final accounts of the Republic, referred

²⁰⁸ Συστήματα Εσωτερικού Ελέγχου και Εσωτερικός Έλεγχος.

80. (1) Κάθε οικονομικός φορέας προβαίνει στις απαραίτητες διευθετήσεις για εφαρμογή και λειτουργία συστήματος εσωτερικού ελέγχου για τις δραστηριότητες που είναι υπό την ευθύνη του, σύμφωνα με τις διατάξεις του περί της Διαχείρισης των Εσόδων και Δαπανών και του Λογιστικού της Δημοκρατίας Νόμου, όπως αυτός εκάστοτε τροποποιείται ή αντικαθίσταται.

(2) Τα υπουργεία συστήνουν μονάδες ελέγχου, οι οποίες δύνανται να επιλαμβάνονται θεμάτων εσωτερικού ελέγχου, ερευνών και επαληθεύσεων, στο επίπεδο της διοίκησης, οι οποίες υπάγονται και λογοδοτούν στον προϊστάμενο οικονομικού φορέα.

(3) Ο εσωτερικός έλεγχος των οικονομικών φορέων διενεργείται από την Υπηρεσία Εσωτερικού Ελέγχου, η οποία ιδρύθηκε δυνάμει του άρθρου 8 του περί Εσωτερικού Ελέγχου Νόμου, όπως αυτός εκάστοτε τροποποιείται ή αντικαθίσταται.

(4) Ο Έφορος Εσωτερικού Ελέγχου, ο οποίος διορίζεται δυνάμει των διατάξεων του άρθρου 3 του περί Εσωτερικού Ελέγχου Νόμου, όπως αυτός εκάστοτε τροποποιείται ή αντικαθίσταται, καθορίζει τα πρότυπα εσωτερικού ελέγχου, τα οποία εφαρμόζει η Υπηρεσία Εσωτερικού Ελέγχου και ισχύουν για όλες τις μονάδες εσωτερικού ελέγχου, στις περιπτώσεις διενέργειας εσωτερικών ελέγχων.

²⁰⁹ Εξωτερικός Έλεγχος και δικαίωμα για πρόσβαση στα λογιστικά βιβλία από το Γενικό Ελεγκτή

81. (1) Τηρουμένων των διατάξεων των εδαφίων (1) και (2) του άρθρου 116 του Συντάγματος, ο Γενικός Ελεγκτής ελέγχει τους τελικούς λογαριασμούς της Δημοκρατίας, που αναφέρονται στο άρθρο 78, τις οικονομικές καταστάσεις που περιλαμβάνουν όλους τους οικονομικούς φορείς που αναφέρονται στην παράγραφο (α) του

to in article 78, the financial statements that include all economic entities that referred to in paragraph (a) of subsection (1) of article 79 and the consolidated financial statements of the General Government, referred to in paragraph (b) of subsection (1) of article 79.

(2) The Auditor General conducts the external audit provided for in subsection (1) on the basis of internationally recognized audit standards that he himself wanted to decide.

(3) In compliance with the provisions of subsection (1) of article 116 of the Constitution and on the Submission of Evidence and Information to the Auditor General of the Republic and the House of Representatives Law, as amended or replaced, the Auditor General has the right of access to accounting books, in statements, returns and other information.

28 The next table offers an overview for the current EU-funds, the granted sums and the (new) managing authorities.

Table 6 Structural funds and national administrative authorities – Cohesion policy acc. to the CFR Regulation in Cyprus (2021–2027)

The European Regional Development Fund (ERDF) – includes European Territorial Cooperation (Interreg)	Just Transition fund	European Social Fund Plus (ESF+)	European Maritime, Fisheries and Aquaculture Fund (EMFAF)	European Rural Development Fund (EAFRD) (Not part of the CFR Regulation anymore as of 2023)
EU funds for Cyprus: 467 million euros ²¹⁰	EU funds for Cyprus: 101.1 million euros ²¹¹	EU funds for Cyprus:		EU funds for Cyprus in 2021 and 2022: 11.5 million euros ²¹³

εδαφίου (1) του άρθρου 79 και τις ενοποιημένες οικονομικές καταστάσεις της Γενικής Κυβέρνησης, που αναφέρονται στην παράγραφο (β) του εδαφίου (1) του άρθρου 79.

(2) Ο Γενικός Ελεγκτής διεξάγει τον εξωτερικό έλεγχο που προβλέπεται στο εδάφιο (1) στη βάση διεθνών αναγνωρισμένων προτύπων ελέγχου που ο ίδιος ήθελε αποφασίσει.

(3) Τηρουμένων των διατάξεων του εδαφίου (1) του άρθρου 116 του Συντάγματος και του περί της Καταθέσεως Στοιχείων και Πληροφοριών στο Γενικό Ελεγκτή της Δημοκρατίας και στη Βουλή των Αντιπροσώπων Νόμου, όπως αυτός τροποποιείται ή αντικαθίσταται, ο Γενικός Ελεγκτής έχει το δικαίωμα πρόσβασης στα λογιστικά βιβλία, σε καταστάσεις, επιστροφές και άλλες πληροφορίες.

²¹⁰ EU Commission 2022.

²¹¹ 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 20 February 2024.

²¹³ Ibid.

		222 million euros ²¹²		EU funds for Malta in MFF 2021–2027 program: 171.7 million euros ²¹⁴
Cypriot Parliament designates Ministries.	Ministries.	Ministries.	Managing Authority: Managing Authority of Cypriot EMFF OP Permanent Secretary Mr. Theodosios Tsiolas Directorate General for European Programmes, Coordination and Development Leoforos Vironos 29 1096 Nicosia Cyprus	

Source: EU Commission 2022. Breakdown of Cohesion Policy allocations per Member State by the European Commission (period 2021–2027).

(bb) Internal policies

- The General Principles of Administrative Law, Law of 1999 (158(I)/1999)
- The Fiscal Responsibility and Fiscal Framework Law of 2014 (20(I)/2014)

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²¹² EU Commission 2022.

²¹⁴ Ibid.

(c) Administrative provisions in the area of the common organisation of the markets = expenditure

- 30** - The Implementation of the Common Organisations of the Market (Fruits and Vegetables, Processed Fruit and Vegetable Products, Citrus Fruits, Fatty Substances, Bananas, Tobacco and Floral Products) Law of 2004 (225(I)/2004)

31 **Responsibilities and powers of the competent authority**

4.²¹⁵ The competent authority has the power and competence to ensure the implementation of the Community acts and provisions referred to in article 3.

Powers of competent authority

5.²¹⁶ The competent authority may authorise officials of the Department of Agriculture of the Ministry to exercise the powers granted to the competent authority pursuant to article 4.

There are other possible codes to consult:

- 32** - The Law of 2018 on the Recognition of Agricultural Product Producer Organisations (27(I)/2018) applies.²¹⁷
- 33** - The 2002 Law on the Recognition of Fishery and Aquaculture Product Producer Organisations (161(I)/2002).²¹⁸

²¹⁵ Αρμοδιότητες και εξουσίες της αρμόδιας αρχής

4. Η αρμόδια αρχή έχει εξουσία και αρμοδιότητα να μεριμνά για τη διασφάλιση της εφαρμογής των Κοινοτικών πράξεων και διατάξεων που αναφέρονται στο άρθρο 3.

²¹⁶ Εξουσίες αρμόδιας αρχής

5. Η αρμόδια αρχή δύναται να εξουσιοδοτεί λειτουργούς του Τμήματος Γεωργίας του Υπουργείου για να ασκούν τις εξουσίες που παρέχονται στην αρμόδια αρχή δυνάμει του άρθρου 4.

²¹⁷ It can be retrieved from: http://www.cylaw.org/nomoi/enop/non-ind/2018_1_27/index.html. Accessed 31 July 2023.

²¹⁸ It can be retrieved from: http://www.cylaw.org/nomoi/enop/non-ind/2002_1_161/index.html.) Accessed 31 July 2023.

(d) Administrative provisions in the area of direct expenditure

- The Regulation of Public Procurement Procedures and Related Matters Law of 2016 (73(I)/2016)²¹⁹

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Selection Criteria

58.²²⁰ (1)(a) The selection criteria set by the contracting authorities may concern:

²¹⁹ http://www.cylaw.org/nomoi/enop/non-ind/2016_1_73/index.html.

²²⁰ Κριτήρια επιλογής

58. (1)(α) Τα κριτήρια επιλογής που τίθενται από τις αναθέτουσες αρχές μπορεί να αφορούν:

(i) Την καταλληλότητα για την άσκηση της επαγγελματικής δραστηριότητας·

(ii) την οικονομική και χρηματοοικονομική επάρκεια·

(iii) την τεχνική και επαγγελματική ικανότητα.

(β) Οι αναθέτουσες αρχές δύνανται να επιβάλλουν στους οικονομικούς φορείς ως απαιτήσεις συμμετοχής μόνο τα κριτήρια που αναφέρονται στα εδάφια (2), (3) και (4).

(γ) Οι αναθέτουσες αρχές περιορίζουν τις όποιες απαιτήσεις συμμετοχής σε εκείνες που είναι απαραίτητες, ώστε να εξασφαλίζεται ότι ένας υποψήφιος ή προσφέρων διαθέτει τις εκ του νόμου απαιτούμενες προϋποθέσεις, τις χρηματοοικονομικές δυνατότητες και την τεχνική και επαγγελματική ικανότητα για την εκτέλεση της προς ανάθεση σύμβασης.

(δ) Οι αναθέτουσες αρχές διασφαλίζουν ότι όλες οι απαιτήσεις σχετίζονται και είναι ανάλογες με το αντικείμενο της σύμβασης.

(2)(α) Όσον αφορά την καταλληλότητα για την άσκηση της επαγγελματικής δραστηριότητας, οι αναθέτουσες αρχές δύνανται να απαιτούν από τους οικονομικούς φορείς να είναι εγγεγραμμένοι σε ένα από τα επαγγελματικά ή εμπορικά μητρώα που τηρούνται στο κράτος μέλος εγκατάστασής τους, όπως καταγράφονται στο Παράρτημα XI και να ικανοποιούν οποιαδήποτε άλλη απαίτηση ορίζεται στο Παράρτημα αυτό.

(β) Στις διαδικασίες σύναψης συμβάσεων υπηρεσιών, εφόσον οι οικονομικοί φορείς πρέπει να διαθέτουν ειδική έγκριση ή να είναι μέλη συγκεκριμένου οργανισμού για να μπορούν να παράσχουν τη σχετική υπηρεσία στη χώρα καταγωγής τους, η αναθέτουσα αρχή δύνανται να τους ζητεί να αποδείξουν ότι διαθέτουν την έγκριση αυτή ή ότι είναι μέλη του εν λόγω οργανισμού.

(3)(α) Όσον αφορά την οικονομική και χρηματοοικονομική επάρκεια, οι αναθέτουσες αρχές δύνανται να επιβάλλουν απαιτήσεις που να διασφαλίζουν ότι οι οικονομικοί φορείς διαθέτουν την αναγκαία οικονομική και χρηματοοικονομική ικανότητα για την εκτέλεση της σύμβασης. Για τον σκοπό αυτό, οι αναθέτουσες αρχές δύνανται να απαιτούν, ιδίως, από τους οικονομικούς φορείς-

(i) Να έχουν έναν ορισμένο ελάχιστο ετήσιο κύκλο εργασιών, συμπεριλαμβανομένου ορισμένου ελάχιστου κύκλου εργασιών στον τομέα δραστηριοτήτων που καλύπτεται από τη σύμβαση,

(ii) να παρέχουν πληροφορίες σχετικά με τους ετήσιους λογαριασμούς, παρουσιάζοντας ιδίως δείκτες, στοιχείων ενεργητικού και παθητικού,

(iii) να έχουν κατάλληλο επίπεδο ασφαλιστικής κάλυψης έναντι επαγγελματικών κινδύνων.

(β) Ο ελάχιστος ετήσιος κύκλος εργασιών που απαιτείται να έχουν οι οικονομικοί φορείς δεν υπερβαίνει το διπλάσιο της εκτιμώμενης αξίας της σύμβασης, εκτός από δεόντως αιτιολογημένες περιπτώσεις, όπως σχετικά με τους ειδικούς κινδύνους που αφορούν τη φύση των έργων, των υπηρεσιών ή των προμηθειών. Η αναθέτουσα αρχή αναφέρει τους βασικούς λόγους για την απαίτηση αυτή στα έγγραφα της διαδικασίας σύναψης σύμβασης ή στη χωριστή έκθεση που προβλέπεται στο άρθρο 84.

(γ) Ο δείκτης, ιδίως, στοιχείων ενεργητικού και παθητικού μπορεί να λαμβάνεται υπόψη όταν η αναθέτουσα αρχή προσδιορίζει τις μεθόδους και τα κριτήρια της συνεκτίμησης αυτής στα έγγραφα της διαδικασίας σύναψης σύμβασης. Οι μέθοδοι και τα κριτήρια αυτά χαρακτηρίζονται από διαφάνεια, αντικειμενικότητα και αποφυγή διακρίσεων.

(δ) Όταν μια σύμβαση υποδιαιρείται σε τμήματα, το παρόν άρθρο εφαρμόζεται σε σχέση με κάθε επιμέρους τμήμα:

Νοείται ότι, η αναθέτουσα αρχή δύνανται να καθορίζει τον ελάχιστο ετήσιο κύκλο εργασιών που πρέπει να έχουν οικονομικοί φορείς ανά ομάδες τμημάτων, σε περίπτωση που θα ανατεθούν στον ανάδοχο περισσότερα τμήματα που πρέπει να εκτελεστούν ταυτοχρόνως.

- (i) The suitability for the exercise of the professional activity;
- (ii) economic and financial adequacy;
- (iii) technical and professional competence.
- (b) Contracting authorities may impose on economic operators as *participation requirements* only the criteria referred to in subsections (2), (3) and (4).
- (c) Contracting authorities shall limit any participation requirements to those necessary to ensure that a candidate or tenderer has the legally required qualifications, financial capacity and technical and professional ability to perform the contract to be awarded.
- (d) Contracting authorities shall ensure that all requirements are relevant and proportionate to the subject matter of the contract.
- (2)(a) With regard to suitability for the exercise of the professional activity, the contracting authorities may require economic operators to be registered in one of the professional or commercial registers kept in the Member State of their establishment, as listed in the Annex XI and satisfy any other requirement set out in this Annex.
- (b) In procedures for the conclusion of service contracts, since economic operators must have a special authorization or be members of a specific organization in order to be able to provide the relevant service in their country of origin, the contracting authority may ask them to prove that they have the authorization she or that they are members of said organization.
- (3)(a) With regard to economic and financial adequacy, the contracting authorities may impose requirements to ensure that the economic operators have the necessary economic

(ε) Στην περίπτωση που οι συμβάσεις βάσει συμφωνίας πλαίσιο πρόκειται να ανατεθούν μετά από προκήρυξη νέου διαγωνισμού, η μέγιστη απαίτηση ετήσιου κύκλου εργασιών που αναφέρεται στην παράγραφο (β) υπολογίζεται βάσει του αναμενόμενου μέγιστου μεγέθους των συγκεκριμένων συμβάσεων που θα εκτελεστούν ταυτοχρόνως, ή, εάν αυτό δεν είναι γνωστό, βάσει της εκτιμώμενης αξίας της συμφωνίας – πλαίσιο.

(στ) Στην περίπτωση δυναμικού συστήματος αγορών η μέγιστη απαίτηση ετήσιου κύκλου εργασιών, που αναφέρεται στην παράγραφο (β), υπολογίζεται βάσει του αναμενόμενου μέγιστου μεγέθους των συγκεκριμένων συμβάσεων που πρόκειται να ανατεθούν στο πλαίσιο του εν λόγω συστήματος.

(4)(α) Όσον αφορά την τεχνική και επαγγελματική ικανότητα, οι αναθέτουσες αρχές δύνανται να επιβάλλουν υποχρεώσεις που να εξασφαλίζουν ότι οι οικονομικοί φορείς διαθέτουν τους αναγκαίους ανθρώπινους και τεχνικούς πόρους και την πείρα για την εκτέλεση της σύμβασης σε κατάλληλο επίπεδο ποιότητας.

(β) Οι αναθέτουσες αρχές δύνανται να απαιτούν, ειδικότερα, από τους οικονομικούς φορείς να διαθέτουν ικανοποιητικό επίπεδο εμπειριών, αποδεικνύόμενο με κατάλληλες συστάσεις από συμβάσεις που έχουν εκτελεστεί κατά το παρελθόν. Μια αναθέτουσα αρχή μπορεί να θεωρήσει ότι ένας οικονομικός φορέας δεν διαθέτει την αναγκαία επαγγελματική ικανότητα εάν διαπιστώσει ότι ο εν λόγω οικονομικός φορέας έχει συγκρουόμενα συμφέροντα που ενδέχεται να επηρεάσουν αρνητικά την εκτέλεση της σύμβασης.

(γ) Στο πλαίσιο διαδικασιών σύναψης σύμβασης προμηθειών για τις οποίες απαιτούνται εργασίες τοποθέτησης ή εγκατάστασης, παροχή υπηρεσιών ή εκτέλεση έργων, οι αναθέτουσες αρχές δύνανται να αξιολογούν την επαγγελματική ικανότητα των οικονομικών φορέων να παράσχουν αυτή την υπηρεσία ή να εκτελέσουν την εγκατάσταση ή τα έργα, βάσει της τεχνογνωσίας τους, της αποτελεσματικότητας, της πείρας και της αξιοπιστίας τους.

(5) Οι αναθέτουσες αρχές αναφέρουν στην προκήρυξη σύμβασης ή στην πρόσκληση επιβεβαίωσης ενδιαφέροντος τις απαιτούμενες προϋποθέσεις συμμετοχής, που μπορεί να εκφράζονται ως ελάχιστα επίπεδα ικανότητας, καθώς και τα κατάλληλα αποδεικτικά μέσα.

and financial capacity to perform the contract. For this purpose, the contracting authorities may require, in particular, from economic operators-

(i) Have a certain minimum annual turnover, including a certain minimum turnover in the field of activities covered by the contract;

(ii) to provide information on the annual accounts, presenting in particular indicators, assets and liabilities;

(iii) have an appropriate level of insurance cover against occupational risks.

(b) The minimum annual turnover required of the economic operators does not exceed twice the estimated value of the contract, except in duly justified cases, such as in relation to the special risks concerning the nature of the works, services or supplies. The contracting authority shall state the main reasons for this requirement in the procurement documents or in the separate report provided for in Article 84.

(c) The index, in particular, of assets and liabilities may be taken into account when the contracting authority specifies the methods and criteria of this consideration in the procurement documents. These methods and criteria are characterized by transparency, objectivity and non-discrimination.

(d) Where a contract is subdivided into sections, this Article shall apply in relation to each sub-section:

Provided that, the contracting authority may determine the minimum annual turnover that economic entities must have by groups of departments, in the event that the contractor will be assigned several departments that must be executed simultaneously.

(e) In the event that contracts under a framework agreement are to be awarded following a call for tender, the maximum annual turnover requirement referred to in paragraph (b) shall be calculated on the basis of the expected maximum size of the specific contracts to be executed simultaneously, or, if this is not known, based on the estimated value of the framework agreement.

(f) In the case of a dynamic purchasing system the maximum annual turnover requirement, referred to in paragraph (b), is calculated based on the expected maximum size of the specific contracts to be awarded under that system.

(4)(a) With regard to technical and professional capacity, contracting authorities may impose obligations to ensure that economic operators have the necessary human and technical resources and experience to perform the contract at an appropriate level of quality.

(b) Contracting authorities may require, in particular, that economic operators have a ***satisfactory level of experience***, demonstrated by appropriate references from contracts executed in the past. A contracting authority may consider an economic operator to lack the necessary professional competence if it finds that the economic operator in question has conflicting interests that may adversely affect the performance of the contract.

(c) In the context of procedures for the conclusion of a procurement contract for which installation or installation work, the provision of services or the execution of works is required, contracting authorities may assess the professional capacity of economic operators to provide this service or to execute the installation or works, based on their expertise, efficiency, experience and reliability.

(5) Contracting authorities shall state in the contract notice or the call for confirmation of interest the required conditions for participation, which may be expressed as minimum levels of competence, as well as the appropriate means of proof.

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Further law codes may be seen below:

- Laws of 2010 to 2017 on Appeal Procedures in the field of Public Procurement (Consolidated Text) L.104(I)/2010
- Law N.11(I)/2017 on the Regulation of Concession Contract Award Procedures and Related Matters
- Law of 2011 L. 173(I)/2011 on the Coordination of the Procedures for the Conclusion of Certain Contracts and Related Matters. (12(I)/2006), http://www.cylaw.org/nomoi/enop/non-ind/2006_1_12/index.html for Projects, Supplies and the Provision of Services Concluded by Contracting Authorities or Contracting Bodies in the Defence and Security Sectors and Related Matters


(2) Investigative Powers of National Authorities relating to OLAF On-the-spot-Checks in Cyprus

(a) Investigative Powers in the Area of Customs Duties and VAT (General Tax Code)

36 The investigative powers in the area of customs duties and VAT are presented below:

(aa) Customs Area

Customs Investigations Measures 1

	Overview of investigative powers
Customs Code 2004 as amended 2022	
Part V Powers of Officers – Obligations of Persons in Relation to Ports and Airports, Maritime and Air Transport	
25. Entry and inspection at approved docks and inspection stations	
26. Power of entry, inspection and control of port and customs airport	
27. Authority of officer to board ship or aircraft	
28. Power to prevent departure of ship or departure of aircraft	

- 29. Power to refuse or cancel permission to depart ship or aircraft
- 30. Unloading of goods in areas designated or approved by the Director

Real investigations:

Part XVIII General Powers

Visit, inspection and control

- 75. Power of entry, visit, inspection and inspection
- 76. Power to carry out inspections
- 77. Power to use appropriate scientific means for audit purposes

Information

- 78. Power to demand information and produce records, books, documents or evidence

Entry and search of buildings

- 79. Power to enter and search premises
- 80. Power to search premises in which anything subject to confiscation is found
- 81. Special regulation in relation to the Criminal Procedure Law


Monitoring and search of vehicles, boats, etc. – Personal search

- 82. Monitoring
- 82A. Power to search vehicles and vessels
- 83. Power of personal inquiry

The following table shows the relevance of the measures in cases from practice:

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Case Study 1 Typical scenario: Avoidance of duties

 Case-Law and Study
<p>A typical scenario or case is the avoidance of duties e.g. for cars, fish, e-bikes etc. which are imported into Cypriot territory.</p> <p>The Administrative Courts of Cyprus had to judge in a several cases, whether the seizure issued by the Cypriot Customs Departments and Officers was done correctly i.e. in accordance with the law. Some answers of the Courts are very old and still concern the Customs and Excise Act 1967 but some are new as new problems come up.</p> <p>The following decisions should be taken into account:</p>

- *Aristotelous et al. v. Republic of Cyprus* through the Ministry of Finance etc. (1995) 3 A.A.D. 279, http://www.cylaw.org/cgi-bin/open.pl?file=/apofaseis/aad/meros_3/1995/rep/1995_3_0279.htm.

A new case from 2022 citing the old case-law shows that it is still applicable in certain cases:

- Administrative Court, Case No. 1353/2017, 2 February 1, 2022, [*EFSTATHIOU - NIKOLETOPOULOU, DDD*], ECLI:CY:DD:2022:81 [concerning the question of seizure and whether four Mercedes brand vehicles had undergone legal customs clearance]

“The Full Session of the Supreme Court in *Aristotelous* (supra), considered whether the seizure of imported cars for fraudulent avoidance of payment of import duty is an enforceable administrative act subject to review. It also examined whether the provisions of the relevant Legislation (N.82/67), which establish the declaration or validation of confiscation through a civil procedure before a District Court, are unconstitutional. It was held that the seizure is not an enforceable administrative act and is not subject to review. Relevant excerpts from the decision in question are quoted:

“Seizure for confiscation, carried out according to the provisions of article 170 of the Law, leads in the event of a dispute to a judicial procedure to issue a judicial decision “on the issue of confiscation“. The procedure, which article 176 characterizes as “customs prosecution“, is regulated by the provisions of the Second Schedule of the Law. It is defined as civil and is conducted before the competent Court, according to the criteria set.

For the reasons we have given, we consider that, in the context of the nexus of the provisions of Law 82/67, the confiscation is not an enforceable administrative act and is not subject to review under Article 146 of the Constitution. It is a fact that the confiscation in itself deprives the possession of the goods that are confiscated, but it is not for this reason an enforceable administrative act in view of its inextricable connection to the judicial procedure envisaged. The cases *Kyriakides v. Republic* 1 R. S. C. C. 66, and *Xenophontos v. Republic* 2 R. S. C. C. 89 are relevant. Appeals to the extent that they challenge a confiscation made, will be rejected as inadmissible.“

- SUPREME COURT OF CYPRUS, REVIEW JURISDICTION, (Case No. 1300/2010), July 11, 2014 [NATHANAIL, Director] IN REFERENCE TO ARTICLE 146 OF THE CONSTITUTION TASSOS ALETRAS LTD, Applicants- AND - REPUBLIC OF CYPRUS, THROUGH 1. MINISTRY OF FINANCE, 2. DIRECTOR OF THE CUSTOMS DEPARTMENT, ECLI:CYAD2014:D511.

[Anti-dumping duties case, customs, mistake on both sites, country of origin, goods of origin etc.]:

[Excerpt of the Judgement:] “Undoubtedly, as the defendants rightly state, with the cases of *Frakapor Co Ltd v. of Democracy*, sub. No. 1499/99, dated 12.7.2001 and *Skoullou v. Minister of Finance* (2004) 3 A.A.D. 530, as well as others, such as *Dimokratia v. Alexandros Soleas and Sons Ltd* (2005) 3 A.A.D. 284 and *Framespex Ltd v. Dimokratis* (2000) 3 A.A.D. 7, the administration must take those measures, even revocable, in order to collect the debts of the public, and time is not a problem when the administration also contributed to the production of the act, (*Alexandros Soleas and Sons Ltd. Law of the Republic* (1993) 4 A.A.D. 803 and *Michalos Dimitriou Ltd et al. Republic Law* (2009) 3 A.A.D. 675).

But the facts here do not show any direct or indirect participation of the applicants in the production of the false statement. They acted in good faith in light of the data and certificates they had. The fact that the Customs Department informed all those interested in the content of Regulation 1095/05 in a relevant circular from 2005 regarding the duties imposed when the goods originate in China, in no way makes the applicants complicit in any illegality. There are no facts here as in *Michalos Dimitriou Ltd*- above - where importers had been advised of the necessity for products imported from Thailand to be accompanied by the filing of an original export certificate from that country, but copies were nevertheless filed. Here the certificates were original. Nor is the case like *Fournaris M & J Imports & Exports Ltd v. Dimokratis* (2010) 3 A.A.D. 486, where the Belgian authorities could not verify the authenticity of the EUR 1 because the exporter was unable to prove the Community origin of the electrical appliances at issue.

In *Skoullou v. Minister of Finance* - above - it was precisely stated that the appellant’s argument there that the revocation violated the principles of good administration “.. might have mattered under normal circumstances, if he himself was not responsible for the initially incorrect calculation of customs value.” The Plenary also referred to *Tasos Troullidis Ltd v. Democracy* - above -. Similarly, in the present case there is no indication of any responsibility on the part of the applicants themselves in entering the data in “Theseas“, nor certainly in relation to illegality of any kind during the previous export of the merchandise

The subsequent imposition of duties and taxes in the present case, where the applicants themselves did not participate with any testimony whatsoever, violated the principle of good faith and trust in the administration. Article 48 of the Law, which is invoked in the contested act, must be read in the light of evidence of wilful circumvention of the Law by the importer or at least a conscious omission or negligence in presenting the correct information. The defendants generally referred to

article 48. They do not explain which aspect of it the applicants violated and this adds to the unreasonableness of the decision.

Article 48 contains dissociative actions on the part of the importer. Which of them all was problematic is not mentioned here at all.”

(bb) VAT Area

38 The VAT Area is prone to irregularities and fraud e.g. if VAT is connected to intra-community sales. If an exemption for a good is granted by the EU or the relevant Member State as an exclusionary rule, the VAT offices need to pay attention to any irregularity and investigate if the suspicion arises e.g. with a bogus invoice²²¹ or a company acting for the first time in a sector that is well established and long-lasting as well as isolated from newcomers. The Cypriot VAT Acts correctly refers to intra-community sales as:

39 **Meaning of the term intra-Community distance sales of goods**

3D. In this Law

“intra-Community distance sales of goods” means the supply of goods dispatched or transported by or on behalf of the supplier, including where the supplier is indirectly involved in the dispatch or transport of the goods, from a Member State other than that in which dispatch or transport of the goods to the customer ends, where the following conditions are fulfilled:

(a) The supply of goods is made for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT in accordance with Article 12A, or for any other non-taxable person;

(b) the goods supplied are not new means of transport or goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

40 Even if the Republic operates the Reverse Charge Principle e.g. for gas and electricity or other goods imported, there is still a risk for other forms of fraud or irregularities. The suspicions in this sector need to be investigated closely. If an investigation acquires

²²¹ The requirement to produce invoices is regulated in the 10. Annex of the VAT Act, see 1A. VAT invoices 1A. (1) Regulations under this paragraph may require a taxable person to ensure that an invoice (hereinafter referred to as the 'VAT invoice') is issued by himself, by his customer or in his name and on his behalf in respect of supplies of goods and services to another person established in the Republic; in another Member State or in a third country or VAT receipts for supplies of goods and/or services to another person in the Republic.

(2) The VAT invoice must contain -

(a) such particulars of the transaction and of the persons to and from whom the goods or services are supplied;

(b) an indication of whether VAT is applicable to the transaction under this Law or the law of another Member State;

(c) such elements of any VAT that may be enforceable;

as may be specified in Regulations. See an example of a case with false invoices for an IT project: Kades, Cyprus Mail, 9.11.2023, Cyprus linked to international fraud and money laundering scheme, <https://shorturl.at/alsBS>.

knowledge of an offence of criminal nature touching the number of 10 million € the authority or OLAF (→ Art. 12e, f OLAF Regulation) will need to inform instantly the EPPO Office in Cyprus or the Main Headquarters in Luxembourg. The claiming of VAT refunds is known as a typical EU fraudster field, almost a profession. A failure to submit a tax return or a forged VAT certificate or a bogus invoice etc. according to Artt. 49, 49A. Cypriot VAT Act may be a reason for instant investigations and an external check.

(b) Investigative Powers around Structural Funds and Internal Policies

- The Fiscal Responsibility and Fiscal Framework Law of 2014 (20(I)/2014)
- The General Principles of Administrative Law, Law of 1999 (158(I)/1999)
- The 2014 Law on Accounting and Financial Management and Financial Control of the Republic (38(I)/2014)

41

Part Two Powers and Authorities of the Accountant General and Responsibilities of Functional Controllers

Competencies and powers of the Accountant General

4.²²² (1) The Accountant General, in compliance with the provisions of Articles 126 and 127 of the Constitution, supported by the Assistant Accountant General, in compliance

²²² ΜΕΡΟΣ ΔΕΥΤΕΡΟ ΑΡΜΟΔΙΟΤΗΤΕΣ ΚΑΙ ΕΞΟΥΣΙΕΣ ΓΕΝΙΚΟΥ ΛΟΓΙΣΤΗ ΚΑΙ ΕΥΘΥΝΕΣ ΕΛΕΓΧΟΝΤΩΝ ΛΕΙΤΟΥΡΓΩΝ

Αρμοδιότητες και εξουσίες του Γενικού Λογιστή

4. (1) Ο Γενικός Λογιστής, τηρουμένων των διατάξεων των Άρθρων 126 και 127 του Συντάγματος, υποστηριζόμενος από το Βοηθό Γενικό Λογιστή, τηρουμένων των διατάξεων του Άρθρου 128 του Συντάγματος, και χωρίς επηρεασμό των πιο πάνω διατάξεων του Συντάγματος, έχει ειδικότερα τις ακόλουθες αρμοδιότητες και εξουσίες-

- (α) διευθύνει και επιβλέπει τη λογιστική εργασία των οικονομικών φορέων και των ειδικών ταμείων·
- (β) τηρεί και ενημερώνει σε έγγραφη ή ηλεκτρονική μορφή όλους τους λογαριασμούς, βιβλία και άλλα έγγραφα και δελτία που σχετίζονται άμεσα ή έμμεσα με τα οικονομικά και λογιστικά θέματα των οικονομικών φορέων και των ειδικών ταμείων·
- (γ) προωθεί τη χρηστή χρηματοοικονομική διαχείριση των οικονομικών φορέων και των ειδικών ταμείων που περιλαμβάνει μεταξύ άλλων, τον προγραμματισμό, την οργάνωση, την καθοδήγηση και τον έλεγχο των οικονομικών δραστηριοτήτων και των πόρων τους·
- (δ) προωθεί την ορθολογιστική διαχείριση για αξιοποίηση των στοιχείων ενεργητικού των οικονομικών φορέων και των ειδικών ταμείων·
- (ε) διενεργεί όλες τις πληρωμές των οικονομικών φορέων και των ειδικών ταμείων·
- (στ) ετοιμάζει –
- (i) τις οικονομικές καταστάσεις που περιλαμβάνουν όλους τους οικονομικούς φορείς·
- (ii) τις ενοποιημένες οικονομικές καταστάσεις της Γενικής Κυβέρνησης·
- (iii) τις οικονομικές καταστάσεις των ειδικών ταμείων·
- (ζ) ελέγχει και εγκρίνει την εισαγωγή μηχανογραφημένων λογιστικών συστημάτων των οικονομικών φορέων και των ειδικών ταμείων πριν την εφαρμογή τους και επαναξιολογεί τη λειτουργία τους σε τακτά χρονικά διαστήματα κατά την κρίση του·
- (η) ασκεί οποιοσδήποτε άλλες εξουσίες και εκτελεί οποιαδήποτε άλλα καθήκοντα ή υπηρεσίες, που καθορίζονται ή ανατίθενται σε αυτόν με νόμους ή/ και Κανονισμούς.

with the provisions of Article 128 of the Constitution, and without prejudice to the above provisions of the Constitution, has in particular the following powers and authorities-

- (a) directs and supervises the accounting work of economic entities and special funds;
- (b) keeps and updates in written or electronic form all the accounts, books and other documents and bulletins directly or indirectly related to the financial and accounting matters of economic entities and special funds;
- (c) promotes the sound financial management of economic entities and special funds which includes, among other things, the planning, organization, guidance and control of their financial activities and resources;
- (d) promotes rational management for the utilization of the assets of economic entities and special funds;
- (e) carries out all payments of economic entities and special funds;
- (f) prepares
 - (i) the financial statements that include all economic operators;
 - (ii) the consolidated financial statements of the General Government;
 - (iii) the financial statements of the special funds;
- (g) controls and approves the introduction of computerized accounting systems of economic entities and special funds before their implementation and re-evaluates their operation at regular intervals at his discretion;
- (h) exercise any other powers and perform any other duties or services, determined or assigned to him by laws and/or Regulations.

(2) The Accountant-General shall manage and supervise, as he may deem fit, any other accounts of local authorities, General Government entities, Public Legal Entities, State Organisations, any State Private Law Company or State bodies operating in the field of hydrocarbons in accordance with the provisions of subsection (6) of article 73 on Fiscal Responsibility and the Fiscal Framework Law, as well as other organizations, institutions and funds for the observance of which special provision is made by law.

(2) Ο Γενικός Λογιστής διευθύνει και επιβλέπει, όπως ήθελε κρίνει κατάλληλα, οποιουδήποτε άλλους λογαριασμούς αρχών τοπικής αυτοδιοίκησης, οντότητας Γενικής Κυβέρνησης, Νομικών Προσώπων Δημόσιου Δικαίου, Κρατικού Οργανισμού, οποιαδήποτε Κρατική Εταιρεία Ιδιωτικού Δικαίου ή κρατικό οργανισμό που δραστηριοποιείται στον τομέα των υδρογονανθράκων σύμφωνα με τις διατάξεις του εδαφίου (6) του άρθρου 73 του περί της Δημοσιονομικής Ευθύνης και του Δημοσιονομικού Πλαισίου Νόμου, καθώς και άλλων οργανισμών, ιδρυμάτων και ταμείων για την τήρηση των οποίων γίνεται ειδική πρόνοια με νόμο.

(3) Οι οριζόμενες στο Κεφάλαιο II του Μέρους VII του Συντάγματος εξουσίες, καθήκοντα και καθοριζόμενες υπηρεσίες του Γενικού Λογιστή, δύνανται να εκτελεστούν είτε από τον ίδιο προσωπικά, είτε από υπαλλήλους που υπάγονται σε αυτόν και οι οποίοι ενεργούν σύμφωνα με τις οδηγίες του.

(4) Κατά την άσκηση των αρμοδιοτήτων του, ο Γενικός Λογιστής δύναται να-

(α) απαιτεί από οποιοδήποτε υπάλληλο ή Αξιωματούχο πληροφορίες σχετικά με τη χρηματοοικονομική διαχείριση, τις οποίες ο Γενικός Λογιστής κρίνει αναγκαίες για την άσκηση των εξουσιών και των καθηκόντων του και ο υπάλληλος ή ο Αξιωματούχος οφείλει να συμμορφώνεται με τέτοια απαίτηση·

(β) διεξάγει ειδικές έρευνες σε θέματα της αρμοδιότητάς του·

(γ) απαιτεί και λαμβάνει οποιοδήποτε βιβλίο, στοιχείο, κατάσταση, μητρώο ή άλλο έγγραφο θεωρεί σκόπιμο.

(3) The powers, duties and defined services of the Accountant General defined in Chapter II of Part VII of the Constitution may be performed either by him personally, or by employees who are subordinate to him and who act in accordance with his instructions.

(4) In exercising his powers, the Accountant General may-

- (a) require from any employee or Officer such information relating to financial management as the Accountant General considers necessary for the exercise of his powers and duties and the employee or Officer shall comply with such demand;
- (b) conduct special investigations in matters within its competence;
- (c) require and receive any book, item, statement, register or other document it thinks fit.

Submission of information by natural and/or legal persons

5. (1) The Accountant General may request any legal and/or natural person who receives a government grant, loan or guarantee to submit-

- (a) audited financial statements;
- (b) a report showing how the grant, loan or guarantee was used;
- (c) any other relevant information deemed necessary by the Accountant General.

(2) Natural or legal persons have an obligation to submit the data referred to in subsection (1), within a reasonable schedule, which the Accountant General sets in each case.

Responsibilities of controlling officers

7. (1) The controlling officers and/or the employees authorized by them, among others-

- (a) have the responsibility of implementing the relevant budget on the basis of the principles of sound financial management, which includes -

- (i) Principle of Economy;
- (ii) Principle of Efficiency;
- (iii) Principle of Efficiency;

- (b) act in accordance with the provisions of the Budget Law and by virtue of general and special Regulations, Orders and Instructions issued by the Minister from time to time;

- (c) have the responsibility of collecting the revenues of the economic entity in which they are designated as controlling officers and take the necessary measures for their timely collection;

- (d) take the necessary measures to ensure prompt invoicing and collection of services provided and specified fees and taxes;

- (e) take the necessary measures to ensure the collection of the overdue revenues of the economic operator in which they are designated as controlling officers;

(f) authorize the carrying out of expenditures only when there are corresponding appropriations and only within the limits of the prescribed funds of the relevant budget or the amount allocated by departmental appropriation;

(g) develop and implement appropriate structures to implement control procedures that ensure the correctness and prompt collection of revenue and payment of expenses.

(2) (a) A controlling officer and/or his duly authorized representative and/or any other officer, who exercises control over expenditure, authorizes in writing the expenditure to be incurred in contravention of the provisions of subsection (1) and the person responsible for the payment employee commit a criminal offense and in case of conviction, they are subject to a fine not exceeding twenty thousand euros (€20,000) or a prison sentence not exceeding one year or both.

(b) The controlling officer and/or his duly authorized representative and/or any other officer and the employee responsible for the payment are civilly liable for any payment, which is carried out in violation of the provisions of this Law and the relevant Regulations.

(c) Irrespective of the provisions of any other law in force, any deficit of public money, securities or material ascertained by the established procedure, as provided for in Regulations or in circulars, shall be made up by the controlling officer and/or the person duly authorized by him representative as a result of whose instructions or actions this deficit arose.

(d) Any material shortfall shall be charged to the controlling officer and/or his duly authorized representative in money based on the current price at the time of the charge; this price shall be determined by the relevant minister or head of the Independent Service in consultation with the Accountant General.

(e) For the purposes of this article, any payment that does not fall within the competence of the controlling officer, which is carried out in excess of the authority granted to him, is also considered a deficit.

42 The following codes may also apply in this area:

- Budget Law (The 2022 Budget, Law of 2021 (Law 56(II)/2021) EU, Par.I(I), No.4434, 31/12/2021
- The Control of Public Aid Law of 2001 (30(I)/2001)

[...]

Part IV State Aid Control Procedure by the Computing Officer

10. Approval by the Registrar

11. Issuance of an opinion by the Superintendent

12. Receipt of Notice

13. Full Disclosure

14. Provision of Additional Information

- 15. [Deleted]
- 16. [Deleted]
- 17. Obligations of Competent Authority and Beneficiary
- 18. Decision of the Treasurer in cases of infringements
- 18A. Procedure for execution of a recovery decision issued by the Registrar
- 18B. Recovery decision issued by the Commission
- Part V Procedure for Audit by the Competitor or the Commission
- 19. Review process by Commissioner or Commission
- 20. Evidence
- 21. Offenses and penalties
- 21A. Action for damages

Source: Excerpt of the Budget law. Unofficial, own translation from cylaw.org.

(c) Investigative powers in the area of common market organisations

- The Implementation of the Common Organisations of the Market (Fruits and Vegetables, Processed Fruit and Vegetable Products, Citrus Fruits, Fatty Substances, Bananas, Tobacco and Floral Products) Law of 2004 (225(I)/2004)

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Power of entry and inspection

6.²²³ (1) The authorized officers have the power of free access to areas where work is being carried out in accordance with the Regulations referred to in article 3 and the Decrees issued pursuant to this Law.

(2) In exercising the powers granted to him by this Law, the authorized officer may

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²²³ Εξουσία εισόδου και άσκησης ελέγχων

6.—(1) Οι εξουσιοδοτημένοι λειτουργοί, έχουν εξουσία ελεύθερης πρόσβασης σε χώρους, στους οποίους διεξάγονται εργασίες σύμφωνα με τα διαλαμβανόμενα στους Κανονισμούς που αναφέρονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου.

(2) Κατά την άσκηση των αρμοδιοτήτων που του παρέχονται από τον παρόντα Νόμο, ο εξουσιοδοτημένος λειτουργός δύναται να—

(α) Ελέγχει οποιαδήποτε βιβλία ή άλλα έγγραφα ή αρχεία ηλεκτρονικών υπολογιστών, στα οποία είναι καταχωρημένες οι αναγκαίες πληροφορίες που εύλογα απαιτούνται, για τη διενέργεια των απαιτούμενων ελέγχων όσον αφορά τα θέματα που αναφέρονται στους Κανονισμούς που καθορίζονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου·

(β) λαμβάνει φωτοαντίγραφα, από βιβλία ή άλλα έγγραφα ή εκτυπωμένες πληροφορίες που υπάρχουν καταχωρημένες σε ηλεκτρονικά αρχεία·

(γ) ζητά επιτόπου προφορικές εξηγήσεις από το ενδιαφερόμενο πρόσωπο ή εκπρόσωπο του·

(δ) εξετάζει οποιοδήποτε προϊόν ή ομάδα προϊόντων για τα οποία έχει προαναγνωρισθεί μια Ομάδα Παραγωγών ή αναγνωρισθεί μια Οργάνωση Παραγωγών ή Ένωση Παραγωγών σύμφωνα με τους περί Αναγνώρισεως Οργανώσεων Παραγωγών Γεωργοκτηνοτροφικών Προϊόντων Νόμους του 2002 και 2004 και των Κανονισμών που εκδίδονται δυνάμει αυτών και

(ε) προβαίνει σε δειγματοληψία για σκοπούς καλύτερης εφαρμογής των σχετικών διατάξεων των Κανονισμών που αναφέρονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου.

- (a) Checks any books or other documents or computer files, in which the necessary information that is reasonably required is registered, for carrying out the required checks with regard to the matters referred to in the Regulations specified in article 3 and in the Decrees issued pursuant of this Law;
- (b) obtain photocopies of books or other documents or printed information contained in electronic records;
- (c) requests oral explanations on the spot from the person concerned or his representative
- (d) examines any product or group of products for which a Producer Group has been pre-recognised or a Producer Organization or Producer Association has been recognized in accordance with the Recognition of Agricultural and Livestock Producer Organizations Laws of 2002 and 2004 and the Regulations issued pursuant thereto and
- (e) conducts sampling for the purposes of better implementation of the relevant provisions of the Regulations referred to in article 3 and the Decrees issued pursuant to this Law.

(d) Investigative powers in the area of direct expenditure

45 In the area of direct expenditure, the direct management i.e., the control and managing by one main authority (mainly the Commission itself) is the main source of money transfer. If it is the European Commission, its agencies and delegations that manage the EU budget in this area, they are competent to supervision the accounting of projects in this area. The EU Commission runs e.g., the Funding and Tenders Portal (SEDIA) for this specific area. The whole direct expenditure area is not immune to fraud. It can be said that it is prone to procurement, or procurement related fraud (causing damage to the expenditure side of the budget).²²⁴

²²⁴ See OECD 2019, online: <https://www.oecd.org/gov/ethics/prevention-fraud-corruption-european-funds.pdf>, p. 7, 14: „The implementation stage of the project cycle brings with it numerous fraud and corruption risks due to the number of actors potentially involved in project implementation and the complexity of some of the processes at this stage. For projects with high investment value, such as large-scale infrastructure projects, this stage becomes even more vulnerable to fraud and corruption. Furthermore, tenders put out either directly by the MA or beneficiary are common during the implementation stage, and procurement processes are notoriously prone to fraud and corruption. As shown in the illustrated schemes in the final part of the guide, there are a number of procurement specific risks that occur at this stage. For example, members of an MA or beneficiary may tailor tender specifications or leak commercially sensitive tender information to favour one particular company or individual. Companies or contractors may also take part in collusive bidding schemes to manipulate competitive procedures. Responses from an OECD survey that was distributed to programme authorities show that procurement-related fraud and corruption risks at the level of beneficiaries are sometimes overlooked in risk analysis activities. In addition, some MAs generally base the identification of fraud risks on their own experience, without any additional input from other knowledgeable actors. Outside of the procurement process, perpetrators employ other tactics to siphon off funds and defraud the EU budget. For example, a beneficiary may fabricate fictitious works, services or activities, or inflate labour costs. In attempt to cover up fraudulent or corrupt behaviour or to justify non-eligible expenditure, perpetrators may manipulate documents and submit fictitious invoices. In some cases, perpetrators may even attempt to bribe officials or staff within programme authorities to conceal the scheme.

OLAF describes and displays investigations in this area as follows:

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“Direct expenditure

Accounting for 14% of the EU budget, this is expenditure allocated and directly managed by EU institutions, bodies, agencies alone (not jointly with national authorities, as with the structural funds). Beneficiaries are located in EU countries.

It includes expenditure in, among others, the following areas:

- research and innovation (e.g. Horizon Europe programme)
- education, training and mobility of young people (e.g. ERASMUS+ programme)
- supporting the competitiveness of industry and in particular of micro, small and medium-sized enterprises (e.g. Single Market programme)
- environment and climate action (LIFE programme)
- improving the capacity of the EU to face security threats (Internal Security Fund)
- European public administration.

! As a rule, national authorities are not involved in investigating fraud affecting direct expenditure.”²²⁵

In the area of direct expenditure beneficiaries subject themselves often under the regime of civil and administrative anti-fraud clauses, which are usually enshrined in the contract between the recipient and the monitoring payment office.

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Examples: The EU Commission supports large infrastructure projects.



OLAF has a **special unit**, which is competent to investigate and detect irregularities in the area of direct expenditure:

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- **Direct Expenditure - Operations and Investigations (OLAF.A.2)** Rue Joseph II 30 / Josef II-straat 30, 1000, (postal office Box: 1049), Bruxelles / Brussel Belgium²²⁶

In Cyprus the **Regulation on Public Procurement** applies. The powers of the relevant authorities are enshrined in Art. 92 of the Regulation:

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²²⁵ OLAF, Information on Investigations related to EU expenditure, https://ec.europa.eu/anti-fraud/investigations/investigations-related-eu-expenditure_hr. Accessed 29 October 2023.

²²⁶ EU, WHOisWHO, https://op.europa.eu/en/web/who-is-who/organization/-/organization/OLAF/COM_CRF_230282. Accessed 29 October 2023.

Powers of the Competent Public Procurement Authority²²⁷

92. Without prejudice to the powers conferred on it by this Law, the Competent Public Procurement Authority shall have the power to:

- (a) To carry out checks on the contracting authorities in order to ensure compliance with this Law and the regulations issued pursuant thereto;
- (b) to make any recommendations or suggestions to the contracting authorities for the proper application of the provisions of this Law, in particular for the purposes of Article 83;
- (c) to request and receive any information it deems appropriate in relation to the application of this Law, within a set of the same period, in particular the additional information required under paragraph (b) of subsection (1) of section 85;
- (d) to issue circulars for the better implementation of this Law and the regulations issued pursuant thereto;
- (e) notify the contracting authorities of the Commission's decisions;
- (f) to collect and submit the necessary statistical data to the Committee, within the pre-determined deadlines, provided for in this Law.

(e) Provisions in the area of external aid = expenditure

- 50** In the area of indirect management, the budget is implemented by various actors that have to carry out delegated tasks, which the Commission carries out itself in the area of direct management.²²⁸ In France this may be special institutions like intergovernmental organisations that operate from French territory and are subject to French law.

²²⁷ Εξουσίες Αρμόδιας Αρχής Δημοσίων Συμβάσεων

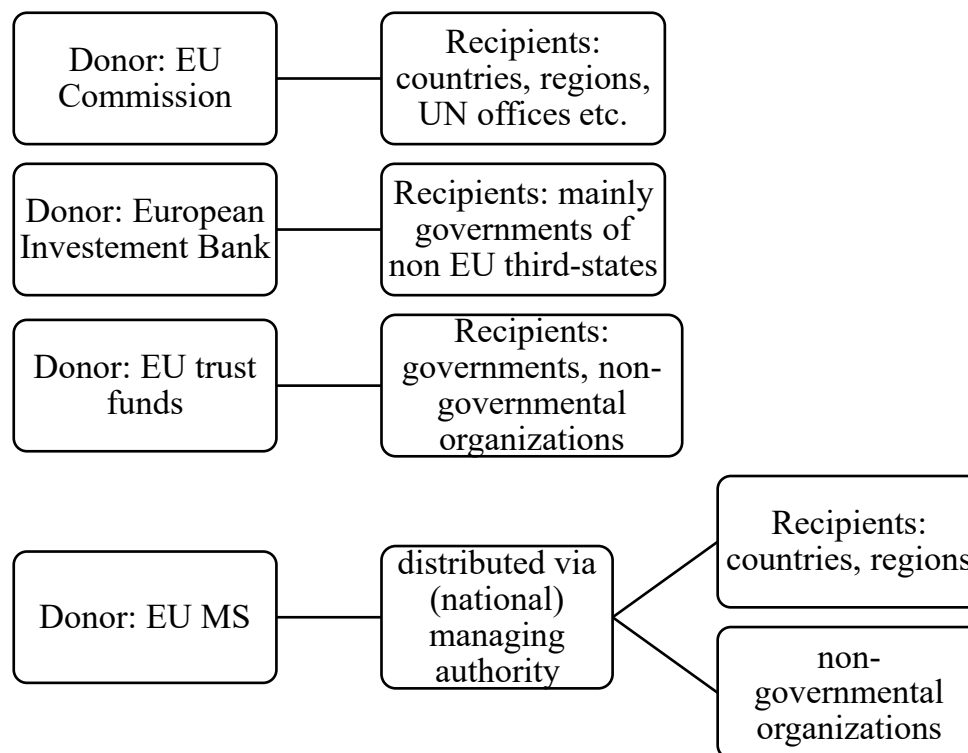
92. Χωρίς επηρεασμό των εξουσιών που της παραχωρούνται από τον παρόντα Νόμο, η Αρμόδια Αρχή Δημοσίων Συμβάσεων έχει εξουσία:

- (α) Να διενεργεί ελέγχους στις αναθέτουσες αρχές με σκοπό τη διασφάλιση της τήρησης του παρόντος Νόμου και των κανονισμών που εκδίδονται δυνάμει αυτού·
- (β) να προβαίνει σε οποιεσδήποτε συστάσεις ή υποδείξεις στις αναθέτουσες αρχές, για την ορθή εφαρμογή των διατάξεων του παρόντος Νόμου, ιδίως για τους σκοπούς του άρθρου 83·
- (γ) να ζητά και λαμβάνει οποιεσδήποτε πληροφορίες κρίνει σκόπιμες σε σχέση με την εφαρμογή του παρόντος Νόμου, μέσα σε τακτή από την ίδια προθεσμία, ιδίως τις συμπληρωματικές πληροφορίες που απαιτούνται σύμφωνα με την παράγραφο (β) του εδαφίου (1) του άρθρου 85·
- (δ) να εκδίδει εγκυκλίους για την καλύτερη εφαρμογή του παρόντος Νόμου και των κανονισμών που εκδίδονται δυνάμει αυτού·
- (ε) να κοινοποιεί στις αναθέτουσες αρχές τις αποφάσεις της Επιτροπής·
- (στ) να συγκεντρώνει και να υποβάλλει τα απαραίτητα στατιστικά στοιχεία στην Επιτροπή, εντός των προκαθορισμένων προθεσμιών, που προβλέπονται στον παρόντα Νόμο.

²²⁸ EU Commission, Funding by management mode, https://ec.europa.eu/info/funding-tenders/find-funding/funding-management-mode_en. Accessed 31 December 2023.

Nota bene: The **EU Aid explorer** can be used to discover beneficiaries and funding schemes.²²⁹ A common fraud scheme in this area is the “manipulation of tender processes”.²³⁰

Figure 7 EU external aid/expenditure (indirect management) Art. 3 OLAF Regulation on-the-spot inspections to discover EU external aid expenditure-related frauds



Source: EU Commission (2022), Funding by management mode.

For the investigations in the area of external aid OLAF can make use of Administrative Cooperation Agreements (ACAs).²³¹

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(3) Protection of information: Examples

The protection of information, the privacy and the confidentiality of information – in an investigation, connected to one, or concerning investigation measures in administrative matters is respected in Cypriot law.²³² The Constitutional Law (Το Σύνταγμα της

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²²⁹ EU external aid explorer, https://euaidexplorer.ec.europa.eu/index_en. Accessed 31 December 2023.

²³⁰ OLAF, Success Stories, May 2022, https://ec.europa.eu/anti-fraud/investigations/success-stories_en#external_aid. Accessed 31 December 2023

²³¹ OLAF, State of Play – June 2021 Administrative Cooperation Arrangements (ACAs) with partner authorities in non-EU countries and territories and counterpart administrative investigative services of International Organisations, https://ec.europa.eu/anti-fraud/system/files/2021-07/list_signed_acas_en_7fd50a9cbe.pdf. Accessed 29 October 2023.

²³² See *Mitrou/ Kyprianou/Nikolaos* 2015, passim.

Κυπριακής Δημοκρατίας (ΣΥΝΤΑΓΜΑ) already refers to the protection of privacy and data (Art. 15, 16 and 17²³³).

(a) Tax secrecy

53 Tax secrecy is respected. It may be interwoven with the bank secrecy. The Cypriot VAT Act 1995 as amended 2022 recalls the secrecy is applicable in VAT matters.

54 **Freezing and confiscation of amounts in bank accounts**

13. (1)(a) In the event that any person refuses or omits or delays or neglects to pay to the Registrar the amount of tax owed by him or any other amount and which exceeds three thousand euros (€3,000), excluding tax or any other amount for which-

(i) all administrative and judicial procedures for its determination have not been exhausted; or

(ii) security has been provided for the payment of the amount due, as the Commissioner considers appropriate;

then the Commissioner, regardless of any provision of any law in force, including any legislative provision in relation to the observance of bank secrecy and upon written consent of the Attorney General of the Republic, may address credit institutions with a written, computerized, electronic or otherwise notification and to request the

²³³ ARTICLE 15 1. Everyone has the right to have their private and family life respected.

2. There is no interference with the exercise of this right, even if it would be in accordance with the law and necessary only in the interest of the security of the Republic or the constitutional order or public security or public order or public health or public morals or the protection of the rights and freedoms of those guaranteed under the Constitution to any person or in the interest of transparency in public life or for the purposes of taking measures against corruption in public life.

ARTICLE 17

1. Everyone has the right to respect and ensure the confidentiality of correspondence and all other communication thereof, as long as such communication is carried out by means not prohibited by law.

2. There is no interference during the exercise of this right, unless such interference is permitted by law, in the following cases:

A. Persons who are in prison or pre-trial detention.

B. Pursuant to a court order issued in accordance with the provisions of the law, at the request of the Attorney General of the Republic, and the intervention is a measure which in a democratic society is necessary only in the interest of the security of the Republic or the prevention, investigation or prosecution of the following serious criminal offences:

(a) Premeditated murder or manslaughter;

(b) trafficking in adults or minors and offenses related to child pornography;

(c) trading, supply, cultivation or production of narcotic drugs, psychotropic substances or dangerous drugs,

(d) offenses relating to the currency or paper currency of the Republic and

(e) corruption offenses punishable by imprisonment of five years or more upon conviction.

C. Pursuant to a court order, issued in accordance with the provisions of the law, for the investigation or prosecution of a serious criminal offense for which, in case of conviction, a prison sentence of five years or more is provided and the intervention concerns access to traffic data related to electronic communication and location and the relevant data necessary to identify the subscriber or the user.

immediate attachment of any free and available amount belonging to the taxable person and which is deposited in bank accounts with one or more credit institutions and which does not exceed the amount of tax due and any other amount; [...].

(b) Administrative secrecy (Administrative laws)

The General Administrative Law applies. It is bound to the rules of the Constitution. **55**

(c) Official secrecy

The Investment Services and Activities Markets aw 2007 contains a special provision that concerns the professional confidentiality (see →Art. 129). Art. 13 of the Administrative Cooperation in Tax Sector and Matters Law refers to the professional secrecy during administrative investigations. **56**

(4) Investigation reports

Investigative reports shall be drawn by the relevant authorities that assist OLAF with their investigation on the Cypriot grounds. **57**

(5) Support to the inspectors

Most Codes in the area of fraud investigations and investigations into irregularities contain provisions dealing with the support to the inspectors. **58**

In the area of **VAT legislation, the VAT Law, 10. Annex** contains a provision that requests to the Economic operator the obligation to produce any document etc.: **59**

Provision of information and production of documents

60

6. (1) Regulations issued by the Council of Ministers may provide that taxable persons are required to notify the Registrar of any details of changes concerning the persons themselves or concerning any business carried out by them, which the Registrar deems necessary for the purposes of updating the VAT Register.

(2) Any person involved (in any capacity) in the supply of goods or services within the framework of or for the promotion of a business or to whom such a transaction is carried out, any person involved, in whatever capacity, in the acquisition of goods from another Member State and any person involved, in whatever capacity, in the importation of goods from a place outside the Member States within the framework of or for the promotion of an undertaking

(a) Provide the Registrar, within such time and in such a manner as he may reasonably require, with such information relating to the goods or services or to the transaction, acquisition or importation, which the Registrar may reasonably determine;

(b) shall, at the request of an authorised person, bring or cause to be brought for inspection by the authorised person;

(i) at the principal place of business of the person to whom the claim was made or at some other place that the authorised person may reasonably require, and

(ii) at such time as the authorized person may reasonably require, any documents relating to the goods or services or the transaction, acquisition or import.

(3) If, pursuant to subsection (2) above, an authorized person has authority to require the production of any documents by any person referred to in this sub-paragraph, the authorized person shall have similar authority to require the production of such documents by any other person who considers the authorized person to be in possession of them; this, the prosecution is done without prejudice to the right of retention.

(4) For the purposes of this paragraph, documents relating to the supply of goods or services, to the acquisition of goods from another Member State or to the importation of goods from a place outside the Member States' and the addition before the period of the words 'or, in the case of acquisition from another Member State), relating to any business or other activities of the person from whom the goods are acquired; shall be deemed to include both any profit and loss account and balance sheet relating to the undertaking in the course of which the goods are supplied or services are supplied or the goods are imported.

(5) The authorized person may receive copies or copy extracts of any document produced under subsection (2) or (3) above.

(6) If he/she deems it necessary, the authorized person may receive within a reasonable time and retain for a reasonable period any document produced under subsection (2) or (3) above and, upon request, issue an acknowledgement of receipt of the documents; The receipt of the document under this subparagraph shall not be deemed to infringe the right of retention.

(7) When a document received by an authorized person under subsection (6) above is reasonably requested for the proper conduct of the business, the authorized person shall, within a reasonable time, deliver a copy of the document, free of charge, to the person who produced it or caused it to be produced.

(8) When any documents received under the powers conferred by this subsection have been lost or destroyed, the Superintendent shall indemnify their owner for any costs reasonably incurred in replacing or repairing the documents.

(8A) For the purposes of this paragraph, a person who has been granted a right to receive all or part of the consideration for the supply of goods or services shall be considered to be the person involved in the transaction.

(9) The Registrar may require any state or local government authority or body governed by public law to provide him with information that may be necessary for the purposes of this Law.

(10) Any employee of a state authority, a local government authority or a body governed by public law which has in its custody registers, books, records or other documents the examination of which may assist in the application of this Law, shall permit any authorized person to examine them and to receive copies or copy extracts thereof, without payment of any fee or royalty.

(6) Preservation of Evidence (Customs Code, General Tax Code, VAT Act)

The VAT Act gives the Economic operators the duty to preserve potential evidence. The duty to keep records is essential to the exploration of the question whether a person has committed fraud or a simple irregularity:

61

Duty to keep records VAT Act, 10. Annex

5. (1) Every taxable person shall keep records which may require Regulations issued by the Council of Ministers and any person who, at the time when he is not a taxable person, acquires in the Republic from another Member State any goods subject to excise duty or relating to new means of transport; keeps records in relation to the acquisition if it is a taxable acquisition and is not in accordance with a taxable transaction, as may be required by the Regulations.

(2) Regulations pursuant to sub-paragraph (1) above may provide otherwise for different cases and may be formulated by reference to records that may be specified in a notification of the Registrar published in the Official Gazette of the Republic under these Regulations.

(3) The Regulations referred to in the above subparagraph may require that any documents held under this paragraph be retained for a period not exceeding seven years.

(4) The obligation under this section to retain records may be fulfilled by retaining the information contained therein by means that the Registrar may approve; whether civil or criminal, to the same extent as the archives themselves.

(5) The Registrar may impose, as a condition of approving under subsection (4) above any means of retaining information contained in any documents, reasonable requirements as he deems necessary to ensure that the information is immediately made available to him as if the records themselves had been maintained.

(6) A statement contained in a computer-generated document is not admissible as evidence in civil or criminal proceedings except in accordance with the provisions of the Evidence Law.

(7) Any person, other than a taxable person, who supplies goods or services in the course of or for the promotion of any business carried on by him shall keep for a period of seven years

(a) Any invoices and receipts issued to it in connection with transactions to it for the purposes of its business;

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(b) any invoices and receipts issued by the person himself in connection with his transactions; and customs declarations and other documents in relation to its imports and exports.

63 In addition the following Art. 3 from VAT Act, 10. Annex may apply:

Power to require a guarantee and to produce evidence

3. (1) The Registrar may require, as a condition of authorizing or refunding any input tax to any person, the production of VAT-related documents which may have been delivered to that person and may, if he deems it necessary for the protection of public revenues, require, as a condition of accepting any VAT credit balance, the provision of a guarantee for the amount of the payment it deems appropriate.

(2) Without prejudice to his authority under section 37(7), where the Registrar deems it necessary for the protection of public revenues, he may require a taxable person, as a condition for the supply of goods or services by that person in a taxable transaction, to provide a guarantee or further guarantee, of such an amount and in a manner which he may determine, for the payment of any VAT that is or may be due from it.

g) Exploring the Law Texts of single investigation measures in the area of external investigations by OLAF and national authorities

64 A closer look at the Cypriot single measures in the areas mentioned above shall enable the reader to take into account the relevant powers of the different authorities.

aa. Interviewing/Questioning of “persons concerned” (in relation to suspects/defendants)

65 The following code is applicable here:

- The Implementation of the Common Organisations of the Market (Fruits and Vegetables, Processed Fruit and Vegetable Products, Citrus Fruits, Fatty Substances, Bananas, Tobacco and Floral Products) Law of 2004 (225(I)/2004)

66 **Power of entry and inspection**

6.²³⁴ (1) The authorized officers have the power of free access to areas where work is being carried out in accordance with the Regulations referred to in article 3 and the Decrees issued pursuant to this Law.

²³⁴ Εξουσία εισόδου και άσκησης ελέγχων

6. (1) Οι εξουσιοδοτημένοι λειτουργοί, έχουν εξουσία ελεύθερης πρόσβασης σε χώρους, στους οποίους διεξάγονται εργασίες σύμφωνα με τα διαλαμβανόμενα στους Κανονισμούς που αναφέρονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου.

(2) In exercising the powers granted to him by this Law, the authorized officer may [...] (c) requests oral explanations on the spot from the person concerned or his representative [...]

bb. The taking of statements from Economic Operators

The taking of statements is a typical investigation method that leads to further steps. **67**

- The Implementation of the Common Organizations of the Market (Fruits and Vegetables, Processed Fruit and Vegetable Products, Citrus Fruits, Fatty Substances, Bananas, Tobacco and Floral Products) Law of 2004 (225(I)/2004) **68**

Power of entry and inspection **69**

6. [See above → Interviewing/Questioning of “persons concerned” (in relation to suspects/defendants)]

cc. Interviewing/Questioning of witnesses

The interviewing and questioning of a witness is quite intrusive but allowed by the General Administrative Act, the Customs Law, the VAT Law and the Procurement Regulations. **70**

dd. Inspections

The Implementation of the Common Organisations of the Market (Fruits and Vegetables, Processed Fruit and Vegetable Products, Citrus Fruits, Fatty Substances, Bananas, Tobacco and Floral Products) Law of 2004 (225(I)/2004) is applicable. **71**

(2) Κατά την άσκηση των αρμοδιοτήτων που του παρέχονται από τον παρόντα Νόμο, ο εξουσιοδοτημένος λειτουργός δύναται να—

(α) Ελέγχει οποιαδήποτε βιβλία ή άλλα έγγραφα ή αρχεία ηλεκτρονικών υπολογιστών, στα οποία είναι καταχωρημένες οι αναγκαίες πληροφορίες που εύλογα απαιτούνται, για τη διενέργεια των απαιτούμενων ελέγχων όσον αφορά τα θέματα που αναφέρονται στους Κανονισμούς που καθορίζονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου·

(β) λαμβάνει φωτοαντίγραφα, από βιβλία ή άλλα έγγραφα ή εκτυπωμένες πληροφορίες που υπάρχουν καταχωρημένες σε ηλεκτρονικά αρχεία·

(γ) ζητά επιτόπου πληροφορικές εξηγήσεις από το ενδιαφερόμενο πρόσωπο ή εκπρόσωπο του·

(δ) εξετάζει οποιοδήποτε προϊόν ή ομάδα προϊόντων για τα οποία έχει προαναγνωρισθεί μια Ομάδα Παραγωγών ή αναγνωρισθεί μια Οργάνωση Παραγωγών ή Ένωση Παραγωγών σύμφωνα με τους περί Αναγνώρισεως Οργανώσεων Παραγωγών Γεωργοκτηνοτροφικών Προϊόντων Νόμους του 2002 και 2004 και των Κανονισμών που εκδίδονται δυνάμει αυτών και

(ε) προβαίνει σε δειγματοληψία για σκοπούς καλύτερης εφαρμογής των σχετικών διατάξεων των Κανονισμών που αναφέρονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου.

Power of entry and inspection

6.²³⁵ (1) The authorized officers have the power of free access to areas where work is being carried out in accordance with the Regulations referred to in article 3 and the Decrees issued pursuant to this Law.

(2) In exercising the powers granted to him by this Law, the authorized officer may—

(a) Checks any books or other documents or computer files, in which the necessary information that is reasonably required is registered, for carrying out the required checks with regard to the matters referred to in the Regulations specified in article 3 and in the Decrees issued pursuant of this Law;

(b) obtain photocopies of books or other documents or printed information contained in electronic records;

(c) requests oral explanations on the spot from the person concerned or his representative-

(d) examines any product or group of products for which a Producer Group has been pre-recognised or a Producer Organization or Producer Association has been recognized in accordance with the Recognition of Agricultural and Livestock Producer Organizations Laws of 2002 and 2004 and the Regulations issued pursuant thereto and

(e) conducts sampling for the purposes of better implementation of the relevant provisions of the Regulations referred to in article 3 and the Decrees issued pursuant to this Law.

ee. Searches under Cypriot Act in External Investigations by OLAF

72 Searches are a common measure in all sectors that are prone to irregularities and fraud detrimental to the Union’s interest.

²³⁵ Εξουσία εισόδου και άσκησης ελέγχων

6.(1) Οι εξουσιοδοτημένοι λειτουργοί, έχουν εξουσία ελεύθερης πρόσβασης σε χώρους, στους οποίους διεξάγονται εργασίες σύμφωνα με τα διαλαμβανόμενα στους Κανονισμούς που αναφέρονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου.

(2) Κατά την άσκηση των αρμοδιοτήτων που του παρέχονται από τον παρόντα Νόμο, ο εξουσιοδοτημένος λειτουργός δύναται να—

(α) Ελέγχει οποιαδήποτε βιβλία ή άλλα έγγραφα ή αρχεία ηλεκτρονικών υπολογιστών, στα οποία είναι καταχωρημένες οι αναγκαίες πληροφορίες που εύλογα απαιτούνται, για τη διενέργεια των απαιτούμενων ελέγχων όσον αφορά τα θέματα που αναφέρονται στους Κανονισμούς που καθορίζονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου·

(β) λαμβάνει φωτοαντίγραφα, από βιβλία ή άλλα έγγραφα ή εκτυπωμένες πληροφορίες που υπάρχουν καταχωρημένες σε ηλεκτρονικά αρχεία·

(γ) ζητά επιτόπου προφορικές εξηγήσεις από το ενδιαφερόμενο πρόσωπο ή εκπρόσωπο του·

(δ) εξετάζει οποιοδήποτε προϊόν ή ομάδα προϊόντων για τα οποία έχει προαναγνωρισθεί μια Ομάδα Παραγωγών ή αναγνωρισθεί μια Οργάνωση Παραγωγών ή Ένωση Παραγωγών σύμφωνα με τους περί Αναγνώρισεως Οργανώσεων Παραγωγών Γεωργοκτηνοτροφικών Προϊόντων Νόμους του 2002 και 2004 και των Κανονισμών που εκδίδονται δυνάμει αυτών και

(ε) προβαίνει σε δειγματοληψία για σκοπούς καλύτερης εφαρμογής των σχετικών διατάξεων των Κανονισμών που αναφέρονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου.

Entry and search of premises or places and persons²³⁶

8. (1) For the purposes of exercising any powers granted under this Law, an authorized person may at any reasonable time enter premises, or a place, other than dwellings, used in connection with the conduct of business.

(2) Where an authorised person has reasonable cause to believe that premises or a place are being used in connection with taxable supplies of goods or services, he may at any reasonable time enter and inspect such premises or the place, with the exception of dwellings, and inspect any goods and documents therein.

(3) Notwithstanding any other authority conferred by this Law, if there is reasonable cause to believe that an offence relating to VAT is being committed, has been committed or is to be committed on any premises or place or that proof of the commission of such an offence will be found there, then any authorized person may enter such premises or the place excluding residences, and research them.

(4) Without prejudice to the provisions of subsection (3) of any other power conferred by this Law, where a judge is satisfied by a written affidavit of an authorized person that

²³⁶ **Είσοδος και έρευνα υποστατικών ή τόπων και προσώπων**

8. (1) Για τους σκοπούς άσκησης οποιωνδήποτε εξουσιών που παρέχονται δυνάμει του παρόντος Νόμου, εξουσιοδοτημένο πρόσωπο δύναται σε οποιοδήποτε εύλογο χρόνο να εισέρχεται σε υποστατικά, ή τόπο, εξαιρουμένων των κατοικιών, που χρησιμοποιούνται σε σχέση με την άσκηση επιχείρησης.

(2) Όταν εξουσιοδοτημένο πρόσωπο έχει εύλογη αιτία να πιστεύει ότι υποστατικά ή τόπος χρησιμοποιούνται σε σχέση με φορολογητέες παραδόσεις αγαθών ή παροχές υπηρεσιών, δύναται σε οποιοδήποτε εύλογο χρόνο να εισέρχεται και να επιθεωρεί τα εν λόγω υποστατικά ή τον τόπο, εξαιρουμένων των κατοικιών και να επιθεωρεί οποιαδήποτε αγαθά και έγγραφα που ευρίσκονται σε αυτά.

(3) Ανεξάρτητα από οποιαδήποτε άλλη εξουσία που παρέχεται από τον παρόντα Νόμο, εάν υπάρχει εύλογη αιτία να πιστεύεται ότι διαπράττεται, έχει διαπραχθεί ή πρόκειται να διαπραχθεί αδίκημα σχετικό με το Φ.Π.Α. σε οποιαδήποτε υποστατικά ή τόπο ή ότι θα ανεβρεθεί εκεί απόδειξη διάπραξης τέτοιου αδικήματος, τότε οποιοδήποτε εξουσιοδοτημένο πρόσωπο δύναται να εισέλθει στα εν λόγω υποστατικά ή τον τόπο εξαιρουμένων των κατοικιών, και να τα ερευνήσει.

(4) Χωρίς επηρεασμό των διατάξεων της υποπαραγράφου (3) οποιασδήποτε άλλης εξουσίας που παρέχεται από τον παρόντα Νόμο, όταν δικαστής ικανοποιείται με γραπτή ένορκη δήλωση εξουσιοδοτημένου προσώπου ότι υπάρχει εύλογη αιτία να πιστεύεται ότι διαπράττεται, έχει διαπραχθεί ή πρόκειται να διαπραχθεί αδίκημα σχετικό με το Φ.Π.Α. σε οποιαδήποτε υποστατικά ή τόπο ή ότι θα ανεβρεθεί εκεί απόδειξη διάπραξης τέτοιου αδικήματος, τότε ο δικαστής δύναται να εκδώσει ένταλμα το οποίο να εξουσιοδοτεί το πρόσωπο αυτό ή οποιοδήποτε άλλο πρόσωπο που κατονομάζεται στο ένταλμα να εισέλθει και να ερευνήσει τα υποστατικά ή τον τόπο που κατονομάζεται στο ένταλμα έρευνας.

(5) Κάθε ένταλμα έρευνας φέρει την υπογραφή του δικαστή που το εκδίδει, την ημερομηνία και ώρα εκδόσεως, καθώς επίσης και βεβαίωση του δικαστή ότι έχει εύλογα ικανοποιηθεί για την ύπαρξη ανάγκης εκδόσεως του εντάλματος.

(6) Οποιοδήποτε πρόσωπο που εισέρχεται σε υποστατικά ή τόπο δυνάμει των υποπαραγράφων (3) και (4) δύναται (α) να κατάσχει και να μετακινήσει οποιαδήποτε έγγραφα ή άλλα αντικείμενα που βρίσκονται στα υποστατικά ή τον τόπο για τα οποία έχει εύλογη αιτία να πιστεύει ότι δυνατό να χρησιμεύσουν ως αποδεικτικά στοιχεία για τους σκοπούς οποιασδήποτε δικαστικής διαδικασίας και

(β) να ερευνήσει ή να μεριμνήσει την έρευνα οποιοδήποτε προσώπου που βρίσκεται στα υποστατικά ή τον τόπο για τα οποία έχει εύλογη αιτία να πιστεύει ότι έχει στην κατοχή του οποιαδήποτε τέτοια έγγραφα ή άλλα αντικείμενα:

Νοείται ότι, η έρευνα σε πρόσωπο θα διενεργείται από ίδιου φύλου εξουσιοδοτημένο λειτουργό.

there is reasonable cause to believe that a VAT offence is being committed, has been committed or is to be committed at any premises or place or that evidence of such an offence will be found therein; The judge may then issue a warrant authorizing that person or any other person named in the warrant to enter and search the premises or the place named in the search warrant.

(5) Each search warrant shall bear the signature of the judge issuing it, the date and time of issue, as well as a certificate from the judge that he or she has been reasonably satisfied that there is a need to issue the warrant.

(6) Any person entering premises or premises pursuant to subparagraphs (3) and (4) may:

(a) seize and move any documents or other objects found on the premises or place where it has reasonable cause to believe that they may serve as evidence for the purposes of any judicial proceeding; and

(b) to search or arrange for the search of any person located in the premises or place for which he has reasonable cause to believe that he is in possession of any such documents or other objects: search of a person will be carried out by a same-sex authorized officer.

(7) A person having authority under this subsection to enter premises, or a place, may use as much force as is reasonably necessary to exercise that power.

- 74 Another area of potential investigative measures, is the customs duties area:
- Customs Law

75 **Customs Law**

Power to enter and search premises

79.²³⁷ (1) For the purposes of exercising any powers granted by virtue of customs or other legislation, *an authorized officer may*, at any reasonable time, enter a building,

²³⁷ Εξουσία για είσοδο και έρευνα οικημάτων

79. (1) Για τους σκοπούς της άσκησης οποιωνδήποτε εξουσιών που παρέχονται δυνάμει της τελωνειακής ή της άλλης νομοθεσίας, εξουσιοδοτημένος λειτουργός δύναται σε οποιοδήποτε εύλογο χρόνο, να εισέρχεται σε οίκημα, με εξαίρεση την κατοικία, και να επιθεωρεί και ερευνά το οίκημα αυτό καθώς και οποιαδήποτε εμπορεύματα, και αρχεία, βιβλία, έγγραφα ή στοιχεία, έστω και αν τηρούνται σε μηχανογραφημένη μορφή, τα οποία βρίσκονται σε αυτό.

(2) Ανεξάρτητα από οποιαδήποτε άλλη εξουσία που παρέχεται από την τελωνειακή ή την άλλη νομοθεσία, εάν υπάρχει εύλογη υποψία να πιστευτεί ότι σε οποιοδήποτε οίκημα, με εξαίρεση την κατοικία, διαπράττεται ή έχει διαπραχθεί ή πρόκειται να διαπραχθεί αδίκημα που προβλέπεται στην τελωνειακή ή την άλλη νομοθεσία ή ότι θα ανευρεθεί απόδειξη διάπραξης ή πιθανής διάπραξης τέτοιου αδικήματος, τότε εξουσιοδοτημένος λειτουργός δύναται να εισέλθει στο οίκημα αυτό, με εξαίρεση την κατοικία και να ερευνήσει αυτό.

(3) Χωρίς επηρεασμό των διατάξεων του προηγούμενου εδαφίου ή οποιασδήποτε άλλης εξουσίας που παρέχεται από την τελωνειακή ή την άλλη νομοθεσία, όταν δικαστής ε Επαρχιακού Δικαστηρίου ικανοποιείται με γραπτή ένορκη δήλωση οποιουδήποτε εξουσιοδοτημένου λειτουργού ότι υπάρχει εύλογη υποψία να πιστευτεί ότι σε οίκημα, περιλαμβανομένης της κατοικίας, διαπράττεται ή έχει διαπραχθεί ή πρόκειται να διαπραχθεί αδίκημα που προνοείται στην τελωνειακή ή την άλλη νομοθεσία ή ότι θα ανευρεθεί απόδειξη διάπραξης ή πιθανής διάπραξης τέτοιου αδικήματος, τότε ο δικαστής δύναται να εκδώσει ένταλμα το οποίο να εξουσιοδοτεί το λειτουργό αυτό ή

with the exception of a residence, and inspect and investigate this building as and any goods, and records, books, documents or evidence, whether or not kept in computerized form, contained therein.

(2) Notwithstanding any other power conferred by customs or other legislation, if there is reasonable suspicion to believe that in any premises, other than a dwelling, an offense under the customs or other is being committed or has been committed or is about to be committed legislation or that proof of the commission or possible commission of such an offense will be found, then an authorized officer may enter that building, with the exception of the residence, and search it. Without prejudice to the provisions of the preceding subsection or to any other power conferred by customs or other legislation, where a Magistrate of a District Court is satisfied by a written affidavit of any authorized officer that there is reasonable suspicion to believe that in a house, including the residence, an offense under customs or other legislation is committed or has been committed or is about to be committed, or that evidence of the commission or possible commission of such an offense will be found, then the judge may issue a warrant authorizing that officer or any other person named in the warrant person to enter and search the building named in the warrant, including the residence. Each search warrant bears the signature of the judge who issues it, the date and time of issuance, as well as the judge's certification that he is reasonably satisfied that there is a need to issue the warrant.

(5) The authorized officer who has the power of investigation as referred to in subsections (1) and (2) or has been authorized by a warrant as referred to in subsection (3) to carry out the investigation may -, ***confiscate, or move any goods or to detain or confiscate any records, books, documents or evidence***, even if kept in computerized form, which were found on the premises and for which he has reasonable reason to believe that they may serve as evidence for the purposes of any legal proceedings; or

κάθε άλλο κατονομαζόμενο στο ένταλμα πρόσωπο να εισέλθει και ερευνήσει το κατονομαζόμενο στο ένταλμα οίκημα, περιλαμβανομένης της κατοικίας.

(4) Κάθε ένταλμα έρευνας φέρει την υπογραφή του δικαστή που το εκδίδει, την ημερομηνία και ώρα έκδοσης, καθώς επίσης και βεβαίωση του δικαστή ότι έχει εύλογα ικανοποιηθεί για την ύπαρξη ανάγκης έκδοσης του εντάλματος.

(5) Ο εξουσιοδοτημένος λειτουργός ο οποίος έχει εξουσία έρευνας όπως αναφέρεται στα εδάφια (1) και (2) ή έχει εξουσιοδοτηθεί με ένταλμα όπως αναφέρεται στο εδάφιο (3) για την εκτέλεση της έρευνας δύναται -

(α) να κατακρατήσει, κατάσχει ως υποκείμενα εις δήμευση, ή μετακινήσει οποιαδήποτε εμπορεύματα ή και κατακρατήσει, ή κατάσχει οποιαδήποτε αρχεία, βιβλία, έγγραφα ή στοιχεία, έστω και αν τηρούνται σε μηχανογραφημένη μορφή, τα οποία βρέθηκαν στο οίκημα και για τα οποία έχει εύλογη αιτία να πιστευθεί ότι δυνατό να χρησιμεύσουν ως αποδεικτικά στοιχεία για τους σκοπούς οποιασδήποτε δικαστικής διαδικασίας; ή και (β) να ερευνήσει ή να μεριμνήσει για την έρευνα οποιουδήποτε προσώπου που βρίσκεται στο οίκημα για το οποίο εύλογα πιστεύει ότι έχει στην κατοχή του τέτοια εμπορεύματα ή αρχεία, βιβλία, έγγραφα ή στοιχεία:

Νοείται ότι, η έρευνα σε πρόσωπο θήλυ θα διενεργείται από ιδίου φύλου γυναίκα εξουσιοδοτημένο λειτουργό.

(6) Ο εξουσιοδοτημένος λειτουργός ή άλλο πρόσωπο που έχει εξουσία με βάση το άρθρο αυτό να εισέλθει σε οίκημα, δύναται να χρησιμοποιήσει τόση βία όση είναι εύλογα αναγκαία για την άσκηση της εξουσίας αυτής.

(7) Πρόσωπο που έχει εξουσία με βάση την παρούσα παράγραφο να εισέλθει σε υποστατικά, ή τόπο, δύναται να χρησιμοποιήσει τόση βία όση είναι εύλογα αναγκαία για την άσκηση της εξουσίας αυτής

(b) search or cause to be searched any person on the premises whom he reasonably believes to be in possession of such goods or records, books, documents or evidence; It is understood that the investigation of a female person will be conducted by a female authorized officer of the same sex.

(6) The authorized officer or other person who has authority based on this article to enter a building, may use as much force as is reasonably necessary for the exercise of this authority.

(1) General remarks

76 All provisions mentioned above have in common that they are bound to a specific sector.

(2) Formal requirements

77 The all require that the relevant investigator has either a reasonable cause to believe that an irregularity or incidence exists or is above this general rule sure that there is such an indication.

(3) Substantive requirements

78 In all cases the investigation can only be carried out by an **authorized person** from the relevant sector – either tax or customs legislation applies. If the further steps described by the legislation are not obeyed by the national investigators, this circumstance can cause difficulties with the whole evidence gathered as the defence might appeal if there is any indication that the **substantial requirements** of the provision have not been followed by the State Authorities (acting on behalf of OLAF or another Union IBOA).

ff. Seizure of other evidence, Custom Law, VAT Law

The VAT Law applies:

79

Power to take samples²³⁸

7. (1) Any authorised person, if he considers it necessary for the protection of public revenues, may at any time take from goods held by a person supplying goods or acquiring goods from another Member State, or in the possession of the tax warehouse keeper, such samples as the authorised person may require for the purpose of determining how the goods or materials from which they were made should be handled for the purposes of VAT

(2) Any sample taken under this subsection shall be made available in the manner specified by the Superintendent.

(3) When a sample under this subsection is taken from the goods in the possession of any person and is not returned to him within a reasonable time and in good condition, the Registrar shall compensate such person with an amount equal to the cost of the sample he has incurred.

Proof with certificate, etc.

10. (1) Certificate from the Superintendent stating that

(a) A person was or was not, on any date, registered under this Law;

(b) any tax return required by or under this Law has not been submitted or has not been submitted on any date; or any VAT shown as due on any tax return submitted or tax certificate issued or decision of the Minister of Finance taken under this Law has not been paid;

(d) any pecuniary charge, interest or additional tax imposed by the Registrar under this Law has not been paid shall constitute sufficient proof of the fact attested, until proven otherwise;

(e) any declaration or notification required to be submitted or served on the Registrar in accordance with any Regulations under paragraph 1(2) or (2A) has not been submitted or served or has not been submitted or served on any date.

²³⁸ Εξουσία λήψης δειγμάτων

7. —(1) Κάθε εξουσιοδοτημένο πρόσωπο, αν το κρίνει αναγκαίο για την προστασία των δημόσιων εσόδων, δύναται σε οποιοδήποτε χρόνο, να λαμβάνει, από τα αγαθά που είναι στην κατοχή προσώπου που παραδίδει αγαθά ή αποκτά αγαθά από άλλο κράτος μέλος, ή στην κατοχή του φορολογικού αποθηκευτή, τέτοια δείγματα που δυνατό να απαιτήσει το εξουσιοδοτημένο πρόσωπο με σκοπό να καθορίσει με ποιο τρόπο τα αγαθά ή τα υλικά από τα οποία κατασκευάστηκαν έπρεπε να τύχουν χειρισμού για τους σκοπούς του Φ.Π.Α.

(2) Οποιοδήποτε δείγμα που λαμβάνεται δυνάμει της παρούσας παραγράφου διατίθεται με τον τρόπο που καθορίζει ο Έφορος.

(3) Όταν λαμβάνεται δείγμα δυνάμει της παρούσας παραγράφου από τα αγαθά που βρίσκονται στην κατοχή οποιουδήποτε προσώπου και δεν επιστρέφεται σε αυτό μέσα σε εύλογο χρόνο και σε καλή κατάσταση, ο Έφορος αποζημιώνει το εν λόγω πρόσωπο με ποσό ίσο προς το κόστος του δείγματος με το οποίο έχει επιβαρυνθεί.

(2) A photograph of any document presented to the Registrar for the purposes of this Law which is certified by him to be a photograph of such document shall be admissible as evidence in any proceedings, whether civil or criminal, to the same extent as the document itself.

(3) Any document carried as a certificate under subsection (1) or (2) above shall be deemed to be such a certificate until proven otherwise.

The next law which enables seizures in a domestic sector is the Customs Law:

80

Customs Law

Power to require information and produce records, books, documents or evidence

78. The Implementation of the Common Organisations of the Market (Fruits and Vegetables, Processed Fruit and Vegetable Products, Citrus Fruits, Fatty Substances, Bananas, Tobacco and Floral Products) Law of 2004 (225(I)/2004)

Power of entry and inspection

6.²³⁹ (1) The authorized officers, in order to ascertain or ensure compliance with customs or other legislation, may demand within a reasonable time and at a place they reasonably

²³⁹ **Εξουσία απαίτησης παροχής πληροφοριών και προσαγωγής αρχείων, βιβλίων, εγγράφων ή στοιχείων**
 78. (1) Οι εξουσιοδοτημένοι λειτουργοί για να διαπιστώσουν ή εξασφαλίσουν την τήρηση της τελωνειακής ή της άλλης νομοθεσίας, δύνανται να απαιτούν εντός ευλόγου χρόνου και σε τόπο που εύλογα καθορίζουν από οποιοδήποτε πρόσωπο που σχετίζεται με οποιαδήποτε ιδιότητα με τα εμπορεύματα ή και με οποιαδήποτε αρχεία, βιβλία, έγγραφα ή στοιχεία, έστω και αν τηρούνται σε μηχανογραφημένη μορφή -
 (α) οποιαδήποτε πληροφορία,
 (β) την προσκόμιση οποιωνδήποτε αρχείων, βιβλίων, εγγράφων ή στοιχείων, έστω και αν τηρούνται σε μηχανογραφημένη μορφή,
 για την εξασφάλιση της τήρησης της τελωνειακής ή της άλλης νομοθεσίας.
 (2) Αν σύμφωνα με το εδάφιο (1), εξουσιοδοτημένος λειτουργός έχει εξουσία να αξιώνει την προσαγωγή οποιωνδήποτε αρχείων, βιβλίων, εγγράφων ή στοιχείων από πρόσωπο που αναφέρεται στο εν λόγω εδάφιο, ο εξουσιοδοτημένος λειτουργός έχει παρόμοια εξουσία να αξιώνει την προσαγωγή των εν λόγω αρχείων, βιβλίων, εγγράφων ή στοιχείων από οποιοδήποτε άλλο πρόσωπο που πιστεύει ότι τα κατέχει·
 Νοείται ότι, αν όμως οποιοδήποτε τέτοιο άλλο πρόσωπο διεκδικεί δικαίωμα επίσκεψης επί οποιουδήποτε αρχείου, βιβλίου, εγγράφου ή στοιχείου που προσάγεται από αυτό, η προσαγωγή γίνεται χωρίς βλάβη του δικαιώματος επίσκεψης.
 (3) Ο εξουσιοδοτημένος λειτουργός δύναται να λαμβάνει αντίτυπα ή να αντιγράφει αποσπάσματα οποιουδήποτε αρχείου, βιβλίου, εγγράφου ή στοιχείου που προσάγεται σύμφωνα με τα εδάφια (1) και (2).
 (4) Αν το κρίνει αναγκαίο ο εξουσιοδοτημένος λειτουργός δύναται να παραλάβει σε εύλογο χρόνο και να κατακρατήσει για εύλογη περίοδο οποιοδήποτε αρχείο, βιβλίο, έγγραφο ή στοιχείο που προσάγεται σύμφωνα με τα εδάφια (1) ή (2) πιο πάνω και αν του ζητηθεί εκδίδει απόδειξη παραλαβής του·
 Νοείται ότι, και όταν διεκδικείται δικαίωμα επίσκεψης επί αρχείου, βιβλίου, εγγράφου ή στοιχείου που προσάγεται σύμφωνα με το εδάφιο (2), η παραλαβή του σύμφωνα με το εδάφιο αυτό δεν θεωρείται ότι παραβιάζει το δικαίωμα επίσκεψης.
 (5) Όταν αρχείο, βιβλίο, έγγραφο ή στοιχείο που παραλήφθηκε από εξουσιοδοτημένο λειτουργό σύμφωνα με τα πιο πάνω εδάφια ζητείται εύλογα για την ομαλή διεξαγωγή της επιχείρησης του προσώπου, ο εξουσιοδοτημένος λειτουργός παραδίδει εντός ευλόγου χρόνου αντίτυπο του αρχείου, βιβλίου, εγγράφου ή στοιχείου στο πρόσωπο το οποίο το προσήγαγε ή μερίμνησε να προσαχθεί.

determine from any person related in any capacity to the goods or to any records, books, documents or data, even if kept in computerized form -

(a) any information;

(b) the production of any records, books, documents or data, even if kept in computerized form;

to ensure compliance with customs or other legislation.

(2) If under subsection (1), an authorised officer has power to require the production of any records, books, documents or particulars from a person referred to in that subsection, the authorised officer shall have a similar power to require the production of those records, books, documents or particulars from any other person who believes that he has: Provided that if, however, any such other person claims a lien on any record, book, document or evidence produced by him, the production shall be without prejudice to the lien.

(3) The authorised officer may take copies or copy extracts of any record, book, document or evidence produced under subsections (1) and (2).

(6) Ο Διευθυντής δύναται να απαιτήσει από οποιαδήποτε κρατική αρχή ή αρχή τοπικής διοίκησης ή οργανισμό δημόσιου δικαίου να του παράσχει πληροφορίες που δυνατό να είναι αναγκαίες για τους σκοπούς της τελωνειακής ή της άλλης νομοθεσίας.

(7) Κάθε υπάλληλος κρατικής αρχής, αρχής τοπικής διοίκησης ή οργανισμού δημόσιου δικαίου που έχει υπό τη φύλαξή του αρχεία, βιβλία, έγγραφα ή στοιχεία των οποίων η εξέταση πιθανόν να βοηθήσει στην εφαρμογή της τελωνειακής ή της άλλης νομοθεσίας οφείλει να επιτρέπει σε οποιοδήποτε εξουσιοδοτημένο λειτουργό να τα εξετάζει και να λαμβάνει αντίτυπα ή να αντιγράφει αποσπάσματά τους, χωρίς την καταβολή οποιουδήποτε τέλους ή δικαιώματος.

(8) Εξουσιοδοτημένος λειτουργός απαγορεύεται να ανακοινώνει ή να χορηγεί σε τρίτους με οποιοδήποτε τρόπο εμπιστευτικά στοιχεία ή πληροφορίες, εκτός μετά από άδεια του Υπουργού που έχουν περιέλθει σε γνώση του ή που του έχουν γνωστοποιηθεί κατά την άσκηση των αρμοδιοτήτων του. Εξουσία εισόδου και άσκησης ελέγχων 6.(1) Οι εξουσιοδοτημένοι λειτουργοί, έχουν εξουσία ελεύθερης πρόσβασης σε χώρους, στους οποίους διεξάγονται εργασίες σύμφωνα με τα διαλαμβανόμενα στους Κανονισμούς που αναφέρονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου.

(2) Κατά την άσκηση των αρμοδιοτήτων που του παρέχονται από τον παρόντα Νόμο, ο εξουσιοδοτημένος λειτουργός δύναται να—

(α) Ελέγχει οποιαδήποτε βιβλία ή άλλα έγγραφα ή αρχεία ηλεκτρονικών υπολογιστών, στα οποία είναι καταχωρημένες οι αναγκαίες πληροφορίες που εύλογα απαιτούνται, για τη διενέργεια των απαιτούμενων ελέγχων όσον αφορά τα θέματα που αναφέρονται στους Κανονισμούς που καθορίζονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου·

(β) λαμβάνει φωτοαντίγραφα, από βιβλία ή άλλα έγγραφα ή εκτυπωμένες πληροφορίες που υπάρχουν καταχωρημένες σε ηλεκτρονικά αρχεία·

(γ) ζητά επιτόπου προφορικές εξηγήσεις από το ενδιαφερόμενο πρόσωπο ή εκπρόσωπο του·

(δ) εξετάζει οποιοδήποτε προϊόν ή ομάδα προϊόντων για τα οποία έχει προαναγνωρισθεί μια Ομάδα Παραγωγών ή αναγνωρισθεί μια Οργάνωση Παραγωγών ή Ένωση Παραγωγών σύμφωνα με τους περί Αναγνώρισεως Οργανώσεων Παραγωγών Γεωργοκτηνοτροφικών Προϊόντων Νόμους του 2002 και 2004 και των Κανονισμών που εκδίδονται δυνάμει αυτών και

(ε) προβαίνει σε δειγματοληψία για σκοπούς καλύτερης εφαρμογής των σχετικών διατάξεων των Κανονισμών που αναφέρονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου.

(4) If he considers it necessary, the authorised officer may at a reasonable time and for a reasonable period receive and retain any record, book, document or item produced under subsections (1) or (2) above and on demand shall issue a receipt for the same:

Provided that, and where a lien is claimed on a record, book, document or item produced under sub-section (2), the receipt thereof under that sub-section shall not be deemed to be in breach of the lien.

(5) When a file, book, document or item received by an authorized officer in accordance with the above subsections is reasonably requested for the smooth conduct of the person's business, the authorized officer shall deliver within a reasonable time a copy of the file, book, document or item to the person who brought it or caused it to be brought.

(6) The Director may require (2) In exercising the powers granted to him by this Law, the authorized officer may

(a) Checks any State authority or local authority or body governed by public law to supply him with such information as may be necessary for the purposes of customs books or other legislation.

(7) Any employee of a state authority, local government authority or body governed by public law who has in his custody records, books, documents or items the examination of computer files, in which the necessary information that is reasonably required is likely to assist registered, for carrying out the required checks with regard to the matters referred to in the Regulations specified in the application of customs or other legislation must allow any authorized officer examine them article 3 and obtain copies or copy extracts thereof, without payment of any fee or royalty.in the Decrees issued pursuant of this Law;

(8) An authorized official is prohibited from announcing or granting to third parties in any way confidential data or information, except with the permission of the Minister, which have come to his knowledge or which have been disclosed to him in the exercise of his powers.

(b) obtain photocopies of books or other documents or printed information contained in electronic records;

(c) requests oral explanations on the spot from the person concerned or his representative-

(d) examines any product or group of products for which a Producer Group has been pre-recognised or a Producer Organization or Producer Association has been recognized in accordance with the Recognition of Agricultural and Livestock Producer Organizations Laws of 2002 and 2004 and the Regulations issued pursuant thereto and

(e) conducts sampling for the purposes of better implementation of the relevant provisions of the Regulations referred to in article 3 and the Decrees issued pursuant to this Law.

(1) General remarks

Seizure has the aim of securing evidence and proving facts. The specific authorisations to seize things related to an irregularity or fraud suspicion are regulated by different national laws, which apply if OLAF conducts an investigation with its national partners (See above → Art. 3 Mn. 2 et seq. for the *Sigma Orionis* Case-law Scenery). **81**

(2) Formal requirements and Substantive requirements

Taking goods into security by the official authorities or taking things while conducting checks is only possible if the formal requirements – such as time, place, area are followed and if words such as “reasonable time”, which need interpretation are followed strictly. **82**

gg. The seizure of digital forensic evidence including bank account information and Freezing of Assets

The seizure of digital forensic evidence including bank account information becomes increasingly important. The recent changes of the OLAF Regulation No 883/2013 (as amended 2020/2223) codified that OLAF shall under the same conditions that apply to national competent authorities have access to bank account information. The relevant national law shall be displayed by the manual on the following pages. **83**

- VAT Area

In the area of VAT investigations and audits, the relevant provision for looking into banking accounts can be found in Art. 13 VAT Act, 10 Annex, which at the same time allows the freezing and confiscation of assets and sums held in bank accounts. **84**

Freezing and seizing sums held in bank accounts

13. (1)(a) In the event that any person refuses or omits or delays or neglects to pay to the Registrar the amount of tax or any other amount due by him and which exceeds three thousand euros (€3,000), excluding tax or any other amount for which-

(i) all administrative and judicial procedures for determining it have not been exhausted; or

(ii) a guarantee has been provided for the payment of the amount due, as the Superintendent deems appropriate;

then the Superintendent, regardless of any provision of any law in force, including any legislative provision in relation to the observance of banking secrecy and with the written consent of the Attorney General of the Republic, may address credit institutions with written, computerized, electronic or otherwise noticeable to him and request the immediate blocking of any free and available amount belonging to the taxable person and **85**

which is deposited in bank accounts with one or more credit institutions and which does not exceed the amount of tax due and any other amount:

(b) In the event that the total amount committed under sub-subparagraph (a) of subparagraph (1) to one or more credit institutions exceeds the amount of tax due or any other amount, the Registrar shall be obliged, within one (1) business day, to instruct the credit institutions to release the excess amount, keeping only the amount corresponding to the amount of tax due and any other amount frozen.

(2) It is forbidden for the Registrar to freeze a free and available amount of money belonging to the taxable person, which leaves in the total bank accounts of that person an amount less than two thousand euros (€2,000).

(3) Where a blocked amount is deposited in an account held by the taxable person who is jointly with another person or persons, the credit institution shall inform those persons of the freezing of the amount; the purposes of this paragraph;

‘Free and disposable amount belonging to the taxable person’ means;

(a) any monetary credit balance in any account with a credit institution and does not include any amount which is subject to a right of retention or other charge or amount of a cheque outstanding for liquidation or security in order to satisfy a claim by a court order: free and available amount shall be deemed to be the credit balance remaining if the credit institution has exercised the rights or powers conferred on it by law or by any relevant agreement concluded with the taxable person and has set off any credit balance of that person against a debt owed to the credit institution itself; prior to receipt of the notice from the Superintendent of the commitment; and

(b) an amount deposited in an account held in the name of the taxable person, including an account held jointly with another or other persons, to which the defaulting person has the right vis-à-vis the credit institution to obtain reimbursement of the full quantity of the monies without the involvement of the other persons, with the exception of customer accounts or accounts which the taxable person has as manager; trustee, guardian, agent, partner, member of the management of an association, club, foundation or other organisation with or without legal personality, agent or in any other capacity for the benefit of and/or on behalf of a third party;

“Credit institution“ has the meaning assigned to this term by the Central Bank of Cyprus Law.

(4) (a) Each director, chief executive officer, director, officer, employee or representative of a credit institution shall refrain from disclosing information with respect to the notice to the Superintendent and when such persons make such disclosure and/or any other action or omission which adversely affects the ability to collect an amount of tax due or any other amount; Then this person commits a criminal offense and in case of conviction is subject to a prison sentence of up to one (1) year or a fine of up to five thousand euros (€5,000) or to both these penalties.

(b) In the event that -

(i) a person referred to in subparagraph (a) has been found guilty of that criminal offence, or

(ii) it has not been possible to collect the tax due or any other amount due to the non-freezing of the amount of tax due or any other amount;

the credit institution is obliged to pay to the Registrar the amount of tax due or any other amount which, as a result of the transactions of the persons referred to in sub-subparagraph (a) of subparagraph (4), could not be collected.

(5) Where an amount has been blocked under this paragraph, the taxable person shall be entitled within fifteen (15) calendar days from the date of the freezing of the amount;

(a) either contact the Registrar with written notice of objection to review the freezing of the amount; the Superintendent must decide on the objection within fifteen (15) calendar days from the date of submission of the objection:

Provided that, in case the objection is rejected by the Registrar, the taxable person retains the right to apply to the Court for a decision to lift the freezing of all or part of the blocked amount;

(b) either apply directly to the Court for a decision to lift the freezing of all or part of the amount committed;

for the reason that –

(i) the taxable person has previously paid the amount of tax due or any other amount and is no longer liable; or

(ii) does not constitute a free and available amount in accordance with the provisions of this Law; choice of any of the measures provided for in paragraphs 12 and 14 would cause him less disfavour than the measure which the Registrar has chosen to follow under this paragraph, without circumventing the purpose of collecting the tax due or any other amount.

(6) Where:

(a) the time limit provided for in subparagraph (5) shall expire without the submission of an objection to the Registrar or the registration of an application with the Court; or

(b) an objection has been filed in accordance with sub-subparagraph (a) of subparagraph 5 and the Registrar rejects the objection and the taxable person has not applied to the Court requesting that the freezing of all or part of the blocked amount be lifted within fifteen (15) days; or an application has been made to the Court for the freezing of the frozen amount to be lifted and a decision has been made rejecting in whole or in part the claims raised in the application;

then the credit institution, upon notification of the Superintendent, transfers the corresponding amount it kept blocked, to the Fixed Fund of the Republic.

(7) In the event that the Registrar accepts the objection or the Court issues a decision to lift the freezing of all or part of the blocked amount, the Registrar shall give instructions to the credit institution to lift the freezing of the corresponding amount.

(8) The Court may not, in considering the application for the freezing of all or part of the amount frozen, examine the legality of the tax imposed or the accuracy of the amount due or any other amount.

(9) The credit institution shall not collect any fees from any person for the execution of the procedure for the freezing of an amount and the transfer of the blocked amount to the Fixed Fund of the Republic.

(10) A credit institution shall not be liable to any person for any action taken in accordance with the provisions of this paragraph.

(11) The Registrar may determine, by notification to the Official Gazette of the Republic, the schedule of the actions provided for in this paragraph, the manner and procedure for the transfer of the blocked amount to the Fixed Fund of the Republic, the type of notice sent by the Registrar to the credit institutions pursuant to sub-subparagraph (a) of subparagraph (1) as well as any other procedural details necessary for the application of this paragraph.

86 The next area, which shall be analysed in respect of the seizure and forensic evidence:

- **Customs Area**

In the **area of customs investigations**, the relevant provision can be found in Art. 80:

87 **Power to search premises in which anything subject to confiscation is found**

80.²⁴⁰ (1) Notwithstanding any other power granted by this Law, if there is a reasonable suspicion that any goods subject to confiscation, by virtue of customs or other legislation, or any record, book, document or item, whether and if they are kept in computerized form, related to the commission of an offense related to customs or other legislation, is kept or hidden in any building, with the exception of residences, any authorized officer

²⁴⁰ Εξουσία έρευνας οικημάτων στα οποία βρίσκεται οτιδήποτε υπόκειται εις δήμευση

80. (1) Ανεξάρτητα από οποιαδήποτε άλλη εξουσία που παραχωρείται από τον παρόντα Νόμο, εφόσον υπάρχει εύλογη υποψία ότι οποιαδήποτε εμπορεύματα τα οποία υπόκεινται εις δήμευση, δυνάμει της τελωνειακής ή της άλλης νομοθεσίας, ή οποιοδήποτε αρχείο, βιβλίο, έγγραφο ή στοιχείο, έστω και αν τηρούνται σε μηχανογραφημένη μορφή, που σχετίζεται με τη διάπραξη αδικήματος που σχετίζεται με την τελωνειακή ή την άλλη νομοθεσία, φυλάσσεται ή αποκρύπτεται σε οποιοδήποτε οίκημα, με εξαίρεση τις την κατοικίες, οποιοσδήποτε εξουσιοδοτημένος λειτουργός δύναται να εισέλθει στο οίκημα αυτό, κατά οποιοδήποτε χρόνο, κατά τη διάρκεια της ημέρας ή της νύκτας και να ελέγξει, ερευνήσει, κατακρατήσει, κατάσχει ως υλοκείμενα εις δήμευση ή μετακινήσει οποιαδήποτε τέτοια εμπορεύματα ή και κατακρατήσει ή κατάσχει οποιαδήποτε αρχεία, βιβλία, έγγραφα ή στοιχεία, έστω και αν τηρούνται σε μηχανογραφημένη μορφή, επιπρόσθετα δε, κατά την έκταση που είναι εύλογα αναγκαίο για το σκοπό αυτό, να παραβιάσει οποιαδήποτε πόρτα, παράθυρο ή δοχείο καθώς και να παραβιάσει και μετακινήσει οποιοδήποτε άλλο κώλυμα θα παρουσιασθεί.

(2) Οι διατάξεις των εδαφίων (3) έως (6) του άρθρου 79(3) έως (6) εφαρμόζονται κατ' αναλογία και για τους σκοπούς του άρθρου αυτού.

may enter this building, at any time, during the day or night and to inspect, search, detain, seize as subject to confiscation or move any such goods or to seize or seize any records, books, documents or evidence, even if kept in computerized form, and in addition, to the extent reasonably necessary for that purpose, breach any door, window or container as well as breach and move any other obstruction that will be presented.

(2) The provisions of subsections (3) to (6) of article 79(3) to (6) shall be applied *mutatis mutandis* for the purposes of this article.

Special regulation in relation to the Criminal Procedure Law

81. The provisions of articles 27(c)(i) and 32 of the Criminal Procedure Law do not apply with respect to goods and records, books, documents or items seized or confiscated in accordance with the provisions of customs or other legislation.

hh. Principle of specification

The acquisition of digital evidence applies to every sector of investigation and depends on the relevant laws applicable in these cases:

- **VAT Act, 10. Annex**

88

Decree-Law on access to registered information

9. (1) When a judge, at the request of an authorized person, is satisfied that there is reasonable cause to believe that—

(a) An offence in relation to VAT is committed, has been committed or is to be committed, and

(b) any registered information (including any document of any nature) which may serve as evidence for the purposes of any proceedings in connection with such offence, is in the possession of any person, then may issue an injunction pursuant to this paragraph.

(2) An injunction under this subsection constitutes an order that the person whom the judge finds to be in possession of recorded information to which the application relates—

(a) Grant access to them to an authorized person, and

(b) allow an authorized person to receive and retain any of them as they reasonably deem necessary, at a time not later than the end of the 7-day period commencing on the date of the Order or the end of such longer period as the Order may specify.

(3) The reference in sub-paragraph (2)(a) above to granting an authorized person access to registered information to which the application relates shall include a reference to the granting of permission to the authorized person to take copies or copy extracts thereof.

(4) If the *information entered consists of information contained in a computer*, the Order under this subsection shall apply as an *order to produce the information in a*

form that is visible and legible and, if the authorised person wishes to move it, in a type that can be moved.

(5) This paragraph does not affect paragraphs 6 and 8 above.

(6) Without prejudice to the foregoing provisions of this subsection, any authorised person shall have authority, if he has reasonable cause to believe that an offence provided for in Section 46 or 47 is being or has been committed or is to be committed, to require any person reasonably believed to be aware of the facts or incidents of the offence to attend his office or any other reasonable place to be examined and to obtain testimony from him or her in relating to the offence and in such a case, the provisions of subsection (2) of section 5 of the Criminal Procedure Law shall apply *mutatis mutandis*.

89 The next provisions relate to **the area of common market organization in Cyprus:**

90 - The Implementation of the Common Organizations of the Market (Fruits and Vegetables, Processed Fruit and Vegetable Products, Citrus Fruits, Fatty Substances, Bananas, Tobacco and Floral Products) Law of 2004 (225(I)/2004)

91 **Power of entry and inspection**

6.²⁴¹ (1) The authorized officers have the power of free access to areas where work is being carried out in accordance with the Regulations referred to in article 3 and the Decrees issued pursuant to this Law.

(2) In exercising the powers granted to him by this Law, the authorized officer may—

(a) Checks any books or other documents or computer files, in which the necessary information that is reasonably required is registered, for carrying out the required checks with regard to the matters referred to in the Regulations specified in article 3 and in the Decrees issued pursuant of this Law;

²⁴¹ Εξουσία εισόδου και άσκησης ελέγχων

6.—(1) Οι εξουσιοδοτημένοι λειτουργοί, έχουν εξουσία ελεύθερης πρόσβασης σε χώρους, στους οποίους διεξάγονται εργασίες σύμφωνα με τα διαλαμβανόμενα στους Κανονισμούς που αναφέρονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου.

(2) Κατά την άσκηση των αρμοδιοτήτων που του παρέχονται από τον παρόντα Νόμο, ο εξουσιοδοτημένος λειτουργός δύναται να—

(α) Ελέγχει οποιαδήποτε βιβλία ή άλλα έγγραφα ή αρχεία ηλεκτρονικών υπολογιστών, στα οποία είναι καταχωρημένες οι αναγκαίες πληροφορίες που εύλογα απαιτούνται, για τη διενέργεια των απαιτούμενων ελέγχων όσον αφορά τα θέματα που αναφέρονται στους Κανονισμούς που καθορίζονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου·

(β) λαμβάνει φωτοαντίγραφα, από βιβλία ή άλλα έγγραφα ή εκτυπωμένες πληροφορίες που υπάρχουν καταχωρημένες σε ηλεκτρονικά αρχεία·

(γ) ζητά επιτόπου προφορικές εξηγήσεις από το ενδιαφερόμενο πρόσωπο ή εκπρόσωπο του·

(δ) εξετάζει οποιοδήποτε προϊόν ή ομάδα προϊόντων για τα οποία έχει προαναγνωρισθεί μια Ομάδα Παραγωγών ή αναγνωρισθεί μια Οργάνωση Παραγωγών ή Ένωση Παραγωγών σύμφωνα με τους περί Αναγνώρισεως Οργανώσεων Παραγωγών Γεωργοκτηνοτροφικών Προϊόντων Νόμους του 2002 και 2004 και των Κανονισμών που εκδίδονται δυνάμει αυτών και

(ε) προβαίνει σε δειγματοληψία για σκοπούς καλύτερης εφαρμογής των σχετικών διατάξεων των Κανονισμών που αναφέρονται στο άρθρο 3 και στα Διατάγματα που εκδίδονται δυνάμει του παρόντος Νόμου.

(b) obtain photocopies of books or other documents or printed information contained in electronic records; [...].

ii. Digital forensic operations within inspections or on-the-spot checks

Digital forensic operations within inspections or on-the-spot checks became increasingly important in the last decade already, 92

Bulgaria, which has included a special paragraph in the State Investigations Office Act, Art. 31a (see Bulgarian Chapter in this manual) makes a direct reference to Art. 7 of the applicable provision of Regulation 2185/96 and is therefore a role model regarding Digital forensic operations within inspections or on-the-spot checks of OLAF. 93

(1) General remarks

Cyprus has implemented the relevant investigation powers in relation to gathering digital evidence. These provisions mostly still refer to the overall term “computer” but this term may as well encompass by common understanding smartphones, digital storages and small digital items that operate de facto as a computer. 94

(2) Formal requirements

The formal requirements are mostly request for a letter or a draft decision including the arguments why the access to this information is important and necessary. A reasonable ground must exist, which is depending on the fraud committed. 95

(3) Substantive requirements

The seizure or acquisition of digital data is limited by proportionality requirements. The area, the place, the whereabouts and the circumstances must be specified if conducting the investigation measure. 96

h) Investigative missions in third countries

Investigative missions in third countries have led to evidence in cases judged in Cypriot Courts in the past and they mostly related to customs duties cases. These were cases, in which the Customs Service suspected the avoidance and evasion of duties such as anti-dumping duties detrimental to the Union’s and Cypriot financial interests and subsequently involved OLAF, which then conducted further investigations: 97

See e.g. Supreme Court of Cyprus, Review Jurisdiction, (Case No. 1300/2010), July 11, 2014 [NATHANAIL, Director] in reference to Article 146 of the Constitution Tassos Aletras LTD, Applicants- and - Republic of Cyprus, through 1. Ministry of Finance, 2. Director of the Customs Department, ECLI:CYAD2014:D511. [Anti-dumping duties case, customs, mistake on both sites, country of origin, goods of origin etc.].



i) National procedural rules for “checks and inspections” by the assisting national authority

98 The national rules for checks and inspections were referred to above. The relevant legislation is enshrined in the Customs Law, the VAT Law, the Audit Act and further Acts mentioned as important legislation under “Sources of Law” above, before Part. A.

j) Cooperation and mutual assistance agreements

99 In the area of tax controls and audits Cyprus has issued the following law:

100 - The 2012 Law on Administrative Cooperation in the Tax Sector (205(I)/2012) /Ο
Περί Διοικητικής Συνεργασίας στον Τομέα της Φορολογίας Νόμος του 2012
(205(I)/2012)

101 **Part III Other Forms of Administrative Cooperation**
Presence of the requesting authority in administrative services and its participation in administrative investigations
9. (1) Upon agreement between the authority receiving the request in the Republic and the requesting authority and in accordance with the arrangements established by the authority receiving the request in the Republic, officials authorized by the requesting authority may, for the exchange of information provided for within the framework of this Law:
a) Be present at the offices of the receiving authority in the Republic;
b) to be present during administrative investigations, which are conducted on the territory of the Republic.
(2) If the requested information is contained in documents to which the officials of the authority receiving the request have access in the Republic, copies of said documents are provided to the officials of the requesting authority.
(3) Where permitted by the applicable legislation of the Republic, the agreement referred to in subsection (1) may provide that, in the event that officials of the requesting authority are present during the administrative investigations, they may conduct an interview with individuals and they review files.
Concurrent controls
10. When the Republic and one or more other member states agree to carry out simultaneous checks on their territory, for one or more persons of common or complementary interest to the Republic and for one or more of the other member states, with the aim of exchanging information obtained from these controls, then the following shall apply:
a) The competent authority of the Republic independently defines the persons against whom it intends to propose the carrying out of a simultaneous audit. It informs the com-

petent authorities of the other Member States concerned of the cases for which it proposes to carry out a simultaneous control, justifying its choice and specifying the time period during which said controls will be carried out;

b) the competent authority in the Republic decides whether it wishes to take part in simultaneous controls. The competent authority of the Republic informs the competent authority of the other member state or of the other member states that proposed to carry out simultaneous controls of its agreement to participate in the simultaneous controls or informs them of its reasoned refusal to participate;

c) the competent authority of the Republic appoints a representative responsible for supervising and coordinating the control.

(4) The refusal of the person subject to investigation to comply with the control measures of the officials of the requesting authority shall be treated by the authority receiving the request in the Republic as a refusal against its own officials.

(5) The authorized officers of the requesting authority, who act on the basis of the provisions of subsection (1) must, at all times, be able to present a written authorization stating their identity and their official status.

3. Article 4 Internal investigations

Art. 4 Internal Investigations

1. Investigations within the institutions, bodies, offices and agencies in the areas referred to in Article 1 shall be conducted *in accordance with this Regulation and with the decisions adopted by the relevant institution, body, office or agency* ('internal investigations').

8. Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an internal investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the institution, body, office or agency concerned. Upon request, the institution, body, office or agency concerned shall inform the Office of any action taken and of its findings on the basis of such information.

Where necessary, the Office shall also inform the *competent authorities of the Member State concerned*. In this case, the procedural requirements laid down in the second and third subparagraphs of Article 9(4) shall apply. If the competent authorities decide to *take any action on the basis of the information transmitted to them, in accordance with national law*, they shall, upon request, inform the Office thereof.

- 1 Internal investigations of OLAF, which are *de facto* administrative investigations²⁴² *within* the Union institutions²⁴³ with the possibility of sanctions for administrative offences *within* the European Union itself, can lead to **repercussions at national level** i.e. the level of the authorities that cooperate with OLAF and which e.g. employ the economic operator, manage the funds etc. or who are responsible for disciplinary actions for officials that work at Union level and national level (double hat) or as a national expert for OLAF (corruption cases). The relationship of national disciplinary, union disciplinary proceedings and national criminal proceedings is incredibly important.²⁴⁴

²⁴² The access to OLAF's documents on the basis of Regulation No 1049/2001 is therefore restricted in order to ensure the *ratio legis* of Art. 4 OLAF Regulation: "For the purposes of interpreting the exception to the right of access to documents laid down by the third indent of Article 4(2) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents, it is necessary to recognise a general presumption that the disclosure of documents from the administrative file would, in principle, undermine the protection of the objectives of OLAF's investigation activities. Generalized access, based on Regulation No 1049/2001, to documents in OLAF's file, while OLAF's investigation procedure is still ongoing, would, in principle, undermine the effective conduct of the investigation. The same is true where the investigation has been recently closed by OLAF." (see ECJ, Case T-110/15 International Management Group v European Commission).

²⁴³ OLAF may as well investigate despite the IBOA's own administrative investigators – investigate within e.g. the ECB, see ECJ, Case C-11/00 Commission of the European Communities v European Central Bank, EU:C:2003:395, in particular paragraphs 110 and 111 of the judgment.

²⁴⁴ See ECJ, Research note, Impact of ongoing criminal proceedings on the conduct of disciplinary proceedings, https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-09/ndr_2020_001_neutralisee_en.pdf. OLAF will handle the case according to the conditions in Art. 11. It will present a Case Number, Legal Basis for the opening

a) References to national law, Para 8

The General Administrative Law of Cyprus asks for the adherence to proportionality if a national authority carries out administrative investigations: **2**

52. Principle of proportionality²⁴⁵

(1) The administrative organ, in exercising its discretionary power, must take into account and weigh up all the interests directly involved in the case.

(2) The means used by the administration in its actions should be proportionate to the aim pursued. Interference with citizens' rights is permitted only to the extent necessary to protect the public interest.

(3) If the administration has a choice between two or more legal solutions, it must give preference to the one that is least burdensome for the person being administered.

(4) Any disciplinary or administrative measure taken by the management must be objectively consistent with the obligation that has been breached and must be reasonably related to the aim pursued.

(5) The adverse effects of an administrative act on one or more persons administered must not be disproportionate to the objective pursued by the act.

b) Competent authorities

Internal investigations within the Union bodies might have a connection to national i.e. Cypriot authorities. These authorities will most likely be connected to the spending of expenses or the acquiring of revenue duties as those areas are part of the financial interests of the Union.²⁴⁶ Considering this fact it becomes clear that the Cypriot Customs Authority, the Registration Offices for VAT and other Cypriot Payment Agencies such **3**

decision, Date of creation of OLAF case, the relevant investigator, EU institution, body, office or agency Concerned, Person(s) concerned, the informants, Fraud Notification System (FNS), Offence category, Area concerned investigative or Coordination activities carried out, opportunity to comment on facts concerning Him, collected evidence, Impact on EU financial interests, Judicial proceedings and a case summary.

²⁴⁵ Αρχή της αναλογικότητας

52. (1) Το διοικητικό όργανο, κατά την άσκηση της διακριτικής του εξουσίας, οφείλει να λαμβάνει υπόψη και να σταθμίζει όλα τα άμεσα αναμειγμένα στην υπόθεση συμφέροντα.

(2) Τα μέσα που χρησιμοποιεί η διοίκηση στις ενέργειές της πρέπει να είναι ανάλογα με τον επιδιωκόμενο σκοπό. Επέμβαση στα δικαιώματα των πολιτών επιτρέπεται μόνο στην έκταση που αυτό είναι απαραίτητο για την προστασία του δημόσιου συμφέροντος.

(3) Αν η διοίκηση έχει να επιλέξει μεταξύ δύο ή περισσότερων νόμιμων λύσεων, οφείλει να προτιμήσει εκείνη που είναι λιγότερο επαχθής για το διοικούμενο.

(4) Κάθε πειθαρχικό ή διοικητικό μέτρο που λαμβάνει η διοίκηση πρέπει να έχει αντικειμενική συνάφεια με την υποχρέωση που παραβιάστηκε και να βρίσκεται σε εύλογη σχέση με τον επιδιωκόμενο σκοπό.

(5) Οι δυσμενείς για έναν ή περισσότερους διοικουμένους συνέπειες μιας διοικητικής πράξης δεν πρέπει να είναι δυσανάλογες με τον επιδιωκόμενο με την πράξη σκοπό.

²⁴⁶ See The Internal Audit Law of 2003 (114(I)/2003), http://www.cylaw.org/nomoi/enop/non-ind/2003_1_114/index.html.

as the competent Ministry and the bodies annexed to it, are part of the national authorities.

- 4 Any action available to these bodies that might OLAF help clarify the irregularity, the case, the freezing of sums needed for recovery etc. can be seen as possible actions in the home territory of the person investigated. The relevant national authorities can adopt decisions that concern the individual acting for an EU institution. The case of the well-known Greek European Parliamentarian showed this circumstance in 2022. While the prosecuting authorities in Belgium carried out investigations against the individual by certain jurisdiction, the authorities in Greece acted on their own behalf and explored their competences to avoid that the money suspected of being laundered would flow to dark and hidden channels.

4. Article 5 Opening of investigations

[...] 5. If the Director-General decides not to open an investigation, he or she may without delay send any relevant information, as appropriate, to the *competent authorities of the Member State concerned* for appropriate *action to be taken in accordance with Union and national law* or to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules applicable to that institution, body, office or agency. The Office shall agree with that institution, body, office or agency, if appropriate, on suitable measures to protect the confidentiality of the source of that information and shall, if necessary, ask to be informed of the action taken.

a) Competent authorities

- 5 A competent authority is the competent administrative body (§ 45 of The General Principles of Administrative Law). The apparent circular argument becomes self-evident upon observance of the pertinent laws outlined in Part A. Exemplary passages from these laws are provided herein as excerpts.

b) National rules

- 6 **The General Principles of Administrative Law (Law of 1999 – 158(I)/1999)**
Part IX Proper Exercise of Discretionary Power
Exercise of discretion
44.²⁴⁷ (1) The administrative body to which the exercise of discretionary power has been entrusted by law has the legal obligation to exercise it.

²⁴⁷ ΜΕΡΟΣ ΙΧ ΟΡΘΗ ΑΣΚΗΣΗ ΤΗΣ ΔΙΑΚΡΙΤΙΚΗΣ ΕΞΟΥΣΙΑΣ
 Άσκηση της διακριτικής εξουσίας

- (2) It is not permissible for the competent administrative body to be substituted or directed in the exercise of its discretionary power by another body.
- (3) The competent body is not allowed to decide in advance and in a general manner its discretionary power for the cases that will arise in the future.
- (4) A governing body shall not be prohibited from exercising its discretion in a case, on the basis of general policy or criteria which it has pre-established for similar cases, so long as the policy or criteria which it has laid down are consistent with law, and to consider in particular each case that is presented before it and more specifically to examine whether the special circumstances of the case justify a deviation from the general policy or the criteria that it has drawn up.
- (5) It is not prohibited for the competent administrative body in the exercise of its discretionary power to be guided by circulars or general administrative instructions issued by hierarchically superior bodies and which determine the general policy of the government on a subject, as long as these circulars or instructions do not conflict with the law.
- (6) The competent body is allowed to exercise its discretion based on formulas and commitments that it has determined and which are not imposed, but not prohibited by law.

Adequate research

45.²⁴⁸ (1) The administration, when exercising its discretionary power, must conduct an adequate investigation of all facts related to the case.

44.—(1) Το διοικητικό όργανο στο οποίο έχει ανατεθεί η άσκηση διακριτικής εξουσίας από το νόμο έχει τη νομική υποχρέωση να την ασκήσει.

(2) Δεν είναι επιτρεπτό το αρμόδιο διοικητικό όργανο να υποκαθίσταται ή να κατευθύνεται στην άσκηση της διακριτικής του εξουσίας από άλλο όργανο.

(3) Δεν επιτρέπεται στο αρμόδιο όργανο να αποφασίζει εκ των προτέρων και κατά τρόπο γενικό τη διακριτική του εξουσία για τις περιπτώσεις που θα παρουσιαστούν στο μέλλον.

(4) Δεν απαγορεύεται σε διοικητικό όργανο να ασκήσει τη διακριτική του εξουσία σε μια υπόθεση, με βάση γενική πολιτική ή κριτήρια που έχει προκαθορίσει το ίδιο για παρόμοιες υποθέσεις, εφόσον η πολιτική ή τα κριτήρια που έχει χαράξει συνάδουν με το νόμο, και να εξετάζει ιδιαίτερα κάθε υπόθεση που παρουσιάζεται ενώπιον του και πιο συγκεκριμένα να εξετάζει αν τα ιδιαίτερα περιστατικά της υπόθεσης δικαιολογούν απόκλιση από τη γενική πολιτική ή τα κριτήρια που χάραξε.

(5) Δεν απαγορεύεται στο αρμόδιο διοικητικό όργανο κατά την άσκηση της διακριτικής του εξουσίας να καθοδηγείται από εγκυκλίους ή γενικού χαρακτήρα διοικητικές οδηγίες που εκδίδονται από ιεραρχικά ανώτερα του όργανα και που καθορίζουν τη γενική πολιτική της κυβέρνησης σε ένα θέμα, εφόσον αυτές οι εγκυκλίους ή οι οδηγίες δε συγκρούονται με το νόμο.

(6) Επιτρέπεται στο αρμόδιο όργανο να ασκεί τη διακριτική του εξουσία με βάση τύπους και δεσμεύσεις που το ίδιο έχει καθορίσει και που δεν επιβάλλονται, αλλά ούτε απαγορεύονται από το νόμο.

²⁴⁸ Επαρκής έρευνα

45.—(1) Η διοίκηση, κατά την άσκηση της διακριτικής της εξουσίας, οφείλει να προβαίνει σε επαρκή έρευνα όλων των σχετικών με την υπόθεση γεγονότων.

(2) Η έκταση της έρευνας εξαρτάται από τα περιστατικά κάθε υπόθεσης. Στο αρμόδιο διοικητικό όργανο εναπόκειται να επιλέξει τον ενδεδειγμένο τρόπο διεξαγωγής της έρευνας. Η έρευνα μπορεί να διεξαχθεί είτε από το αρμόδιο διοικητικό όργανο είτε διά μέσου άλλου οργάνου ή προσώπου.

The 2012 Law on Administrative Cooperation in the Tax Sector (205(I)/2012)

Part II Exchange of Information

Request for information

- 6.²⁴⁹ (1) Upon request by the requesting authority, the receiving authority in the Republic shall notify the requesting authority of any information specified in subsection (1) of article 3 that it possesses or that comes to it as a result of administrative investigations.
- (2) The authority receiving the request in the Republic shall arrange for the conduct of any administrative investigations, which are required for the gathering of the information.
- (3) The application may include a reasoned request for a specific administrative investigation. If the authority receiving the request in the Republic considers that it is not

²⁴⁹ ΜΕΡΟΣ ΙΙ ΑΝΤΑΛΛΑΓΗ ΠΛΗΡΟΦΟΡΙΩΝ

Αίτηση παροχής πληροφοριών

6. (1) Μετά από αίτηση της αιτούσας αρχής, η λαμβάνουσα την αίτηση αρχή στη Δημοκρατία γνωστοποιεί στην αιτούσα αρχή οποιαδήποτε πληροφορία καθορίζεται στο εδάφιο (1) του άρθρου 3 την οποία διαθέτει ή η οποία περιέρχεται σε αυτήν ως

(3) Η αίτηση δύναται να περιλαμβάνει αιτιολογημένο αίτημα για τη διενέργεια συγκεκριμένης διοικητικής έρευνας. Εάν η λαμβάνουσα την αίτηση αρχή στη Δημοκρατία θεωρεί ότι δεν είναι αναγκαία η διενέργεια διοικητικής έρευνας, πληροφορεί αμέσως την αιτούσα αρχή για τους λόγους άρνησης ικανοποίησης του αιτήματός της.

(4) Για σκοπούς συγκέντρωσης των αιτούμενων πληροφοριών ή διεξαγωγής της αιτούμενης διοικητικής έρευνας, η λαμβάνουσα την αίτηση αρχή στη Δημοκρατία ακολουθεί τις ίδιες διαδικασίες όπως όταν ενεργεί με δική της πρωτοβουλία ή κατόπιν αιτήματος άλλης αρχής της Δημοκρατίας.

(5) Σε περίπτωση συγκεκριμένου αιτήματος από την αιτούσα αρχή, η λαμβάνουσα την αίτηση αρχή στη Δημοκρατία κοινοποιεί τα πρωτότυπα έγγραφα, εφόσον αυτό δεν είναι αντίθετο προς τις διατάξεις οι οποίες ισχύουν στη Δημοκρατία.

(6) Η λαμβάνουσα την αίτηση αρχή στη Δημοκρατία παρέχει τις πληροφορίες το συντομότερο δυνατόν, και οπωσδήποτε εντός έξι μηνών από την ημερομηνία λήξης του αιτήματος:

Νοείται ότι, αν η λαμβάνουσα την αίτηση αρχή στη Δημοκρατία διαθέτει ήδη τις πληροφορίες αυτές, τότε τις διαβιβάζει εντός δύο μηνών από την ημερομηνία λήξης της αίτησης.

(7) Σε συγκεκριμένες ειδικές περιπτώσεις, η λαμβάνουσα την αίτηση αρχή και η αιτούσα αρχή δύνανται να συμφωνούν προθεσμίες διαφορετικές από αυτές που προβλέπονται στο εδάφιο (6).

(8) Η λαμβάνουσα την αίτηση αρχή στη Δημοκρατία επιβεβαιώνει στην αιτούσα αρχή τη λήψη του αιτήματος αμέσως και οπωσδήποτε εντός επτά (7) εργάσιμων ημερών από τη λήψη αυτού, στο βαθμό που είναι δυνατό με ηλεκτρονικά μέσα.

(9) Εντός ενός (1) μηνός από τη λήψη της αίτησης, η λαμβάνουσα την αίτηση αρχή στη Δημοκρατία γνωστοποιεί στην αιτούσα αρχή τυχόν ελλείψεις της αίτησης και την ανάγκη παροχής συμπληρωματικών πληροφοριών. Σε τέτοια περίπτωση, οι προθεσμίες που προβλέπονται στο εδάφιο (6) αρχίζουν την επόμενη μέρα λήξης των απαιτούμενων συμπληρωματικών πληροφοριών.

(10) Όταν η λαμβάνουσα την αίτηση αρχή στη Δημοκρατία δεν είναι σε θέση να απαντήσει στην αίτηση εντός της σχετικής προθεσμίας, ενημερώνει την αιτούσα αρχή αμέσως και οπωσδήποτε εντός τριών (3) μηνών από τη λήψη της αίτησης για τους λόγους μη έγκαιρης απάντησης και για την ημερομηνία έως την οποία θεωρεί ότι ενδεχομένως θα είναι σε θέση να απαντήσει.

(11) Όταν η λαμβάνουσα την αίτηση αρχή στη Δημοκρατία δεν διαθέτει τις ζητούμενες πληροφορίες και δεν είναι σε θέση να απαντήσει στην αίτηση παροχής πληροφοριών ή αρνείται να απαντήσει για τους λόγους που προβλέπονται στο άρθρο 14, ενημερώνει την αιτούσα αρχή για τους λόγους αυτούς το συντομότερο δυνατό, και οπωσδήποτε εντός ενός (1) μηνός από τη λήψη της αίτησης.

necessary to conduct an administrative investigation, it immediately informs the requesting authority of the reasons for refusing to satisfy its request.

(4) For the purposes of gathering the requested information or conducting the requested administrative investigation, the authority receiving the request in the Republic follows the same procedures as when it acts on its own initiative or at the request of another authority of the Republic.

(5) In case of a specific request from the requesting authority, the authority receiving the request shall notify the Republic of the original documents, as long as this is not contrary to the provisions in force in the Republic.

(6) The authority receiving the request in the Republic shall provide the information as soon as possible, and in any case within six months from the date of receipt of the request:

Provided that, if the authority receiving the application in the Republic already has this information, then it transmits it within two months from the date of receipt of the application.

(7) In specific special cases, the authority receiving the request and the requesting authority may agree on deadlines different from those provided for in subsection (6).

(8) The authority receiving the request in the Republic confirms to the requesting authority the receipt of the request immediately and in any case within seven (7) working days of receiving it, to the extent possible by electronic means.

(9) Within one (1) month of receiving the application, the authority receiving the application in the Republic shall notify the requesting authority of any deficiencies in the application and the need to provide additional information. In such a case, the deadlines provided for in subsection (6) begin on the day following receipt of the required additional information.

(10) When the authority receiving the application in the Republic is unable to respond to the application within the relevant deadline, it shall inform the requesting authority immediately and in any case within three (3) months of receiving the application of the reasons for not responding in time and for the date by which he thinks he may be able to respond.

(11) When the authority receiving the request in the Republic does not have the requested information and is unable to respond to the request for information or refuses to respond for the reasons provided for in article 14, it shall inform the requesting authority of these reasons as soon as possible, and definitely within one (1) month of receiving the application.

The following Acts may apply as well:

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The Tax Department Law of 2014 (Law 70(I)/2014)²⁵⁰
The Law on Consumption Taxes of 2004 (Law 91(I)/2004)²⁵¹
The Value Added Tax Law of 2000 (Law 95(I)/2000)²⁵²

[Article 6 Access to information in databases prior to the opening of an investigation] Not analysed here.

5. Article 7 Investigations procedure

Art. 7 Investigations procedure

[...] 3. The competent authorities of Member States shall give the necessary assistance to enable the staff of the Office to fulfil their tasks in accordance with this Regulation effectively and without undue delay. When providing such assistance, the competent authorities of Member States shall *act in accordance with any national procedural rules applicable to them*.

3a. At the request of the Office, which shall be explained in writing, in relation to matters under investigation, the relevant competent authorities of the Member States shall, *under the same conditions as those that apply to the national competent authorities*, provide the Office with the following:

- (a) information available in the centralised automated mechanisms referred to in Article 32a(3) of Directive (EU) 2015/849 of the European Parliament and of the Council (4);
- (b) where strictly necessary for the purposes of the investigation, the record of transactions.

The request of the Office shall include a justification of the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation. Such request shall refer only to information referred to in points (a) and (b) of the first subparagraph.

Member States shall notify to the Commission the relevant competent authorities for the purposes of points (a) and (b) of the first subparagraph.

6. Where investigations show that it might be appropriate to take precautionary administrative measures to protect the financial interests of the Union, the Office shall without delay inform the institution, body, office or agency concerned of the investigation in progress. The information supplied shall include the following:

- (a) the identity of the official, other servant, member of an institution or body, head of office or agency, or staff member concerned and a summary of the facts in question;

²⁵⁰ http://www.cylaw.org/nomoi/indexes/2014_1_70.html.

²⁵¹ http://www.cylaw.org/nomoi/indexes/2004_1_91.html.

²⁵² http://www.cylaw.org/nomoi/indexes/2000_1_95.html.

(b) any information that could assist the institution, body, office or agency concerned in deciding on the appropriate precautionary administrative measures to be taken in order to protect the financial interests of the Union;

(c) any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or, in the case of an external investigation, within the competence of a national authority, ***in accordance with the national rules applicable to investigations.***

The institution, body, office or agency concerned may at any time consult the Office with a view to taking, in close cooperation with the Office, any appropriate precautionary measures, including measures for the safeguarding of evidence. The institution, body, office or agency concerned shall inform the Office without delay about any precautionary measures taken.

7. Where necessary, it shall be for the competent authorities of the Member States, at the Office's request, to take the ***appropriate precautionary measures under their national law***, in particular measures for the safeguarding of evidence.

a) References to national law

Sources & national sections 4 Art. 7 OLAF Regulation

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Para 3	<p>See: The 2012 Law on Administrative Cooperation in the Tax Sector (205(I)/2012) and: The Consumption Tax Law of 2004 (91(I)/2004) e.g.</p> <p>Part XIV Special Provisions Collaboration and information sharing</p> <p>121. Regardless of the provisions of any legislation regarding the protection of tax or administrative secrets, the Customs, in accordance with the provisions of Regulation (EU) no. 389/2012 of the Council of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) no. 2073/2004, cooperates and exchanges with the competent authorities of member states of the European Union, any information that allows the correct application of excise taxes on energy products and electricity, on alcohol and alcoholic beverages and on manufactured tobacco.</p> <p>Sampling and information sharing</p> <p>122. (1) The Customs provides mutual assistance to the competent authorities of the other member states of the European Union, carries out sample checks in order to establish the regularity of the intra-Community movement of the harmonized products and announces the findings, documents</p>
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	<p>and other information related to the transfers of the products, as well as any irregularities or violations during the intra-Community trade of said products.</p> <p>(2) The Customs, in the context of the above sample checks, may exchange information in addition to that contained in the Data Register provided for by article 14 of this Law. The exchange of this information is governed by the provisions of Regulation (EU) no. 389/2012 of the Council of May 2, 2012 on administrative cooperation in the field of excise duties and the repeal of Regulation (EC) no. 2073/2004.</p>
<p>Para 3a (a) (b)</p>	<p>The 2012 Law on Administrative Cooperation in the Tax Sector (205(I)/2012)</p> <p>Part II Exchange Of Information</p> <p>Request for information</p> <p>6. (1) Upon request by the requesting authority, the receiving authority in the Republic shall notify the requesting authority of any information specified in subsection (1) of article 3 that it possesses or that comes to it as a result of administrative investigations.</p> <p>(2) The authority receiving the request in the Republic shall arrange for the conduct of any administrative investigations, which are required for the gathering of the information.</p> <p>(3) The application may include a reasoned request for a specific administrative investigation. If the authority receiving the request in the Republic considers that it is not necessary to conduct an administrative investigation, it immediately informs the requesting authority of the reasons for refusing to satisfy its request.</p> <p>(4) For the purposes of gathering the requested information or conducting the requested administrative investigation, the authority receiving the request in the Republic follows the same procedures as when it acts on its own initiative or at the request of another authority of the Republic.</p> <p>(5) In case of a specific request from the requesting authority, the authority receiving the request shall notify the Republic of the original documents, as long as this is not contrary to the provisions in force in the Republic.</p> <p>(6) The authority receiving the request in the Republic shall provide the information as soon as possible, and in any case within six months from the date of receipt of the request:</p>

Provided that, if the authority receiving the application in the Republic already has this information, then it transmits it within two months from the date of receipt of the application.

(7) In specific special cases, the authority receiving the request and the requesting authority may agree on deadlines different from those provided for in subsection (6).

(8) The authority receiving the request in the Republic confirms to the requesting authority the receipt of the request immediately and in any case within seven (7) working days of receiving it, to the extent possible by electronic means.

(9) Within one (1) month of receiving the application, the authority receiving the application in the Republic shall notify the requesting authority of any deficiencies in the application and the need to provide additional information. In such a case, the deadlines provided for in subsection (6) begin on the day following receipt of the required additional information.

(10) When the authority receiving the application in the Republic is unable to respond to the application within the relevant deadline, it shall inform the requesting authority immediately and in any case within three (3) months of receiving the application of the reasons for not responding in time and for the date by which he thinks he may be able to respond.

(11) When the authority receiving the request in the Republic does not have the requested information and is unable to respond to the request for information or refuses to respond for the reasons provided for in article 14, it shall inform the requesting authority of these reasons as soon as possible, and definitely within one (1) month of receiving the application.

Mandatory automatic exchange of information

7.²⁵³ (1) The competent authority of the Republic communicates to the competent authority of each other member state, by automatic exchange,

²⁵³ Υποχρεωτική αυτόματη ανταλλαγή πληροφοριών

7. (1) Η αρμόδια αρχή της Δημοκρατίας κοινοποιεί στην αρμόδια αρχή κάθε άλλου κράτους μέλους, με αυτόματη ανταλλαγή, διαθέσιμες πληροφορίες που αφορούν φορολογικές περιόδους από την 1η Ιανουαρίου 2014 και μετέπειτα σχετικά με άτομα που κατοικούν σε αυτό το άλλο κράτος μέλος, όσον αφορά τις ακόλουθες συγκεκριμένες κατηγορίες εισοδήματος και κεφαλαίου:

α) Εισόδημα από απασχόληση·

β) αμοιβές διοικητικών στελεχών·

γ) προϊόντα ασφάλειας ζωής που δεν καλύπτονται από άλλες νομικές πράξεις της Ευρωπαϊκής Ένωσης για την ανταλλαγή πληροφοριών και άλλα παρόμοια μέτρα·

δ) συντάξεις·

ε) κυριότητα ακίνητης περιουσίας και εισόδημα από αυτήν.

Για τους σκοπούς του παρόντος εδαφίου, «διαθέσιμες πληροφορίες» σημαίνει τις πληροφορίες στα φορολογικά αρχεία της Δημοκρατίας οι οποίες μπορούν να ανακτηθούν σύμφωνα με τις προβλεπόμενες στη Δημοκρατία διαδικασίες για τη συλλογή και επεξεργασία πληροφοριών.

(2) Πριν από την 1η Ιανουαρίου 2014, η Δημοκρατία ενημερώνει την Επιτροπή σχετικά με τις κατηγορίες που απαριθμούνται στο εδάφιο (1) και για τις οποίες διαθέτει πληροφορίες και γνωστοποιεί στην Επιτροπή οποιεσδήποτε μεταγενέστερες μεταβολές.

(3) Η αρμόδια αρχή της Δημοκρατίας δύναται να δηλώνει στην αρμόδια αρχή οποιουδήποτε άλλου κράτους μέλους ότι δεν επιθυμεί να λαμβάνει πληροφορίες για μία ή μερικές από τις κατηγορίες εισοδήματος και κεφαλαίου που αναφέρονται στο εδάφιο (1). Ενημερώνει δε σχετικά και την Επιτροπή. Η Δημοκρατία ή οποιοδήποτε άλλο κράτος μέλος δύναται να θεωρηθεί ότι δεν επιθυμούν να λαμβάνουν πληροφορίες σύμφωνα με το εδάφιο (1) εάν δεν ενημερώσουν την Επιτροπή για οποιαδήποτε συγκεκριμένη κατηγορία, για την οποία διαθέτουν πληροφορίες.

(3Α)(α) Τα Δηλούντα Κυπριακά Χρηματοοικονομικά Ιδρύματα οφείλουν να υποβάλλουν τα στοιχεία και να τηρούν τους κανόνες δέουσας επιμέλειας που αναφέρονται στο Παράρτημα I και στο Παράρτημα II.

(β) Δυνάμει των εφαρμοστέων κανόνων υποβολής στοιχείων και δέουσας επιμέλειας που αναφέρονται στο Παράρτημα I και στο Παράρτημα II, η αρμόδια αρχή της Δημοκρατίας γνωστοποιεί στην αρμόδια αρχή οποιουδήποτε άλλου κράτους μέλους, με αυτόματη ανταλλαγή και εντός της προθεσμίας που ορίζεται στην παράγραφο (β) του εδαφίου (5), τις ακόλουθες πληροφορίες που αφορούν φορολογικές περιόδους από την 1η Ιανουαρίου 2016 και μετέπειτα, όσον αφορά ένα Δηλωτέο Λογαριασμό:

(i) το όνομα, τη διεύθυνση, τον/τους Αριθμό(ούς) Φορολογικής Ταυτότητας (ΑΦΤ) και την ημερομηνία και τον τόπο γέννησης, στην περίπτωση φυσικού προσώπου, κάθε Δηλωτέου Προσώπου που είναι Δικαιούχος Λογαριασμού και, στην περίπτωση Οντότητας η οποία είναι Δικαιούχος Λογαριασμού και για την οποία, κατόπιν εφαρμογής κανόνων δέουσας επιμέλειας σύμφωνων προς το Παράρτημα I και το Παράρτημα II, διαπιστώνεται ότι διαθέτει ένα ή περισσότερα Ελέγχοντα Πρόσωπα που είναι Δηλωτέα Πρόσωπα, την επωνυμία, τη διεύθυνση και τον/τους Αριθμό(ούς) Φορολογικής Ταυτότητας (ΑΦΤ) της Οντότητας, καθώς και το όνομα, τη διεύθυνση, τον/τους Αριθμό(ούς) Φορολογικής Ταυτότητας (ΑΦΤ) και την ημερομηνία και τον τόπο γέννησης κάθε Δηλωτέου Προσώπου·

(ii) τον αριθμό λογαριασμού ή το λειτουργικό ισοδύναμο ελλείψει αριθμού λογαριασμού·

(iii) την επωνυμία και τον αριθμό ταυτοποίησης, εάν υπάρχει, του Δηλούντος Κυπριακού Χρηματοοικονομικού Ιδρύματος·

(iv) το υπόλοιπο ή την αξία του λογαριασμού, περιλαμβανομένης στην περίπτωση του Ασφαλιστήριου Συμβολαίου με Αξία Εξαγοράς ή της Σύμβασης Ετήσιων Αποζημιώσεων, της αξίας εξαγοράς κατά τη λήξη ή της τιμής εξαγοράς, σε περίπτωση πρόωρης λύσης του Συμβολαίου, στο τέλος του σχετικού ημερολογιακού έτους ή άλλης αντίστοιχης περιόδου υποβολής στοιχείων ή το κλείσιμο του λογαριασμού, εάν ο λογαριασμός έκλεισε κατά τη διάρκεια του έτους αυτού ή της περιόδου αυτής·

(v) σε περίπτωση Λογαριασμού Θεματοφυλακής:

(iα) το συνολικό ακαθάριστο ποσό των τόκων, το συνολικό ακαθάριστο ποσό των μερισμάτων και το συνολικό ακαθάριστο ποσό λοιπών εισοδημάτων που προέκυψαν σε σχέση με τα περιουσιακά στοιχεία που τηρούνται στον λογαριασμό, σε κάθε περίπτωση που καταβλήθηκαν ή πιστώθηκαν στον λογαριασμό ή σε σχέση με τον λογαριασμό κατά τη διάρκεια του ημερολογιακού έτους ή άλλης αντίστοιχης περιόδου υποβολής στοιχείων· και

(iβ) τα συνολικά ακαθάριστα έσοδα από την πώληση ή την εξαγορά Χρηματοοικονομικών Περιουσιακών Στοιχείων που καταβλήθηκαν ή πιστώθηκαν στον λογαριασμό κατά τη διάρκεια του ημερολογιακού έτους ή άλλης αντίστοιχης περιόδου υποβολής στοιχείων για τα οποία το Δηλούν Κυπριακό Χρηματοοικονομικό Ίδρυμα ενήργησε ως θεματοφύλακας, μεσάζων, εντολοδόχος ή διαφορετικά ως εξουσιοδοτημένος αντιπρόσωπος του Δικαιούχου Λογαριασμού·

(vi) στην περίπτωση Καταθετικού Λογαριασμού, το συνολικό ακαθάριστο ποσό των τόκων που καταβλήθηκε ή πιστώθηκε στον λογαριασμό κατά τη διάρκεια του ημερολογιακού έτους ή άλλης αντίστοιχης περιόδου υποβολής στοιχείων· και

(vii) σε περίπτωση λογαριασμού που δεν ορίζεται στις παραγράφους (v) ή (vi), το συνολικό ακαθάριστο ποσό που καταβλήθηκε ή πιστώθηκε στο Δικαιούχο Λογαριασμού σε σχέση με το λογαριασμό κατά τη διάρκεια του ημερολογιακού έτους ή άλλης αντίστοιχης περιόδου υποβολής στοιχείων, ως προς το οποίο το Δηλούν Κυπριακό Χρηματοοικονομικό Ίδρυμα είναι οφειλέτης ή χρεώστης, περιλαμβανομένου του συνολικού ποσού τυχόν

available information relating to tax periods from 1 January 2014 and thereafter regarding persons residing in that other member state, as far as it concerns the following specific categories of income and capital:

- a) Income from employment;
- b) directors' fees;
- c) life insurance products not covered by other legal acts of the European Union on the exchange of information and other similar measures;
- d) pensions;
- e) ownership of immovable property and income from it.

For the purposes of this subsection, "available information" means the information in the tax records of the Republic which can be retrieved in accordance with the procedures prescribed in the Republic for the collection and processing of information.

πληρωμών εξόφλησης προς το Δικαιούχο Λογαριασμού κατά τη διάρκεια του ημερολογιακού έτους ή άλλης αντίστοιχης περιόδου υποβολής στοιχείων.

(γ) Για την ανταλλαγή πληροφοριών στο πλαίσιο του παρόντος εδαφίου, εκτός εάν προβλέπεται διαφορετικά στο παρόν εδάφιο ή στο Παράρτημα I και στο Παράρτημα II, το ποσό και ο χαρακτηρισμός των πληρωμών που πραγματοποιούνται σε σχέση με Δηλωτέο Λογαριασμό, καθορίζονται σύμφωνα με την νομοθεσία της Δημοκρατίας ή την εθνική νομοθεσία του κράτους μέλους που γνωστοποιεί τις πληροφορίες, ανάλογα με την περίπτωση.

(δ) Οι παράγραφοι (α) και (β) του εδαφίου (3Α) υπερισχύουν της παραγράφου (γ) του εδαφίου (1) ή κάθε άλλης ενωσιακής νομικής πράξης, περιλαμβανομένης της Οδηγίας 2003/48/ΕΚ του Συμβουλίου και των συναφών εναρμονιστικών προς αυτήν διατάξεων δυνάμει των διατάξεων του περί Βεβαιώσεως και Εισπράξεως Φόρων Νόμου και των περί Βεβαιώσεως και Εισπράξεως Φόρων (Παροχή Πληροφοριών αναφορικά με Τόκους) Κανονισμών, στο βαθμό που η σχετική ανταλλαγή πληροφοριών εμπίπτει στο πεδίο εφαρμογής της παραγράφου (γ) του εδαφίου (1) ή άλλης ενωσιακής νομικής πράξης, περιλαμβανομένης της Οδηγίας 2003/48/ΕΚ και των συναφών εναρμονιστικών προς αυτήν διατάξεων δυνάμει των διατάξεων του περί Βεβαιώσεως και Εισπράξεως Φόρων Νόμου και των περί Βεβαιώσεως και Εισπράξεως Φόρων (Παροχή Πληροφοριών αναφορικά με Τόκους) Κανονισμών.

(3B) Τα Δηλούντα Κυπριακά Χρηματοοικονομικά Ιδρύματα οφείλουν να εγγραφούν στην αρμόδια αρχή ως Δηλούντα Κυπριακά Χρηματοοικονομικά Ιδρύματα δυνάμει των διατάξεων του παρόντος Νόμου, σύμφωνα με τον τύπο και τις διαδικασίες που προβλέπονται σε Διάταγμα που εκδίδεται από τον Υπουργό. (4) [Διαγράφηκε]. (5) Η γνωστοποίηση πληροφοριών πραγματοποιείται από την αρμόδια αρχή της Δημοκρατίας ως ακολούθως: (α) όσον αφορά τις κατηγορίες που ορίζονται στο εδάφιο (1), αυτές γνωστοποιούνται τουλάχιστον ανά έτος, εντός έξι (6) μηνών από το τέλος του φορολογικού έτους κατά τη διάρκεια του οποίου κατέστησαν διαθέσιμες· (β) όσον αφορά τις κατηγορίες που ορίζονται στο εδάφιο (3Α), αυτές γνωστοποιούνται ετησίως, εντός εννέα (9) μηνών από το τέλος του ημερολογιακού έτους ή άλλης αντίστοιχης περιόδου υποβολής στοιχείων που αφορούν οι πληροφορίες. (5Α)(α) Η αρμόδια αρχή αξιολογεί και καταχωρεί σε κατάλογο ο οποίος δημοσιεύεται στην Επίσημη Εφημερίδα της Ευρωπαϊκής Ένωσης τα Μη Δηλούντα Κυπριακά Χρηματοοικονομικά Ιδρύματα και τους Εξαιρούμενους Λογαριασμούς οι οποίοι πληρούν όλες τις προϋποθέσεις που αναφέρονται στο Τμήμα VIII παράγραφος Β υποπαράγραφος 1 στοιχείο (γ) και παράγραφος Γ υποπαράγραφος 17 στοιχείο (ζ) του Παραρτήματος I. (β) Η αρμόδια αρχή κατά την αξιολόγηση που προβλέπεται στην παράγραφο (α) εξετάζει και διαπιστώνει ότι το καθεστώς ενός Χρηματοοικονομικού Ιδρύματος ως Μη Δηλούντος Κυπριακού Χρηματοοικονομικού Ιδρύματος ή το καθεστώς ενός λογαριασμού ως Εξαιρούμενου Λογαριασμού δεν παρακωλύει την επίτευξη των σκοπών του παρόντος Νόμου και της Οδηγίας 2014/107/ΕΕ. (6) Όταν η Δημοκρατία σε διμερείς ή πολυμερείς συμφωνίες που συνάπτει με άλλα κράτη μέλη συμφωνεί για την αυτόματη ανταλλαγή πληροφοριών σχετικά με πρόσθετες κατηγορίες εισοδήματος και κεφαλαίου, κοινοποιεί τις συμφωνίες αυτές στην Επιτροπή.

(2) Before January 1, 2014, the Republic shall inform the Commission of the categories listed in subsection (1) for which it has information and shall notify the Commission of any subsequent changes.

(3) The competent authority of the Republic may declare to the competent authority of any other member state that it does not wish to receive information on one or some of the categories of income and capital referred to in subsection (1). It also informs the Commission about this. The Republic or any other Member State may be deemed not to wish to receive information under subsection (1) if they do not inform the Commission of any particular category for which they have information.

(3A) (a) Reporting Cypriot Financial Institutions must submit the data and comply with the due diligence rules set out in Annex I and Annex II.

(b) Pursuant to the applicable data submission and due diligence rules referred to in Annex I and Annex II, the competent authority of the Republic shall notify the competent authority of any other Member State, by automatic exchange and within the deadline set out in paragraph (b) of subsection (5), the following information relating to tax periods on or after 1 January 2016, in respect of a Reportable Account:

(i) the name, address, Tax Identification Number(s) and date and place of birth, in the case of a natural person, of each Reportable Person who is an Account Beneficiary and, in the case of an Entity that is a Beneficiary; Account and for which, following the application of due diligence rules in accordance with Annex I and Annex II, it is established that it has one or more Controlling Persons who are Reportable Persons, the name, address and Tax Identification Number(s) (TIN) of the Entity, as well as the name, address, Tax Identification Number(s) and the date and place of birth of each Reportable Person;

(ii) the account number or the functional equivalent in the absence of an account number;

(iii) the name and identification number, if any, of the Reporting Cyprus Financial Institution;

(iv) the account balance or value, including in the case of a Cash Value Policy or Annual Indemnity Contract, the cash value at maturity or the cash value, in the event of early termination of the Policy, at the end of the relevant calendar year or other corresponding reporting period or the closing of the account, if the account was closed during that year or such period;

(v) in the case of a Custodial Account:

(i) the aggregate gross amount of interest, aggregate gross amount of dividends and aggregate gross amount of other income arising in respect of the

assets held in the account, in each case paid or credited to the account or in respect of account during the calendar year or other corresponding reporting period; and

(ib) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other corresponding reporting period for which the Reporting Cyprus Financial Institution acted as custodian, intermediary, trustee or otherwise as an authorized representative of the Account Beneficiary;

(vi) in the case of a Deposit Account, the total gross amount of interest paid or credited to the account during the calendar year or other corresponding reporting period; and

(vii) in the case of an account not set out in clauses (v) or (vi), the total gross amount paid or credited to the Account Holder in respect of the account during the calendar year or other relevant reporting period, in respect of of which the Declaring Cyprus Financial Institution is a debtor or creditor, including the total amount of any repayment payments to the Account Holder during the calendar year or other corresponding reporting period.

(c) For the exchange of information under this subsection, except as otherwise provided in this subsection or in Schedule I and Schedule II, the amount and characterization of payments made in connection with a Reportable Account shall be determined in accordance with the law of Republic or the national legislation of the Member State disclosing the information, as the case may be.

(d) Paragraphs (a) and (b) of subsection (3A) take precedence over paragraph (c) of subsection (1) or any other Union legal act, including Council Directive 2003/48/EC and the relevant harmonizations thereto provisions pursuant to the provisions of the Tax Certification and Collection Law and the Tax Certification and Collection (Provision of Information Regarding Interest) Regulations, to the extent that the relevant exchange of information falls within the scope of paragraph (c) of subsection (1) or another Union legal act, including Directive 2003/48/EC and the relevant harmonizing provisions to it by virtue of the provisions of the Law on Certification and Collection of Taxes and the Certification and Collection of Taxes (Provision of Information Regarding Interest) Regulations.

(3B) Declaring Cypriot Financial Institutions must register with the competent authority as Declaring Cypriot Financial Institutions pursuant to the provisions of this Law, in accordance with the form and procedures provided for in a Decree issued by the Minister.

<p>Para 6 (c)</p>	<p>(4) [Deleted].</p> <p>(5) The disclosure of information is carried out by the competent authority of the Republic as follows:</p> <p>(a) with respect to the categories defined in subsection (1), these are disclosed at least annually, within six (6) months of the end of the tax year during which they became available;</p> <p>(b) in respect of the categories set out in subsection (3A), these are disclosed annually, within nine (9) months of the end of the calendar year or other corresponding reporting period to which the information relates.</p> <p>(5A) (a) The competent authority assesses and registers in a list which is published in the Official Journal of the European Union the Non-Reporting Cypriot Financial Institutions and the Excluded Accounts which meet all the conditions referred to in Section VIII paragraph B subparagraph 1 item (c) and paragraph C subparagraph 17 item (g) of Annex I.</p> <p>(b) The competent authority during the evaluation provided for in paragraph (a) examines and finds that the status of a Financial Institution as a Non-Reporting Cypriot Financial Institution or the status of an account as an Excluded Account does not hinder the achievement of the purposes of this Law and Directive 2014/107/EU.</p> <p>(6) When the Republic, in bilateral or multilateral agreements it concludes with other member states, agrees on the automatic exchange of information on additional categories of income and capital, it shall notify these agreements to the Commission.</p> <p>The General Principles of Administrative Law, Law of 1999 (158(I)/1999)</p> <p>The Consumption Tax Law of 2004 (91(I)/2004)</p>
<p>Para 7</p>	<p>The Consumption Tax Law of 2004 (91(I)/2004)</p> <p>Part XV General Powers etc.</p> <p>E.g.: Power to search premises in which anything subject to confiscation is found</p> <p>134. (1) Notwithstanding any other power granted by this Law, if there is a reasonable suspicion that any products subject to confiscation under this Law, or any record, book, document or item, even if kept in computerized form, related to the commission of an offence, is kept or concealed in any premises, with the exception of a residence, any authorized officer may enter such premises, at any time, during the day or night, and inspect, search, detain, confiscate as subject to confiscation or move any such products or detain or confiscate any records, books, documents or data, even if</p>

kept in computerized form, and in addition, to the extent reasonably necessary for this purpose, to breach any door, window or container as well as to breach and move any other obstruction that occurs.

(2) The provisions of subsections (3) to (6) of article 133 are applied by analogy and for the purposes of this article.

The Customs Code Law of 2004 (94(I)/2004)

Part XX Provisions Relating To Seizure Of Goods And Means Of Transport

103. Provisions concerning the detention, seizure and confiscation of goods

104. Detention or confiscation of goods as subject to confiscation

105. General provision for confiscation of goods

106. Confiscation of goods in case of false declaration about their final destination

107. Special provision for confiscation of larger ships

108. Confiscation of ship or aircraft or vehicle constructed for concealment of imported goods

109. Confiscation of ship discharging cargo

110. Confiscation of ship or aircraft where loss of cargo cannot be explained

111. Confiscation of goods in case of negligence or refusal to pay amount due to duties or taxes

111A. Freeze and confiscation of amounts held in bank accounts

111B. Registration of a lien on immovable property for duties or taxes due

Source: The authors.

b) References to national authorities

- Competent administrative body
- Customs Department

2

6. Article 8 (Duty to inform the Office)

Art. 8 (Duty to inform the Office)

[...] 2. The institutions, bodies, offices and agencies and, unless *prevented by national law*, the *competent authorities of the Member States* shall, at the request of the Office or on their own initiative, transmit without delay to the Office any document or information they hold which relates to an ongoing investigation by the Office. [...]

3. The institutions, bodies, offices and agencies and, unless *prevented by national law*, the *competent authorities of Member States* shall transmit without delay to the Office, at the request of the Office or on their own initiative, any other information, documents or data considered pertinent which they hold, relating to the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

- 1 A report obligation can at least be determined from the principle of sincere cooperation with Union bodies, cf. Art. 4 Para 3 TEU. This principle applies in all areas of potential irregularities and frauds (for the typology of EU frauds see the EU Fraud Commentary and see above → Art. 26 EPPO Regulation, where the material scope of the EPPO is determined). Additionally, Art. 12a in combination with Art. 8 para 2 and 3 OLAF Regulation 883/2013 obliges the AFCOS of the present Member State to report to OLAF any of the requested material.
- 2 The obligations exist throughout the different areas of irregularities (tax revenue related, customs revenue related; tax expenditure related i.e. structural funds area, direct grants etc.) and are therefore enshrined in different national laws. The competent authorities of the Member States are either the same that can conduct external investigations (in cases of resistance, *Sigma Orionis*²⁵⁴) or those that must be informed by the Director General if he/she decides not open a case according to Art. 5 Para 5 OLAF Regulation No 883/2013 as amended 2020/2223.
- 3 Art. 24 para 4 of the General Administrative Law of Cyprus for example refers to the special protection of confidential data. These kinds of rules can hinder national authorities to supply OLAF with information.²⁵⁵
- 4 Another example from national law is the Law on Administrative Cooperation in Tax Sector:

²⁵⁴ See Art 3 OLAF Regulation above in this Chapter.

²⁵⁵ (4) The minutes of the relevant decisions or part thereof are excluded from the obligation to make public, provided for in subsection (3) of this article-

(a) relating to matters of a confidential nature, including confidential matters of national security, defence, international relations, and/or

(b) containing personal data for the disclosure of which the provisions of the Personal Data Processing (Protection of the Individual) Law, as amended or replaced from time to time, must be observed.

Part IV Terms Governing Administrative Cooperation**Disclosure of information and documents**

13. (1) The information communicated to the Republic by another member state in any form is covered by the obligation to observe professional secrecy and receives the protection provided for such information by the legislative, regulatory provisions and administrative practices that apply in the Republic.

(2) The information referred to in subsection (1) may be used as follows:

(a) To implement and enforce the laws of the Republic regarding the taxes covered by article 4;

(b) for the determination and imposition of other taxes and duties covered by article 4 of the Mutual Assistance for the Collection of Claims Related to Taxes, Duties and Other Measures Law, as amended or replaced from time to time, as well as for the determination and the imposition of compulsory social security contributions;

(c) in the case of judicial or administrative proceedings that may attract sanctions, when such proceedings are initiated following violations of tax legislation, without affecting the general rules and provisions governing the rights of defendants and witnesses in such proceedings.

(3) With the permission of the competent authority of the Republic which discloses information in accordance with this Law and to the extent that this is permitted under the legislation of the Member State of the competent authority receiving the information, the information and documents received in accordance with this Law, may be used for purposes other than those referred to in subsection (2). This permission is granted if the information can be used for similar purposes in the Republic.

(4) When the competent authority in the Republic considers that the information it received from the competent authority of another member state may be useful for the purposes referred to in subsection (2) to the competent authority of a third member state, it may transmit it to this last competent authority, provided that this transfer is in accordance with the rules and procedures provided for in this Law. In such a case, the competent authority of the Republic informs the competent authority of the Member State from which the information originated regarding its intention to disclose the information to a third Member State.

Provided that, the permission for the use according to subsection (3) of information, which has been transmitted in accordance with this subsection can only be granted by the competent authority of the member state from which the information originated.

(5) All competent authorities in the Republic may invoke information, reports, statements and any other document, or certified true copies or extracts thereof, which have been notified to the Republic in accordance with this Law, as evidence under the same

conditions as they refer to similar information, reports, statements and any other documents, which are provided by another authority of the Republic.

(6) Without prejudice to subsections (1) to (4), the information communicated between Member States in accordance with the provisions of Article 7C shall be used for the purposes of assessing high risks in relation to transfer prices and other risks in relation to the tax base erosion and profit shifting, including the assessment of the risk of non-compliance of PE Group members with the applicable transfer pricing rules and where appropriate for economic and statistical analyses; transfer pricing corrections by the tax authorities of the receiving Member State are not based on the information exchanged in accordance with the provisions of Article 7C:

It is understood that, regardless of the above, no limitation exists regarding the use of the information communicated between member states in accordance with the provisions of article 7C, as a basis for carrying out further investigations regarding the arrangements of the PE Group for transfer prices or with respect to other tax matters in the context of the tax audit and, accordingly, appropriate adjustments may be made to the taxable income of a Constituent Entity.

II. References to National law in the OLAF Regulation (Art. 9–17 OLAF Regulation)

1. Article 9 (Procedural guarantees)

Art. 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)

The remit of a national judicial authority is displayed by its foundation, the legal scope and the provisions concerning its scope. National judicial authorities are authorities that can decide and judge a subject matter and even, if following the rules and acting according to the law, decide on matters to follow-up the case. Judicial authorities that can conduct investigations on their own are limited. Foremost the courts acting only following an accusation or a file brought by the prosecution offices, offices powered to conduct administrative fine proceedings and other proceedings leading to a sanctioning procedure. 1

In criminal matters the judicial authorities include thus the criminal courts and the prosecution offices. The second instance is provided for by the Higher Regional Court and finally the Supreme Court is the highest judicial authority in matters falling within the jurisdiction of courts in civil and criminal proceedings, with the exception of matters decided by the Constitutional Court and the Supreme Administrative Court. 2

In administrative matters the administrative courts, the higher administrative court and the Supreme Administrative Court are competent to judge on cases. 3

Finally the Supreme Court primarily conducts proceedings on extraordinary remedies. 4

b) Art. 9 Para 4 (National judicial authorities)

See above for the competent authorities → Art. 3 OLAF. 5

2. Article 10 (Confidentiality and data protection)

Art. 10 (Confidentiality and data protection)

[...] 3. The institutions, bodies, offices or agencies concerned shall ensure that the confidentiality of the investigations conducted by the Office is respected, together with the legitimate rights of the persons concerned, and, where judicial proceedings have been initiated, that *all national rules applicable to such proceedings* have been adhered to. [...]

- 1 The Court Procedure Act applies.
- 2 The General Data Protection Regulation (GDPR 2016) applies.
- 3 The Customs Code and the Tax Code contain own rules (see above → Art. 3 OLAF Regulation).

3. Article 11 (Investigation report and action to be taken following investigations)

Article 11 (Investigation report and action to be taken following investigations)

[...] 2. In drawing up the reports and recommendations referred to in paragraph 1, account shall be taken of the relevant provisions of Union law and, in so far as it is applicable, *of the national law of the Member State concerned*.

Reports drawn up on the basis of the first subparagraph, together with all evidence in support and annexed thereto, shall constitute admissible evidence:

(a) in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States;

(b) in criminal proceedings of the Member State in which their use proves necessary in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors and shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall have the same evidentiary value as such reports;

(c) in judicial proceedings before the CJEU and in administrative proceedings in the institutions, bodies, offices and agencies.

Member States shall notify to the Office *any rules of national law relevant* for the purposes of point (b) of the second subparagraph.

With regard to point (b) of the second subparagraph, Member States shall, upon request of the Office, send to the Office the *final decision of the national courts* once the *relevant judicial proceedings* have been finally *determined* and the final court decision has become *public*.

The power of the CJEU and national courts and competent bodies *in administrative and criminal proceedings to freely assess the evidential value* of the reports drawn up by the Office shall not be affected by this Regulation. [...]

3. Reports and recommendations drawn up following an external investigation and any relevant related documents shall be sent to the **competent authorities of the Member States** concerned in accordance with the rules relating to external investigations and, if necessary, to the institution, body, office or agency concerned. The competent authorities of the Member State concerned and, if applicable, the institution, body, office or agency shall take such action as the results of the external investigation warrant and shall report thereon to the Office within a time limit laid down in the recommendations accompanying the report and, in addition, at the request of the Office. Member States may notify to the Office the relevant national authorities competent to deal with such reports, recommendations and documents.

a) References to national law

Sources & national sections 5 Art. 11 OLAF Regulation

1

Para 2	This concerns the General Administrative Law, the VAT Law 1995, the Customs Law, the Income Tax Act, the Evidence Law, the CPC (Chapter 155 Laws of Cyprus).
Para 2 (a)	Art. 43 of the General Administrative Act holds provisions to the right to be heard. The General Administrative Act provides for provisions that ask for good research and investigation and hold concerning evidence in this regard: “158(I)/1999 Subsequent reasoning 30. In urgent cases, the administration is permitted, exceptionally, to justify its act afterwards, but based on evidence and facts that existed before the act and which can be deduced from the administrative file.”
Para 2 (b)	The rules on evidence in Criminal Matters in Cyprus are regulated by Chapter 144 Laws of Cyprus. Ss. 49 et seq. CPC contain provisions on the examination of witnesses (e.g. about information within a report): <ul style="list-style-type: none"> - Compulsion to appear and examine witnesses - 49. Issuance of witness summons - 50. Warrant for witness - 51. Testimony at adjourned hearing - 52. Penalty for witness refusing to attend - 53. Summons of prisoner, etc., as a witness - 54. Power to call or recall witnesses - 55. Testimony of a witness is given under oath or by affidavit - 56. Order of examination of witnesses - 57. Cross-examination of witnesses by co-accused - 58. Recalcitrant witnesses

Para 2 (c)	<ul style="list-style-type: none"> - 59. Other witnesses - 60. The Court may order the payment of witness costs and expenses - 61. Taking testimony from agent <p>Art. 112–117 CPC (Final decision of national courts, Appeals Art. 131 et seq.).</p>
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Source: The authors.

b) National authority, Para 3

- 2 The investigation report may address the relevant authority. The competence depends on the area of the irregularity (see above → Art. 3 OLAF Regulation) for all the different kind of frauds.²⁵⁶ The Customs Authority will be competent if e.g. an anti-dumping duty case has been dealt with by OLAF and the national authority.
- 3 The term national authority needs thus to be interpreted in a broad manner so that it encompasses all Cypriot authorities, which may act as a national partner of OLAF. If the case is unclear on whom to contact as well, OLAF may contact the Cypriot AFCOS (see below → Art. 12a OLAF Regulation).
- 4 A list of useful websites can be added here as well:
 - Republic of Cyprus, 2024 <https://www.gov.cy/en/>.
 - Ministry of Energy, Commerce and Industry and Technology Service <https://www.industry.gov.cy/?OpenDocument>.
 - Ministry of Defence <https://mod.gov.cy/en/>.
 - Ministry of Finance <https://mof.gov.cy/en/>.
 - Ministry of Interior <https://www.pio.gov.cy/en/ministries/>.
 - Maritime Cyprus Website: https://www.dms.gov.cy/dms/shipping.nsf/home_en/home_en?openform.

²⁵⁶ See as well the good explanations of the different funding areas in the European Parliamentary Research Service “EPRS Guide To EU Funding” 2023 Edition.

4. Article 12 (Exchange of information between the Office and the competent authorities of the Member States)

<p>4. Article 12 (Exchange of information between the Office and the competent authorities of the Member States)283</p> <p> a) Article 12 Para 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law).....283</p> <p> b) Article 12 Para 2 OLAF Regulation (judicial authorities of the Member State concerned).....284</p>	<p> c) Article 12 Para 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned)..... 284</p> <p> d) Article 12 Para 4 OLAF Regulation (Providing evidence in court proceedings before national courts and tribunals in conformity with national law) 285</p>
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1. Without prejudice to Articles 10 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may transmit to the competent authorities of the Member States concerned information obtained in the course of external investigations in due time to enable them to take appropriate action *in accordance with their national law*. It may also transmit such information to the institution, body, office or agency concerned.

2. Without prejudice to Articles 10 and 11, the Director-General shall transmit to the *judicial authorities of the Member State concerned* information obtained by the Office, in the course of internal investigations, concerning facts which fall within the *jurisdiction of a national judicial authority*. [...]

3. The *competent authorities of the Member State concerned* shall, unless *prevented by national law*, inform the Office without delay, and in any event within 12 months of receipt of the information transmitted to them in accordance with this Article, of the action taken on the basis of that information.

4. The Office may *provide evidence* in proceedings before national courts and tribunals *in conformity with national law* and the Staff Regulations. [...]

a) Article 12 Para 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law)

Competent authorities

- Ministry of Justice and Public Order
- Police

- Attorney General's Office

2 Appropriate action acc. to national law

- National follow-up acc. to the General Principles of Administrative Law (Law of 1999 – 158(I)/1999)
- National follow-up acc. to the special administrative laws e.g. The Consumption Tax Law of 2004 (91(I)/2004) and The Fiscal Responsibility and Fiscal Framework Law of 2014

b) Article 12 Para 2 OLAF Regulation (judicial authorities of the Member State concerned)

Which are these national authorities?

3 For all offences:

- Courts
- Attorney General's Office

4 Especially for corruption offences:

- Police corruption: Police Internal Affairs Service, Professional Standards, Audit and Inspection Directorate²⁵⁷

c) Article 12 Para 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned)

5 These are the authorities, which were presented under a) and b) above. They are obliged to fulfil the time-limit by virtue of Art. 12 Para 3 OLAF Regulation.

6 Prevention by national law

The right to withhold information (for a certain time) may result from provisions, which ensure the secrecy of an action under national law.

²⁵⁷ See e.g. https://anti-fraud.ec.europa.eu/organisations/police-cyprus_en. OLAF informs within the OAFCN network about contact details to relevant institutions on its Website and internally via the “Mini-Country-Leaflets”.

d) Article 12 Para 4 OLAF Regulation (Providing evidence in court proceedings before national courts and tribunals in conformity with national law)

The Criminal Procedure Code (*Ο περί Ποινικής Δικονομίας Νόμος*) may apply here:

7

Compulsion to appear and examine witnesses

Issuance of witness summons

49.²⁵⁸ (1) If in any criminal proceeding the Court is satisfied that a person may give material evidence for the charge or the defence, the Court may issue a summons to that person requiring him to appear before it Court at a time and place stated in the summons, to give evidence in relation to the case and to carry with him any specified document or thing and any other document or thing relating to the case which may be in his possession or power or the control thereof:

Provided that, if the Court is satisfied on affidavit that any person who may give material evidence will not appear to give evidence under subpoena then, in lieu of issuing a summons, the Court may issue a warrant for the arrest of such person:

Provided further that any person present in Court and compelled to testify as a witness, whether a party or not, may be compelled by the Court to give evidence and produce any document or thing in his possession or power, in the same manner and subject to the same regulations as if he had been summoned to attend and give evidence or produce such document or thing and may be punished in like manner for any refusal to obey an order of the Court.

²⁵⁸ Ποινικής Δικονομίας Νόμος

Εξαναγκασμός παράστασης και εξέτασης μαρτύρων

Έκδοση κλήσης μάρτυρα

49. (1) Αν σε οποιαδήποτε ποινική διαδικασία το Δικαστήριο είναι ικανοποιημένο ότι κάποιο πρόσωπο ενδέχεται να δώσει ουσιώδη μαρτυρία για τα την κατηγορία ή την υπεράσπιση, το Δικαστήριο δύναται να εκδώσει κλήση στο πρόσωπο αυτό η οποία να απαιτεί από αυτό να παραστεί ενώπιον του Δικαστηρίου σε χρόνο και τόπο που αναφέρεται στην κλήση, για να δώσει μαρτυρία σε σχέση με την υπόθεση και για να μεταφέρει μαζί του οποιοδήποτε ορισμένο έγγραφο ή πράγμα και οποιοδήποτε άλλο έγγραφο ή πράγμα που αφορά την υπόθεση το οποίο δυνατό να βρίσκεται στην κατοχή ή την εξουσία ή τον έλεγχο αυτού:

Νοείται ότι, αν το Δικαστήριο ικανοποιείται με ένορκη απόδειξη ότι οποιοδήποτε πρόσωπο το οποίο ενδέχεται να δώσει ουσιώδη μαρτυρία δεν θα παραστεί να δώσει μαρτυρία με κλήτευση τότε, αντί της έκδοσης κλήσης, το Δικαστήριο δύναται να εκδώσει από την αρχή ένταλμα για τη σύλληψη του προσώπου αυτού:

Νοείται περαιτέρω ότι οποιοδήποτε πρόσωπο παρόν στο Δικαστήριο και εξαναγκασμένο να καταθέσει ως μάρτυρας, είτε είναι διάδικος ή όχι, δύναται να εξαναγκαστεί από το Δικαστήριο να δώσει μαρτυρία και να παρουσιάσει οποιοδήποτε έγγραφο ή πράγμα που βρίσκεται στην κατοχή ή την εξουσία του, με τον ίδιο τρόπο και τηρουμένων των ίδιων κανονισμών ωσάν να είχε κλητευθεί να παραστεί και δώσει μαρτυρία ή να παρουσιάσει τέτοιο έγγραφο ή πράγμα και δύναται να επιβληθεί σε αυτό ποινή κατά παρόμοιο τρόπο για οποιαδήποτε άρνηση του να υπακούσει σε διαταγή του Δικαστηρίου.

(2) Αν ο κατηγορος δεν είναι δημόσιος λειτουργός κανένα πρόσωπο προς το οποίο απευθύνεται η κλήση δεν υποχρεώνεται να παραστεί εκτός αν προσφέρονται σε αυτό ή καταθέτονται στον Πρωτοκολλητή του Δικαστηρίου που εκδίδει την κλήση εύλογα οδοιπορικά και έξοδα συντήρησης, που γίνεται για αυτό σημείωση στην κλήση.

(3) Οι διατάξεις του άρθρου 46 εφαρμόζονται σε επίδοση κλήσης μάρτυρα δυνάμει του άρθρου αυτού με τις αναγκαίες προσαρμογές.

(2) If the accuser is not a public official, no person to whom the summons is addressed shall be required to attend unless reasonable travel and maintenance expenses are offered to him or deposited with the Recorder of the Court issuing the summons, which is noted in the summons.

(3) The provisions of article 46 apply to the service of a witness summons pursuant to this article with the necessary adjustments.

Power to call or recall witnesses

54²⁵⁹. The Court at any stage of the proceedings may call any person as a witness or recall and further examine any person already examined and the Court may examine or recall and further examine any such person if his testimony appears in Court that it is essential for the just judgment of the case.

Witness testimony is given under oath or by affirmation

55.²⁶⁰ (1) Subject to the provisions of subsection (3), every witness in a criminal proceeding shall be examined under oath and the Court before which a witness appears shall have full power to administer to him such an oath as is customary to administer to persons representing the same with the witness religion or religion:

Provided that a person who refuses to take an oath and who cites as a reason for this objection either that he is not religious or that taking an oath is contrary to his religion (the fact is recorded in the minutes of the proceedings), is entitled, instead of swearing, to make a declaration after promising and solemnly declares that the testimony

²⁵⁹ Ποινικής Δικονομίας Νόμος

Εξουσία προς κλήση ή επανάκληση μαρτύρων

54. Το Δικαστήριο σε οποιοδήποτε στάδιο της διαδικασίας, δύναται να καλέσει οποιοδήποτε πρόσωπο ως μάρτυρα ή να επανακαλέσει και εξετάσει περαιτέρω οποιοδήποτε πρόσωπο που έχει ήδη εξεταστεί και το Δικαστήριο δύναται να εξετάσει ή επανακαλέσει και εξετάσει περαιτέρω οποιοδήποτε τέτοιο πρόσωπο αν η μαρτυρία του φαίνεται στο Δικαστήριο ότι είναι ουσιώδης για τη δίκαιη κρίση της υπόθεσης.

²⁶⁰ Ποινικής Δικονομίας Νόμος

Μαρτυρία μάρτυρα δίνεται με όρκο ή με βεβαίωση

55. (1) Τηρουμένων των διατάξεων του εδαφίου (3), κάθε μάρτυρας σε ποινική διαδικασία εξετάζεται ενόρκως και το Δικαστήριο ενώπιον του οποίου εμφανίζεται μάρτυρας έχει πλήρη εξουσία να επάγει σε αυτό τέτοιο όρκο όπως συνηθίζεται να επάγεται σε πρόσωπα που πρεσβεύουν το ίδιο με το μάρτυρα θρησκειομα ή θρησκεία:

Νοείται ότι πρόσωπο, που ενίσταται να ορκιστεί και που αναφέρει ως λόγο της ένστασης αυτής είτε ότι δεν θρησκευεται είτε ότι το να ορκιστεί αντίκειται στη θρησκεία του (το γεγονός καταχωρείται στα πρακτικά της διαδικασίας), δικαιούται, αντί να ορκιστεί να προβεί σε βεβαίωση αφού υποσχεθεί και δηλώσει επίσημα ότι η μαρτυρία που θα δοθεί από αυτό στο Δικαστήριο είναι η αλήθεια, όλη η αλήθεια, και τίποτε άλλο παρά η αλήθεια, και η βεβαίωση αυτή έχει την ίδια ισχύ και το ίδιο αποτέλεσμα ωσάν αυτός να είχε ορκιστεί.

(2) Όταν επαχθεί και δοθεί όρκος κανονικά, το γεγονός ότι κατά το χρόνο της ορκωμοσίας το πρόσωπο στο οποίο επαχθήκε ο όρκος δεν θρησκευέτο ή η ορκωμοσία αντίκειτο στη θρησκεία του δεν επηρεάζει για οποιοδήποτε σκοπό την εγκυρότητα του όρκου αυτού.

(3) Σε οποιαδήποτε ποινική διαδικασία όποιος έχει ηλικία κάτω των δεκατεσσάρων χρόνων εξετάζεται χωρίς όρκο.

to be given by him in Court shall be the truth, the whole truth, and nothing but the truth, and such affidavit shall have the same force and effect as if he had sworn.

(2) When an oath is duly administered and administered, the fact that at the time of the oath the person to whom the oath was administered was not religious, or that the oath was contrary to his religion, does not for any purpose affect the validity of that oath.

(3) In any criminal proceeding anyone under the age of fourteen is examined without an oath.

Series of witness examination

56.²⁶¹ (1) Every witness in a criminal proceeding is first examined primarily by the party who calls him, then, if any other party so wishes, he is cross-examined and then, if the party who calls him so wishes, he is re-examined.

(2) The examination and cross-examination must concern related facts, but it is not necessary that the cross-examination be limited to facts about which the witness testified in his main examination.

(3) Except with the leave of the Court, the purpose of the re-examination is to explain matters raised in the re-examination and, if with the leave of the Court new issues are introduced in the re-examination, the other party may cross-examine further on those issues.

(4) If counsel appears for any party, the examination-in-chief, cross-examination and re-examination as provided in this section shall be conducted by counsel.

²⁶¹ Ποινικής Δικονομίας Νόμος

Σειρά εξέτασης μαρτύρων

56. (1) Κάθε μάρτυρας σε ποινική διαδικασία εξετάζεται πρώτα κύρια από το μέρος που τον καλεί, ύστερα, αν οποιοδήποτε άλλο μέρος επιθυμεί αυτό, αντεξετάζεται και ύστερα αν το μέρος που τον καλεί αυτό επιθυμεί, επανεξετάζεται.

(2) Η εξέταση και η αντεξέταση πρέπει να αφορούν γεγονότα συναφή0 δεν είναι όμως αναγκαίο όπως η αντεξέταση περιορίζεται σε γεγονότα για τα οποία ο μάρτυρας κατάθεσε στην κύρια εξέταση του.

(3) Εκτός κατόπι άδειας του Δικαστηρίου, η επανεξέταση αποσκοπεί στην εξήγηση ζητημάτων που αναφέρθηκαν στην αντεξέταση και, αν κατόπι άδειας του Δικαστηρίου εισαχθούν νέα ζητήματα κατά την επανεξέταση, το άλλο μέρος δύναται να αντεξετάσει περαιτέρω για τα εν λόγω ζητήματα.

(4) Αν εμφανίζεται δικηγόρος για οποιοδήποτε μέρος, η κύρια εξέταση, η αντεξέταση και η επανεξέταση όπως προβλέπεται στο παρόν άρθρο διεξάγεται από το δικηγόρο.

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) General remarks

aa. Definition and History

- 1 Cooperation, Coordination and Facilitation are **buzz words in anti-fraud literature**.²⁶² Anti-fraud coordination services are known worldwide and exist in many international organizations and cooperate with nation states.²⁶³ In the EU the term “AFCOS” has a *very special meaning* as it means the *Anti-fraud coordination services* created on behalf of the European Anti-fraud Office for the facilitation of interactions with the national Member States of the EU (see → recitals below).²⁶⁴
- 2 The obligation to designate these services runs and derives from primary Union law. **Art. 325 TFEU** (ex-Art. 280 TEC) requests the Union *and* the Member States to fight fraud (together). The history of these services, adapted to the financial and budgetary law sector and set-up in the Member States’ internal justice and financial systems dates to the early 2000s.²⁶⁵ Historically, the coordinating bodies emerged primarily in the new Member States that were awaiting accession. The European Parliament has already in 2010 called for the AFCOS to be set up as independent bodies in the MS.

²⁶² Kuhl 2019, 135 (160 et seq.); Wells 2019; Saporta/Maraney 2022, *passim*; FCPA 2022, *passim*; with further impact Malan 2022, 135–139; focusing on the customs area Van der Paal/Nurk/De Vlieger et al. 2019; furthermore De Vries 2022, 401–463; House of Lords 2012–13, 32 et seq.

²⁶³ Bartsiotas and Achamkulangare 2016, *passim*; See World Customs Organization, http://www.wcoomd.org/en/about-us/partners/international_organizations.aspx. Accessed 15 December 2023. See UNDOC, <https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html>, focusing on the designation of anti-corruption bodies. They exist even on national level and are especially common in federal state systems. AU has special coordinators „Betrugsbekämpfungskoordinator:innen“ <https://www.bmf.gv.at/en/topics/combating-fraud/anti-fraud-units/anti-fraud-coordinators.html>: „In each office there is an Anti-Fraud Coordinator (AFC; in German: Betrugsbekämpfungskoordinator, BBKO) for the individual sectors and regional customs units. They are members of the management and communicate in their function at management level and with each other. The AFC is the point of contact for all anti-fraud matters at the local level, within the department for other organisational units, as well as externally for institutions and public authorities. They also act as an information hub to the outside world, for example when it comes to external information exchange or cooperation with external institutions and authorities.“

²⁶⁴ Kuhl 2019, 135 (164).

²⁶⁵ Quirke 2015, 232 (236 et seq.).

Today one could not be further from this idea than ever, since the **AFCOS are mostly subordinated** deep in the structure of a Financial or Treasury Department/Ministry, Financial Inspections Services of the Treasury Department/Ministry, the Department of Commerce, or the Ministry/Department of the Interior. The simplicity of the coordination from within a ministry and the size of the administrative apparatus certainly speak in favour of this, but the interconnectedness is also problematic from the point of view of efficiency (states with political goodwill coordinate very easily and others are politically manoeuvrable) 3

“Friday 24 April 2009 Protection of the Communities’ financial interests and the fight against fraud – Annual Report 2007 4

P6_TA (2009)0315 European Parliament resolution of 24 April 2009 on the protection of the Communities’ financial interests and the fight against fraud – Annual Report 2007 (2008/2242(INI) 2010/C 184 E/14 The European Parliament,”

68. points out that the Anti-Fraud Coordination Units (AFCOS) set up for OLAF in the Member States that joined the European Union after 2004 are very important sources of information and contact points for OLAF; points out, however, **that the functional added value of these offices (in particular in terms of reporting irregularities to the Commission) is minimal as long as they are not independent from national administrations**; therefore calls on the Commission to submit a proposal to Parliament’s competent committee on how the work of these offices could be made more useful and considers it necessary to improve cooperation with the candidate countries.”²⁶⁶

At least there is legal and technical oversight of the areas of administration in most states and nowadays the AFCOS are implemented at the highest level.²⁶⁷ 5

However, the existing Member States are also aware of weaknesses in the fight against fraud. Only since 2010 and in the last decade has more attention been paid to these coordination points. They have become a *sine qua non* in the EU’s fight against fraud and they are becoming more and more the “eyes and ears” of OLAF in the Member States. They only have their own investigative skills, which would make them an “extended arm“ of OLAF in the member states, if at all, e.g. in Bulgaria or Italy. On the other hand, in Germany and France, they are more active in the background and do not appear too clearly. Activity reports may also have to be requested by the Commission, i.e. the responsible departments of OLAF. 6

²⁶⁶ See OJ, 8.7.2010, CE 184/72 Freitag, 24. April 2009 Schutz der finanziellen Interessen der Gemeinschaften und Betrugsbekämpfung – Jahresbericht 2007 P6_TA(2009)0315 Entschließung des Europäischen Parlaments vom 24. April 2009 zu dem Schutz der finanziellen Interessen der Gemeinschaften und der Betrugsbekämpfung – Jahresbericht 2007 (2008/2242(INI) 2010/C 184 E/14 Das Europäische Parlament.

²⁶⁷ Byrne 2018, p. 13.

bb. Legislative developments

- 7 The Commission has evaluated the impact of the AFCOS in the past decade.²⁶⁸ Recent changes at the beginning of the 2020s have enlarged the competences of the AFCOS. These are now even allowed to cooperate with each other and not only with OLAF in Luxembourg alone, which was the case prior to the amendments of the Regulation (EU) 2020/2223.
- 8 The recent changes describe the role of the AFCOS in the recitals of the Union law text. Thus, by reading them the task and role of these bodies becomes vivid. Recital 23 of the text says the following:

(23) The Office is able, under Regulation (EU, Euratom) No 883/2013, to enter into administrative arrangements with *competent authorities of Member States*, such as anti-fraud coordination services, and institutions, bodies, offices and agencies, in order to specify the arrangements for their cooperation under that Regulation, in particular *concerning the transmission of information, the conduct of investigations and any follow-up action*.

(30) Due to the large diversity of national institutional frameworks, Member States should, on the basis of the principle of sincere cooperation, *have the possibility to notify to the Office the authorities that are competent to take actions upon recommendations of the Office*, as well as the authorities that need to be informed, such as for financial, statistical or monitoring purposes, for the performance of their relevant duties. Such authorities *may include national anti-fraud coordination services*. In accordance with the settled case-law of the CJEU, the Office recommendations included in its reports have no binding legal effects on such authorities of Member States or on institutions, bodies, offices and agencies.

(37) The anti-fraud coordination services of Member States were introduced by Regulation (EU, Euratom) No 883/2013 to facilitate an effective cooperation and exchange of information, including information of an operational nature, between the Office and Member States. The Commission evaluation report concluded that they have contributed positively to the work of the Office. The Commission evaluation report also identified the *need to further clarify the role of those anti-fraud coordination services* in order to ensure that the Office is provided with the necessary assistance to ensure that its investigations are effective, while leaving the organisation and powers of the anti-fraud coordination services to each Member State. In that regard, the anti-fraud coordination services should be able to provide or coordinate the *necessary assistance* to the Office *to carry out its tasks effectively, before, during or at the end of an external or internal investigation*.

²⁶⁸ Commission Staff Working Document Evaluation of the application of Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 Accompanying the document Commission report to the European Parliament and the Council., p. 3, 12, 72.

The Commission document was accompanied by a Report (called ICF Report 2017), which resulted from an external study: European Commission, European Anti-Fraud Office, Evaluation of the application of Regulation No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) final report, Publications Office, 2017, <https://data.europa.eu/doi/10.2784/281658>.

(40) It should be possible for the anti-fraud coordination services in the context of coordination activities to provide assistance to the Office, as well as for the anti-fraud coordination services *to cooperate among themselves*, in order to further reinforce the available mechanisms for cooperation in the fight against fraud.

cc. Visualization of old (prior to 2020) vs. new (since 2020) cooperation and role of the AFCOS

Figure 8 Visualization of the old cooperation by virtue of Regulation No. 883/2013

9

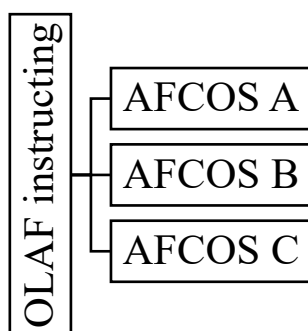
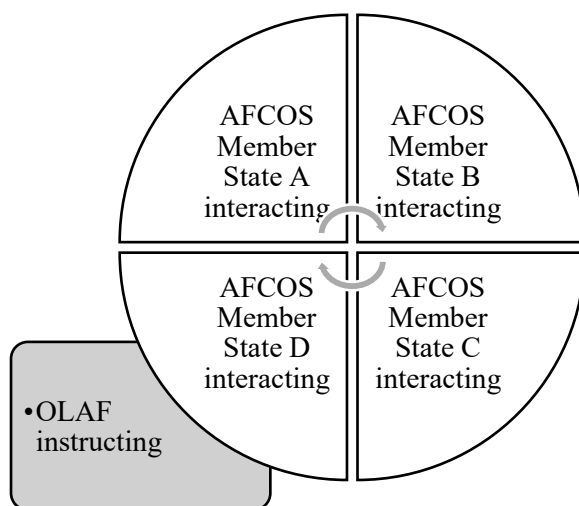


Figure 9 Visualization of the new cooperation by virtue of Regulation No. 883/2013 (as amended 2020/2223)

10

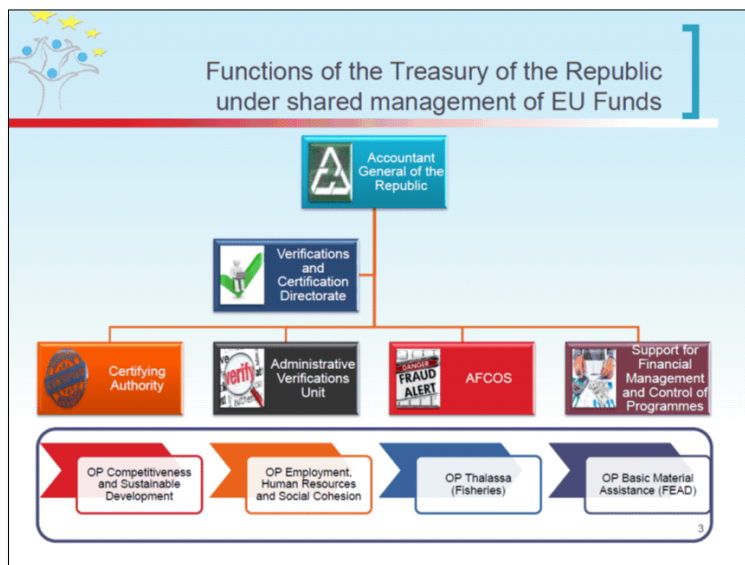


Source: The authors.

b) A closer look at the relevant AFCOS in the present Member State

- 11 The AFCOS of Cyprus is the Verifications and Certification Directorate within the Treasury of the Republic of Cyprus.²⁶⁹
- 12 The following figure gives a short overview of the situation:

Figure 10 Overview of the Treasury of the Republic of Cyprus



Source: Official website of the Treasury of the Republic.

[Article 12b–12d omitted]

6. Article 12e (The Office’s support to the EPPO)

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;

²⁶⁹ See Government of Cyprus 2021, p. 35–36 AFCOS has: the Accountant General as president, and consists of the following members, or their representatives: the Attorney General, the Auditor General, the Chief of Police, the Commissioner of the Cyprus Payments Organization, the General Director of the General Directorate of European Programs, Coordination and development, the Director of Internal Audit, the Director of the Customs Department. It takes the appropriate preventive measures or other measures in accordance with the relevant legislation, in cooperation with the other competent authorities, mainly for the preservation of evidence, in accordance with paragraph 7 of Article 7 of Regulation (EU, Euratom) no. 883/2013. It works closely with OLAF to carry out on-the-spot checks and verifications in Republic and participates if it so wishes in these on-site checks and verifications and/or the on-site checks and verifications are carried out jointly by the officials of OLAF and AFCOS, in accordance with Article 4 of Regulation (EC) No. 2185/96 (jointly checks).

(b) facilitating coordination of specific actions of *the competent national administrative authorities* and bodies of the Union; [...]

The following authorities support the EPPO:

- Customs and Excise Department, see → Art. 3 OLAF Regulation above.
- Verifications and Certification Directorate within the Treasury of the Republic of Cyprus

[Article 12f–g omitted]

7. Article 13 (Cooperation of the Office with Eurojust and Europol)

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. [...]

- Ministry of Justice and Public Order
- Attorney General's Office
- Police
- Unit for Combating Money Laundering (MOKAS)

[Article 14–16 omitted]

8. Article 17 (Director-General)

Article 17 (Director-General)

4. The Director-General shall report regularly, and at least annually, to the European Parliament, to the Council, to the Commission and to the Court of Auditors on the findings of investigations carried out by the Office, the action taken and the problems encountered, whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and of informants, and, where appropriate, *national law applicable to judicial proceedings*. Those reports shall also include an assessment of the actions taken by the *competent authorities of Member States* and the institutions, bodies, offices and agencies, following reports and recommendations drawn up by the Office.

7. The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating, inter alia, to the respect of procedural guarantees and fundamental rights of the persons concerned and *of the national law of the Member*

States concerned, with particular reference to Article 11(2). The legality check shall be carried out by Office staff who are experts in law and investigative procedures. Their opinion shall be annexed to the final investigation report.

a) National law applicable to judicial proceedings

- 1 The VAT Act contains appeal rights in PART V COMPLAINTS AND APPEALS, Art. 52 et seq. The following applies to judicial proceedings: The General Principles of Administrative Law, Law of 1999 (158(I)/1999), the Criminal Procedure Code.

b) Internal advisory and control procedure: Legality check involving national law

- 2 Citing the supervisory committee reveals the following: “OLAF established ‘country mini-profiles’, detailing the relevant provisions of criminal law [and administrative] applicable in each of the Member States (containing definitions of financial crimes, applicable sanctions, and prescription periods). However, the SC fears that the additional measures adopted (such as an informal in-house network or the country mini-profiles) are not sufficient to compensate for the unit’s overall lack of expertise in the area of the national laws of all the 28 Member States.”²⁷⁰
- 3 The Supervisory Committee reviewed OLAF's legality check²⁷¹ and review procedures, focusing on upholding procedural guarantees and fundamental rights. While they recognized the expertise of OLAF personnel, they stressed the need for expertise in the legal systems of all EU Member States. They highlighted the positive impact of good relations between investigators and reviewers on the quality of checks and reviews.
- 4 A legality check in OLAF ensures all investigative actions follow legal rules, preventing breaches and fixing any non-compliance swiftly. The telos of it, is it to provide information for management to address rule violations, aiming to maintain investigative integrity and legality. The legality check addressed by Art. 17 OLAF RG may involve a **preliminary evaluation in law** and it should enumerate the provisions on the investigation procedure and e.g. the powers of investigating authority; how it did obtain evidence, relevant secrecy obligations etc.
- 5 It must often **contain a list of provisions**, which are considered to have been breached. Otherwise a legal analysis is not possible.
- 6 It may then draw conclusions and include a **legal assessment paper**, which clearly identifies for each case the **misconduct** at the end.

²⁷⁰ Supervisory Committee, Opinion No 2/2015, Legality check and review in OLAF, p. 6 et seq.

Maybe this volume series, within which the Cypriot chapter is situated, might contribute to mitigate these challenges mentioned by the Committee through comprehensive inquiry into existing EU legal domains pertinent to the respective national equivalent provisions.

²⁷¹ A long-lasting problem for defence lawyers, see Rodoplous and Pantazatou 2013, pp. 133 et seq.

The paper will most likely include information about the *actus reus* and the *mens rea*. 7
For example, the Customs Code of 2004 (94(I)/2004) of Cyprus contains several provisions on the powers of the officials relating to investigating irregularities and breaches of the customs code.

It would then need to contain those regulations. See above → under **Art. 37** for the rules 8
on investigations.

[Article 18–21]

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This **Cypriot EPPO/OLAF volume** deals with the link between national law and EU law (EPPO and OLAF Regulations) and enables professionals from the justice sector to understand the national law in comparative perspective and to plan further investigations. It refers to fraud cases, the link between OLAF and AFCOS, and the activities of the new EPPO regional offices.

The Cypriot Act for the Implementation of the EPPO and the rules for defence lawyers in EPPO cases involving tax, subsidy, and customs fraud are also discussed. Attorney Dr Marilena Katsogiannou's introductory chapter to the Compendium on Cyprus provides a thorough summary of both Union and Cypriot laws in relation to EU fraud offences. While this volume is written in English, its footnotes reproduce the original national legislation in the local language.

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