THE EPPO/OLAF XVIII

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

Luxembourg



λογος

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Volume XVIII – Luxembourg

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

Volume XVIII – Luxembourg

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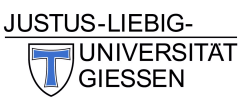
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Preface and Acknowledgements

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

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

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

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

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

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

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

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

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

Giessen/Germany, in November 2025

Pierre Hauck & Jan-Martin Schneider

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Executive Summary:

This chapter examines the legal framework governing the European Public Prosecutor's Office, with particular attention to both Union law and Luxembourgish law. It first explains the complementary legal regimes applicable to the EPPO and then turns to the operational dimension of external investigations, focusing on fact-finding missions conducted by the European Anti-Fraud Office and its national partners. The volume chapter is structured in two main parts. Each part opens with an introduction before presenting the relevant Union and national legal provisions. This approach highlights how European and Luxembourgish rules interact and support one another in practice. For accessibility and consistency, the main body of the chapter has been translated into English, while the footnotes preserve the original French text.

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

General structure and concept: Prof. Dr. *Pierre Hauck* LL.M. (Sussex)
National expert feedback for Luxembourg and author of the introduction: Lawyer *Sandra Birtel, CM Law Partner.* Part B severally (EPPO Analysis): Prof. Dr. *Pierre Hauck* LL.M. (Sussex)/ Dr. *Jan-Martin Schneider* (Dipl.-Jur. MR; R.A., University of Gießen)/ *Alastair Laird* (R.A., University of Gießen)/ *Nur Sena Karakocaoğlu* (Dipl.-Jur. FFM.;

R.A., University of Gießen) organisations via questionnaires (AFCOS, OAFCN members and Experts Part C (OLAF Analysis): Prof. Dr. *Pierre Hauck* LL.M. (Sussex)/ Dr. *Jan-Martin Schneider* (Dipl.-Jur. MR; R.A., University of Gießen)/ *Alastair Laird* (R.A., University of Gießen)/ *Nur Sena Karakocaoğlu* (Dipl.-Jur. FFM.; R.A., University of Gießen. Further sources: AFCOS Questionnaire, Comments, Expert Visions.

Further material used: Tax Compliance Investigation Departement Public Documents, Public AFCOS Report, OLAF Reports, Expertise, EUROSTAT, Official Statistics Office, Luxembourgish Databases.

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Abbreviations

ACAs	Administrative Cooperation Agreements
ACD	Direct Contributions Administration
ADA	*Direction de l'Administration des douanes et accises*
AFCOS	Anti-fraud Coordination Service
AFSJ	Area of Freedom, Security and Justice
AMIF	Asylum, Migration and Integration Fund
AML	Anti-Money Laundering
AO	Abgabenordnung/*loi générale des impôts*
BMVI	Instrument for Financial Assistance in
C. PROC. PÉN.	*Code de procédure pénale*
CA	*Cour d'appel*
CASS.	*Cour de cassation*
CC	Criminal Code
CCC	Community Customs Code
CESOP	Central Electronic System of Payment Information
CF	Cohesion Fund
CFR	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
COCOLAF	Advisory Committee for the Coordination of Fraud Prevention
COUR. CONST.	*Cour constitutionnelle*
CPC	*Criminal Procedure Code*
CPP	*Code de procedure pénale*
DPPS	*Direction centrale Police judiciaire*
CSSF	*Commission de surveillance du secteur financier*

EAFRD	European Agricultural Fund For Rural Development
EAGF	European Agricultural Guarantee Fund
EAW	European Arrest Warrant
EC	European Commission
ECA	European Court of Auditors
ECHA	European Chemicals Agency
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice (now CJEU)
ECJN	European Judicial Network against Cybercrime
ECON	European Parliament's Committee on Economic and Monetary Affairs
ECP	European Chief Prosecutor
EDF	European Development Fund
EDMS	Electronic Document Management System
EDO	European Data Officer
eDP	ePrivacy Directive
EDP	European Delegated Prosecutor
EEAS	European External Action Service
EEC	European Economic Community
EIO	European Investigation Order
EJN	European Judicial Network
EMFAF	European Maritime, Fisheries and Aquaculture Fund
EP	European Prosecutor
EPP	European Public Prosecutor
EPPO	European Public Prosecutor's Office
ERDF	European Regional Development Fund
ESF+	European Social Fund Plus

ESIF	European Structural and Investment Funds
ESMF	European Shared Management Funds
EU	European Union
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 Co-operation
EUROPOL	European Police Office
EUROSTAT	European Statistical Office
FRM	Financial Risk Management
GC (aka CFI ex-2009)	General Court of the EU/formerly Court of First Instance
IBOAs	Institutions, Bodies, Offices, and Agencies
ID	Identification
IMS	Irregularity Management System
IRP	Internal Rules of Procedure
ISF	Internal Security Fund
JITs	Joint investigation teams
LLM	Master of Laws
LLP	Limited Liability Partnerships
MA	Managing Authority
MALT	Mobile Assisted Language Tool
MEP	Member of European Parliament
OAFCN (-Member)	OLAF Anti-Fraud Communicators' Network
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-fraud Office
ONA	National Reception Office

PAS.	*Pasicrisie*, Greek term for constant jurisprudence
PC-OC	Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters
PIF	Protection of the EU's Financial Interests
PPU	Procedure for urgent Preliminary Ruling
RLP	*Revue pénale luxembourgeoise*
SNE	Seconded National Expert
SPJ	Judicial Service of the Police/*Service de Police judiciare*
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TVA	*Taxe sur la Valeur Ajoutée*
UCLAF	Anti-Fraud Coordination Unit/*unité de coordination de la lutte antifraude*
UE	*Union Européenne*
VAT	Value Added Tax

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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.
Tables with symbols in the first row contain case studies (EPPO & OLAF cases) or relevant jurisprudence.
Margin numbers (1, 2, 3…) in the General Margin enable citation.

Pictures/Figures/Symbols Used:

 = Expert Introduction

 = Customs legislation/Customs cases

 = Examples

 = *Nota bene*/General note

 Access to files

 = Tax police/tax related

 = Excerpt

 = Art. 33 EPPO Regulation

Ⓟ = Problems resulting from national law

 = (criminal) police, relevant for investigators

 = Funds area (e.g maritime)

 = procurement area

 = Case law and Courts

 = urgent measures (Art. 27, 28, 30)

Π = Plaintiff (Pi)

Δ = (Delta) Defendant

 = Case Studies (Overviews)

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A. Introduction to the Luxembourgish Legal System in the Area of the PIF-*Acquis*/*Introduction au Volume Luxembourg*

Auteur: *Sandra Birtel* *Avocate à la Cour* et Partner CM Law

I. Introduction in French

Le Parquet européen, institué par le règlement (UE) 2017/1939, est entré en fonction le 1er juin 2021. Près de cinq années après le début de ses activités, il ne constitue plus une innovation institutionnelle théorique, mais un **acteur opérationnel du contentieux pénal financier**. Au Luxembourg, son **intégration** s'est faite **sans rupture apparente**. Pourtant, à l'épreuve de la pratique, cette intégration révèle une transformation profonde, et encore inachevée, des équilibres procéduraux. **1**

Le législateur luxembourgeois a opté pour une mise en œuvre par intégration, à travers la loi du 31 mars 2021 portant modification **de la loi modifiée du 7 mars 1980 sur l'organisation judiciaire** en vue de **l'organisation de l'Office des procureurs européens délégués**, et la **loi du 22 juillet 2022 adaptant la procédure pénale**.[1] Ce choix s'inscrit dans la tradition nationale : plutôt que de créer un **régime autonome**, le Luxembourg a inséré le Parquet européen dans les structures existantes, en maintenant notamment le rôle central du juge d'instruction. **2**

Cette approche, en **apparence pragmatique**, masque en réalité une tension structurelle. Le Parquet européen incarne une logique centralisée, fondée sur la coordination et l'efficacité transfrontalière. À l'inverse, la procédure pénale luxembourgeoise repose sur des équilibres internes, structurés autour du juge d'instruction et des garanties procédurales classiques. La **coexistence de ces deux logiques** produit un système hybride, dont la cohérence se construit encore au fil de la jurisprudence. **3**

Un arrêt fondamental de la **Cour de cassation du 26 janvier 2023** en constitue une illustration décisive.[2] Dans cette affaire, la Cour consacre explicitement la primauté du droit de l'Union européenne en matière de mise en œuvre du Parquet européen. Elle rappelle que les juridictions nationales doivent appliquer directement le règlement et, le cas échéant, laisser inappliquées les dispositions nationales incompatibles. **4**

Cette solution **dépasse le cadre du litige**. Elle signifie que le fonctionnement du Parquet européen ne dépend pas de la complétude du droit national. Ainsi, durant la période initiale d'activité, marquée par un décalage d'environ quatorze mois entre l'entrée en fonction de l'EPPO et l'adaptation du droit luxembourgeois, les procureurs européens délégués pouvaient exercer leurs prérogatives directement sur le fondement du règlement. Cette compétence directe du Parquet européen s'étend, conformément au considérant 31 du règlement, jusqu'au terme de la procédure, c'est-à-dire jusqu'à la décision définitive sur la commission de l'infraction. **5**

6 Plus encore, la Cour consacre une **conséquence déterminante** : les procureurs européens délégués disposent des mêmes pouvoirs que les procureurs nationaux, y compris en l'absence de base légale interne explicite, dès lors que ces pouvoirs trouvent leur fondement dans le droit de l'Union. Cette lecture conduit à neutraliser certaines dispositions nationales incompatibles, notamment celles qui permettraient au juge d'instruction de reprendre la direction de l'enquête sur le fondement de l'article 24-1, paragraphe 2, du Code de procédure pénale.

7 Il en résulte une **redéfinition implicite du rôle du juge d'instruction**. Celui-ci demeure un acteur central, en particulier en matière de contrôle des atteintes aux libertés individuelles, mais il ne peut plus interférer avec la compétence d'enquête du Parquet européen. Cette évolution, peu visible dans les textes, est pourtant tangible dans la pratique.

8 Un second arrêt de la **Cour de cassation**, en date du **21 mars 2024**, permet d'appréhender les conséquences concrètes de ce modèle.[3] Dans cette affaire, une perquisition avec saisie a été ordonnée par un juge d'instruction luxembourgeois sur réquisitoire d'un procureur européen délégué luxembourgeois, en exécution d'une mesure déléguée par l'office portugais du Parquet européen dans le cadre d'une enquête transfrontière au sens de l'article 31 du règlement.

9 Cette configuration illustre la **nature fondamentalement transfrontalière** des procédures EPPO: l'impulsion de l'enquête est européenne, tandis que son exécution demeure nationale. Elle met également en évidence les limites du système du point de vue de la défense.

10 Dans cette même affaire, l'entité visée par la mesure, un cabinet d'avocats organisé sous la forme d'un *limited liability partnership* de droit anglais disposant d'une succursale luxembourgeoise, a pu contester l'ordonnance devant la Chambre du conseil de la Cour d'appel sur le fondement de l'article **136-48**, paragraphe 3, du Code de procédure pénale. Son **pourvoi en cassation** a en revanche été déclaré irrecevable, sur le fondement de l'article 407 du Code de procédure pénale, lequel réserve cette voie de recours au ministère public, au prévenu et à la partie civile. Pour la Cour, l'appel devant la Chambre du conseil suffit à satisfaire l'exigence d'un recours effectif au sens de l'article 13 de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, l'argument tiré du secret professionnel attaché à la qualité d'avocat n'ayant pas suffi à infléchir cette analyse.

11 Cette solution, conforme au droit interne, révèle néanmoins une **fragilité du système**: certains acteurs directement affectés par des mesures coercitives, y compris lorsque ces mesures touchent à des protections aussi sensibles que le secret professionnel de l'avocat, peuvent se trouver privés d'un accès complet au juge de cassation. Pour la défense,

cela implique une concentration du contentieux à un stade précoce de la procédure, devant la Chambre du conseil.

Cette difficulté est renforcée par la **fragmentation du contrôle juridictionnel** dans les enquêtes transfrontalières. La Cour de justice de l'Union européenne, dans l'arrêt *G.K. e.a.* du 21 décembre 2023, a précisé que, dans une **enquête transfrontière** au sens de l'article 31 du règlement, le contrôle juridictionnel exercé dans l'État du procureur européen délégué assistant ne porte que sur les modalités d'exécution de la mesure, tandis que la justification et l'adoption de celle-ci relèvent du contrôle préalable de l'État du procureur européen délégué chargé de l'affaire.[4] **12**

Appliqué au Luxembourg, ce principe signifie que le juge national peut être amené à valider une mesure intrusive sans en examiner pleinement la proportionnalité, dont l'appréciation relève en principe de l'État d'origine. Pour la défense, cette dissociation constitue un défi majeur, en ce qu'elle complique la contestation globale des actes d'enquête. **13**

Au-delà de ces **aspects procéduraux**, l'activité du Parquet européen au Luxembourg présente une autre spécificité: son volume limité, mais sa forte technicité. Le **rapport annuel 2024 du Parquet européen** confirme cette double caractéristique: au 31 décembre 2024, l'office luxembourgeois compte 18 enquêtes actives, sur 2 666 enquêtes au niveau européen, pour un préjudice estimé à 173,8 millions d'euros, mobilisant deux procureurs européens délégués.[5] Surtout, la typologie des affaires reflète une orientation marquée vers la criminalité financière sophistiquée : le blanchiment représente près d'un quart des infractions investiguées (24,39 %), suivi de la fraude aux dépenses hors marchés publics (31,71 %).[6] Cette structure contraste avec le profil dominant à l'échelle européenne, davantage tourné vers la fraude à la TVA. **14**

Une **autre singularité luxembourgeoise** mérite attention. Comme le souligne un article de Paperjam, en 2023 le Luxembourg occupe l'avant-dernière position européenne pour les signalements émanant des autorités nationales, lesquels représentent à peine 15 % du flux luxembourgeois, contre 63 % issus des procureurs européens délégués eux-mêmes.[7] Le rapport 2024 confirme cette tendance structurelle : sur 23 signalements reçus, seuls 5 émanaient des autorités nationales, tandis que 11 provenaient de parties privées et 5 de saisines d'office.[8] Cette situation, atypique en Europe, pose la question du dispositif national de détection plus que celle du volume réel d'infractions. **15**

Pour le praticien, cette réalité est déterminante. Le Parquet européen ne transforme pas la pratique par la quantité de dossiers, mais par leur nature. Chaque affaire implique une coordination internationale, une technicité accrue et une articulation délicate entre plusieurs ordres juridiques. **16**

17 L'expérience luxembourgeoise révèle ainsi un **modèle en construction**. D'un côté, la jurisprudence affirme la puissance du Parquet européen, fondée sur la primauté du droit de l'Union et sur l'exercice direct de ses compétences. De l'autre, elle met en évidence certaines limites, notamment en matière de garanties procédurales et de lisibilité du contrôle juridictionnel.

18 Le Luxembourg a **fait le choix de l'intégration**. Ce choix a permis une mise en œuvre rapide et pragmatique. Mais il en résulte un système hybride, dans lequel le droit national s'efface parfois devant le droit de l'Union, sans que toutes les conséquences de ce mouvement soient encore stabilisées.

19 Pour le praticien, une conclusion s'impose: le Parquet européen ne constitue pas une révolution visible. Il opère une **transformation silencieuse, mais profonde, de la procédure pénale**.

Notes

[1] Loi du 31 mars 2021 portant modification de la loi modifiée du 7 mars 1980 sur l'organisation judiciaire en vue de l'organisation de l'Office des procureurs européens délégués (Mémorial A n° 282 du 8 avril 2021) ; loi du 22 juillet 2022 modifiant le Code de procédure pénale aux fins de la mise en œuvre du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen (Mémorial A n° 428 du 5 août 2022, entrée en vigueur le 9 août 2022); see further in an analysis of a country report in an EPPO Regulation Commentary Ligeti and Theodorakakou 2026, mn. 1 "adopted two laws", mn. 2 admitting that: "Luxembourg had faced difficulties in applying EPPO Regulation" prior to 2022.

[2] Cour de cassation, 26 janvier 2023, n° 11/2023 pénal, CAS-2022-00038.

[3] Cour de cassation, 21 mars 2024, n° 42/2024 pénal, CAS-2023-00114.

[4] CJUE, Grande chambre, 21 décembre 2023, G.K. e.a. (Parquet européen), C-281/22, ECLI:EU:C:2023:1018.

[5] Parquet européen, *Rapport annuel 2024*, p. 42 (section Luxembourg) et p. 10 (chiffres globaux:2 666 enquêtes actives au 31 décembre 2024 pour un préjudice estimé à 24,8 milliards d'euros).

[6] *Ibid.*, p. 42, « Typologies identified in active EPPO cases ». Sur 41 infractions investiguées dans les affaires luxembourgeoises actives, 10 relèvent du blanchiment (24,39 %) et 13 de la fraude aux dépenses hors marchés publics (31,71 %).

[7] Paperjam, « Cette statistique luxembourgeoise que le Parquet européen n'explique pas», https://paperjam.lu/article/cette-statistique-luxembourgeoise-que-le-parquet-europeen-nexplique-pas.

[8] Parquet européen, *Rapport annuel 2024*, p. 42, « Received reports/complaints ».

II. Introduction in English

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In Luxembourg, its integration occurred **without any apparent rupture**. Yet practical experience reveals that such integration entails a profound and still incomplete transformation of **procedural *equilibria***. **20**

The Luxembourg legislature opted for implementation by **way of integration** through the Law of 31 March 2021 amending **the amended Law of 7 March 1980** on the organisation of the judiciary with a view to **establishing the Office of the European Delegated Prosecutors**, and the **Law of 22 July 2022 adapting criminal procedure**.[1] This approach accords with national tradition: rather than creating an **autonomous regime**, Luxembourg incorporated the EPPO into existing institutional structures, whilst notably preserving the central role of the investigating judge (*juge d'instruction*). **21**

This approach, **ostensibly pragmatic**, in reality conceals a structural tension. The EPPO embodies a centralised logic founded upon coordination and cross-border efficiency. By contrast, Luxembourg criminal procedure is predicated upon internal procedural balances structured around the investigating judge and traditional procedural safeguards. The **coexistence of these two logics** has produced a hybrid system whose coherence continues to evolve through judicial interpretation. **22**

A seminal judgment of the **Court of Cassation of 26 January 2023** constitutes a decisive illustration thereof.[2] In that case, the Court expressly affirmed the primacy of European Union law in relation to the implementation of the EPPO. It reiterated that national courts are required to apply the Regulation directly and, where necessary, to disapply incompatible provisions of national law. **23**

This ruling extends beyond the confines of the individual dispute. It signifies that the functioning of the EPPO does not depend upon the **completeness of domestic legislation**. Accordingly, during the initial phase of activity marked by a delay of approximately fourteen months between the commencement of EPPO operations and the adaptation of Luxembourg law European Delegated Prosecutors were entitled to exercise their powers directly on the basis of the Regulation itself. Pursuant to recital 31 of the **24**

[1] Loi du 31 mars 2021 portant modification de la loi modifiée du 7 mars 1980 sur l'organisation judiciaire en vue de l'organisation de l'Office des procureurs européens délégués (Mémorial A n° 282 du 8 avril 2021); loi du 22 juillet 2022 modifiant le Code de procédure pénale aux fins de la mise en œuvre du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen (Mémorial A n° 428 du 5 août 2022, entrée en vigueur le 9 août 2022).
[2] Cour de cassation, 26 janvier 2023, n° 11/2023 pénal, CAS-2022-00038.

Regulation, this direct competence of the EPPO extends until the conclusion of proceedings, namely until a final determination has been made regarding the commission of the offence.

25 Moreover, the Court recognised a **consequence of considerable importance**: European Delegated Prosecutors possess the same powers as national prosecutors, even in the absence of an explicit domestic legal basis, provided that such powers derive from European Union law. This interpretation has the effect of neutralising certain incompatible national provisions, particularly those enabling the investigating judge to reassume control of the investigation pursuant to Article 24-1(2) of the Code of Criminal Procedure.

26 This development results in an **implicit redefinition of the role of the investigating judge**. While the latter remains a **central actor**, particularly with regard to the supervision of interferences with individual liberties, the investigating judge may no longer interfere with the investigative competence of the EPPO. Though scarcely visible in the legislative texts, this evolution is nonetheless **perceptible in practice**.

27 A second judgment of the **Court of Cassation**, delivered on **21 March 2024**, illustrates the concrete implications of this model.[3] In that case, a search and seizure operation was ordered by a Luxembourg investigating judge upon the application of a Luxembourg European Delegated Prosecutor, in execution of a measure delegated by the Portuguese office of the EPPO within the **framework of a cross-border investigation** pursuant to Article 31 of the Regulation.

28 This configuration illustrates the **fundamentally transnational nature** of EPPO proceedings: the impetus for the investigation is European, whereas its execution remains national. It also highlights the limitations of the system from the perspective of the defence.

29 In the same case, the entity targeted by the measure a law firm organised as an English-law limited liability partnership with a Luxembourg branch was able to challenge the order before the indictments Chamber (*Chambre du conseil*) of the Court of Appeal pursuant to **Article 136-48(3)** of the Code of Criminal Procedure. However, its **appeal on points of law** before the Court of Cassation was declared inadmissible on the basis of Article 407 of the Code of Criminal Procedure, which reserves such recourse to the Public Prosecutor's Office, the **accused**, and the civil party. According to the Court, the appeal before the Indictments Chamber was sufficient to satisfy the requirement of an effective remedy within the meaning of Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the argument based on legal professional privilege attached to the status of lawyer being insufficient to alter that assessment.

[3] Cour de cassation, 21 mars 2024, n° 42/2024 pénal, CAS-2023-00114.

Whilst consistent with domestic law, this solution nevertheless reveals **a fragility within the system**: certain actors directly affected by coercive measures including where such measures interfere with protections as sensitive as legal professional privilege may be deprived of full access to the Court of Cassation. **For the defence**, this entails a concentration of **procedural challenges at an early stage** of the proceedings before the Indictments Chamber. **30**

This difficulty is further exacerbated by the **fragmentation of judicial review** in cross-border investigations. In *G.K. and Others*, decided on 21 December 2023, the Court of Justice of the European Union clarified that, in the context of a cross-border investigation under Article 31 of the Regulation, judicial review in the Member State of the assisting European Delegated Prosecutor is limited solely to the modalities of execution of the measure, whereas the justification for and adoption of the measure fall within the prior review conducted in the Member State of the handling European Delegated Prosecutor.[4] **31**

Applied in Luxembourg, this principle means that the national court may be required to validate an intrusive measure without fully examining its proportionality, the assessment of which falls, in principle, within the jurisdiction of the State of origin. For the defence, this dissoc**iation constitutes a major challenge** insofar as it **complicates** the com-prehensive **contestation of investigative acts**. **32**

Beyond these procedural aspects, the **activity of the EPPO** in Luxembourg presents another distinctive characteristic: a limited caseload combined with a high degree of technical complexity. The EPPO **Annual Report 2024** confirms this dual characteristic. As of 31 December 2024, the Luxembourg office handled **18 active investigations** out of **2,666 investigations** at European level, concerning estimated damages amounting to **EUR 173.8 million** and involving two European Delegated Prosecutors.[5] Above all, the **typology of cases** reflects a marked orientation towards sophisticated financial criminality: money laundering accounts for nearly one quarter of the investigated offences (24.39%), followed by fraud involving non-public procurement expenditure (31.71%).[6] This structure contrasts with the dominant profile at European level, which remains more heavily focused on VAT fraud. **33**

A further **Luxembourg-specific feature** merits attention. As noted in an article Luxembourg ranked **second-last in Europe in 2023 with regard to referrals originating** **34**

[4] CJUE, Grande chambre, 21 décembre 2023, *G.K. e.a.* (*Parquet européen*), C-281/22, ECLI:EU:C:2023:1018.
[5] Parquet européen, Rapport annuel 2024, p. 42 (section Luxembourg) et p. 10 (chiffres globaux : 2 666 enquêtes actives au 31 décembre 2024 pour un préjudice estimé à 24,8 milliards d'euros).
[6] Ibid., p. 42, Typologies identified in active EPPO cases. Sur 41 infractions investiguées dans les affaires luxembourgeoises actives, 10 relèvent du blanchiment (24,39 %) et 13 de la fraude aux dépenses hors marchés publics (31,71 %).

from national authorities, which represented barely 15% of the Luxembourg caseload, compared with 63% originating from the European Delegated Prosecutors themselves.[7] The 2024 report confirms this **structural tendency**: of the 23 reports received, only 5 originated from national authorities, whilst 11 emanated from private parties and 5 from *ex officio* referrals.[8] This situation, atypical within Europe, raises questions concerning the **national EU fraud detection framework** rather than the actual volume of offences.

35 For practitioners, this reality is determinative. The EPPO does not **transform practice** through the sheer quantity of cases, but **through their nature**. Each matter entails international coordination, heightened technical complexity, and a delicate articulation between several legal orders.

36 The Luxembourg experience thus reveals a **model still in the process of construction**. On the one hand, the case law affirms the authority of the EPPO, founded upon the primacy of European Union law and the direct exercise of its competences. On the other hand, it exposes certain limitations, particularly in relation to procedural safeguards and the intelligibility of judicial review.

37 Luxembourg has chosen the **path of integration**. That choice enabled rapid and pragmatic implementation. However, it has also produced a hybrid system in which national law at times recedes before European Union law, without all the consequences of that development yet having been fully stabilised.

38 **For practitioners**, one conclusion is unavoidable: the EPPO does not constitute a visible revolution. Rather, it effects a silent, yet profound, transformation of criminal procedure.

III. Short Notes on the Luxembourgish Legal System in General and the Luxembourgish Criminal Law System in Particular

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39 Starting our comparing notes, we can refer to the academic scholar *Calcoen*, who described the **legal system of the Grand Duchy of Luxembourg** over 30 years ago in the US' *Modern Legal Systems Cyclopedia* and ended his article in the 90's with an **outlook on the greater economic community**. Re-reading it in 2025, we can see that the EU contrary to all doubters and academic hurdles, to sum it up, despite all not every time fully founded critique, became this vision of such a **greater community** till today, which was strongly connected to the **opening of the borders on June 19, 1990**, when five member nations of the European Community signed an agreement to open borders,

[7] Paperjam, Cette statistique luxembourgeoise que le Parquet européen n'explique pas, https://paperjam.lu/article/cette-statistique-luxembourgeoise-que-le-parquet-europeen-nexplique-pas. Accessed 31 May 2026.
[8] Parquet européen, Rapport annuel 2024, p. 42, Received reports/complaints.

which ended in the historic treaty signed in the Luxembourg **Village of Schengen**. Today Art. 26 TFEU and the Schengen Treaty show that in an "ever closer" economic community needs a **stronger criminal protection** of the financial interests and it was necessary for all members**.** Next, the enforcement, the setting up of the institutions, **UCLAF, OLAF, and the EPPO** as well as their **normative grounding**[9] enabled via Regulations and Directives[10], a **harmonized EU substantive** (criminal or **nowadays "criminst(r)ative" law**[11], a neologism of the successor of the former **AGON bulletin**- nowadays a look into it feels like **stepping back in 1990's and 2000's EU criminal law times** - *eucrim* uses to describe the special nature of criminal and administrative EU law enforcement structures it, a quasi ***sui-generis* EU regime**) took over 25 years.[12] Criminal procedure in Luxembourg is principally governed by the *Code de procédure pénale* (Code of Criminal Procedure), supplemented by **constitutional principles**, European Union law, the European Convention on Human Rights ("ECHR"), and specialised statutory provisions as seen above. Luxembourg follows the continental **civil law tradition**, characterised by codification, judicial investigation, and the central role historically accorded to the investigating judge (*juge d'instruction*).[13] The **procedural framework** is structured around several fundamental principles, including legality of prosecution, judicial supervision of coercive measures, proportionality, adversarial proceedings, and respect for defence rights.[14] Luxembourg criminal procedure distinguishes between the investigative phase (*instruction préparatoire* by investigating judge

[9] Hauck 2025a, Part 2, pp. 74 on the first genuine European steps to fight fraud detrimental to the Community, with a focus on own resources, pp. 85 et seq.; for the Commission decision to establish UCLAF as predecessor to OLAF see pp, 124 et seq.; for the foundation of OLAF and its independence requisites see pp. 255 et seq.; for the decisions towards the EPPO see 290 et seq.

[10] The latest being the Directive (EU) 2026/1021 of the European Parliament and of the Council of 29 April 2026 on combatting corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council PE/1/2026/REV/1, OJ L, 2026/1021, 11.5.2026. For the extensive amendments introduced, see in particular: Art. 2(1)(c) (introducing the definition of high-level official); Art. 4(2) (terminological alignment with active and passive corruption in the public sector); Art. 7(3), (4) and (6) (increasing the maximum penalty to at least 5 years' imprisonment for breaches of official duties, excluding the de minimis clause for corruption offenses, and introducing additional sanctions against natural persons); Art. 8 (extending the scope to mitigating circumstances); Art. 9 (restructuring and proportionality requirements for sanctions against legal persons); and Art. 12 (differentiating and substantially extending the limitation periods for prosecution and enforcement up to 8 and 10 years respectively for corruption and abuse offenses); Ligeti and Theodorakakou 2026, mn. 2 on the difficulties during implementation.

[11] https://eucrim.eu/about-us/20-years-of-eucrim/. EUcrim turns 20-years old in 2026; Hauck 2025a, pp. 135 on the administrative foundations of investigations to uncover frauds and other irregularities – one being that the EDPs had more powers that national prosecutors if performing duties of the *juge d'instrcution*.

[12] See Hauck 2025a, pp. 135 et seq., 255 et seq. at least from UCLAF to OLAF nearly 10 years and nearly 17 years from OLAF to EPPO.

[13] Ligeti and Giuffrida 2019 pp. 184 (188 et seq.)

[14] Ligeti and Giuffrida 2019 pp. 184 (188 et seq.) citing Valentina Covolo, 'Luxembourg' in Silvia Allegrezza and Valentina Covolo (eds), Effective Defence Rights in Criminal Proceedings (Wolters Kluwer-CEDAM 2018), pp. 337.

or *enquête préliminaire* by prosecutor), the trial phase, and appellate review.[15] To comply with the Regulation the ***instruction préparatoire* has been abolished**, restricting the **investigating judges**, which can lead investigations in non-EPPO cases, to **control the legality of very strong liberty-rights limiting coercive measures**, if the EDP cannot order them themselves (catalogue of measures available to EDPs without judges).[16]

40 The **influence of supranational norms** has become increasingly significant. European Union law, particularly in matters relating to judicial cooperation in criminal matters and the protection of the Union's financial interests shapes domestic criminal procedure.[17] The jurisprudence of the CJEU and ECtHR plays a decisive interpretative role.[18]

1. How Does Luxembourgish Law Regulate Criminal Proceedings?

41 Criminal law in Luxembourg is **enforced by judicial police authorities** acting under the supervision of the Public Prosecutor's Office (*Parquet*), the investigating judiciary, and the criminal courts. The Luxembourg **prosecutorial structure is hierarchical**.[19] At its apex stands the Procureur général d'État (Prosecutor General), followed by the Parquets attached to the district courts (*tribunaux d'arrondissement*). Prosecutors belong to the magistrature debout ("standing judiciary"), reflecting their institutional status as members of the judiciary notwithstanding their prosecutorial function.[20] The Public Prosecutor directs **criminal investigations**, initiates prosecutions, supervises police activity, and represents the "interests of society" before the criminal courts. Prosecutors may either conduct preliminary investigations directly or request the opening of a judicial investigation before the investigating judge.

42 The investigating judge occupies a **historically central role** within Luxembourg criminal procedure.[21] Unlike adversarial systems in which investigations are predominantly prosecutor-led, Luxembourg procedure traditionally entrusts serious or complex investigations to an **independent judicial authority** empowered to order coercive investigative measures, including searches, seizures, interceptions of communications, and pretrial detention. The investigating judge acts both as investigator and **guarantor of pro-**

[15] Covolo 2018, pp. 337 et seq.
[16] Ligeti and Theodorakakou 2026, mn. 12-13 explaining the standard, traditional LUX procedure and then mn. 14 (footnote 44) see for changes. Both say LUX made "significant modifications to its criminal justice system".
[17] Hauck 2025b, Art. 1 PIF-Directive and see 2026a on the EPPO Regulation.
[18] See Gerkrath 2019, pp. 221 passim and see instructive Scheeck 2025 no 1, pp 57–77.
[19] See https://bit.ly/4uUQUHd.
[20] See https://bit.ly/4uUQUHd.
[21] In Loi 2022 the *juge d'instruction* is mentioned 58 times. This alone shows how occupied the system of the Grand-Duchy is with this special institutional figure. https://tinyurl.com/46scvn9z. For the French countries see Hodgson, 2005; Bell 2006, Judiciaries within Europe: a comparative review, pp. 57 et seq., 103.

cedural legality. However, the emergence of the EPPO has partially altered this *equilibrium* by introducing investigative competences exercised directly by European Delegated Prosecutors ("EDPs").

2. The Integration of the EPPO System into the Luxembourgish Legal Order and the Importance of Implementing Legislation

Luxembourg opted for an **integration-based implementation model** with regard to the EPPO even if this leads due to the **historical construction of the EPPO in 2017** to a significant shortcoming of jurisdiction of the CJEU to review coercive acts and lowers judicial protection.[22] Rather than creating a fully autonomous procedural regime for EPPO investigations, the legislature **incorporated the EPPO into existing judicial and procedural structures** (see Art. Art. 75-8 bis, Art. 75-8-ter).[23] **43**

This approach reflects Luxembourg's **traditional preference for institutional continuity** and procedural integration.[24] The EPPO therefore operates within the domestic procedural framework whilst simultaneously deriving its authority directly from European Union law, whereby preliminary questions are necessary for interpretations.[25] **44**

The importance of implementing legislation nevertheless remains considerable. Although Regulation (EU) 2017/1939 is **directly applicable**, national legislation is necessary to organise institutional arrangements, define procedural interfaces, allocate competences, and ensure compatibility between domestic law and supranational prosecutorial powers. **45**

The Luxembourg implementation process occurred in **two principal stages**: **46**

- the institutional organisation of the Office of the European Delegated Prosecutors; and
- the subsequent adaptation of criminal procedural law (see below Sources of Law).

[22] See Mitsilegas 2021, p. 259.
[23] Ligeti and Theodorakakou 2026, mn. 8: "status of 'substitute principal'".
[24] Krenn 2022, pp. 40–101; a federal system was not established, see for historical ideas Lensing, 1993 pp. 212 et seq.; Ligeti and Theodorakakou 2026, mn. 3: "[...] main objectives [of the legislator were ...] to preserve, as far as possible, a degree of procedural parallelism between domestic and EPPO's investigations". The new phase established is called single investigative phase led by the EDP (*enquêtes menées par le procurerur européen délégué*).
[25] Academic Subcommittee, Interpretation of the EPPO Regulation: A new wave of preliminary references to the CJEU, March 26, 2026, https://www.steppo-eulaw.com/2026/03/26/interpretation-of-the-eppo-regulation-a-new-wave-of-preliminary-references-to-the-cjeu/ (Accessed 31 March 2026) naming on the interpretation of the EPPO Regulation, see also pending preliminary references: Case C-407/25 *Tersten* (referred by the Belgian courts) concerning the communication and division of competences between the EPPO and national authorities under Articles 24, 25, 27 and 35 regarding ongoing investigations; Case C-506/25 *Raukar-Gamulin* (referred by the Croatian Constitutional Court) concerning the designation of national authorities competent for conflicts of jurisdiction under Article 25 para 6; and Case C-686/25 *Aliki* (referred by the Greek Special Court for Actions against Judges) concerning jurisdiction over the non-contractual liability of European Delegated Prosecutors under Art. 42 para 4.

47 This **two-step implementation process** also revealed tensions between domestic procedural traditions and the supranational logic of the EPPO system.[26]

3. *Loi du 31 mars 2021 portant modification de la loi modifiée du 7 mars 1980 sur l'organisation judiciaire en vue de l'organisation de l'Office des procureurs européens délégués*

48 The **Law of 31 March 2021** amended the amended Law of 7 March 1980 on the organisation of the judiciary with a view to establishing the Office of the European Delegated Prosecutors in Luxembourg.

49 Its principal purpose was institutional rather than procedural. The legislation organised the status, appointment, and functioning of the Luxembourg European Delegated Prosecutors within the national judicial order.

50 The **adoption law** formally integrated EDPs into the Luxembourg judiciary whilst preserving their functional independence under the EPPO Regulation.

4. *Loi du 22 juillet 2022 modifiant le Code de procédure pénale aux fins de la mise en œuvre du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen*

51 The defence lawyer occupies a **central position** within Luxembourg criminal proceedings and acts as the principal guarantor of defence rights during investigations and trial proceedings.

52 In EPPO and OLAF-related matters, the **role of defence counsel** acquires an additional supranational dimension. Defence lawyers must navigate not only Luxembourg criminal procedure but also European Union law, EPPO procedural mechanisms, mutual legal assistance structures, and the jurisprudence of the CJEU.

53 The **defence lawyer's role** includes:

- safeguarding procedural rights[27];
- right to request witness questioning and confrontations [28];

[26] Ligeti and Theodorakakou 2026, mn. 3: "has proven challenging".
[27] E.g. Art. 136-10 paras. 2 and 4 guarantee protection, here the right to accompany and to be informed during site visits. When the European Delegated Prosecutor conducts a site visit to secure evidence, the suspect and their lawyer (conseil) have the right to participate. They must be notified of this on the preceding day. Exception: In the event of an acute risk of loss of evidence, the measure may be carried out as an urgent procedure without the lawyer present; however, the reasons for this must be stated in the official record.
[28] See e.g. Art. 136-11 para. 3 Loi 2022 see for guaranteed protection: Active participation in the evidentiary proceedings (active defence). The suspect and their lawyer (conseil) have the right to request the questioning of witnesses for the defence. They may also request that the suspect be questioned in the presence of the designated witness. Right to be heard and determination of status at the first interrogation.

- ensuring respect for legal professional privilege (e.g. in exceptional danger situations, loss of evidence, see **Art. 136-24 para 8** Loi 2022 allows the EDPs to act immediately);
- obtaining **access to the case file**[29];
- contesting jurisdictional issues; challenging **proportionality of investigative acts** (see e.g. **Art. 136-24 para 9** this is why any statements need to be in protocols); and coordinating defence strategies across multiple jurisdictions where cross-border investigations are involved.

In practice, EPPO proceedings require defence lawyers to **operate simultaneously** within domestic and European procedural frameworks. **54**

5. The Criminal Trial in Luxembourg in the Light of the EPPO Regulation: Defence Rights

Investigations relating to offences affecting the financial interests of the European Union ("PIF offences") are characterised by **heightened complexity**, extensive documentary evidence, financial tracing operations, and cross-border cooperation mechanisms. **55**

Defence rights *in generali* in such investigations must be assessed in light of: **56**

- **Directive (EU) 2016/343** on the presumption of innocence; **Directive 2013/48/EU** on access to a lawyer; the Charter of Fundamental Rights of the European Union; the ECHR; and the EPPO Regulation itself and further directives.[30]

OLAF investigations remain administrative in nature, whereas EPPO investigations are criminal proceedings. Nevertheless, OLAF findings frequently serve or at least should and could serve as the factual, evidentiary basis for subsequent EPPO investigations. **57**

Defence lawyers must therefore carefully assess the **admissibility and procedural legality of evidence** transferred from OLAF to the EPPO. **58**

Under Luxembourg law, **defence rights during the investigation phase** include: **59**

[29] This is one of the most fundamental rights under the CFR, the ECHR, which the EU does not take part in but the Member States. The right to prior access to the case file and copies is given by Art. 136-29 Para. 1, Para. 2, and Para. 3 The equality of arms through knowledge of the status of the investigation (*accès au dossier*). Before the first interrogation, the accused and their lawyer (avocat) must be granted the right to inspect the case file (at least 3 working days in advance for a standard summons; at least 30 minutes in advance in the event of an arrest). Following the initial interrogation, the defence attorney may inspect the case file at any time and generally has the right to request copies of all file contents within one month. An exception is that the public prosecutor may, by way of a reasoned decision, restrict access in exceptional cases if there is a serious risk to third parties or if significant public interests (e.g., national security) are jeopardized.

[30] Ligeti and Theodorakakou 2026, mn. 20 "not been without difficulty".

- the **right to legal assistance**[31]; the right to silence (see Art. 136-24 para 3 due to para 1 and 2, which request this); access to judicial remedies; limited access to the case file (see above); participation in certain investigative acts or questionings[32]; the right to challenge detention; and protection against unlawful coercive measures.

60 However, **access to the case file during the preliminary investigative phase** remains more limited than during the judicial investigation stage. Procedural secrecy traditionally plays a significant role in Luxembourg criminal investigations.

61 The defence may challenge investigative acts before the *Chambre du conseil* (Indictments Chamber), particularly where coercive measures affect fundamental rights.

62 It can be added, that one should recall the **latest changes** (*en vigueur*: 7 March 2026) to the EPPO laws. They stem from **February 2026** and the legislator changed Art. 136-48, -51, -62, - 62, -65, -74. *De facto* the **nullity procedure** in Art. 136-62 **was reformed**, the **timelines in Art. 136-51 clarified**, so judges of courts assessing Art. 30 measures on intrusive investigation tools must decide specifically fast in transnational cases, Art. 31 EPPO. **Filings to** the **District courts** are possible via Art. 136-65 and the **conflict situations of evocation cases**, where national authorities fail to defer to the EPPO will be **resolved by the Court of Appeal**, who designates the magistrates (Art. 136-74).[33]

[31] This is important because it protects the accused from waiving rights where he/she does not need to, see the Protection against ineffective waiver of procedural rights in Art. 136-26. It states that the protection against acting to one's own detriment or waiving rights without due consideration. Any premature waiver of statutory time limits or formalities by the accused is ineffective (null and void) unless the waiver is made in the presence of the defence counsel (*défenseur*) or is confirmed by them. Free communication is essential therefore see for the absolute right to free communication with the lawyer Art. 136-27 Para. 1, Para. 5, Para. 6, and Para. 9 Guaranteed protection is here an unrestricted, confidential client-lawyer contact (attorney-client privilege). Immediately after the first interrogation, the accused may communicate freely with their lawyer. Even if the investigating judge imposes a general ban on contact due to urgent investigative necessities, the following expressly applies: Under no circumstances does the contact ban extend to the accused's lawyer. The lawyer must be informed of such orders via registered mail and must be heard regarding any judicial applications to lift the ban.

[32] Right to ask questions during witness confrontations is guaranteed by Art. 136-25 para. 2. It includes the right to confrontation and active right to ask questions. Rule: During a confrontation, the accused and their lawyer (conseil) may ask the witness relevant questions either through the public prosecutor or, if the prosecutor permits, directly.

[33] See Mémorial A98, 3 mars 2026, http://data.legilux.public.lu/eli/etat/leg/loi/2026/02/18/a98/jo.

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

On 2.3.2026, there were **36 ongoing investigations** by EPPO and an unknown number of OLAF investigations in or concerning Luxembourg.[34] This indicates, it is clear that for any **EDP, SNE of OLAF or defence lawyer** the need to deal with EPPO/OLAF investigations is imminent and inherent to the ani-fraud-work, to put it short: It is important to **know** (at least) **the most relevant case law**.[35] Case law, which emerged since 2021 till 2026 concerns already many EDP related **questions of judicial control** etc. and OLAF has an even larger case law from ECJ and national (administrative and/or criminal) courts dealing e.g. with the **applicability of OLAF reports as evidence** or a complaint by a person concerned or an economic operator being investigated appealing because of **infringements of his personal rights under the CFR** or in case of resistance against OLAF actions **under the national fundamental rights** of the constitution of Luxembourg[36] (see below Art. 9, 9a OLAF Regulation for this "yield-situation"). **1**

I. Collection of Cases

Nota bene: There was one major case explicitly concerning the EPPO Regulation in Luxembourg till 2023. This decision stems from the *Cour de cassation du Grand-Duché de Luxembourg*.[37] But further **relevant cases of an emerging EPPO/OLAF PIF law *Acquis* scenery since 2023** can be obtained in the **case law Annex** at the end of the volume.

See below → The most important parts referring to Art. 288 para 2 TFEU, Art. 13, 26 EPPO Regulation are presented within a translation below. **2**

[34] See Luxembourg Times, https://tinyurl.com/57rkchsy. There are currently 32 active cases in the Grand Duchy, with an estimated damage of €1.42 billion, [...].

[35] Even the CJEU and lower EU court instances as well as courts in the Member States within the EPPO zone have a lot of scientific or academic staff preparing decisions or researching decisions even or just because of the AI-age, which request even more sharper research and a human-based approach to find solutions for legal problems during investigations or a concept for the whole PIF Acquis, which takes into account the differences, which still exist between the Member States despite the harmonizing Directives and EPPO Regulation, see e.g. Court of Justice of the European Union 2024 describing the rules of seconded national experts.

[36] See Gerkrath 2019, 1.1.2 "The role of the Constitution has never been subject to extensive theoretical debate in Luxembourg [...] he part on fundamental rights appears to be neglected". [and 1.5.3:] Within the EU, the far-reaching exercise of powers at supranational level requires a set of constitutional rules ensuring that these powers are exercised according to shared constitutional values and in the respect of a common standard of fundamental rights. This set of rules can only result from 'European constitutional law' understood here as a combination of the Member States' national constitutions, the 'EU constitution', the ECHR and the Charter of Fundamental Rights of the EU. The harmonious coexistence of these different legal sources and their complementary relation needs to be organised by clauses of reciprocal reference and mutual respect."

[37] See N° 11/ 2023 pénal du 26.01.2023 Not. 3/21/PE Numéro CAS-2022-00038 du registre: https://tinyurl.com /5n96mkpr. Accessed 30 June 2026.

3 Another publicly discussed investigation concerns a case discovered by a newspaper from Luxembourg.[38] The so-called "**MALT" affair** revolves around the language app "Mobile Assisted Language Tool" (MALT), which was originally commissioned by the National Reception Office (ONA) to provide linguistic support for Syrian refugees. The project was developed by the Pirate Party, which is registered as a non-profit organisation, as part of an EU and Luxembourg **co-funded tender**. However, in the spring of 2023, an **audit by the financial inspection authority** revealed that certain **accounting records** were deemed **inadmissible**, raising questions about the **ONA's bookkeeping.**

4 As a result, the ONA demanded € 92,000 in repayment from the Pirate Party. The Pirate Party, however, rejected the demand through a lawyer's letter. Subsequently, the Ministry of Family Affairs, which oversees the ONA, announced a more thorough review of the office's accounts. The affair was uncovered by investigative reporting from the Luxembourger Wort and the Luxembourg Times. It sheds therefore light on **potential irregularities in publicly co-funded projects** and highlights typical fraud scenarios within the "inner EU", now as well EPPO-zone.[39]

Table 1: Case Law Relating to Actions of the EPPO

Relates to Art.	**Judgement, ECLI, etc.**	**Content**
Art. 24	Luxembourg Court of Cassation, N°11/2023 pénal (CAS-2022-00038), 26.01.2023.	Decision prior to implementing law: An EDP asked an investigating judge to order a search and seizure under Art. 24-1 1 CPP (Lux.) (mini-instruction). The judge declared the requisition inadmissible; the Court of Appeal affirmed, reasoning there was no national rule expressly empowering EDPs and that Art. 24-1 2 CPP (allowing the judge to continue the instruction) was incompatible with the EPPO model. The EDP brought cassation. The Court of Cassation quashed the appellate ruling. It held that national courts must apply Art. 24-1 1 CPP in EPPO cases and disapply Art. 24-1 2 CPP to the extent it conflicts with the EPPO Regulation, by virtue of EU-law primacy and direct applicability. Therefore, an **EDP is in-**

[38] See https://tinyurl.com/38hcr6hz. Accessed 30 June 2026.
[39] Presumption of Innocence: The case is the subject of ongoing investigations. All parties involved are entitled to the presumption of innocence until proven otherwise.

		vested with the same power as the State Prosecutor to requisition a search/seizure under Art. 24-1 1, even absent special implementing legislation. Case remanded to a differently composed chamber; cassation costs borne by the State.
	Luxembourg Court of Cassation, N° 42/ 2024 pénal (CAS-2023-00114), 21.03.2024.	On the requisition of an EDP, an investigating judge ordered a search and seizure at the Luxembourg branch of an English LLP (SOCIETE1). The Court of Appeal's chambre du conseil confirmed. The company lodged cassation; the Public Prosecutor and the EPPO argued the company lacked standing. Can a third party affected by a search order bring a criminal cassation under Luxembourg law? In EPPO-driven investigations, a company targeted by a search order cannot bring criminal cassation unless it fits one of the Art. 407 CPP categories; its proper route is the **immediate appeal under Art. 136-48 para 3 CPP**. EPPO involvement does not alter national standing rules for cassation. EPPO representation before the Cour de cassation is by the EDP under CPP art. 17 para 2, with the national Prosecutor General acting as amicus curiae
Art. 30, 41, 42	ECJ, *Opinion of Advocate General Collins* C-292/23, ECLI:EU:C:2024:856 EPPO (*Contrôle juridictionnel des ac tes de procédure*).	This case focuses on whether Article 42 para 1 of the EPPO Regulation, when read alongside Article 47 of the CFR, the second subparagraph of Article 19 para 1 TEU, and the principles of equivalence and effectiveness, allows national laws to prevent individuals under investigation by the EPPO from directly challenging decisions by EDPs to summon third parties as witnesses. The issue arises because such decisions can potentially affect the legal positions of both the individuals under investigation and the witnesses summoned.
	ECJ, *G. K. u.a. (Parquet européen)*,	It involved cross-border investigative measures carried out by the EPPO. A German EDP led an

	21.12.2023, C-281/22, ECLI:EU:C:2023:1018.	investigation into suspected fraud regarding biodiesel imports, which allegedly caused €1.295 million in damages to the EU's financial interests. The investigation required a search and seizure of goods in Austria, delegated to an Austrian EDP. Thus, it concerns whether the judicial review of cross-border investigation measures taken by the EPPO should include a full assessment of their justification and legality, or if such review should be restricted to procedural aspects in the Member State where the measure is executed. This interpretation addresses fundamental rights under EU law, particularly the right to effective judicial protection (Article 47 of the CFR). Allowing full judicial review in the Member State of the assisting EDP would risk undermining the EPPO's efficiency by creating additional hurdles for cross-border investigations.
	GC, *Stan v EPPO,* 15.12.2023*,* T-103/23*,* ECLI: EU:T:2023:871.	Decision from the Court (Tenth Chamber) that involves a nullity action filed by *Victor-Constantin Stan* against the EPPO. The court dismissed the claim, declaring itself incompetent to adjudicate the matter. EPPO charged Mr. Stan with offenses related to unlawful acquisition of public funds. He challenged the EPPO's decision, seeking annulment under Article 263 TFEU. He claimed the EPPO's decision violated his right to judicial protection, asserting that Article 42 of Regulation (EU) 2017/1939 inadequately ensures judicial oversight of EPPO's procedural acts. Court only confirmed that procedural acts by the EPPO fall under the jurisdiction of national courts unless expressly covered by Article 42 para 3 and 8 of Regulation 2017/1939. Mr. Stan's argument for broadening the EU court's jurisdiction was unsupported by the regulation's wording or intent. Challenges to EPPO acts must first be raised at the national level, with potential referral to the CJEU for preliminary rulings under Article 267

		TFEU. Finally, the court dismissed Mr. Stan's case, finding his legal challenge inadmissible.

The following table relates to part D OLAF (Regulation → see below D). **5**

Table 2: Case Law Relating to Actions of OLAF

Relates to Art.	**Judgement, ECLI, etc.**	**Content**
Art. 3, 11	ECJ, C-T-48/16, *Sigma Orionis v the Commission,* Judgement of 3 May 2018, ECLI: EU:T: 2018:245.	Resistance of the Economic Operator, Decision, Applicability of national law in case of on-the-spot-checks.
Art. 4 (Internal Investigation)	ECJ, *Franchet & Byk*[40], Judgment of 8 July 2008, ECLI:EU:T:20 08:257.	Non-contractual liability, Investigations by OLAF, 'Eurostat' case, [..] Supervisory Committee, Leaks in the press, Disclosure by OLAF and Commission, Breach of the principle of the presumption of innocence, Non-material damage, Causal link.
	ECJ, Case C-591/19 P, *European Commission v Fernando De Esteban Alonso*, Judgment of 10 June 2021, ECLI:EU:C:20 21:468.	After OLAF transmitted information from an internal Eurostat inquiry to French prosecutors and the Commission lodged a criminal complaint (as civil party) before OLAF's final report, a former Commission official sued the EU for damages. The General Court awarded him €62,000. On appeal, key questions were: (i) whether OLAF had to notify/hear him as a "named" or "personally implicated" person before transmitting information; (ii) whether Art. 9(4) of Reg. 1073/1999 barred the Commission from complaining to national prosecutors before OLAF closed its investigation; and (iii) causation between OLAF/Commission acts and alleged non-material harm. OLAF may transmit information from internal inquiries to na-

[40] See Wojahn and Butticé 2008, pp. 143 et seq.

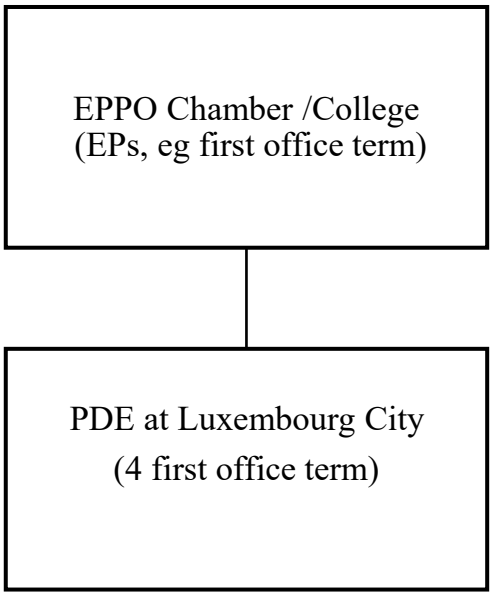
		tional prosecutors without first hearing an official who is not named or personally implicated. The Commission may complain to national prosecutors before OLAF's final report; Art. 9 para 4 is not a bar, though the duty of care constrains named accusations.
Art. 4 Internal Investigations	ECtHR, *Allenet de Ribemont v. France App*. No(s) 15175/ 89, ECLI:CE: ECHR :1995:0210 JUD001517589.	Administrative investigations. Public officials (not only courts) can violate the presumption of innocence when their statements amount to a declaration of guilt about an identified suspect prior to conviction; communications on pending cases must be factual and cautious. Excessive delay in domestic civil proceedings seeking redress for such statements breaches Article 6(1). Remedies include substantial monetary awards.
National courts		
	Tribunal administratif (Luxembourg), 21.09.2015, N° 35235 du role.	The Customs and Excise Administration invited a customs agent (… S.à r.l.) to provide a guarantee (€122,865.81) to secure potentially underpaid customs duties on imports from China, relying on OLAF "fair prices" and the Community Customs Code (CCC) valuation rules. The Director rejected the agent's administrative appeal (4 Sep 2014) and later extended the deadline (17 Sep 2014). The company sought annulment or *réformation* of the director's decisions. Core issue before the Tribunal administratif: jurisdiction administrative court vs. ordinary courts for disputes about guarantees securing customs duties. The Tribunal declared itself incompetent ra*tione materiae*. Disputes about a guarantee demanded to secure customs duties concern the perception of an indirect tax, which falls outside the administrative courts' attributed tax jurisdiction under art. 8 para 1 of the 1996 law. Such matters belong to the judicial courts. Applicant

		was ordered to pay costs. Challenges to customs guarantees tied to alleged undervaluation (even if grounded in OLAF reference prices and CCC rules) are not within Luxembourg administrative courts' fiscal remit; they must be brought before the ordinary judiciary. The administrative court will dismiss for lack of material jurisdiction without reaching the merits.

Source: The authors, Own Compilation.

II. Institutions

Table 3: The EPPO in Luxembourg **6**



Contacts: 11, rue Notre Dame L–2240 Luxembourg Phone: (+352) 475981 2661 European Delegated Prosecutors: Claude Eischen, Philipp Zangerle, Nathalie Presber. Supervised by European Prosecutor: **Gabriel Seixas.** **7**

For **more information and updates** see on the EPPO Website or make a request to a Regional, decentralized office.

Source: EPPO Website.

8 *Table 4: National Institutions*

In purely national Cases	*La police judiciaire*	*Le ministère public* (Articles 31 à 48-1 CPP) et les procureurs	*Le juge d'instruction*
In PIF matters	Will act under the supervisions of the EDP or will e.g. conduct own measures	Might need to relinquish/hand the case to Luxembourgish EDP -	Might need to relinquish/hand the case to Luxembourgish EDP

Source: Expert Information, Own Compilation.

1. Investigation Offices and Investigating Judges of Luxembourg and Diekirch

9 ***Cabinet d'instruction de Luxembourg***
Cité judiciaire, Building TL
L-2080 - Luxembourg
Tel.: (+352) 475981-2454

Cabinet d'instruction de Diekirch
Tribunal d'arrondissement de Diekirch
Place Guillaume, L-9237 Diekirch
P.O. Box 164
L-9202 Diekirch
Tel.: (+352) 803214-23

2. Criminal Chambers of the District Court of Diekirch

10 **Courthouse**
Place Guillaume, 4
L-9237 Diekirch

Tribunal d'arrondissement de Luxembourg
Bâtiments TL, CO, JT
Cité judiciaire

P.O. Box 164
L-9202 Diekirch
Tel.: (+352) 803214-1
Fax: (+352) 807119
Plateau du St-Esprit
L-2080 Luxembourg
Tel.: (+352) 475981-1

Figure 1 La Justice in Luxembourg **11**



Source: La Justice: https://tinyurl.com26rzfwbc.

3. Superior Court of Justice (*La Cour supérieure de justice*) and Location of *Procureur Général d'Etat*

a) Appeal Court

High Court of Justice **12**
Cité judiciaire
Building CR L-2080 – Luxembourg
The Court of Appeal reviews cases already tried at first instance (1st instance or 1st instance) in civil, commercial, social or criminal matters. **13**

b) Cassation Court

Art. 416 of the Criminal Procedure Code of Luxembourg allows cassation, if the grounds for cassation can be proved. The **contact to the Court of Cassation** is possible in at least three ways, whereby the law determines the right way for the action of either the EDP, a lawyer, or a researcher. A **cassation complaint** must be submitted according to the law and cannot simply be handed to the court via mail etc. **14**

Registry of the Court of Cassation – *Cité judiciaire* **15**
Building CR 2080 - Luxembourg
Tel. : (+352) 475981-2369/ 2373
cal.cassation@justice.etat.lu

4. Sources of Law

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

5. National Laws – *Lex Generalis*

a) EPPO Investigation-Related Bills, Codes, Laws and Administrative Documents in Luxembourg

17 ***Codes***

- *le code de procédure pénale*/Criminal Procedure Code
- *le code de l'organisation judiciaire*/Code for the organization of the judiciary
- *le loi générale sur les douanes et accises*/Luxembourgish Customs Law[41], Art. 131
- *le code monetaire et financier*/Monetary and Financial Code
- *le code général des impots*/General Tax Code

18 ***Laws (lois) et accords:***

- *ACCORD entre les Gouvernements des Etats de l'Union Economique Benelux, de la République fédérale d'Allemagne et de la République française relatif à la suppression graduelle des contrôles aux frontières communes*, Art. 9

19 ***OLAF related legislation:***

- *le code général des impots*/General Tax Code

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

20 **EPPO related**:

- Circular of October 4, 2021 relating to the fight against tax fraud: JUSD2129778C, and its annexes/*Circulaire du 4 octobre 2021 relative à la lutte contre la fraude fiscale NOR: JUSD2129778C, et ses annexes*.

21 Obligation of Art. 117 EPPO Regulation was fulfilled by Luxembourg and EPPO received the document and made it public on its website.[42]

c) OLAF-Investigations Related Laws

22

- *Code de la commande publique*/Market Organization Act
- *Code rural et de la pêche maritime*/Rural and maritime fishing code
- *Code général des impôts*/General Tax Code
- *Loi générale sur les douanes et accises*/Luxembourgish Customs Law

[41] See http://data.legilux.public.lu/eli/etat/leg/recueil/douanes_accises/20221003. Accessed 30 June 2026.
[42] See https://www.eppo.europa.eu/sites/default/files/2021-11/10-FR.pdf. Accessed 30 June 2026.

- *Code monétaire et financier*/Monetary and Financial Code
- *Code commerce*/Trade code
- *Loi du 7 novembre 1996 portant organisation des juridictions de l'ordre administratif*/The Law of 7 November 1996 on organization of Administrative Courts, as amended
- The law of 21 June 1999 regulating the procedure in front of Administrative Courts, as amended[43]. * This list is not exhaustive.

d) The EPPO Adoption Act in Luxembourg (*Loi du 31 mars 2021 portant modification en vue de l'organisation de l'Office des procureurs européens délégués*)

Nota bene: The Act on the Execution of the European Public Prosecutor's Office contains provisions that may affect all Sections 26–33 of the EPPO Regulation and therefore it is presented here in advance:

Synopsis 1: Official Text of the EPPO Adoption Act in French and Translation of the Luxembourgish EPPO Adoption Act in English

Loi du 31 mars 2021 portant modification de la loi modifiée du 7 mars 1980 sur l'organisation judiciaire en vue de l'organisation de l'Office des procureurs européens délégués.	**Law of 31 March 2021 amending the amended law of 7 March 1980 on the organization of the judiciary with a view to the organization of the Office of European Delegated Prosecutors.**
Nous Henri, Grand-Duc de Luxembourg, Duc de Nassau, Notre Conseil d'État entendu; De l'assentiment de la Chambre des Députés; Vu la décision de la Chambre des Députés du 18 mars 2021 et celle du Conseil d'État du 23 mars 2021 portant qu'il n'y a pas lieu à second vote; Avons ordonné et ordonnons:	We Henri, Grand Duke of Luxembourg, Duke of Nassau, Our Council of State heard; With the consent of the Chamber of Deputies; Considering the decision of the Chamber of Deputies of March 18, 2021 and that of the Council of State of March 23,2021 that there is no need for a second vote; Have ordered and are ordering:

23

[43] Loi du 21 juin 1999 portant règlement de procédure devant les juridictions administratives et modifiant
(a) la loi générale des impôts,
(b) la loi modifiée du 1er mars 1952 modifiant certaines dispositions relatives aux impôts directs,
(c) la loi du 27 août 1977 concernant le statut des fonctionnaires entrés au service d'institutions internationales,
(d) la loi modifiée du 10 août 1991 sur la profession d'avocat,
(e) la loi modifiée du 13 mars 1993 relative à l'exécution en droit luxembourgeois de la Directive No. 89/665 du Conseil du 21 décembre 1989 portant coordination des dispositions législatives, réglementaires et administratives relatives à l'application des procédures de recours en matière de marchés publics,
(f) la loi du 7 novembre 1996 portant organisation des juridictions de l'ordre administratif.

Article unique. À la suite de l'article 75-8 de la loi modifiée du 7 mars 1980 sur l'organisation judiciaire, il est inséré un nouveau paragraphe 3bis, intitulé « De l'Office des procureurs européens délégués » et comprenant les articles 75-8bis à 75-8quater nouveaux, libellés comme suit:	Single article. Following article 75-8 of the amended law of 7 March 1980 on the organization of the judiciary, a new paragraph 3a is inserted, entitled "Of the Office of European Delegated Prosecutors" and comprising articles 75- New 8 bis to 75-8 quater, worded as follows:
§ 3 bis. – De l'Office des procureurs européens délégués	**§ 3 bis. – From the Office of European Delegated Prosecutors**
Art. 75-8bis. Les deux procureurs européens délégués désignés par le Luxembourg, pour être nommés, conformément à l'article 17 du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen, sont choisis par le procureur général d'État.	**Art. 75-8 bis.** The two European Delegated Prosecutors appointed by Luxembourg, to be appointed, in accordance with Article 17 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation concerning the creation of the European Public Prosecutor's Office, are chosen by the state attorney general.
Le choix est opéré parmi les magistrats de l'ordre judiciaire répondant aux critères prévus par l'article 17, paragraphe 2, du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen.	The choice is made among the magistrates of the judicial order who meet the criteria provided for in Article 17, paragraph 2, of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation concerning the creation of the Public Prosecutor's Office.
Les procureurs européens délégués ont le grade de substitut principal. Ils sont libérés de leurs fonctions nationales pour la durée de leur mandat. Les postes libérés sont pourvus par de nouvelles nominations. Les procureurs européens délégués conservent les droits et obligations attachés à leur qualité de magistrat luxembourgeois.	The European Delegated Prosecutors have the rank of principal substitute. They are released from their national functions for the duration of their mandate. The vacant posts are filled with new appointments. The European Delegated Prosecutors retain the rights and obligations attached to their status as Luxembourg magistrates.

Art. 75-8ter. Les magistrats qui cessent la fonction de procureur européen délégué sont réintégrés à un poste équivalent à la fonction qu'ils exerçaient avant leur nomination. À défaut de vacance de poste adéquat, les magistrats concernés sont réintégrés par dépassement des effectifs. Les périodes pendant lesquelles les magistrats ont exercé la fonction de procureur européen délégué sont prises en compte comme périodes de service au sein de la magistrature. Les cotisations sociales ainsi que les contributions à l'assurance dépendance des procureurs européens délégués sont pris en charge par le budget de l'État. Au cas où leur traitement après réintégration serait inférieur à celui touché en tant que procureur européen délégué, les magistrats concernés bénéficieront d'un supplément personnel de traitement pensionnable tenant compte de la différence entre le traitement touché à la fin de leur mandat de procureur européen délégué et le nouveau traitement. Ce supplément personnel de traitement diminue au fur et à mesure que le traitement augmente avec l'évolution de la carrière. **Art. 75-8quater.** Le procureur général d'État met à la disposition des procureurs européens délégués des fonctionnaires et employés de l'État relevant de l'administration judiciaire pour les assister dans l'exercice de leurs fonctions.	**Art. 75-8-ter.** Magistrates who cease the function of European Delegated Prosecutor are reinstated in a position equivalent to the function they exercised before their appointment. In the absence of an adequate vacancy, the magistrates concerned are reinstated by exceeding the number of staff. The periods during which the magistrates exercised the function of European Delegated Prosecutor are considered as periods of service within the magistracy. Social security contributions as well as contributions to long-term care insurance for European Delegated Prosecutors are covered by the State budget. In the event that their salary after reinstatement is lower than that received as European Delegated Prosecutor, the magistrates concerned will benefit from a personal supplement of pensionable salary considering the difference between the salary received at the end of their mandate as European Delegated Prosecutor. and the new treatment. This personal salary supplement decreases as the salary increases with the progression of the career. **Art. 75-8 c.** The State Prosecutor General provides the European Delegated Prosecutors with State officials and employees in the judicial administration to assist them in the performance of their duties.

Ces fonctionnaires et employés de l'État sont placés sous la direction des procureurs européens délégués. Mandons et ordonnons que la présente loi soit insérée au Journal officiel du Grand-Duché de Luxembourg pour être exécutée et observée par tous ceux que la chose concerne. La Ministre de la Justice, *Sam Tanson* Palais de Luxembourg, le 31 mars 2021. *Henri* Doc. parl. 7760; sess. ord. 2020–2021.	These civil servants and state employees are placed under the direction of the European Delegated Prosecutors. Let us mandate and order that this law be inserted in the Official Journal of the Grand Duchy of Luxembourg to be executed and observed by all those concerned. The Minister of Justice, *Sam Tanson* Luxembourg Palace, March 31, 2021. *Henri* Doc. speak 7760; sess. ord. 2020–2021.

e) The Second EPPO Adoption Amendment Law of 2022

24 The **Loi du 22 juillet 2022** modifying le *Code de procédure penale aux fins de la mise en œuvre du règlement* (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen. – Mémorial A n° 428 de 2022) shall be presented here:

25 *Synopsis 2: Official Text of the EPPO Adoption Decree and Translation of the Luxembourgish EPPO Decree*

Loi du 22 juillet 2022 modifiant le Code de procédure pénale aux fins de la mise en œuvre du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen. Is presented on the following pages Nous Henri, Grand-Duc de Luxembourg, Duc de Nassau, Notre Conseil d'État entendu; De l'assentiment de la Chambre des Députés; Vu la décision de la Chambre des Députés du 13 juillet 2022 et celle du Conseil d'État du 15 juillet 2022 portant qu'il n'y a pas lieu à second vote;	Law of 22 July 2022 amending the Code of Criminal Procedure for the purposes of implementing Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation regarding the creation of the European Public Prosecutor's Office. Is presented on the following pages We Henri, Grand Duke of Luxembourg, Duke of Nassau, Our Council of State heard; With the consent of the Chamber of Deputies; Considering the decision of the Chamber of Deputies of July 13, 2022 and that of the Council of State of July 15, 2022 that there is no need for a second vote;

Avons ordonné et ordonnons:	Have ordered and order:

Law of 22 July 2022 amending the Code of Criminal Procedure for the purposes of implementing Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation regarding the creation of the European Public Prosecutor's Office.

Title V. – European Public Prosecutor's Office
Chapter I. – Competence and powers of the European Delegated Prosecutors

Chapter II. - Of the procedure

Subchapter I. – Exercise of the competence of the European Public Prosecutor's Office

Subchapter II. – The power of the European Delegated Prosecutor

Section I era. – General provisions Art. 136-9 et seq.

Section II. – Specific powers of the European Delegated Prosecutor

Sub-section I era. – Transport

Subsection II. – Witness hearings

Subsection III. – Interrogations and confrontations

Subsection IV. – Expertise

Subsection V. – Access to certain information held by banking establishments

Subsection VI. – The summons and its execution

Subsection VII. – Judicial control Art. 136-41 et seq.
Section III. – Measures ordered by the investigating judge at the request of the European Delegated Prosecutor

Subchapter III. – Provisional release

Subchapter IV. – Appeals Section I era. – Nullities of the investigation conducted by the European Delegated Prosecutor Section II. – Appeals against the orders of the investigating judge and the council chamber issued in matters of investigations carried out by the European Delegated Prosecutor Subchapter V. – Rights of the parties Subchapter VI. – Closing of the procedure **Chapter III. – The articulation of competences between the European Public Prosecutor's Office and the Luxembourg judicial authorities** The Minister of Justice, *Sam Tanson* *Cabasson*, July 22, 2022. *Henry* Doc. speak. 7759; sess. ord. 2020-2021 and 2021-2022.	
Les dispositions pertinentes seront présentées dans la structure de ce manuel.	**The relevant provisions will be presented within the structure of this compendium volume.**

26 For another country report in a short manner without the adoption provisions printed but analysed shortly we can cross-reference now Ligeti and Theodorakakou 2026, mn. 3.

27 Be aware that on 19 December 2025, the **Law of 12 December 2025**, amending the Penal Code and the Code of Criminal Procedure (Official Gazette A556 of 15 December 2025), entered into force, which wants to strengthen the legal framework for combating crime (particularly money laundering and terrorist financing) and adapts the criminal procedures in line with the recommendations of the Financial Action Task Force (FATF) set out in its report published on 27 September 2023: It hereby enlarges the **Article 506-1 of the Penal Code** and expansion of the scope of the money laundering offence. This is an indirect transposition **enlargement of the Directive 2017/1371**.

28 **Latest changes** to **EPPO Adoption** laws stem from **February 2026**:

Law of 18 February 2026 amending the Code of Criminal Procedure with a view to adapting certain provisions relating to the European Public Prosecutor's Office
We, Guillaume, Grand Duke of Luxembourg, Duke of Nassau,
Having heard the Council of State;
Having regard to the adoption by the Chamber of Deputies;
Having regard to the decision of the Chamber of Deputies of 22 January 2026 and that of the Council of State of 3 February 2026 stating that a second vote is not required;
Have ordered and hereby order as follows:
Article 1 [...].

The full wording can be **accessed online** https://legilux.public.lu/filestore/eli/etat/leg/loi/2026/02/18/a98/jo/fr/pdfa/eli-etat-leg-loi-2026-02-18-a98-jo-fr-pdfa.pdf and the special changes are explained below. There have been no further changes to the EPPO zone laws, yet, despite the **Anti-Corruption Directive 1021/2026 (EU)**, which has some impact on the PIF *acquis* law scenery and implementation. **29**

The **general overall adoption** was found to be in "**full compliance**" by a legal Assessement study and even when the adoption law from 2022 created an "**almost autonomous procedural framework**" the explanatory *memorandum* of the *Projet de loi No 8431* from 2024, adopted 2026 analysed **some difficulties** – especially to keep the traditional Luxembourgish, Belgium inspired criminal procedure.[44] To **be up-to-date and for any further changes till 2030**, **we recommend** to consult the new volumes of le *Code pénal/ Code de procédure pénale 2025* (2025) 11th edn, Les codes de la Pasicrisie, vol 3. Luxembourg concerning PIF-*Acquis* relevant changes due to **Directive 1021/2026 (EU)** and *le Pasicrisie* et le *semestriel Revue pénale luxembourgeoise*, which presents *le droit pénal et la Constitution* dans *les números avec les articles de doctrine* by the *éditeur juridique* LegalTech Sàrl, Bourmicht, Bertrange for changes concerning EPPO jurisprudence. The CNP volume presents in the following the *status quo* as of 2026. **30**

[44] See only Ligeti and Theodorakakou 2026, mn. 1, 2 with footnote 5, mn. 3 returning to the national "implementing legislation".

C. EPPO Regulation

I. Comment: The Adoption and Implementation of the EPPO in Luxembourg: An Originally "Unwanted" Prosecution Office or an Obstacle to the National System, and the Success Brought by the EPPO?

Hauck/Schneider JLU, University of Gießen

Luxembourg was part of the **European Communities**, signed the **Schengen Treaty** in **1990** and was the first country to effectively help **foster the Western European free trade area**.[45] Today all of this is history important for daily practice in the area of white-collar crime and PIF *Acquis* offences detrimental to the Union's budget, and some problems are (still) the same. An important part to effectively combat PIF offences plays the **judiciary of Luxembourg**. But the Government and the Legislator proved to be very reluctant when acting on the **EU-EPPO matter** in the past years (especially 2019–2022). In February 2023 the journalist *Laurent Schmit* portrayed a **small country in conflict with its own European ideas**. He wrote that Luxembourg hindered the operations of the EPPO for almost one and half a year. Only in July 2022 the EDPs could take up cases and investigate. **1**

The **main reasons for this reluctance** are according to the research: "The reason: hesitant justice ministers, an overwhelmed parliament and distrust in parts of the judiciary."[46] **2**

"A **judgment by the Court of Cassation** at the end of January [*scil.* 2023] revealed the consequences of the belated change in the law. The EPPO had applied to a Luxembourg examining magistrate for a house search and confiscation. But this request was rejected. Both the EPPO and the Luxembourg Attorney General then appealed this decision. But in March 2022, the council chamber of the "*Cour d'appel*" confirmed the decision of the investigating magistrate. The Court of Cassation reversed that judgment.
But the damage was done: EPPO's investigation was blocked and the house search could not be carried out for months. Since confiscation was also requested, criminal money may have disappeared. Two European Delegated Prosecutors are responsible for handling the cases in Luxembourg. They have the same powers as a national prosecutor." Your power to request investigative measures has been challenged in Luxembourg", **3**

[45] See Kostoris 2018, p. 9: "The starting point of the process leading to the current situation finds its origin in the intention to strengthen, in the aftermath of the Second World War, the economic cooperation between States. This led to the establishment by six States (France, Germany, Italy, Belgium, Netherlands, and Luxembourg) in 1951 of the ECSC (European Coal and Steel Community), followed in 1957 by the Euratom (European Atomic Energy Community) and by the EEC (European Economic Community), whose purpose was to guarantee a free movement of persons, services, goods, and capitals among States"; https://bit.ly/4e4AnJA 3.190.11.
[46] See Schmit L 2023 Luxemburg behinderte Ermittlungen. Reporter.lu. online: https://tinyurl.com/yc5baace. Accessed 30 June 2026.

stresses the EPPO. The delegated prosecutors had no choice but to appeal against this questioning of their power by all instances. particularly embarrassing: Only in Luxembourg was such a lawsuit by the EPPO necessary." As far as we know, there were no such problems in any other member state involved," says the EPPO statement."[47]

4 This all shows that the EPPO had **no smooth start in Luxembourg** and the new institution is not fully recognized here in the minds of the judiciary. The power of the Union body was undermined and not accepted but critiqued without any real reasons. EDPs are *de facto* national prosecutors and act on the basis of national law. The problem was that, like in France an investigating judge exists for many years and he needs to be contacted prior to an investigation. This is in conflict with the wording of Art. 30 EPPO Regulation and Art. 28 EPPO Regulation. Both Regulation Articles grant the EDP the power to "order or request" an investigation measure. If this investigation measure is now denied only be saying that the relevant EDP has no power to "order or request", one must ask why Luxembourg had not changed the law according to the EPPO Regulation before 2021. Almost all other MS had changed their laws by then (**see the other Volumes in the CNP Series**).

5 The Luxembourgish legislator has since the beginning of 2021 worked on a **specific EPPO Adoption Law.** This law started initially with the title "*Projet de loi relatif à la mise en application du règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen et modifiant le Code de procédure pénale*". Schmit summarized this development in his article: "It should be different. The text went back and forth twice more between Parliament and the Council of State." We had extreme difficulties in integrating the powers of the European Public Prosecutor's Office into the Luxembourg system," says the then rapporteur *Stéphanie Empain* today. The problem: the delegated European public prosecutor must be **independent of the national judiciary**. He also has powers that are shared between the investigating magistrate, the council chamber and the public prosecutor in Luxembourg criminal proceedings."

6 It's like trying to install Windows on a Mac", said *Stéphanie Empain* when voting on the text in July 2022. Over 70 new articles were added to the Code of Criminal Procedure."[48]

[47] See Schmit L (2023) Luxemburg behinderte Ermittlungen. Reporter.lu. online: https://tinyurl.com/yc5baace. Accessed 30 June 2026.

[48] See Schmit L (2023) Luxemburg behinderte Ermittlungen. Reporter.lu. https://tinyurl.com/yc5baace. Accessed 30 June 2026. "Things turned out differently. The text went back and forth between Parliament and the Council of State twice more. "We faced extreme difficulties integrating the powers of the European Public Prosecutor's Office

The Court of Cassation addressed the matter by providing a detailed clarification on the Luxembourgish judiciary and the legislator regarding the application of EU law. The judgment adopts a **logical approach**, elaborating on the **fundamental principles of Article 288 TFEU** with a level of clarity that underscores the essential nature of these provisions within the national legal order: 7

"No. 11/ 2023 Criminal Area from 26.01.2023 Not. 3/21/PE Registry number CAS-2022-00038 8

The **Court of Cassation of the Grand Duchy of Luxembourg** rendered in its hearing public on Thursday, January twenty-six, two thousand and twenty-three,

on the **appeal of European Public Prosecutor's Office**, body of the European Union having legal personality, created by Council Regulation (EU) No 2017/1939 of 12 October 2017 implementing implement enhanced cooperation regarding the creation of the European Public Prosecutor's Office, established at L-1855 Luxembourg, 11, avenue John F. Kennedy,
petitioner in cassation,
appearing by the European Delegated Prosecutor MAGISTRAT1.), established qualities in L–2080 Luxembourg, Plateau du Saint-Esprit, Cité Judiciaire - Building CR, within the Office whose domicile is elected, in the presence of the Public Prosecutor,

the following judgment:

Having regard to the judgment under appeal delivered on March 29, 2022 under number 320/22 Ch.c.C. by the council chamber of the Court of Appeal of the Grand Duchy of Luxembourg;
Having regard to the appeal in cassation lodged by the European Delegated Prosecutor MAGISTRAT1.), following declaration of April 26, 2022 at the Court Registry superior of justice;
Having regard to the memorandum in cassation, served on May 17, 2022 by the European Public Prosecutor's Office to the State Attorney General, filed on May 19, 2022 at the Court Registry;
On the conclusions of the Deputy Attorney General MAGISTRATE 2.)

into the Luxembourgish system," says Stéphanie Empain, the rapporteur at the time. The problem: the European Delegated Prosecutor must be independent of the national judiciary. Furthermore, the role entails powers that, under Luxembourgish criminal procedure, are divided among the investigating judge, the Chambre du Conseil (committal chamber), and the public prosecutor. "It's like trying to install Windows on a Mac," *Stéphanie Empain* remarked during the vote on the text in July 2022. More than 70 new articles were added to the Code of Criminal Procedure."

On the facts

According to the judgment under appeal, the investigating judge who heads the court of the district of Luxembourg had declared inadmissible the indictment of the European Delegated Prosecutor seeking an order, on the basis of Article 24-1 of the Code of Criminal Procedure, a search with seizure. The council chamber of the Court of Appeal upheld this order.

On the second ground of cassation, which is prior Statement of means based on the violation of articles 24-1 of the Code of Criminal Procedure, 13, paragraph 1, paragraph 1, of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation regarding the creation of the Public Prosecutor's Office European Union and 288, paragraph 2, of the Treaty on the Functioning of the European Union, in that the Council Chamber of the Court of Appeal confirmed an order inadmissibility of an indictment from the European Public Prosecutor's Office for the purpose of asking the judge instruction to order, on the basis of article 24-1 of the Code of Criminal Procedure, a search and seizure, on the grounds that At the appeal hearing, the European Delegated Prosecutors while acknowledging that currently the Luxembourg legislator has not made any special provision to ensure that they be empowered to order or request a search or seizure, as provided required by the said article, maintain that they must be assimilated to the Prosecutor under the said Regulation and that they must be able, as such, to benefit from the same rights and hence also the right to request from the investigating judge to order a search and seizure on the basis of article 24-1 of the Code of Procedure criminal. However, Article 24-1 (1) 1st and 2nd paragraphs of the Code of Criminal Procedure provides that For any offence, the State prosecutor may, require the investigating judge to order a search, a seizure, the hearing of a witness or an expertise without a preparatory investigation is opened. The state prosecutor can proceed the same applies to the offenses referred to in articles 196 and 197 of the Penal Code for this concerning the use of forgeries referred to in Article 196, and for the offenses referred to in Articles 467, 468 and 469 of the Penal Code. Article 24-1 (2) 1st paragraph of the same Code provides that the investigating judge hearing the case decides whether to execute only the required investigative act and returns the file or if, on the contrary, it continue the education himself. The said text which was introduced into the Penal Code by the law of October 27, 2010, was inspired by article 28 septies of the Code of Belgian instruction, as it was introduced by article 5 of the Belgian law of March 12 1998 relating to the improvement of criminal procedure at the stage of information and of instruction, known as the "Franchimont reform" and is known by the term mini- instruction. The idea was to unclog the business investigation offices not of great complexity, not characterized by a sensitive side and therefore not requiring a complete instruction, but only measurements punctual. It would therefore only be the "small" business or business simple which would fall under the simplified instruction. The investigating judge seized requisitions

to perform the specific act, however, retains the possibility of requesting the opening of a preparatory investigation; he decides whether to carry out the investigative act or if he himself continues the investigation (Bill 5354, commentary on the articles, 3 p. 13 and 14 and Opinion of the Council of State p. 2 and 3). However, the Regulation of October 12, 2017 grants in Article 4 to the European Public Prosecutor's Office the competence to seek, prosecute and bring to trial the perpetrators and accomplices of criminal offenses detrimental to the financial interests of the European Union, not allowing national investigating authorities the decision to prosecute.

It follows that even if in pursuant to the articles cited by the European Delegated Prosecutors the Regulation of 12 October 2017 assimilates the European Public Prosecutor's Office to the National Public Prosecutor's Office, it can only act in accordance with national law, in similar national proceedings, and cannot, in the absence of a special text, have more powers than the Public Prosecutor's Office national by splitting a national procedure which, moreover, is provided for small-scale cases, to which European cases such as the one at the basis of the request can hardly be assimilated. It is therefore wisely that the investigating judge did not order the requested measure. The order attacked is therefore to be confirmed.

[…]

In the alternative, as regards the **second limb of the second plea**, it is necessary to seize the Court of Justice of the European Union on the basis of Article 267 of the Treaty on the Functioning of the European Union questions following preliminary rulings:
"Does **Article 13, paragraph 1, subparagraph 1, of Regulation (EU) 2017/1939 of the Council of 12 October 2017** implementing cooperation reinforced regarding the creation of the European Public Prosecutor's Office, which provides that "**[t]he European Delegated Prosecutors […] are vested with the same powers as the national prosecutors in the field of investigation, prosecution and enforcement state of affairs, in addition to and subject to the special powers and status which they are conferred and under the conditions provided for by these regulations**" is *interpret as meaning that the European Delegated Prosecutors are vested, by the effect of the Regulation alone, therefore in the absence of a national law to bring it into line with the Regulation, of the same powers as national prosecutors in the field of investigations, prosecutions and disposition of cases?* Is this investiture of the European Delegated Prosecutors in the powers of national prosecutors is also carried out when the modalities exercise of powers cannot be fully applied to prosecutors European delegates because they are partly incompatible with the powers and the special status of European Delegated Prosecutors or with the conditions of the Rules? Are the European Delegated Prosecutors, by the sole effect of Regulation, therefore in the absence of a national law to bring it into line with the Regulation, vested with the power conferred by national law

on prosecutors national, such as that provided for by article 24-1 of the Code of Criminal Procedure Luxembourg, to request, without opening a preparatory investigation directed by the investigating judge, it is up to the latter to order a search or seizure and this even if the exercise of this power involves a modality that is incompatible with the Regulations and could not therefore be applied in the event of the exercise of this power by the European Delegated Prosecutors, namely that national law confers in such a case to the investigating judge seized the power to refer the case to the Prosecutor of State and to demand the opening of a preparatory investigation?". If you decide to ask these preliminary questions, you should ask to the Court of Justice of the European Union, on the basis of Article 107 of the Rules procedure of the Court of Justice of 25 September 2012, to apply the procedure urgent preliminary ruling (PPU)."



Court's response

On the two branches of the middle joined together; Having regard to the principle of the primacy of European Union law over the domestic law of the Member States. Having regard to **Article 288, paragraph 2, of the Treaty on the Functioning of the Union European which has**: "The regulation is general in scope. It is mandatory in all its elements and it is directly applicable in any Member State." Having regard to Article 4 of Council Regulation (EU) 2017/1939 of October 12, 2017 implementing enhanced cooperation regarding the creation of the Public Prosecutor's Office (hereinafter "the Regulation") which provides: "The European Public Prosecutor's Office is competent to investigate, prosecute and commit to trial the perpetrators and accomplices of the criminal offenses damage to the financial interests of the Union which are provided for in Directive (EU) 2017/1371 and determined by these regulations. In this regard, the European Public Prosecutor's Office diligent investigations, carries out acts of prosecution and exercises public action before the competent courts of the Member States until the case has been definitely judged."

Having regard to Article 13, paragraph 1, subparagraph 1, of the Rules which provides: "The European Delegated Prosecutors act on behalf of the European Public Prosecutor's Office in their respective Member States and are vested with the same powers as the national prosecutors in the field of investigation, prosecution and enforcement state of affairs, in addition to and subject to the special powers and status which they are conferred and under the conditions provided for in these regulations.

"Given article 24-1 of the Code of Criminal Procedure which provides: "(1) For any offence, the State prosecutor may require the investigating judge to order a search, a seizure, the hearing of a witness or an expertise without a preparatory investigation is opened. The state prosecutor can proceed the same applies to the offenses referred to in articles 196 and 197 of the Penal Code for this concerning the use of forgeries referred to in Article 196, and for the offenses referred to in Articles 467, 468 and 469 of the Penal Code. For the offenses referred to in the preceding paragraph and for the offenses

which carry a correctional sentence, the maximum of which is equal to or greater than one year imprisonment, the State prosecutor may request the investigating judge to order the measures provided for in paragraphs (1) and (2) of Article 67-1 and without a preparatory investigation is opened. (…) 7 (2) The investigating judge hearing the case shall decide whether to execute only the required investigative act and sends the file back or if, on the contrary, he continues even education. However, in this case, he must immediately request in writing an indictment referral in rem to the State prosecutor before performing acts other than that of which he was seized, indictment that the State prosecutor must address to him on the field. (…)."

Under the **principle of the primacy of EU law and the direct applicability of the provisions of the Rules**, the appeal judges the obligation to apply Union law, disapplying, where necessary, any incompatible provision of national law.

The appeal judges said that article 24-1, paragraph 1, of the Code of criminal procedure could only apply in conjunction with paragraph 2 of the same article, that the latter provision was incompatible with the Rules and could not therefore receive application and that, consequently, failing special text, paragraph 1 could not be applied either.

By retaining that the European Delegated Prosecutors were, in the absence of a national text, not empowered to request from the investigating judge on the basis of article 24-1, paragraph 1, of the Code of Criminal Procedure a search order without the latter being able, by virtue of article 24-1, paragraph 2, of the same code continue the investigation himself, so as to confirm the order of inadmissibility of the indictment of the European Delegated Prosecutor, the **appeal judges violated the provisions referred to above**, since th**e direct application of European law to them imposed, with regard to the primacy of the latter over any contrary national provision and the duty of loyal cooperation, to apply article 24-1, paragraph 1, of the Code of criminal procedure and to disapply paragraph 2 of the same article. It follows that the judgment incurs the cassation.**

FOR THESE REASONS,

and without there being any need to rule on the first plea th**e Court of Cassation quashes and annuls the contested judgment,** number 320/22 Ch.c.C., rendered on March 29, 2022 (Not.3/21/PE) by the council chamber of the Court of Appeal of the Grand Duchy of Luxemburg; **declares null and void the said judicial decision and the acts resulting from it** followed, restores the parties to the state they were in before the judgment was broken and to be made right, sends them back to the council chamber of the Court of Appeal of Big-Chamber."

The **EPPO Adoption Law for Luxembourg** finally ended up as a law called "*Loi du* **9**
22 juillet 2022 modifiant le Code de procédure pénale aux fins de la mise en œuvre du

règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen."[49] It primarily amends the Luxembourgish CPC, which is a law that was, if seen historically strongly influenced by the French legislature in the Napoleonic century.[50]

10 The **EPPO critiqued that Luxembourg "took so long"** to really participate within the EPPO. Luxembourg had time since 2017 to adopt a law enabling the EDPs to act within the territory but the legislators only adopted one in 2022. It remains to be seen how the future of the EPPO acting in Luxembourg itself develops in the near future. Schmit said in the end of his article quite promising that Luxembourg (City) does not want to lose its status as (a) "European Capital":

11 "The Luxembourg judiciary fears that investigators will **face a mountain of cases**." It is warned against a competition for the scarce resources of the criminal investigation department. *Sam Tanson* **avoided** the **demand for more staff and resources**. In the specific case of VAT fraud, the government underestimates how much Luxembourg is involved in these networks, as research by Reporter.lu shows even if the commitment to combat EU frauds is high as "The European Public Prosecutor's Office confirms the legal EU location of our capital and our country," emphasized the Minister of Justice when voting on the law in July 2022."[51]

II. Special Introduction to the Criminal Code and the Criminal Procedure Code, Accompanied by a Short Historical Sketch

12 The Luxembourgish criminal justice system is *de facto* a "***mélange***" **of different legal and historical impacts**.[52] In the history Luxembourg was for a long-time part of the so-called German States, which were part of the **Holy Roman Empire**. In 1815 the Vienna Congress took place and Luxembourg was granted the **status of a Grand-Duchy**. With the second contract of London from 1867 the **independence of Luxembourg** was ensured. Since 1890 the **Grand-Duchy** was ruled by the emperors of the House Luxembourg-Nassau.[53] In 2023 the state is still represented by the Grand-Duke, the only **Grand-Duke** of a Grand-Duchy remaining worldwide, **Henri of Nassau**, who operates since 2000.[54]

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[49] Law of 22 July 2022 amending the Code of Criminal Procedure for the purposes of implementing Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation regarding the creation of the European Public Prosecutor's Office. See above "Sources of law" for a translation of the most important provisions. The provisions not cited above are cited below in the relevant part of the CNP volume.
[50] See Cour de cassation du Grand-Duché de Luxembourg, N° 11/ 2023 pénal du 26.01.2023 Not. 3/21/PE Numéro CAS-2022-00038 du registre, https://tinyurl.com/5n96mkpr. Accessed 30 June 2026.
[51] See Schmit L (2023) Luxemburg behinderte Ermittlungen. Reporter.lu. online: https://tinyurl.com/yc5baace. Accessed 30 June 2026.
[52] See in-depth Fritz et al. 2022.
[53] See https://gouvernement.lu/en/systeme-politique.html. Accessed 30 June 2026.
[54] See https://www.capitant.lu/wp-content/uploads/2018/01/interpretation_penal.pdf. Accessed 30 June 2026.

After the second world war Luxembourg took a strong position in the international concept of checks and balances and welcomed not only the idea of a European Community but as well the idea for the UN.[55] **13**

The **Criminal Code of Luxembourg** stems from the time of the awakening of national independence and a very own, modern Luxembourg state tradition in the 19th century.[56] In 1879 the Criminal Code (*Le Nouveau Code Penal Du Grand-Duche De Luxembourg Loi Du 18 Juin 1879 or De Lëtzebuerger Code Pénal*) was made public. It had many parallel parts to the Code pénal Napoleon. And this Code reproduced in parts the Criminal Code of Belgium of 1867. Thus, all in all the Luxembourgish Criminal Justice System stems mainly from the Belgian and French structure, which existed in the 19th century.[57] **14**

In the past 150 years the **Code penal of Luxembourg has changed** much **under the influence of European legislation**. The most recent changes in relation to the protection of the financial interests of the EU were asked for in 2017 with the Directive 2017/1371/EU.[58] **15**

These changes were implemented and the EU Commission controlled the transposition, which it made public in the **34th PIF Report 2023**. The Criminal Procedure Code of Luxembourg was in force since 9 December 1808.[59] A very prominent organ of this code is the *juge d'instruction*, who is well known from the French criminal justice system. This judge is competent to fight specialized criminal conduct.[60] Today the name *code instruction criminelle* is not used any more but instead *Code de procedure penale*. **16**

[55] Harmsen and Högenauer, 2020 https://doi.org/10.1093/acrefore/9780190228637.013.1041, accessed 9 March 2026: "The country was a founding member of the United Nations (1945), the Organization for Economic Cooperation in Europe (1948), and the Council of Europe (1949), as well as the North Atlantic Treaty Organization (1949)." And later "Luxembourg as a highly Europeanized society". This is why the authors see a huge interest, as small as the country may be, in international and European enforcement of politics and law.

[56] See for further historical milestones and references Calmes and Bossaert 1994; and see Thill 2014, pp. 1085–1144.

[57] Thill 2014, pp. 1085–1144; 1088: "On 12 October 1841, William II granted the first Luxembourg Constitution in accordance with the principles of the German Confederation. This "chartered constitution", constitution octroyée, greatly resembled the Dutch Constitution, the Grondwet of 1815, and gave the country administrative autonomy"; 1129: "The Grand Duchy had twenty-nine governments between 1848 and 1888", thus they were very instable; 1137 et seq. on the specialities of the development of a procedural law system.

[58] For the changes due to Art. 4 PIF-Directive and the AML EU law frameworks, see e.g. Allegrezza and Bruzzese, 2023, pp. 50–94; see Hauck 2025b, Art. 11 PIF-Directive, Mn. 1.387 et seq. for the legal situation Mn. 1.390 and the official information from the Government, see as well below in this CNP volume.

[59] See http://uniset.ca/microstates2/3ModLegalSysCyclopedia190_Luxembourg.pdf 3.190.11, § 13(H). Publication of Legislative Acts and § 1.4. Judicial System. § 14 (A). Introduction. https://tinyurl.com/5t3erysp and see Katalog der Bibliothek des Reichstages, Luxembourg; Calcoen 1984 Vol. 3, Ch. 6(B), pp. 3.190.3–3.190.19. Available at: HeinOnline (Accessed: 8 June 2026).

[60] See https://tinyurl.com/kksk7fc4. Accessed 30 May 2026.

17 The Criminal Procedure Code is as well regulated by transposition measures of the EU and the **EPPO Regulation has made changes necessary**, which were proposed and enacted in July 2022 (see below the references within this volume and above, Sources of law).

18 The following part will explore the actions of Luxembourgish EDPs: how must Art. 26–33 be interpreted if the national law references are considered?

III. Criminal Investigations under the EPPO Regulation Based on National Law (Measures)/Introduction to the Luxembourgish System Relating to EPPO Investigations

[…]
SECTION 1
Rules on investigations

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1. Where, **in accordance with the applicable national law,** there are **reasonable grounds to believe that** an offence within the competence of the EPPO is being or has been committed, a European Delegated Prosecutor in a Member State which **according to its national law** has jurisdiction over the offence shall, 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	*le code de procédure pénale*/Criminal Procedure Code *le code de l'organisation judiciaire*/Code for the organization of the judiciary; *le loi générale sur les douanes et accises*/ Luxembourgish Customs Law, Art. 131
"an offence within the competence of the EPPO"	For the text of the offences that are mentioned by Art. 26 EPPO Regulation cf. Hauck 2025a, Fraud in Europe and Hauck 2025b, The PIF Directive (here, Art. 1 on the Implementation of the PIF Directive); See below → "The PIF Offences in Luxembourg".
Sanctions for legal persons	Exist, see Hauck 2025b, Art. 6, 9 PIF Directive 2017/1371.
"[competence of] an EDP in [Luxembourg]"	See Art. 75-8 bis. as introduced by *Loi du 31 mars 2021 portant modification de la loi modifiée du 7 mars 1980 sur l'organisation judiciaire en vue de l'organisation de l'Office des procureurs européens délégués*.
"jurisdiction"	Cf. ss. from the Luxembourgish Criminal Code and cf. Art. 11 of the PIF Directive (EU Fraud Commentary).

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 (see below → Art. 27, Mn. 1). Art. 26 stands on its own and describes a **principle of legality at Union level**, which has the effect of protecting the Unions' (own) financial interests.[61] The Luxembourgish law foresees a similar **role for the prosecutor** already in Art. 24 CPC: **1**

> **Art. 24** (L. June 16, 1989)[62] **2**
> (1) The State prosecutor shall carry out or cause to be carried out all the acts necessary for the investigation and prosecution of offenses against criminal law. [..].

The investigation starts as soon as a **PIF crime comes to the knowledge** of the *procureur d'État* or he receives criminal complaints and reports and decides what action should be taken Article 23 para 1 CPP. **3**

Thus, the **commencement of criminal investigations** is governed primarily by Articles 23 and 46 of the Luxembourg Code of Criminal Procedure. **4**

While a preliminary investigation may be **initiated by the judicial police** either *ex officio* or upon instructions from the public prosecutor, a judicial investigation requires the formal **seizure of the investigating judge** pursuant to Articles 49 and 50 CPP. **5**

The EPPO first **receives or identifies a crime report** under Art 24 EPPO Regulation, originating from Union or national authorities or private persons/entities. It then verifies its **material competence under Art 22**, covering PIF offences under Directive (EU) 2017/1371 and participation in criminal organisations focused on committing such offences. **6**

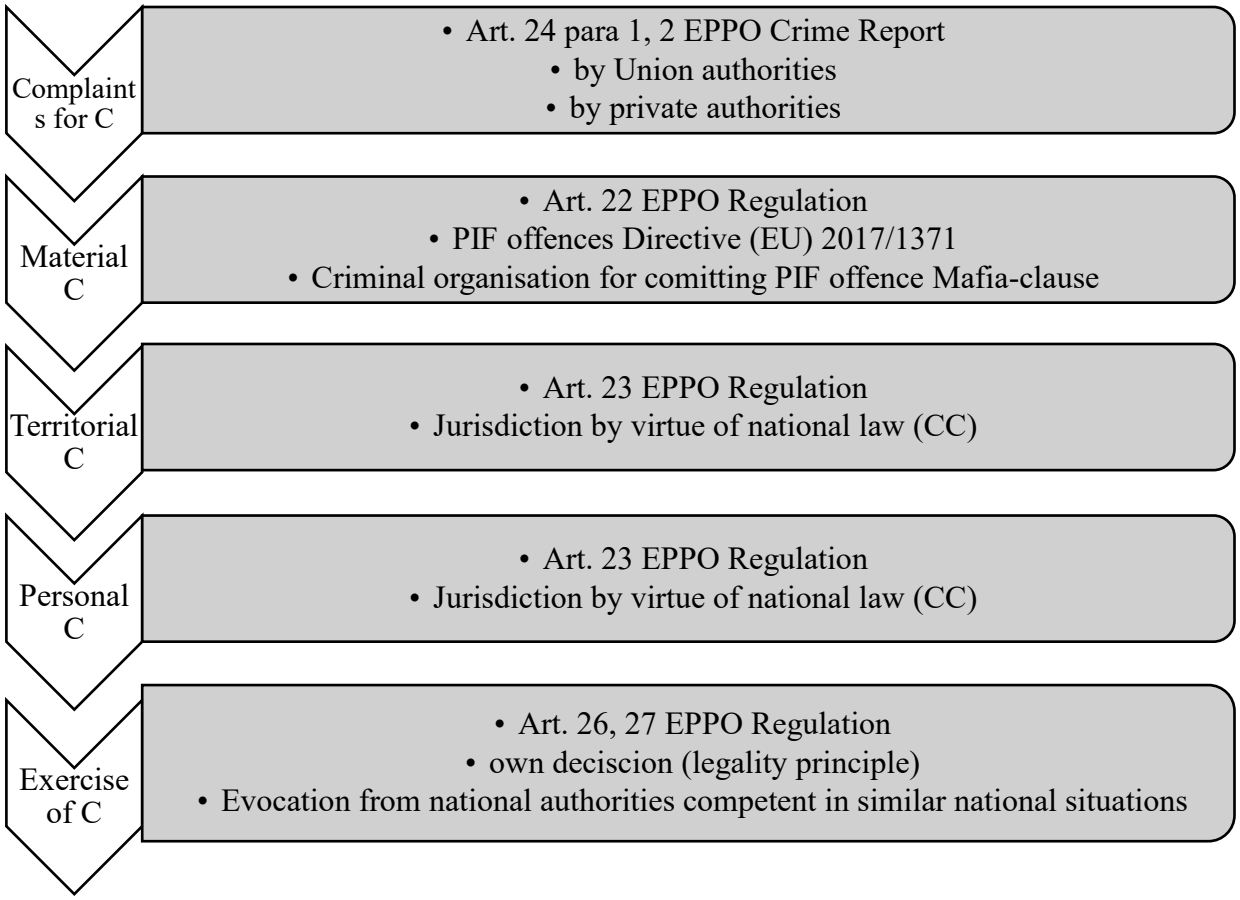
Territorial and personal competence are determined by Art 23 in conjunction with applicable national jurisdiction rules. If these requirements are fulfilled, the EPPO may initiate its **own investigation under Art 26** or, where national authorities have already opened proceedings, exercise its **right of evocation under Art 27** and take over the investigation. Figure 2 illustrates this structure in chronological order: **7**

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[61] See Herrnfeld 2020, Art. 26, Mn. 3 "autonomous concept", pp. 213 et seq. Zuidema 2024 argues that the € 100,000 financial threshold under the EPPO Regulation is not a competence criterion but a procedural tool limited to evocation and referral, where safeguards ensure that at least one authority investigates, thereby avoiding *in concreto* negative conflicts of competence. He concludes that applying the threshold at the initiation stage would unlawfully circumvent the EPPO's duty to investigate and risk impunity, as no guarantee exists that national authorities would take over the case.

[62] **Art. 24 (L. 16 juin 1989)**
(1) Le procureur d'Etat procède ou fait procéder à tous les actes nécessaires à la recherche et à la poursuite des infractions à la loi pénale

8 *Figure 2 Power and Jurisdiction of the EPPO*



9 What is the effect of the **references in Union law to national law**? How have the cases been exercised in practice and what is the situation after years of operational work? The EPPO Annual Report 2021 provides information on the exercise of jurisdiction under Articles 26 and 27 EPPO Reg.

b) Powers and Jurisdiction of the Luxembourgish EDP by Virtue of Arts 13 and 26 EPPO Regulation

10

Title V - Chapter I – Competence and powers of the EDPs
Art. 136-3[63]
The European Delegated Prosecutors have jurisdiction throughout the national territory to seek out, prosecute and bring to trial the perpetrators and accomplices of the criminal offenses referred to in Article 26, paragraph 4a.

[63] **Chapitre Ier - Compétence et attributions des procureurs européens délégués**
Art. 136-3
Les procureurs européens délégués sont compétents sur l'ensemble du territoire national, pour rechercher, poursuivre et renvoyer en jugement les auteurs et complices des infractions pénales visées à l'article 26, paragraphe 4bis.

Art. 136-4[64]
For offenses falling within their jurisdiction, the European Delegated Prosecutors exercise, pursuant to Articles 4 and 13 of the aforementioned Regulation (EU) 2017/1939, the powers of the State Prosecutor and the State Prosecutor General, with the exception Articles 15-2, 16-2, Article 18, paragraphs 1 and 2, Articles 19 to 21, and Article 23, paragraph 5.

Art. 136-5[65]
The acts performed by or on the order of a European Delegated Prosecutor before a transfer or removal decision on the basis of Article 34 of the aforementioned Regulation (EU) 2017/1939 are included in the national file and can be used in the context subsequent prosecutions.

Art. 136-6[66]
The European Public Prosecutor who, in accordance with Article 28, paragraph 4 of the aforementioned Regulation (EU) 2017/1939, decides to search for, prosecute and personally bring to trial the perpetrators and accomplices of the criminal offenses referred to in Article 26, paragraph 4 bis of this Code, enjoys the competence and powers conferred on the European Delegated Prosecutors.

c) The Opening of an Investigation/*L'ouverture d'une enquête*

aa. Relevant Sources of Indications of a Criminal Offence Falling within the Competence of the EPPO

Once the Director-General of OLAF said that: "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 **11**

[64] **Art. 136-4**
Pour les infractions relevant de leur compétence, les procureurs européens délégués exercent, en application des articles 4 et 13 du règlement (UE) 2017/1939 précité, les attributions du procureur d'État et du procureur général d'État, à l'exception des articles 15-2, 16-2, de l'article 18, paragraphes 1 et 2, des articles 19 à 21, et de l'article 23, paragraphe 5.

[65] **Art. 136-5**
Les actes accomplis par ou sur ordre d'un procureur européen délégué avant une décision de transfert ou de renvoi sur le fondement de l'article 34 du règlement (UE) 2017/1939 précité sont intégrés au dossier national et peuvent être utilisés dans le cadre des poursuites ultérieures.

[66] **Art. 136-6**
Le procureur européen qui, conformément à l'article 28, paragraphe 4 du règlement (UE) 2017/1939 précité, décide de rechercher, poursuivre et renvoyer personnellement en jugement les auteurs et complices des infractions pénales visées à l'article 26, paragraphe 4bis du présent code, jouit de la compétence et des attributions conférées aux procureurs européens délégués.

national law duties to report such information to a national prosecution office in advance or in parallel to the EPPO."[67]

12 A **distinction** can be made between the direct and the indirect path for the **transfer of information** related to the competence: The relevant Luxembourgish rules in this regard are enshrined in the CPC, Art. 23:

13

Art. 23 (L. June 16, 1989)
(1)[68] The State prosecutor receives complaints and denunciations and assesses the follow-up to be given to them.
(2) (L. February 13, 2011) Any constituted authority, any public officer or civil servant, as well as any employee or agent in charge of a public service mission, whether hired or mandated by virtue of provisions of public law or of private law, who, in the exercise of his functions, acquires knowledge of facts likely to constitute a crime or misdemeanour, is required to give notice thereof without delay to the State prosecutor and to transmit to this magistrate all information, minutes and deeds relating thereto, notwithstanding any rules of confidentiality or professional secrecy applicable thereto.

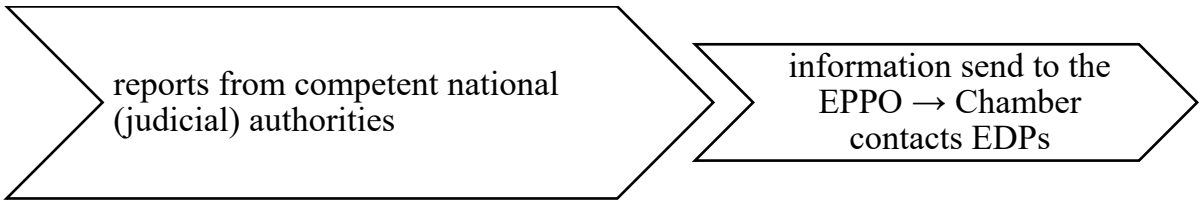
Title V – European Public Prosecutor's Office (L. July 22, 2022)
Chapter II. – Of the procedure
Art. 136-7
(1) The **reports provided for in Article 24(1)** of the aforementioned Regulation (EU) 2017/1939 are sent directly to the European Public Prosecutor's Office.[69]

[67] Klement 2021, pp. 51–52; Ligeti and Theodorakakou 2026, mn.. 9 and 10 expressing that Luxembourg has not established any further formal procedures and requirements despite the ECR Report and EPPO Rules.
[68] **Art. 23 (L. 16 juin 1989)**
(1) Le procureur d'Etat reçoit les plaintes et les dénonciations et apprécie la suite à leur donner.
(2) (L. 13 février 2011) Toute autorité constituée, tout officier public ou fonctionnaire, ainsi que tout salarié ou agent chargés d'une mission de service public, qu'il soit engagé ou mandaté en vertu de dispositions de droit public ou de droit privé, qui, dans l'exercice de ses fonctions, acquiert la connaissance de faits susceptibles de constituer un crime ou un délit, est tenu d'en donner avis sans délai au procureur d'Etat et de transmettre à ce magistrat tous les renseignements, procès-verbaux et actes qui y sont relatifs, et cela nonobstant toute règle de confidentialité ou de secret professionnel lui étant applicable le cas échéant.
(4) (L. 8 mars 2017) Le procureur d'Etat avise dans les dix-huit mois de la réception de la plainte ou de la dénonciation, la victime des suites qu'il donne à l'affaire y compris, le cas échéant, du classement de l'affaire et du motif sous-jacent.
(5) (L. 8 mars 2017) Lorsque l'affaire est classée, l'avis précise les conditions dans lesquelles la victime peut engager les poursuites par voie de citation directe ou de plainte avec constitution de partie civile. Lorsque les peines encourues de par la loi, au titre des faits, sont des peines criminelles ou des peines correctionnelles, l'avis comporte l'information que la victime peut s'adresser au procureur général d'Etat qui a le droit d'enjoindre au procureur d'Etat d'engager des poursuites.
[69] **Art. 136-7**
(1) The reports provided for in Article 24(1) of the aforementioned Regulation (EU) 2017/1939 are sent directly to the European Public Prosecutor's Office.

(2) The reports provided for in Article 24, paragraphs 2, 3 and 5, of the aforementioned Regulation (EU) 2017/1939, are sent to the European Public Prosecutor's Office, either by the investigating judge or by the State prosecutor.

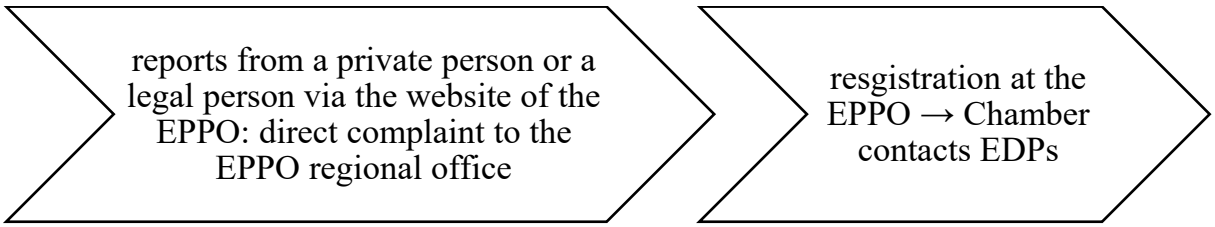
Art. 136-8[70]
When the European Public Prosecutor's Office decides to exercise its jurisdiction, the investigating judge automatically issues a divestiture order which is notified to the parties.

Figure 3: National (Indirect Way of) Obtaining Information for the EPPO Competence and the Exercise of Jurisdiction **14**



Art. 24 Para 8 EPPO Regulation et seq.

Figure 4: Supranational (Direct Way of) Obtaining Information for the EPPO Competence and the Exercise of Jurisdiction **15**



Another, third source or way of information are the Union bodies themselves which are obliged **to report either to OLAF or to the EPPO** (e.g., by obliged by Working Agreements) – depending on the seriousness of the suspected conduct: irregularities only or clear foundations for potential criminal offences. National authorities, who report to OLAF need to obey the national guidelines on how to report irregularities and fraud to the European Commission. OLAF will either way report conduct that falls in the EPPO's competence by virtue of Art. 12c OLAF Reg. **16**

(2) The reports provided for in Article 24, paragraphs 2, 3 and 5, of the aforementioned Regulation (EU) 2017/1939, are sent to the European Public Prosecutor's Office, either by the investigating judge or by the State prosecutor. See as well Ligeti and Theodorakakou 2026, mn. 9 explaining the procedure of reporting cases and Herrnfeld, Art. 24, mn. 11 with a different view.

[70] **Art. 136-8**
When the European Public Prosecutor's Office decides to exercise its jurisdiction, the investigating judge automatically issues a divestiture order which is notified to the parties.

bb. The Framework of Investigations in the Luxembourgish System/*le cadre des enquêtes des PDEs au Luxembourg*

(1) Common Investigation Scenario

(2) Flagrancy Investigation/*D'infraction flagrante*, Art. 30 et seq., 41 CPC

17

TITLE II. – Investigations
Chapter I. – Flagrant crimes and misdemeanours
Art. 30 (L. June 16, 1989)
(1) A flagrant crime or misdemeanour is defined as a crime or misdemeanour which is currently being committed or which has just been committed.
(2) There is also a felony or a flagrant offense when, very close to the time of the action, the suspected person is pursued by public outcry, or is found in possession of objects, or presents traces or clues, leaving to think that she participated in the crime or misdemeanour.
(3) Any crime or offense which, even if not committed under the circumstances provided for in the preceding paragraphs, is assimilated to a flagrant crime or misdemeanour in a house the head of which requires the State prosecutor or a judicial police officer to ascertain.

(3) Official, Preliminary Investigation/*l'Enquête préliminaire*, Art. 46 et seq.

18

Chapter III. – Preliminary investigation
Art. 46 (L. October 6, 2009) (L. March 8, 2017)
(1) Judicial police officers and agents carry out preliminary investigations either on the instructions of the State prosecutor, or *ex officio*, as long as an investigation has not been opened.
(2) Paragraph 3 of this section applies to the questioning in the context of a preliminary investigation on the charge of a crime or misdemeanour of the person against whom there are indications making it probable that he has may have participated in that crime or misdemeanour. They apply in the same way if it turns out during the hearing of a person who is heard as a witness of such an offense that there are indications against him making it likely that he may have to participate.
(3) The interviewee is informed:
has) the nature and presumed date of the offense to which the questioning relates,
b) (L. of August 10, 2018) of his right to make statements and to answer the questions put to him or to remain silent, of his right not to incriminate himself as well as
vs) rights conferred by articles 3-2, 3-3 and 3-6.
If the questioning takes place on written summons, this information is notified to the person to be questioned together with the summons.

If it takes place without a written notice, they are provided, orally or in writing, before it takes place. Mention of this is made in the interrogation report.

Art. 46-1 (L. October 6, 2009)
When instructing the officers and agents of the judicial police to carry out a preliminary investigation, the State prosecutor sets the time limit within which this investigation must be carried out. He may extend it on the basis of the justifications provided by the investigators.
When the investigation is carried out ex officio, without prejudice to Article 12, the officers and agents of the judicial police report regularly to the State prosecutor on its progress.

cc. Determination of the Competence and Verification

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). **19**

These are formal but essential questions. They are determined by means of Union secondary legislation and special delegated guidelines required by secondary legislation, the so-called **Internal Rules on Procedure [of the EPPO]**. This depends on the criteria of the Regulation (see Art. 22, 23). **20**

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

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

For the EPPO to be competent, the requirements of the Regulation must be met. **21**

Either an examination according to Art. 24 para 6 must show that the EPPO is competent or the delegated prosecutor carries out an examination and Assessement by virtue of Art. 26 para 1 EPPO Regulation himself/herself without informing the Permanent Chamber and initiates an investigation about which he/she subsequently informs the Permanent Chamber. **22**

The IRP rules state the following: **23**

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. *For Updates see the EPPO Website within Documents*.

24 The EDP shall **initiate an investigation** when there are reasonable grounds to believe that an offence within the EPPO's competence has been committed, without prejudice to Article 25 para 2 and 3 of the EPPO Regulation (i.e., the **rules on exercise of competence and conflicts of competence**, cf. Art. 26 para 1).

The **exercise of EPPO competence** presupposes that the **cumulative criteria** of the Regulation are met: subject-matter competence (Art. 22, offences affecting the Union's financial interests as defined by the PIF Directive and its national implementation), territorial or personal jurisdiction (Art. 23), and any applicable monetary thresholds (Art. 24). The practical taking-up, allocation and any conflict resolution are governed by Article 25, including decisions of the Permanent Chamber (seated in Luxembourg). **25**

In the following this competence **mechanism** shall be **explored more in-depth** and Art. 23 EPPO Regulation shall be compared more with Art. 24 EPPO Regulation **26**

Art. 23 Territorial and Personal Competences of the EPPO

The EPPO is competent if :
- 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. On this matter see as well Hauck 2025b, Art. 11.

SECTION 2 Exercise of the competence of the EPPO *Art. 24 Communication, Registration and Verification of Information* **27**

The transfer of information to the relevant EDPs or the chamber of the EPPO is mainly regulated by Art. 24 EPPO Regulation. This provision has **been made public to all authorities in Luxembourg** by virtue of the EPPO Adoption Act, which indicates how the transfer of information should take place in order to comply with the supranational law. The transfer of information that could establish an initial suspicion for a PIF offence depends on the suspected concrete offence. **28**

(2) Jurisdiction of the European Delegated Prosecutor in Luxembourg

Art. 26 (L. 22 June 2022) **29**
(1) The public prosecutor of the place where the offence was committed,[71] the public prosecutor of the place of residence, at the time of prosecution, of one of the natural

[71] **Art. 26. (L. 22 juin 2022)**
(1) Sont compétents le procureur d'État du lieu de l'infraction, celui de la résidence, au moment de la poursuite, de l'une des personnes physiques soupçonnées d'avoir participé à l'infraction, celui du lieu d'arrestation d'une de ces personnes, même lorsque cette arrestation a été opérée pour une autre cause, celui du siège de la personne morale.

persons suspected of having participated in the offence, the public prosecutor of the place of arrest of one of these persons, even if the arrest was made for another reason, or the public prosecutor of the registered office of the legal person shall have jurisdiction.
(2) By way of derogation from paragraph (1), the public prosecutor and the courts of the judicial district of Luxembourg shall have exclusive jurisdiction in cases concerning offences under Articles 112-1, 135-1 to 135-6, 135-9 and 135-11 to 135-16 of the Criminal Code.
(3) The public prosecutor competent to prosecute an offence under the conditions of paragraphs (1) or (2) shall also be competent to prosecute offences that are related to that offence as provided for in the following Article.
(4)[72] By way of derogation from paragraph 1, the Public Prosecutor of Luxembourg and the courts of the judicial district of Luxembourg shall have exclusive jurisdiction throughout the territory of Luxembourg for cases concerning offences under Articles 136bis to 136quinquies of the Criminal Code and for acts of execution of international judicial cooperation with regard to the International Criminal Court, established by the Statute done in Rome on 17 July 1998 and approved by the law of 14 August 2000.
(4a) (L. 22 July 2022) By way of derogation from paragraph 1, and without prejudice to the jurisdiction conferred on the EDPs, the Public Prosecutor of Luxembourg and the courts of the judicial district of Luxembourg shall have exclusive jurisdiction for cases concerning criminal offences against the financial interests of

(2) Par dérogation au paragraphe (1), le procureur d'État et les juridictions de l'arrondissement judiciaire de Luxembourg sont seuls compétents pour les affaires concernant des infractions aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-16 du Code pénal.
(3) Le procureur d'État compétent pour poursuivre une infraction dans les conditions des paragraphes (1) ou (2) est compétent également pour la poursuite des infractions présentant avec celle-ci un lien de connexité prévu à l'article suivant.
[72] (4) Par dérogation au paragraphe 1er, le procureur d'État de Luxembourg et les juridictions de l'arrondissement judiciaire de Luxembourg sont seuls compétents sur tout le territoire luxembourgeois pour les affaires concernant les infractions aux articles 136bis à 136quinquies du Code pénal et pour les actes d'exécution de la coopération judiciaire internationale à l'égard de la Cour pénale internationale, instaurée par le Statut fait à Rome le 17 juillet 1998 et approuvé par la loi du 14 août 2000.
(4bis) (L. 22 juillet 2022) Par dérogation au paragraphe 1er, et sans préjudice quant à la compétence attribuée aux procureurs européens délégués, le procureur d'État de Luxembourg, et les juridictions de l'arrondissement judiciaire de Luxembourg sont seuls compétents pour les affaires concernant des infractions pénales portant atteinte aux intérêts financiers de l'Union européenne visées au règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen qui sont commises après le 20 novembre 2017.
(5) Par dérogation au paragraphe 1er, le Bureau de recouvrement des avoirs auprès du parquet de l'arrondissement de Luxembourg est seul compétent sur tout le territoire du Grand-Duché de Luxembourg pour les enquêtes de patrimoine post sentencielles et pour les actes d'exécution dans le cadre de la coopération entre les bureaux de recouvrement des avoirs patrimoniaux des États membres en matière de dépistage et d'identification des produits d'une infraction ou des autres biens en rapport avec l'infraction pouvant faire l'objet d'un gel, d'une saisie ou d'une confiscation ordonnés dans le cadre d'une enquête civile ou pénale.
(6) Les actes accomplis par ou sur l'ordre d'un procureur d'État territorialement incompétent ne sont pas nuls pour autant et peuvent valablement fonder des poursuites ultérieures ».

the European Union referred to in Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation regarding the establishment of the European Public Prosecutor's Office which are committed after 20 November 2017.
(5) By way of derogation from paragraph 1, the Asset Recovery Office at the Public Prosecutor's Office of the district of Luxembourg shall have sole jurisdiction throughout the territory of the Grand Duchy of Luxembourg for post-trial asset investigations and for acts of execution in the context of cooperation between the Asset Recovery Offices of the Member States in tracing and identifying proceeds of an offence or other assets related to the offence which may be subject to freezing, seizure or confiscation ordered in the framework of a civil or criminal investigation.
(6) Acts performed by or on the orders of a territorially incompetent public prosecutor shall not be invalid and may constitute a valid basis for subsequent prosecution.

dd. How to Assess and Verify the Level of Suspicion under Art. 26 Para. 1 and the CPC for a Criminal Offence Falling within the Competence of the EPPO

The **initial suspicion** is only to determine the impetus, so to speak, the "ball that gets the criminal proceedings rolling" if saying it by using a metaphor. **30**

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 is addressed by Union law and the communication with the national authorities and Art. 40 para 3 IRP [2020.003 EPPO]. **31**

In the next section the area of **material competence of the EPPO** in Luxembourg will be explored by showing as well the recent amendments in July 2022, which amended the Code penal again in the area of the general fraud offence, Art. 496. **32**

The **following overview** provides provisions, which cover the **PIF-Directive core areas** fraud (incl. subsidy fraud), corruption, money-laundering, customs/traditional own resources, and serious tax/VAT fraud and thus are the primary national hooks for EPPO material competence (Art. 22 EPPO Reg.): **33**

Further **general research articles for the PIF *acquis* law implementation** can be found here: Busch M (2021) 'Negotiation and Transposition of the PIF Directive – The German Perspective', eucrim, 16(3), pp 182–187; Van Ballegooij W (2021) 'Protecting the EU's Financial Interests through Criminal Law: The Implementation of the "PIF Directive"', eucrim, 16(3), pp 177–181; Zoli L (2023) 'The Amendment of the PIF Directive by the New Proposal for a Directive on Combating Corruption', eucrim, 18(3), pp 279–281. **34**

(1) The PIF Offences in Luxembourg

35 *Sources and National Sections 1: PIF Offences in Luxembourg*

CC fraud offences	CC corruption + AML offences	Tax and Customs (Decree/Code) offences
• Art. 489 à 90 *Banqueroute fraudleuse* • Art. 491 à 492 *Abus de confiance* • Art. 493 *Abus de faiblesse* • Art. 494 *Usure* • Arr. 495 *Production fraudleuse d'une pièce en justice* • Art. 496 *Escroquerie et tentative d'esqroquerie* • Art. 496-1 à 496-4 *Escroquerie à la subvention*	• Art. 246–249 in combination with Art. 252 and the definition of Union official in conformity with Art. 4 PIF Directive 2017/1371 • AML: Art. 507-509-7 CC	• Art. 131 *Loi des douanes Toute infraction à cette interdiction, même si elle ne se rattache à aucune fraude ou tentative de fraude, est punie des peines établies par l'article 130, paragraphe 4.* • Art. 171 *Abus de biens sociaux* • Art. 396 alinéas (5) et (6) *Fraude fiscale aggravée et escroquerie fiscale en matière d'impôts directs* • Art. 29, alinéa 1 et 2 *Fraude fiscale aggravée et escroquerie fiscale en matière de droit d'enregistrement* • Art. 80, paragraphe 1er *Fraude fiscale aggravée et escroquerie fiscale en matière de TVA*

Source: The authors.

36 For more information on the **general transposition** see Hauck 2025b and the Evaluation **Report of the Commission from 2021** as well as the recent court decisions by national courts on these offences. In the summer of 2025, the EU Commission adopted a new anti-fraud architecture within a Withe-Paper, which is without effect on Art. 3, 4 PIF Directive. Only recently the **Directive 2026/1021 (EU)** has been adopted, foreseeing adoption till 2028, which will lead eventually to new implementations in Luxembourg.

(a) PIF Offences in the Criminal Code

The text of the **relevant offences** is presented on the following pages (updates online): **37**

38

Chapter 2. Fraud
Section U. Bankruptcy
Art. 489[73]
Those who, in the cases provided for by the Commercial Code, will be declared guilty of bankruptcy, will be condemned:
Simple bankrupts, to imprisonment from one month to two years. Fraudulent bankrupts, to imprisonment of five to ten years. (L. June 9, 1989) Simple bankrupts may, moreover, be condemned to prohibition, in accordance with article 24.

Art. 490[74] **[Sentencing Guideline]**
Will be **sentenced to imprisonment of** one month to two years and a fine of 500 euros to 30,000 euros:
Those who, in the interest of the bankrupt, have withdrawn, concealed or concealed all or part of his property, movable and immovable;
Those who have fraudulently presented in the bankruptcy and asserted, either in their own name or through the interposition of persons, supposed or exaggerated claims;
The creditor who has stipulated, either with the bankrupt or with any other person, special advantages by reason of his vote in the deliberations relating to the bankruptcy, or who has made a special treaty from which would result, in his favour, an advantage to charge of the bankrupt's estate;
The curator who will be guilty of embezzlement in his management.

[73] **Art. 489**
Ceux qui, dans les cas prévus par le Code de commerce, seront déclarés coupables de banqueroute, seront condamnés:
Les banqueroutiers simples, à un emprisonnement d'un mois à deux ans.
Les banqueroutiers frauduleux, à la réclusion de cinq à dix ans.
(L. 9 juin 1989) Les banqueroutiers simples pourront, de plus, être condamnés à l'interdiction, conformément à l'article 24.

[74] **Art. 490**
Seront condamnés à un emprisonnement d'un mois à deux ans et à une amende de 500 euros à 30.000 euros:
Ceux qui, dans l'intérêt du failli, auront soustrait, dissimulé ou recelé tout ou partie de ses biens, meubles et immeubles;
Ceux qui auront frauduleusement présenté dans la faillite et affirmé, soit en leur nom, soit par l'interposition de personnes, des créances supposées ou exagérées;
Le créancier qui aura stipulé, soit avec le failli, soit avec toutes autres personnes, des avantages particuliers à raison de son vote dans les délibérations relatives à la faillite, ou qui aura fait un traité particulier duquel résulterait, en sa faveur, un avantage à la charge de l'actif du failli;
Le curateur qui se sera rendu coupable de malversation dans sa gestion.

Section II. Breach of trust

Art. 491[75]

(L. July 5, 2016) Anyone who will have fraudulently either diverted, or dissipated to the detriment of others, effects, **funds**, goods, tickets, receipts, electronic keys, writings of any kind containing or operating obligation or discharge and which had been handed over on the condition of returning them or making a specific use or employment of them, will be punished by imprisonment from one month to five years and a fine of 251 euros to 5,000 euros.

(L. March 17, 2016) Anyone who, **with fraudulent intent**, will have been served drinks or food that he will have consumed on site in whole or in part, or will have been given accommodation in establishments intended for this purpose, or will have been transported on public roads by a carrier who makes the transport of people his profession and without having paid the price, will be punished by imprisonment from eight days to six months and a fine of 251 euros to 5,000 euros. The offenses provided for in this paragraph may only be prosecuted on the complaint of the injured party.

(L. March 17, 2016) The culprit may, in addition, be sentenced to a ban, in accordance with article 24.

Art. 492[76]

The provision of article 462 will be applicable to the offense provided for by the preceding article.

Art. 493

(L. February 21, 2013)[77] Is punished by a prison sentence of three months to three years and a fine of 251 to 50,000 euros the fraudulent abuse of the state of ignorance or the

[75] **Art. 491**

(L. 5 juillet 2016) Quiconque aura frauduleusement soit détourné, soit dissipé au préjudice d'autrui, des effets, deniers, marchandises, billets, quittances, clefs électroniques, écrits de toute nature contenant ou opérant obligation ou décharge et qui lui avaient été remis à la condition de les rendre ou d'en faire un usage ou un emploi déterminé, sera puni d'un emprisonnement d'un mois à cinq ans et d'une amende de 251 euros à 5.000 euros.

(L. 17 mars 2016) Quiconque, dans une intention frauduleuse, se sera fait servir des boissons ou des aliments qu'il aura consommés sur place en tout ou en partie, ou se sera fait donner un logement dans les établissements à ce destinés, ou se sera fait transporter sur les voies publiques par un voiturier qui fait du transport de personnes sa profession et sans avoir payé le prix, sera puni d'un emprisonnement de huit jours à six mois et d'une amende de 251 euros à 5.000 euros. Les délits prévus au présent alinéa ne pourront être poursuivis que sur la plainte de la personne lésée.

(L. 17 mars 2016) Le coupable pourra, de plus, être condamné à l'interdiction, conformément à l'article 24.

[76] **Art. 492**

La disposition de l'article 462 sera applicable au délit prévu par l'article précédent.

[77] **Art. 493 (L. 21 février 2013)**

situation of weakness either of a minor, either of a person whose particular vulnerability, due to his age, to an illness, to an infirmity, to a physical or mental deficiency, is apparent or known to his author, or of a person in a state of psychological or physical subjection resulting from the exercise of serious or repeated pressure or techniques likely to alter his judgment, to lead this minor or this person to an act or abstention which is seriously prejudicial to him.
When the offense is committed by the *de facto* or *de jure* leader of a group which pursues activities whose aim or effect is to create, maintain or exploit the psychological or physical subjection of the persons who participate in these activities, the penalties are increased to five years' imprisonment and a fine of 250,000 euros.

Art. 494[78]
Whoever habitually furnishes securities, in any way whatsoever, at a rate exceeding the legal interest and abusing the weaknesses or passions of the borrower, shall be sentenced to imprisonment from one month to one year and fine of 500 euros to 25,000 euros, or only one of these penalties.

Art. 495[79]
Anyone who, after having produced, in a legal challenge, any title, document or memoir, will have maliciously or fraudulently misappropriated it, in any way whatsoever, will be punished with a fine of 251 euros to 3,000 euros. This penalty will be pronounced by the court hearing the dispute.

Est puni d'une peine d'emprisonnement de trois mois à trois ans et d'une amende de 251 à 50.000 euros l'abus frauduleux de l'état d'ignorance ou de la situation de faiblesse soit d'un mineur, soit d'une personne dont la particulière vulnérabilité, due à son âge, à une maladie, à une infirmité, à une déficience physique ou psychique, est apparente ou connue de son auteur, soit d'une personne en état de sujétion psychologique ou physique résultant de l'exercice de pressions graves ou réitérées ou de techniques propres à altérer son jugement, pour conduire ce mineur ou cette personne à un acte ou une abstention qui lui sont gravement préjudiciables.
Lorsque l'infraction est commise par le dirigeant de fait ou de droit d'un groupement qui poursuit des activités ayant pour but ou pour effet de créer, de maintenir ou d'exploiter la sujétion psychologique ou physique des personnes qui participent à ces activités, les peines sont portées à cinq ans d'emprisonnement et à 250.000 euros d'amende.

[78] **Art. 494** Quiconque aura habituellement fourni des valeurs, de quelque manière que ce soit, à un taux excédant l'intérêt légal et en abusant des faiblesses ou des passions de l'emprunteur, sera condamné à un emprisonnement d'un mois à un an et à une amende de 500 euros à 25.000 euros, ou à une de ces peines seulement.

[79] Celui qui, après avoir produit, dans une contestation judiciaire quelque titre, pièce ou mémoire, l'aura détourné méchamment ou frauduleusement, de quelque manière que ce soit, sera puni d'une amende de 251 euros à 3.000 euros. Cette peine sera prononcée par le tribunal saisi de la contestation.

Section III – Fraud and deception

Art. 496[80]

(L. July 18, 2014) Anyone who, with the aim of appropriating a thing belonging to others, will be given or delivered or will have attempted to be given or delivered funds, furniture, obligations, receipts, discharges, electronic keys, either by m**aking use of false names or false qualities**, or **by employing fraudulent manoeuvrers** to persuade the existence of false undertakings, of an imaginary power or credit, to give rise to the hope or fear of a success, an accident or any other chimerical event, or to otherwise abuse trust or credulity, will be punished by imprisonment from four months to five years and a fine of 251 euros to 30,000 euros.

The culprit may also be sentenced to a ban, in accordance with article 24.

Art. 496-1[81] **[Obtaining or Retaining an EU-Subsidy by Making/Omitting False Information]**

(**L. July 29, 2022**) Is punishable by the penalties provided for in article 496, anyone who **knowingly makes a false or incomplete declaration or omits** to communicate information in **violation of a specific obligation**, with a view to **obtaining or retaining a subsidy**, **indemnity** or other **allocation** which is, in whole or in part, borne by the State, another legal person governed by public law or an international institution or **budgets managed by the European Union** or **on its behalf**.

Art. 496-2 (L. July 15, 1993)

Is punished with the penalties provided for in article 496,[82] whoever, following a declaration as referred to in the preceding article, receives a subsidy, indemnity or other allowance to which he is not entitled or to which he is only partially entitled.

[80] De l'escroquerie et de la tromperie

Art. 496

(L. 18 juillet 2014) Quiconque, dans le but de s'approprier une chose appartenant à autrui, se sera fait remettre ou délivrer ou aura tenté de se faire remettre ou délivrer des fonds, meubles, obligations, quittances, décharges, clefs électroniques, soit en faisant usage de faux noms ou de fausses qualités, soit en employant des manœuvres frauduleuses pour persuader l'existence de fausses entreprises, d'un pouvoir ou d'un crédit imaginaire, pour faire naître l'espérance ou la crainte d'un succès, d'un accident ou de tout autre événement chimérique, ou pour abuser autrement de la confiance ou de la crédulité, sera puni d'un emprisonnement de quatre mois à cinq ans et d'une amende de 251 euros à 30.000 euros.

Le coupable pourra de plus être condamné à l'interdiction, conformément à l'article 24.

[81] **Art. 496-1**

(L. 29 juillet 2022) Est puni des peines prévues à l'article 496, celui qui sciemment fait une déclaration fausse ou incomplète ou omet de communiquer une information en violation d'une obligation spécifique, en vue d'obtenir ou de conserver une subvention, indemnité ou autre allocation qui est, en tout ou en partie, à charge de l'État, d'une autre personne morale de droit public ou d'une institution internationale ou des budgets gérés par l'Union européenne ou pour son compte.

[82] **Art. 496-2**

(L. March 30, 2001) Is punished with the same penalties anyone who knowingly uses a subsidy, indemnity or allowance as referred to in the preceding article, for purposes other than those for which it was initially granted.

Art. 496-3[83] **[Accepting or Retaining a subsidy of the EU]**
(L. March 30, 2001) (L. July 29, 2022) Is punished with the penalties provided for in article 496, anyone **who accepts or retains a subsidy**, indemnity or other **allowance**, or **part of a subsidy**, indemnity or other allowance, knowing that there is no right.

Art. 496-4[84] **[Evasion or Avoidance of budget contributions]**
(L. March 30, 2001) (L. July 29, 2022) Is punishable by the penalties provided for in article 496, anyone who knowingly makes a false or incomplete declaration, or omits to communicate information in violation of a specific obligation, in **to avoid or reduce its legal contribution to the resources of the budget** of an international institution or of the **budgets managed by the European Union** or **on its behalf**.
(**L. July 29, 2022**) The same penalties apply to anyone who knowingly misappropriates a legally obtained advantage and carries out an illegal reduction in the resources of the budget of an international institution or of the budgets managed by the European Union or on its behalf.

(L. 15 juillet 1993) Est puni des peines prévues à l'article 496, celui qui suite à une déclaration telle que visée à l'article précédent, reçoit une subvention, indemnité ou autre allocation à laquelle il n'a pas droit ou à laquelle il n'a droit que partiellement.
(L. 30 mars 2001) Est puni des mêmes peines celui qui aura sciemment employé une subvention, indemnité ou allocation telle que visée à l'article précédent, à d'autres fins que celles pour lesquelles elle a été initialement accordée.

[83] **Art. 496-3**
(L. 30 mars 2001) (L. 29 juillet 2022) Est puni des peines prévues à l'article 496, celui qui accepte ou conserve une subvention, indemnité ou autre allocation, ou partie d'une subvention, indemnité ou autre allocation, sachant qu'il n'y a pas droit.

[84] **Art. 496-4**
(L. 30 mars 2001) (L. 29 juillet 2022) Est puni des peines prévues à l'article 496, celui qui sciemment fait une déclaration fausse ou incomplète, ou omet de communiquer une information en violation d'une obligation spécifique, en vue d'éviter ou de réduire sa contribution légale aux ressources du budget d'une institution internationale ou des budgets gérés par l'Union européenne ou pour son compte.
(L. 29 juillet 2022) Est puni des mêmes peines celui qui sciemment détourne un avantage légalement obtenu et réalise une diminution illégale des ressources du budget d'une institution internationale ou des budgets gérés par l'Union européenne ou pour son compte.

Art. 496-5[85]
(L. March 8, 2017) Is punishable by the penalties provided for in Article 496, anyone who, by knowingly making believe, contrary to the truth, that he does not speak or understand the language of the proceedings, causes the decision to have the free assistance of an interpreter or translator granted within the framework of articles 3-2 to 3-5 of the Code of Criminal Procedure.
The convicted person is liable for interpretation or translation costs.

Art. 496-6[86]
(**L. of March 12, 2020**) **Attempting the offenses** provided for in articles 496-1 to 496-4 is punishable by the same penalties.

Art. 497[87]
Will be punished by imprisonment from eight days to three years and a fine of 500 euros to 5,000 euros:
Those who have issued or attempted to issue for gold or silver coins currencies of lesser value which have been given the appearance of gold or silver;
Those who have issued or attempted to issue for coins pieces of metal bearing no monetary imprint.

Art. 498 (L. August 14, 2000)
Will be punished by imprisonment of one month to one year and a fine of 500 euros to 10,000 euros, or one of these penalties only, whoever deceives the buyer:[88]

[85] **Art. 496-5**
(L. 8 mars 2017) Est puni des peines prévues à l'article 496, celui qui, en faisant sciemment croire, contrairement à la vérité, qu'il ne parle ou ne comprend pas la langue de procédure, provoque la décision de se faire accorder l'assistance gratuite d'un interprète ou d'un traducteur dans le cadre des articles 3-2 à 3-5 du Code de procédure pénale. Le condamné est tenu des frais d'interprétation ou de traduction.
[86] **Art. 496-6**
(L. du 12 mars 2020) La tentative des délits prévus aux articles 496-1 à 496-4 est punie des mêmes peines.
[87] **Art. 497**
Seront punis d'un emprisonnement de huit jours à trois ans et d'une amende de 500 euros à 5.000 euros:
Ceux qui auront émis ou tenté d'émettre pour des monnaies d'or ou d'argent des monnaies de moindre valeur auxquelles on a donné l'apparence d'or ou d'argent;
Ceux qui auront émis ou tenté d'émettre pour des pièces de monnaies des morceaux de métal ne portant aucune empreinte monétaire.
[88] **Art. 498**
(L. 14 août 2000) Sera puni d'un emprisonnement d'un mois à un an et d'une amende de 500 euros à 10.000 euros, ou d'une de ces peines seulement, celui qui aura trompé l'acheteur:
Sur l'identité du bien vendu, en livrant frauduleusement un bien autre que l'objet déterminé sur lequel a porté la transaction;
Sur la nature ou l'origine du bien vendu, en vendant ou en livrant un bien semblable en apparence à celui qu'il a acheté ou qu'il a cru acheter.
Les dispositions qui précèdent s'appliquent aux biens mobiliers y compris incorporels et immobiliers.

On the identity of the property sold, by fraudulently delivering property other than the specific object to which the transaction related;
On the nature or origin of the property sold, by selling or delivering a property similar in appearance to that which he bought or thought he was buying. The preceding provisions apply to movable property, including intangible and immovable property.

Art. 499[89]
Will be sentenced to imprisonment from eight days to one year and a fine of 251 euros to 5,000 euros, or one of these penalties only, those who, by fraudulent manoeuvres, will have deceived the buyer on the quantity of the things sold.

Art. 500[90]
(L. January 13, 2002) The provision of article 462 will be applicable to the offenses provided for by articles 496, 498 and 499.

Art. 501[91]
(L. July 28, 2017) Will be punished by imprisonment from eight days to one year and a fine of 251 euros to 10,000 euros or one of these penalties only, those who, even without fraudulent intent, have manufactured, sold, peddled or distributed all objects, instruments, printed matter or formulas obtained by any process whatsoever which, by their external form, would present with money, annuity securities and postal or telegraph stamps, securities representing property rights, claims or transferable securities, other than monetary signs in the form of banknotes or generally with fiduciary securities issued in the Grand Duchy or abroad, a resemblance likely to facilitate acceptance of the said objects, instruments, printed or formulas instead of imitated values.

[89] **Art. 499**
Seront condamnés à un emprisonnement de huit jours à un an et à une amende de 251 euros à 5.000 euros, ou à une de ces peines seulement, ceux qui, par des manoeuvres frauduleuses, auront trompé l'acheteur sur la quantité des choses vendues.
[90] **Art. 500** (L. 13 janvier 2002)
La disposition de l'article 462 sera applicable aux délits prévus par les articles 496, 498 et 499.
[91] **Art. 501** (L. 28 juillet 2017)
Seront punis d'un emprisonnement de huit jours à un an et d'une amende de 251 euros à 10.000 euros ou de l'une de ces peines seulement, ceux qui, même sans intention frauduleuse, auront fabriqué, vendu, colporté ou distribué tous objets, instruments, imprimés ou formules obtenus par un procédé quelconque qui, par leur forme extérieure, présenteraient avec la monnaie, les titres de rente et timbres des postes ou des télégraphes, les titres représentatifs de droits de propriété, de créances ou de valeurs mobilières, autres que des signes monétaires sous forme de billets ou généralement avec les valeurs fiduciaires émises au Grand-Duché ou à l'étranger, une ressemblance de nature à faciliter l'acceptation desdits objets, instruments, imprimés ou formules au lieu et place des valeurs imitées. (L. 13 janvier 2002) Seront en outre confisqués les objets, instruments, imprimés ou formules ainsi que les planches ou matrices ayant servi à leur confection, alors même que la propriété n'en appartient pas au condamné.

(L. January 13, 2002) The objects, instruments, printed matter or formulas as well as the boards or matrices having been used in their manufacture will also be confiscated, even though the property does not belong to the condemned person.

39 The next part will focus on the **money laundering offences** and deals with other fraud offences, too:

(b) Money Laundering Offence

40

Section VI – Some other frauds (L. August 11, 1998)
Art. 507[92]
Will be punished by imprisonment of one to five years and a fine of 500 euros to 10,000 euros, the seized person and all those who have fraudulently destroyed or misappropriated movable objects, reversed, damaged or destroyed real estate objects seized on him. These penalties will also apply to any debtor, borrower or third-party pledger who has damaged, destroyed or misappropriated the objects given by him as pledge. (L. December 12, 1972) The same provision is applicable to the spouse and to those who, in his interest, have degraded, destroyed or misappropriated furniture which has been the subject of one of the measures provided for in Articles 864-1 and 864- 4 of the Code of Civil Procedure. Attempts of these offenses will be punished by imprisonment of two months to two years and a fine of 500 euros to 10,000 euros.
All without prejudice to the application of the provisions contained in Chapters I and III of Title IX of this book.

Art. 508[93]
Will be punished by imprisonment from eight days to two years and a fine of 500 euros to 5,000 euros:

[92] **Art. 507**
Seront punis d'un emprisonnement d'un an à cinq ans et d'une amende de 500 euros à 10.000 euros, le saisi et tous ceux qui auront frauduleusement détruit ou détourné des objets mobiliers, renversé, dégradé ou détruit des objets immobiliers saisis sur lui.
Ces peines seront également applicables à tout débiteur, emprunteur ou tiers donneur de gage qui aura dégradé, détruit ou détourné les objets par lui donnés à titre de gage.
(L. 12 décembre 1972) La même disposition est applicable au conjoint et à ceux qui, dans son intérêt auront dégradé, détruit ou détourné des meubles qui ont fait l'objet d'une des mesures prévues aux articles 864-1 et 864-4 du Code de procédure civile.
Les tentatives de ces délits seront punies d'un emprisonnement de deux mois à deux ans et d'une amende de 500 euros à 10.000 euros.
Le tout sans préjudice à l'application des dispositions contenues aux chapitres I et III du titre IX du présent livre.

[93] **Art. 508**
Seront punis d'un emprisonnement de huit jours à deux ans et d'une amende de 500 euros à 5.000 euros:
Ceux qui, ayant trouvé une chose mobilière appartenant à autrui ou en ayant obtenu par hasard la possession, l'auront frauduleusement celée ou livrée à des tiers;
Ceux qui, ayant découvert un trésor, se le seront approprié au préjudice des personnes auxquelles la loi en attribue une partie.

Those who, having found a movable thing belonging to another or having obtained possession of it by chance, have fraudulently concealed it or delivered it to third parties; Those who, having discovered a treasure, will have appropriated it to the detriment of the persons to whom the law attributes a part of it.

Art. 509[94]
Will be punished by imprisonment of one month to two years and a fine of 251 euros to 30,000 euros, whoever fraudulently procures funds, securities or discharges by means of an effect drawn on a person who does not does not exist or that he knew he was not or should not be his debtor when due, and who had not authorized him to shoot her.
However, prosecution cannot take place, or will cease, if the bill has been paid, or if the funds have been made at the time the fraud was discovered, unless the drawee has lodged a complaint.
In this case, the culprit will be sentenced to imprisonment for fifteen days to three months and a fine of 251 euros to 3,000 euros, or to one of these penalties only.

Division VII – Certain computer offenses (L. July 15, 1993)
Art. 509-1[95]
(L. August 14, 2000) Anyone who, fraudulently, will have accessed or will be maintained in all or part of an automated data processing or transmission system will be punished by imprisonment of two months to two years and a fine. from 500 euros to 25,000 euros or one of these two penalties.
When the result is either the deletion or the modification of data contained in the system, or an alteration of the functioning of this system, the imprisonment will be from four months to two years and the fine from 1,250 euros to 25,000 euros.

Art. 509-2
(L. July 15, 1993) Anyone who intentionally and disregarding the rights of others, hinders or distorts the operation of an automated data processing or transmission system will be punished by imprisonment of three months to three years and a fine of 1,250 euros to 12,500 euros or one of these two penalties.

[94] **Art. 509**
Sera puni d'un emprisonnement d'un mois à deux ans et d'une amende de 251 euros à 30.000 euros, celui qui se sera frauduleusement procuré des fonds, valeurs ou décharges au moyen d'un effet tiré sur une personne qui n'existe pas ou qu'il savait ne pas être sa débitrice ou ne pas devoir l'être à l'échéance, et qui ne l'avait pas autorisé à tirer sur elle.
Toutefois, les poursuites ne pourront avoir lieu, ou cesseront, si l'effet a été payé, ou si les fonds ont été faits au moment où la fraude a été découverte, à moins que le tiré n'ait porté plainte.
Dans ce cas, le coupable sera condamné à un emprisonnement de quinze jours à trois mois et à une amende de 251 euros à 3.000 euros, ou à une de ces peines seulement.
[95] No French text displayed for the next part of the Code. Pls. refer to Luxembourgish Databases.

Art. 509-3
(L. August 14, 2000) Anyone who, intentionally and disregarding the rights of others, directly or indirectly, introduces data into an automated processing or transmission system or deletes or modifies the data it contains or their methods of processing or transmission, shall be punished by imprisonment of three months to three years and a fine of 1,250 euros to 12,500 euros or one of these two penalties.
(L. July 18, 2014) Will be punished with the same penalties whoever intentionally and disregarding the rights of others, intercepts data during non-public transmissions to, from or within a processing system or automated data transmission.

Art. 509-4
(L. November 10, 2006) When, in the cases referred to in articles 509-1 to 509-3, there has been a transfer of money or monetary value, thus causing a loss of property to a third party with the aim of providing economic benefit to the person who commits the offense or to a third party, the penalty incurred will be imprisonment from four months to five years and a fine of 1,250 euros to 30,000 euros.
Repealed paragraph (L. July 18, 2014)

Art. 509-5
(L. July 18, 2014) Will be punished by 4 months to five years imprisonment and a fine of 1,250 euros to 30,000 euros whoever, with fraudulent intent, produces, sells, obtains, holds, imports, distributes or puts available.

Art. 509-5 *bis*
Anyone who counterfeits, alters or falsifies a payment instrument other than those referred to in Article 160 will be punished by imprisonment of four months to five years and a fine of 1,250 euros to 75,000 euros. (L. April 1, 2022)
Shall be punished with the same penalty anyone who has received, held, transported, issued, imported, has obtained or has put into circulation such a payment instrument, knowing at the time when he received it that it came from one or more of the offenses referred to in the first paragraph. The counterfeit, altered or falsified payment instrument will be confiscated. A payment instrument other than those referred to in Article 160 is defined as any device, object or recording protected against imitation and fraudulent use, non-material or material or a combination of these elements, which, alone or in connection with a procedure or a set of procedures, allows its holder or its user to carry out a transfer of money or monetary value, including by digital means of exchange and not referred to in Article 160.

Art. 509-6 41
(L. July 15, 1993) (L. April 1, 2022) The attempt of the offenses provided for by articles 509-1 to 509-5 *bis* is punished by the same penalties as the offense itself.

Art. 509-7
(L. July 15, 1993) Anyone who has participated in an association formed or an agreement established for the preparation, materialized by one or more material facts, of one or more offenses provided for by articles 509-1 to 509- 5 will be punished with the penalties provided for the offense itself or for the most severely punished offense.

(c) Customs Law Offences

Art. 135 Customs Law 42
"The **customs representative**" who, having followed his client's instructions for the declaration to be made to customs, is prosecuted for fraud, may summon by bailiff's writ "the Director of Customs and Excise" to whose name it has been assigned to also cite the client before the territorially competent district court" (Rmin. of January 27, 1994): "The **fraud being established at the expense of the customer**, "the judge exonerates the customs representative at the criminal level. Notwithstanding the foregoing, the customs representative who acts as an indirect representative remains liable for the payment of taxes, jointly and severally with his client."

Art. 165 Customs Law
Breaking or altering the seals affixed to "packages", or to the hatches or exits of ships or otherwise, will be punished by "a fine of between one and two times the duties", „the amounts to be granted to the 'import or export or excise', on those of the goods in respect of which this precautionary measure would then have been taken 'unnecessarily, to be paid by the master or other carriers, unless' the breakage or alteration is obviously caused by extraordinary circumstances or unexpected events, and which destroy any suspicion of fraud.

Art. 170[96]
The King may subject the transport, loading or unloading of any goods in the customs department to the accompaniment of a document intended to prevent fraud.

[96] **Art. 170**
Le Roi peut soumettre le transport, le chargement ou le déchargement de toute marchandise dans le rayon des douanes à l'accompagnement d'un document destiné à prévenir la fraude. La forme du document est établie par le « Roi ». « Le Roi peut charger le ministre des Finances de l'exécution du présent alinéa. » Le « Roi » ou son délégué peut accorder des dérogations particulières à cette obligation, en les soumettant aux conditions qu'il détermine. « Le Roi peut charger le ministre des Finances de l'exécution du présent alinéa. »

The form of the document is established by the "King". "The King may entrust the Minister of Finance with the execution of this indentation."
The "King" or his delegate may grant special exemptions from this obligation, subjecting them to the conditions he determines." The King may entrust the Minister of Finance with the execution of this paragraph."

Art. 172[97]
With a view to preventing fraud, the King may regulate and in particular make the establishment of factories within the customs area subject to authorisation.

Art. 315[98]
(1) "**The Director of Customs and Excise**" may, by virtue of the authorization of the "president of the territorially competent district court" and up to the sum fixed by this magistrate, require mortgage registrations on buildings of any dependent of whom a regular report has been drawn up as author, co-author or accomplice of a customs or excise offence.
(2) Authorization to request registration may be granted up to the amount of the defrauded duties and taxes, fines and confiscations incurred, provided that the total amounts to at least "250.00 euros".

Art. 322[99]
Any agent of the "Customs and Excise Administration" who, directly or indirectly, will have participated in an act or ***attempted fraud, either by aiding or assisting the perpetrators or accomplices in the acts*** that will have prepared or facilitated it or in those who will have consumed it, either by consulting with the authors or accomplices, or by agreeing to offers or promises, or by receiving gifts or presents, or by allowing the

[97] **Art. 172**
En vue de la prévention de la fraude, le Roi peut réglementer et notamment subordonner à autorisation, l'établissement de fabriques dans le rayon des douanes.
[98] **Art. 315**
(1) « Le Directeur des douanes et accises » peut, en vertu de l'autorisation du « président du tribunal d'arrondissement territorialement compétent » et à concurrence de la somme fixée par ce magistrat, requérir des inscriptions hypothécaires sur les immeubles de toute personne à charge de qui un procès-verbal régulier a été dressé en qualité d'auteur, coauteur ou complice d'une infraction en matière de douane ou accise.
(2) L'autorisation de requérir inscription peut être accordée à concurrence du montant des droits et taxes fraudés, des amendes et des confiscations encourues, pour autant que le total s'en élève à « 250,00 euros » au moins.
[99] **Art. 322**
Tout agent de « l'Administration des douanes et accises » qui, directement ou indirectement, aura participé à un fait ou tentative de fraude, soit en aidant ou assistant les auteurs ou complices dans les faits qui l'auront préparé ou facilité ou dans ceux qui l'auront consommé, soit en se concertant avec les auteurs ou complices, soit en agréant des offres ou promesses, ou en recevant des dons ou présents, soit en laissant se consommer la fraude, lorsqu'il pouvait l'empêcher, soit de toute autre manière, sera puni d'un emprisonnement de deux à cinq ans, et, en outre, déclaré incapable à jamais d'exercer aucune fonction publique.

fraud to be consummated, when he could prevent it, or by any other way, ***shall be punished with imprisonment from two to five years,*** and, in addition, declared forever incapable of exercising any public function.

Art. 202[100] **(Rmin. of January 12, 2022)**
"(1) When, after the closing of the certificate of verification, the agents establish, within a period of three years from the date of taking into account the amount originally required of the person liable, or, if there is no has not taken into account, from the date of the inception of the tax debt, that the duties or excise duties legally due on declared goods have not been or have not been fully collected, the duties or excise duties evaded must be paid by the person liable for these duties, either principally or subsidiarily, or by his successors in title The period referred to in the first paragraph is ten years when the act giving rise to the tax debt referred to in the first paragraph is liable to criminal prosecution. (Rmin. of February 22, 1990)
"(2) The persons referred to in paragraph 1 shall be punished with "a fine of between five and ten times the duties" evaded. In the event of recidivism, they are also punished by imprisonment from eight days to one month, without it being possible to apply article 228. (Rmin. of December 18, 2020 - Belgian law of December 9, 2019)
"(3) Where the persons referred to in paragraph 1 have committed the offense with fraudulent intent, they shall be further punished by imprisonment from eight days to one month. **When the persons referred to in paragraph 1 have committed the offense with fraudulent intent and have seriously *harmed the financial interests of the European Union*, they are punished by imprisonment from 4 months to 5 years. The financial interests of the European Union must in any case be considered seriously harmed when the damage amounts to more than 100,000 euros.**

[100] ***Art. 202 (Rmin. du 12 janvier 2022)***
« (1) Lorsque, postérieurement à la clôture du certificat de vérification, les agents établissent, dans le délai de trois ans à compter de la date de la prise en compte du montant primitivement exigé du redevable, ou, s'il n'y a pas eu de prise en compte, à compter de la date de la naissance de la dette d'impôts, que les droits ou les droits d'accise légalement dus sur des marchandises déclarées n'ont pas été ou n'ont pas été intégralement perçus, les droits ou les droits d'accise éludés doivent être payés par le redevable de ces droits, soit à titre principal, soit à titre subsidiaire, ou par ses ayants droit Le délai visé à l'alinéa 1er est de dix ans lorsque l'acte donnant naissance à la dette d'impôts visée à l'alinéa 1er est passible de poursuites judiciaires répressives. »(Rmin. du 22 février 1990)
« (2) Les personnes visées au paragraphe 1er sont punies d' « une amende comprise entre cinq et dix fois les droits » éludés. En cas de récidive, elles sont en outre punies d'un emprisonnement de huit jours à un mois, sans qu'il puisse être fait application de l'article 228. » (Rmin. du 18 décembre 2020 – Loi belge du 9 décembre 2019)
« (3) Lorsque les personnes visées au paragraphe 1er ont commis l'infraction dans une intention frauduleuse, elles sont punies en outre d'un emprisonnement de huit jours à un mois. Lorsque les personnes visées au paragraphe 1er ont commis l'infraction avec une intention frauduleuse et ont gravement lésé les intérêts financiers de l'Union européenne, elles sont punies d'un emprisonnement de 4 mois à 5 ans. Les intérêts financiers de l'Union européenne doivent en tout cas être considérés comme gravement lésés lorsque le préjudice se monte à plus de 100 000 euros. »

(d) Tax Offences

43 Regarding **Luxembourg's (criminal) tax legislation** it can be said that for the EPPO it is important to know that the 1931 delegation must be distinguished from the VAT legislation 1979 as amended and the references of the customs laws to the tax legislation. The AO Luxembourg contains from ss. 391 et seq. comments on the **applicability of criminal law.** This apparently means the general criminal law, i.e., the basic principles. The AO Luxembourg contains e.g.; a provision related to intent and being mistaken about facts:

44

> **Section 395**
> (1) Anyone who, through no fault of their own, mistook the existence or applicability of tax regulations and considered the act permissible shall remain unpunished.
> (2) Anyone who, due to a lack of due diligence to which he was obligated under the circumstances and capable according to his personal circumstances, considered the act to be permissible shall be punished for negligence.

45 In the next step, the compendium explores the **Value Added Tax Code Offences Scenery** in Luxembourg:

46

> **Law of February 12, 1979 on value added tax**[101]
> **Art. 80**
> (1) If the offense referred to in Article 77, paragraph 3, committed or attempted, relates, per reporting period, to an amount which is greater than a quarter of the value added tax due, [102] without being less than 10,000 euros, or on an undue reimbursement greater than a quarter of the reimbursement actually due, without being less than 10,000 euros, or if the evaded value-added tax or the unduly obtained reimbursement is greater than the sum of 200,000 euros per reporting period, the author will be punished, for aggravated tax evasion, by imprisonment from one month to four years and a fine of 25,000 euros

[101] Loi du 12 février 1979 concernant la taxe sur la valeur ajoutée.

[102] **Art. 80 de la loi modifiée du 12 février 1979 concernant la taxe sur la valeur ajoutée**
(1) Si l'infraction visée à l'article 77, paragraphe 3, commise ou tentée, porte, par période déclarative, sur un montant qui est supérieur au quart de la taxe sur la valeur ajoutée due, sans être inférieur à 10.000 euros, ou sur un remboursement indu supérieur au quart du remboursement effectivement dû, sans être inférieur à 10.000 euros, ou si la taxe sur la valeur ajoutée éludée ou le remboursement indûment obtenu sont supérieurs à la somme de 200.000 euros par période déclarative, l'auteur sera puni, pour fraude fiscale aggravée, d'un emprisonnement de un mois à quatre ans et d'une amende de 25.000 euros à un montant représentant le sextuple de la taxe sur la valeur ajoutée éludée ou du remboursement indûment obtenu. Si l'auteur a, de façon systématique employé des manœuvres frauduleuses dans l'intention de dissimuler des faits pertinents à l'administration ou à la persuader des faits inexacts et que la fraude ainsi commise ou tentée porte, par période déclarative, sur un montant significatif de taxe sur la valeur ajoutée éludée ou de remboursement indûment obtenu soit en montant absolu soit en rapport avec la taxe sur la valeur ajoutée due par période déclarative ou de remboursement effectivement dû par période déclarative, l'auteur sera puni, pour escroquerie fiscale, d'un emprisonnement de un mois à cinq ans et d'une amende de 25.000 euros à un montant représentant le décuple de la taxe sur la valeur ajoutée éludée ou du remboursement indûment obtenu.

at an amount representing six times the value added tax evaded or the refund unduly obtained. If the author has systematically[103] employed fraudulent manoeuvres with the intention of concealing relevant facts from the administration or to persuade it of inaccurate facts and the fraud thus committed or attempted relates, per reporting period, to an amount significant value added tax evaded or refund unduly obtained either in absolute amount or in connection with the value added tax due by reporting period or reimbursement actually due by reporting period, the author will be punished, for tax fraud, imprisonment from one month to five years and a fine of 25,000 euros to an amount representing ten times the value added tax evaded or the refund unduly obtained. He may also be deprived in whole or in part, for at least five years and at most ten years, of the rights listed in Article 11 of the Penal Code. When the offenses provided for in paragraphs 1 and 2 are committed within the framework of a criminal organization as defined in article 324bis of the Penal Code, the minimum penalty will be two years. All the provisions of Book 1 of the Penal Code and the provisions of the Code of Criminal Procedure are applicable to these offenses.
The judicial authorities have sole jurisdiction in the cases referred to in paragraphs 1 to 3. The **prescription of public action** is interrupted when a legal appeal is lodged against the managerial decision or, in the absence of a managerial decision, against the bulletin which is the subject of the complaint. **The limitation period begins to run again from a court decision that has become final.[104]**
(2) Anyone who has drawn up or caused to be drawn up a false certificate that could compromise the interests of the Treasury or who has made use of such a certificate will be punished by a criminal fine of 251 euros to 12,500 euros.
(3) The perpetrators and accomplices of the offenses provided for in paragraphs 1 and 2 will be jointly and severally liable for the payment of the tax evaded.

[103] Il pourra, en outre, être privé en tout ou en partie, pendant cinq ans au moins et dix ans au plus, des droits énumérés à l'article 11 du Code pénal. Lorsque les infractions prévues par les alinéas 1 et 2 sont commises dans le cadre d'une organisation criminelle telle que définie à l'article 324bis du Code pénal, le minimum de la peine sera de deux ans. Toutes les dispositions du livre premier du Code pénal et les dispositions du Code de procédure pénale sont applicables à ces infractions. Les autorités judiciaires sont seules compétentes dans les cas visés aux alinéas 1er à 3. La prescription de l'action publique est interrompue lorsqu'un recours judiciaire est introduit contre la décision directoriale ou, en l'absence de décision directoriale, contre le bulletin qui fait l'objet de la réclamation. La prescription commence à courir de nouveau à partir d'une décision de justice passée en force de chose jugée.
(2) Toute personne qui aura établi ou fait établir un faux certificat pouvant compromettre les intérêts du Trésor ou qui aura fait usage de pareil certificat sera punie d'une amende pénale de 251 euros à 12.500 euros.
(3) Les auteurs et complices des infractions prévues par les paragraphes 1 et 2 seront solidairement tenus au paiement de l'impôt éludé.
(4) Tout Luxembourgeois, toute personne qui a sa résidence habituelle au Grand-Duché de Luxembourg, de même que l'étranger trouvé au Grand-Duché de Luxembourg, qui aura commis à l'étranger les infractions prévues par les paragraphes 1 et 2, pourra être poursuivi et jugé au Grand-Duché de Luxembourg, bien que le fait ne soit pas puni par la législation du pays où il a été commis et que l'autorité luxembourgeoise n'ait pas reçu de plainte de la partie offensée ou de dénonciation de l'autorité du pays où l'infraction a été commise.

[104] See in general on statutes of limitations concerning VAT laws in the EU, Court of Justice of the European Union 2017a, pp. 1 passim.

(4) Any Luxembourger, any person who has his habitual residence in the Grand Duchy of Luxembourg, as well as a foreigner found in the Grand Duchy of Luxembourg, who has committed abroad the offenses provided for in paragraphs 1 and 2, may be prosecuted and tried in the Grand Duchy of Luxembourg, although the act is not punished by the legislation of the country where it was committed and the Luxembourg authority has not received a complaint from the offended party or from denunciation of the authority of the country where the offense was committed.

(e) Corruption Offences

47 A major Act from the area of **anti-corruption legislation,** which should still be mentioned is the **Law of 13 February 2011** strengthening the means of fighting against corruption and amending of the Labor Code, the amended law of 16 April 1979 establishing the status of civil servants, the amended law of 24 December 1985 establishing the general status of municipal civil servants, of the Code of Criminal Procedure and of the *Code Pénal*.[105]

48 The Penal Code contains the following provisions, which must be assessed by the EDPs:

49

Corruption and influence peddling
Art. 246
Will be punished by imprisonment of five to ten years and a fine of 500 euros to 187,500 euros, the fact, by a person, depositary or agent of authority or public force, or charged with a mission of service public, or vested with a public elective mandate, to solicit or receive, without right, directly or indirectly, for itself or for others, offers, promises, donations, presents or advantages of any kind or to accept the offer or the promise: [106]
1°Either to perform or refrain from performing an act of its function, mission or mandate or facilitated by its function, mission or mandate;

[105] Loi du 13 février 2011 renforçant les moyens de lutte contre la corruption et portant modification
(1) du Code du Travail
(2) de la loi modifiée du 16 avril 1979 fixant le statut des fonctionnaires de l'Etat
(3) de la loi modifiée du 24 décembre 1985 fixant le statut général des fonctionnaires communaux
(4) du Code d'instruction criminelle et
(5) du Code pénal.

[106] De la corruption et du trafic d'influence
Art. 246
Sera puni de la réclusion de cinq à dix ans et d'une amende de 500 euros à 187.500 euros, le fait, par une personne, dépositaire ou agent de l'autorité ou de la force publiques, ou chargée d'une mission de service public, ou investie d'un mandat électif public, de solliciter ou de recevoir, sans droit, directement ou indirectement, pour elle-même ou pour autrui, des offres, des promesses, des dons, des présents ou des avantages quelconques ou d'en accepter l'offre ou la promesse:
1°Soit pour accomplir ou s'abstenir d'accomplir un acte de sa fonction, de sa mission ou de son mandat ou facilité par sa fonction, sa mission ou son mandat;
2° Soit pour abuser de son influence réelle ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés ou toute autre décision favorable.

2°Either to abuse its real or supposed influence in order to obtain from an authority or a public administration distinction, jobs, markets or any other favourable decision.

Art. 247[107]
Will be punished by imprisonment of five to ten years and a fine of 500 euros to 187,500 euros, the fact of offering or giving, without right, directly or indirectly, to a person, depositary or agent of the authority or the public force, or charged with a public service mission, or vested with a public elective mandate, for itself or for a third party, offers, promises, donations, presents or advantages of any kind, or 'to make an offer or promise of it, to obtain from it:
1°Either that he performs or refrains from performing an act of his function, mission or mandate or facilitated by his function, mission or mandate;
2°Either it abuses its real or supposed influence in order to obtain from an authority or a public administration distinction, jobs, markets, or any other favourable decision.

Art. 248
Will be punished by imprisonment of six months to five years and a fine of 500 euros to 125,000 euros, any person who solicits or receives, without right, directly or indirectly, offers, promises, gifts, presents or any advantages whatsoever, or accepts the offer or the promise thereof, for itself or for a third party, to abuse its real or supposed influence with a view to obtaining from an authority or a public administration distinction, jobs, contracts or any other favourable decision.[108]
Will be punished with the same penalties anyone who offers or gives to a person, without right, directly or indirectly, offers, promises, gifts, presents or benefits of any kind, for

[107] **Art. 247**
Sera puni de la réclusion de cinq à dix ans et d'une amende de 500 euros à 187.500 euros, le fait de proposer ou de donner, sans droit, directement ou indirectement, à une personne, dépositaire ou agent de l'autorité ou de la force publiques, ou chargée d'une mission de service public, ou investie d'un mandat électif public, pour elle-même ou pour un tiers, des offres, des promesses, des dons, des présents ou des avantages quelconques, ou d'en faire l'offre ou la promesse, pour obtenir d'elle:
1° Soit qu'elle accomplisse ou s'abstienne d'accomplir un acte de sa fonction, de sa mission ou de son mandat ou facilité par sa fonction, sa mission ou son mandat;
2° Soit qu'elle abuse de son influence réelle ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés, ou toute autre décision favorable.

[108] **Art. 248**
Sera punie d'un emprisonnement de six mois à cinq ans et d'une amende de 500 euros à 125.000 euros, toute personne qui sollicite ou reçoit, sans droit, directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques, ou en accepte l'offre ou la promesse, pour elle-même ou pour un tiers, pour abuser de son influence réelle ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés ou toute autre décision favorable.
Sera puni des mêmes peines quiconque propose ou donne à une personne, sans droit, directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour elle-même ou pour un tiers, ou en fait l'offre ou la promesse, pour que cette personne abuse de son influence réelle ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés ou toute autre décision favorable.

himself or for a third party, or makes the offer or promise, so that this person abuses his real or supposed influence in order to obtain from an authority or a public administration distinction, jobs, markets or any other favourable decision.

Art. 249[109]
Will be punished by imprisonment of five to ten years and a fine of 500 euros to 187,500 euros any person, depositary or agent of authority or public force, any person charged with a public service mission or invested with a public elective office, which solicits or receives, without right, directly or indirectly, for itself or for others, offers, promises, donations, presents or advantages of any kind, or accepts the offer or the promise, by reason of the accomplishment or the abstention from accomplishing an act of his function, his mission or his mandate or facilitated by his function, his mission or his mandate, of anyone who has benefited from this act or from refraining from performing this act.
Will be punished with the same penalties, whoever, under the conditions of the first paragraph, offers or gives to a person, depositary or agent of authority or public force, or charged with a public service mission or invested with a public elective office, offers, promises, gifts, gifts or advantages of any kind for oneself or for others, or makes the offer or promise thereof.

Art. 250 Of the corruption of magistrates
Will be punished by imprisonment of ten to fifteen years and a fine of 2,500 euros to 250,000 euros, any magistrate or any other person sitting in a judicial formation, any arbitrator or expert appointed either by a court or by the parties, who will have solicited or received, without right, directly or indirectly, offers, promises, gifts, presents or benefits of any kind, for himself or for a third party, or will have accepted the offer or the promise, for the performing or refraining from performing an act of his office.[110] Anyone

[109] **Art. 249**
Sera punie de la réclusion de cinq à dix ans et d'une amende de 500 euros à 187.500 euros toute personne, dépositaire ou agent de l'autorité ou de la force publiques, toute personne chargée d'une mission de service public ou investie d'un mandat électif public, qui sollicite ou reçoit, sans droit, directement ou indirectement, pour elle-même ou pour autrui, des offres, des promesses, des dons, des présents ou des avantages quelconques, ou en accepte l'offre ou la promesse, en raison de l'accomplissement ou de l'abstention d'accomplir un acte de sa fonction, de sa mission ou de son mandat ou facilité par sa fonction, sa mission ou son mandat, de quiconque ayant bénéficié de cet acte ou de l'abstention d'accomplir cet acte.
Sera puni des mêmes peines, quiconque, dans les conditions de l'alinéa 1er, propose ou donne à une personne, dépositaire ou agent de l'autorité ou de la force publiques, ou chargée d'une mission de service public ou investie d'un mandat électif public, des offres, des promesses, des dons, des présents ou des avantages quelconques pour soi-même ou pour autrui, ou en fait l'offre ou la promesse.
[110] De la corruption de magistrats
Art. 250

who, under the conditions of the first paragraph, offers or gives to a magistrate or another person sitting in a judicial formation, or to an arbitrator or expert appointed either by a court or by the parties, offers, promises, gifts, gifts or benefits of any kind, for himself or for a third party, or makes the offer or promise thereof, is punished with the same penalties. (…)

(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)

Recent studies have analysed and frequently analyse the **peculiarities and typologies of (EU-) frauds** quite extensively and they are therefore highly important for EDPs and their knowledge about the structures of this crime area (criminological insights): **50**

National level: Police, *Chiffres de la Délinquance*.[111] The statistics from 2022 reveal that the offences based on an error, which resulted in a financial loss are quite high per 100.000 inhabitants: **51**

"**Most Frequently Recorded Case Categories** **52**
in 2022 Business
1. Single flights 11324
2. Scams/deceptions 4689
3. Destruction 4297
4. Burglaries in inhabited houses 2958
5. Voluntary blows and injuries without incapacity for work 2643."[112]

EU-level: PIF Reports, Rule of law Report, „Impact of Organized Crime on the EU's Financial Interests etc. New Developments of the EU-Anti-Fraud Architecture."[113] **53**

Nota bene: The **Anti-Fraud Knowledge Centre** hosted by the EU Commission/OLAF provides information on fraud patterns, prevention tools and case studies. **54**

Sera puni de la réclusion de dix à quinze ans et d'une amende de 2.500 euros à 250.000 euros, tout magistrat ou toute autre personne siégeant dans une formation juridictionnelle, tout arbitre ou expert nommé soit par une juridiction, soit par les parties, qui aura sollicité ou reçu, sans droit, directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour lui-même ou pour un tiers, ou en aura accepté l'offre ou la promesse, pour l'accomplissement ou l'abstention d'accomplir un acte de sa fonction.
Quiconque, dans les conditions de l'alinéa 1er, propose ou donne à un magistrat ou une autre personne siégeant dans une formation juridictionnelle, ou à un arbitre ou expert nommé soit par une juridiction, soit par les parties, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour lui-même ou pour un tiers, ou en fait l'offre ou la promesse, est puni des mêmes peines. (…)

[111] See Henri M (2023) Présentation des statistiques policières 2022. Police Letzebuerg. https://tinyurl.com/ypjuyhhv. Accessed 30 June 2026.

[112] Ibid.

[113] See European Parliament 2021. online: https://tinyurl.com/5c3hshz2. Accessed 30 June 2026.

(3) Examples and Precedents in National Case Law

55 There are **different types of fraud** against the EU budget. A **basic distinction** must be made between fraud on the **revenue side** and fraud on the **expenditure side**. This separation applies not only to investigations by the delegated public prosecutors, but also to OLAF investigators 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 the offences** between:



- Non-procurement expenditure fraud
- Procurement expenditure fraud
- VAT revenue fraud
- Non-VAT revenue fraud
- corruption cases (4% in 2021).[114]

ee. Actions upon a "Decision to Open a Case" (Regulation + Rules in IRP, 2020.003 EPPO)

56 If he/she decides to initiate an investigation he/she **must note this in the case management system** (**Art. 45 para 1 EPPO Regulation, 38 IRP**[115]). In addition, the numerous obligations to provide information from Art. 24 para 3 to 8.

57 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**:

"(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

[114] 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.
[115] See https://www.eppo.europa.eu/sites/default/files/2020-12/2020.003%20IRP%20-%20final.pdf. Accessed 30 June 2026.

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; […]"
(k) any other additional information, if deemed appropriate by the inserter.

Specific information is presented by the IRP; Art. 41 relates to the initiation according to Art. 26 EPPO Regulation: **58**

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, considering 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.

ff. Consequences of the "Decision to Open a Case"

59 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**. A **PIF offence** will need to be **assessed by the relevant conditions for a crime** i.e., the elements of a particular PIF offence of the present country.

The Luxembourgish legislator has adopted a **special Article** on this matter, which applies besides the Regulation and the Internal Rules of Procedure: **60**

Book I, Title V – European Public Prosecutor's Office (L. July 22, 2022) **61**
Art. 136-9 (1) When the European Public Prosecutor's Office has decided to exercise its jurisdiction, the European Delegated Public Prosecutor shall,[116] in accordance with the law, **carry out all acts of investigation** *which he deems useful* for ascertaining the truth. He collects and verifies, with *equal care*, the facts and circumstances incriminating or exonerating the person suspected of having participated in the offense or the accused.
(2) The **acts of investigation** *are ordered* by the European Delegated Prosecutor himself, or by the investigating judge, at the request of the European Delegated Prosecutor, in accordance with this sub-chapter and *without a preparatory investigation being opened*.
(3) Article 49[117] is not applicable for offenses falling within the competence of the European Public Prosecutor's Office and for which the European Delegated Prosecutor has decided to exercise his competence.

The EDPs will need to focus on their own terms of *actus reus a*nd the *mens rea* conditions of the relevant offence.[118] The EDP needs to be assessed according to the **requirements** that the legislator set up **for offences** in general and special PIF offences, which includes the **concretization of the objective elements** (*actus reus*, see above) of the **62**

[116] **Sous-chapitre II – Du pouvoir du procureur européen délégué**
Section Ière – Dispositions générales
Art. 136-9
(1) Lorsque le Parquet européen a décidé d'exercer sa compétence, le procureur européen délégué procède, conformément à la loi, à tous les actes d'enquête qu'il juge utiles à la manifestation de la vérité. Il recueille et vérifie, avec soin égal, les faits et les circonstances à charge ou à décharge de la personne soupçonnée d'avoir participé à l'infraction ou de l'inculpé.
(2) Les actes d'enquête sont ordonnés par le procureur européen délégué lui-même, ou par le juge d'instruction, sur réquisition du procureur européen délégué, conformément au présent sous-chapitre et sans qu'une instruction préparatoire ne soit ouverte.
(3) L'article 49 n'est pas applicable pour les infractions relevant de la compétence du Parquet européen et pour lesquelles le procureur européen délégué a décidé d'exercer sa compétence.
[117] Section Ire. – Dispositions générales Art. 49. (L. 16 juin 1989) Sauf dispositions spéciales, l'instruction préparatoire est *obligatoire* en matière de crime; elle est *facultative* en matière de délit.
[118] See for the common terms in comparing criminal law and criminal procedure Child et al. Chapter 4 et seq.; Chapter 5, Chapter 15 on Fraud (relevant for Ireland, Malta, Cyprus).

crime[119], the **subjective elements** (*mens rea*, see above)[120] as well as the unlawfulness of the conduct (i.e. no written or unwritten justifications/justificatory defence's[121] 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.[122] In Luxembourg law, the EDP must establish the *éléments constitutifs de l'infraction* as defined by the Code pénal and any *lois pénales spéciales* (e.g., customs/tax legislation). This requires proving:

1. the *élément matériel* (the act/omission, any required result, causal link, and legally relevant circumstances);
2. the *élément moral* (at least intention/*dol général* or, where the statute allows, faute; plus any dol spécial the offence requires – e.g., intent to deceive for *escroquerie*, intent to obtain an undue advantage for corruption);
3. the *illicéité* – i.e., absence of causes de justification (such as *légitime défense*, *état de nécessité*, *ordre de la loi* or *commandement de l'autorité légitime*); and
4. the offender's *culpabilité*/ *responsabilité pénale* (imputability and absence of causes *d'excuse or d'irresponsabilité* like *irresistible contrainte*, non-imputable mistake, minority, or serious mental disorder).[123]

63 Thus, in functional terms, the German objective and subjective *Tatbestand*[124] largely perform functions comparable to the Luxembourg *élément matériel* and *élément moral*. Luxembourg doctrine commonly describes the offence through three constitutive elements *élément légal*, *élément matériel* and *élément moral* and deals separately with causes of justification, criminal irresponsibility, attenuation and excuses. Similar or the

[119] 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 and Weiser 2022, pp. 57–94.
[120] 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.
[121] A worldwide recognized condition as a basic element of the concept of crime, see Stasi 2021, pp. 31–47.
[122] See Eser 1987, pp. 17–65. online: https://d-nb.info/112342229X/34 on the historical implications and the differences between the common law and civil law approach; Bohlander 2009, pp. 29 et seq., 77 et seq. (Rechtswidrigkeit), 115 et seq. ("Guilt and Excusatory Defences").
[123] For any infromation on the *élément matériel* et question ci-dessus cf. Spielmann and Spielmann 2004, who still provide the most prominent book on the *Droit pénal général luxembourgeois*. 2nd edn. Brussels: Bruylant. Still it is possible to consult as foreign defence lawyer assessing conduct under Luxembourg PIF law with French Criminal Law Books e.g. Bouloc 2025 and it we recommend strongly to contact local lawyers used to the doctrine in the respective EPPO zone country – especially in the age of AI Society and non-legal experienced operators believe in false assessements; very good overview for *mens rea* and defences in European criminal law see Blomsma J 2012, 1 passim and for Art. 5 PIF Directive relevant questions of *actus reus* and participation in European criminal law see only Keiler 2013 and Hauck 2025b, PIF-Directive Commentary, Art. 5 PIF Directive, m. 5.001 et seq.
[124] Bohlander 2009, pp. 29 et seq.

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 almost every country in the EU.

When **drafting the indictment**, the EDP should state the *mode de participation pénale*: are the facts those of an auteur or co-auteur, or of an *auteur médiat* (*perpétration par personne interposée*)? The EDP must also assess the ***responsabilité pénale*** des participants, distinguishing for each suspect and determine the legally relevant mode of participation under Arts 66–69 CP. Article 66 identifies persons punishable as *auteurs*, including direct perpetrators, persons directly cooperating in execution, etc..[125] In **corporate PIF cases**, a separate attribution analysis under Art. 34 CP is required for the legal person. **64**

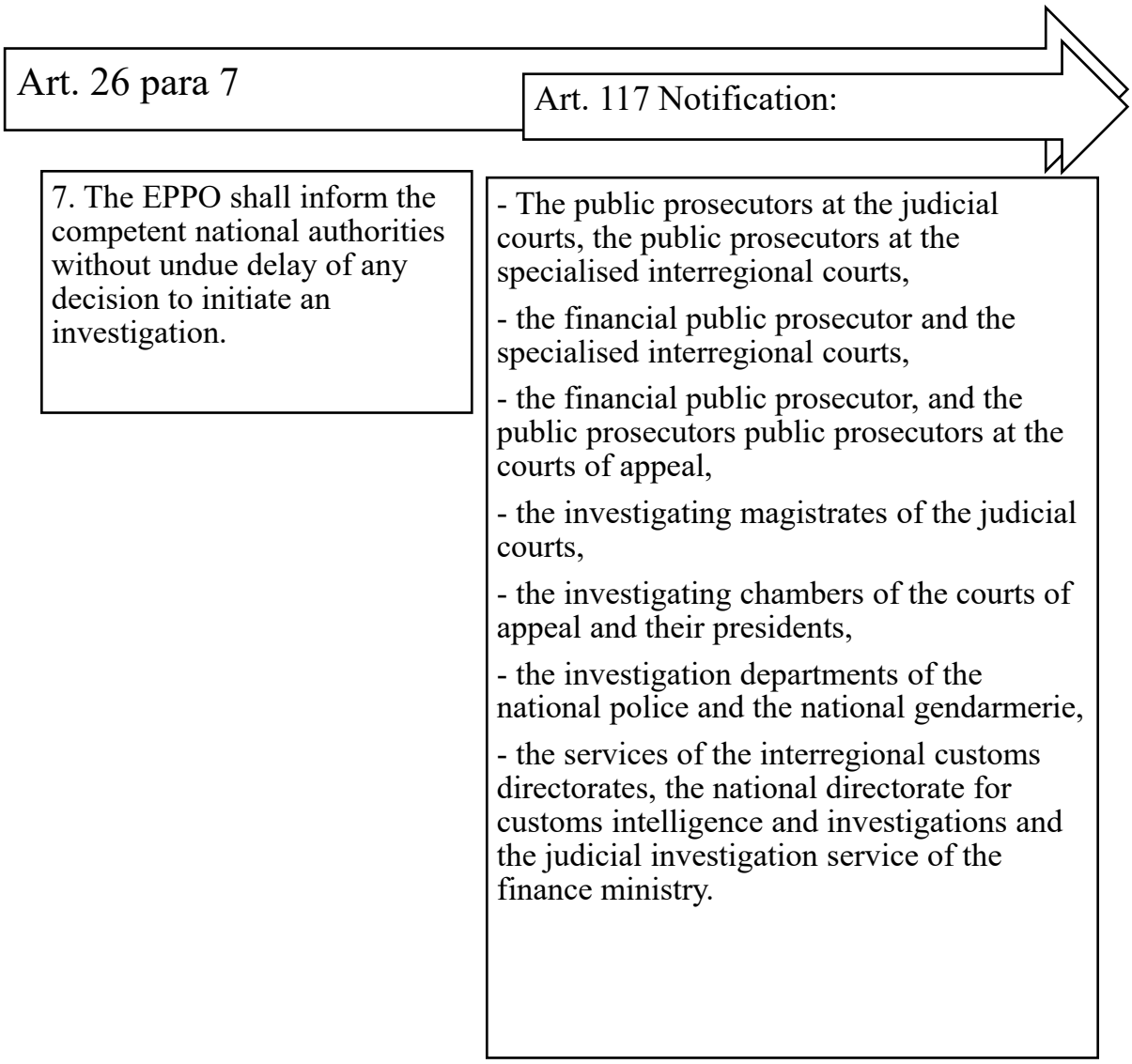
Where the completed offence cannot be established, the EDP must **examine tentative** under Arts 51–53 CP. This requires a *commencement d'exécution* manifesting the resolution to commit the offence and failure or interruption attributable to circumstances independent of the offender's will (Art. 51 CP). Attempted crimes are punishable under the general rules of Art. 52 CP; an *attempted délit*, by contrast, is punishable only where the law specifically provides for it (Art. 53 CP).[126] For all of these questions and purposes, the EDPs can additionally to the present presentations, analysis and compendium references **rely on the existing legal commentaries** on the penal codes of the EU Member States.[127] **To sum it up** the EDP must therefore **first** identify the **precise incriminating provision** and its temporal, territorial, personal and material scope; **secondly** establish all objective components of the prohibited conduct; and third determine the particular form of fault required by that offence. Luxembourg **case law stresses** that an offence normally requires both a material and a moral element even where the latter is not expressly stated by the legislature; where the statute is silent, the relevant fault may consist in the material infringement of the statutory provision committed freely and consciously, which must be distinguished from *faute intentionnelle*. Once those constitutive elements are established, the EDP must consider any cause de justification, including, **65**

[125] See EU Fraud Commentary, Commentary on PIF Directive, Art. 5. For the various translations of these terms see the EUR-Lex database translations of the PIF Directive 2017/1371.
[126] See EU Fraud Commentary, Commentary on PIF Directive, Art. 5.
[127] Spielmann and Spielmann 2004, Droit pénal général luxembourgeois, p. 314 confirming e.g. that the Lux-Code pénal contains no comprehensive general theory of the *élément moral*. Nevertheless, every offence requires a material and a moral element. Where the incriminating provision is silent, the required fault may consist in the material infringement of the statutory rule committed "*librement et consciemment*". See Cour d'appel (Luxembourg), 15 May 2018, arrêt no 184/18 V, Not 14950/12/CD (LuxLeaks) and Cour de cassation (Luxembourg), 6 May 2021, arrêt no 81/2021 pénal, CAS-2020-00103, Not 1532/13/CD, p. 42, footnote 8, 43: "Il en découle donc que, dans le silence de la loi, et sauf à remettre en cause le Code pénal dans son ensemble, l'élément moral exigé est le dol général."

where applicable, Art. 70 CP, *légitime défense* under Arts 416–417 CP and the *jurisprudential état de nécessité*. This must be distinguished from questions of personal criminal responsibility:

gg. Art. 26 Para. 7 EPPO Regulation

66 *Figure 5: L'information des Autorités Compétentes par le Parquet Européen, Art. 26 Para 7 EPPO Regulation – Overview for Luxembourg*[128]



Source: EPPO Website.

[128] Caption: The information for Art. 26 para 7 EPPO stem from the Luxembourgish Government. See https://www.eppo.europa.eu/sites/default/files/2021-11/18-LU.pdf. Accessed 30 June 2026.

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

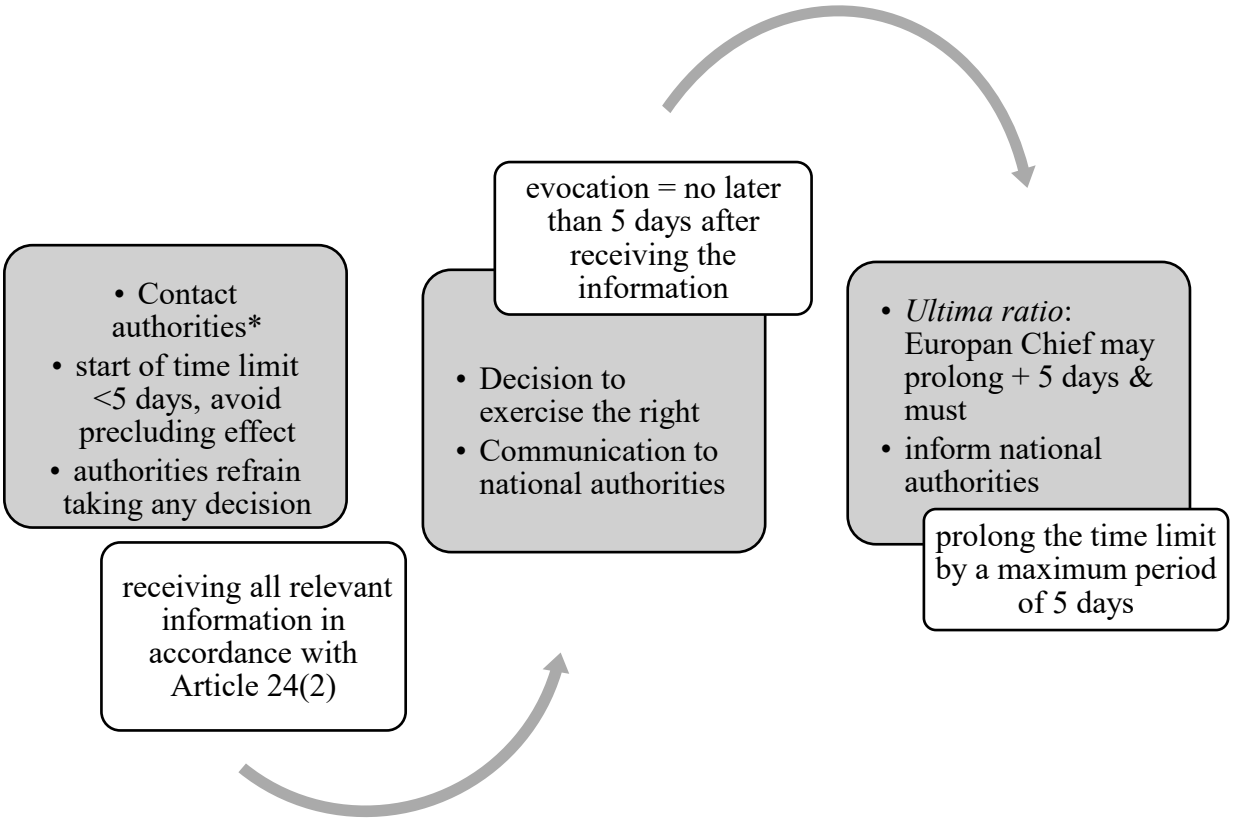
evocation. The decision shall be taken within the time limits set out in paragraph 1 of this Article.
4. The EPPO shall, where appropriate, consult the **competent authorities of the Member State** concerned before deciding whether to exercise its right of evocation.
5. Where the EPPO exercises its right 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 finalized and that an indictment has not been submitted to a court. The decision shall be taken within the time limit set out in paragraph 1.
8. Where, with regard to offences which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute at Union level, it shall in accordance with Article 9(2), issue general guidelines allowing the European Delegated Prosecutors to decide, independently and without undue delay, not to evoke the case.
The guidelines shall specify, with all necessary details, the circumstances to which they apply, by establishing clear criteria, taking specifically into account the nature of the offence, the urgency of the situation and the commitment of the competent national authorities to take all necessary measures in order to fully recover the damage to the Union's financial interests.
9. To ensure coherent application of the guidelines, a European Delegated Prosecutor shall inform the competent Permanent Chamber of each decision taken in accordance

with paragraph 8 and each Permanent Chamber shall report annually to the College on the application of the guidelines.

If the national prosecutor has already started investigating or he/she has taken any steps applying national law after informing the EPPO of its right of evocation, these actions may have a precluding effect on the **right of evocation** of the EPPO (cf. para 2 of Art. 27 EPPO Regulation). *De jure* the prosecutor is **ordered to "stand still" for the time period** established by para 1 of Art. 27 EPPO Regulation. Therefore, it is very important to reconsider the national provisions in this area prior to each investigation task: **1**

a) The Implementation of the Right of Evocation/*La mise en œuvre du droit d'évocation*

Figure 6: Right of Evocation/Time Limits/Refrain Taking Decisions that have a Precluding Effect – Overview for Luxembourg **2**



Caption (*auteurs des signalements*): Luxembourgish Authorities[129]. **3**

[129] See Notifications imposées en application de l'article 117 du règlement constitutif: « autorités qui sont compétentes aux fins de l'application du présent règlement », à transmettre à la Cheffe du Parquet européen, au Conseil et à la Commission européenne.

b) Provisions with a Precluding Effect for the Right of Evocation of the EPPO, Para 2

4 These provisions are important as they may potentially interfere with the EPPO's decision.

aa. The Prescription of Public Action/*La prescription de l'action publique*

(1) Discontinuance of Proceedings in Criminal Tax Matters (AO Luxembourg, ss. 446 et seq.)

5

Section 446 AO Luxembourg
(1) If the investigation reveals that the **suspicion was unfounded**, the tax control agency shall discontinue the procedure and notify the accused if he has been heard as such. If the suspicion appears justified, the tax control office, if it cannot or does not want to recognize it itself, hands over the negotiations to the public prosecutor's office. It can request that public charges be brought against the accused and the secondary participants; if appropriate, a specific request must be made and justified.
(2) Locally responsible is also the public prosecutor's office of the district in which the tax control office is based. The jurisdiction extends to that of the courts. The provisions of the Code of Criminal Procedure regarding local jurisdiction remain unaffected.
(3) If the tax control body has submitted the matter because it is not responsible for the decision, but the public prosecutor's office does not consider this view to be correct, it can return the thing to the tax control body for further processing in administrative criminal proceedings; Section 425 remains unaffected.

Section 447
(1) If the tax inspection body wants to recognize it itself, it issues a penalty notice.
(2) In addition to the penalty, the penalty notice must also state the punishable act, the criminal law and the evidence. It should also contain the reasons for the decision and the instruction that the accused, if he does not lodge a complaint with the tax director in accordance with Section 451, can apply for a court decision against the penalty notice within one week of notification to the tax control office that issued the notice.
(3) If confiscation can be identified and it is not certain whether confiscation can be carried out, the replacement penalty pursuant to Section 401 (2) shall be determined in the event that confiscation cannot be carried out.

Section 448
(1) If secondary participants are involved in the investigation, the penalty notice shall state whether they accept the confiscation against them or whether they are liable for the fine and the costs of the criminal proceedings and the enforcement of the sentence.

(2) If they were not consulted in administrative penal proceedings or in court proceedings, a special penalty notice may be issued against them.

(2) Further Rules

Section 449 6
(1) The penalty notice is to be served or announced to the parties involved.
(2) If the accused is not yet eighteen years old, the penalty notice must also be served or announced to the legal representative.
(3) If there are several legal representatives or, in the case of legal persons, associations of persons, special-purpose funds and similar entities, there are several representatives, directors or administrators, service or notification to one of them is sufficient.
(4) After delivery, the penalty notice can only be withdrawn in the cases of Sections 461 and 464. […]

Section 472
(1) If the public prosecutor **files a public complaint for a tax offence**, the tax control agency has the rights of a joint plaintiff (section 467).
(2) If the public prosecutor's office rejects an application for the prosecution of a tax offence, the **tax control agency may file a public complaint** itself. His deputy has the same position in the further proceedings as the public prosecutor's office in the proceedings for public prosecution. Section 467 paragraph 2 applies accordingly.
(3) If the **tax control agency has filed a public complaint**, the public prosecutor's office can participate in every stage of the procedure. It brings about the summonses to the main hearing and must be represented there. You are to be informed of the decisions. It can take over the prosecution until the judgment becomes final; if she files an appeal, she takes over the prosecution. The procedure continues in the position in which it is. The tax control agency has the rights of a joint plaintiff (section 467).
(4) The provision of § 468 also applies in the cases of this paragraph.

bb. Presidential Pardon (*Cessation de l'action publique/grâce présidentielle*)

See → the rules of the Constitution. 7

cc. Urgent Measures by National Authorities to Secure an Investigation and Prosecution, Art. 27 Para. 2 EPPO Regulation

The urgent measures **depend on the investigation framework**. In case of a flagrant investigation, the following might apply: 8

9

Art. 31 (L. June 16, 1989)
(1) In the event of a flagrant crime, the judicial police officer who is informed of it immediately informs the State prosecutor, *travels without delay to the place of the crime and makes all useful findings.*
(2) He sees to the preservation of clues likely to disappear and of everything that can be used to reveal the truth.
(3) (L. July 18, 2014) He seizes the objects, documents, data stored, processed or transmitted in an automated processing or transmission system of data and effects which were used to commit the crime or which were intended to commit it and those who formed the object of the crime, as well as all that appears to have been the proceeds of the crime, as well as in general, all that appears useful for the manifestation of the truth or whose use would be of a nature to harm the smooth running of the investigation and anything that is likely to be confiscated or returned.
(4) It represents the objects seized, for recognition, from the persons who appear to have participated in the crime, if they are present.
(5) (**L. June 22, 2022**) If the seizure relates to any sums, whether cash or balances credited to an account, receivables or virtual assets, the State prosecutor orders their transfer pursuant to Article 579, paragraphs 1 to 3. If the seizure relates to other assets, whatever their nature, the preservation of which in kind is not necessary for the manifestation of the truth and which require for their preservation or their valuation of the acts of management, the State prosecutor may order that the management of these assets be entrusted to the Asset Management Office pursuant to Article 579, paragraph 4.

Art. 33 [Investigation measures/Gathering Evidence during *inflagrante delicto* situation] (L. July 18, 2014)
(1) If the nature of the crime is such that proof of it can be acquired by the seizure of papers, documents, data stored, processed or transmitted in an automated data processing or transmission system or other objects in the possession of persons who appear to have participated in the crime or to hold documents, data or objects relating to the incriminated facts, the judicial police officer travels without hesitation to the home of the latter to carry out a search of which he draws up a report and operates the seizure. This search can take place at any time of day or night.
(2) He alone, together with the persons designated in Article 34 and those to whom he may have recourse pursuant to Article 36, has the right to examine the papers, data or documents before seizing them.
(3) However, he has the obligation to initiate beforehand all useful measures to ensure respect for professional secrecy and the rights of the defence.
(4) All objects, data and documents seized shall be inventoried immediately after having been presented, for recognition, to the persons who appear to have participated in the

offence, if they are present, as well as to the persons referred to in the following article. However, if their inventory on the spot presents difficulties, they are subject to seals until the moment of their inventory in the presence of the persons who attended the search.
(5) The entry of data stored, processed or transmitted in an automated data processing or transmission system may be done either by entering the physical medium of these data, or by a copy of these data made in the presence of the persons referred to in the following article. If a copy is made, it may be proceeded, at the request of the State Prosecutor, to the definitive erasure on the physical medium, when the latter is in the Grand Duchy of Luxembourg and it has not been placed in the hands of justice, data stored, processed or transmitted in an automated data processing or transmission system whose possession or use is illegal or dangerous for the safety of persons or property.
(6) The record of searches and seizures shall be signed by the persons who appear to have participated in the offence, by the persons in whose homes they took place and by the persons who were present; in the event of refusal to sign, the minutes shall mention it. They are left with a copy of the minutes.
(7) The objects, data and documents seized shall be deposited at the registry of the district court or entrusted to a seizure custodian.
(8) With the agreement of the State prosecutor, the judicial police officer only maintains the seizure of objects, data and documents useful for establishing the truth.
(9) In the interest of ascertaining the truth, the State prosecutor may order the taking of fingerprints and photographs of persons who appear to have participated in the flagrant crime. Fingerprints and photographs collected pursuant to this article may be subsequently processed by the Police for the purposes of prevention, research and the establishment of criminal offences.

In the **case of a preliminary investigation**, Art. 46 et seq. CPC the following measures will apply: **10**

Art. 47 (L. June 16, 1989) **11**
(1) (L. June 22, 2022) Searches, home visits and seizures of exhibits and property liable to confiscation or restitution may not be carried out without the express consent of the person at whose premises the operation takes place.
(2) This assent must be the subject of a written declaration by the person concerned or, if the latter cannot write, it shall be mentioned in the minutes together with his assent.
(3) The forms provided for in Article 33 are applicable.

12 **Art. 48 (L. June 16, 1989)**
The judicial police officers and the judicial police officers draw up a report of their findings. They record in reports the declarations made to them spontaneously or in response to their questions.

13 The tax laws might apply as well in this area as the Luxembourgish tax control panels and authorities may **take urgent actions** and carry out measures:

Procedure Rules in the Tax Procedure Code AO Luxembourg
Section 440
The auxiliary offices and the officials of the tax control offices ***must investigate the tax offenses*** and, within their competence, ***make all orders that do not allow for delay*** in order to prevent the matter from being covered up. A record or written notification of the investigation must be submitted to the tax control office.

Section 441
(1) The tax control agencies have to check the ads they receive to see whether action should be taken because of a tax offence. The same applies if they otherwise become aware of the suspicion of a tax offense.
(2) The initiation of the investigation is to be put on record.
(3) In order to research the facts, the tax control agencies can conduct investigations of any kind themselves or have them carried out by their auxiliary agencies or officials.
(4) The powers that the tax control authorities are entitled to according to §§ 175 to 184, 186, 188, 202 and § 209 paragraph 1 when determining the tax liability apply *mutatis mutandis* to the investigation.
(5) A record or a note is to be made of each investigation.
(6) Minutes taken by a tax control agency with the involvement of a secretary are equivalent to judicial minutes with regard to their lecture in a main hearing in court.

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

14 See → **Notification of Luxembourg to EPPO pursuant Art. 117 EPPO Reg.**

15 Under Art. 117 EPPO Reg., Member States notify who is competent for these interactions. In Luxembourg, conflicts of competence are channelled as follows:

1. If a State Prosecutor refuses to relinquish to the EPPO, the Attorney General of State designates who is competent to proceed (Code de procédure pénale, Art. 136-74 para 1).
2. If a *juge d'instruction* refuses to relinquish, he hears the parties (5 days) and issues an order; on appeal, the *Conseil de la Cour d'appel* designates the competent magistrate (8 days) (Art. 136-74 para 2).

3. If the EPPO declines jurisdiction (Art. 34 EPPO Reg.), the case continues nationally: either under instruction (if indictment is compulsory/has been issued) or under preliminary investigation, depending on the stage (Art. 136-75). (These designations are also reflected in comparative overviews of national notifications.)

The national legislator has adopted **rules for competence conflicts**: **16**

Chapter III. – The articulation of competences between the European Public Prosecutor's Office and the Luxembourg judicial authorities

Art. 136-74

(1) Where, in the cases mentioned in paragraph 6 of Article 25 of the aforementioned Regulation (EU) 2017/1939, the State prosecutor responsible for the investigation refuses to relinquish jurisdiction in favour of the European Public Prosecutor's Office, the Attorney General of State, seized by a reasoned request from the European Delegated Public Prosecutor, designates the magistrate competent to continue the procedure.

(2) When, in the cases mentioned in paragraph 6 of Article 25 of the aforementioned Regulation (EU) 2017/1939, the investigating judge seized of the information refuses to relinquish jurisdiction in favour of the European Public Prosecutor's Office, he invites the parties, the State Prosecutor and the European Delegated Prosecutor to make their observations known within five days.

At the end of this period, the investigating judge, if he persists, issues an order refusing to relinquish which is notified to the State prosecutor, the European delegated prosecutor and the parties.

Within five days of its notification, this order may be referred, at the request of the Deputy European Public Prosecutor, the State Public Prosecutor, the State Public Prosecutor or the parties, to the council chamber of the Court of Appeal.

The council chamber of the Court of Appeal appoints, within eight days of the date of receipt of the file, the magistrate competent to continue the investigations. The judgment of the council chamber is brought to the attention of the delegated European prosecutor, the investigating judge and the public prosecutor and notified to the parties. The investigating judge remains seized until this judgment is notified to them.

Art. 136-75

When the European Public Prosecutor's Office declines jurisdiction in accordance with Article 34 of the aforementioned Regulation (EU) 2017/1939, the procedure continues in accordance with the provisions applicable to the investigation provided for in Book I, Title III, Chapter I if the charge is compulsory in accordance with article 136-28 or if it is optional and there has been a charge. Otherwise, the procedure continues in accordance with the provisions applicable to the preliminary investigation.

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1. The European Delegated Prosecutor handling a case may, in accordance with this Regulation **and with national law**, either undertake the investigation measures and other measures on his/her own or instruct the competent authorities in his/her Member State. Those authorities shall, **in accordance with national law**, ensure that all instructions are followed and undertake the measures assigned to them. The handling European Delegated Prosecutor shall report through the case management system to the competent European Prosecutor and to the Permanent Chamber any significant developments in the case, in accordance with the rules laid down in the internal rules of procedure of the EPPO.

3. The competent Permanent Chamber may, on proposal of the supervising European Prosecutor decide to reallocate a case to another European Delegated Prosecutor in the same Member State when the handling European Delegated Prosecutor:

(a) cannot perform the investigation or prosecution; or

(b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.

4. In exceptional cases, after having obtained the approval of the competent Permanent Chamber, the supervising European Prosecutor may take a reasoned decision to conduct the investigation personally, either by undertaking personally the investigation measures and other measures or by instructing the competent authorities in his/her Member State, where this appears to be indispensable in the interest of the efficiency to the investigation or prosecution by reasons of one or more of the following criteria:

(a) the seriousness of the offence, in particular in view of its possible repercussions at Union level;
(b) when the investigation concerns officials or other servants of the Union or members of the institutions of the Union;
(c) in the event of failure of the reallocation mechanism provided for in paragraph 3. In such exceptional circumstances Member States shall ensure that the European Prosecutor is entitled to order or request investigative measures and other measures and that he/she has all the powers, responsibilities and obligations of a European Delegated Prosecutor in accordance with this Regulation and national law.
The competent national authorities and the European Delegated Prosecutors concerned by the case shall be informed without undue delay of the decision taken under this paragraph.

Art. 28 *Conduite de l'enquête*

The **necessity of a close cooperation** of the police in daily actions « *coopération policière au quotidien* » must be emphasised. The aim is to **establish the truth for PIF crimes**, whereby the EDPs have the competences adopted by the EPPO Regulation. **1**

a) The EDPs Conducting the Investigation/*La direction par les PED*

The EDPs may be responsible for carrying out the investigations. Cf. Art. 26 mainly and see Art. 17, 22 and 24 Luxembourgish CPC as amended 2022. **2**

b) Overview of Instructions and Assignment of Investigative Measures for "those national authorities"/ *Instructions et attribution de mesures d'enquête pour "ces autorités nationales"*

The EDPs can **instruct and assign** special national authorities. This depends on the phase of investigation and the severeness of the suspected offence i.e. suspected PIF fraud offence (see above for the list of the offences). **3**

Art. 24 (L. 16 June 1989)
(1) The public prosecutor shall carry out or arrange for the execution of all acts necessary for the investigation and prosecution of criminal offences. [130]
(2) To this end, he ***shall direct the activities of the judicial police officers and agents*** within the jurisdiction of his court.

[130] **Art. 24 (L. 16 juin 1989)**
(1) Le procureur d'Etat procède ou fait procéder à tous les actes nécessaires à la recherche et à la poursuite des infractions à la loi pénale.
(2) *A cette fin, il dirige l'activité des officiers et agents de police judiciaire dans le ressort de son tribunal.*
(3) Il a tous les pouvoirs et prérogatives attachés à la qualité d'officier de police judiciaire prévus par la section II du chapitre Ier du titre Ier du présent livre, ainsi que par des lois spéciales.

(3) He shall have all the powers and prerogatives attached to the status of judicial police officer provided for in Section II of Chapter I of Title I of this book, as well as by special law,

Art. 25 (L. June 16, 1989)
The State prosecutor has, in the exercise of his functions, the right to directly request the police.

4 Firstly the Judicial Police with its specific subdivisions and specialized anti-fraud units can be mentioned.

5
1. **MTIC frauds (revenue-related)**: Tax Offices by the General Administration of Taxation in Luxembourg and the Revenue Offices (see below)
2. **Tax frauds (mainly revenue-related)**[131]: Tax Offices by the General Administration of Taxation in Luxembourg and the Revenue Offices (see below)
3. **Money laundering (predicate offences)**[132]: National Asset Recovery Office within the European Union/*Bureau national de recouvrement des avoirs au sein de l'Union européenne*
4. Corruption offences[133]
5. Subsidy frauds: no specialized units. But the IGF is competent to conduct financial audits, which may lead to a suspicion (see below on the following pages and see part B., Art. 3 OLAF Regulation).
6. Procurement frauds: no specialized units.

6 Next to be mentioned are the Luxembourgish customs *départements*, bureaus and units eventually brigades supervised by the General Directions of Customs and Excise[134] (*Direction de l'Administration des douanes et accises*[135] short: *ADA*), which have competences for the special area of **customs revenue fraud (duties frauds, etc.)** and also

[131] Code des douanes: Offenses of smuggling, fraudulent importation or exportation; Code pénal Fraud offences: Art. 496 et seq. and the PIF Implementation Law.
[132] Chapter IV: Money laundering in the CP.
[133] Corruption offences: State Bodies, Parliament, IGF (see below) .
[134] It is part of three tax administrations in Luxembourg. Yurick Backes is the current head of the Service (10/2022).
[135] See https://douanes.public.lu/fr/acteur/bureaux.html: "The Customs and Excise Administration is one of the 3 tax administrations alongside the Administration of Registration and Domains and the Administration of Direct Contributions. The activities of the 440 civil servants in processing groups A1, A2, B1 and D1 are divided into 2 main areas, namely: The tax component, covering the development and monitoring of laws and regulations on import, export, transit of goods and on excise duties, the collection of customs duties and excise duties as well as the control of cash movements. The security component covering controls in the fields of transport, public health, the environment and the right of establishment, in close collaboration with the competent ministerial departments – from which the specific legislation falls – and their respective administrations as well as the fight against drugs." Accessed 30 June 2026.
Administration des Douanes et Accises – Customs and Excise **Street and number:** Rue de Bitbourg 22, **City:** Luxembourg **Postal code:** L-1273 **Country:** Luxembourg.

already play a role in OLAF investigations (i.e. for the detection of irregularities).[136] The supervising Ministry is the Ministry of Finance Luxembourg.[137] The EPPO will have possibly access to the **instruction** of the **Inspection Services** of the **Luxembourgish Customs Service(s)** e.g. via OLAF Units:

1. *Inspection Douanes et Accises*
2. *Inspection Audit et comptabilité*
3. *Inspection Antidrogues et produits sensibles*
4. *Inspection Surveillance et Contrôles douaniers*
5. *Inspection Support informatique*

It has therefore **competences in fraud matters**, fraudulent goods, falsified stuff, drugs and other goods imported to the Union. As Luxembourg City has a quite big airport for the small country, many goods from abroad come into the EU here for the first time if travelling by air. This is a potential source for frauds in the anti-dumping sector and its duties. **7**

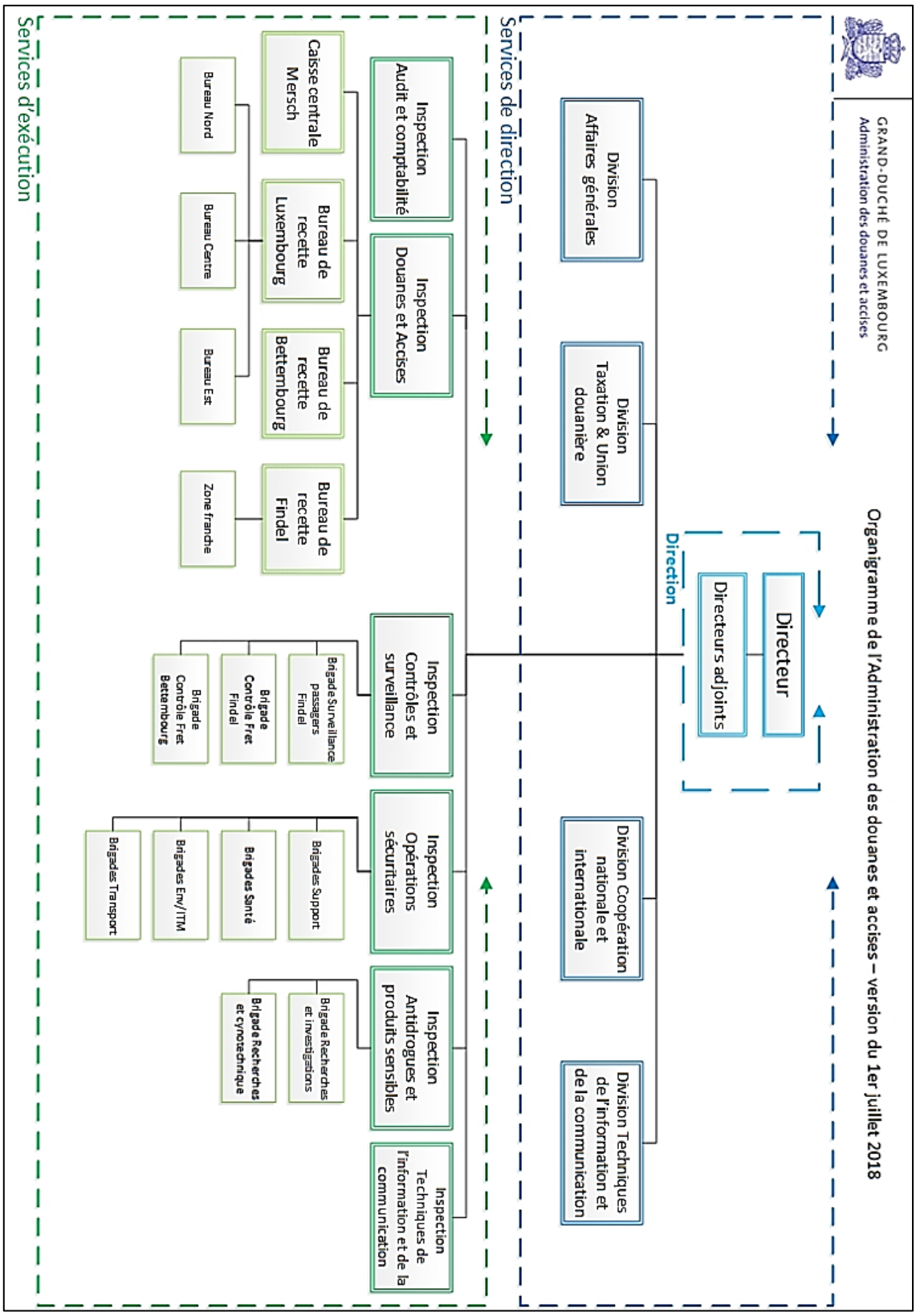
OLAF will have contact to the **Lux. Customs Service** for external inspection (see below → part B. Art. 3 OLAF Regulation). It will most likely communicate with the Cooperation and International as well as European Communications Département (*Division Coopération nationale et internationale*). **8**

Interestingly it seems to be **common sense** now that **to understand Art. 28 completely**, it is required to **delve into the national peculiarities and structures**, what the CNP volume will do for the most important situations on the next pages.[138] **9**

10

[136] Rapport annuel 2021. online: https://tinyurl.com/3r3z478b. Accessed 30 June 2026. The ADA also took part in several joint customs-police operations in 2021 in terms of intellectual property carried out under the aegis of Europol and OLAF respectively.
[137] The Questionnaire, which we send to the Ministry was answered but denied scientific information requests and seemed strongly stuck to national interests in the answer at first sight.
[138] Ligeti and Theodorakakou 2026, mn. 12.

Figure 7: Organigramme of the Customs Service of the Grand Duchy of Luxembourg



Source: https://tinyurl.com/4c8z9fca.

In its **self-Assessement towards the fight against fraud** detrimental to the Union's interests, the ADA said the following in 2021: "In the fight against tax fraud, the role of the ADA is to identify the main areas of fraud and to **develop common risk criteria** and standards, the electronic implementation of which contributes to put in place equivalent customs controls in the European Union. The ADA is part of the Group of Community project Customs 2020 - Financial Risk Management (FRM). The close collaboration in this area with the Administration of Registration, Domains and VAT results in **precise electronic targeting of customs transactions** and data exchange ad hoc statistics on a weekly basis. Currently, the risk management engine in the electronic application for customs declarations includes 1,334 duty and tax risk profiles. The ADA carried out numerous **a posteriori checks** to ensure that economic operators comply with customs and excise legislation. In 2021, these checks were **primarily focused on the compliance with the correct collection of customs duties** according to European regulations on resources traditional cleanliness, with an emphasis on **undervaluation in the areas of textiles and footwear**. This was one of the main axes of the investigation carried out by the inspectors of traditional own resources in June 2021."[139] **11**

Considering the above-mentioned details in the area of customs duties fraud, in **VAT fraud matters** the EPPO shares the competence with the same national authorities like the ADA, or other authorities, which would be competent in similar national cases like the Direct Contributions Administration (ACD) and the suboffices such as the Revenue Offices e.g.: *Recette Esch-sur-Alzette*, *Recette Ettelbruck*, *Recette Luxembourg*. **12**

All information concerning the **tax offices in Luxembourg** are summarized online and in an Organigramme.[140] In a 2019 interview the old Finance Minister *Gramegna* said that Luxembourg would not be attractive for this kind of fraud as Luxembourg had one of the lowest VAT rates in the EU.[141] Even if this might the case, this **does not stop criminal organization to build up capacities in Luxembourg** so that the whole small country in the heart of Europe gets caught up in these criminal networks as a basis for further action. In November 2022 the EPPO reported that it conducted investigations in Luxembourg in the **Operation Admiral**.[142] **13**

[139] Rapport Annuel 2021. online: https://tinyurl.com/3r3z478b. Accessed 30 June 2026.
[140] See https://tinyurl.com/33h67f7d. Accessed 30 June 2026.
[141] See https://tinyurl.com/8mc7zf6y. Accessed 30 June 2026.
[142] See https://tinyurl.com/2cnhbces. Accessed 30 June 2026.

14 In the **area of tax (fraud) crimes** the civil servants that may work for the EDPs are civil servants (Art. 15-2 CPC Luxembourg).

15 A very special national organ in the area of observing national finances and annexed finances like these with a connection to EU money are observed by the **Financial Inspection Service** Lux. of the State, the IGF (, which was established by the law of March 10, 1969[143]). Especially in the area of the European Structural and Investment Funds the IGF has an important role and determines the spending. This influences the investigation in this area.

16 *Table 6 The Financial Inspection Service in Luxembourg*

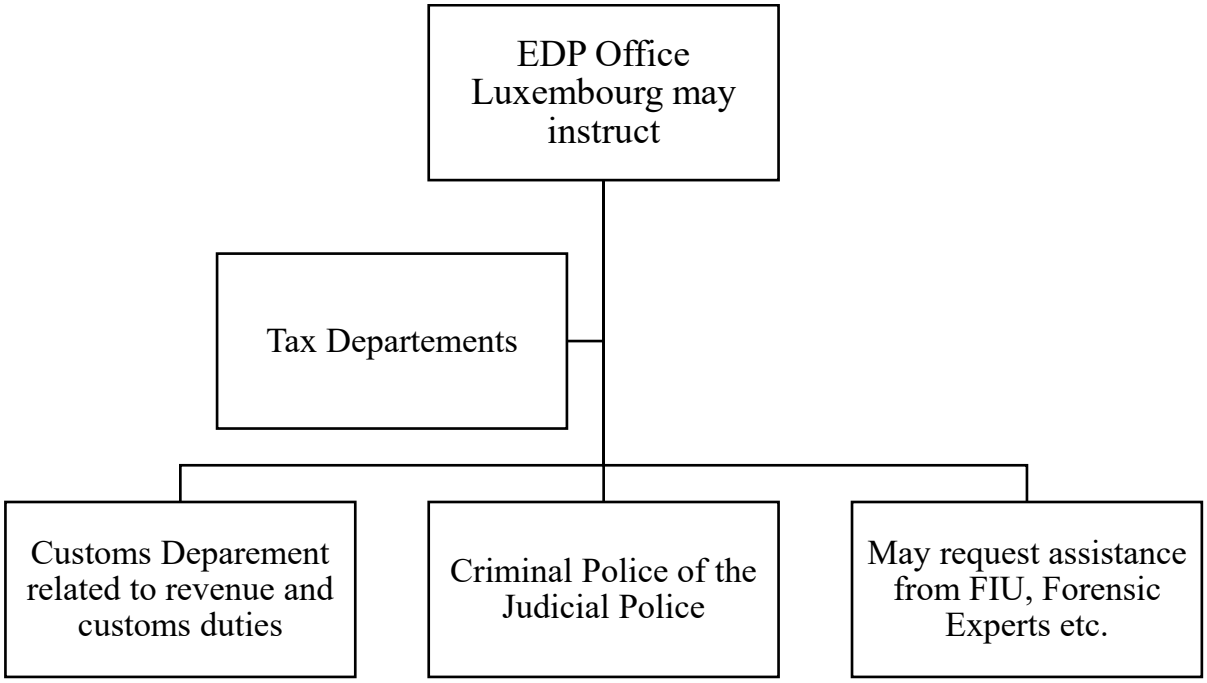
Ministry of Finance **IGF Director** **Director's assistant(s)** **Departments/ Units** **Budget related matters**
• Housing; Gender equality
Data & Statistics
• *Prévisions et Modélisations*
IT
• Budget IT Systems
Accounting systems
• Functional Analysis
Audit of EU funds
• Structural Funds
Internal Audit
• Completion of audits on requests
Administration
• HR

Source: https://igf.gouvernement.lu/de/service/organigramme.html (reduced to main Units).

[143] See https://igf.gouvernement.lu/de.html. Accessed 30 June 2026.

The **auditing of EU funds** by the **Suboffice of the IGF Lux**. may lead to a **suspicion of fraud** in a special branch. This suspicion would then be referred to the EDPs in Luxembourg. **17**

Figure 8: Assignment of "Those National Authorities" in Luxembourg, Art. 28 EPPO Regulation **18**



Caption: Criminal Police = The National Division of Criminal Police/*Direction centrale Police judiciaire* – DCPJ Suboffices of the DCPJ: *Service de Police judiciare* – SPJ. The 4. Central office for the repression of major financial crime/*Departemen*t 4.

aa. The Police Authorities in Luxembourg/*Les autorités policières au Grand-Duché*

Even if the EDPs oversee **the investigations**, they do not act alone but are supported but they are helped a lot by judicial police officers in Luxembourg. **19**

(1) General Judicial Police Officers/*Les officiers de police judiciaire*

The general judicial police officers are regulated by the *Code de procédure pénale* (Art. 10 et seq.) and they must be distinguished from the agents of the judicial police (Art. 13 et seq. CPC): **20**

Excerpt CPC **21**
Art. 10 (L. August 1, 2007)
Have the quality of judicial police officer:

1° members of the senior police officers, chief commissioners, commissioners and chief inspectors;
2° the first inspectors named by name by order of the Minister of Justice;
3° the members of the judicial police service who report to the police;
4° civil servants and employees of the judicial police service who do not come under the police force, referred to in Article 14(2), paragraph 5 of the amended law of 31 May 1999 on the Police and the General Police Inspectorate, named by name by order of the Minister of Justice.

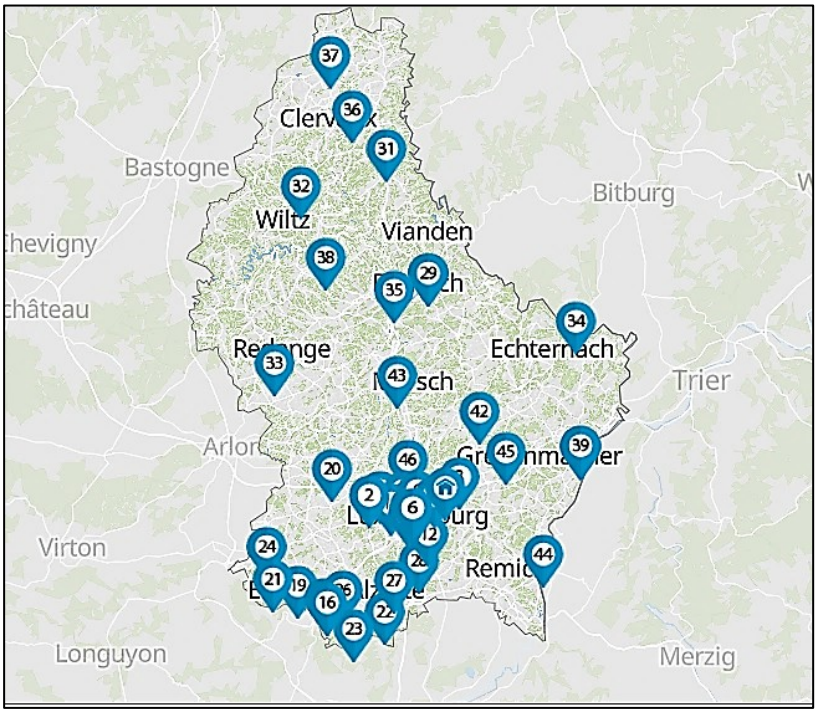
Art. 11 (L. June 16, 1989)
(1) Judicial police officers exercise the powers defined in article 9-2; they receive complaints and denunciations; they carry out preliminary inquiries under the conditions provided for in Articles 46 to 48.
(2) In the event of flagrant crimes and misdemeanours, they exercise the powers conferred on them by articles 30 to 40.
(3) They have the right to directly request the assistance of the public force for the execution of their mission.
(4) (L. February 28, 2018) Without prejudice to the prerogatives attributed to them by special laws, they may, with the authorization of the State prosecutor, enter at any time places for which there are certain indications, precise and consistent leading to the presumption that acts of procuring were committed there.
They can also, with the authorization of the State prosecutor, enter at any time inside any hotel, furnished house, boarding house, drinking establishment, club, circle, dance hall, place of show and their annexes and in any other place. open to the public or used by the public when it is found that persons engaged in prostitution are habitually received there.

Art. 12 (L. June 16, 1989)
(1) Judicial police officers are required to inform the State prosecutor without delay of crimes, misdemeanours and contraventions of which they become aware. As soon as their operations are closed, they must send it directly the original as well as a certified true copy of the minutes they have drawn up; all deeds and documents relating thereto are sent to it at the same time; the objects seized are made available to him.
(2) The reports must state the status of judicial police officer of their writer.
(3) (L. 17 May 2017) If the minutes, deeds and documents have been dematerialized, the State prosecutor may authorize that these be transmitted to him in the form of a document digital, by a secure electronic means of communication.

Subject to the provisions of Article 154 of the Code of Criminal Procedure, the report bearing either a digitized manual signature or an electronic signature is authentic until proven otherwise.

The commissariats and police officers are located throughout the country: **22**

Figure 9: Police Offices in Luxembourg **23**



Source: https://police.public.lu/fr/votre-police/postes-police.html.

(2) Special Judicial Police Officers

bb. Custom Officers/*Les agents des douanes*

The customs officers carry out functions in the area of customs irregularities and fraud as well as in the area of tax matters. **24**

(1) In the Area of Customs Matters

Powers in customs matters (enquêtes fraude douanes)
See below → Art. 30. **25**

(2) In the Area of Tax Matters

Tax officials conducting investigations can be **heard as witnesses in a potential trial** (cf. Art. 23a AO) and they investigate as assistant officers of the EDPs in an equal manner like if acting in a purely national situation: **26**

Section 23a[144] **A900, May 22, 1931**
Those officials (§ 22 Paragraph 3 Clause 1) of the **tax administration who are involved in the fight against criminal acts** (in the fight against smuggling, tax evasion, other tax offences, monopoly offenses and foreign exchange offences) can be assigned the rights and obligations that are in accordance with the Code of Criminal Procedure to the assistant officers of the public prosecutor's office.

Section Two – Criminal Procedure
First Subsection – General Rule
Section 420
The Code of Criminal Procedure applies unless tax laws provide otherwise.

Section 421[145]
(1) The **tax control bodies** must investigate the facts of the matter for all tax offenses (section 392). An exception applies if the suspect is arrested for tax evasion and brought before the judge.
(2) The tax control body is entitled to make the decision if the tax offense is threatened only with a fine and confiscation or one of these penalties or the tax control body does not want to recognize any other than these penalties or that the conviction should be made known at the expense of the convicted person.
(3) The tax control bodies can also decide against secondary participants. secondary participant is

[144] **§ 23a** Denjenigen Amtsträgern (§ 22 Absatz 3 Satz 1) der Steuerverwaltung, die bei der Bekämpfung strafbarer Handlungen (insbesondere bei der Bekämpfung von Schmuggel, Steuerflucht, anderen Steuervergehen, Monopolvergehen und Devisenzuwiderhandlungen) mitwirken, können die Rechte und Pflichten übertragen werden, die nach der Strafprozessordnung den Hilfsbeamten der Staatsanwaltschaft zustehen.

[145] Zweiter Abschnitt – Strafverfahren Erster Unterabschnitt – Allgemeine Vorschrift
§ 420 Die Strafprozessordnung gilt, soweit die Steuergesetze nichts Abweichendes vorschreiben.
Zweiter Unterabschnitt - Verwaltungstrafverfahren
I. Allgemeine Vorschriften
§ 421
(1) Die Steuerkontrollstellen haben bei allen Steuervergehen (§ 392) den Sachverhalt zu erforschen. Eine Ausnahme gilt, wenn der Beschuldigte wegen Steuerhinterziehung festgenommen und dem Richter vorgeführt ist.
(2) Die Entscheidung steht der Steuerkontrollstelle zu, wenn das Steuervergehen nur mit Geldstrafe und Einziehung oder einer dieser Strafen bedroht ist oder die Steuerkontrollstelle auf keine andere als auf diese Strafen oder darauf erkennen will, dass die Verurteilung auf Kosten des Verurteilten bekanntzumachen sei.
(3) Die Steuerkontrollstellen können auch gegen Nebenbeteiligte entscheiden. Nebenbeteiligter ist,
1. wem ein Recht an Gegenständen zusteht, die der Einziehung unterliegen, oder wem ein Anspruch auf solche Gegenstände zusteht,
2. wer für die Geldstrafe und die Kosten haftet, die dem Täter oder einem Teilnehmer auferlegt werden.
§ 422
Ist ein und dieselbe Handlung zugleich als Steuervergehen und nach einem anderen Gesetz strafbar, so steht die Untersuchung und in den Grenzen des § 421 die Entscheidung der Steuerkontrollstelle zu, wenn die Strafe aus dem Steuergesetz zu entnehmen ist

1. who has a right to objects that are subject to confiscation, or who has a claim to such objects,
2. who is liable for the fine and costs imposed on the offender or a participant.

Section 422
If one and the same act is punishable as a tax offense and according to another law, the investigation and, within the limits of § 421, the decision of the tax control authority is entitled if the penalty can be found in the tax law.

Section 423
If there is a **suspicion of a negligent tax offense against a lawyer**, which he committed in the exercise of his profession when advising on tax matters, the initiation of criminal prosecution is subject to the condition that a violation of the lawyer's professional duties has previously been established in the court honour. If the investigation has been initiated because of an intentional tax offence, the same applies to the continuation of the proceedings if, before the penalty notice is issued or before the main proceedings are opened, it appears that only the suspicion of a negligent tax offense appears to be justified.

Section 424
(1) The tax control body to which the administration of the affected or endangered tax is transferred is responsible for the investigation and decision.
(2) The tax control offices can use the help of the local police authorities. The authorities and officials of the police and security service are obliged to carry out the investigations that the tax control authorities require.

Section 425
The tax control authorities are entitled to refrain from further investigation or decision at any time and to hand over the matter to the competent public prosecutor's office.

Section 426
(1) As long as the tax control agency does not hand over the matter to the competent public prosecutor's office (section 425), the public prosecutor's office and the courts only must intervene if the accused is provisionally arrested for the tax offense and brought before the judge.
(2) If someone has committed a tax offense and another criminal offense through several independent acts, the public prosecutor's office can take over the criminal prosecution for the tax offense against him and the persons involved as participants, secondary participants (section 421 (3)) or beneficiaries.

(3) Even where their jurisdiction is justified, the public prosecutor's office can request the tax control agency to determine the facts of the tax offense. If the tax control body corresponds to the application, it is also responsible for the decision within the limits of §§ 421 and 422; their right to refrain from further prosecution or the decision at any time remains unaffected.

Section 427
(1) The authorities and officials of the police and security service must also investigate tax offenses and issue all orders that do not allow for a delay to prevent the matter from being covered up.
(2) You must report tax offenses to the tax inspectorate without delay. They must attach their hearings to the complaint, unless the accused is arrested and brought before the judge.

c) Ensuring Compliance with National Law

27 This is done via National Administrative Decrees/Regulations under Criminal Procedural Law (*décrets, arrêtes).*

4. Lifting Privileges or Immunities

4. Lifting Privileges or Immunities 136
a) National Privilege and Immunity Provisions 137
aa. Privilege of Jurisdiction of Members of the Government 137
bb. Real-Normative Parliamentary Immunity/*L'immunité parlementaire* (Constitution)..... 137
cc. Interception of Communications (Senators, Lawyers, Office of a Magistrate)/ Interception de communications (sénateurs, *avocats, magistrat)*..... 138
b) Provisions on the Lifting of Immunities? 138

Lifting privileges or immunities Art. 29/*Levée des privilèges ou des immunités*

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

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

The **following part** displays the privileges and immunities that might be an "**obstacle**" **to an investigation** of the EDPs in Luxembourg (see in the other CNP volumes for examples). In connection to the display of the national provisions the procedure of lifting or waiving these national privileges and immunities (para 1) are dealt with: 1

a) National Privilege and Immunity Provisions

aa. Privilege of Jurisdiction of Members of the Government

The Constitution guarantees MPs parliamentary immunity. Thus, no civil or criminal action can be taken against a deputy in connection with opinions and votes expressed in the exercise of his functions.[146] 2

bb. Real-Normative Parliamentary Immunity/*L'immunité parlementaire* (Constitution)

The **Constitution from 1867** (1919) includes still today the following provisions: 3

Art. 84[147]
No action, neither civil nor criminal, may be taken against a deputy in connection with the opinions and votes expressed by him in the exercise of his functions.

Art. 85 regulates an **exception from Art. 84** of the Constitution: 4

Art. 85
Except for the cases covered by article 84, deputies may be prosecuted in criminal matters.[148]

[146] See https://gouvernement.lu/fr/systeme-politique/chambre-deputes.html. Accessed 30 June 2026.
[147] **Art. 84**
Aucune action, ni civile ni pénale, ne peut être dirigée contre un député à l'occasion des opinions et votes émis par lui dans l'exercice de ses fonctions.
[148] **Art. 85**
À l'exception des cas visés par l'article 84, les députés peuvent être poursuivis en matière pénale. Cependant, l'arrestation d'un député est, sauf le cas de flagrant délit, soumise à autorisation préalable de la Chambre des Députés.
Une autorisation de la Chambre des Députés n'est pas requise pour l'exécution des peines, même celles privatives de liberté, prononcées à l'encontre d'un député.

However, the arrest of a deputy is, except in the case of *flagrante delicto*, **subject to prior authorization from the Chamber of Deputies.** Authorization from the Chamber of Deputies is not required for the execution of sentences, even those involving deprivation of liberty, pronounced against a deputy.

cc. Interception of Communications (Senators, Lawyers, Office of a Magistrate)/*Interception de communications* (*sénateurs, avocats, magistrat)*

5 See below → Art. 30 para 1 (e).

b) Provisions on the Lifting of Immunities?

Union law differs from national law and is not researched here in-depth. Cf. an EU-Commentary for this area and the legal questions that might arise.

6 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.

7 It applies the consolidated version of the Treaty on the Functioning of the European Union.

8 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).

IV. Investigative Measures Scenery of the EPPO in Luxembourg according to the Requisites of Art. 30 EPPO Regulation and Recent Amendments as of 2022

9 The next part of the compendium chapter deals with **the investigative measures scenery**, which the EDPs can operate on the territory of Luxembourg – either investigating on their own or receiving instructions from another handling EDP of a foreign EPPO country:

1. Art. 30 Investigation Measures and Other Measures

1. Art. 30 Investigation Measures and Other Measures 138
a) Investigation Measures ... 142
aa. Searches, Home Visits and Seizures for Evidentiary Purposes and to Ensure Confiscation (elements will be detailed in point 30 §1 d)/*Les perquisitions, les visites domiciliaires, les fouilles et les saisies (des éléments seront détaillés au point 30 §1 d)* .. 143
(1) Vehicle/Luggage Searches/*Les fouilles de véhicules/ bagages* 143

(2) Field of Taxes/En matière douanière..... 144
bb. Art. 30 § 1 b) and c) Production of any Object, Document and Computer Data (= requisitions)/Art. 30 § 1 b) et c) *production de tout objet, document et des données informatiques* (= les réquisitions) 144
cc. Art. 30 §1 e) Interception of Electronic Communications and Remote Access/Art. 30 §1 e)/ *L'interception des* communications électroniques et l'accès à distance 149
dd. Art. 30 §1 f) Geolocation/Art. 30 §1 f) La géolocalisation..... 153
ee. Any Other Measure(s) in the EDP's Member State 155
(1) The Luxembourgish EDPs Hearing Witnesses/*Des auditions des témoins, Art. 136-11 et seq. CPC* 155
(2) Checks, Verifications and Identity Records/*Des contrôles, des vérifications et des relevés d'identité* 159
(3) Examinations and Confrontations/*Les interrogatoires et confrontations, Art. 136-24 CPC*..... 160
(a) Interrogations and Confrontations (EDP-specific Legislation).... 160
(b) Hearing Experts in an EPPO Investigation, Art. Art. 136-33 167
(c) Special Investigation Techniques (in the Context of Organised Crime) ... 169
(d) Investigation under a Pseudonym (in Cybercrime)/*L'enquête sous pseudonyme (en matière de cyber-criminalité*)..... 170
(e) Letters Rogatory/*Les commissions rogatoires* 173
ff. Appeals against Certain Order of the Investigating Judge 174

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 apart from 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 is highly important for the EDPs as this Article **confers various powers**, enshrined in national law on to the EDPs and enables them to conduct investigations into the suspected PIF conduct. A general rule is enshrined in the Luxembourgish CPC: **1**

Art. 24-1 (L. October 27, 2010) **2**
(1) For any offence, the State prosecutor may request the investigating judge to order a search, a seizure, the hearing of a witness or an expert report without a preparatory investigation being opened.[149]
The State prosecutor may proceed in the same way for the offenses referred to in Articles 196 and 197 of the Penal Code with regard to the use of forgeries referred to in Article 196, and for the offenses referred to in Articles 467, 468 and 469 of the Criminal Code.
(L. July 18, 2014) For the offenses referred to in the preceding paragraph and for offenses which carry a correctional sentence, the maximum of which is equal to or greater than one year's imprisonment, the State prosecutor may require the judge to instruction to order the measures provided for in paragraphs (1) and (2) of Article 67-1 and without a preparatory investigation being opened.
(L. July 18, 2014) The person whose means of telecommunication has been the subject of the measure provided for in paragraph (1) of Article 67-1 is informed of the measure ordered during the preliminary investigation and in any case no later than 12 months from the date of the order.

[149] **Art. 24-1. (L. 27 octobre 2010)**
(1) Pour tout délit, le procureur d'Etat peut requérir du juge d'instruction d'ordonner une perquisition, une saisie, l'audition d'un témoin ou une expertise sans qu'une instruction préparatoire ne soit ouverte.
Le procureur d'Etat peut procéder de même pour les infractions visées aux articles 196 et 197 du Code pénal pour ce qui concerne l'usage des faux visés à l'article 196, et pour les infractions visées aux articles 467, 468 et 469 du Code pénal. (L. 18 juillet 2014) Pour les infractions visées à l'alinéa qui précède et pour les délits qui emportent une peine correctionnelle dont le maximum est égal ou supérieur à un an d'emprisonnement, le procureur d'Etat peut requérir du juge d'instruction d'ordonner les mesures prévues aux paragraphes (1) et (2) de l'article 67-1 et sans qu'une instruction préparatoire ne soit ouverte. (L. 18 juillet 2014) La personne dont un moyen de télécommunication a fait l'objet de la mesure prévue au paragraphe (1) de l'article 67-1 est informée de la mesure ordonnée au cours même de l'enquête préliminaire et en tout cas au plus tard dans les 12 mois qui courent à partir de la date de l'ordonnance. (L. 18 juillet 2014) Lorsque les mesures de repérage de télécommunications ordonnées par le juge d'instruction n'ont donné aucun résultat, les données obtenues seront retirées du dossier de l'enquête préliminaire et détruites dans la mesure où elles concernent des personnes non visées par l'enquête préliminaire.
(2) Le juge d'instruction saisi de l'affaire décide s'il exécute uniquement l'acte d'instruction requis et renvoie le dossier ou si, au contraire, il continue lui-même l'instruction Il doit toutefois en ce cas immédiatement demander par écrit un réquisitoire de saisine in rem au procureur d'Etat avant d'accomplir des actes autres que celui dont il a été saisi, réquisitoire que le procureur d'Etat doit lui adresser sur-le-champ.
(3) (L. 8 mars 2017) Si le juge d'instruction renvoie le dossier, les personnes visées par l'enquête sont, antérieurement à la citation ou au renvoi par la chambre du conseil, interrogées. L'interrogatoire s'effectue suivant les modalités et sous les conditions prévues par le paragraphe 3 de l'article 46.
(4) Le procureur d'Etat ne peut procéder à un second réquisitoire, au sens du paragraphe 1er, que dans un délai de trois mois après que le juge d'instruction lui a renvoyé le dossier.
Paragraphes (5) à (10) Abrogés (L. 8 mars 2017)

(L. July 18, 2014) When the telecommunications tracking measures ordered by the investigating judge have yielded no results, the data obtained will be removed from the preliminary investigation file and destroyed insofar as they relate to persons not covered by the preliminary investigation.
(2) The investigating judge seized of the case shall decide whether he shall carry out only the act of investigation requested and dismiss the file or whether, on the contrary, he shall continue the investigation himself.
However, in this case, he must immediately request in writing an indictment of referral in rem to the State prosecutor before performing acts other than those of which he was seized, an indictment which the State prosecutor must address to him on the spot. field.
(3) (L. 8 March 2017) If the investigating judge returns the file, the persons targeted by the investigation are, prior to the summons or the referral by the council chamber, questioned. The questioning is carried out according to the methods and under the conditions provided for in paragraph 3 of Article 46.
(4) The State prosecutor may only make a second indictment, within the meaning of paragraph 1, within a period of three months after the investigating judge has sent the case back to him.
(5) to (10) Repealed (L. March 8, 2017)

a) Investigation Measures

3 Member States shall ensure that the EDPs are **entitled to order or request** investigation measures, art. 30 para 1. The Luxembourgish legislator has only in July 2022 enacted a law that deems to confer these powers on the EDP. Thus, for one year and a month (the EPPO stated on 1.6.2022) the Regulation was **interpreted roughly in Luxembourg** and the EDPs were not specifically entitled to order or request investigation measures by an **EPPO Adoption Law**. As of **22nd July 2022,** the following provisions from Book I, Title V. of the CPC apply:

4

Section II – Specific powers of the European Delegated Prosecutor
Sub-section I era – Transport
Art. 136-10
(1) The European Delegated Public Prosecutor may go to the premises to make any useful findings.
(2) The person affected by this measure and his counsel as well as the civil party may attend the transport on the premises; they receive notice the day before. Exceptionally, when there is reason to fear the imminent disappearance of elements the observation and examination of which seem useful for ascertaining the truth, the European Delegated Public Prosecutor carries out these operations as a matter of urgency without the persons concerned having to be called.
(3) The European Delegated Prosecutor is always assisted by his Registrar.

(4) He draws up a report of his operations. If, due to the urgency, the interested parties have not been called, the reason is indicated in the minutes.

Art 136-10 is highly **important for searches** by virtue of Art. 30 para 1 (a) EPPO Regulation see below). **5**

aa. Searches, Home Visits and Seizures for Evidentiary Purposes and to Ensure Confiscation (elements will be detailed in point 30 §1 d)/*Les perquisitions, les visites domiciliaires, les fouilles et les saisies (des éléments seront détaillés au point 30 §1 d)*

📖 RÈGLEMENT (UE) 2017/1939 → Article 30/ Investigation and other measures
(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.***

(1) Vehicle/Luggage Searches/*Les fouilles de véhicules/bagages*

Searching vehicles depends on the investigation framework. At least it is ensured in Art. 48-10 CPC: **6**

Chapter VI – Searching vehicles (L. March 15, 2007) **7**
Art. 48-10 (L. March 15, 2007)
(1) Without prejudice to the provisions concerning the inspection of vehicles provided for by special texts, the judicial police officers, assisted, if necessary, by the judicial police officers, may carry out searches of vehicles circulating, stopped or parked directly on the public highway. or in places accessible to the public, when there exists regarding the driver, the owner or a passenger, one or more indications making it presumed that he has committed, as author or as accomplice, a crime or an offense not subject to a preparatory instruction; these provisions also apply to the attempt. The fact that the search is carried out because of a crime or misdemeanour that is the subject of a preparatory investigation does not constitute a cause for the nullity of the latter and of the incidental proceedings.
(2) For the application of the provisions of this article, vehicles in circulation may only be immobilized for the time strictly necessary for the conduct of the search. The search takes place in the presence of the driver or the owner of the vehicle. In the absence of the owner or the driver, the search is carried out with the authorization of the State prosecutor.
(3) A report shall be drawn up mentioning the name of the judicial police officer and of the judicial police officers who carried out the operation, the clue(s) referred to in paragraph 1, the place, the dates of the start and the end of the operations, the license plate

of the vehicle, as well as, where applicable, the fact that the search was carried out with the authorization of the State prosecutor. A copy of the report is given to the driver or owner, if present, and another is sent without delay to the State prosecutor.
(4) The judicial police officer shall seize the vehicle, objects, documents or effects which have been used to commit a crime or misdemeanour even other than that which gave rise to the search, are intended to commit it, form the object or the product, appear useful for the manifestation of the truth, the use of which would be likely to harm the smooth running of the investigation, or are liable to confiscation or restitution. All objects, documents and effects seized are immediately inventoried after being presented, for recognition, to the person in whose presence the search took place. However, if their inventory on the spot presents difficulties, they are subject to seals until the moment of their inventory in the presence of the person who attended the search. The report of the seizures is signed by the latter; in the event of refusal to sign, the minutes shall mention it. He is left with a copy of the minutes. The objects, documents and effects seized will be deposited at the registry of the district court or entrusted to a seizure custodian. With the agreement of the State prosecutor, the judicial police officer only maintains the seizure of objects, documents or effects useful for establishing the truth. If it is found that the objects, documents or effects seized are related to an offense that is the subject of a preparatory investigation, the investigating judge is notified as soon as possible. The foregoing provisions apply without prejudice to those relating to seizures in preliminary investigations.
(5) However, inspection of vehicles specially fitted out for residential use and used as a residence may only be made in accordance with the provisions relating to searches and domiciliary visits.

(2) Field of Taxes/*En matière douanière*

8 *Taxes Investigations Measures 1:*



Investigation powers of the Tax control Stations (*Steuerkontrollstellen*) and Authorities in Luxembourg in Relation to the Powers of the EPPO

→ Right of access to premises and places of business and home visits:

Section 436 Abgabenordnung Luxembourg
The tax control authorities can request the authorities and officials responsible under the Code of Criminal Procedure to carry out searches. At their request, officials to be designated by them are to be involved in the execution. The things that are taken into custody or confiscated must be handed over to the tax control authorities.

Section 437
(1) If searches are provided for in tax laws, the tax control authorities are entitled to order them. Unless otherwise provided in the tax laws, the officials charged with the execution shall proceed in accordance with the provisions of the Code of Criminal Procedure; they must identify themselves by means of a written order from the tax control office.
(2) Papers and trading books may only be viewed by the tax control offices and their agents if the owner approves it. Otherwise, they shall seal in an envelope the papers and accounts which they deem necessary to examine, in the presence of the holder or his representative, with the official seal, and deliver them to the magistrate. This has papers and trading books that are important for the investigation to inform the tax control office.

Section 438
The right of the tax inspector to investigate rooms that are accessible to her for exercising tax supervision and to inspect the books and records intended for her inspection there remains unaffected; Means of coercion (§ 202) against the person of the accused are inadmissible, however, if it is a matter of pursuing traces of a tax offence.

Section 430
(1) The tax control authorities can order confiscations in accordance with the provisions of the CPC and have them carried out by their officials. (2) to (5) [...]

Section 431
The tax control agency asks the competent court to confiscate letters and consignments in the mail and telegrams on the telegraph stations (Investigation Criminal Procedure Code). This hands over to him opened shipments whose restraint seems necessary.

Section 433
(1) The confiscation of items that are subject to confiscation remains effective until the criminal proceedings for the tax offense have been completed or the tax control agency lifts the confiscation.
(2) Items that have been confiscated and whose storage, care and maintenance costs a disproportionate amount or whose deterioration is imminent can be sold by the tax control agency after three days, or earlier in the event of imminent danger, in compulsory proceedings. The proceeds take the place of the things. The accused and the owner must be informed of the time and place of the sale in advance, if possible.

Section 434
If confiscated property subject to confiscation has been left behind by an unknown party involved in the tax offense but escaped, it or its proceeds shall become forfeit to the State if the victim or the owner fails to return within three months of the confiscation

reported. The tax control office can have them sold in compulsory proceedings after a week has elapsed, calculated from the date of confiscation.

Section 435
To secure a tax evasion, means of transport that the suspect has in his custody when committing a tax offense and other items that he is carrying, other than work tools, may be confiscated if his place of residence is unknown or located outside Luxembourg. The confiscated items can be transported by means of transport to the nearest office where they can be stored. The things are to be released if it can be proven that they belong to someone who is neither involved in the crime nor liable for penalties and costs, unless the confiscation pursuant to Section 401 has been forfeited.

bb. Art. 30 § 1 b) and c) Production of any Object, Document and Computer Data/*Art. 30 § 1 b) et c) production de tout objet, document et des données informatiques (= les réquisitions)*

9 🕮 RÈGLEMENT (UE) 2017/1939/***SECTION 2 → Rules on investigation measures and other measures*** *Article 30* → **Investigation measures and other measures**
(b) obtain the production of any relevant object or document either in its original form or in some other specified form;
(c) obtain the production of stored computer data, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council (20).

10 **Chapter X – Fast storage of computer data (L. July 18, 2014)**
Art. 48-25 (L. July 18, 2014)
When there **is reason to believe that** data stored, processed or transmitted in an automated data processing or transmission system, useful for ascertaining the truth, is liable to loss or modification, the State prosecutor or the examining magistrate seized may proceed to the rapid and immediate conservation, for a period which may not exceed 90 days, of this data.

11 A very **special subsection** has been implemented into the Luxembourgish CPC by the Legislator when he adopted the national law to the Regulation requirements. Book I, Title V. on the EPPO investigation rules ensures that the EDPs are ***entitled to order or request*** **banking account data** under special requirements:

Subsection V – Access to certain information held by banking establishments **12**

Art. 136-35

(1) If the investigation so requires and *the ordinary means of investigation*[150] *prove ineffective* due to the nature of the facts and the special circumstances of the case, the **European Delegated Prosecutor *may,*** *exceptionally*, if the criminal prosecution relates to an act carrying a criminal sentence or a correctional sentence the maximum of *which is equal to or* ***greater than two years' imprisonment*** …[*scil.* Corruption, fraud etc.], **order the credit institutions** it designates to inform it **if the person targeted** by the investigation holds, controls or **has power of attorney over one or more accounts** of any kind whatsoever, or has held, controlled or has power of attorney over such an account.

(2) If the answer is affirmative, the **credit institution communicates the number of the account as well as the balance**, and **transmits to it the data** relating to the identification of the account and in particular the documents for opening it.

(3) The decision shall be added to the proceedings file after the proceedings have been completed.

Art. 136-36

(1)[151] If the investigation so requires and the ordinary means of investigation prove ineffective due to the nature of the facts and the special circumstances of the case, the European Delegated Prosecutor may, exceptionally, if the criminal prosecution has as its object an act carrying a criminal penalty or a correctional penalty the maximum of which is equal to or greater than two years' imprisonment, order a credit institution *to*

[150] **Art. 136-35**
(1) Si l'enquête l'exige et que les moyens ordinaires d'investigation s'avèrent inopérants en raison de la nature des faits et des circonstances spéciales de l'espèce, le procureur européen délégué peut, à titre exceptionnel, si la poursuite pénale a pour objet un fait emportant une peine criminelle ou une peine correctionnelle dont le maximum est égal ou supérieur à deux ans d'emprisonnement, ordonner aux établissements de crédit qu'il désigne de l'informer si la personne visée par l'enquête détient, contrôle ou a procuration sur un ou plusieurs comptes de quelque nature que ce soit, ou a détenu, contrôlé ou eu procuration sur un tel compte.
(2) Si la réponse est affirmative, l'établissement de crédit communique le numéro du compte ainsi que le solde, et lui transmet les données relatives à l'identification du compte et notamment les documents d'ouverture de celui-ci.
(3) La décision est versée au dossier de la procédure après achèvement de la procédure.

[151] **Art. 136-36**
(1) Si l'enquête l'exige et que les moyens ordinaires d'investigation s'avèrent inopérants en raison de la nature des faits et des circonstances spéciales de l'espèce, le procureur européen délégué peut, à titre exceptionnel, si la poursuite pénale a pour objet un fait emportant une peine criminelle ou une peine correctionnelle dont le maximum est égal ou supérieur à deux ans d'emprisonnement, ordonner à un établissement de crédit de l'informer pendant une période déterminée de toute opération qui sera exécutée ou prévue d'être exécutée sur le compte de la personne visée par l'enquête qu'il spécifie.
(2) La mesure est ordonnée pour une durée qui est indiquée dans la décision du procureur européen délégué. Elle cessera de plein droit un mois à compter de la décision. Elle pourra toutefois être prorogée chaque fois pour un mois, sans que la durée totale puisse dépasser trois mois.
(3) La décision est versée au dossier de la procédure après achèvement de la procédure.

inform it for a determined period of any transaction which will be carried out or intended to be performed on the account of the person under investigation that it specifies.
(2) The measure is ordered *for a period* which is indicated in the decision of the European Delegated Public Prosecutor. It will automatically cease one month from the date of the decision. However, it may be extended each time for one month, without the total duration exceeding three months.
(3) The decision shall be added to the proceedings file after the proceedings have been completed.

Art. 136-37[152]
When it is useful for ascertaining the truth, the European Delegated Public Prosecutor **may order a credit institution to send him information or documents** concerning accounts or transactions which have been carried out during a given period on one or more accounts that it specifies.

Art. 136-38[153]
(1) The decision provided for in Articles 136-35, 136-36 and 136-37 shall be brought to the attention of the credit institution concerned by notification made either by a law enforcement officer or by registered letter with advice. of receipt, either by fax or by e-mail.
(2) The credit institution which was notified of the order shall communicate the requested information or documents by e-mail to the European Delegated Public Prosecutor within the time limit indicated in the decision. The European Delegated Prosecutor acknowledges receipt by e-mail.
(3) Refusal to assist in the execution of decisions based on Articles 136-35, 136-36 and 136-37 will be punished by a fine of 1,250 euros to 125,000 euros.

[152] **Art. 136-37**
Lorsqu'il est utile à la manifestation de la vérité, le procureur européen délégué peut ordonner à un établissement de crédit de lui transmettre des informations ou des documents concernant des comptes ou des opérations qui ont été réalisées pendant une période déterminée sur un ou plusieurs comptes qu'il spécifie.
[153] **Art. 136-38**
(1) La décision prévue par les articles 136-35, 136-36 et 136-37 est portée à la connaissance de l'établissement de crédit visé par notification faite soit par un agent de la force publique, soit par lettre recommandée avec avis de réception, soit par télécopie, soit par courrier électronique.
(2) L'établissement de crédit qui s'est vu notifier l'ordonnance communique les informations ou documents sollicités par courrier électronique au procureur européen délégué dans le délai indiqué dans la décision. Le procureur européen délégué en accuse réception par courrier électronique.
(3) Le refus de prêter son concours à l'exécution des décisions sur le fondement des articles 136-35, 136-36 et 136-37 sera puni d'une amende de 1 250 euros à 125 000 euros.

cc. Art. 30 §1 e) Interception of Electronic Communications and Remote Access/Art. 30 §1 e)/*L'interception des communications électroniques et laces à distance*

📖 RÈGLEMENT (UE) 2017/1939 DU CONSEIL ***SECTION 2 → Rules on investigation measures and other measures*** *Article 30* → **Investigation measures and other measures** → (e) intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using;

The **intrusive investigation measures**, like the present one are restricted to the powers of an investigating judge and the status as accused requires *inculpation*: **13**

Section VIII – Special surveillance measures **14**
Art. 88-1
(L. November 26, 1982) (L. of June 27, 2018)
(1) The investigating judge may, under the conditions provided for in Articles 88-2 and 88-4, order the use of ***technical means of surveillance and control of all forms of communication***.
This is done by means of:
1°surveillance and control of telecommunications and postal correspondence;
2°the sound system and the fixing of images of certain places or vehicles;
3°computer data capture.
(2) The sound system and the fixing of images of certain places or vehicles consist in the establishment of a technical device whose purpose, without the consent of the interested parties, is to capture, fix, transmit and record words spoken by one or more persons in a private or confidential capacity, in a public place, a vehicle, premises used for professional purposes or a home or its dependencies within the meaning of articles 479, 480 and 481 of the Penal Code or, by means of a technical device placed in a room used for professional purposes, a home or its outbuildings or a vehicle in the image of one or more people in these places.
(3) The capture of computer data consists in the implementation of a technical device whose purpose, without the consent of the interested parties, is to access, anywhere, computer data, to record them, to store them and to transmit them, as they are displayed on a screen for the user of an automated data processing or transmission system, as he introduces them by entering characters or as they are received and output from audiovisual devices.

Art. 88-2 (L. May 30, 2005) (L. of June 27, 2018)
(1) The measures referred to in Article 88-1 may only be decided by the examining magistrate in exceptional circumstances and by decision specially reasoned according

to the elements of the case and with reference to the conditions indicated in paragraph 2.
(2) They are subject to the conditions:
1°that the purpose of the criminal prosecution, with regard to the surveillance and control of telecommunications as well as postal correspondence, in whole or in part, is an act of particular gravity carrying a criminal penalty or a correctional penalty, the maximum of which is equal to or greater than two years' imprisonment, and, with regard to the sound system and the recording of images of the places and vehicles referred to in Article 88-1, paragraph 2, and the recording of computer data, in whole or in part, one or more of the facts listed below:
has) crimes and offenses against state security within the meaning of articles 101 to 123 of the Penal Code;
b) acts of terrorism and terrorist financing within the meaning of Articles 135-1 to 135-6, 135-9 and 135-11 to 135-16 of the Penal Code;
2°that specific facts make the person to be monitored suspect either of having committed the offense or of having participated in it, or of receiving or transmitting information intended for the accused or the suspect or which comes from him;
3°that the ordinary means of investigation prove to be ineffective due to the nature of the facts and the special circumstances of the case.
(3) The decision of the investigating judge shall be in writing and contain, on pain of nullity, the following particulars:
1°the special motivation according to the elements of the case and with reference to the conditions indicated in paragraph 2;
2°the name or, if not known, as precise a description as possible of the person or persons targeted by the measures ordered;
3°how the measures will be carried out;
4°the period during which the measures may be carried out with regard to the provisions of paragraph 4;
5°the name and position of the judicial police officer carrying out the investigation.
(4) They must be lifted as soon as they are no longer necessary. They cease automatically one month from the date of the order. They may however be extended each time for one month, without the total duration being able to exceed one year, by reasoned order of the investigating judge, approved by the president of the council chamber of the court of appeal who rules within two days of receipt of the order, the Attorney General of State heard in his conclusions.
(5) They may not, on pain of nullity, be ordered with regard to an accused after his first interrogation by the investigating judge and those ordered previously cease to have effect as of right on that date.

(6) These measures may not, on pain of nullity, be ordered with regard to a person bound by professional secrecy within the meaning of Article 458 of the Penal Code, unless he himself is a suspect. to have committed the offense or to have participated in it. The measures cannot, on pain of nullity, be ordered with regard to a lawyer or a doctor without the President of the Bar or the representative of the Medical College, as the case may be, being notified. These same people are informed by the investigating judge of the elements of the communications collected which he considers to be covered by professional secrecy and which are not recorded in the report provided for by article 88-4, paragraph 4. The installation of the technical device mentioned in paragraphs 2 and 3 of article 88-1 may not, on pain of nullity, be carried out in the premises used for professional purposes, the home or its outbuildings within the meaning of articles 479, 480 and 481 of the Penal Code or the vehicle of a lawyer, a doctor, a professional journalist or a publisher, these last two terms understood within the meaning defined by the amended law of June 8, 2004 on freedom of expression in the media, or concern the automated data processing systems located there.
(7) The measures may not, on pain of nullity, have any other purpose than information on the offenses referred to in the decisions of the investigating judge. The fact that they reveal infringements other than those referred to in these decisions does not constitute a cause of nullity of the incidental proceedings.

For the measure of **telecommunications interception,** it is particularly important to pay attention to the investigation framework: **15**

Chapter XII – Identification of the user of a means of telecommunication (L. of June 27, 2018) **16**
Art. 48-27
(1) *Within the* ***framework of the investigation for a crime or misdemeanour*** *or of the* ***preparatory investigation***, the State prosecutor or the investigating judge may, by a reasoned and written decision, requesting the assistance of a telecommunications operator or a supplier of a telecommunications service, proceed or have proceeded on the basis of all data held by it on the basis of article 10 bis of the amended law of 30 May 2005 concerning the protection of life private sector in the electronic communications sector to:
1° identification of the subscriber or habitual user of an electronic communication service or of the means of electronic communication used;
2° identification of the electronic communications services to which a specific person subscribes or which are usually used by a specific person.
The reasoning reflects the proportionality with regard to respect for private life and subsidiary to any other duty of investigation or instruction.

When there is an urgent need to prevent a serious attack on the life, freedom or physical integrity of a person or when it is imperative that the authorities carrying out the investigation act immediately to avoid compromising serious criminal proceedings, the judicial police officers referred to in Article 10 may, with the oral and prior agreement of the State prosecutor or the investigating judge, and by a reasoned and written decision, request this data. They communicate this reasoned and written decision as well as the information collected within twenty-four hours to the State prosecutor or the investigating judge and also justify the extreme urgency.
The provisions of this paragraph are to be observed on pain of nullity.
(2) Each telecommunications operator and each supplier of a telecommunications service shall communicate the information which has been requested as soon as possible.
Any person who, by virtue of his position, has knowledge of the measure or lends his support to it, is bound to maintain secrecy. Any violation is punished in accordance with article 458 of the Penal Code.
Any person who refuses to lend his technical assistance to the requisitions referred to in this article, is punished by a fine of 1,250 to 125,000 euros".

17 **2) Art. 30 § 2 Specific provisions for certain professionals and categories of persons (applicable to *flagrante delicto*, pre-trial and investigation)/*Art. 30 § 2 Dispositions spécifiques pour certains professionnels et certaines catégories de personnes (applicable à la flagrance, préliminaire et instruction)***

18 In case of an ***inflagrante*** **investigation** (see → Art. 26 EPPO Regulation, above):

Art. 34 (L. June 16, 1989)
(1) Subject to what is stated in the preceding article concerning respect for professional secrecy and the rights of defence, the operations prescribed by the said article shall be carried out in the presence of the person at whose domicile the search is taking place.
(2) In case of impossibility, the judicial police officer has the obligation to invite him to designate a representative of his choice; failing this, the judicial police officer chooses two witnesses required for this purpose by him, apart from the persons coming under his administrative authority.
(3) The report of these operations shall be signed by the persons referred to in this article; in case of refusal, it is mentioned in the minutes.

Art. 35 (L. June 16, 1989)
Subject to the requirements of the investigations and the provision of Article 8, paragraph (3), any communication or any disclosure without the authorization of the accused or his heirs or of the signatory or recipient of a document from of a search of a person not qualified by law to take cognizance of it is punishable by imprisonment from eight days to six months and a fine of 500 euros to 5,000 euros or only one of these penalties.

Art. 36 (L. June 16, 1989)
If it is necessary to make findings that cannot be deferred, the judicial police officer has recourse to all qualified persons. Unless they are registered on the list of sworn experts drawn up by the Minister of Justice, the persons thus called take an oath, in writing, to provide their assistance to justice in their honour and in their conscience.

Art. 37 (L. June 16, 1989)
The judicial police officer may forbid any person to leave the place of the offense until the closure of his operations.

dd. Art. 30 §1 f) Geolocation/*Art. 30 §1 f) La géolocalisation*

📖 **track and trace an object** by technical means, including controlled deliveries of goods. **19**

Chapter VII – Observing **20**
Art. 48-12 (L. December 3, 2009)
(1) Observation within the meaning of this Code is the **systematic observation of one or more persons**, of their presence or behaviour, or of **specific things, places or events**.
(2) A systematic observation within the meaning of this chapter is an observation of more than five consecutive days or more than five non-consecutive days spread over a period of one month, an observation in which technical means are used or an observation of an international character.
(3) A **technical means** within the meaning of this chapter is a configuration of components which detects signals, transmits them, activates their recording and stores the signals, with the exception of technical means used for the execution of a measurement referred to in Article 67-1 or a measure referred to in Articles 88-1 to 88-4. A device used for taking photographs is considered a technical means within the meaning of this chapter in the case of an observation made outside a private place in accordance with paragraph 2 of this article and in the case referred to in paragraph 3 of the 48-13.

Art. 48-13 (L. December 3, 2009)
(1) An observation may be decided by the State prosecutor or the investigating judge provided that the investigation or the preparatory investigation so requires and that the

ordinary means of investigation prove to be ineffective due to the nature of the facts and special circumstances of the case.
(2) An observation carried out using technical means may be decided by the State prosecutor or the investigating judge when the conditions of paragraph (1) are met and there are serious indications that the offenses are likely to carry a criminal sentence or a correctional sentence, the maximum of which is equal to or greater than one year's imprisonment.
(3) (L. June 27, 2018) An observation made using technical means in order to have from outside a home, or from a specific dependency enclosed therein of this home within the meaning of Articles 479, 480 and 481 of the Penal Code, or of premises used for professional purposes an interior view of these premises, may be decided by the investigating judge alone when the conditions of paragraph 1 are met and there are indications serious as to the existence of facts which carry a criminal sentence or a correctional sentence, the maximum of which is equal to or greater than four years' imprisonment.

Art. 48-14 (L. December 3, 2009)
(1) The decision of the State prosecutor or the investigating judge to proceed with the observation shall be in writing and contain, under penalty of nullity, the following particulars:
1°the serious indication(s) of the offense referred to in paragraphs (2) or (3) of Article 48-13 and which justify the observation;
2°the specific grounds on which the investigation or preparatory investigation requires an observation;
3°the name or, if not known, as precise a description as possible of the person or persons observed, as well as of the things, places or events referred to in article 48-12, paragraph (1);
4°the manner in which the observation will be carried out, including the permission to use technical means in the cases provided for in Article 48-13, paragraphs (2) and (3). In the case of article 48-13, paragraph (3), the decision of the investigating judge mentions the address or as precise a location as possible of the dwelling which is the subject of the observation;
5°the period during which the observation may apply and which may not exceed one month from the date of the decision;
6°the name and position of the judicial police officer who directs the execution of the observation.
(2) In urgent cases, the decision to observe may be granted verbally. This decision must be confirmed as soon as possible in the form provided for in paragraph (1).
(3) The State prosecutor or the investigating judge may at any time, giving reasons, modify, supplement or extend his decision. He can revoke his decision at any time. It

verifies whether the conditions referred to in Articles 48-12 and 48-13 are met each time its decision is modified, supplemented or extended and acts in accordance with paragraph (1), 1° to 6°.

ee. Any Other Measure(s) in the EDP's Member State

📖 4. The EDPs 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. **21**

(1) The Luxembourgish EDPs Hearing Witnesses/*Des auditions des témoins, Art. 136-11 et seq. CPC*

Art. 136-11 Subsection II – Witness hearings **22**
(1)[154] The European Delegated Public Prosecutor shall call before him all the persons whose testimony seems useful to him.
(2) Witnesses may also appear voluntarily.
(3) The accused and his counsel as well as the plaintiff have the **right to demand the hearing of the witnesses** they wish to have heard. They must, on pain of inadmissibility of the request, articulate the facts intended to be the subject of the testimony. They may likewise request that the accused be questioned in the presence of the witness they indicate for this purpose in their request.
(4) The decision of the European Delegated Public Prosecutor refusing to grant this request shall state the reason for the refusal.

Art. 136-12 (1) The witnesses are heard separately,[155] and without the presence of the accused and the civil party, by the European Delegated Prosecutor assisted by his clerk; a report of their declarations is drawn up.
(2) The European Delegated Prosecutor may call upon an interpreter of full age, to the exclusion of his clerk and witnesses. The interpreter, if not sworn, takes an oath to faithfully translate the depositions.

[154] **Art. 136-11**
(1) Le procureur européen délégué fait citer devant lui toutes les personnes dont la déposition lui paraît utile.
(2) Les témoins peuvent aussi comparaître volontairement.
(3) L'inculpé et son conseil ainsi que la partie civile ont le droit de réclamer l'audition des témoins qu'ils désirent faire entendre. Ils doivent, sous peine d'irrecevabilité de la demande, articuler les faits destinés à faire l'objet du témoignage. Ils peuvent de même demander que l'inculpé soit interrogé en présence du témoin qu'ils indiquent à ces fins dans leur demande.
(4) La décision du procureur européen délégué refusant de faire droit à cette demande énonce le motif du refus.
[155] **Art. 136-12**
(1) Les témoins sont entendus séparément, et hors la présence de l'inculpé et de la partie civile, par le procureur européen délégué assisté de son greffier; il est dressé procès-verbal de leurs déclarations.
(2) Le procureur européen délégué peut faire appel à un interprète majeur, à l'exclusion de son greffier et des témoins. L'interprète, s'il n'est pas assermenté, prête serment de traduire fidèlement les dépositions.

Art. 136-13[156]
Witnesses take an oath to tell the whole truth, nothing but the truth. The EDP **asks them for their surname, first names, age, status, profession, domicile or residence**, whether they are relatives or allies of the parties and to what degree or whether they work for them. Reference is made to the request and the response.

Art. 136-14[157]
Any person named in a complaint accompanied by a civil party application may refuse to be heard as a witness. The EDP notifies him after informing him of the complaint. Mention is made in the minutes. In case of refusal, he can only hear him as accused.

Art. 136-15[158]
The EDP, as well as the judicial police officers acting on the orders of the Delegated European Prosecutor, may not hear as witnesses' persons against whom there are indications making it likely that they may have participated in the offense of which the EDP is grasped.

Art. 136-16
Each page of the minutes is signed by the European Delegated Prosecutor, the Registrar and the witness.[159] The latter affixes his signature after his deposition has been read to him and he has declared that he persists in it. However, he is authorized to re-read his testimony himself, if he so requests. If the witness does not want or cannot sign, this is mentioned in the report. Each page is also signed by the interpreter if necessary.

[156] **Art. 136-13**
Les témoins prêtent serment de dire toute la vérité, rien que la vérité. Le procureur européen délégué leur demande leur nom, prénoms, âge, état, profession, domicile ou résidence, s'ils sont parents ou alliés des parties et à quel degré ou s'ils sont à leur service. Il est fait mention de la demande et de la réponse.
[157] **Art. 136-14**
Toute personne nommément visée par une plainte assortie d'une constitution de partie civile peut refuser d'être entendue comme témoin. Le procureur européen délégué l'en avertit après lui avoir donné connaissance de la plainte. Mention en est faite au procès-verbal. En cas de refus, il ne peut l'entendre que comme inculpé.
[158] **Art. 136-15**
Le procureur européen délégué, ainsi que les officiers de police judiciaire agissant sur ordre du procureur européen délégué ne peuvent entendre comme témoins des personnes contre lesquelles il existe des indices rendant vraisemblable qu'elles aient pu participer à l'infraction dont le procureur européen délégué est saisi.
[159] **Art. 136-16**
Chaque page des procès-verbaux est signée du procureur européen délégué, du greffier et du témoin. Ce dernier appose sa signature après que lecture lui a été faite de sa déposition et qu'il a déclaré y persister. Il est cependant autorisé à relire lui-même sa déposition, s'il le demande. Si le témoin ne veut ou ne peut signer, mention en est portée sur le procès-verbal. Chaque page est également signée par l'interprète s'il y a lieu.

Art. 136-17[160]
(1) Minutes may not include any line spacing. The erasures and references are approved by the European Delegated Prosecutor, the Registrar and the witness and, if necessary, by the interpreter. In the absence of approval, these erasures and references are void.
(2) The same applies to the minutes which are not duly signed.

Art. 136-18[161]
Children under the age of fifteen are heard without taking an oath.

Art. 136-19
(1) Any person summoned to be heard as a witness shall be required to appear, take an oath and give evidence, subject to the provisions of Articles 136-14, 136-15 and 136-18 and Article 458 of the Penal Code.[162]
(2) If the witness does not appear, the European Delegated Public Prosecutor may request the investigating judge to compel him to do so by force of law and to condemn him to a fine of 250 euros to 500 euros. If he appears later, he may, however, upon production of his excuses and justifications, be relieved of this penalty by the examining magistrate. This request is sent to the European Delegated Public Prosecutor, who forwards it with his submissions to the investigating judge who imposed the fine.
(3) The same penalty may, at the request of the European Delegated Public Prosecutor, be pronounced by the investigating judge against a witness who, although appearing, refuses to take the oath and give evidence.

[160] **Art. 136-17**
(1) Les procès-verbaux ne peuvent comporter aucun interligne. Les ratures et les renvois sont approuvés par le procureur européen délégué, le greffier et le témoin et, s'il y a lieu, par l'interprète. À défaut d'approbation, ces ratures et ces renvois sont non avenus.
(2) Il en est de même du procès-verbal qui n'est pas régulièrement signé.
[161] **Art. 136-18**
Les enfants au-dessous de l'âge de quinze ans sont entendus sans prestation de serment.
[162] **Art. 136-19**
(1) Toute personne citée pour être entendue comme témoin est tenue de comparaître, de prêter serment et de déposer, sous réserve des dispositions des articles 136-14, 136-15 et 136-18 et de l'article 458 du Code pénal.
(2) Si le témoin ne comparaît pas, le procureur européen délégué peut requérir le juge d'instruction de l'y contraindre par la force publique et de le condamner à une amende de 250 euros à 500 euros. S'il comparaît ultérieurement, il peut toutefois, sur production de ses excuses et justifications, être déchargé de cette peine par le juge d'instruction. Cette demande est adressée au procureur européen délégué, qui la transmet avec ses réquisiti-ons au juge d'instruction qui a prononcé l'amende.
(3) La même peine peut, sur réquisitions du procureur européen délégué, être prononcée par le juge d'instruction contre le témoin qui, bien que comparaissant, refuse de prêter serment et de faire sa déposition.
(4) Le témoin condamné à l'amende en vertu des paragraphes 1 à 3 peut interjeter appel de la condamnation dans les trois jours de ce prononcé; s'il était défaillant ce délai ne commence à courir que du jour de la notification de la condamnation. L'appel est porté devant la chambre du conseil de la cour d'appel sur le fondement de l'article 136-65.
(5) La mesure de contrainte dont fait l'objet le témoin défaillant est prise par voie de réquisition. Le témoin est conduit directement et sans délai devant le procureur européen délégué qui a requis la mesure.

(4) A witness sentenced to a fine under paragraphs 1 to 3 may appeal against the sentence within three days of such pronouncement; if he was in default, this period does not begin to run until the day of notification of the conviction. The appeal is brought before the council chamber of the Court of Appeal on the basis of article 136-65.
(5) The coercive measure to which the defaulting witness is subject is taken by requisition. The witness is brought directly and without delay before the European Delegated Prosecutor who requested the measure.

Art. 136-20[163]
(1) If a witness is unable to appear, the European Delegated Prosecutor shall travel to hear him or give orders to that end.
(2) The judicial police officer who received the depositions pursuant to this order shall transmit the report to the European Delegated Prosecutor.

Art. 136-21[164]
If the witness heard under the conditions provided for in the previous article was not unable to appear on the summons, the Delegated European Public Prosecutor may request against this witness the fine provided for in Article 136-19.

Art. 136-22
The European Delegated Public Prosecutor may make or have made the **sound or audiovisual recording of the hearing of a witness** as well as of any minor.[165]

[163] **Art. 136-20**
(1) Si un témoin est dans l'impossibilité de comparaître, le procureur européen délégué se transporte pour l'entendre, ou donne ordre à cette fin.
(2) L'officier de police judiciaire qui a reçu les dépositions en exécution de cet ordre transmet le procès-verbal au procureur européen délégué.
[164] **Art. 136-21**
Si le témoin entendu dans les conditions prévues à l'article précédent n'était pas dans l'impossibilité de comparaître sur la citation, le procureur européen délégué peut requérir contre ce témoin l'amende prévue à l'article 136-19.
[165] **Art. 136-22**
Le procureur européen délégué peut procéder ou faire procéder à l'enregistrement sonore ou audiovisuel de l'audition d'un témoin ainsi que de tout mineur.
L'enregistrement se fera après avoir recueilli le consentement du témoin ou du mineur, s'il a le discernement nécessaire, sinon du représentant légal du mineur. En cas de risque d'opposition d'intérêts dûment constaté entre le représentant légal du mineur et ce dernier, l'enregistrement ne pourra se faire qu'avec le consentement de l'administrateur ad hoc s'il en a été désigné un au mineur ou, si aucun administrateur ad hoc n'a été désigné, qu'avec l'autorisation expresse dûment motivée du juge d'instruction saisi à cette fin sur réquisition du procureur européen délégué.
L'enregistrement sert de moyen de preuve. L'original est placé sous scellés fermés. Les copies sont inventoriées et versées au dossier. Les enregistrements peuvent être écoutés ou visionnés par les parties, dans les conditions

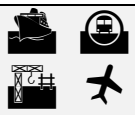
The recording will be done after obtaining the consent of the witness or the minor, if he has the necessary discernment, otherwise of the legal representative of the minor. In the event of a risk of opposition of interests duly noted between the legal representative of the minor and the latter, registration can only be done with the consent of the ad hoc administrator if one has been appointed to the minor. or, if no ad hoc administrator has been appointed, only with the duly substantiated express authorization of the investigating judge seized for this purpose at the request of the European Delegated Prosecutor. The **recording serves as evidence**. The original is placed under closed seal. The copies are inventoried and added to the file. The recordings may be listened to or viewed by the parties, under the conditions provided for in Article 85, and by an expert with the authorization of the European Delegated Public Prosecutor without traveling and at the place designated by him.
Any minor has the **right to be accompanied by the adult of his choice** during his hearing during the investigation, unless a reasoned decision to the contrary is taken with regard to this person by the investigating judge seized for this purpose. at the request of the European Delegated Public Prosecutor, in the interest of the minor or of establishing the truth.

Art. 136-23[166]
If, on the interpellation which must be addressed to him, a witness requests a fee, this fee is allocated by the European Delegated Public Prosecutor, and mention thereof is made in the minutes.

(2) Checks, Verifications and Identity Records/*Des contrôles, des vérifications et des relevés d'identité*

Customs Investigation Measures 1:

23

	**Investigation powers → (Special customs investigation procedure/***Section 5*
→ presentation of identity papers and documents, Art. 5 General Law of 18 July 1977	

prévues à l'article 85, et par un expert sur autorisation du procureur européen délégué sans déplacement et à l'endroit désigné par celui-ci.
Tout mineur a le droit de se faire accompagner par la personne majeure de son choix lors de son audition au cours de l'enquête, sauf décision contraire motivée prise à l'égard de cette personne par le juge d'instruction, saisi à cette fin sur réquisition du procureur européen délégué, dans l'intérêt du mineur ou de la manifestation de la vérité.

[166] **Art. 136-23**
Si, sur l'interpellation qui doit lui être adressée, un témoin requiert taxe, celle-ci est allouée par le procureur européen délégué, et mention en est faite au procès-verbal.

(3) Examinations and Confrontations/*Les interrogatoires et confrontations, Art. 136-24 CPC*

(a) Interrogations and Confrontations (EDP-specific Legislation)

24 **Art. 136-24**

(1) At the first appearance of a person whom he intends to indict,[167] the Delegated European Public Prosecutor **shall establish the identity** of the person to be questioned and inform him **expressly of the facts** for which he has decided to exercise his competence, as well as the **legal qualification that these facts are likely to receive** and indicates to him the acts carried out during his investigation.

(2) He gives **notice to the person of his rights under section 3-6.**

(3) He shall also give him notice of his right, after having disclosed his identity, to make statements, to answer questions put to him or to remain silent, as well as of his right not to incriminate himself.

(4) Unless prevented, the person shall be questioned immediately.

(5) The civil party may attend the interrogation.

(6)[168] No party may take the floor without being authorized to do so by the European Delegated Prosecutor. In case of refusal, mention is made in the minutes at the request of the interested party.

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[167] **Art. 136-24**

(1) Lors de la première comparution d'une personne qu'il envisage d'inculper, le procureur européen délégué, constate l'identité de la personne à interroger et lui fait connaître expressément les faits pour lesquels il a décidé d'exercer sa compétence, ainsi que la qualification juridique que ces faits sont susceptibles de recevoir et lui indique les actes accomplis au cours de son enquête.

(2) Il donne avis à la personne de ses droits au titre de l'article 3-6.

(3) Il lui donne également avis de son droit, après avoir décliné son identité, de faire des déclarations, de répondre aux questions qui lui sont posées ou de se taire, ainsi que de son droit de ne pas s'incriminer soi-même.

(4) Sauf empêchement, il est procédé de suite à l'interrogatoire de la personne.

(5) La partie civile peut assister à l'interrogatoire.

[168] (6) Aucune partie ne peut prendre la parole sans y être autorisée par le procureur européen délégué. En cas de refus, mention en est faite au procès-verbal à la demande de la partie intéressée.

(7) Après avoir, le cas échéant, recueilli les déclarations de la personne ou procédé à son interrogatoire et entendu les observations de son avocat, le procureur européen délégué lui fait connaître soit qu'elle n'est pas inculpée, soit qu'elle est inculpée, ainsi que les faits et la qualification juridique des faits qui lui sont reprochés, si ces faits ou ces qualifications diffèrent de ceux qu'il lui a déjà fait connaître.

(8) Nonobstant les dispositions prévues au paragraphe 5 et à l'article 136-39, paragraphe 2, alinéa 4, le procureur européen délégué peut procéder à un interrogatoire immédiat et à des confrontations si l'urgence résulte, soit de l'état d'un témoin en danger de mort, soit de l'existence d'indices sur le point de disparaître, ou encore lorsqu'il s'est rendu sur les lieux en cas de flagrant crime ou délit. Le procès-verbal doit faire mention des causes d'urgence.

(9) Le procès-verbal d'interrogatoire indique le jour et l'heure à laquelle la personne a été informée des droits lui conférés par les paragraphes 2 et 3, le cas échéant, de la renonciation prévue par l'article 3-6, paragraphe 8, la durée de l'interrogatoire et les interruptions de ce dernier, ainsi que, si elle est privée de liberté, le jour et l'heure à partir desquels elle a été soit libérée, soit fait l'objet d'une décision du procureur européen délégué de requérir le décernement d'un mandat de dépôt par le juge d'instruction conformément à l'article 136-54.

(10) Les dispositions des paragraphes 1, 2, 3 et 9 sont à observer à peine de nullité.

(7) After having, where appropriate, taken statements from the person or questioned them and heard the observations of their lawyer, the European Delegated Public Prosecutor shall inform them either that they are not charged or that they is charged, as well as the facts and the legal qualification of the facts of which he is accused, if these facts or these qualifications differ from those which he has already made known to him.
(8) Notwithstanding the provisions of paragraph 5 and Article 136-39, paragraph 2, subparagraph 4, the European Delegated Public Prosecutor may carry out an immediate interrogation and confrontations if the urgency results either from the state of a witness in danger of death, either of the existence of clues about to disappear, or even when he went to the scene in the event of a flagrant crime or offence. The minutes must mention the causes of urgency.
(9) The **interrogation record** shall indicate the day and time at which the person was informed of the rights conferred on him by paragraphs 2 and 3, if applicable, of the waiver provided for in article 3-6, paragraph 8, the duration of the interrogation and the interruptions thereto, as well as, if deprived of liberty, the day and time from which she was either released or placed under a decision of the Delegated European Public Prosecutor to request the issuance of a warrant of committal by the investigating judge in accordance with Article 136-54.
(10) The provisions of paragraphs 1, 2, 3 and 9 are to be observed on pain of nullity.

Art. 136-25[169]
(1) The accused may be **confronted** with the witnesses and the civil party.
(2) The accused and his counsel as well as the plaintiff and his counsel may, through the intermediary of the European Delegated Public Prosecutor, **ask the witnesses confronted with the accused questions** relevant to ascertaining the truth; the European Delegated Public Prosecutor may also authorize the parties or their counsel to put their questions directly to the witnesses.
(3) Questions which the European Delegated Prosecutor has refused to ask or to allow to be asked shall be recorded in the minutes at the request of one of the interested parties.

[169] **Art. 136-25**
(1) L'inculpé peut être confronté avec les témoins et la partie civile.
(2) L'inculpé et son conseil ainsi que la partie civile et son conseil peuvent, par l'intermédiaire du procureur européen délégué, poser aux témoins confrontés avec l'inculpé les questions utiles à la manifestation de la vérité; le procureur européen délégué peut aussi autoriser les parties ou leurs conseils à poser directement leurs questions aux témoins.
(3) Les questions que le procureur européen délégué a refusé de poser ou de laisser poser doivent être actées au procès-verbal à la demande d'une des parties intéressées.

Art. 136-26[170]
Any early waiver by the accused of the deadlines and formalities provided for by this code and by the other laws on criminal procedure, with the exception of those referred to in articles 146 and 184, is void if it has not been made in the presence of the defendant or confirmed by him and that it does not specify the deadlines or formalities to which it relates.

Art. 136-27[171]
(1) Immediately after the first interrogation, relating to the facts attributed to him, the accused may communicate freely with his counsel.
(2) Where the requirements of the investigation so require, the European Delegated Public Prosecutor may apply to the investigating judge for an order prohibiting communication for a period of ten days.
(3)[172] The indictment of the European Delegated Public Prosecutor shall be specially reasoned according to the elements of the case. It is transcribed on the register of the penitentiary Center and entails a temporary ban on communication for a period which may not exceed twenty-four hours.
(4) At the request of the European Delegated Public Prosecutor, the investigating judge may renew his order prohibiting communication only once for the same period of ten days.

[170] **Art. 136-26**
Toute renonciation anticipée de l'inculpé aux délais et formalités prévus par le présent code et par les autres lois sur la procédure pénale, à l'exception de ceux visés aux articles 146 et 184, est non avenue, si elle n'a pas été faite en présence du défenseur ou confirmée par lui et qu'elle ne spécifie les délais ou formalités auxquels elle se rapporte.
[171] **Art. 136-27**
(1) Immédiatement après le premier interrogatoire, portant sur les faits qui lui sont imputés, l'inculpé peut communiquer librement avec son conseil.
(2) Lorsque les nécessités de l'enquête l'exigent, le procureur européen délégué peut requérir auprès du juge d'instruction une ordonnance d'interdiction de communiquer pour une période de dix jours.
[172] (3) Le réquisitoire du procureur européen délégué est spécialement motivé d'après les éléments de l'espèce. Il est transcrit sur le registre du centre pénitentiaire et emporte interdiction de communiquer provisoire pour une durée qui ne peut dépasser vingt-quatre heures.
(4) Sur réquisition du procureur européen délégué, le juge d'instruction peut renouveler son ordonnance d'interdiction de communiquer une seule fois pour une même période de dix jours.
(5) En aucun cas l'interdiction de communiquer ne s'applique au conseil de l'inculpé.
(6) Les ordonnances d'interdiction de communiquer doivent être motivées et sont transcrites sur le registre du centre pénitentiaire. Le greffier notifie immédiatement l'ordonnance à l'inculpé et à son conseil par lettre recommandée. Copie en est adressée au procureur européen délégué.
(7) L'inculpé, ou pour lui son représentant légal, son conjoint et toute personne justifiant d'un intérêt personnel légitime peuvent présenter à la chambre du conseil du tribunal d'arrondissement une requête en mainlevée de l'interdiction.
(8) La chambre du conseil statue d'urgence, le procureur européen délégué entendu en ses conclusions et l'inculpé ou son conseil en leurs explications orales.
(9) L'inculpé et son conseil sont avertis, par les soins du greffier, des lieu, jour et heure de la comparution.

(5) Under no circumstances does the communication ban apply to counsel for the accused.
(6) Orders prohibiting communication must be reasoned and are transcribed in the register of the penitentiary centre. The clerk immediately notifies the order to the accused and his counsel by registered letter. A copy is sent to the European Delegated Prosecutor.
(7) The accused, or for him his legal representative, his spouse and any person justifying a legitimate personal interest may present to the council chamber of the district court a request for the lifting of the prohibition.
(8) The chamber of the council rules as a matter of urgency, the European Delegated Public Prosecutor heard in his conclusions and the accused or his counsel in their oral explanations.
(9) The accused and his counsel shall be notified, by the clerk, of the place, day and time of the appearance.

Art. 136-28
(1) Charges against the person prosecuted in accordance with Article 136-24 shall be compulsory where the European Delegated Prosecutor has resorted to measures which, without prejudice to the application of Article 24-1, do not could only have been ordered by the investigating judge if the investigation had been carried out by the State prosecutor. It is optional in other cases.
(2) Paragraph 1 does not prejudice the application of Article 102.[173]

Art. 136-29 [Central defence rights and rights of the accused, file access]
(1)[174] **Before the first questioning**, the person to be questioned, the plaintiff and their lawyers may consult the file, without moving, except for matters relating to duties in

[173] **Art. 136-28**
(1) L'inculpation de la personne poursuivie conformément à l'article 136-24 est obligatoire lorsque le procureur européen délégué a eu recours à des mesures qui, sans préjudice quant à l'application de l'article 24-1, n'auraient pu être ordonnées que par le juge d'instruction si l'enquête avait été menée par le procureur d'État. Elle est facultative dans les autres cas.
(2) Le paragraphe 1er ne préjudicie pas l'application de l'article 102.
[174] **Art. 136-29**
(1) Avant le premier interrogatoire, la personne à interroger, la partie civile et leurs avocats peuvent consulter, sans déplacement, le dossier, à l'exception de ce qui se rapporte à des devoirs en cours d'exécution. Cette consultation doit être rendue possible, en cas de convocation par mandat de comparution, au plus tard trois jours ouvrables avant l'interrogatoire et, en cas de comparution à la suite d'une rétention sur base de l'article 39 ou en exécution d'un mandat d'amener ou d'arrêt, au plus tard trente minutes avant l'interrogatoire.
En cas d'ordonnance de prolongation prévue à l'article 93, alinéa 2, cette consultation doit être rendue possible au plus tard une heure avant l'interrogatoire.

progress. This consultation must be made possible, in the event of summons by warrant of appearance, at the latest three working days before the interrogation and, in the event of an appearance following a detention on the basis of article 39 or in execution of a summons or arrest warrant, at the latest thirty minutes before the interrogation.
In the event of an extension order provided for in Article 93, paragraph 2, this consultation must be made possible no later than one hour before the interrogation.
(2) **After the first interrogation** or after subsequent indictment, the accused, the civil party and their lawyers may, at any time, consult the file, without moving, except for what relates to ongoing duties. execution, subject to the requirements of the proper functioning of the Office of the European Delegated Prosecutors and, except in an emergency, three working days before each questioning or any other duties for which the assistance of a lawyer is admitted.
Consultation of the file may be, in whole or in part, **restricted**, exceptionally by reasoned decision of the European Delegated Public Prosecutor in the following cases:

(2) Après le premier interrogatoire ou après inculpation ultérieure, l'inculpé, la partie civile et leurs avocats peuvent, à tout moment, consulter, sans déplacement, le dossier, à l'exception de ce qui se rapporte à des devoirs en cours d'exécution, sous réserve des exigences du bon fonctionnement de l'Office des procureurs européens délégués et, sauf urgence, trois jours ouvrables avant chaque interrogatoire ou tous autres devoirs pour lesquels l'assistance d'un avocat est admise.
La consultation du dossier peut être, en tout ou en partie, restreinte, à titre exceptionnel par décision motivée du procureur européen délégué dans les cas suivants:
1. lorsqu'elle peut constituer une menace grave pour la vie ou les droits fondamentaux d'un tiers, ou
2. lorsque son refus est strictement nécessaire en vue de préserver un intérêt public important, notamment lorsque la consultation risque de compromettre une enquête ou une instruction préparatoire en cours ou de porter gravement atteinte à la sécurité nationale.
La restriction doit être levée aussitôt qu'elle n'est plus nécessaire. Elle cesse de plein droit le jour de la clôture de l'enquête. L'inculpé ou la partie civile visée par la restriction peut à tout moment demander au procureur européen délégué d'en décider la mainlevée.
(3) En outre, les avocats de l'inculpé et de la partie civile ou, s'ils n'ont pas d'avocat, l'inculpé et la partie civile peuvent se faire délivrer copie de tout ou partie des pièces et actes du dossier. La délivrance de cette copie doit intervenir dans le mois qui suit la demande. Si le dossier a fait l'objet d'une numérisation, cette copie est remise sous forme numérisée.
Lorsque la copie a été directement demandée par l'inculpé ou la partie civile, celui-ci doit attester par écrit avoir pris connaissance des dispositions de l'alinéa 3 et de l'article 136-30. Lorsque la copie a été demandée par les avocats, ceux-ci peuvent en transmettre une reproduction à leur mandant, à condition que celui-ci leur fournisse au préalable cette attestation.
Seules les copies des rapports d'expertise peuvent être communiquées par les parties ou leurs avocats à des tiers pour les besoins de la défense.
Lorsque la copie a été demandée par l'avocat, celui-ci doit, le cas échéant, donner connaissance au procureur européen délégué, par déclaration à son greffier ou par lettre ayant ce seul objet et adressée en recommandé avec accusé de réception, de la liste des pièces ou actes dont il souhaite remettre une reproduction à son mandant.
Le procureur européen délégué dispose d'un délai de cinq jours ouvrables à compter de la réception de la demande pour s'opposer à la remise aux parties de tout ou partie des copies demandées ou de leurs reproductions par une décision spécialement motivée au regard des motifs visés au deuxième alinéa du paragraphe 2 ou des risques de pression sur les victimes, les parties civiles, les inculpés, leurs avocats, les témoins, les enquêteurs, les experts ou toute autre personne concourant à la procédure.
Cette décision est notifiée par tout moyen et sans délai aux parties ou à leurs avocats. Lorsque la copie a été demandée par l'avocat, à défaut de réponse notifiée dans le délai imparti, l'avocat peut communiquer à son mandant la reproduction des pièces ou actes mentionnés sur la liste.

1. when it may constitute a serious threat to the life or fundamental rights of a third party, or
2. when its refusal is strictly necessary in order to preserve an important public interest, in particular when the consultation risks compromising an investigation or a preparatory investigation in progress or seriously harming national security.

The restriction must be lifted as soon as it is no longer necessary. It ceases automatically on the day of the closing of the investigation. The accused or the civil party affected by the restriction may at any time ask the European Delegated Prosecutor to decide on its release.

(3) In addition, the lawyers for the accused and the civil party or, if they have no lawyer, the accused and the civil party **may obtain a copy of all or part of the documents and deeds folder**. This copy must be issued within one month of the request. If the file has been digitized, this copy is returned in digitized form.

When the copy has been directly requested by the accused or the plaintiff, the latter must certify in writing that he is aware of the provisions of paragraph 3 and of article 136-30.

When the copy has been requested by the lawyers, they may send a reproduction to their principal, provided that the latter provides them with this certificate beforehand.

Only copies of expert reports may be communicated by the parties or their lawyers to third parties for the purposes of the defence.

When the copy has been requested by the lawyer, the latter must, where appropriate, inform the European Delegated Public Prosecutor, by declaration to his clerk or by letter having this sole purpose and sent by registered mail with acknowledgment of receipt, of the list of documents or deeds of which he wishes to submit a reproduction to his principal.

The European Delegated Public Prosecutor has a **period of five working days** from receipt of the request **to oppose the delivery to the parties of all or part of the requested copies or their reproductions** by a decision specifically substantiated with regard to the grounds referred to in the second subparagraph of paragraph 2 or the risks of pressure on the victims, the civil parties, the accused, their lawyers, the witnesses, the investigators, the experts or any other person contributing to the proceedings.

This decision is notified by any means and without delay to the parties or their lawyers.

When the copy has been requested by the lawyer, in the absence of a response notified within the time allowed, the lawyer may communicate to his principal the reproduction of the documents or acts mentioned on the list.

Art. 136-30[175]
Subject to the provisions of Article 136-29, paragraph 3, third subparagraph, the fact, for a party to whom a reproduction of the documents or acts of an investigation procedure of the European Delegated Prosecutor or the European Public Prosecutor, when he personally conducts the investigation in accordance with Article 28 of the aforementioned Regulation (EU) 2017/1939, has been postponed pursuant to this article, disseminating it to a third party is punishable by a fine of 2,501 euros to 10,000 euros.

Art. 136-31[176]
(1) The **interrogation and confrontation reports** are drawn up in the forms provided for in Articles 136-16 and 136-17.
(2) If an interpreter is used, the provisions of article 136-10, paragraph 2 are applicable.

Art. 136-32[177]
When the European Delegated Public Prosecutor considers that the facts referred to him are no longer likely to receive the qualifications which he previously brought to the accused's attention, he notifies him of those which he considers that they should henceforth receive.

25 Articles 136-11 to 136-23 CPC govern witness hearings conducted by the European Delegated Prosecutor. The EDP may **summon all persons** whose testimony appears **useful to the investigation**. Witnesses may also appear voluntarily. The accused, defence counsel and the civil party may request the hearing of witnesses, provided that they identify the facts on which the testimony is sought. A refusal by the EDP must be reasoned.

26 Witnesses are heard separately and, as a rule, outside the presence of the accused and the civil party. A **written record of the statement** must be drawn up. The EDP may use an interpreter, who must take an oath if not already sworn.

[175] **Art. 136-30**
Sous réserve des dispositions de l'article 136-29, paragraphe 3, troisième alinéa, le fait, pour une partie à qui une reproduction des pièces ou actes d'une procédure d'enquête du procureur européen délégué ou du procureur européen, lorsqu'il conduit personnellement l'enquête conformément à l'article 28 du règlement (UE) 2017/1939 précité, a été remise en application de cet article, de la diffuser auprès d'un tiers est puni d'une amende de 2 501 euros à 10 000 euros.
[176] **Art. 136-31**
(1) Les procès-verbaux d'interrogatoire et de confrontation sont établis dans les formes prévues aux articles 136-16 et 136-17.
(2) S'il est fait appel à un interprète, les dispositions de l'article 136-10, paragraphe 2 sont applicables.
[177] **Art. 136-32**
Lorsque le procureur européen délégué considère que les faits dont il est saisi ne sont plus susceptibles de recevoir les qualifications qu'il a précédemment portées à la connaissance de l'inculpé, il lui notifie celles qu'il estime qu'ils devront dorénavant recevoir.

The witness **must swear to tell the whole truth**, except in the case of minors under the age of fifteen, who are heard without oath. The witness must be identified by surname, first names, age, status, profession, domicile or residence, and any relationship with the parties must be recorded. **27**

A person named in a **complaint with civil-party application** may refuse to be heard as a witness. If that person refuses, he or she may only be heard as an accused person. Further, neither the EDP nor judicial police officers acting on the EDP's orders may hear as witnesses' persons against whom there are indications making it likely that they participated in the offence under investigation. As seen above in Artt. 136 et seq. the minutes of the hearing must comply with **strict formal requirements**. Article 136-29 CPC contains central defence safeguards (see below Defence in EPPO proceedings). **28**

(b) Hearing Experts in an EPPO Investigation, Art. Art. 136-33

29

Book I, Title V. The EPPO
Subsection IV – Expertise
Art. 136-33
(1) When it is necessary to order an expert report, the European Delegated Public Prosecutor shall issue a decision in which he specifies the information he wishes to obtain from the experts, as well as the questions to which he calls their attention and which he requests. the solution.[178]

[178] **Art. 136-33**
(1) Lorsqu'il y a lieu d'ordonner une expertise, le procureur européen délégué rend une décision dans laquelle il précise les renseignements qu'il désire obtenir des experts, ainsi que les questions sur lesquelles il appelle leur attention et dont il demande la solution.
(2) Si l'inculpé est présent, le procureur européen délégué lui donne immédiatement connaissance de cette décision; si l'inculpé n'est pas présent, la décision lui est notifiée aussitôt que possible.
(3) L'inculpé peut, de son côté, mais sans retarder l'expertise, choisir un expert qui a le droit d'assister à toutes les opérations, d'adresser toutes réquisitions aux experts désignés par le procureur européen délégué et de consigner ses observations à la suite du rapport ou dans un rapport séparé.
(4) Les experts commis par le procureur européen délégué l'avisent, en temps utile, des jour, lieu et heure de leurs opérations et le procureur européen délégué informe, à son tour, en temps utile, l'expert choisi par l'inculpé.
Si le procureur européen délégué l'estime utile, il peut assister personnellement aux opérations d'expertise. Cette assistance peut se faire par des moyens de télécommunication audiovisuelle garantissant la confidentialité de la transmission.
(5) Si l'expertise a été achevée sans que l'inculpé ait pu s'y faire représenter, celui-ci a le droit de choisir un expert qui examine le travail des experts commis et présente ses observations.
(6) S'il y a plusieurs inculpés, ils désignent chacun un expert. Si leur choix ne tombe pas sur la même personne, le procureur européen délégué en désigne un d'office parmi les experts proposés. Il peut même en désigner plusieurs au cas où les inculpés ont des intérêts contraires.
(7) Les dispositions des paragraphes 1 à 6 sont observées à peine de nullité.
(8) Le tiers concerné justifiant d'un intérêt légitime personnel peut saisir le procureur européen délégué aux fins de bénéficier des droits prévus aux paragraphes 2 à 6.
(9) Les frais d'expertise sont à considérer comme frais de justice.

(2) If the **accused is present**, the European Delegated Public Prosecutor shall immediately inform him of this decision; if the accused is not present, the decision is notified to him as soon as possible.
(3) The **accused may**, for his part, but without delaying the expertise, choose an expert who has the right to be present at all the operations, to address all requests to the experts appointed by the European Delegated Prosecutor and to record its observations following the report or in a separate report.
(4) The **experts appointed** by the European Delegated Public Prosecutor shall notify him in good time of the day, place and time of their operations and the European Delegated Public Prosecutor shall in turn inform the expert chosen by the charged. If the European Delegated Public Prosecutor deems it useful, he may personally attend the expertise operations. This assistance can be provided by means of audiovisual telecommunication guaranteeing the confidentiality of the transmission.
(5) If the expertise has been completed without the defendant having been able to be represented, the latter has the right to choose an expert who examines the work of the commissioned experts and presents his observations.
(6) If there are **several defendants**, they each designate an expert. If their choice does not fall on the same person, the European Delegated Prosecutor appoints one ex officio from among the experts proposed. He can even appoint several in case the defendants have conflicting interests.
(7) The provisions of paragraphs 1 to 6 are observed on pain of nullity.
(8) The third party concerned showing a legitimate personal interest may approach the European Delegated Public Prosecutor for the purpose of benefiting from the rights provided for in paragraphs 2 to 6.
(9) Expert fees are to be considered as legal costs.
(10) Notwithstanding the provisions of this article, the European Delegated Public Prosecutor **may order**, in all cases where **there is reason to fear the imminent disappearance of facts and evidence**, the finding and examination of which he considers useful for the manifestation of the truth, th**at the expert or the experts he appoints will proceed urgently and without the accused being called upon to make the first findings**. Subsequent expertise operations take place contradictorily as stated in this article. The decision specifies the reason for urgency.

(10) Nonobstant les dispositions du présent article, le procureur européen délégué peut ordonner, dans tous les cas où il y a lieu de craindre la disparition imminente de faits et indices dont la constatation et l'examen lui semblent utiles à la manifestation de la vérité, que l'expert ou les experts qu'il désigne procéderont d'urgence et sans que l'inculpé y soit appelé aux premières constatations. Les opérations d'expertise ultérieures ont lieu contradictoirement ainsi qu'il est dit au présent article. La décision spécifie le motif d'urgence.

Art. 136-34[179]
(1) The **accused and his counsel** as well as the plaintiff have the **right to request an expert report on the facts** they indicate.
(2) They also have the right to request that the expertise ordered by the European Delegated Public Prosecutor relate to these facts.
(3) The decision of the European Delegated Public Prosecutor refusing to grant these requests shall state the reason for the refusal.

(c) Special Investigation Techniques (in the Context of Organised Crime)

Chapter VIII – Infiltration **30**
Art. 48-17
(1) If the investigation or the preparatory investigation so require and the ordinary means of investigation prove ineffective due to the nature of the facts and the special circumstances of the case, the State prosecutor or the investigating judge seized may, exceptionally, if the subject of the criminal prosecution is an act carrying a criminal sentence or a correctional sentence the maximum of which is equal to or greater than two years' imprisonment, decide that it be proceeded, under their respective control, to an undercover operation under the conditions provided for in this chapter.
(2) An undercover operation may not be ordered against an accused after his first interrogation by the investigating judge and those ordered previously shall cease to have effect without prejudice to the provisions of article 48-21.
(3) Infiltration consists in monitoring persons against whom there are serious indications that they are committing one or more of the acts referred to in the preceding paragraph, by passing themselves off, to these persons, in particular as one of their co-authors, accomplices or receivers.
(4) Infiltration may only be carried out by a judicial police officer or a foreign agent authorized by his national legislation to carry out this type of measure and acting under the responsibility of a judicial police officer in charge of coordinating the operation. The judicial police officer or the foreign agent is for this purpose authorized to use an assumed identity and to commit, if necessary, the acts mentioned in paragraph (1) of Article 48-19. On pain of nullity, these acts cannot constitute an incitement to commit offences.
(5) The infiltration is the subject of a report drawn up by the judicial police officer who coordinated the operation. This report includes the elements strictly necessary for the

[179] **Art. 136-34**
(1) L'inculpé et son conseil ainsi que la partie civile ont le droit de demander une expertise sur les faits qu'ils indiquent.
(2) Ils ont également le droit de demander que l'expertise ordonnée par le procureur européen délégué porte sur ces faits.
(3) La décision du procureur européen délégué refusant de faire droit à ces demandes énonce le motif du refus.

observation of the offenses and does not endanger the safety of the officer or the undercover agent and of the persons required within the meaning of paragraph (2) of article 48-19.

Art. 48-18 (L. December 3, 2009)
(1) The decision of the State prosecutor or the investigating judge to carry out an undercover operation shall be in writing and shall contain, under penalty of nullity, the following particulars:
1°the serious indication(s) of the offenses referred to in paragraph (1) of Article 48-17 and which justify the infiltration operation;
2°the specific reasons why the investigation or instruction requires infiltration;
3°the period during which the infiltration may apply and which may not exceed four months from the date of the decision;
4°the name and position of the judicial police officer under whose responsibility the operation is taking place.
(2) The infiltration operation may be repeated under the same conditions of form and duration. Under penalty of nullity, the renewal decision must contain, in addition to the information referred to in paragraph (1) above, the reasons for which the renewal of the infiltration operation is essential for the investigation or the preparatory investigation.
(3) The State prosecutor or the investigating judge may at any time withdraw his decision and have the infiltration operation interrupted before the expiry of the fixed period, without prejudice to the provisions of Article 48- 21.
(4) The decision shall be placed on the record of the proceedings after completion of the undercover operation

(d) Investigation under a Pseudonym (in Cybercrime)/*L'enquête sous pseudonyme (en matière de cybercriminalité)*

31 **Art. 38**
(1) The **judicial police officer or agent may call and hear any person likely to provide information on the facts** or on the **objects and documents seized**.
(2) Persons summoned by him are required to appear. If they do not meet this obligation, notice is given to the State prosecutor who can compel them to appear by public force.
(3) The report to be drawn up in accordance with paragraph 5 mentions the time at which the hearing began, was, if necessary, interrupted and resumed, as well as the time at which the hearing ended. The people heard are informed, and mention is made in the minutes of the hearing, that they can ask that the questions put to them and the answers they give be recorded in the terms used.

(4) The persons heard may use the documents in their possession, without this leading to the postponement of the hearing. They may request that these documents be attached to the minutes.
(5) The **judicial police officer or agent draws up the report of the hearing**. The people heard can either read the minutes themselves or request that they be read to them, and have their observations recorded. After reading they affix their signature. If they declare that they do not know how to read, the reading is done by the judicial police officer prior to the signature. In the event of refusal to sign the minutes, mention thereof shall be made therein.
(6) Affected persons, identified, heard are informed that they can request that a copy of the hearing report be delivered to them free of charge. Mention of this is made in the minutes. This copy is given to them immediately. In the event of a material impossibility to deliver this copy, it will be sent to them within one month.
(7) (L. 6 October 2009) The provisions of article 48-1 are applicable to the hearings referred to in this article.

Chapter XI – Of the survey under a pseudonym by electronic means (L. of June 27, 2018)
Art. 48-26
(1) For the purpose of establishing crimes and misdemeanours against State security within the meaning of Articles 101 to 123 of the Penal Code and acts of terrorism and terrorist financing within the meaning of Articles 135-1 to 135-6, 135-9 and 135-11 to 135-16 of the Penal Code, which are committed by a means of electronic communication, to gather evidence and to search for the perpetrators or to inform about these offences, the State prosecutor or the investigating judge may decide that police officers courts referred to in Article 10 specially empowered for this purpose by the State Attorney General, acting during the investigation of flagrance or the preliminary investigation or during the preparatory investigation on the basis of a letter rogatory from the judge of investigation, carry out the following acts without being criminally liable:
1°participate in electronic exchanges under a pseudonym which, except with the express and informed agreement of the person concerned, cannot, according to the result of the name checks recorded in the file, not be the identity of an existing person;
2°be, under a pseudonym complying with the conditions referred to in point 1°, in contact with persons whom certain facts make them suspect of committing or having committed the offense justifying the measure;
3°extract, acquire or store by this means evidence and data on persons likely to be the perpetrators of these offences;
4°extract, transmit in response to an express request, acquire or store illegal content.
On pain of nullity, these acts cannot constitute an incitement to commit these offences.

On pain of nullity, they may not have any other purpose than the investigation and finding of the offense referred to in the decision of the State prosecutor or information on the offense referred to in the decision of the investigating judge. The fact that they reveal infringements other than those referred to in these decisions does not constitute a cause of nullity of the incidental proceedings.
(2) The decision of the State prosecutor or the investigating judge to proceed with the investigation under a pseudonym shall be written and shall contain, under penalty of nullity, the following particulars:
1°the serious indication(s) of the offense which justify the investigation under a pseudonym;
2°the specific reasons why the investigation or preparatory investigation requires such a measure;
3°the name, or if it is not known, a description as precise as possible of the person or persons targeted by the investigative measure under a pseudonym, as well as the specific facts which make them suspect of committing or having committed the offense justifying the measure;
4°the manner in which the measure will be carried out, including the pseudonym used or the express and informed agreement of a person to have his identity used as a pseudonym;
5°the period during which the measure may be executed and which may not exceed one month from the date of the decision;
6°the name and position of the judicial police officer carrying out the investigation.
(3) **In urgent cases**, the decision to carry out the investigation under a pseudonym may be granted verbally. This decision must, on pain of nullity, be confirmed within twenty-four hours in the form provided for in paragraph 2.
(4) The State prosecutor or the investigating judge may at any time, giving reasons, modify, supplement or extend his decision. He can revoke his decision at any time. It verifies whether the conditions referred to in paragraph 1 are met each time its decision is amended, supplemented or extended and acts in accordance with paragraph 2, points 1° to 6°.
(5) The **investigation under a pseudonym** is the subject of a report drawn up by the judicial police officer who conducted it.
This report describes in detail the operations carried out and indicates the date and time at which they began and those at which they ended.
The data recorded as part of the survey under a pseudonym is kept under conditions that guarantee its integrity and confidentiality and document the date and the virtual location where the data entry was made
The storage media for the recorded data are placed under seal and appended to the report.

Unless they are strictly necessary for the purposes of the survey under a pseudonym, data relating to persons other than the one targeted by this measure are not recorded in the report. They are deposited at the registry in a sealed file.
The defendant, the accused, the plaintiff or their lawyers receive, under the conditions of Articles 85 and 182-1, a copy of all the data recorded in the context of the investigation under a pseudonym.
(6) Persons targeted by the investigation under a pseudonym who are neither charged nor prosecuted shall be informed of the measure under the following conditions:
1°if the measure was executed by decision of the State prosecutor taken within the framework of an investigation which was dismissed, by the State prosecutor at the time of the dismissal;
2°if it was carried out by decision of the State prosecutor taken within the framework of an investigation which gave rise to a prosecution on summons directed against persons other than those targeted by the measure, by the State prosecutor at the time of the quote;
3°if it was executed by decision of the State prosecutor taken within the framework of an investigation which was followed by a preparatory investigation directed against persons other than those targeted by the measure or by decision of the investigating judge in the framework of a preparatory investigation directed against such persons, at the time of the last indictment or, when the preparatory investigation is closed by the investigating judge without charge, at the time of this closure.
In the cases provided for in points 1° and 2°, the persons targeted by the survey under a pseudonym have, by way of derogation from Article 48-2, paragraph 2, subparagraph 3, a period of five working days from receipt information to bring an action for nullity on the basis of article 48-2.
In the case provided for in point 3°, the persons targeted by the investigation under a pseudonym are entitled to bring an action for nullity on the basis and under the conditions of Article 126.
The information informs them of their respective rights to bring proceedings for nullity on the basis of articles 48-2 or 126.
(7) The computer data recorded in the context of the investigation under a pseudonym shall be destroyed, at the behest of the State prosecutor or the State attorney general, on the **expiry of the limitation period for public action**. In the event of a decision of acquittal, they are destroyed immediately after the decision has the force of res judicata. In case of condemnation, they are not destroyed.

(e) Letters Rogatory/*Les commissions rogatoires*

The letter rogatory is an **act that allows the investigating judge to delegate the performance of certain procedural acts** *(acte qui permet au juge d'instruction de déléguer la réalisation de certains actes procéduraux).* **32**

ff. Appeals against Certain Order of the Investigating Judge

33 **Section II – Appeals against the orders of the investigating judge and the council chamber issued in matters of investigations carried out by the European Delegated Prosecutor**

Art. 136-65

(1)[180] The European Delegated Public Prosecutor and the accused may, in all cases, appeal against the order of the investigating judge or the council chamber of the district court.

(2) The plaintiff may appeal orders adversely affecting his civil interests. However, his appeal cannot, under any circumstances, relate to an order relating to the detention or the prohibition to communicate of the accused.

(3) The other persons referred to in Articles 66, paragraph 1, 136-33, paragraph 8 and 136-62, paragraph 1 may appeal against the orders of the council chamber of the district court issued pursuant to these articles.

(4) The appeal is brought before the council chamber of the court of appeal.

(5)[181] It is recorded in a register kept for this purpose at the registry of the District Court of Luxembourg. It must be formed within five days, which runs against the European Delegated Public Prosecutor from the day of the order and against the other parties involved from the day of the notification which is made within twenty-four hours of the date of the prescription.

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[180] **Art. 136-65**

(1) Le procureur européen délégué et l'inculpé peuvent, dans tous les cas, relever appel de l'ordonnance du juge d'instruction ou de la chambre du conseil du tribunal d'arrondissement.

(2) La partie civile peut interjeter appel des ordonnances faisant grief à ses intérêts civils. Toutefois, son appel ne peut, en aucun cas, porter sur une ordonnance relative à la détention ou à l'interdiction de communiquer de l'inculpé.

(3) Les autres personnes visées aux articles 66, paragraphe 1er, 136-33, paragraphe 8 et 136-62, paragraphe 1er peuvent relever appel des ordonnances de la chambre du conseil du tribunal d'arrondissement rendues en application de ces articles.

(4) L'appel est porté devant la chambre du conseil de la cour d'appel.

[181] (5) Il est consigné sur un registre tenu à cet effet au greffe du Tribunal d'arrondissement de Luxembourg. Il doit être formé dans un délai de cinq jours, qui court contre le procureur européen délégué à compter du jour de l'ordonnance et contre les autres parties en cause à compter du jour de la notification qui est faite dans les vingt-quatre heures de la date de l'ordonnance.

(6) Le greffier avertit les autres parties de la déclaration d'appel dans les vingt-quatre heures de la consignation sur le registre.

(7) L'audience de la chambre du conseil de la cour d'appel n'est pas publique.

L'inculpé, la partie civile et toute autre partie en cause ou leurs conseils que le greffier avertit au plus tard huit jours avant les jour et heure de l'audience, ont seuls le droit d'y assister et de fournir tels mémoires et de faire telles réquisitions, verbales ou écrites, qu'ils jugent convenables. Les formalités du présent paragraphe sont à observer à peine de nullité, sauf si l'inculpé ou la partie civile y ont renoncé. L'inculpé ou son conseil a toujours la parole en dernier.

(8) Les notifications et avertissements visés au présent article se font par le greffier dans les formes prévues pour les notifications en matière répressive.

(6) The clerk notifies the other parties of the statement of appeal within twenty-four hours of the entry in the register.
(7) The hearing of the council chamber of the court of appeal is not public.
The accused, the civil party and any other party in question or their counsel notified by the court clerk no later than eight days before the date and time of the hearing, alone have the right to attend and to provide such briefs and make such requisitions, verbal or written, as they deem appropriate. The formalities of this paragraph are to be observed on pain of nullity, unless the accused or the civil party have waived them. The accused or his counsel always speaks last.
(8) The notifications and warnings referred to in this article are made by the clerk in the forms provided for notifications in criminal matters.

Art. 136-66[182]
(1) If the accused is detained, he can declare his appeal to one of the staff members of the penitentiary administration, of the begging depots or of the houses of education.
(2) The call is recorded on a special register. It is dated and signed by the prison officer who receives it and signed by the prisoner. If the latter does not want or cannot sign, this is mentioned in the deed.
(3) A copy of the document is immediately sent to the registry of the court which issued the decision.

Art. 136-67
(1) The council chamber of the Court of Appeal may order the personal appearance of the parties as well as the production of exhibits.[183]
(2) Articles 134 and 134-1, with the exception of article 134, paragraphs 1 and 5, are inapplicable to the procedure for appealing against orders of the investigating judge and the council chamber issued in matters of investigations carried out by the European Delegated Prosecutor.

[182] **Art. 136-66**
(1) Si l'inculpé est détenu, il peut déclarer son appel à l'un des membres du personnel de l'administration pénitentiaire, des dépôts de mendicité ou des maisons d'éducation.
(2) L'appel est acté sur un registre spécial. Il est daté et signé par l'agent pénitentiaire qui le reçoit et signé par le détenu. Si celui-ci ne veut ou ne peut signer, il en est fait mention dans l'acte.
(3) Une copie de l'acte est immédiatement transmise au greffe de la juridiction qui a rendu la décision entreprise.
[183] **Art. 136-67**
(1) La chambre du conseil de la Cour d'appel peut ordonner la comparution personnelle des parties ainsi que l'apport des pièces à conviction.
(2) Les articles 134 et 134-1, à l'exception de l'article 134, paragraphes 1er et 5, sont inapplicables à la procédure d'appel des ordonnances du juge d'instruction et de la chambre du conseil rendues en matière d'enquêtes menées par le procureur européen délégué.

EDPs and investigators **should ensure** as *quasi*-**normative EPPO inherent "checklist"** that every investigative act is based on a **clearly identified legal provision** and that this basis is **recorded in the file**. Where a person is questioned, the rights under Article 3-6 CPC and Article 136-24 CPC must be expressly notified and documented. Any refusal of a defence request, restriction of access to the **file or rejection of an expert-evidence request** should be reasoned with sufficient precision (see Art. 136-29). All formal requirements concerning signatures, oaths, interpreters and recordings must be strictly observed. Urgency exceptions should be used only where expressly stated. In **infiltration and pseudonym investigations**, any conduct amounting to incitement must be avoided. Digital evidence must be preserved in a manner ensuring integrity, confidentiality and traceability. Authorising decisions and reports should be placed in the file at the proper procedural stage as they are apparent on judicial review.

2. Article 31 Cross-Border Investigations

1. The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the handling European Delegated Prosecutor, the latter European Delegated Prosecutor ***shall decide on the adoption of the necessary measure and assign it to a European Delegated Prosecutor*** located in the Member State where the measure needs to be carried out.
2. The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30. **The justification and adoption of such measures shall be governed by the law of the Member States' of the handling European Delegated Prosecutor.** Where the handling European Delegated Prosecutor assigns an investigation measure to one or several European Delegated Prosecutors from another Member State, he/she shall at the same time inform his supervising European Prosecutor.
3. If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor shall obtain that authorisation in accordance with the law of that Member State.
If judicial authorisation for the assigned measure is refused, the handling European Delegated Prosecutor shall withdraw the assignment.
However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor requires it, ***the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment***.
4. The assisting European Delegated Prosecutor shall undertake the assigned measure, or instruct the competent national authority to do so.
5. Where the assisting European Delegated Prosecutor considers that:

(a) the assignment is incomplete or contains a manifest relevant error;
(b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons;
(c) an alternative but less intrusive measure would achieve the same results as the measure assigned; or
(d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his/her Member State,
he/she shall inform his supervising European Prosecutor and consult with the handling European Delegated Prosecutor in order to resolve the matter bilaterally.
6. If the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation, the European Delegated Prosecutors concerned may, in agreement with the supervising European Prosecutors concerned, have recourse to such instruments.
7. If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.
8. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide without undue delay, **in accordance with applicable national law** as well as this Regulation, whether and by when the assigned measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision to the said European Delegated Prosecutors through the competent European Prosecutor.

a) Overview of General National Codes and Provisions

Generally speaking, Art. 31 requests a "lot of communication" between all EPPO staff and the staff in the Member States (see Art. 31 para 8). The **efficient usage of these communication channels** helps to conduct a coherent and effective investigation. Art. 31 needs to be seen in the light of the interpretations by the ECJ, the EPPO's self-understanding in internal *memoranda* and **official Guidelines** and in the light of new cases and changes eventually issued by Sparks Legal Company, who drafts an **Assessement of the Regulation for the 1st of June 2026**, which will then lead to discussion in DG Just, the Commission and the EU Parliament's Legal Groups. But let us, despite this general background, first discuss the wording, first of all the handling EDP from Luxembourg will need to determine the Member State that relates to his/her investigations. **1**

All this is important because of the Assessement and **admissibility of evidence**.[184] Potentially this might be any Member State that is part of the EU and opted-in to the enhanced cooperation. The Luxembourgish EDP will need to identify the investigation measure (pls. refer to the other volumes below Art. 32 of this compendium for a comprehensive, comparative table of investigations measures including information on the obtainment of judicial authorizations in all participating and non-participating Member States).

2 **I.** Determine the Member State, where the investigation measure needs to be carried out
II. Identify the measures by virtue of Art. 31 para 2 (all measures by virtue of Art. 30 EPPO Regulation)
III. Contact the regional EDP office (* information in the EPPO Case Management System and available to the general public on the Website of the EPPO)
IV. Officially assign the relevant measure
V. Adjust the follow-up and obey Art. 31 para 3–8 EPPO Regulation[185]

3 **Applicable Codes** are:
- *Code pénal*, *Code de procedure pénale*,
- Law of July 2022 – Luxemburgish EPPO Adoption Law and further Police laws.

b) Para 2: Assignment of Measures by a Handling EDP to an Assisting EDP in another, Foreign MS

4 In the cases of Art. 31 para 1, para 3 s. 3 EPPO Regulation all provision that were mentioned in Art. 30 EPPO Regulation above shall apply.

[184] See within the other CNP volumes, GER and FR for comparable situations, and the Annex within this volume and for Luxembourg and its rules see especially Ligeti and Giuffrida 2019, pp. 184–195 (186: Function of admissibility rules in national criminal law based on freedom of proof generally speaking); Ligeti 2026; see as well the newest decisions of the ECJ on e-curia; Heinemann 2025, Prozessrechtspluralismus, pp. 59 on the general conditions of cross-border evidence gathering in the EPPO zone, 117 et seq., for conflict situations 173 et seq and for solutions to cope with the unsatisfactory system of Art. 31 and 32, see 338 et seq, 466 et seq. and admissibility problems, see 478 et seq. seeing no real secondary EU law requirements established. Finally Heinemann sees the pluralism, let's say the EU kaleidoscope of different procedural regimes under the EPPO Regulation as an engine like system for efficiency and supranational coherence, but call upon the legislator to provide for efficient rule of law backup mechanisms to respect the fundamental rights of suspects and the by the EDPs accused persons. All in all, he arguments strongly, despite the problems the legal pluralism theory and critique as well as the EPPO model of today have, for a stronger European harmonization of procedural mechanisms, which effectively protect the financial basis of the EU itself, its budget and the components of it; see as well Ligeti and Theodorakakou 2026, mn. 22, 23 explaining the adoption law from 2022 and mn. 24, 25 by referring to the general case law.

[185] For a critical analysis of the implications of CJEU, Case C-281/22, *G.K. and Others*, for Arts 30–32 EPPO Regulation, see Csúri (2026), pp 13–20. Csúri argues that the judgment clarifies the allocation of judicial control between the handling and assisting Member States but does not overcome the underlying fragmentation of national investigative powers and safeguards; he therefore calls for greater standardization or, alternatively, reliance on EIOs and JITs in cross-border investigations.

aa. Availability of Measures to the EDP in Luxembourg

If the measure is available under the law of the present Member State depends on the general rules on investigation measures in the CPC of the Member State of the handling EDP. **5**

In order not to have to repeat the regulations here verbatim and in translation, only the relevant articles or numbers and the respective law (sometimes there are provisions in the Customs or Tax Act). **6**

bb. Justification and Adoption of Such Measures Governed by the Law of the Member State of the Handling EDP

Sources & national sections 1: Art. 31 EPPO Regulation: Overview for the Grand-Duchy of Luxembourg **7**

"The handling European Delegated Prosecutor may assign any measures, which are available to him/her **in accordance with Article 30** [EPPO Regulation]…"	List of provisions that are printed in full length above below Art. 30:
Art. 30 para 1 (a)	See above within the volume and the Luxembourgish CPC; here above the details of Art. 30 EPPO Regulation provide an analysis.
Art. 30 para 1 (b)	
Art. 30 para 1 (c)	
Art. 30 para 1 (d)	
Art. 30 para 1 (e)	
Art. 30 para 1 (f)	

c) Para. 3: Judicial Authorisation for the Measure Required under the Law of the Member State of the Assisting European Delegated Prosecutor

In the case that judicial authorisation for the measure is required **under the law of the Member State of the assisting European Delegated Prosecutor** it must be obtained by the assisting i.e. not the EDP from the Member State that assigned the measure from his home Member State but the EDP that resides elsewhere and is not conducting or carrying out the investigation as his/her investigation. **8**

If the handling EDP needs information about the question if judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, he/she may **refer to the other country chapters** in this Compendium and consult Art. 30 EPPO Regulation in the relevant chapter or take a closer look at part B of the whole books where a comparative overview summarizes these situations. **9**

d) Para. 8: Decision by the Chamber concerning the Execution of an Assigned Measure Needed, or a Substitute Measure by the Assisting EDP

10 The national law that is concerned in relation to the situation of Art. 31 para 8 EPPO Regulation is the national procedural law, which governs the investigation measures by virtue of Art. 30 EPPO Regulation of the law of the handling or of the law of the assisting EDP.

3. Article 32 Enforcement of Assigned Measures

The assigned measures shall be carried out in accordance with this Regulation and **the law of the Member State of the assisting European Delegated Prosecutor. [National] Formalities and procedures expressly indicated by the handling European Delegated Prosecutor** shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.

a) Accordance-Clause: Assigned Measures according to Para 2 of Art. 31

1 The accordance-clause requires the handling EDP to question the assisting EDP if he/she can carry out the assigned measures (see Art. 31 para 2 EPPO Regulation) a) in accordance with this Regulation and **b) in accordance with the law of the Member State of the assisting European Delegated Prosecutor**. The following table indicates in an abstract style, where to locate the law of the assisting Member States. In order to enable the regional offices and the EPPO Chambers to consult the relevant provisions – even if they deal with foreign laws – the research of all measures relating to the respective country can be presented in the next table:

2 *Sources & national sections 2: Art. 32 – Overview for the Luxembourg*

Country of origin of the assisting/or several assisting MS	***"The law of the Member State of the assisting European Delegated Prosecutor."***	Art. 30 para 1 (a) Art. 30 para 1 (b) Art. 30 para 1 (c) Art. 30 para 1 (d) Art. 30 para 1 (e) Art. 30 para 1 (f)
AT *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Strafprozessordnung (ÖStPO); for updates see in the CNP volume	**Art. 30 para 1 (a)** ss. 93 para 2, 111 and 111 in combination with 119 et seq., 119, 120–122 StPO. **Art. 30 para 1 (b)** ss. 110, 111, 115, 122, 135 para 1, 144, 157 CPC

		Art. 30 para 1 (c) ss. 76a, 110, 111, 112, 113, 114, 115 CPC, 135 para 2 CPC - **Art. 30 para 1 (d)** ss. 110, 115, 122 CPC **Art. 30 para 1 (e)** ss. 135 para 3 CPC, s. 135a was recently declared unconstitutional![186] **Art. 30 para 1 (f)** Art. 30 para 1 f: ss. 130, 135 para 2 et seq. CPC
BG *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Nakazatelno protsesualen kodeks	**Art. 30 para 1 (a)** Art. 159 et seq., 164 **Art. 30 para 1 (b)** Art. 159 et seq. CPC **Art. 30 para 1 (c)** **-** **Art. 30 para 1 (d)** Law on Administrative Offenses and Penalties; **Art. 30 para 1 (e)** Art. 165, 172 CPC **Art. 30 para 1 (f)** Art. 165, 172 CPC
BE *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Code d'Instruction Criminelle	**Art. 30 para 1 (a)** Art. 62 (Art. 56), Art. 90*coties* search on premises of professionals eg lawyers (*juge d'instruction* Art.90*octies* s. 3) **Art. 30 para 1 (b)** Art. 35, 35bis (immovable property) s, 35*ter* (seizure of substitutes), 36, 37, 38, 39*bis* (computers) CPC. **Art. 30 para 1 (c)** see in CNP volume **Art. 30 para 1 (d)** see in CNP volume **Art. 30 para 1 (e)** see in CNP volume Art. 39bis, 46bis, but mainly Art. 90ter

[186] See Eurojust 2021, pp. 9 et seq. online: https://tinyurl.com/37h6tyw8. Accessed 30 June 2026.

		Art. 30 para 1 (f) - Art. 46sexies (juge d'instruction = Art. 46sexies ss. 3, 5 CPC
CY *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Ο περί Ποινικής Δικονομίας Νόμος (ΚΕΦ.155)	**Art. 30 para 1 (a)** ss. 11 (for an arrest), 25 CPC (search without a warrant), 26 CPC (Power for means of transport research) **Art. 30 para 1 (b)** s. 33 CPC **Art. 30 para 1 (e)** see ss. 4, 5, 5a, 6, 6a The Protection of the Privacy of Private Communication (Interception of Conversations and Access to Recorded Content of Private Communication) Law of 1996 (92 (I)/ 1996) [187]/ see as well Law on the Regulation of Electronic Communications and Postal Services **Art. 30 para 1 (f) -**
CZ *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Zákon č. 141/1961 Sb. Zákon o trestním řízení soudním (trestní řád)	**Art. 30 para 1 (a)** mainly ss. 82, 83 but see as well 112, 113, 114, 115 CPC **Art. 30 para 1 (b)** ss. 77b para 3, 78 (obligation to submit things with evidential value), 79, 79a[188] (Securing crime tools and proceeds of crime), 79b CPC **Art. 30 para 1 (c)** ss. 5 et seq AML Act, s. 78 CPC, s. 88, 88a, CPC, 158d CPC, s. 97 (3) of Act No 127/2005 Coll. on Electronic Communication

[187] Ο περί Προστασίας του Απόρρητου της Ιδιωτικής Επικοινωνίας (Παρακολούθηση Συνδιαλέξεων και Πρόσβαση σε Καταγεγραμμένο Περιεχόμενο Ιδιωτικής Επικοινωνίας) Νόμος του 1996 (92(I)/1996).

[188] **§ 79b**
Doručení rozhodnutí o zajištění a vyrozumění o něm
(1) Orgán činný v trestním řízení, který rozhodl o zajištění, bezodkladně doručí rozhodnutí o zajištění orgánu nebo osobě, které jsou příslušné k provedení zajištění, a poté, co orgán nebo osoba provedou zajištění, i osobě, jíž byla věc zajištěna. Současně orgány nebo osoby příslušné k provedení zajištění vyzve, aby, pokud zjistí, že se s věcí, která byla zajištěna, nakládá tak, že hrozí zmaření nebo ztížení účelu zajištění, mu tuto skutečnost neprodleně oznámily. [...]

		Art. 30 para 1 (d) ss. 8, 78 et seq.; 82 et seq. CPC in combination with Art. 496 Civil Code **Art. 30 para 1 (e)** s. 88 CPC **Art. 30 para 1 (f)** s. 113 CPC
DE *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Deutsche Strafprozessordnung	**Art. 30 para 1 (a)** ss. 102–10, 110 CPC **Art. 30 para 1 (b)** Chapter 8 CPC, ss. 94, 97 (Prohibition), 111c, s. 443 CPC **Art. 30 para 1 (c)** ss. 94–98, 99, 100, 108 CPC **Art. 30 para 1 (d)** ss. 73 et seq. CC; 111b CPC; Law on the reform of criminal asset confiscation **Art. 30 para 1 (e)** s. 100a° CPC, 100g CPC, 111k CPC **Art. 30 para 1 (f)** ss. 98a–e CPC, ss. 100g CPC, 100i CPC, ss. 161, 163, 163e, f CPC, para 4: ss. 95a StPO-E, 100c Residential surveillance, 100f acoustic surveillance outside the apartment according to § 100f, 110a the use of undercover investigators according to § 110a, source telephone surveillance, ss. 100a paragraph 1 sentences 1 to 3, paragraph 5, 100e StPO (telecommunications using laptops, PCs or IP telephony)
DK *see Art. 30 EPPO Regulation in the Compendium-Country Chapter, not part of AFSJ and not part*	Retsplejeloven Lov om rettens pleje	**Art. 30 para 1 (a)** ***** opted out of AFSJ = Chapter 73 Retsplejeloven: s. 793 "Dwellings and other housing, documents, papers and the like, as well as the contents of locked objects and 2) other objects as well as locations outside housing spaces."

of EPPO zone, but liaison and Eurojust		**Art. 30 para 1 (b)** Chapter 74 ss. 801, 802, 802 para 3 (all of the suspect's property) 803, 803a (an association's assets), 807 (formalities during a seizure operation), 807a (seizure by everyone), 807b–807f (special rules on seizure eg in AML cases) Retsplejeloven. **Art. 30 para 1 (c)** See Tax Control Act/ *Skattekontrollov*; Money Laundering Act. **Art. 30 para 1 (d)** ss. 75-77a CC; s. 804 Retspleejeloven and see CIR no 94 of 13/05/1952, Ministry of Justice More information, Circular on the police's management of seized or deposited sums of money or securities/ CIR nr 94 at 13/05/1952, *Cirkulære om politiets forvaltning af beslaglagte eller deponerede pengebeløb eller værdipapirer.* **Art. 30 para 1 (e)** *opted out of AFSJ= but see the Fourth Book of the Code of Judicial Procedure (Retsplejeloven) Chapter 67 and 68 provide for investigative rules and measures; Chapter 71 finally introduces special investigative measures such as telecommunications surveillance. (Kapitel 71: *Indgreb i meddelelseshemmeligheden, observation, dataaflæsning, forstyrrelse eller afbrydelse af radio- eller telekommunikation, blokering af hjemmesider og overtagelse af tv-overvågning*) s. 780 et seq. **Art. 30 para 1 (f)** s. 791a Retsplejeloven
EE *see Art. 30 EPPO Regulation in*	Kriminaalmenetluse seadustik	**Art. 30 para 1 (a)** ss. 91, 92, 470 para 5 CPC.

the Compendium-Country Chapter.		**Art. 30 para 1 (b)** ss. 89 Seizure and examination of postal or telegraphic items; 123, 142 Seizure of property, 143; 470 (handing over of property to a foreign state). **Art. 30 para 1 (c)** s. 142 (2^1) CPC **Art. 30 para 1 (d)** See following Act: "Procedure for transfer, transfer and destruction of confiscated property, return of money from the transfer of property from the budget to the legal owner, accounting and destruction of physical evidence, storage, evaluation and transfer of seized property and assessment, transfer and destruction of quickly perishable physical evidence" **Art. 30 para 1 (e)** ss. 126^1 et seq. CPC **Art. 30 para 1 (f)** s. 126^5. Covert surveillance, covert collection of comparative samples and conduct of initial examinations, covert examination and replacement of things; s. 126^6. Covert examination of postal items s. 126^9. Use of police agents
EL *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Νόμος 4620/2019 - ΦΕΚ 96/A/11-6-2019 : Κώδικας Ποινικής Δικονομίας	**Art. 30 para 1 (a)** Art. 243 in combination with Art. 253, Art. 256 (night search in a house) CPC **Art. 30 para 1 (b)** Art. 260 (seizure of securities in banks other public or private institutions), Art. 260 para 2: „In case of refusal, they search and seize the useful documents and things.", Art. 261 (asset freezing), Art. 263 (obligation of civil servants to deliver documents), *Art. 264 (General confiscation of documents); Art. 265 (confiscation of digital data).

		Art. 30 para 1 (c) Art. 258 et seq.; 260 para 2 CPC/ (Law 4619/2019) and see AML legislation Law 4557/2018 **Art. 30 para 1 (d)** Art. 39, 40 AML legislation Law 4557/2018 and Art. 260 CPC **Art. 30 para 1 (e)** See Art. 3, 4 Law 2225/1994 For the protection of freedom and response and communication and other provisions as amended Law 4871/2021/ *ΝΟΜΟΣ ΥΠ'ΑΡΙΘ. 2225 ΦΕΚ 121/20.07.1994 Για την προστασία της ελευθερίας και ανταπόκρισης και επικοινωνίας και άλλες διατάξεις.* **Art. 30 para 1 (f)** Art. 254 (cover investigation for certain crimes), Art. 254 para 1 c (controlled deliveries for certain crimes), Art. 255 special investigative acts in corruption cases Art. 255 para 1 (cover investigation in order to tackle corruption)
ES[189] *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Ley de Enjuiciamiento Criminal	**Art. 30 para 1 (a)** Art. 46, 47 Organic Law 9/2021 (EPPO Adoption law, see Chapter on Spain), Art. 326 (description of the crime scene), 364 (special evidence gathering in cases of theft or fraud); and cf. mainly Art. 545 et seq. CPC **Art. 30 para 1 (b)** Art. 334, 367bis, 545 et seq. **Art. 30 para 1 (c)** Art. 127 CC **Art. 30 para 1 (d)** Art. 127, 128, 129, 301, 302, 303, 304 CC and AML legislation in combination with the Civil Procedure Code, Art. 367 e t seq. CPC

[189] See López 2022, pp. 127–139.

		Art. 30 para 1 (e) Art. 588 bis et seq., 588ter et seq. CPC and *lex specialis* is provided for in Art. 48 Organic Law 9/2021 **Art. 30 para 1 (f)** Art. 588 bis et seq., 588ter et seq. and lex specialis is provided for in Art. 48 Organic Law 9/2021
FI *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Laki oikeudenkäynnistä rikosasioissa 11.7.1997/689	**Art. 30 para 1 (a)** Chapter 8 ss. 1–34 Coercive Measures Act; see ss. 2, 3, 4, 5, 6–14 searches on premises **Art. 30 para 1 (b)** Chapter 2, s. 15 (dangerous objects) Police Act[190]; Chapter 6 Seizure with the aim to secure property or payments, Chapter 7 Seizure and reproduction of the document, ss. 1, 5 (Seizure and reproduction of parcels, etc.), 6, Coercive Measures Act [Legislation monitored until SDK 178/2022 (published on March 17, 2022)] **Art. 30 para 1 (c)** Section 23 of Chapter 8 Coercive Measures Act **Art. 30 para 1 (d)** Chapter 10, ss. 2 et seq. CC[191] **Art. 30 para 1 (e)** Chapter 5, s. 1 et seq., Chapter 6, ss. 6 et seq. Police Act 7/22/2011/ 872 [192]; Chapter 3, s. 3, Subs.1 of the Preliminary Investigation Act, Act on the Prevention of Crime in Customs (623/2015) , Chapter 10 ss. 1–4 of the Coercive Measures Act

[190] See Poliisilaki 22.7.2011/872, cf. https://www.finlex.fi/fi/laki/ajantasa/2011/20110872#L2P3. Accessed 30 June 2026.
[191] See https://www.finlex.fi/fi/lainsaadanto/1997/689. Accessed 30 June 2026.
[192] See *Poliisilaki 22.7.2011/872*, cf. https://www.finlex.fi/fi/laki/ajantasa/2011/20110872#L2P3. Accessed 30 June 2026.

		Art. 30 para 1 (f) Chapter 5, s. 1 et seq., Chapter 6, ss. 6 et seq., ss. 30, 31, 32 et seq. Police Act[193]; ss. 23, 24, 24, 36 39, 40, 42 (controlled delivery) Law on Crime Prevention in Customs 5/22/2015/ 623[194]; Chapter 10, S. 3 of the Coercive Measures Act Especially ss. 13 "Systematic monitoring and its conditions", s. 15 "Covert access to information and its conditions" Police Act 7/22/2011/ 872
FR *see Art. 30 EPPO Regulation in the Compendium-Country Chapter for the full text.*	Code du procédure pénale	**Art. 30 para 1 (a)** *Depends on the investigatory framework. Pls. see French Chapter.* **Art. 30 para 1 (b)** *Depends on the investigatory framework. Pls. see French Chapter.* **Art. 30 para 1 (c)** Art. L.871-1 of the Internal Security Code Article 230-1 to 230-5 Criminal Code (deciphering) Article 706-102-1 to 706-102-7 Criminal Code **Art. 30 para 1 (d)** *Depends on the investigatory framework. Pls. see French Chapter.* **Art. 30 para 1 (e)** *Depends on the investigatory framework. Pls. see French Chapter.* **Art. 30 para 1 (f)** *Depends on the investigatory framework. Pls. see French Chapter.*
HR *see Art. 30 EPPO Regulation in*	Zakon o kaznenom postupku	**Art. 30 para 1 (a)** Art. 240 et seq. CPC, 251 (for a person) CPC, Art. 252 et seq. (Search of home and

[193] See *Poliisilaki 22.7.2011/872*, cf. https://www.finlex.fi/fi/laki/ajantasa/2011/20110872#L2P3. Accessed 30 June 2026.
[194] See *Laki rikostorjunnasta Tullissa 22.5.2015/623*, cf. https://tinyurl.com/2jh8k78u. Accessed 30 June 2026.

the Compendium-Country Chapter.		other premises), Art. 255 (search on a military facility), Art. 257 (search of computers), Art. 258 (search on a ship/aircraft. **Art. 30 para 1 (b)** Art. 206i, 261 et seq., Art. 262 (special reference to computers and data storage) **Art. 30 para 1 (c)** Art. 257, 258, 269, 260, 261, 262, 263 CPC, Art. 332–339 CPC **Art. 30 para 1 (d)** Art. 82 para 1 et seq. CPC **Art. 30 para 1 (e)** Art. 195, 196 CPC **Art. 30 para 1 (f) -**
HU *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	2017. évi XC. Törvény a büntetőeljárásról *	**Art. 30 para 1 (a)** ss. 306, 307, Sec. 820 CPC **Art. 30 para 1 (b)** ss. 306, 307, 820 **Art. 30 para 1 (c)** Art. 308, 309, 324 CPC **Art. 30 para 1 (d)** s. 151 CPC in combination with ss. 72-74 CC of Hungary and see Act LII, of 1994 on judicial enforcement. **Art. 30 para 1 (e)** ss. 261 et seq. Hungary Act XV. 2017. **Art. 30 para 1 (f)**
IT *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Codice di Procedura Penale	**Art. 30 para 1 (a)** Art. 244 et seq. stipulates provisions for inspections but Art. 247 et seq. stipulate provisions for searches (Perquisizioni) CPC, Art. 247 – Cases and forms of searches Art. 248 – Request for delivery Art. 249 – Personal searches Art. 250 – Local searches Art. 251 – House searches. Time limits Art. 252 – Seizure following a search

Art. 30 para 1 (b)
Art. 262, Art. 316–321 (Chapter 1 and 2)
Art. 321 (*sequestro preventivo*), 368, 253, 252, 254; 671 CPC. En detail the following provisions should be consulted by an Austrian EDP in a case, which involves Italy.
Art. 253 – Object and formality of the seizure
Art. 254 – Seizure of correspondence
Art. 254 bis – Seizure of IT data from IT, telematic and telecommunication service providers
Art. 255 – Seizure from banks
Art. 256 – Duty of exhibition and secrets
Art. 256 bis – Acquisition of documents, deeds or other things by the judicial authority at the offices of the security information services
Art. 256ter – Acquisition of deeds, documents or other things for which state secrecy is raised
Art. 257 – Review of the seizure decree
Art. 258 – Copies of the documents seized
Art. 259 – Custody of seized things
Art. 260 – Affixing of seals to seized things. Perishable things. Destruction of seized things
Art. 261 – Removal and re-affixing of seals
Art. 262 – Duration of the seizure and return of the seized things
Art. 263 – Procedure for the restitution of seized things
Art. 30 para 1 (c)
Art. 240 CC
Limitation: Article 51, paragraphs 3-bis and 3-quarter.
Art. 30 para 1 (d) CPC
EIO may be used, too.

		Art. 30 para 1 (e) Art. 254bis seizure of IT data from IT, telematic and telecommunication service providers, Art. 266 – Eligibility limits, Art. 266 bis – Interception of computer or telematic communications, Art. 267 – Assumptions and forms of the provision, Art. 268 – Execution of operations, Art. 268 bis – Filing of minutes and registrations [repealed], Art. 268ter – Acquisition of the investigation file [repelaed], Art. 268quater – Terms and methods of the judge's decision [REPEALED], Art. 269 – Conservation of documentation Art. 270 – Use in other proceedings, Art. 270 bis – Service communications from members of the Department of Security Information and Security Information Services, Art. 271 – Prohibitions of use; **Art. 30 para 1 (f)** Art. 354, 357 CPC; but cf. as well Art. 9 of Law no. 146 2006 amended Law no. 3 2019; Law 18 February 1992, n. 172, art. 10 Art. 9
LT *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Lietuvos Respublikos baudžiamojo proceso kodekso	**Art. 30 para 1 (a)** mainly Art. 145 (search any premise or other place), 146 (search of a person), 147, 148, 149 CPC and see Art. 169 and 170 CPC in the pre-trial investigation phase, Art. 205, 206, 207 CPC **Art. 30 para 1 (b)** Art. 17-4 in connection with Art. 133 (security), 134 (seizure of documents), 149 (search and seizure) and in special cases of a pre-trial investigation see Art. 1701 (Powers of the prosecutor to secure the confiscation of property) *Lietuvos Respublikos baudžiamojo proceso kodeksas*, the Lithuanian and Art. 170 para 5 CPC in pre-trial investigations.

		Art. 30 para 1 (c) Art. 154, 158 CPC **Art. 30 para 1 (d)** Art. 151 CPC in combination with ss. 72–75 CC of Lithuania **Art. 30 para 1 (e)** Art. 154 CPC - **Art. 30 para 1 (f)** Art. 159 (covert investigation officer) CPC, Art. 160 Covert tracking
LV *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Kriminālprocesa likums	**Art. 30 para 1 (a)** ss. 159, 160 (inspection, which may lead to an investigation), 163 (inspection of other places, vehicles etc.); but mainly ss. 179–188 CPC will apply. S. 179. Searches, S. 180. Decision on a Search, S. 181. Persons Present at a Search, S. 182. Procedures for Conducting a Search, S. 183. Search of a Person, S. 184. Search in the Premises of Diplomatic or Consular Representative Offices, S. 185. Issuance of a Copy of the Minutes of a Search, S. 186. Removal, s. 188. Removal Procedures **Art. 30 para 1 (b)** ss. 361, S. 361.1 Sending for Execution of the Decision on the Seizure of a Property, 363, 364 CPC (issuing of copies of the protocol on a seizure) CPC **Art. 30 para 1 (c)** see in CNP volume **Art. 30 para 1 (d)** ss. 70 CC, ss. 124 CPC **Art. 30 para 1 (e)** Chapter 11 Special Investigative Actions, ss. 215 et seq. CPC but cf. especially ss. 218, 219

		Art. 30 para 1 (f) Chapter 11 Special Investigative Actions, ss. 217 et seq. CPC, S. 223. Surveillance and Tracking of a Person
MT *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	SUBSIDIARY LEGISLATION 9.09CRIMINAL PROCEDURE (REGULATION OF REGISTRIES, ARCHIVES AND FUNCTIONS OF DIRECTOR GENERAL (COURTS) AND OTHER COURT EXECUTIVE OFFICERS) REGULATIONS	**Art. 30 para 1 (a)** see in CNP volume **Art. 30 para 1 (b)** see in CNP volume **Art. 30 para 1 (c)** see in CNP volume - **Art. 30 para 1 (d)** Art. 435B, C Criminal Code of Malta and see mainly CHAPTER 621 of the Laws of Malta: PROCEEDS OF CRIME ACT **Art. 30 para 1 (e)** see in CNP volume **Art. 30 para 1 (f)**
PT *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Codigó de Procesal Pénal	**Art. 30 para 1 (a)** ss. 351, 354, 355K., 355L., 355P. ("when lawfully on a premise") ss. 351 para 2 in a flagrante delicto situation: "(2) For the purposes of sub-article (1), the Police may stop a person or a vehicle until the search is performed and shall seize anything discovered during the search and the possession of which is prohibited or which may be connected with an offence", s. 354 in a flagrante delicto situation: "354. Anything seized as a result of a search under the preceding articles of this title shall be preserved and the Police carrying out the search shall draw up a report stating all the particulars of the search and including a detailed list of the things so seized." And see the following ss. 355E, G (search of premises, which may lead to seizure of things on the premises e.g. s. 355 E (3) (b): "discovering and seizing any property in respect of which an alert has

been entered in the Schengen Information System.") in the real investigative phase.
Next see ss. 355AF (person) and 355AR.
Criminal Code Cap. 9 Laws of Malta, Book 2 Laws Of Criminal Procedure part I of the Authorities to which the Administration of Criminal Justice is entrusted, Title I Of the powers and duties of the Attorney General and the Executive Police in Respect of Criminal Prosecutions

Art. 30 para 1 (b)

s. 355P. (General rules of seizure.) : "355P. The Police, when lawfully on any premises, may seize anything which is on the premises if they have reasonable grounds for believing that it has been obtained in consequence of the commission of an offence or that it is evidence in relation to an offence or it is the subject of an alert in the Schengen Information System and that it is necessary to seize it to prevent it being concealed, lost, damaged, altered or destroyed."
And see s. 355Q. (Computer data), and see s. 628B. para 1 (f) in mutual assistance cases (criminal law).

Art. 30 para 1 (c)

No special provision in the CPC; Art. 3 See Art. 4 Law No. 5/2002, of January 11 MEASURES TO FIGHT ORGANIZED CRIME.

Art. 30 para 1 (d)

See Art. 4 Law No. 5/2002, of January 11; Portuguese Securities Market Code.

Art. 30 para 1 (e)

see. ss. 628 para 1 (d) and the newly introduced s. 628E. Criminal Code Cap. 9 Laws of Malta, Book 2 Laws Of Criminal Procedure part I of the Authorities to which the

		Administration of Criminal Justice is entrusted, Title I Of the powers and duties of the Attorney General and the Executive Police in Respect of Criminal Prosecutions. And last but not least see ss. 6, 7 Security Service Act, Chapter 391 of the Laws of Malta. **Art. 30 para 1 (f)** see in CNP volume
RO[195] *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Codul de procedură penală al României	**Art. 30 para 1 (a)** Art. 156 CPC: "Common provisions (1) The search may be house, body, computer or vehicle search. (2) The search shall be carried out with respect for dignity, without constituting disproportionate interference with private life."; 157 (home search), 159 (formalities), 161 (report), 165, 166 (body search related provisions) CPC, 167 CPC (vehicle search), 168 (computer search), 192 (on-the-spot search) **Art. 30 para 1 (b)** Art. 158 para 13 CPC, 168 para 10 CPC; 171 but cf. mainly s. 252, 252^1, 252^2 CPC **Art. 30 para 1 (c)** Article 138 §1 and §3 CPC (access to computer systems), Art. 152 Para 1 CPC **Art. 30 para 1 (d)** Art. 270 CC; latest changes by Law no. 228/2020. And see LAW no. 129 of July 11, 2019 for the prevention and combating of money laundering and the financing of terrorism, as well as for the amendment and completion of some normative acts **Art. 30 para 1 (e)** - **Art. 30 para 1 (f)** Art. 138 CPC

[195] See Jderu 2016, pp. 287–297.

		General dispositions (1) The following are special methods of surveillance or research: (a) interception of communications or any type of remote communication; (b) access to a computer system; (c) video, audio or photography surveillance; (d) location or tracking by technical means; (e) obtaining data on a person's financial transactions; (f) detention, delivery or search of postal items; (g) the use of undercover investigators and collaborators; (h) authorized participation in certain activities; (i) supervised delivery; (j) obtaining the traffic and location data processed by the providers of public electronic communications networks or the providers of electronic communications services intended for the public.; […] - Article 148 - Use of undercover or real-identity investigators and collaborators - Article 151 Controlled delivery
SI *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	Zakon o državnem tožilstvu (ZDT-1	**Art. 30 para 1 (a)** Art. 164 but see mainly Art. 214, 215, 216, 217, 218 CPC **Art. 30 para 1 (b)** Art. 148 but see mainly Art. 156 CPC; 220, 221, 222, 222a CPC **Art. 30 para 1 (c)** see in CNP volume **Art. 30 para 1 (d)** Art. 502-502e CPC in combination with Art. 73 et seq. CC **Art. 30 para 1 (e)** Art. 150, 150a150b, 151 Zakon o kazenskem postopku, the Slovenian CPC

		Art. 30 para 1 (f) & para 4 Art. 149a para 1 (controlled delivery) CPC
SK *see Art. 30 EPPO Regulation in the Compendium-Country Chapter.*	301, ZÁKON z 24. mája 2005 TRESTNÝ PORIADO; for recent changes see in the CNP volume; Slovakia has changes its PIF and EPPO laws frequently from 2022 to 2026	**Art. 30 para 1 (a)** ss. 99 et seq., 101, 102, 103, 104, 105 (Inspection and entry into the dwelling, other premises and land) CPC **Art. 30 para 1 (b)** s. 89 et seq. (Securing things important for criminal proceedings), ss. 95 et seq. (Securing crime instruments and proceeds of crime) part Four - Seizure of Matters Important for Criminal Proceedings (s. 89 – s. 98a), S. 1 – Case relevant to criminal proceedings (s. 89), s. 89 – Matter important for criminal proceedings, S. Two – Seizure of Evidence (S.s 89a – 94) : s. 89a – Obligation to issue a thing, s. 90 – Withdrawal of the case, s. 91 – Preservation, release and withdrawal of computer data, s. 92 – Acceptance of the seized thing, s. 93 – Common provisions, s. 94 – Custody of issued, confiscated, taken over or otherwise seized items, S. 3 – Seizure of criminal instruments and proceeds of crime (s. 95 – s. 98a) : s. 95 – Securing funds, s. 95a, s. 95b, s. 96 – Securing book-entry securities, s. 96a – Securing real estate, s. 96b – Real estate inspection, s. 96c – Ensuring ownership interest in a legal entity, s. 96d – Securing virtual currency, s. 96e – Securing other property value, s. 96f – Securing a movable thing, s. 96g – Ensuring substitute value, Return of case (s. 97 – s. 98a), s. 97, s. 98, s. 98a – Common provisions for securing property, things and other property values **Art. 30 para 1 (c)** ss. 90, 116 §6, 118 CPC

Art. 30 para 1 (d)
The Law 101/2010 Coll. of March 4, 2010 on proving the origin of property applies; Art. 56-60 CC
Art. 30 para 1 (e)
ss. 115–118 Zákon č. 301/2005 Z. z. Trestný poriadok, the Slovakian CPC
Art. 30 para 1 (f) & para 4
s. 111(Controlled delivery)
s. 112 (Fake transfers)
s. 113 (tracking and tracing people and things)
s. 114 (video & audio recordings)

b) National Formalities and Procedures Expressly Indicated by the Handling European Delegated Prosecutor

1 On the territory of Luxembourg, the standards for formalities and procedures relating to investigative measures are **enshrined in the Luxembourgish CPC**.

2 The handling EDPs in the regional office of the City may indicate general provisions **from the Constitution**.

3 The concrete formalities and procedures depend on the concerned investigation measures, which cannot be determined completely in *abstracto*. But the **main principles can be listed:**

4
1. Reasonable suspicion element
2. Warrant obtainment
3. Right to privacy
4. Right to liberty
5. Right to a fair investigation including the right not to incriminate oneself (Art. 6 para 2 ECHR), Art. 47quinquies CPC.

* This list is not exhaustive and serves exemplary purposes to show the legal thinking behind the Regulation concept. Please refer to a Legal Commentary of the *Grand-Duché*.

4. Article 33 Pre-Trial Arrest and Cross-Border Surrender

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Art. 33 *Détention provisoire et remise transfrontière*

1. The handling European Delegated Prosecutor may order or request the arrest or pre-trial detention of the suspect or accused person **in accordance with the national law applicable in similar domestic cases.**
2. Where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA.

In the following the main Luxembourgish provisions i.e. **national law applicable in similar domestic arrest and pre-trial cases** shall be presented, explained and underpinned with judgements of Luxembourgish (criminal) courts. Pre-trial detention shall **ensure the presence of suspects for any EPPO actions** according to Art. 34, 36 et seq. EPPO Regulation.[196] **1**

a) General Relation to National Law: Applicable Codes

Sources and National Sections 2: Overview for Luxembourg – Art. 33 EPPO Regulation **2**

- Tax Code/*Code d'impôts*, CPC/*Code de procédure pénale*,
- Code for the organization of the judiciary/*Code de l'organisation judiciaire*,

[196] See van Kalmthout and Knapen 2009b with a historical view on the conditions in Luxembourg and both 2009a with a EU assessment; but see recently Hauck 2026a, Art. 33 with further references as well as Herrnfeld/Brodowski/Burchard, EPPO Regulation, 2nd, edn, 2026, Art. 33, Mn. 1 et seq.

- Customs Code/*Codes des douanes*

b) Para. 1: Provisions on Arrest and Pre-Trial Detention

aa. The Warrants during the Investigation/*Les mandats durant l'enquête*

(1) Flagrancy Investigation/*En enquête de flagrance*

3 **Art. 39** (L. April 24, 2000) (L. March 8, 2017) (L. of June 27, 2018)
(1) If the requirements of the investigation so require, the judicial police officer may, with the authorization of the State prosecutor, detain for a period which may not exceed twenty-four hours, the persons against whom he there are serious and corroborating indications of guilt.
The **24-hour period** runs from the moment the person is actually detained by the police.
In the context of a flagrancy investigation relating in whole or in part to one or more of the facts listed below:
1° crimes and offenses against state security within the meaning of articles 101 to 123 of the Penal Code;
2° acts of terrorism and terrorist financing within the meaning of Articles 135-1 to 135-6, 135-9 and 135-11 to 135-16 of the Penal Code;
the investigating judge, acting at the request of the State prosecutor, may issue an order to extend this period.
The deprivation of liberty resulting from this order may not, under any circumstances, exceed twenty-four hours, from the notification of the order. The order is reasoned and can only be taken once. It mentions the elements which justify the opening of a new deadline, namely:
1° serious indications of guilt relating to a crime or misdemeanour;
2° the particular circumstances of the case.
It is notified to the person retained within twenty-four hours. This begins to run from the moment the person is actually detained by the police. In the absence of due service within this period, the person is released.
The extension order is communicated immediately to the State prosecutor. It is not subject to any appeal.
(2) (L. of August 10, 2018) As soon as he is detained, the person is informed of his rights resulting from this article, articles 3-2, 3-3 and 3-6, the remedy of article 48-2, that she may only be deprived of her liberty for a maximum period of twenty-four hours before being brought before an investigating judge, of her right to make statements and to answer questions which she is asked or to remain silent, her right not to incriminate herself, and the alleged nature and date of the offense for which she is charged.
This information is given by the delivery, against receipt, of a declaration of rights formulated in a language that the detainee understands. By way of exception, when this

declaration is not available, it is made orally in a language that the detainee understands, if necessary by using an interpreter and will be followed without undue delay by the delivery, against receipt, of the written version. of the statement.
(3) Upon detention, the detained person has the right to be examined by a doctor without delay. Furthermore, the State prosecutor may, at any time, ex officio or at the request of a member of the family of the detainee, appoint a doctor to examine him.
(4) The detainee has the right to notify a person of his choice without undue delay. A telephone is available for this purpose.
The police officer may, after the oral agreement of the State prosecutor, to be confirmed by written and reasoned agreement, temporarily derogate from the application of this right if this is justified, taking into account the particular circumstances of the case, on the basis of one of the following compelling reasons:
1. when there is an urgent need to prevent a serious attack on the life, freedom or physical integrity of a person;
2. when there is an urgent need to avoid a situation that could seriously compromise criminal proceedings.
This temporary derogation must:
has) be proportionate and not go beyond what is necessary;
b) have a strictly limited duration;
vs) not be based exclusively on the nature or seriousness of the alleged offence; and
d) not to prejudice the general fairness of the proceedings.
(5) The detained person, who is not a Luxembourg national, has the right to notify and communicate without undue delay with the consular authorities of the State of which he is a national. She also has the right to receive their visit. When the person has more than one nationality, he can choose the consular authority to be informed.
The judicial police officer can refuse the warning of the consular authorities as well as the right to communicate with them and to receive their visit if the necessities of the investigation oppose it.
(6) The State Prosecutor may order, in the interest of ascertaining the truth, the taking of fingerprints and photographs of the detained person, as well as the taking of human cells for the purpose of establishing a DNA profile, in accordance with articles 48-3 to 48-6 and 48-8 of the Code of Criminal Procedure. Fingerprints and photographs collected pursuant to this article may be subsequently processed by the Police for the purposes of prevention, research and the establishment of criminal offences.
(7) If the detained person is suspected of concealing objects useful for ascertaining the truth or objects dangerous for himself or for others, he may be searched by a person of the same sex.
(8) The records of the interrogation of the detained person shall indicate the day and time at which the detained person was informed of the rights conferred on him or mentioned by paragraphs 2, 3, 4 and 5 of this article, as well as that, where applicable, the

reasons which motivated a refusal or delay in the application of the rights referred to in paragraphs 2, 4 and 5, the waiver provided for in Article 3-6, paragraph 8, the authorization provided for by paragraph 1, the agreement provided for in paragraph 4 and article 3-6, paragraph 6, the duration of the interrogations to which she was subjected and of the interruptions which separated these interrogations, the day and the hour from which she has been detained, as well as the day and time from which she will be either released or brought before the investigating judge.

Art. 39-1 (L. March 8, 2017)
(1) The questioning, during the flagrante investigation, of a person who is not detained in accordance with section 39, but against whom there are indications making it likely that he may have participated in the flagrante crime, is carried out according to the methods and under the conditions provided for in paragraph 3 of Article 46.
(2) These same provisions apply if it turns out during the hearing of a person who is heard during the flagrance investigation as a witness in accordance with Article 38 that there is evidence against her making it likely that she may have participated in the flagrant crime, but that it has not been decided to retain her in accordance with Article 39.

Art. 40 (L. June 16, 1989) (L. August 25, 2006) (L. March 8, 2017)
The provisions of Articles 31 to 39-1 are applicable, in the event of a flagrant offence, in all cases where the law provides for a prison sentence. However, the removal of human cells under physical constraint for the purposes of establishing a DNA profile may only be carried out if the facts carry a criminal sentence or a correctional sentence the maximum of which is equal to or greater than two years. 'imprisonment.

(2) The Search Warrant/*Le mandat de recherche*

4

Art. 102 (L. 22 July 2022)
If the accused cannot be seized, the arrest warrant shall be served at his last dwelling and a report shall be drawn up of the unsuccessful search.[197]
This report shall be drawn up in the presence of the two closest neighbours of the accused whom the bearer of the arrest warrant can find; they shall sign it, or, if they are

[197] **Art. 102** (L. 22 juillet 2022)
Si le prévenu ne peut être saisi, le mandat d'arrêt sera notifié à sa dernière habitation; et il sera dressé procès-verbal de perquisition et de recherches infructueuses.
Ce procès-verbal sera dressé en présence des deux plus proches voisins du prévenu que le porteur du mandat d'arrêt pourra trouver; ils le signeront, ou, s'ils ne savent ou ne veulent pas signer, il en sera fait mention, ainsi que de l'interpellation qui en aura été faite.
Ce procès-verbal de perquisition et de recherches infructueuses est adressé au juge d'instruction qui a délivré le mandat, ainsi que, s'il y a lieu, au procureur européen délégué pour les affaires relevant de ses compétences.
La personne est alors considérée comme inculpée pour l'application des articles 127 et 136-73.

unable or unwilling to sign, it shall be mentioned, together with the arrest which has been made.
This report on the unsuccessful search shall be sent to the investigating judge who issued the warrant and, where appropriate, to the Delegated European Public Prosecutor for cases falling within his jurisdiction.
The person is then considered to be charged for the purposes of Articles 127 and 136-73.

(3) The Warrant of Appearance/*Le mandat de comparution*, Art. 91 CPC

In the past the national law required an investigating judge to act in similar national cases:

Art. 91 (L. 28 July 1973)
(1) The investigating judge may issue, as the case may be, a warrant to appear ***or*** a warrant to bring in a person.[198]
(2) (L. 8 March 2017) The purpose of the appearance warrant is to give notice to the person against whom it is issued to appear before the investigating judge on the date and at the time indicated in the warrant.
It shall inform the person:
(a) of the nature and presumed date of the offence to which the questioning relates,
b) (L. of 10 August 2018) of his or her right to make statements and answer questions or to remain silent, of his or her right not to incriminate himself or herself, and
(c) the rights conferred by Articles 3(2), 3(3), 3(6) and 85(1).
Where a warrant to appear is issued, the lawyer of the person to be questioned and of the civil party shall, provided that the investigating judge is informed of their warrant, be summoned by letter at least eight working days before the questioning.

5

[198] **Art. 91** (L. 28 juillet 1973)
(1) Le juge d'instruction peut décerner, selon le cas, un mandat de comparution ou un mandat d'amener.
(2) (L. 8 mars 2017) Le mandat de comparution a pour objet de mettre en demeure la personne à l'encontre de laquelle il est décerné de se présenter devant le juge d'instruction à la date et à l'heure indiquées dans le mandat. Il informe la personne:
(a) de la nature et de la date présumée de l'infraction sur laquelle porte l'interrogatoire,
(b) (L. du 10 août 2018) de son droit de faire des déclarations et de répondre aux questions qui lui sont posées ou de se taire, de son droit de ne pas s'incriminer soi-même ainsi que
(c) des droits conférés par les articles 3-2, 3-3, 3-6 et 85, paragraphe 1.
Lorsqu'un mandat de comparution est émis, l'avocat de la personne à interroger et de la partie civile sont, pour autant que le juge d'instruction soit informé de leur mandat, convoqués par lettre au moins huit jours ouvrables avant l'interrogatoire. L'interrogatoire ne peut avoir lieu moins de dix jours après la notification du mandat de comparution, sauf si la personne à interroger y renonce.
(3) Un mandat d'amener ne peut être décerné contre l'inculpé que s'il y a danger de fuite, s'il y a danger d'obscurcissement des preuves ou si l'inculpé fait défaut. Le danger de fuite est légalement présumé lorsque le fait est puni par la loi d'une peine criminelle.

The examination may not take place less than ten days after notification of the summons, unless the person to be examined waives this.
(3) A warrant to bring an accused person to court may only be issued if there is a danger of absconding, if there is a danger of obscuring the evidence or if the accused person is in default. The danger of flight is legally presumed when the act is punishable by law by a criminal penalty.

6 The legislator has amended the **situation in EPPO investigations**. Book I, Title V. ensures that the EDP may issue a warrant to appear:

7

Subsection VI. – The summons and its execution
Art. 136-39
(1) The European Delegated Prosecutor **may issue a warrant to appear**.
(2) The purpose of the warrant to appear is to give notice to the person against whom it is issued to appear before the European Delegated Prosecutor on the date and at the time indicated in the warrant.
It **informs the person**:
a) has) the nature and presumed date of the offense to which the questioning relates;
b) his right to make statements and answer questions put to him or to be silent, his right not to incriminate himself;
c) the rights conferred by Articles 3-2, 3-3, 3-6 and 136-29, paragraph 1.
When a warrant to appear is issued, the lawyer of the person to be questioned and of the civil party are, provided that the European Delegated Prosecutor is informed of their mandate, summoned by letter at least eight working days before the questioning. The interrogation cannot take place less than ten days after notification of the warrant to appear, unless the person to be questioned waives it.

Art. 136-40
(1) The warrant to appear shall be signed by the person who issued it, and bearing his seal. The defendant will be named or designated as clearly as possible.
(2) The summons shall be served by post or by a law enforcement officer or served by a bailiff; in these last two cases, a copy of the warrant will be issued to the defendant.
(3) It will be enforceable throughout the territory of the State of the Grand Duchy of Luxembourg.

(4) The Summons Warrant/*Le mandat d'amener*, Art. 91 CPC

8

Art. 91[199] (L. 28 juillet 1973)
(1) The investigating judge may issue, as the case may be, a summons to appear or a warrant to compel appearance.
(2) (Law of 8 March 2017) The purpose of a summons to appear is to require the person against whom it is issued to present themselves before the investigating judge on the date and at the time indicated in the summons.
It informs the person:
(a) of the nature and the alleged date of the offense to which the questioning relates,
(b) (Law of 10 August 2018) of their right to make statements and answer questions put to them or to remain silent, of their right not to incriminate themselves, as well as
(c) of the rights conferred by Articles 3-2, 3-3, 3-6, and 85, paragraph 1.
When a summons to appear is issued, the lawyer for the person to be questioned and the lawyer for the civil party shall provided the investigating judge has been informed of their mandate be summoned by letter at least eight working days prior to the questioning. The questioning may not take place less than ten days after notification of the summons to appear, unless the person to be questioned waives this requirement.
(3) A warrant to compel appearance may be issued against the accused only if there is a risk of flight, a risk of tampering with evidence, or if the accused fails to appear. A risk of flight is legally presumed when the act is punishable by law with a criminal penalty.

Art. 92
He may also issue warrants for the attendance of witnesses who refuse to appear in response to the summons given to them, in accordance with Article 75, and without prejudice to the fine set out in that Article.

Art. 93 (L. 8 March 2017) (L. 20 July 2018) (L. 1 August 2019)
In the case of a warrant for bringing in or arresting a person, the person shall be questioned within twenty-four hours of his or her deprivation of liberty.
Paragraph 2 repealed (L. 16 June 1989).
(L. 9 December 2021) The investigating judge may issue an order to extend this period.
(L. 9 December 2021) The deprivation of liberty resulting from such an order may in no case exceed twenty-four hours from the notification of the order. The order shall state the reasons on which it is based and may be issued only once.
(L. 9 December 2021) It shall mention the elements that justify the opening of a new deadline, namely
1° serious indications of guilt relating to a crime or an offence;

[199] See above.

2° the particular circumstances of the case, resulting from the specific complexity of the case and the number of suspects involved.
(L. 9 December 2021) The person deprived of liberty shall be notified of the extension order within twenty-four hours. This period shall begin to run from the moment the person is deprived of liberty. If the person is not properly served within this period, he or she shall be released.
(L. 9 December 2021) The extension order shall be communicated immediately to the State Prosecutor. It shall not be subject to appeal.

Art. 94 (L. 28 July 1973)
After questioning the accused person residing in the Grand Duchy, the judge may issue a committal order if there are serious indications that the accused person is guilty and if the act carries a criminal penalty or a correctional penalty with a maximum of two years' imprisonment or more.
In addition to the conditions provided for in the previous paragraph, the committal order may only be issued in one of the following cases:
(1) If there is a danger of the accused fleeing; the danger of fleeing is legally presumed, when the act is punishable by law with a criminal penalty;
(2) if there is a danger of obscuring the evidence
(3) if there is reason to fear that the accused will abuse his freedom to commit further offences.
If the accused does not reside in the Grand Duchy, the committal order may be issued outside the conditions set out in paragraphs 1 and 2 after the examination, if there is serious evidence of guilt and if the act carries a criminal penalty or a penalty of correctional imprisonment.
(L. 7 July 1989) Warrants for bringing in and committing to prison must be specially motivated according to the elements of the case by reference to the conditions for the application of warrants.

9 Rules applicable for the action of the Luxembourgish EDP/+ *règle propre au PED* apply.

bb. Restrictions or Deprivation of Liberty

(1) The Judicial Control/*Le contrôle judiciaire*

10 Special rules for the Luxembourgish EDPs/+ *règle propre au PED* see → Law of July 2022.

(2) House Arrest with Electronic Surveillance/*De l'assignation à résidence avec surveillance électronique*

Rules to carry out these measures for the Luxembourgish EDPs/+ *règle propre au PED* **11**
→ see Law of July 2022 above under Sources of law and A. Introduction.

(3) Pre-Trial Detention/*De la détention provisoire*

12

Section XI – Provisional release (L. March 6, 2006)
Art. 113 (L. March 20, 1877)
In any matter, the council chamber may, at the request of the accused and on the conclusions of the State prosecutor, order that the accused be provisionally released, subject to the latter undertaking to represent himself in all the acts of the procedure and for the execution of the judgment as soon as he is required to do so. Paragraphs 2 and 3 repealed (L. July 28, 1973).

Art. 114 (L. March 6, 2006)
Provisional release may be subject to the obligation to provide security in the terms provided for in Article 120.

Art. 115 (L. March 6, 2006)
The release takes place without prejudice to the right that the investigating judge retains, following the investigation, to issue a new warrant to bring, arrest or commit, or to place the accused under supervision. court, if new and serious circumstances make this measure necessary. However, if provisional release has been granted by the chamber of the council of the district court or by the chamber of the council of the Court of Appeal, the investigating judge cannot issue a new warrant, place the accused under supervision court or impose on him new obligations not provided for by the decision of release accompanied by the placement under judicial supervision, as much as the chamber of the council of the district court or the Court of Appeal, on the requisitions of the public prosecutor, withdrew from the accused the benefit of their respective decisions.

Art. 116 (1 - temporary provisions) (L. of August 1, 2019)
(1) **Release may be requested at any stage** of the proceedings, namely:
1. in the council chamber of the district court, during the period of the investigation;
2. to the council chamber of the Court of Appeal, if it is seized of an appeal against the order for referral from the council chamber of the district court;
3. to the correctional chamber of the district court, if the case is referred there;
4. to the correctional chamber of the Court of Appeal, if an appeal has been lodged on the merits;
5. to the criminal division of the district court, if the case is transferred there;

6. to the Criminal Division of the Court of Appeal, if an appeal has been lodged on the merits;
7. to the correctional chamber of the Court of Appeal, if an appeal in cassation has been lodged either against a decision of an investigating court or against a decision of a trial court.
(2) The request shall be filed with the registry of the court called upon to rule.
(3) It shall be ruled as a matter of urgency and at the latest within three days of filing, the public prosecutor and the accused or his lawyer heard in their oral explanations.
When the court called upon to rule is the council chamber of the district court, this court rules on the basis of a written and substantiated report from the investigating judge.
A decision on a new application for release is not made until at the earliest one month after the filing of a previous application for release.
(4) Upon decision of the court called upon to rule, the accused may be heard in his oral explanations by way of audiovisual telecommunication.
This decision is not subject to any appeal. The court called upon to rule appoints a member of the prison administration staff who verifies the identity of the accused and who is present with him during the procedural act.
The accused concerned is supposed to have appeared. If the defendant is assisted by a lawyer, the latter can be either with the defendant or with the court called upon to rule.
At the end of the operation, the designated prison administration staff member draws up a report which is signed by the accused. If the accused refuses to sign, the report mentions it. The report mentions the date and place of its establishment, its object, the identity of the accused and, where applicable, of his lawyer, if he is with him, the name of the court before which the application for provisional release was presented and the technical conditions in which the operation took place.
(5) The accused or his lawyer shall be informed, by the clerk, of the place, day and time of the hearing and, where applicable, of the audiovisual telecommunication ordered.
In this case, the lawyer is informed that he has the option of assisting the accused either with the latter or with the court called upon to rule on the application for release.
(6) Release may only be refused if the conditions provided for in paragraphs 1, 2 and 3 of Article 94 are met.
(7) Release, when granted, may be accompanied by placement under judicial supervision.
(8) If release is granted by the council chamber, the correctional chamber or the criminal chamber of the district court, the State prosecutor may, within one day from the day of order, appeal the decision. The accused shall remain detained until the expiry of the said period. The appeal has suspensive effect. The registry notifies the accused or his lawyer of the place, day and time of the appearance no later than two days before the hearing.
The council chamber, the correctional chamber or the criminal chamber of the Court of

Appeal decides on the appeal no later than ten days after the appeal has been filed. If it has not ruled within this period, the accused is released, subject to representing himself in all acts of the procedure and for the execution of the judgment as soon as it is required.
(9) In the event of an appeal by the accused against a decision to reject a request for release, the council chamber, the correctional chamber or the criminal chamber of the Court of Appeal shall rule no later than twenty days after appeal has been filed.
(10) In the event of an appeal against a decision of release or rejection of release, the public prosecutor and the accused or his lawyer shall be heard in their oral explanations. The accused may also be heard by way of audiovisual telecommunication. In this case, the provisions of paragraphs 4 and 5 are applicable.
(1) The provisions provided for in this article were supplemented by the amended law of 20 June 2020 temporarily adapting certain procedural methods in criminal matters.

Art. 117 (L. March 20, 1877)
In the cases provided for by the preceding article, it will be ruled on simple request in chambers of the council, after hearing the public prosecutor.
The accused may provide written observations in support of his request.

Art. 118 (L. March 6, 2006) (L. July 20, 2018)
Prior to release with or without surety, the applicant must, by document received at the registry, elect domicile, if charged, in the place where the examining magistrate sits; if he is warned, in the one where sits the court hearing the merits of the case. Persons detained in a penitentiary establishment or placed in a re-education establishment or a disciplinary establishment may elect domicile in the hands of the competent members of the personnel of the penitentiary administration. The act of election of domicile is recorded in a special register. It is dated and signed by the prison administration staff member who received it and signed by the person concerned. If the latter does not want or cannot sign, this is mentioned in the deed. A copy of the act is immediately sent to the State prosecutor to be attached to the file.

Art. 119
(L. March 6, 2006) If, after having obtained his provisional release, the defendant summoned or adjourned does not appear, the investigating judge, the tribunal or the Court, as the case may be, may issue a warrant of arrest or committal against him.

Competent authorities **13**

1. The liberty and detention judge/*juge des libertés et de la détention*
2. judicial police/*police judiciaire*
3. Public prosecutor/*procureur de la République*

4. Attorney General/*procureur général*
5. Investigative judge/*le juge d'instruction*

c) Para 2: Cross-Border Surrender

14 Luxembourg's **mutual assistance in criminal matters** is governed by the amended Law of 8 August 2000 on International Mutual Assistance in Criminal Matters.

15 Luxembourg is also a **party to several international conventions** that obligate the country to provide legal aid under certain conditions in all proceedings related to offenses whose punishment falls within the competence of the judicial authorities of the requesting country. Luxembourg's judicial authorities **may request mutual legal assistance** in criminal matters from foreign jurisdictions.

16 The **law of 1 August 2018 transposing Directive 1/2014/EU** of the European Parliament and of the Council of 41 April 3 on the European Investigation Order in criminal matters ensures the applicability of European legislation in Luxembourg. The law amended the Code of Criminal Procedure and the amended Act of 3 August 8 on international mutual assistance in criminal matters.[200]

17 The **Departement of Justice** explains the Extraditions and surrenders of persons as follows: "For the extradition of persons in relation to third States, the amended Extradition Act of 20 June 2001 applies. Luxembourg has ratified several international conventions obliging our country to extradite, in accordance with specific procedures, persons who have committed an offence abroad to the authorities of the country where they committed the offences. Our country also has the right to request from foreign countries the extradition of criminals who have committed an offence in Luxembourg."[201]

18 Between the Member States of the European Union, the amended **Act of 17 March 2004 on the European arrest warrant and surrender procedures** between Member States of the European Union is applicable to the surrender of persons.

19

Competent authorities Luxembourg

- Judge of liberty and detention
- Departement of Justice

Provisions for the EAW [European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA])

[200] See Departement of Justice 2022, https://tinyurl.com/4v7umu2h. Accessed 30 June 2026.
[201] See Departement of Justice 2022, https://tinyurl.com/4v7umu2h. Accessed 30 June 2026.

5. Provisions on Defence Laws Relating to EPPO Actions

The general internationally recognized **right of any suspect** and accused **to information** is a form of the even more **general right to defence** against (any) criminal investigations, actions or procedural decisions by any body, encompassing the **right to appeal** or any **other procedural measure** or action possible against prosecutorial actions, e.g. stipulated by **EU-Directive 2012/13** and can be understood in a wider sense as the **defence laws in relation to EPPO actions** in Luxembourg.[202] The Regulation itself pinpoints the reader at the already **applicable Union law**, including Directives from the Stockholm programme of 2009, as said. Nearly only in **Art. 41 EPPO Regulation and Art. 42** the **rights of the suspect** are at least named. This can include some complaints in the Member States, which may lead to a "**decision to invalidate a procedural act**"[203], like in Germany or in Luxembourg Art. 136-1 et seq. may apply and it can aim to declare "a procedural act in the preparatory phase [..] invalid in a separate decision delivered by a court"[204]. Further **defence relevant laws** and options will be discussed – thus, not exhaustible below. 1

a) Availability of Specialized Law Firms?

As there is **not yet a "Euro-Defensor"**, only major **law firms concentrate on this PIF *Acquis*-matters** but have not been seen yet to *only* concentrate on it, but common forms have presented interest in cross-border matters like e.g. *DLA Piper*, *Linklaters*[205], *White & Case*[206] and *Hengeler Mueller*.[207] Above all, **ERA** has organized seminars in 2020 2

[202] Court of Justice of the European Union 2022, p. 1 reshaping the *telos* of these rights by saying: "numerous provisions that grant various rights to the accused person, 5 above all with a view to compensating for the weaker position of the accused person in relation to the public authorities conducting the criminal proceedings"; the academic literature has addressed defence against OLAF/EPPO actions frequently see instead of all only: Oehmichen 2022, pp. 345–373; Sicurella, R, Đurđević, Z, Ligeti, K, Costa, M 2022 EULAW EPPO Manual, presenting case studies and fictious situations; Bovend'Eerdt 2024; Ligeti 2016, passim; Ligeti and Theodorakakou 2026, mn. 31, 32 explaining that judicial review differs according to the nature of the act and the procedures laid down by national law. In short, defence needs a reasoned written request to abolish either an investigative act or a judicial order.

[203] Court of Justice of the European Union 2022, p. 3, 4.

[204] Court of Justice of the European Union 2022, p. 3, 4; 5 be aware that there is a time limit: "Under Luxembourg law, if a preparatory judicial investigation has been opened on the basis of the inquiry, an application for a declaration of invalidity may be lodged by the accused person before the Chambre du conseil du Tribunal d'arrondissement (Investigation Chamber of the District Court) within five working days of being charged. [...] A defect in a procedural act in the preparatory phase is likely to affect (A) the admissibility of the evidence obtained through that act, and (B) the decision on the merits. [...] Under Luxembourg law, besides exclusion of evidence on the grounds of invalidity for a breach of a procedural requirement, evidence may be excluded on the basis of irregularity, where the irregularity has put into question the credibility of the evidence or the use of the evidence is contrary to the right to a fair trial."

[205] See https://tinyurl.com/2ndnu2jc. Accessed 30 June 2026.

[206] See https://tinyurl.com/3axte4vh. Accessed 30 June 2026.

[207] See https://www.hengeler.com/de/2021-06-brussels-a-jour. Accessed 30 June 2026.

and 2022.[208] Another possibility it, to **mandate law firms that have already participated in EPPO proceedings**, which one can find out via a research on *e-curia* and in the rubrum of the relevant EPPO judgements of the ECJ (see Case law table above, or Annex).

b) Defence in the Investigation Phase

aa. Input from the Regulation 2017/1939

3 The **access to the case file** is an important **annex right** of the principle of the **equivalence of arms**. Recent case law has brought some light into the matter. It is now clearer that only the handling EDP can grant access based on the national law procedure regulating this matter, as seen e.g. by a judgement from the **first instance and pre-trial judge court *Amtsgericht*** *Frankfurt am Main*, which had to decide a case on a **request to access to case file in EPPO** cross-border investigation.[209] The EPPO was therefore involved via an assisting EDP (Art. 31 EPPO Regulation). The court held that access to the **file is governed exclusively by the law of the handling EDP** and the assisting EDP cannot grant access independently and refusal was lawful.

(1) Access to National Case File

4 Luxembourg has introduced the **e-case file** in 2021:

> **Title IV – Of the electronic file (L. December 9, 2021)**
> **Art. 136-1 [Digital conditions for procedural documents]**
> All procedural documents in criminal matters, whether they are acts of investigation or instruction or judicial decisions or any other document of the procedure, can be drawn up or **converted into digital format**.
> If the law requires that these documents be signed, they are the subject, whatever the number of pages and for each signatory, of a single signature in digital form, according to technical methods which guarantee that the act does not can no longer be changed. These acts do not have to be sealed.
> The **electronic signature** is affixed by means of a technical device, after the signatory has taken cognizance of the document in a digital format.
> If the person refuses to sign or is unable to sign electronically, this is mentioned in the deed. **The procedure file can be kept entirely in digital format**, under secure conditions, without the need for a paper medium.

[208] See https://tinyurl.com/mts7f94b. Accessed 30 June 2026.
[209] AG FFM (*Ermittlungsrichter*), Case: 931 Gs 1371/23 Date: 08 February 2024; see as well Ligeti 2026, pp. 197.

Art. 136-2
The **notifications made by the registry or by the secretariat take place exclusively by e-mail of the document to the recipient lawyer** by means of the professional e-mail addresses of the lawyers made available by the bars.

Art. 136-73[210]
(1) When the **investigation procedure appears to him to have been** completed, the European Delegated Public Prosecutor shall notify the parties and their lawyers thereof. The notice of completion of the investigation is notified either by registered letter or by e-mail.
(2) The case file **is made available to the accused and the civil party as well as to their lawyer**. Under pain of foreclosure, the accused, the civil party and their lawyers may, within a period of fifteen days from the dispatch of the notice provided for in paragraph 1, provide the European Delegated Prosecutor with such briefs and make such written requests as they deem appropriate, either by registered letter or by e-mail.

(2) Access to EPPO Case File

The access to the EPPO case file in Luxembourg and the **database of the EPPO** is primarily **regulated by the EPPO Regulation**, the Internal Rules of Procedure and can eventually be only requested with the help of the EDP or through the Central Office of the EPPO. The Legal Service of the EPPO might help lawyers in some cases if they have **a right to access certain information**. **5**

bb. Defence while Investigation is Under-Way, Art. 28–33 EPPO Regulation

(1) Cases involving Investigative Measures of Art. 30 EPPO Regulation

(a) General Provisions

Art. 24-2 (L. March 8, 2017) **6**
(1) The State prosecutor, as well as any person concerned proving a legitimate personal interest, may, by simple request, request the nullity of the investigative action referred to in Article 24-1 or of the actions which are performing.

[210] **Art. 136.73 (2022)**
(1) Lorsque la procédure d'enquête lui paraît terminée, le procureur européen délégué en avise les parties et leurs avocats. L'avis d'achèvement de l'enquête est notifié soit par lettre recommandée, soit par courrier électronique.
(2) Le dossier est mis à la disposition de l'inculpé et de la partie civile ainsi que de leur avocat. Sous peine de forclusion, l'inculpé, la partie civile et leurs avocats peuvent dans un délai de quinze jours à compter de l'envoi de l'avis prévu au paragraphe 1er fournir au procureur européen délégué tels mémoires et faire telles réquisitions écrites qu'ils jugent convenables, soit par lettre recommandée, soit par courrier électronique.
Toute observation ou demande conformément à l'article 136-68 parvenant au procureur européen délégué après ce délai est rejetée. [...].

(2) The request must be filed with the council chamber of the district court.
The deadline, for the State prosecutor, is five days from knowledge of the act.
Subject to the provisions of paragraph 3 of this article, for any person concerned, the period is two months after the contested act or the last of the contested acts has been carried out, whether or not a preparatory investigation has been opened at the following the act of instruction.
(3) The request may be filed:
1. if a preparatory investigation has been opened on the basis of the investigative document, by the accused before the council chamber of the district court, on pain of foreclosure, within five days of his indictment;
2. if no preparatory investigation has been opened on the basis of the investigative document, by the defendant before the trial court, on pain of foreclosure, before any claim, defence or exception other than the exceptions of incompetence.
(4) The request, if it emanates from a person concerned, is communicated to the State prosecutor through the registry. If the request is made by the accused, in accordance with the provisions of the first point of paragraph 3 above, the request is communicated to the other parties involved through the registry.
(5) If the request is filed before the chamber of the council, the request shall be ruled upon urgently by a decision notified to the parties in question in the forms provided for notifications in criminal matters.
(6) When the chamber of the council or the trial court recognizes the existence of a nullity, it annuls the act of the procedure carried out in disregard of the prescriptions of the law as well as the acts of the investigation, respectively, the where applicable, of the preparatory, subsequent instruction made following and as a consequence of the void act, and determines the effects of the cancellation.

Section VIII-1. – Provisional measures with regard to legal persons
Art. 89 (L. March 3, 2010)
(1) When during an investigation, the investigating judge finds serious indications of guilt in a legal person, he may, if particular circumstances so require, order the following measures:
1°the suspension of the procedure for the dissolution or liquidation of the legal person;
2°the prohibition of specific property transactions that may lead to the insolvency of the legal person;
3° the posting of a bond, the amount of which he fixes, in order to guarantee compliance with the measures he orders.
(2) Articles 126 to 126-2 are applicable to the measures ordered under paragraph (1).

Art. 90
(L. March 3, 2010)
(1) The release of the measure ordered under paragraph (1) of Article 89 may be requested in any case by the accused, the defendant or the public prosecutor, namely:
1. in the council chamber of the district court, during the period of the investigation;
2. to the council chamber of the Court of Appeal, if it is seized of an appeal against the order for referral from the council chamber of the district court;
3. to the correctional chamber of the district court, if the case is transferred there;
4. to the correctional chamber of the Court of Appeal, if an appeal has been lodged on the merits;
5. to the criminal division of the district court, if the case is transferred there;
6. to the Criminal Division of the Court of Appeal, if an appeal has been lodged on the merits;
7. to the correctional chamber of the Court of Appeal, if an appeal in cassation has been lodged either against a decision of an investigating court or against a decision of a trial court.
(2) The request shall be filed with the registry of the court called upon to rule.
(3) It shall be ruled as a matter of urgency and at the latest within three days of filing, the public prosecutor and the accused, the defendant or their defender heard in their oral explanations.
(4) The accused, the defendant or their defender shall be notified, by the clerk, of the place, day and time of the appearance.
(5) Release may only be refused if the conditions provided for in Article 89 are met.

(b) Special Provisions, Rights of the parties in EPPO Investigations in Luxembourg, Art. 136-68 CPC

Subchapter V – Rights of the parties **7**
Art. 136-68
(1) The person targeted by the acts of investigation provided for in Book I, Title V, Chapter II, Sub-chapter II, the civil party, the civilly responsible party as well as any third party concerned ju**stifying a legitimate personal interest exercise all the rights granted to them by this code *during* an investigation conducted by the investigating judge**. Requests for specific investigative acts by the persons referred to in paragraph 1 shall be **submitted to the European Delegated Public Prosecutor**.
(2) The persons referred to in paragraph 1 may lodge an appeal against decisions refusing an act of investigation by petition before the council chamber of the Court of Appeal.
(3) This request must be made within five days from the notification of the refusal decision. The chamber of the council decides as a matter of urgency, the European Delegated Prosecutor and the applicant or his counsel having heard their oral explanations. The

parties may submit such briefs and exhibits as they deem useful. The clerk of the council chamber informs the parties of the place, day and time of the appearance.

Art. 136-69
(1) A **civil party** may be filed at any time during an investigation conducted by the European Delegated Prosecutor. It is not notified to the other parties.
(2) The European Delegated Prosecutor shall verify, in addition to the conditions provided for in Article 57(3) and (4), whether the request relates in whole or in part to facts falling within the competence of the European Public Prosecutor's Office and for which the European Delegated Prosecutor has decided to exercise its jurisdiction.

Art. 136-70
(1) Without prejudice to the prior application of Articles 57 to 59, Article 136-7, paragraph 2 is applicable to complaints involving civil action brought before the investigating judge. The **statute of limitations for public action** is suspended until the response of the European Public Prosecutor's Office.
(2) When the European Public Prosecutor decides to exercise his jurisdiction, Article 136-8 is applicable.

Art. 136-71
(1) If the European Delegated Prosecutor **accepts a civil party application** in whole or in part, he shall take a decision determining the status to be granted to the party concerned according to the distinction provided for in Article 136-72.
(2) The accused or another civil party may challenge the civil party. Any decision by the European Delegated Public Prosecutor, whether it is admission or rejection of the application for civil action, is reasoned and may be appealed before the council chamber of the Court of Appeal.

Art. 136-72
(1) The party who has **duly instituted civil proceedings**, either before the investigating judge in accordance with Article 56, and who is associated with the investigation carried out by the European Delegated Prosecutor in accordance with Articles 136- 7 and 136-8, or during an investigation conducted by the Delegated European Prosecutor in accordance with Article 136-69, is granted by the Delegated European Prosecutor the status of civil party if the indictment is compulsory in accordance with Article 136-69. 136-28 or if it is optional and there has been a charge.
Otherwise, the party concerned is attributed the status of victim.
(2) Once the European Delegated Public Prosecutor **has charged a person, he shall inform the victim of the opening of proceedings, of his right to bring civil proceedings and of the procedures for exercising this right**.

(3) Only the party who has been granted civil party status is entitled to exercise the rights attached to this status.

(2) Defence in Cross-Border Cases

See Book 1, Title V, Subchapter Iv. Appeals of the CPC applies. 8

(3) Defence in Case of Arrest, Pre-Trial Detention, Judicial Control and Provisional release based on the Luxembourgish EPPO Adoption Law, Art. 33 EPPO Regulation

Book 1, Title V, Subchapter Iv. Appeals of the CPC applies. It might be necessary that the defendant needs to be searched and cannot be found as the search is fruitless: 9

Art. 102 10
If the defendant cannot be seized, the warrant of arrest will be notified to his last residence; and there will be drawn up a report of search and fruitless searches. This report will be drawn up in the presence of the two closest neighbours of the defendant that the bearer of the arrest warrant can find; they will sign it, or, if they do not know how or do not wish to sign it, mention will be made of it, as well as of the interpellation which will have been made. This **record of unsuccessful search** and search is sent to the investigating judge who issued the warrant, as well as, if necessary, to the European Delegated Public Prosecutor for cases falling within his competence. The person is then considered to be charged for the application of articles 127 and 136-73.

Placing Accused Under Judicial Control
Art. 136-41
The European Delegated Public Prosecutor may, because of the requirements of the investigation, **impose on the accused one or more obligations of judicial control**.
Placement under judicial supervision is without prejudice to the possibility for the Delegated European Public Prosecutor to request the investigating judge to issue a warrant to bring, arrest or commit if new and serious circumstances make this measure necessary.

Art. 136-42 11
Judicial review may be ordered by the European Delegated Public Prosecutor if the accused incurs a **penalty of correctional imprisonment or a more serious penalty**, the maximum of which is equal to or greater than two years' imprisonment. However, if the accused does not reside in the Grand Duchy of Luxembourg, judicial review may be ordered if the act carries a penalty of imprisonment or a more serious penalty. This control **compels the person concerned to submit**, according to the decision of the European Delegated Public Prosecutor, to one or more of the **obligations listed below**:

1. Do not leave the territorial limits determined by the European Delegated Prosecutor;
2. To be absent from his domicile or from the residence fixed by the European Delegated Public Prosecutor only under the conditions and for the reasons determined by this magistrate;
3. Not going to certain places or only going to places determined by the European Delegated Prosecutor;
4. Inform the European Delegated Prosecutor of any travel beyond the determined limits;
5. Report periodically to the services or authorities designated by the European Delegated Public Prosecutor, who are required to observe the strictest discretion regarding the facts with which the accused person is charged;
6. Respond to summonses from any authority and any service designated by the European Delegated Public Prosecutor, and submit, where appropriate, to control measures relating to his professional activities or his attendance at teaching as well as to socio-educational measures intended to promote their social integration and prevent recidivism;
7. Submit either to the registry or to a police department all documents proving identity and, in particular, the passport, in exchange for a receipt valid as proof of identity. The model of the receipt is determined by Grand-Ducal regulation;
8. Abstain from driving all vehicles or certain vehicles and, if necessary, surrender their driving license to the registry against receipt; however, the European Delegated Prosecutor may decide that the accused person may use his driving license for the exercise of his professional activity.
9. Refrain from receiving or meeting certain persons specially designated by the European Delegated Prosecutor, as well as from entering into relations with them, in any way whatsoever;
10. To submit to control, treatment or care measures, even under the hospitalization regime, in particular for the purposes of detoxification, subject to article 24 of the amended law of February 19, 1973 concerning the sale of medicinal substances and the fight against drug addiction;
11. Provide security, the amount and payment deadlines of which, in one or more instalments, are set by the European Delegated Prosecutor, considering in particular the resources and expenses of the accused person;
12. Not to hold or carry a weapon and, if necessary, to hand over to a police department against receipt the weapons in his possession;
13. Contribute to family expenses or regularly pay alimony.
At the request of the European Delegated Public Prosecutor, the investigating judge may place a person, subject to the obligations referred to in paragraph 2, points 1, 2 and 3, under electronic surveillance within the meaning of Article 690.

Art. 136-43 **12**

(1) The European Delegated Public Prosecutor shall designate, to **contribute to the application of judicial supervision**, a police service or any competent judicial or administrative service, in particular the **central social assistance service**.

(2) The services or authorities responsible for contributing to the application of judicial control ensure that the accused complies with the obligations imposed on him; for this purpose, they can summon him and visit him; they carry out all the necessary steps and research for the execution of their mission.

They report to the Delegated European Public Prosecutor, under the conditions he determines, on the behaviour of the accused; if the latter fails to fulfil the obligations imposed on him, they shall notify the European Delegated Public Prosecutor thereof without delay.

(3) Notice is given to the police services of all decisions subjecting the latter to one of the obligations provided for in points 1, 2, 3, 4, 8, 9, 12 of article 136-42, as well as of all decisions removing, modification or waiver of these obligations.

(4) The authority or service to which the accused must report periodically pursuant to point 5 of Article 136-42 records the dates on which the person concerned reported under the conditions set by the European Delegated Public Prosecutor.

(5) The service or authority designated by the Delegated European Public Prosecutor to supervise the professional activities of the accused or his attendance at a teaching, by application of point 6 of Article 136-42, may be presented by the accused documents or information concerning his work or schooling.

(6) The receipt given to the accused in exchange for the documents referred to in points 7 and 8 of article 136-42 must be returned by the accused when the document withdrawn is returned to him.

(7) When subject to the obligation provided for in point 10 of article 136-42, the accused chooses the practitioner or establishment which will provide the examination, treatment and care. He presents or sends to the European Delegated Prosecutor all the required justifications.

Art. 136-44 **13**

The accused is **placed under judicial supervision** by a decision of the Delegated European Public Prosecutor which may, subject to Articles 136-46 and 136-57, be taken at any stage of the investigation until notification of the decision proposed by the European Delegated Public Prosecutor, together, if applicable, the decision of the competent permanent chamber of the European Public Prosecutor's Office.

Until this decision, the European Delegated Public Prosecutor may, subject to Articles 136-46 and 136-57, at any time, impose on the person placed under judicial supervision one or more new obligations, abolish all or part of the obligations included in control,

modify one or more of these obligations or grant an occasional or temporary dispensation from observing some of them.
Until this decision, he may at any time order the lifting of the judicial review.

Art. 136-45
(1) If, as a result of the **accused's voluntary refusal to submit to the obligations of judicial review**, the conditions for issuing an arrest or committal warrant are met, the European Delegated Prosecutor may, until notification of the decision proposed by the Delegated European Public Prosecutor and, if necessary, the decision of the competent permanent chamber of the European Public Prosecutor's Office, request the investigating judge to issue a warrant to the accused against arrest or filing for preventive detention.
(2) The same rights belong, at the relevant request of the European Delegated Public Prosecutor, the accused or defendant heard or duly summoned:
1. to the council chamber of the district court, during the period of the investigation conducted by the Delegated European Prosecutor and until the notification of the decision proposed by the Delegated European Prosecutor, together, if applicable, the decision of the competent permanent chamber of the EPPO;
2. to the correctional chamber of the district court, if the case is referred there;
3. to the correctional chamber of the Court of Appeal, if an appeal has been lodged on the merits;
4. to the criminal division of the district court, if the case is transferred there;
5. to the Criminal Division of the Court of Appeal, if an appeal has been lodged on the merits;
6. to the correctional chamber of the Court of Appeal, if an appeal in cassation has been lodged either against a decision of an investigating court or against a decision of a trial court.

Art. 136-46
(1) The **total or partial lifting of the judicial review** may be requested in any case from the competent courts according to the distinctions of article 136-45, paragraph 2.
(2) The request is filed with the registry of the court called upon to rule.
(3) It is ruled there urgently and at the latest within three days of the filing, the European Delegated Prosecutor and the accused or his defender heard in their oral explanations.
(4) The accused or his defender is notified, by the clerk, of the place, day and time of the appearance.
(5) The court called upon to rule on the request may, in addition to granting or rejecting it, remove part of the obligations included in the control, modify one or more obligations or grant an occasional or temporary dispensation from observing some of them.

The options at this stage are further examined by Art. 136-47: **14**

15

Art. 136-47

The **total or partial lifting of the judicial review** takes place without prejudice to the right which the Delegated European Public Prosecutor retains, in the continuation of the investigation, to request from the investigating judge the issue against the accused of a warrant of arrest or deposit with a view to his preventive detention, or to place the accused who has been the subject of a total release again under judicial supervision or to impose on him, if he has been the subject of a partial release, new obligations if new and serious circumstances make this measure necessary.

However, if the total or partial lifting of the judicial review has been granted by the chamber of the council of the district court or by the chamber of the council of the Court of Appeal, the European Delegated Prosecutor may only take these measures insofar as the chamber of the council of the district court or that of the Court of Appeal, on its requisitions, withdrew from the accused the benefit of their respective decisions.

Subsection On Provisional Release of the Accused

Art. 136-57

(1) In any matter, the chamber of the council may, at the request of the accused and on the conclusions of the delegated European prosecutor, **order that the accused be provisionally released**, subject to the latter undertaking to represent in all acts of the procedure and for the execution of the judgment as soon as it is required.

(2) Unless otherwise provided in this sub-chapter, requests for release remain subject to the conditions, terms and remedies specific to them.

(3) The release takes place without prejudice to the right retained by the European Delegated Public Prosecutor, following the investigation carried out by him, to request the investigating judge to issue a new arrest warrant or arrest warrant., or to place the accused under judicial control, if new and serious circumstances make this measure necessary.

However, if provisional release has been granted by the chamber of the council of the district court or by the chamber of the council of the Court of Appeal, the delegated European public prosecutor cannot request a new mandate or place the accused under judicial supervision. or impose on him new obligations not provided for by the decision of release accompanied by the placement under judicial supervision, as much as the chamber of the council of the district court or the Court of Appeal, on requisitions of the European Delegated Prosecutor, deprived the accused of the benefit of their respective decisions.

Art. 136-58

(1) **Release may be requested** *at any stage* of the proceedings, namely:

1. to the council chamber of the district court, during the period of the investigation conducted by the Delegated European Prosecutor and until the notification of the decision proposed by the Delegated European Prosecutor, together, if applicable, the **decision of the competent permanent chamber** of the EPPO;
2. to the correctional chamber of the district court, if the case is referred there;
3. to the correctional chamber of the Court of Appeal, if **an appeal has been lodged on the merits**;
4. to the criminal division of the district court, if the case is transferred there;
5. to the Criminal Division of the Court of Appeal, if an appeal has been lodged on the merits;
6. to the correctional chamber of the Court of Appeal, if an appeal in cassation has been lodged either against a decision of an investigating court or against a decision of a trial court.

(2) The request is filed with the registry of the court called upon to rule.

(3) It is ruled urgently and at the latest within three days of the filing, the European Delegated Prosecutor and the accused or his lawyer heard in their oral explanations.

A decision on a new application for release is not made until at the earliest one month after the filing of a previous application for release.

Article 116 (3), paragraph 2 is inapplicable to cases falling within the competence of the European Public Prosecutor's Office and for which the European Delegated Prosecutor has decided to exercise his competence.

(4) Release, when granted, may be accompanied by placement under judicial supervision.

(5) By decision of the court called upon to rule, the accused may be heard in his oral explanations by way of audiovisual telecommunication.

This decision is not subject to any appeal.

The court called upon to rule appoints a member of the prison administration staff who verifies the identity of the accused and who is present with him during the procedural act.

The accused concerned is supposed to have appeared.

If the defendant is assisted by a lawyer, the latter can be either with the defendant or with the court called upon to rule.

At the end of the operation, the designated prison administration staff member draws up a report which is signed by the accused.

If the accused refuses to sign, the report mentions it.

The report mentions the date and place of its establishment, its object, the identity of the accused and, where applicable, of his lawyer, if he is with him, the name of the court before which the application for provisional release was presented and the technical conditions in which the operation took place.

(6) The defendant or his lawyer is notified, by the clerk, of the place, day and time of the hearing and, where applicable, of the audiovisual telecommunication ordered.
In this case, the lawyer is informed that he has the option of assisting the accused either with the latter or with the court called upon to rule on the application for release.
(7) If release is granted by the council chamber, the correctional chamber or the criminal chamber of the district court, the delegated European public prosecutor may, within one day from the day of the order, appeal the decision.
The accused shall remain detained until the expiry of the said period.
The appeal has suspensive effect.
The registry notifies the accused or his lawyer of the place, day and time of the appearance no later than two days before the hearing.
The council chamber, the correctional chamber or the criminal chamber of the Court of Appeal decides on the appeal no later than ten days after the appeal has been filed.
If it has not ruled within this period, the accused is released, subject to representing himself in all acts of the procedure and for the execution of the judgment as soon as it is required.
(8) In the event of an appeal by the accused against a decision rejecting a request for release, the council chamber, the correctional chamber or the criminal chamber of the Court of Appeal rules no later than twenty days after appeal has been made.
(9) In the event of an appeal against a decision to release or to reject release, the European Delegated Public Prosecutor and the accused or his lawyer are heard in their oral explanations. The accused may also be heard by way of audiovisual telecommunication.
In this case, the provisions of paragraphs 5 and 6 are applicable.

Art. 136-59 [Simple Request to be released]
In the cases provided for by article 136-58, a decision will be taken ***on a simple request in chambers***, after hearing the European Delegated Prosecutor.
The accused may provide written observations in support of his request.

Art. 136-60
Article 118 is applicable.
A copy of the act of election of domicile provided for in Article 118 is immediately sent to the European Delegated Public Prosecutor to be attached to the file.

Art. 136-61 [Warrant after having obtained provisional release and Not appearance]
If, after having obtained provisional release, the defendant summoned or adjourned does not appear, the investigating judge, at the request of the delegated European public prosecutor, the district court or the Court of Appeal, as the case may be, may award a warrant of arrest or committal against him.

cc. Art. 26, 27 EPPO Regulation

16 In similar national cases Art. 48-2 applied. But the legislator has adopted the legislation and **Art. 136-62 et seq.** CPC (see below) now apply in EPPO investigations.

17

Chapter IV – Nullities of the investigation procedure (L. March 6, 2006)
Art. 48-2 (L. March 6, 2006)
(1) The public prosecutor as well as any person concerned justifying a legitimate personal interest may, by simple request, request the nullity of the investigation procedure or of any act of this procedure.
(2) The request must be filed with the council chamber of the district court.
(L. March 8, 2017) The deadline for the public prosecutor is five working days from knowledge of the act.
Subject to the provisions of paragraph 3 of this article, for any person concerned, the period is two months after the contested act or the last of the contested acts has been carried out, whether or not a preparatory investigation has been opened at the following the act of instruction.
(3) The request may be filed: (L. March 8, 2017) If a preparatory investigation has been opened on the basis of the investigation, by the accused before the council chamber of the district court, on pain of foreclosure, within five working days from his indictment; if no preparatory investigation has been opened on the basis of the investigation, by the defendant before the trial court, on pain of foreclosure, before any claim, defence or exception other than the exceptions of incompetence.
(4) The request must be submitted to the council chamber of the Court of Appeal instead of the council chamber of the district court when the investigation relates to a procedure within the jurisdiction of the Court of Appeal.
(5) The request, if it comes from a person concerned, shall be communicated to the public prosecutor's office through the registry.
If the request is made by the accused, in accordance with the provisions of the first indent of paragraph 3 above, the request is communicated to the other parties involved through the registry.
(6) (L. 8 March 2017) If the request is produced before the chamber of the council, the request shall be ruled on urgently by a decision notified by the clerk to the parties in question in the forms provided for notifications in matters repressive.
(7) When the chamber of the council or the trial court recognizes the existence of a nullity, it annuls the act of the procedure carried out in disregard of the prescriptions of the law as well as the acts of the investigation, respectively, the where applicable, of the preparatory, subsequent instruction made following and as a consequence of the void act, and determines the effects of the cancellation.

18 In an EPPO investigation the **review**, **appeals**, and **nullity actions** are possible:

Subchapter IV – Appeals Section I era. – Nullities of the investigation by EDP
Art. 136-62 [main judicial review provision]
(1) The **accused, the plaintiff, the liable civil party and any third party** concerned justifying a **legitimate personal interest**, may, **by simple request, ask** the chamber of the council of the district court **for the nullity of the procedure** of the **investigation** carried out by the European Delegated Public Prosecutor or **of any act** of this procedure.[211]
(2) The application must be produced, on pain of foreclosure:
1° If the European Delegated Public Prosecutor has charged the person suspected of having participated in the offence, by the accused **within five working days of becoming aware of the act**;
2° If the European Delegated Public Prosecutor has not charged the person suspected of having participated in the offence, by the defendant **before the trial court**, on pain of foreclosure, **before any request**, defence or defence other than objections to jurisdiction.
(3) In the **event of an appeal for nullity** lodged before the chamber of the council of the district court, the application shall be communicated to the other parties involved through the registry. It can also be communicated to third parties, if they can be considered to be interested. In the event of a dispute, the council chamber determines which third party is, in a given case, qualified as an interested party.
(4) When the **request comes from a third party** concerned by an act of investigation, this third party may obtain communication only of the act of investigation which concerns him personally as well as, if applicable, of the act which constitutes the legal basis.

[211] Sous-chapitre IV. – Des recours
Section Ière. – Des nullités de l'enquête menée par le procureur européen délégué
Art. 136-62
(1) L'inculpé, la partie civile, la partie civilement responsable ainsi que tout tiers concerné justifiant d'un intérêt légitime personnel, peut, par simple requête, demander à la chambre du conseil du tribunal d'arrondissement la nullité de la procédure de l'enquête menée par le procureur européen délégué ou d'un acte quelconque de cette procédure.
(2) La demande doit être produite, sous peine de forclusion:
1° Si le procureur européen délégué a procédé à l'inculpation de la personne soupçonnée d'avoir participé à l'infraction, par l'inculpé dans un délai de cinq jours ouvrables à partir de la connaissance de l'acte;
2° Si le procureur européen délégué n'a pas procédé à l'inculpation de la personne soupçonnée d'avoir participé à l'infraction, par le prévenu devant la juridiction de jugement, à peine de forclusion, avant toute demande, défense ou exception autre que les exceptions d'incompétence.
(3) En cas de recours en nullité exercé devant la chambre du conseil du tribunal d'arrondissement, la demande est communiquée aux autres parties en cause par la voie du greffe. Elle peut aussi être communiquée à des tiers, si ceux-ci peuvent être considérés comme étant intéressés. En cas de contestation, la chambre du conseil détermine quel tiers est, dans une affaire donnée, qualifié d'intéressé.
(4) Lorsque la demande émane d'un tiers concerné par un acte d'enquête, ce tiers ne peut obtenir communication que de l'acte d'enquête qui le vise personnellement ainsi que, s'il y échet, de l'acte qui en constitue la base légale.
(5) Si la demande est produite devant la chambre du conseil, il est statué d'urgence sur la demande par une décision notifiée par le greffier aux parties en cause dans les formes prévues pour les notifications en matière répressive.

(5) If the request is filed before the council chamber, the request shall be decided urgently by a decision notified by the clerk to the parties in question in the forms provided for notifications in criminal matters.

Art. 136-63[212]
When the chamber of the council or the trial court recognizes the **existence of a formal nullity**, it annuls the act of the procedure carried out in defiance of the prescriptions of the law as well as the acts of the subsequent investigation carried out following and as a consequence of the null act, and determines the effects of the nullity in relation to the parties.

Art. 136-64
(1) The council chamber of the court of appeal examines *ex officio* the regularity of the procedures submitted to it.
(2) If it discovers a cause of nullity, it pronounces the nullity of the act which is vitiated by it, and, if applicable, that of all or part of the subsequent proceedings.
(3) After cancellation, the case is sent back to the European Delegated Prosecutor in order to continue the investigation.

19 Summarizing this there are **two options** according to **Arz. 136-62**, the status as accused, civil party or civil liability party must be clarified and a request for annulment submitted at the pre-trial chamber. This **first option** could lead to the clarification of any act of the procedure or the whole investigation, which is highly unlikely, as null and void. Secondly, **Art. 136-65** offers the possibility to submit an **appeal against an order of an investigating judge**, which was involved by the EDP for a really strong civil liberties limiting coercive measure.[213]

[212] **Art. 136-63**
Lorsque la chambre du conseil ou la juridiction de jugement reconnaît l'existence d'une nullité de forme, elle annule l'acte de la procédure accomplie au mépris des prescriptions de la loi ainsi que les actes de l'enquête ultérieure faite à la suite et comme conséquence de l'acte nul, et détermine les effets de l'annulation par rapport aux parties.
[213] See now recently before publication even stated by Ligeti and Theodorakakou 2026, mn. 32, 33.

(1) Appeals against the Orders of the Investigating Judge and the Council Chamber issued in Matters of Investigations Carried out by the EDP, Art. 136-65 et seq.

Section II – Appeals against the orders of the investigating judge and the council chamber issued in matters of investigations carried out by the European Delegated Prosecutor **20**

Art. 136-65

(1) The Delegated European Public Prosecutor and the accused may, in all cases, **appeal against the order of the investigating judge** or the co**uncil chamber of the district court**.

(2) The **civil party may appeal** against orders adversely affecting his civil interests. However, his appeal cannot, under any circumstances, relate to an order relating to the detention or the prohibition to communicate of the accused.

(3) The **other persons referred to in Articles 66**, paragraph 1, 136-33, paragraph 8 and 136-62, paragraph 1 **may appeal** against the orders of the council chamber of the district court issued pursuant to these articles.

(4) The appeal shall be brought **before the council chamber of the court of appeal**.

(5) It shall be **recorded in a register** kept for this purpose at the registry of the District Court of Luxembourg. It must be formed within five days, which runs against the European Delegated Prosecutor from the day of the order and against the other parties involved from the day of the notification which is made within twenty-four hours of the date of the prescription.

(6) The Registrar shall notify the other parties of the notice of appeal within twenty-four hours of entering it in the register.

(7) The hearing of the council chamber of the court of appeal is **not public**.

The accused, the civil party and any other party in question or their counsel notified by the court clerk no later than eight days before the date and time of the hearing, alone have the right to attend and to provide such briefs and make such requisitions, verbal or written, as they deem appropriate. The formalities of this paragraph are to be observed on pain of nullity, unless the accused or the civil party have waived them. The accused or his counsel always speaks last.

(8) The notifications and warnings referred to in this article are made by the clerk in the forms provided for notifications in criminal matters.

Art. 136-66

(1) If the **accused is detained**, he may **declare his appeal to one of the staff members of the penitentiary administration**, of the begging depots or of the houses of education.

(2) The call is recorded in a special register. It is dated and signed by the prison officer who receives it and signed by the prisoner. If the latter does not want or cannot sign, this is mentioned in the deed.
(3) A copy of the document shall be immediately sent to the registry of the court which issued the decision under appeal.

Art. 136-67
(1) The council chamber of the Court of Appeal may order the personal appearance of the parties as well as the production of exhibits.
(2) Articles 134 and 134-1, with the exception of Article 134, paragraphs 1 and 5, are inapplicable to the procedure for appealing the orders of the investigating judge and the council chamber issued in matters of investigations carried out by the European Delegated Prosecutor.

(2) Defence in Indictment Phase (Art. 136-73 CPC) and the Trial Phase

21 For the **trial phase** it is important to make sure that the right court handles the case. Any error in this regard might be challenged as well as that the court's judges are not disqualified according to s. the Luxembourgish CPC.

22
Section II Powers of the Attorney General of State
Art. 17 (L. July 22, 2022) **[Excerpt CPC]**
(1) The Attorney General of State represents in person or through his substitutes the public prosecutor before the Court of Cassation and the Court of Appeal.
(2[214]) The [Luxembourgish] **European Delegated Public Prosecutor represents** the European Public Prosecutor's **Office before the Court of Cassation and the Court of Appeal**.

23 **Section III – Powers of the State prosecutor**
Art. 22n (L. July 22, 2022)
(1) The State prosecutor represents in person or through his substitutes the public prosecutor before the district court and the police courts. [215]

[214] 2) Le procureur européen délégué représente le Parquet européen auprès de la cour de cassation [reviews points of law only, not facts and ensures uniform interpretation of the law] et de la cour d'appel [hears appeals from the Tribunal d'arrondissement (both civil and criminal)].
[215] **Section III – Des attributions du procureur d'Etat**
Art. 22 (L. 22 juillet 2022)
(1) Le procureur d'Etat représente en personne ou par ses substituts le ministère public près le tribunal d'arrondissement et les tribunaux de police.
(2) Le procureur européen délégué représente le Parquet européen auprès du tribunal d'arrondissement [Main court of first instance for serious criminal cases (crimes and major délits) and civil/commercial matters. Also acts as investigating court (juge d'instruction) in criminal proceedings.] et des tribunaux de police [Handles minor criminal offences (contraventions).]

(2) The European Delegated Public Prosecutor represents the European Public Prosecutor's Office **before the district court and the police courts**.

Book I, Title V.
Subchapter VI. – Closing of the procedure
Art. 136-73
(1) When the **investigation procedure appears to him to have been completed**,[216] the European Delegated Public Prosecutor shall notify the parties and their lawyers thereof. The notice of completion of the investigation is notified either by registered letter or by e-mail.
(2) The **file is made available to the accused and the civil party as well as to their lawyer**. Under pain of foreclosure, the accused, the civil party and their lawyers may, within a period of fifteen days from the dispatch of the notice provided for in paragraph 1, provide the European Delegated Prosecutor with such briefs and make such written requests as they deem appropriate, either by registered letter or by e-mail.
Any observation or request in accordance with Article 136-68 reaching the European Delegated Prosecutor after this deadline is rejected.
(3) At the end of the fifteen-day period, the European Delegated Public Prosecutor, having regard to the observations of the parties, may, if he deems it useful, order additional investigative measures.
If **additional investigative actions** have been requested, but the Delegated European Public Prosecutor does not intend to follow up on them, the procedure is carried out in accordance with Article 136-68.

[216] **Art. 136.73 (2022)**
(1) Lorsque la procédure d'enquête lui paraît terminée, le procureur européen délégué en avise les parties et leurs avocats. L'avis d'achèvement de l'enquête est notifié soit par lettre recommandée, soit par courrier électronique.
(2) Le dossier est mis à la disposition de l'inculpé et de la partie civile ainsi que de leur avocat. Sous peine de forclusion, l'inculpé, la partie civile et leurs avocats peuvent dans un délai de quinze jours à compter de l'envoi de l'avis prévu au paragraphe 1er fournir au procureur européen délégué tels mémoires et faire telles réquisitions écrites qu'ils jugent convenables, soit par lettre recommandée, soit par courrier électronique.
Toute observation ou demande conformément à l'article 136-68 parvenant au procureur européen délégué après ce délai est rejetée.
(3) À l'issue du délai de quinze jours, le procureur européen délégué, au vu des observations des parties, peut, s'il l'estime utile, ordonner des mesures d'enquête complémentaires.
Si des actes d'enquête complémentaires ont été requis, mais que le procureur européen délégué n'entend pas y faire suite, il est procédé conformément à l'article 136-68.
(4) À l'issue des diligences prévues aux paragraphes précédents, le procureur européen délégué procède à la clôture de l'enquête et suit la procédure prévue à l'article 35 du règlement (UE) 2017/1939 précité.
(5) La décision proposée par le procureur européen délégué, ensemble, s'il y a lieu, la décision de la chambre permanente compétente du Parquet européen, est notifiée aux parties en cause dans les formes prévues pour les notifications en matière répressive.
(6) Toute décision rédigée dans une langue autre que les trois langues judiciaires est accompagnée d'une traduction dans une de ces trois langues.

(4) At the end of the steps provided for in the preceding paragraphs, the European Delegated Prosecutor ***shall close the investigation and follow the procedure provided for in Article 35 of the aforementioned Regulation (EU) 2017/1939.***
(5) The decision proposed by the European Delegated Public Prosecutor, together, where appropriate, the decision of the competent permanent chamber of the European Public Prosecutor's Office, shall be notified to the parties involved in the forms provided for notifications in criminal matters.
(6) Any decision drafted in a language other than the three judicial languages shall be accompanied by a translation into one of these three languages.

24 **Art. 26** (L. June 22, 2022)
(1) The State prosecutor of the place of the offense, that of the residence, at the time of the prosecution,[217] of one of the natural persons suspected of having participated in the offense, that of the place of arrest of one of these persons, even when this arrest was made for another cause, that of the registered office of the legal person.
(2) By way of derogation from paragraph (1), the State prosecutor and the courts of the judicial district of Luxembourg have sole jurisdiction for cases concerning offenses under Articles 112-1, 135-1 to 135-6, 135 -9 and 135-11 to 135-16 of the Criminal Code.

[217] **Art. 26** (L. 22 juin 2022)
(1) Sont compétents le procureur d'État du lieu de l'infraction, celui de la résidence, au moment de la poursuite, de l'une des personnes physiques soupçonnées d'avoir participé à l'infraction, celui du lieu d'arrestation d'une de ces personnes, même lorsque cette arrestation a été opérée pour une autre cause, celui du siège de la personne morale.
(2) Par dérogation au paragraphe (1), le procureur d'État et les juridictions de l'arrondissement judiciaire de Luxembourg sont seuls compétents pour les affaires concernant des infractions aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-16 du Code pénal.
(3) Le procureur d'État compétent pour poursuivre une infraction dans les conditions des paragraphes (1) ou (2) est compétent également pour la poursuite des infractions présentant avec celle-ci un lien de connexité prévu à l'article suivant.
(4) Par dérogation au paragraphe 1er, le procureur d'État de Luxembourg et les juridictions de l'arrondissement judiciaire de Luxembourg sont seuls compétents sur tout le territoire luxembourgeois pour les affaires concernant les infractions aux articles 136bis à 136quinquies du Code pénal et pour les actes d'exécution de la coopération judiciaire internationale à l'égard de la Cour pénale internationale, instaurée par le Statut fait à Rome le 17 juillet 1998 et approuvé par la loi du 14 août 2000.
(4 bis) (L. 22 juillet 2022) Par dérogation au paragraphe 1er, et sans préjudice quant à la compétence attribuée aux procureurs européens délégués, le procureur d'État de Luxembourg, et les juridictions de l'arrondissement judiciaire de Luxembourg sont seuls compétents pour les affaires concernant des infractions pénales portant atteinte aux intérêts financiers de l'Union européenne visées au règlement (UE) 2017/1939 du Conseil du 12 octobre 2017 mettant en œuvre une coopération renforcée concernant la création du Parquet européen qui sont commises après le 20 novembre 2017.
(5) Par dérogation au paragraphe 1er, le Bureau de recouvrement des avoirs auprès du parquet de l'arrondissement de Luxembourg est seul compétent sur tout le territoire du Grand-Duché de Luxembourg pour les enquêtes de patrimoine postsentencielles et pour les actes d'exécution dans le cadre de la coopération entre les bureaux de recouvrement des avoirs patrimoniaux des États membres en matière de dépistage et d'identification des produits d'une infraction ou des autres biens en rapport avec l'infraction pouvant faire l'objet d'un gel, d'une saisie ou d'une confiscation ordonnés dans le cadre d'une enquête civile ou pénale.
(6) Les actes accomplis par ou sur l'ordre d'un procureur d'État territorialement incompétent ne sont pas nuls pour autant et peuvent valablement fonder des poursuites ultérieures ».

(3) The State prosecutor competent to prosecute an offense under the conditions of paragraphs (1) or (2) is also competent to prosecute offenses having a connection with it provided for in the following article.
(4) By way of derogation from paragraph 1, the State prosecutor of Luxembourg and the courts of the judicial district of Luxembourg have exclusive jurisdiction throughout the territory of Luxembourg for cases concerning infringements of Articles 136 bis to 136 quinquies of the Code. and for the acts of execution of international judicial cooperation with regard to the International Criminal Court, established by the Statute made in Rome on July 17, 1998 and approved by the law of August 14, 2000.
(4 bis) (L. 22 July 2022) By way of derogation from paragraph 1, and without prejudice to the competence attributed to the European Delegated Prosecutors, the ***State Prosecutor of Luxembourg, and the courts of the judicial district of Luxembourg are sole jurisdiction for cases concerning criminal offenses affecting the financial interests of the European Union referred to in Council Regulation (EU) 2017/1939 of 12 October 2017*** implementing enhanced cooperation concerning the establishment of the European Public Prosecutor's Office which are committed after on November 20, 2017.
(5) By way of derogation from paragraph 1, the Asset Recovery Office at the prosecutor's office of the district of Luxembourg has sole jurisdiction throughout the territory of the Grand Duchy of Luxembourg for post-sentence asset investigations and for acts of enforcement in the context of cooperation between the asset recovery offices of the Member States in the tracing and identification of the proceeds of an offense or other property related to the offense which may be the subject of a freezing, seizure or confiscation ordered in the context of a civil or criminal investigation.
(6) Acts performed by or on the order of a territorially incompetent State prosecutor are not null and void and may validly form the basis of subsequent proceedings".

dd. (Right to) Appeals and Civil Party Applications in EPPO Proceedings

Under the law of Luxembourg, the Constitution does not regulate **a right to appeal** (decisions) *expressis verbis*.[218] Despite that the right to appeal can be found in **various occasions and articles of the CPP**. The main aim is it to ensure the **same applicability of the law** in each court.[219] For the EPPO proceedings, the legislator has ensured that private parties can exercise all rights in EPPO investigations: **25**

Art. 136-68 **26**
(1) The person targeted by the acts of investigation provided for in Book I, Title V, Chapter II, Subchapter II, the civil party, the civilly liable party and any third party concerned justifying a legitimate personal interest exercise all of the rights granted to them

[218] Covolo 2023, pp. 307 et seq.
[219] Ibid, p. 308.

by this code during an investigation conducted by the examining magistrate. Requests for specific investigative acts by the persons referred to in paragraph 1 shall be submitted to the European Delegated Public Prosecutor. [220]
(2) The persons referred to in paragraph 1 may lodge an appeal against decisions refusing an act of investigation by petition before the council chamber of the Court of Appeal.
(3) This request must be made within a period of five days which runs from the notification of the decision of refusal. The chamber of the council decides as a matter of urgency, the European Delegated Prosecutor and the applicant or his counsel having heard their oral explanations. The parties may submit such briefs and exhibits as they deem useful. The clerk of the council chamber informs the parties of the place, day and time of the appearance.

Art. 136-69
(1) The **filing of a civil party** can take place at any time during an investigation carried out by the European Delegated Prosecutor. It is not notified to the other parties.[221]
(2) The European Delegated Prosecutor shall verify, in addition to the conditions provided for in Article 57(3) and (4), whether the request relates in whole or in part to facts falling within the competence of the European Public Prosecutor's Office and for which the European Delegated Prosecutor has decided to exercise its jurisdiction.

Art. 136-70
(1) Without prejudice to the prior application of articles 57 to 59,[222] article 136-7, paragraph 2 is applicable to complaints with civil action brought before the investigating

[220] **Art. 136-68**
(1) La personne visée par les actes d'enquête prévus au livre Ier, titre V, chapitre II, sous-chapitre II, la partie civile, la partie civilement responsable ainsi que tout tiers concerné justifiant d'un intérêt légitime personnel exercent l'intégralité des droits qui leur sont reconnus par le présent code au cours d'une instruction menée par le juge d'instruction. Les demandes d'actes d'enquêtes spécifiques par les personnes visées au paragraphe 1er sont déposées entre les mains du procureur européen délégué.
(2) Les personnes visées au paragraphe 1er peuvent interjeter appel contre les décisions de refus d'acte d'enquête par requête devant la chambre du conseil de la Cour d'appel.
(3) Cette requête doit être formée dans un délai de cinq jours qui court à partir de la notification de la décision de refus. La chambre du conseil statue d'urgence, le procureur européen délégué et le requérant ou son conseil entendus en leurs explications orales. Les parties peuvent soumettre tels mémoires et pièces qu'ils jugent utiles. Le greffier de la chambre du conseil informe les parties des lieu, jour et heure de la comparution.
[221] **Art. 136-69**
(1) La constitution de partie civile peut avoir lieu à tout moment au cours d'une enquête menée par le procureur européen délégué. Elle n'est pas notifiée aux autres parties.
(2) Le procureur européen délégué vérifie, outre les conditions prévues à l'article 57, paragraphes 3 et 4, si elle porte en tout ou en partie sur des faits relevant de la compétence du Parquet européen et pour lesquelles le procureur européen délégué a décidé d'exercer sa compétence.
[222] **Art. 136-70**

judge. The **statute of limitations for public action is suspended** until the response of the European Public Prosecutor's Office.
(2) When the European Public Prosecutor decides to exercise his jurisdiction, Article 136-8 is applicable.

Art. 136-71
(1) If the European Delegated Prosecutor accepts a **civil party application** in whole or in part, he takes a decision determining the status to be attributed to the party concerned according to the distinction provided for in Article 136-72. [223]
(2) The accused or another civil party may challenge the civil party. Any decision by the European Delegated Public Prosecutor, whether it is admission or rejection of the application for civil action, is reasoned and may be appealed before the council chamber of the Court of Appeal.

Art. 136-72
(1) The party who has duly instituted civil proceedings, either before the investigating judge in accordance with Article 56, and who is associated with the investigation carried out by the European Delegated Prosecutor in accordance with Articles 136-7 and 136 -8, either during an investigation carried out by the European Delegated Prosecutor in accordance with Article 136-69, is granted by the European Delegated Prosecutor the status of civil party if the indictment is compulsory in accordance with Article 136 -28 or if it is optional and there has been a charge.[224]
Otherwise, the party concerned is attributed the status of victim.

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(1) Sans préjudice quant à l'application préalable des articles 57 à 59, l'article 136-7, paragraphe 2 est applicable aux plaintes avec constitution de partie civile introduite entre les mains du juge d'instruction. La prescription de l'action publique est suspendue, jusqu'à la réponse du Parquet européen.
(2) Lorsque le procureur européen décide d'exercer sa compétence, l'article 136-8 est applicable.

[223] **Art. 136-71**
(1) Si le procureur européen délégué admet une constitution de partie civile en tout ou en partie, il prend une décision fixant le statut devant être attribué à la partie concernée selon la distinction prévue à l'article 136-72.
(2) L'inculpé ou une autre partie civile peuvent contester la partie civile. Toute décision du procureur européen délégué, qu'elle soit d'admission ou de rejet de la constitution de partie civile, est motivée et peut faire l'objet d'un appel devant la chambre du conseil de la Cour d'appel.

[224] **Art. 136-72**
(1) La partie qui s'est de manière régulière constituée partie civile, soit devant le juge d'instruction conformément à l'article 56, et qui se trouve associée à l'enquête menée par le procureur européen délégué conformément aux articles 136-7 et 136-8, soit au cours d'une enquête menée par le procureur européen délégué conformément à l'article 136-69, se voit attribuer par le procureur européen délégué le statut de partie civile si l'inculpation est obligatoire conformément à l'article 136-28 ou si elle est facultative et qu'il y a eu inculpation.
Dans le cas contraire, la partie concernée se voit attribuer le statut de victime.
(2) Dès lors que le procureur européen délégué a procédé à l'inculpation d'une personne, il avertit la victime de l'ouverture d'une procédure, de son droit de se constituer partie civile et des modalités d'exercice de ce droit.
(3) Seule la partie qui s'est vu attribuer le statut de partie civile est recevable à exercer les droits attachés à cette qualité.

(2) Once the European Delegated Public Prosecutor **has charged a person, he notifies the victim of the opening of proceedings**, of his **right to bring a civil action** and the procedures for exercising this right.
(3) Only the party who has been granted the status of civil party is admissible to exercise the rights attached to this quality.

27 Luxembourgish law provides a **developed framework for protecting suspects** and accused persons in EPPO investigations, although ef**fectiveness depends on access to counsel and judicial supervision**. Article 41 of Regulation 2017/1939 guarantees **Charter-based rights**, including information, interpretation and translation, access to a lawyer, legal aid, the presumption of innocence, and the right to remain silent. Article 42 requires judicial review of EPPO measures producing legal effects. Luxembourg's Code of Criminal Procedure supplements these guarantees.

28 **Article 136-68** grants affected persons the rights available in judicial investigations, permits requests for acts, and allows appeals against refusals. **Articles 136-62 to 136-64** provide nullity proceedings and *ex officio* review of procedural legality; Article 136-65 permits **appeal against investigative judicial orders**. Article 136-73 ensures **access to the file** when the investigation closes and allows observations and investigative requests within fifteen days.

29 Articles 136-46 and 136-57 to 136-59 provide **urgent judicial review** of supervision and detention-related measures. On their grounding, these safeguards align with Articles 5 and 6 ECHR and Articles 47 and 48 CFR presumably. However, five-day appeal periods, delayed file access, and fragmented cross-border review may **impair effective defence**. Under the CJEU's Article 42 case law, remedies must satisfy equivalence and effectiveness. Compatibility therefore remains application-dependent.

C. OLAF Regulation

I. General Rules on OLAF Investigations in Luxembourg

1. OLAF's Role

OLAF is well accommodated in the Union law set-up framing titled "**Union anti-fraud architecture**" these days and the academic research is extensive and long lasting since the 2000s.[225] Last decade's **landmark judgement** "*Sigma Orionis SA vs European Commission*", decided by the European General Court[226], clarified the **application of national law and Union law**[227] in relation to external investigations of OLAF.[228] 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). 1

a) Current Debates

Current debates evolve around the **effectiveness of investigations** with regard to digital evidence by virtue of the **Regulation 2185/96**, which stems in parts from a more analogue society, which is problematic in an age, which sees more digitally committed or planned frauds.[229] More and more questions are raised if the **analogue society in law enforcement** and the area of criminal justice is **a problem of the digital age** and presents obstacles to effective investigations.[230] 2

[225] Cf. first the general and foundational literature, e.g. Brüner 2001, pp. 17–26; Brüner 2009; Brüner 2008, pp. 859–872; Gellert 2009, pp. 85–88. Next, see the country-specific literature and reports by the national AFCOS and AFCOS Council, e.g. Republic of Bulgaria, Ministry of the Interior, Report on the Activities of the Coordination Council in Fighting Offences Affecting the Financial Interests of the European Union in 2021, pp. 44 et seq. (relationship to OLAF), pp. 55 et seq. (administrative checks carried out, including on-site checks, financial inspections, audits...), pp. 65 et seq. (opened files and criminal proceedings concluded with a criminal court decision), online: http://www.afcos.bg/sites/default/files/uploads/docs/2022-07/Doklad.pdf, accessed 30 June 2026.
[226] GC (formerly CFI), Case T-48/16, *Sigma Orionis SA v Commission*, 3 May 2018, pp. 70 et seq., 80–81, published in the electronic Reports of Cases (Court Reports – General) and in the OJ, 1 June 2018.
[227] See De Bellis 2021, pp. 431 et seq.; Herrnfeld 2021 pp. 426 et seq.; recently Wouters 2020, pp. 132 et seq.
[228] De Bellis 2021, pp. 431 et seq.; see OLAF Website, List of rulings of the Court of Justice of the EU concerning OLAF, https://tinyurl.com/459bhtht. Accessed 30 June 2026.
[229] See Carrera et al. 2021. online: https://tinyurl.com/y6p38a5s. Accessed 30 June 2026.
[230] See Rückert 2023, pp. 1 passim on the problem from the pov of criminal procedural law(s).

b) Access to Bank Accounts

3 The access to bank accounts and registers if highly important for OLAF investigators as well as their national homologues. The **relationship to the EPPO**, especially the regional centres of the EDPs in the present country should be close. In addition to that the external investigations require a good coordination, which shall be governed by the relevant AFCOS (see below → Art. 12a OLAF Regulation)[231], 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.

c) Reports of OLAF and their Relevance

4 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. They concern EPPO cases (see → Art. 23–28 EPPO Regulation) or cases below the thresholds for which the EDPs could exercise their competence and jurisdiction on behalf of the EPPO. This area has been well researched by *Luchtman/Vervaele/Ligeti and others* in OLAF studies from the last decade, which we can refer to.[232]

d) Structure of the Compendium

5 Part C, alike to the first Part B on the EPPO and its investigative powers presents a "*bilingue*" collection of the relevant laws – including the recently adopted on-the-spot checks laws of certain countries. In addition to the analysis parts of this chapter mentioned above, the national authorities and the role of any special unit, body or agency, here: **AFCOS Luxembourg** is explained below. The relationship of Luxembourg, a Benelux country is strong to its direct neighbours. This results in **special agreements and accords between the Benelux countries**, which contain provisions on special controls in customs matters:

[231] See Ministry of Interior, The competencies of the Bulgarian AFCOS in order to check EU funds, The Bulgarian experience in the anti-fraud area, NAFS and best practices in the operational cooperation with OLAF and AFCOS: https://tinyurl.com/5eabk2kb.
[232] See Luchtman and Vervaele 2017.

ACCORD
entre les Gouvernements des Etats de l'Union Economique Benelux, de la République fédérale d'Allemagne et de la République française relatif à la suppression graduelle des contrôles aux frontières communes

Section 9[233]
The parties shall strengthen cooperation between their customs and police authorities, in particular in the fight against crime, in particular illicit trafficking in drugs and arms, against the illegal entry and stay of persons and against tax and customs fraud and smuggling. To this end, and in accordance with their internal legislation, the parties shall endeavour to improve the exchange of information and to strengthen it with regard to information likely to be of interest to the other parties in the fight against criminality. The parties shall strengthen, within the framework of their national legislation, mutual assistance against irregular movements of capital.

Luxembourg has various such **special agreements or Regulations of the Grand-Duché**, which make the anti-fraud fight even better on a regional level. For more details on e.g. the customs legislation we will now focus on on-the-spot checks and the law on external investigations (Art. 3 OLAF Regulation): **6**

- *Traité Benelux pour l'amélioration et le renforcement de la coopération transfrontalière dans le domaine de la lutte contre les fraudes sociales et les erreurs en matière de sécurité sociale, de protection de la santé et de la sécurité au travail et des conditions de travail décentes*.
- Luxembourg can execute extradition requests in relation to ML/TF based on 1) the 2001 Extradition Law, 2) the 2004 EAW Law (EU Member States' requests), or 3) a bilateral treaty (see FATF 2023, p. 287)
- *Règlement du Gouvernement en Conseil du 19 juin 2015 portant fixation de l'indemnité kilométrique pour les voitures utilisées pour voyages de service*.

[233] Article 9 ACCORD entre les Gouvernements des Etats de l'Union Economique Benelux, de la République fédérale d'Allemagne et de la République française relatif à la suppression graduelle des contrôles aux frontières communes. Les parties renforcent la coopération entre leurs autorités douanières et de police, notamment dans la lutte contre la criminalité, en particulier le trafic illicite de stupéfiants et d'armes, contre l'entrée et le séjour irréguliers de personnes et contre la fraude fiscale et douanière et la contrebande. A cette fin, et dans le respect de leurs législations internes, les parties s'efforcent d'améliorer l'échange d'informations et de le renforcer en ce qui concerne les renseignements susceptibles de présenter un intérêt pour les autres parties dans la lutte contre la criminalité. Les parties renforcent dans le cadre de leurs législations nationales l'assistance mutuelle contre les mouvements irréguliers de capitaux.

2. Article 3 External investigations

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[…] 2. The Office shall ***carry out on-the-spot checks and inspections in accordance with this Regulation and, to the extent not covered by this Regulation, in accordance with Regulation (Euratom, EC) No 2185/96.***

4. Where, in accordance with paragraph 3 of this Article, the ***economic operator concerned submits*** to an on-the-spot check and inspection authorised pursuant to this Regulation, Article 2(4) of Regulation (EC, Euratom) No 2988/95, the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96 and Article 7(1) of Regulation (Euratom, EC) No 2185/96 ***shall not apply insofar as those provisions require compliance with national law*** and are capable of restricting access to information and documentation by the Office to the same conditions as those that apply to national administrative inspectors.

5. At the request of the Office, the ***competent authority of the Member State*** concerned shall, without undue delay, provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2).

The ***Member State concerned shall ensure***, in accordance with Regulation (Euratom, EC) No 2185/96, that the ***staff of the Office are allowed access to all information, documents and data relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that the staff are able to assume custody of documents or data to ensure that there is no danger of their disappearance.*** Where privately owned devices are used for work purposes, those devices may be subject to inspection by the Office. The Office shall subject such devices to inspection only under the same conditions and

to the same extent that national control authorities are allowed to investigate privately owned devices and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

6. Where the staff of the Office find that an ***economic operator resists*** an on-the-spot check and inspection authorised pursuant to this Regulation, namely where the economic operator refuses to grant the Office the necessary access to its premises or any other areas used for business purposes, conceals information or prevents the conduct of any of the activities that the Office needs to perform in the course of an on-the-spot check and inspection, the ***competent authorities, including, where appropriate, law enforcement authorities of the Member State concerned shall afford the staff of the Office the necessary assistance so as to enable the Office to conduct its on-the-spot check and inspection effectively and without undue delay.***

Article 2(4) of Regulation (EC, Euratom) No 2988/95

Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96

~~On-the-spot checks and inspections shall be carried out on the Commission's authority and responsibility by its officials or other servants, duly empowered, hereinafter called 'Commission inspectors'. Persons placed at the disposal of the Commission by the Member States as national experts on secondment may assist in such checks and inspections. Commission inspectors shall exercise their powers on production of a written authorization showing their identity and position, together with a document indicating the subject-matter and purpose of the on-the-spot check or inspection.~~

Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the Member State concerned.

Article 7(1) of Regulation (Euratom, EC) No 2185/96

Commission inspectors shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned which are required for the proper conduct of the on-the-spot checks and inspections. They may avail themselves of the same inspection facilities as national administrative inspectors and in particular copy relevant documents. On-the-spot checks and inspections may concern, in particular:

—professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements held by economic operators,

—computer data,

—production, packaging and dispatching systems and methods,

—physical checks as to the nature and quantity of goods or completed operations,

—the taking and checking of samples,

—the progress of works and investments for which financing has been provided, and the use made of completed investments,
—budgetary and accounting documents,
—the financial and technical implementation of subsidized projects.] When providing assistance in accordance with this paragraph or with paragraph 5, the competent authorities of Member States ***shall act in accordance with national procedural rules applicable to the competent authority concerned. If such assistance requires authorisation from a judicial authority in accordance with national law***, such authorisation shall be applied for.
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.

1 On-the-spot checks have been discussed in the last decade quite thoroughly[234], but not enough for all countries. For Luxembourg, it is worth tak**ing a closer look at the applicable provisions**. For all other countries, see in the CNP Volume Series Logos Online.

a) On-the-Spot Checks and Inspections – Renouncing the Applicable National Law – Paras 2 and 4

2 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**. Para 2 *de facto* clarifies that OLAF's on-the-spot checks and inspections are primarily governed by the OLAF Regulation itself. However, to the extent that this Regu-

[234] See Bovend'Eerdt 2018; 2024.

lation does not specifically regulate certain aspects of such checks, Regulation (Euratom, EC) No 2185/96 applies. OLAF operates under its own rules first but still falls back on the **older Regulation 2185/96** when necessary. Importantly, this ensures there should always be a clear legal framework for OLAF's investigation powers. Para 4 has a derogating effect compared to certain provisions of EU anti-fraud and inspection law. If an economic operator (e.g. a company) **agrees to an OLAF on-the-spot inspection** under this Regulation, then the following provisions shall not apply insofar as they require **compliance with national law**, and limit OLAF's access to information to what national administrative inspectors would have. The provisions that are partially set aside are **Article 2 para 4 of Regulation 2988/95** (which makes national law govern procedural aspects), Article 6 para 1, 3rd subparagraph, and Article 7 para 1 of Regulation 2185/96 (which limit OLAF's access to what national inspectors can do).[235]

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 Compliance by the Economic Operator

If the economic operator, the beneficiary, the grant recipient etc. resists this conduct has an effect on the applicability of law. The ECJ rules in *Sigma Orionis* that national law applies **in the case of resistance**, which means that the investigations need to be in conformity with the national law applicable in similar national investigations. **4**

[235] See Maugeri 2026 no 1, pp 1 ff. analyses the EU's administrative punitive power, focusing on Council Regulation No 2988/1995 as a "regulatory code" for protecting the Union's financial interests. This Regulation is not-outdated at all and therefore Regulation No 2988/95 has not been superseded by the emergence of the EPPO. Rather, it continues to constitute the horizontal administrative-law layer of the Union's PIF enforcement architecture. Maugeri shows whereas the PIF Directive and national criminal law determine criminal liability and Regulation 2017/1939 governs criminal investigation and prosecution by the EPPO, Regulation No 2988/95 supplies the general concept of an irregularity, rules on recovery and administrative penalties, limitation periods and the coordination of administrative and criminal enforcement. Its continuing relevance is particularly apparent in OLAF investigations: Article 3 of Regulation 883/2013 expressly integrates the control framework of Article 9 of Regulation No 2988/95, while the EPPO–OLAF relationship under Article 101 of Regulation 2017/1939 seeks to combine criminal enforcement with administrative recovery and follow-up without duplicating investigations. The CJEU showed with clarity in 2024 in Case C-721/22 P, *Commission v PB*, ECLI:EU:C:2024:836 that recovery and administrative sanctions must be distinguished as a matter of legal principle as Articles 1, 4, and 7 of Regulation 2988/95, in conjunction with the relevant budgetary rules, can provide a legal basis for recovery even against persons who participated in the irregularity or were responsible for it. But the CJEU clarified, particularly in C-367/09, *SGS Belgium*, ECLI:EU:C:2010:648 that a punitive administrative sanction requires a pre-existing legal basis for sanctions whether under sector-specific Union law or corresponding national law.

d) The Basic Principle of Compliance with Regulations 2185/96 and 883/2013

aa. Submission: Compliance with Union Law

5 In the **case of compliance of an economic operator** Union law applies, thus the Regulation allows OLAF officials to conduct on-the-spot checks without prior information of national authorities.

bb. Resistance: Assistance in Conformity with Applicable National Procedural Rules

6 Does the participant, the personal or economic operator concerned resist, the Regulation indicates that **OLAF has to follow national law and inform national authorities** that can aid in conformity with national procedural rules applicable.[236]

e) Competent Authorities

7 The table below shows **non-extensively the most important competent authorities**, which need to be contacted if the economic operator resists and thus national law applies if OLAF wants to conduct investigations into irregularities: Who is responsible **depends on which area is affected** and which type of irregularity or fraud is suspected. For example, one area of shared management can be presented here[237]:

8 *Table 7: Competent Authorities External Investigations in Luxembourg*

Translated Term	Original Term	Contact & Task
Council of State	Conseil d'état	Mandatory Opinion according to **law of 9 August 1971** concerning the execution and sanction of decisions and directives as well as the sanction of regulations of the European Communities in economic, technical, agricultural, forestry, social and transport matters required.

[236] ECJ, Case T-48/1, *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."

[237] All data in the table below is updated as of 08/2023.

Customs and Excise Administration (of Luxembourg)	*Administration des Douanes et Accises*[238] Direction	22, rue de Bitbourg L-1273 Luxembourg 2818-2818

[238] The organization by the law from 1993 was:
Art. 5
The directorate comprises seven divisions:
(1) the "Personnel and General Affairs" division;
(2) the "Customs and Value" division;
(3) the "Litigation and International Traffic" division
(4) the "Excise and Cabareting" division;
(5) the "Security Assignments" division;
(6) the "Investigations and Research" division;
(7) the "Anti-drugs and sensitive products" division.
Art. 6
The revenue and verification service includes, apart from the Central Customs and Excise Fund, revenue offices, classified according to their size and administrative needs, into class A, B, C or D offices.
Art. 7
The surveillance and control service includes respectively divisional inspections and controls, lieutenancies as well as brigades.
Art. 8
In the performance of his duties as head of administration, the director of customs and excise is assisted by two deputy directors, one of whom is placed at the head of the revenue and verification, surveillance and control services and the other at the head of the services of the customs and excise department.
Art. 9 Grand-Ducal regulations may bring to this organization all the necessary changes by application of Articles 12 and 15 of the Coordinated Agreement establishing the Belgo-Luxembourg Economic Union.
The Regulation from 2015 changed parts of the Revenue Service:
Grand-Ducal Regulation of 27 April 2015 concerning inspections and revenue offices of the Customs and Excise Administration.
We Henri, Grand Duke of Luxembourg, Duke of Nassau,
Having regard to article 14 of the modified law of July 27, 1993 concerning the organization of the customs and excise administration;
Having regard to the opinion of the Chamber of Civil Servants and Public Employees;
Our Council of State heard;
On the report of Our Minister of Finance and after deliberation by the Government in council;
Art. 1
The Customs and Excise Administration includes, in addition to the Directorate, the Revenue and Verification Service as well as the Surveillance and Control Service.
Art. 2
(1) The Acceptance and Verification Service includes an Audit, Accounting and Risk Analysis inspection, a central acceptance and acceptance offices.
(2) The competences of the Audit, Accounting and Risk Analysis inspection, as well as those of the central revenue, are exercised throughout the national territory.
(3) The delimitation and competence of the revenue offices of the Customs and Excise Administration are regulated in accordance with the indications in the appended table.
(4) The revenue office "Luxembourg-Howald Customs Centre" has exclusive national competence with regard to manufactured tobacco and energy products.
(5) The revenue office "East Customs Center" in Grevenmacher has exclusive national competence with regard to distilleries.
(6) The "Recette autos" revenue office has exclusive national competence with regard to the tax on road vehicles.
(7) In duly justified cases, the Minister of Finance, acting on a proposal from the Director, may temporarily derogate from the indications given in the table mentioned in paragraph 3 above.
Art. 3

	Bureau des douanes et accises Luxembourg-Aéroport Cargo Centre Est *Bureau de recette Bettembourg* Centre Douanier Luxembourg-Howald Centre douanier Nord Diekirch Caisse Centrale/ Taxe Auto	2818 + extension 2818-9200 douanes@do.etat.lu http://www.do.etat.lu Postanschrift: 1605 L-1016 Luxembourg
AFCOS Luxembourg		A simple coordination body *expressis verbis* without *any* own investigation powers.
Area of Common Market Organization Payment Authorities[239] **Under the supervision of the Ministry of Agriculture, Viticulture and Rural Development**		Management of EU Funds

(1) The monitoring and control service includes six functional inspections:
To) an "Anti-drugs and sensitive products" inspection;
b) an "Environment/ITM" inspection;
vs) a "Findel" inspection;
d) a "Health" inspection;
e) a "Support" inspection;
f) a "Transport" inspection.
(2) The jurisdiction of the "Findel" inspection is limited to the enclosure of Luxembourg airport as well as the area known as the "customs radius" extending over a depth of 250 meters from the limits of this enclosure.
(3) The competence of the districts of the other functional inspections extends to the whole national territory.

[239] Loi du 26 avril 2022 relative aux contrôles officiels des produits agricoles

Art. 6 Registration and approval

(1) In accordance with Article 28, paragraph 1 of Regulation (EC) No 834/2007 and Article 15, paragraph 5 of Regulation (EU) 2017/625, any operator shall notify the Minister of each of the places of which he is responsible for and implements its activity in any of the stages of production, processing and distribution of agricultural products, with a view to its registration.
(2) Delegated bodies which carry out official controls and other official activities of organic production are approved by the Minister in accordance with Article 27(4) of Regulation (EC) No 834/2007.
(3) Operators who import hemp seeds other than those intended for sowing, falling within CN code 1207 99 91, are approved by the Minister in accordance with Article 189 of Regulation (EU) No 1308/2013.

Cohesion Policy Area/Structural Funds Area **Different managing authorities, such as e.g. ERDF Managing Authority (MA)** [240] **Mr. Pierre COLBACH, effective member,** **Mr. Nico GODART, effective member,** **Mr. Bob SIMON, effective member,** **Mr. Franck VALENCIA, effective member,**		Management, Control, Protection and observance of EU Funds
Ministry of Equality between Women and Men	See Homepage.	Highest Authority, which controls the implementation of a European Policy within its area of operation (Government can decide on this matter)
Ministry of Energy and Spatial Planning	See Homepage.	Highest Authority, which controls the implementation of a European Policy within its area of operation (Government can decide on this matter)
Ministry of the Environment, Climate and Sustainable Development	See Homepage.	Highest Authority, which controls the implementation of a European Policy within its area of operation (Government can decide on this matter)

[240] Arrêté ministériel du 12 janvier 2023 portant nomination des membres du Comité de suivi de la période de programmation 2021-2027 FEDER.

Ministry of Labour, Employment and the Social and Solidarity Economy	See Homepage.	Highest Authority, which controls the implementation of a European Policy within its area of operation (Government can decide on this matter)
Ministry of Higher Education and Research	See Homepage.	Highest Authority, which controls the implementation of a European Policy within its area of operation (Government can decide on this matter)

Source: The authors.[241]

f) National Law and OLAF "Checks and Inspections"

9 The national law for checks and inspections in Luxembourg **depends on the area of the irregularities and frauds** suspected, being committed or having been committed. Administrative reactions and criminal reactions must be strictly distinguished (see → above **Part A The EPPO in Luxembourg**). A short list of the most prominent laws, decrees, (ministerial) regulations, arrests and decisions can be presented here:

10
- **(General) Administrative Area**
- **Customs Area**
- **VAT Area**
- **Cohesion and Common Market Organization Area: General Procurement**

Law of 8 April 2018 on public procurement[242]

Structural Funds Area:

Law of 8 June 1999 on the Budget, Accounting and Treasury of the State[243]

[241] The AFCOS Luxembourg, which is situated within the Ministry of Finance was requested to answer in August 2022 as well but was very reluctant. Other experts confirmed the structure and relevance of these authorities. Luxembourg is small, the communication flows well, but the general interest to make the efforts even better, the structure more public seem somehow shadowed.
[242] Loi du 8 avril 2018 sur les marchés publics.
[243] Loi du 8 juin 1999 sur le Budget, la Comptabilité et la Trésorerie de l'Etat.

Grand-ducal regulation of 8 April 2018 implementing the law of 8 April 2018 on public procurement and modifying the threshold provided for in article 106 point 10° of the amended municipal law of 13 December 1988.[244]

Source: Own Compilation, Expert Knowledge.

aa. Administrative Procedure in General

The administrative procedure in general is specified by various specific laws, such as the Tax Code (*Abgabenordung*), the Code T.V.A. (VAT Code), the Customs Code etc. **11**

Luxembourg's tax code still has so-called **tax control bodies** (*Steuerkontrollstellen*). This terminology seems old-fashioned, but it was practice for a long time and is still in the law today. The **tax director** supervises the administration (ss. 46 et seq. AO). **12**

He is responsible for the **proper application of the law** and not for detecting fraud. The basic taxation procedure (jurisdiction and so on) can be found in the AO (see 71 AO et seq.). The AO Luxembourg speaks of the **tax claim of the state** and thus stands in the tradition of those who dogmatically represent the theory of claims in the area of taxes (ss. 97 et seq.). The claims can become time-barred (see 143 AO). **13**

The **taxpayer has numerous duties to fulfil** (ss. 166 et seq. AO). The tax control authorities can use direct force against the tax debtor (ss. 202 et seq.). The tax code contains appeals in the last third (ss. 238 et seq.). **14**

bb. Special Administrative Powers and Provisions in Certain Areas of Revenue and Expenditure

The special administrative powers and provisions of certain areas of revenue and expenditure shall be explored in the following part. This is important because these **powers extend the powers of OLAF** on the Luxembourgish territory in case of an external investigation. **15**

(1) Administrative Provisions

The administrative provisions **depend on the area of the irregularity**. An irregularity might happen in the procurement sector, the direct expenditure sector but as well in the area of revenue collections (customs and tax sector). The administrative provisions establish a certain administrative procedure, which must be followed by the economic **16**

[244] Règlement grand-ducal du 8 avril 2018 portant exécution de la loi du 8 avril 2018 sur les marchés publics et portant modification du seuil prévu à l'article 106 point 10° de la loi communale modifiée du 13 décembre 1988.

operators. If this structure is not followed, there might be a first incident for an irregularity. The **definition of an irregularity** is determined by Union law and enshrined in different Regulations.[245]

17 The **individual may appeal** against decisions of the competent authorities. This is regulated by the General Customs and Excise Act 1977 (*Loi générale sur les douanes et accises du 18 juillet 1977*).[246] The Articles 211 to 219 of Chapter XXIII of the customs and excise law apply.

18 Chapter XXIV of the same act and here art. 220 to 266 regulate offences for breaches of customs and excise law in Luxembourg.

(2) Administrative Provisions in the Area of Customs Duties and Value Added Tax (VAT) = Revenue

19 The administrative provisions in the area of customs duties and value added tax in Luxembourg belongs to the *droit fiscal* (the financial law sector). It encompasses various legislative acts, such as laws from the customs and excise sector (*douanes et accisces*[247]) and VAT sector (tax controls and tax collection laws). The most common legislative documents in both areas are: *Loies* (Laws), *Circulaires* (Circulars), *Règlements* (Regulations), *Arrêtes* (Ordinances) and *Documents du Grand Ducale* (Simple Documents of the Grand Duchy).

(a) Customs Area

20 The main Customs Law stems from a cooperation with Belgium. The **Ministerial Regulation of 4 October 1977** concerning the coordination of general provisions relating to customs and excise states in Art. 1 that the Belgian **Royal Decree of 18 July 1977** coordinating the general provisions relating to customs and excise duties is to be published in the *Mémorial* in order to be executed in the Grand Duchy of Luxembourg from the date of its publication. This Act still applies in Luxembourg and has lastly been amended in 2020 to cope with the COVID pandemic.

21 In the area of customs duties the **customs administration** is organized by the **Law of July 27, 1993** on the organization of the customs and excise administration.[248]

[245] For a definition pls. see Hauck, EU Fraud Commentary Series, Vol. 1.
[246] See below, why Luxembourg operates and executes a Belgian Law in this area as it was their own.
[247] The Legislator in Luxembourg offers a public consolidated version of the customs and excise laws, see Ministère d'État – Service central de législation, https://tinyurl.com/3m4e3bau. Accessed 30 June 2026.
[248] Loi du 27 juillet 1993 portant organisation de l'administration des douanes et accises.

(b) Tax Area

The tax area is defined by the **General Budget Act of Luxembourg** and particular focus should remain on the revenue. From the point-of-view of the EU the revenue is important for the EU's own revenue as Luxembourg is obliged to pay a part of the revenue to the EU budget. **22**

Chapter 10.1 –Tax revenue
Art. 40
Tax revenue includes revenue from taxes, duties and fees.

Art. 41
(1) The terms and conditions of the basis, liquidation, control and collection of tax revenue shall be determined and created by the laws specific to each category of tax revenue.
(2) Any liquidated claim shall be subject to a collection document issued by the tax services of the tax authorities.
(3) The recovery of tax claims shall be entrusted to the collectors of the competent tax authorities.
(4) Revenue collectors make budgetary and accounting allocations immediately upon collection of tax revenue.

(3) Principle of Investigation (Tax Laws)

An example is the area of wines and distilleries: **23**

Administrative supervision of distilleries
Art. 26[249] **(Law of 27 July 1925 on the tax regime for spirits)**
"Tax administration officials have the right to visit the distiller's property at any time, with the exception of rooms used exclusively for the habitation of people. In the event of the discovery of either materials or utensils or parts of utensils which may be the subject of excise duty fraud, the searches may be extended without authorization special at home. Within the premises subject to administrative surveillance, no measures may be taken that may prevent or aggravate the exercise of control. In the event of refusal to

[249] Surveillance administrative des distilleries. Art. 26. Loi du 27 juillet 1925 sur le régime fiscal des eaux-de-vie. « Les agents de l'administration des contributions ont le droit de visiter à tout moment la propriété du distillateur à l'exception des pièces servant exclusivement à l'habitation de personnes. En cas de découverte soit de matières, soit d'ustensiles, soit de parties d'ustensiles pouvant faire l'objet d'une fraude de droits d'accise, les recherches peuvent être étendues sans autorisation spéciale à la maison d'habitation. Dans l'intérieur des locaux soumis à la surveillance administrative, il ne pourra être pris des dispositions pouvant empêcher ou aggraver l'exercice du contrôle. En cas de refus d'ouvrir ces locaux, les agents pourront forcer l'entrée par des moyens de coercition appropriés aux circonstances; toute résistance à l'action des agents est qualifiée rébellion et punie des peines prévues par les art. 269 et ss. du Code pénal. »

open these premises, the officers may force entry by means of coercion appropriate to the circumstances; any resistance to the action of the agents is qualified as rebellion and punishable by the penalties provided for in arts. 269 et seq. of the Code penal."

Art. 27[250]
The holder of the distillery is required to give the administrative officials on the operation of the factory all the information necessary for the exercise of control and for the purposes of statistics, and to make the necessary preparations for the execution of control and management operations, to provide the necessary utensils and instruments and to lend any assistance deemed necessary. The administration may prescribe to the distiller, if it deems it appropriate, the keeping of a log of entry and use of all generally any materials used in the manufacture of spirits, including sugar, as well as a log of all the products of the distillery. He must submit to the inspection of senior officials, at their request, the books and documents relating to the manufacture of brandy. (..)

Art. 28
If the owner of the distillery has been convicted of fraud,[251] the distillery may be subject to special control. The costs of this exceptional control will be borne by the holder of the distillery; the recovery of the costs will be pursued, the case applicable, such as excise duties.

Art. 29[252]
Holders of distilleries who do not personally direct the operation of their factory must ap-point to the administration qualified persons to act on their behalf as manager of the distillery. The provisions of art. 27 and 28 concerning the owners of a distillery are also applicable to managers.

[250] **Art. 27**
Le détenteur de la distillerie est tenu de donner aux agents de l'administration sur l'exploitation de l'usine tous les renseignements nécessaires à l'exercice du contrôle et aux besoins de la statistique, et de faire les préparatifs nécessaires pour l'exécution des opé-rations du contrôle et de la prise en charge, de fournir les ustensiles et instruments voulus et de prêter toute assistance jugée nécessaire. L'administration pourra prescrire au distillateur, si elle le juge convenir, la tenue d'un jour-nal d'entrée et d'emploi de toutes les matières généralement quelconques servant à la fabrication des eaux-de-vie, y compris le sucre, ainsi qu'un journal de sortie de tous les produits de la distiller-ie. Il devra soumettre à l'inspection des fonctionnaires supérieurs, sur leur demande, les livres et pièces concernant la fabrication de l'eau-de-vie. (...)
[251] **Art. 28**
Si le détenteur de la distillerie a été condamné pour fraude, la distillerie pourra être as-sujettie à un contrôle spécial. Les frais de ce contrôle exceptionnel seront à charge du dé-tenteur de la distillerie; le recouvrement des frais sera poursuivi, le cas échéant, comme celui des droits d'accises.
[252] **Art. 29**
Les détenteurs de distilleries qui ne dirigent pas personnellement l'exploitation de leur usine, devront désigner à l'administration les personnes qualifiées pour agir en leur nom comme régisseur de la distillerie.
Les dispositions des art. 27 et 28 concernant les détenteurs d'une distillerie sont également applicables aux régisseurs.

(4) External Audits (General Tax Code, Customs Code)

External audits are a **major tool of the Union Anti-Fraud Strategy**. They aim at the discovery of new cases, irregularities, shortcomings in the customs and excise area as well as the vat revenue area. They are conducted on a regular basis established by the competent authorities – either internally or on the basis of simple laws below the rank of a *general loi*, e.g. a regulation or an *arrêt* of the Grand Duchy. **24**

(a) Tax and VAT Area

In Luxembourg, the VAT area is regulated by the "*Loi Modifiée du 12 Fevrier 1979 concernant la Taxe sur la Valeur Ajoutée* (TVA)"[253]. The responsible ministry regularly prepares consolidated legislative acts, since the changing laws are shown on the national **legal platform "*legi lux*"**, but only the original version of the law from 1979 can be called up. This is a difficult situation that provokes uncertainty for entrepreneurs and legal practitioners. **25**

In the area of VAT fraud **external audits are essential**. Fake products, fake transit routes, fake invoices, non-existing products, falsely from VAT exempted products, VAT gangs and criminal organizations might be already under the radar of an OLAF operation (and not only an EPPO investigation, see above on that matter part B of the whole compendium chapter).[254] If it comes to this situation OLAF or national officials will most likely discover a first irregularity, which later leads to a major concern (or even a sufficient suspicion for a criminal conduct[255]). In the last decade so-called **e-commerce VAT fraud** has been on the frontlines of VAT frauds. **26**

Therefore, the legislator in Luxembourg has now opted for changes in the current law. At the beginning of June 2023, the legislator started ("A **new tool to fight against VAT fraud in e-commerce**").[256] **27**

New Legislation

"Bill 8207 on the **transparency of online payments** was presented to the deputies of the Finance and Budget Committee on Monday 5 June.
The CESOP (Central Electronic System of Payment Information) is to be fed by EU member states with information obtained from online payment service providers on transactions going through them. The CESOP must be active from January 1, 2024. Bill

[253] See http://data.legilux.public.lu/eli/etat/leg/loi/1979/02/12/n1/jo. Accessed 30 June 2026.
[254] See on this matter in-depth in French language Charlène Adline Herbain, Erwan Loquet, Jean-Claude Bouchard, La Fraude à la TVA, Larcier Lux 2017.
[255] In this case OLAF or the national authorities need to report to the EPPO. See Art. 23–25 EPPO Regulation.
[256] Cambre des Députés, https://www.chd.lu/de/node/1367. Accessed 30 June 2026.

8207 transposes Council Directive (EU) 2020/284 of February 18, 2020 into Luxembourg law."[257]

(b) Customs Code Area

28 The General Customs and Excise Act 1977 contains control of invoices, etc.:

29

Customs and Excise Administration
Inspection Service

The Grand-Ducal Regulation of 27 April 2015 concerning inspections and revenue offices of the Customs and Excise Administration[258] applies in connection with the rules on a customs control, which are enshrined in the General Customs and Excise Law.

(c) Tax and Customs Investigation (Customs Code/General Tax Code)

30 A customs control may lead to the discovery of irregularities or even fraud schemes:

31

Chapter XXII – Control measures
Art. 201 (Rmin. of January 27, 1994)
"(1) Except in the cases determined by the "King"[259], the invoice and all other documents necessary for the application of the provisions governing the customs procedure for which the goods are declared must be attached to the customs declaration. „The King may entrust the Minister of Finance with the execution of this paragraph."
(2) At the request of a customs and excise officer "having at least the rank of assistant auditor", the declarant, the importer, the exporter and the consignee of goods declared for any customs procedure, are **required to produce all documents and correspondence** and to provide verbally or in writing all information relating to these goods, when the communication is deemed necessary for the control of the elements of the customs

[257] Cambre des Députés, https://www.chd.lu/de/node/1367. Accessed 30 June 2026.
[258] Règlement grand-ducal du 27 avril 2015 concernant les inspections et les bureaux de recette de l'Administration des douanes et accises.
[259] **Chapitre XXII – Mesures de contrôle**
Art. 201 (Rmin. du 27 janvier 1994)
« (1) Sauf dans les cas déterminés par le « Roi », doivent être joints à la déclaration en douane la facture et tous autres documents nécessaires pour l'application des dispositions régissant le régime douanier pour lequel les marchandises sont déclarées. « Le Roi peut charger le ministre des Finances de l'exécution du présent paragraphe. »
(2) A la demande d'un agent des douanes et accises « ayant au moins le grade de vérificateur adjoint », le déclarant, l'importateur, l'exportateur et le destinataire de marchandises déclarées pour un régime douanier quelconque, sont tenus de produire tous documents et correspondance et de fournir verbalement ou par écrit tous renseignements relatifs à ces marchandises, lorsque la communication est jugée nécessaire pour le contrôle des éléments de la déclaration en douane. Lorsque les documents visés au premier alinéa sont tenus, établis, délivrés, reçus ou conservés au moyen d'un système informatisé, ces agents ont le droit de se faire communiquer les données enregistrées sur des supports informatiques sous forme lisible et intelligible. Ces agents peuvent également requérir la personne visée à l'alinéa 1er d'effectuer, en leur présence, et sur son matériel, des copies, dans la forme qu'ils souhaitent, de tout ou partie des données précitées, ainsi que les traitements informatiques jugés nécessaires à la vérification de l'exacte perception de la taxe. »
(3) Le refus de produire ou de fournir les pièces et renseignements visés aux paragraphes 1er et 2 est puni d'une amende de « 25,00 à 250,00 euros ».

declaration. When the documents referred to in the first paragraph are kept, drawn up, issued, received or stored by means of a computerized system, these agents have the right to have the data recorded on computer media communicated to them in readable and intelligible form. These agents may also require the person referred to in the first paragraph to make, in their presence, and on their equipment, **copies, in the form they wish, of all or part of the aforementioned data**, as well as the **computer processing deemed necessary** for verifying that the tax has been collected correctly.
(3) Refusal to produce or provide the documents and information referred to in paragraphs 1 and 2 is punishable by a fine of
"25.00 to 250.00 euros"

Art. 202 (Rmin. of January 12, 2022)
"(1) When, after the closing of the certificate of verification,[260] the agents establish, within a period of three years from the date of taking into account the amount originally required of the person liable, or, if there is no has not taken into account, from the date of the inception of the tax debt, that the duties or excise duties legally due on declared goods have not been or have not been fully collected, the duties or excise duties evaded must be paid by the person liable for these duties, either principally or subsidiarily, or by his successors in title The period referred to in the first paragraph is ten years when the act giving rise to the tax debt referred to in the first paragraph is liable to criminal prosecution. (Rmin. of February 22, 1990)
"(2) The persons referred to in paragraph 1 shall be punished with "a fine of between five and ten times the duties" evaded. In the event of recidivism, they are also punished by imprisonment from 8 days to one month, without it being possible to apply art. 228.
"(3) Where the persons referred to in paragraph 1 have committed the offense with fraudulent intent, they shall be further punished by imprisonment from eight days to one

[260] **Art. 202** (Rmin. du 12 janvier 2022)
« (1) Lorsque, postérieurement à la clôture du certificat de vérification, les agents établissent, dans le délai de trois ans à compter de la date de la prise en compte du montant primitivement exigé du redevable, ou, s'il n'y a pas eu de prise en compte, à compter de la date de la naissance de la dette d'impôts, que les droits ou les droits d'accise légalement dus sur des marchandises déclarées n'ont pas été ou n'ont pas été intégralement perçus, les droits ou les droits d'accise éludés doivent être payés par le redevable de ces droits, soit à titre principal, soit à titre subsidiaire, ou par ses ayants droit Le délai visé à l'alinéa 1er est de dix ans lorsque l'acte donnant naissance à la dette d'impôts visée à l'alinéa 1er est passible de poursuites judiciaires répressives. » (Rmin. du 22 février 1990)
« (2) Les personnes visées au paragraphe 1er sont punies d « une amende comprise entre cinq et dix fois les droits » éludés. En cas de récidive, elles sont en outre punies d'un emprisonnement de huit jours à un mois, sans qu'il puisse être fait application de l'article 228. » (Rmin. du 18 décembre 2020 - Loi belge du 9 décembre 2019)
« (3) Lorsque les personnes visées au paragraphe 1er ont commis l'infraction dans une intention frauduleuse, elles sont punies en outre d'un emprisonnement de huit jours à un mois. Lorsque les personnes visées au paragraphe 1er ont commis l'infraction avec une intention frauduleuse et ont gravement lésé les intérêts financiers de l'Union européenne, elles sont punies d'un emprisonnement de 4 mois à 5 ans. Les intérêts financiers de l'Union européenne doivent en tout cas être considérés comme gravement lésés lorsque le préjudice se monte à plus de 100 000 euros. »

month. ***When the persons referred to in paragraph 1 have committed the offense with fraudulent intent and have seriously harmed the financial interests of the European Union, they are punished by imprisonment from 4 months to 5 years. The financial interests of the European Union must in any case be considered seriously harmed when the damage amounts to more than 100,000 euros.***"

Art. 205[261]
When customs and excise officers find that a trader's accounting books, commercial records or commercial documents contain data which are not consistent concerning the purchase and sale of goods subject to import duties or excise duties, these books, records and documents may be invoked in support of duty evasion until proven otherwise.

32 The area of tax and customs investigations is highly important for the PIF *Acquis*:

Case Study 1: Tax and Customs investigation in Luxembourg

33



Case-Study

A study outlined the typical "look" of a tax and customs investigation in Luxembourg. The customs officials will act according to their duties and try to solve the practical issue by means of the Luxembourgish law.[262] See organigramme on Customs Website.

(d) Fiscal Supervision

34 The Ministry of Finance supervises the area of customs and VAT duties:

35

Art. 208
(1) With a view to preventing fraud, the Minister of Finance is authorized to organize[263], according to the bases which he determines, the supervision and regulation of work in establishments or factories whose products are subject to "duties excise". Unless they are already sanctioned by another legal provision, breaches of the measures arrested are punishable by a fine of "125.00 to 625.00 euros."

[261] **Art. 205**
Lorsque les agents des douanes et accises constatent que les livres comptables, les écritures commerciales ou les documents commerciaux d'un commerçant contiennent des données qui ne sont pas concordantes concernant l'achat et la vente de marchandises soumises à des droits d'entrée ou à des droits d'accise, ces livres, écritures et documents peuvent être invoqués à l'appui d'une fraude des droits jusqu'à preuve contraire.
[262] Évaluation Nationale des Risques de Blanchiment de Capitaux et de Financement du Terrorisme, 2020.
[263] **Art. 208**
(1) En vue de prévenir la fraude, le Ministre des Finances est autorisé à organiser, d'après les bases qu'il détermine, la surveillance et la réglementation des travaux dans les établissements ou usines dont les produits sont soumis à « des droits d'accise » A moins, qu'elles ne soient déjà sanctionnées par une autre disposition légale, les infractions aux mesures qu'il arrête sont punies d'une amende de « 125,00 à 625,00 euros ».
(2) Il peut aussi faire rembourser par les intéressés les frais occasionnés par la surveillance de leurs établissements ou usines. Eventuellement ces frais peuvent être recouvrés par voie de contrainte conformément aux dispositions des articles 313 et 314.

(2) He may also have the interested parties reimburse the costs occasioned by the supervision of their establishments or factories. If necessary, these costs may be recovered by coercion in accordance with the provisions of articles 313 and 314.

The law on the Customs and Excise Administration has an equal provision: **36**

Art. 2[264]
1) The customs and excise administration, placed under the immediate authority of the Minister of Finance, is entrusted to a director who is the head of administration.
(2) It includes management, the acceptance and verification service as well as the monitoring and control service.

(5) Administrative Provisions in the Area of Structural Funds and Internal Policies = Expenditure

(a) ESF+ and ESFR Fund (Special Laws)

The ESF+ Funds Area is regulated by various Acts according to Luxembourg's own funding portal: "Law of June 8, 1999 on the Budget, Accounting and State Treasury[265]: **37**

It is important to mention that the State Revenue stems partly from **EU allocations**. The Budget Act states in **Chapter 10. - State revenue**, which rules apply and how expenditure is regulated:

Art. 38
All State revenue must be collected on behalf of the State, allocated to an article of the budget and entered in the State accounts.

Art. 39
Revenues not yet allocated are allocated by the minister having the budget in his or her attributions, who sets the fiscal year as well as the budget item to which the allocation is made.

Chapter 11 – State expenditure
Art. 47
All state expenditure must be budgeted and entered in state accounts.

[264] **Art. 2**
(1) L'administration des douanes et accises, placée sous l'autorité immédiate du Ministre des Finances, est confiée à un directeur qui est le chef de l'administration.
(2) Elle comprend la direction, le service de recette et de vérification ainsi que le service de surveillance et de contrôle.
[265] Loi du 8 juin 1999 sur le Budget, la Comptabilité et la Trésorerie de l'Etat.

Art. 48
Any credit request made outside the annual budget must indicate the ways and means of covering the expense.

Art. 49
Expenses can only be paid if they have been previously committed, liquidated and authorised.

Art. 50
(1) Current expenditure includes in particular State operating expenditure, income transfers as well as interest and ancillary charges on the public debt.
(2) Capital expenditure consists in particular of investment expenditure carried out directly by the State, capital transfers, State participation in the capital of private or public companies, reimbursement of principal of the public debt, as well as the granting of credit to the public and private sectors.

Art. 51
Any measure likely to lead to expenditure charged to the budget must be the subject of a commitment proposal by the authorizing officer.

Art. 52
Expenditure may only be committed and authorized within the limits of the voted appropriations without prejudice to the provisions provided for in Articles 16, 17 and 18.

Art. 53
(1) Current expenses which recur regularly at fixed deadlines may be the subject of a commitment proposal. Provisional investment. Individual commitments covered by such provisional commitments are not to be submitted separately subject to the control of the financial controller.
(2) Individual commitments made by the authorizing officer may not exceed the amount of the provisional commitment which covers them.

Art. 54
For specific expenditure, the minister in charge of the budget may set thresholds below which the commitment should not be the subject of a commitment proposal.

38 Besides these main rules on expenditure, there are several other Codes, which contain rules on the expenditure in special areas:

- Law of 8 April 2018 on public procurement and the regulations adopted in its execution[266] **39**
- Labor Code[267]
- Regulation of the Government in Council of 10 January 2014 setting the allowances provided for in Articles 20 (1), 22 and 23 (1) of the amended Grand-Ducal Regulation of 5 August 1993 on travel and subsistence expenses as well as on allowances for relocation of civil servants and employees[268]
- Grand-Ducal Regulation of 14 June 2015 on travel and accommodation expenses as well as on moving allowances for civil servants and State employees[269]
- Regulation of the Government in Council of 19 June 2015 fixing the mileage allowance for cars used for business trips[270]."[271]

Further Acts, which apply e.g. for the **ESFR Fund area are**: **40**

- Grand-ducal regulation of 8 April 2018 implementing the law of 8 April 2018 on public procurement and modifying the threshold provided for in article 106 point 10° of the amended municipal law of 13 December 1988
- Law of 8 April 2018 on public procurement.[272]

The **Budget Act** stipulates a certain relevance of the General Inspectorate of Budget and Finance: **41**

Chapter 19 – Missions of the General Inspectorate of Finance **42**
Art. 84
Paragraph 1 of article 2 of the amended law of March 10, 1969 establishing a general inspectorate of finances is replaced by the following provisions: "The General Inspectorate of Finance prepares the preliminary draft law concerning the State revenue and expenditure budget according to the directives of the Minister having the budget in his or her attributions and on the basis of the proposals budgets formulated by the ministerial departments. At the request of the Minister having the budget in his attributions, the inspection issues an opinion on the projects and proposals the realization of which is likely to have an impact on the finances of the State.

[266] Loi du 8 avril 2018 sur les marchés publics ainsi que les règlements pris en son exécution.
[267] Code du Travail.
[268] Règlement du Gouvernement en Conseil du 10 janvier 2014 fixant les indemnités prévues aux articles 20 (1), 22 et 23 (1) du règlement grand-ducal modifié du 5 août 1993 sur les frais de route et de séjour ainsi que sur les indemnités de déménagement des fonctionnaires et employés de l.
[269] Règlement grand-ducal du 14 juin 2015 sur les frais de route et de séjour ainsi que sur les indemnités de déménagement des fonctionnaires et employés de l'État.
[270] Règlement du Gouvernement en Conseil du 19 juin 2015 portant fixation de l'indemnité kilométrique pour les voitures utilisées pour voyages de service.
[271] See https://fonds-europeens.public.lu/fr/boite-outils/legislation/nationale/fse.html. Accessed 30 June 2026.
[272] Loi du 8 avril 2018 sur les marchés publics.

43 **Art. 85**
Paragraph 1 of Article 3 of the aforementioned amended law of 10 March 1969 is replaced by the following text: "The General Inspectorate of Finance prepares, at the request of the minister in charge of the budget, draft financial programming and budgetary and collaborates in the work of economic and social programming.

Art. 86
The amended law of 10 March 1969 establishing a general finance inspectorate is amended as follows: "(1) In Article 9, paragraph (2), the second paragraph is amended as follows: "eleven" instead of "eight". (2) The first sentence of paragraph (1) of Article 11 of the amended law of 10 March 1969 establishing an Inspectorate General of Finance is amended as follows: "Civil servants in the upper, middle or lower careers may be recruited from among the civil servants of the governmental administration and other public administrations to be assistants to the General Inspectorate of Finance according to the needs of the service and within the limits of budgetary appropriations.

(b) Separately Managed State Services (Gestion) and the Financial and Accounting Management Rules

44 In the area of the **financial and accounting management** a very important Grand-Ducal Regulation applies.

45 The Grand Ducal Regulation of 3 February 2006 laying down the financial and accounting management rules applicable to separately managed State services as well as the procedures for controlling this management, (Mém. A – 34 of February 24, 2006, p. 639) Edited by:
Grand-ducal Regulation of 20 February 2007 (Mem. A – 25 of 2 March 2007, p. 549)
Grand-ducal Regulation of 11 January 2008 (Mém. A – 6 of 16 January 2008, p. 66)
Grand-ducal Regulation of 1 April 2011 (Mém. A – 79 du 27 avril 2011, p. 1260)
Grand-ducal Regulation of 24 January 2022 (Mém. A – 42 of 27 January 2022)
Grand-ducal Regulation of 23 December 2022 (Mém. A – 650 of 23 December 2022).
Consolidated version applicable on December 27, 2022
Chapter 1 – Service Budget
Art. 1st.
The separately managed State service, hereinafter referred to as "the service", draws up, no later than 1 March of each financial year, a draft budget of all the revenue and all the expenditure to be made by it during the next exercise.

(c) Public Procurement Law

46 Audits and special controls for the compliance with the administrative provisions are foreseen by the Public Procurement Law:

Book IV – Governance and international obligations
Title I – Governance Chapter I – Follow-up of the application of the rules relating to public procurement

Art. 261

(1)[273] The application of the rules relating to the award of public contracts is controlled by the competent authorities, bodies and structures.

Where audit authorities or structures identify, on their own initiative or after being informed of them, specific violations or systemic problems, they must be empowered to report them to national audit authorities, courts or other authorities or structures competent.

[273] Titre Ier - Gouvernance
Chapitre Ier - Suivi de l'application des règles relatives aux marchés publics
Art. 261
(1) L'application des règles relatives à la passation des marchés publics est contrôlée par les autorités, organismes et structures compétentes.
Lorsque les autorités ou structures de contrôle constatent, de leur propre initiative ou après en avoir été informées, des violations précises ou des problèmes systémiques, elles doivent être habilitées à les signaler aux autorités nationales d'audit, aux juridictions ou aux autres autorités ou structures compétentes.
(2) Les résultats des opérations de contrôle réalisées conformément au paragraphe 1er sont rendus publics via des moyens d'information appropriés. Ces résultats sont également mis à la disposition de la Commission européenne; ils peuvent notamment être intégrés dans les rapports de contrôle visés au paragraphe 4.
(3) Sans préjudice des procédures générales et des méthodes de travail mises en place par la Commission européenne pour ses communications et contacts avec les États membres, le ministre ayant les Travaux publics dans ses attributions est désigné comme point de référence pour la coopération avec la Commission européenne en ce qui concerne la législation relative aux marchés publics.
(4) Afin de permettre au ministre ayant les Travaux publics dans ses attributions, de présenter à la Commission européenne, le 18 avril 2017 au plus tard, et tous les trois ans par la suite, un rapport de contrôle portant sur les questions détaillées à l'alinéa qui suit, les autorités, organismes et structures visées au paragraphe 1er lui transmettent, annuellement et par écrit, les informations nécessaires à cette fin, en fonction de leurs domaines de compétence respectifs.
Le rapport de contrôle visé à l'alinéa qui précède intègrera:
(a) le résultat des opérations de contrôle visées au paragraphe 1er;
(b) le cas échéant, des informations sur les causes les plus fréquentes de mauvaise application des règles ou d'insécurité juridique, y compris d'éventuels problèmes structurels ou récurrents dans l'application des règles, sur le niveau de participation des PME aux procédures de passation des marchés publics ainsi que sur la prévention, la détection et le signalement adéquat des cas de fraude, de corruption, de conflit d'intérêts et d'autres irrégularités graves dans le cadre de la passation de marchés;
Aux fins du tiret qui précède, on entend par « PME » l'entreprise qui est définie dans la recommandation 2003/361/CE de la Commission européenne du 6 mars 2003 concernant la définition des micro, petites et moyennes entreprises.
(c) pour les marchés qui auraient relevé des Livres II et III si leur valeur avait dépassé le seuil applicable fixé aux articles 52 et 98 de la loi, un rapport statistique présentant une estimation de la valeur totale agrégée de ces marchés au cours de la période concernée. Cette estimation peut notamment être fondée sur des données disponibles en vertu des obligations nationales en matière de publication ou sur des estimations fondées sur un échantillonnage;
(d) des informations sur leur organisation institutionnelle en rapport avec la mise en œuvre, le suivi et le contrôle de l'application des règles de la loi sur les marchés publics, ainsi que sur les initiatives nationales prises pour fournir des orientations ou une assistance lors de la mise en œuvre des règles de l'Union relatives aux marchés publics ou répondre aux difficultés qui se posent lors de la mise en œuvre de ces règles.
(5) Lorsque la Commission européenne le demande, le ministre ayant les Travaux publics dans ses attributions lui fournit des informations sur la mise en œuvre pratique des politiques stratégiques nationales en matière de marchés.

(2) The results of the control operations carried out in accordance with paragraph 1 are made public via the appropriate means of information. These results are also made available to the European Commission; they may in particular be included in the control reports referred to in paragraph 4.
(3) Without prejudice to the general procedures and working methods put in place by the European Commission for its communications and contacts with the Member States, the Minister in charge of Public Works is designated as the point of reference for cooperation with the European Commission in with regard to public procurement legislation.
(4) In order to enable the Minister in charge of Public Works to submit to the European Commission, by 18 April 2017 at the latest, and every three years thereafter, a monitoring report covering the issues detailed in paragraph below, the authorities, organizations and structures referred to in paragraph 1 send it, annually and in writing, the information necessary for this purpose, according to their respective areas of competence.
The inspection report referred to in the preceding paragraph will include:
(a) the result of the control operations referred to in paragraph 1;
(b) where appropriate, information on the most frequent causes of poor application of the rules or legal uncertainty, including any structural or recurrent problems in the application of the rules, on the level of participation of SMEs in procurement procedures public procurement as well as on the prevention, detection and adequate reporting of cases of fraud, corruption, conflict of interest and other serious irregularities in the context of procurement;
For the purposes of the preceding indent, “SME” means the enterprise defined in European Commission Recommendation 2003/361/EC of 6 March 2003 on the definition of micro, small and medium-sized enterprises.
(c) for contracts which would have come under Books II and III if their value had exceeded the applicable threshold set in Articles 52 and 98 of the law, a statistical report presenting an estimate of the total aggregate value of these contracts during the period concerned. This estimate may in particular be based on data available under national publication obligations or on estimates based on sampling;
(d) information on their institutional organization in relation to the implementation, monitoring and control of the application of the rules of the law on public procurement, as well as on the national initiatives taken to provide guidance or assistance during the implementation of Union rules on public procurement or to respond to difficulties which arise when implementing these rules.
(5) When requested by the European Commission, the Minister in charge of Public Works provides it with information on the practical implementation of national strategic procurement policies.

(6) Administrative Provisions in the Area of the Common Organisation of the Markets = Expenditure

In the area of the common organization of the markets the main Acts stem from the agriculture sector. Since the **MAF 2021–2027** entered into force, Luxembourg has passed various adoption laws, such as: **48**

***Loi du 26 avril 2022 relative aux contrôles officiels des produits agricoles et portant abrogation de**:* **49**
1° *la loi modifiée du 24 juillet 1909 sur le régime des vins et boissons similaires*;
2° *la loi du 8 juin 1984 fixant le cadre général pour l'établissement des règles concernant la commercialisation du bétail de boucherie*.

Nota bene: The special control rights, which are enshrined in these acts are displayed below in full text (see → Investigative powers in the area of common organization of the markets, structural funds area).

(7) Administrative Provisions in the Area of Direct Expenditure

Special rules in the **area of direct expenditure** might exist in the Public Procurement Law. But as the direct expenditure is controlled by the Commission itself without the help of national authorities, there are no special provision to be named here. **50**

g) Investigative Powers

In the next part the investigative powers shall be **explored by their full law text** in more depth than before and as an annex to the administrative provisions and the presentation of the relevant competent authorities in Luxembourg in an external investigation of OLAF – both parts, which were mentioned above already. **51**

aa. Investigative Powers in the Area of Customs Duties and VAT (General Tax Code)

(1) Customs Area

In the area of the customs and excise duties (revenue area) the **Law of 9 June 1994**, the purpose of which is to empower customs administration agents to exercise certain general police powers, applies.[274] **52**

[274] Loi du 9 juin 1994 ayant pour objet d'habiliter les agents de l'administration des douanes à exercer certaines attributions de la police générale.

53 *Customs Investigations Measures 2:*

	**Measures see Law of 9 June 1994, the purpose of which is to empower customs administration agents to exercise certain general police powers**

Art. 1er

Customs and excise administration officers are empowered, under the same conditions and with the same powers as general police officers, to carry out checks on persons at borders, which is instituted for a limited period when public order or national security so require, in accordance with article 2 paragraph 2 of the Convention implementing the Schengen Agreement of 14 June 1985, signed in Schengen on 19 June 1990 and approved by the law of 3 July 1992. During these checks, they will be able to:

- refuse the foreigner entry into the country, in accordance with the legislation on the foreigners' police,
- Investigate and record offenses committed when crossing the border.

Art. 2

The **agents of the customs administration** retain,[275] within the framework of the controls at the borders carried out in conformity with article 1 above, as well as on the occasion of the controls carried out on the whole of the national territory within the framework **powers conferred on them by other legal and regulatory provisions**:
to) persons who are the subject of a court order,
b) persons against whom there are serious indications of having committed a crime or misdemeanour, with a view to the application of article 39 of the criminal investigation code.
They will immediately inform the Gendarmerie or Police unit with territorial jurisdiction and hand over the detained person.
If necessary, customs officers may be requisitioned by the Minister of Justice in order to carry out checks on persons inside the territory.

[275] **Art. 2**
(a) Les agents de l'administration des douanes conservent, dans le cadre des contrôles aux frontières effectués conformément à l'article 1er ci-dessus, ainsi qu'à l'occasion des contrôles effectués sur l'ensemble du territoire national dans le cadre des pouvoirs qui leur sont conférés par d'autres dispositions légales et réglementaires:
Aux personnes qui font l'objet d'une décision judiciaire,
(b) les personnes à l'encontre desquelles il existe des indices sérieux de commission d'un crime ou d'un délit, en vue de l'application de l'article 39 du code d'instruction criminelle.
Ils informent immédiatement l'unité de gendarmerie ou de police territorialement compétente et lui remettent la personne retenue.
En cas de nécessité, les agents des douanes peuvent être réquisitionnés par le ministre de la justice pour procéder au contrôle des personnes à l'intérieur du territoire.
A cette occasion, ils peuvent retenir les personnes dans les conditions visées ci-dessus.

On this occasion, they may retain the persons under the conditions referred to above. Nota bene: For tobacco and alcohol different acts exist (*Règlements* mostly), which regulate different powers. They cannot be displayed here.

General Customs and Excise Act
Art. 174 et seq. Customs Law (see below for the full provision).

(2) VAT Area

The VAT Act itself contains no specific investigative powers. Instead, the other tax regulation and administrative procedure codes are applicable. **54**

bb. Investigative Powers in the Area of Structural Funds and Internal Policies

The European Regional policy should contribute to increasing growth, competitiveness and employment by incorporating the Union's priorities for sustainable development as defined at the Lisbon European Council and at the Goteborg European Council (see Art. 174, 175 TFEU).[276] **55**

(1) General Introduction

In the area of **cohesion policy legislation and the distribution of EU structural funds money**, it is important to take a look at the single provisions. Even if Luxembourg, in the heart of the continent of Europe, is a very small country, there is still money spend for cohesion action. On 7th December 2022 the EU commission announced that: "In 2021–2027, Luxembourg will benefit from €67 million in Cohesion Policy funding to accelerate the country's green transition, finance innovation and digitisation, increase the employment rate and improve local social services."[277] **56**

The EU Commission has set-up a **Partnership Agreement with Luxembourg** for the achievement of this aim. **57**

***Accord de partenariat* – Grand-Duché de Luxembourg**

This accord plays a very important role for inspections. It can be guessed that a low percentage of actions will be prone to fraudulent activities. Therefore, the applicable national laws, which allow inspections, audits and controls will be regulated within these laws as well. **58**

[276] Bovis 2010.
[277] EU Commission, EU Cohesion Policy: more than €67 million for Luxembourg to support its green and digital transition, jobs and inclusion, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7524; Bonnemains L, Campagno M, Kessler B 2018, passim.

59 It should be considered that Luxembourg has set-up a **Platform and Website for the distribution, allocation and management of the spending of these EU funds**.

See → https://fonds-europeens.public.lu/fr.html.

60 This page calls for proposals and contains information about funding. It enumerates the Responsible managing authorities.



Source: https://fonds-europeens.public.lu/fr.html.

61 Luxembourg has a **Monitoring Committee for the spending** of these money sums.[278] An applicant or beneficiary, for example in the area of the EFS+ Fund must use an ID Card (RCDevs, LUXTRUST™) [279]. These ID cards might be prone to computer fraud if a fraudster tries to obtain money via an ESF+ Fund.[280]

(2) Case Study ERDF Funding Fictious Case

62 *Case Study 2*: *EGTC Interreg Greater Region/ERDF Spending in Luxembourg Fictious Case Scenario: "School Adventure Trip" vs. Eligible costs"*



Fictious Case-Study

The following call is published and beneficiaries apply to it:

Fund: ERDF Programme: Interreg Greater Region 2021-2027 Call for projects from: Fall 2023 Fund: ERDF Program: Interreg Greater Region 2021-2027 Period:

2021-2027 Responsible managing authority: Ministry of Energy and Spatial Planing
Department of Spatial Planning

Grand Est Regional Council
EGTC Interreg Greater Region Managing Authority
Contact:
Joint Secretariat
11, bd JF Kennedy

[278] Ministerial decree of 12 January 2023 appointing the members of the Monitoring Committee for the 2021-2027 ERDF programming period/ *Arrêté ministériel du 12 janvier 2023 portant nomination des membres du Comité de suivi de la période de programmation 2021-2027 FEDER.*
[279] See https://bit.ly/4mO83xe. Accessed 30 June 2026.
[280] For the competence of the EPPO in Luxembourg in such a case of a suspicion for a computer fraud offence see part B. above within this compendium on Luxembourg (and the EPPO's vs. OLAF's powers within the country).

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Eligible area: The Greater Region including Luxembourg
Strategic objective to be co-financed: A Greater Region closer to citizens.
Promote integrated and inclusive local development in social, economic and environmental terms, culture, natural heritage, sustainable tourism and security, in areas other than urban areas.
Eligible beneficiaries: Associations, small towns, schools, social and solidarity economy structures, etc.
Eligible expenses: Cross-border actions carried out by small structures based on the territory of cooperation of the Interreg Greater Region program on various themes such as: citizenship, youth, inclusion, culture, education, sport, history, arts, environment, etc. The maximum amount of co-financing is €30,000 per small project.
European budget available:

- 2.5 million euros for the period 2020-2027
- Co-financing rate:
- 90% of the total cost of the small project
- Access to the IT platform under:
- http://www.interreg-gr.eu/fr/interreg-vi-2021-2027-fr-2/
- Start of call: Fall 2023 End of call: End of 2023

Fictious Case Scenario:
A school applies. The head and dean of the school have not much time to apply for the call. When writing the proposal he applies for a youth-project aiming at presenting school attenders the results of climate change. He does not read "eligible costs" and thinks that he could easily use the money in two ways; first for the project aim and for a great school adventure with an upper-class that has never seen the world except when they were on vacation with their parents. He thinks a big school trip will be part of the program. If this case happened, and the proposal would be read by the relevant civil servant within the Ministry of Energy and Spatial Planning, Department of Spa-

tial Planning and the civil servant would without testing the proposal and really reading it, allocate the money to the head of the school for their spending, a two-folded suspicion for irregularities and possible fraud could arise.

Needed actions:
Clarify the circumstances
Get access to the proposal and drafts
Minutes and Summons with the head of the school
Minutes and summons with the civil servant
Investigations according to Art. 3 And 4 (civil servant)
Collecting information:
- Art. 3 and 4 OLAF Regulation in combination with the relevant national law.

Deciding on Investigation:

- Art. 5 OLAF Regulation

If an investigation, is initiated officially, a final report will be needed in the end (see Art. 11 OLAF Regulation).

(3) Rules from the Budget Act

63 The Budget Act, which applies in the area of structural funds contains specific control rights:

Chapter 8.1. – Authorizing officers
Art. 22
(1) The authorizing officer has sole competence to commit, liquidate and order expenditure, ascertain the rights to be recovered and issue recovery orders.
(2) The authorizing officer engages, liquidates and authorizes under his responsibility the expenditure charged to the budgetary appropriations made available to him. He must ensure the legality and regularity of his acts and respect the ceilings of budgetary appropriations.
(3) Members of the Government shall have the power of authorizing officer for expenditure and revenue falling within their department government, who may delegate signing authority to public servants in accordance with terms and conditions set by regulation grand-ducal. In terms of tax revenue, this competence is exercised by the tax authorities in accordance with the laws and regulations in force.
(4) By Grand-Ducal decree, one or more members of the Government may be authorized either exclusively or jointly with the competent minister to incur and authorize expenditure from the budgetary appropriations of ministerial departments not falling within their competence.

Art. 23
The authorizing officer must use budget appropriations in accordance with the principles of sound financial management.

Chapter 8.2. – Financial controllers
Art. 24 (Law of December 22, 2000)
"(1) The financial controller is responsible for controlling the commitment and authorization of all expenditure as well as the control of the liquidation of all non-fiscal revenue coming under the ministerial department or departments placed under its control." [281]
(2) He exercises his control on documents and as far as necessary on the spot.
(3) With regard to expenditure, the purpose of control is to establish:
(a) the availability of credits;
(b) the accuracy of the budgetary and accounting allocation;
(c) the compliance of the expenditure with the laws, regulations, agreements and related government or ministerial decisions;
(d) the regularity of supporting documents;
(e) the correct execution of internal controls by the administration and compliance with procedures.
(4) With regard to non-tax revenue, the purpose of the audit is to establish:
(a) the accuracy of the budgetary and accounting allocation;
(b) compliance of the recipe with the relevant laws, regulations, agreements and governmental or ministerial decisions;
(c) the regularity of the supporting documents;
(d) the correct execution of internal controls by the administration and compliance with procedures.

[281] **Art. 24** (Loi du 22 décembre 2000)
« (1) Le contrôleur financier est chargé du contrôle de l'engagement et de l'ordonnancement de toutes les dépenses ainsi que du contrôle de la liquidation de toutes les recettes non fiscales relevant du ou des départements ministériels placés sous son contrôle."
(2) Il exerce son contrôle sur pièces et pour autant que de besoin sur place .
(3) En matière de dépenses le contrôle a pour objet de constater:
(a) la disponibilité des crédits;
(b) l'exactitude de l'imputation budgétaire et comptable;
(c) la conformité de la dépense aux lois, règlements, conventions et décisions gouvernementales ou ministérielles afférentes;
(d) la régularité des pièces justificatives;
(e) l'exécution correcte des contrôles internes par l'administration et le respect des procédures .
(4) En matière de recettes non fiscales le contrôle a pour objet de constater:
(a) l'exactitude de l'imputation budgétaire et comptable;
(b) la conformité de la recette aux lois, règlements, conventions et décisions gouvernementales ou ministérielles afférentes;
(c) la régularité des pièces justificatives;
(d) l'exécution correcte des contrôles internes par l'administration et le respect des procédures .

(4) Inspection and Control Rights from the Regulation of the Financial and Accounting Management

64 **Grand-Ducal Regulation of 3.2.2008 setting the applicable financial and accounting management rules to the separately managed State services**

Chapter 3 Art. 9 (Reg. g.-d. of January 11, 2008)

"(1) The expenditure of the service is committed, liquidated and paid without the intervention of the financial controller, with the exception of remuneration expenses referred to in Article 3, paragraph (7)." (Reg. g.-d. of January 24, 2022)

"(1bis) Expenditure falling under the provisions of the amended law of 8 April 2018 on public procurement must be committed to the budget and subject to the visa of financial control in accordance with article 55 of the amended law of 8 June 1999 on the budget, accounting and treasury of the State.

(2) The minister in charge of the service may, depending on the nature of the service's activities, supplement the rules to be observed with regard to the execution of the budget of the service appearing in this Grand-Ducal regulation.

Art. 10

(1) At the end of each quarter, the service communicates to the Minister in charge of the service the detailed statement of all revenue collected and expenditure incurred relating to the current financial year.[282]

(2) The minister in charge of the department appoints officers responsible for internal control of financial management and accountant of the service and decides on the terms and methods of internal control", which are to be communicated to the minister having

[282] **Art. 10**

(1) Le service communique à la fin de chaque trimestre au ministre ayant le service dans ses attributions l'état détaillé de l'ensemble des recettes perçues et des dépenses effectuées se rapportant à l'exercice en cours .

(2) Le ministre ayant le service dans ses attributions désigne des agents chargés du contrôle interne de la gestion financière et comptable du service et décide des modalités et des méthodes du contrôle interne", qui sont à communiquer au ministre ayant le Budget dans ses attributions" 1 (Règl. g.-d. du 24 janvier 2022) « Un contrôle tel que prévu par la loi modifiée du 8 juin 1999 sur le budget, la comptabilité et la trésorerie de l'État dans son article 24 est à mettre en place lorsque les dépenses du Service ont dépassé le seuil de 10 000 000 euros lors des deux exercices précédents. »

(3) Les agents « chargés du contrôle interne » 2 peuvent prendre connaissance et se faire présenter tous les pièces et documents qu'ils jugent indispensables à l'accomplissement de leur mission.

(4) « À chaque contrôle lors duquel les agents chargés du contrôle interne constatent une irrégularité concernant la gestion financière et comptable du Service, ils" 1 établissent un rapport de mission contradictoire et le transmettent au ministre ayant le service dans ses attributions qui décide des suites à lui réserver.

(5) La direction du contrôle financier est chargée du contrôle externe (. . .) 2 des opérations effectuées par le service suivant les modalités arrêtées par le ministre ayant le budget dans ses attributions. A cette fin elle peut prendre connaissance des documents mis à la disposition du contrôle interne et généralement de toutes les écritures du service. (Règl. g.-d. du 24 janvier 2022) « Le ministre ayant le Service dans ses attributions communique à la Direction du contrôle financier le rapport annuel du contrôle interne, comprenant les rapports de mission établis conformément au paragraphe 4 au plus tard pour le 31 mars de l'exercice suivant. » Le rapport de contrôle « annuel »1 effectué par la direction du contrôle financier accompagné de la prise de position du ministre ayant le service dans ses attributions est transmis au ministre ayant le budget dans ses attributions.

the Budget within its powers."1 (Reg. g.-d. of January 24, 2022)"A control as provided for by the amended law of June 8, 1999 on budget, accounting and cash flow of the State in its article 24 is to be put in place when the expenses of the Service have exceeded the threshold of 10,000,000 euros in the two previous financial years."
(3) The agents "responsible for internal control" 2 may examine and be presented with all the items and documents that they deem essential for the accomplishment of their mission.
(4) At each control during which the agents responsible for internal control find an irregularity concerning the financial management clerk and accountant of the Service, they" **draw up a contradictory mission report** and send it to the minister responsible for the service. in its attributions which decides on the continuations to be reserved to him.
(5) The **Financial Control Department is responsible for the external control** (..) 2 of the operations carried out by the department in accordance with the methods adopted by the minister having the budget in his attributions. To this end, it may read the documents made available to internal control and generally to all service records. (Reg. g.-d. of January 24, 2022) "The Minister having the Service in his attributions sends the Financial Control Department the annual report of the control internal, including the mission reports drawn up in accordance with paragraph 4 at the latest by March 31 of the financial year following." The "annual" control report1 carried out by the Financial Control Department accompanied by the position of the Minister having the service in his attributions is transmitted to the minister having the budget in his attributions. (..)

cc. Investigative Powers in the Area of Common Market Organisations

The law from 26 April 2022 on **official controls of agricultural products** contains the next provisions **in Chapter 3 – Official inspections** **65**

Art. 4 Competence for official controls **66**
(1) Official controls of agricultural products are **carried out at all stages of production and marketing** of agricultural products by the competent authorities, which verify compliance with the provisions of this Act.[283]
(2) The Minister may delegate the performance of official controls and other official activities in respect of agricultural products to authorities other than the competent authorities or to delegated bodies.

[283] **Chapitre 3 – Contrôles officiels**
Art. 4 Compétences en matière de contrôles officiels
(1) Les contrôles officiels des produits agricoles sont réalisés, à tous les stades de production et de commercialisation des produits agricoles, par les administrations compétentes qui vérifient le respect des dispositions de la présente loi.
(2) Le ministre peut déléguer la réalisation des contrôles officiels et des autres activités officielles des produits agricoles à des administrations autres que les administrations compétentes ou à des organismes délégataires.

Art. 5 Powers of control

(1)[284] The agents of the competent administrations, as well as of the administrations and delegated bodies designated in accordance with Article 4, paragraph 2, have free access to the premises and to all parts of the operators' installations, and are authorized to:

1° request communication of all the registers, all the writings and all the documents relating to the agricultural products covered by this law, as well as to the animals producing these products;

2° to access the data of the IT systems of the operators within the framework of the official controls provided for by this law;

3° photograph the agricultural products, installations, premises, sites and means of transport used, subject to this law;

4° carry out or have carried out measurements and examinations of a technical and scientific nature of the installations, premises, sites and means of transport used;

(5) take, for the purposes of examination or analysis, samples of agricultural products. Samples are taken against delivery of an acknowledgment of receipt. part of the sample, sealed or sealed, is given to the operator of the installation, premises, site or means of transport used or his representative, unless the latter expressly waives it or that there are technical reasons against it. The owner or holder of the samples taken will be compensated at the current price of the value of these samples, unless he expressly waives it or in the event of non-compliance of the agricultural products;

[284] **Art. 5 Pouvoirs de contrôle**

(1) Les agents des administrations compétentes, ainsi que des administrations et des organismes délégataires désignés conformément à l'article 4, paragraphe 2, ont librement accès aux locaux et à toutes les parties des installations des opérateurs, et sont habilités à:

1°demander communication de tous les registres, de toutes les écritures et de tous les documents relatifs aux produits agricoles visés par la présente loi, ainsi qu'aux animaux producteurs de ces produits;

2° accéder aux données des systèmes informatiques des opérateurs dans le cadre des contrôles officiels prévus par la présente loi;

3° photographier les produits agricoles, installations, locaux, sites et moyens de transports utilisés, soumis à la présente loi;

4° effectuer ou faire effectuer des mesurages et examens de nature technique et scientifique des installations, locaux, sites et moyens de transport utilisés;

5° prélever, aux fins d'examen ou d'analyse, des échantillons des produits agricoles. Les échantillons sont pris contre délivrance d'un accusé de réception. Une partie de l'échantillon, cachetée ou scellée, est remise à l'opérateur de l'installation, du local, du site ou du moyen de transport utilisé ou de son représentant, à moins que celui-ci n'y renonce expressément ou que des raisons techniques s'y opposent. Le propriétaire ou détenteur des échantillons prélevés sera indemnisé au prix courant de la valeur de ces échantillons, à moins qu'il n'y renonce expressément ou en cas de non-conformité des produits agricoles;

6° exiger de l'opérateur concerné et de son personnel toutes les informations nécessaires pour la réalisation des contrôles officiels;

7° procéder à des achats-tests de biens ou de services, si nécessaire de manière anonyme, et inspecter, analyser et tester les biens et services.

(2) L'opérateur a le droit d'accompagner les agents des administrations compétentes et des administrations et des organismes délégataires, désignés conformément à l'article 4, paragraphe 2, lors de la visite et doit faciliter les opérations de contrôle auxquelles ceux-ci procèdent.

(3) Il est rendu compte dans un rapport écrit des opérations de contrôle officiel et des constatations. Une copie du rapport écrit est délivrée à l'opérateur.

6° to require from the operator concerned and his staff all the information necessary for the performance of official controls;
7° carry out test purchases of goods or services, if necessary anonymously, and inspect, analyse and test the goods and services.
(2) The operator has the right to accompany the agents of the competent administrations and of the administrations and delegated bodies, appointed in accordance with Article 4, paragraph 2, during the visit and must facilitate the control operations to which these here proceed.
(3) Official control operations and findings shall be recorded in a written report. A copy of the written report is delivered to the operator.

If administrative offences are discovered, the judicial police may have more extensive powers to conduct further investigations into the matter: **67**

Art. 11 Investigation and finding of offenses **68**
(1)[285] In addition to the members of the Grand-Ducal Police having the status of judicial police officer or agent, the director and officials of the processing group A1 and A2 of the Administration of Technical Services for Agriculture, of the rural economy as well as the Viti-vinicultural institute may be responsible for noting infringements of this law and the regulations adopted in its execution.
(2) In the performance of their duties, the civil servants and agents referred to in paragraph 1 shall have the status of judicial police officers. They can exercise these functions throughout the territory of the Grand Duchy of Luxembourg. They note the offenses by official reports being authentic until proof of the contrary.
(3) The civil servants and agents referred to in paragraph 1 must have undergone special professional training relating to the investigation and observation of offenses as well as the penal provisions of this law. The program and the duration of the training as well as the methods of knowledge control, are decided by Grand-Ducal regulation.

[285] **Art. 11 Recherche et constatation des infractions**
(1) Outre les membres de la Police grand-ducale ayant la qualité d'officier ou d'agent de police judiciaire, le directeur et les fonctionnaires du groupe de traitement A1 et A2 de l'Administration des services techniques de l'agriculture, du Service d'économie rurale ainsi que de l'Institut viti-vinicole peuvent être chargés de constater les infractions à la présente loi et aux règlements pris en son exécution.
(2) Dans l'exercice de leur fonction, les fonctionnaires et agents visés au paragraphe 1er ont la qualité d'officiers de police judiciaire. Ils peuvent exercer ces fonctions sur tout le territoire du Grand-Duché de Luxembourg. Ils constatent les infractions par des procès-verbaux faisant foi jusqu'à preuve du contraire.
(3) Les fonctionnaires et agents visés au paragraphe 1er doivent avoir suivi une formation professionnelle spéciale portant sur la recherche et la constatation des infractions ainsi que sur les dispositions pénales de la présente loi. Le programme et la durée de la formation ainsi que les modalités de contrôle des connaissances, sont arrêtés par règlement grand-ducal.
(4) Avant d'entrer en fonction, les fonctionnaires et agents visés au paragraphe 1er prêtent devant le président du tribunal d'arrondissement de leur domicile, siégeant en matière civile, le serment suivant: « Je jure de remplir mes fonctions avec intégrité, exactitude et impartialité. »
(5) L'article 458 du Code pénal leur est applicable.

(4) Before taking office, the civil servants and agents referred to in paragraph 1 shall take before the president of the district court of their domicile, sitting in civil matters, the following oath: "I swear to perform my duties with integrity, accuracy and impartiality".
(5) Article 458 of the Penal Code is applicable to them.

Art. 12 Supervisory powers and prerogatives[286]
(1) The members of the Grand-Ducal Police within the framework of the police and the civil servants and agents referred to in Article 11, paragraph 1 may have day and night access to the installations, premises, sites of the operators and means of transport used, subject to this law and the regulations made pursuant to it, in the event of indications leading to the presumption of a serious breach of this law and its implementing regulations. They signal their presence to the operator concerned. If this is not possible, it is mentioned in the minutes. The operator has the right to accompany the members of the Grand Ducal Police and the officials and agents referred to in Article 11, paragraph 1 during the visit.
(2)[287] The provisions of paragraph 1 are not applicable to premises used for residential purposes.

[286] **Art. 12 Pouvoirs et prérogatives de contrôle**
(1) Les membres de la Police grand-ducale relevant du cadre policier et les fonctionnaires et agents visés à l'article 11, paragraphe 1er peuvent accéder de jour et de nuit aux installations, locaux, sites des opérateurs et moyens de transport utilisés, assujettis à la présente loi et aux règlements pris en son exécution, en cas d'indices faisant présumer une infraction grave à la présente loi et à ses règlements d'exécution. Ils signalent leur présence à l'opérateur concerné. En cas d'impossibilité, il en est fait mention dans le procès-verbal. L'opérateur a le droit d'accompagner les membres de la Police grand-ducale et les fonctionnaires et agents visés à l'article 11, paragraphe 1er lors de la visite.
[287] (2) Les dispositions du paragraphe 1er ne sont pas applicables aux locaux qui servent à l'habitation.
Toutefois, et sans préjudice de l'article 33, paragraphe 1er du Code de procédure pénale, en cas d'indices graves faisant présumer que l'origine de l'infraction se trouve dans les locaux destinés à l'habitation, il peut être procédé à une visite domiciliaire entre six heures et demie et vingt heures par deux officiers de police judiciaire, membres de la Police grand-ducale relevant du cadre policier ou fonctionnaires et agents visés à l'article 11, paragraphe 1er, agissant en vertu d'un mandat du juge d'instruction.
(3) Dans l'exercice des attributions prévues aux paragraphes 1er et 2, les membres de la Police grand-ducale relevant du cadre policier et les fonctionnaires et agents visés à l'article 11, paragraphe 1er sont habilités à:
1° demander communication de tous les registres, de toutes les écritures et de tous les documents relatifs aux produits agricoles visés par la présente loi, ainsi qu'aux animaux producteurs de ces produits;
2° accéder aux données des systèmes informatiques des opérateurs dans le cadre des contrôles officiels prévus par la présente loi;
3° photographier la ou les non-conformités constatées;
4° effectuer ou faire effectuer des mesurages et examens de nature technique et scientifique des installations, locaux, sites et moyens de transport utilisés soumis à la présente loi;
5° prélever, aux fins d'examen ou d'analyse, des échantillons des produits agricoles. Les échantillons sont pris contre délivrance d'un accusé de réception. Une partie de l'échantillon, cachetée ou scellée, est remise à l'opérateur, à moins que celui-ci n'y renonce expressément ou que des raisons techniques s'y opposent. Le propriétaire ou détenteur des échantillons prélevés est indemnisé au prix courant de la valeur de ces échantillons;

However, and without prejudice to article 33, paragraph 1 of the Code of Criminal Procedure, in the event of serious indications leading to the presumption that the origin of the offense is to be found in the premises intended for living quarters, it may be carried out a home search between half past six and 8 p.m. by two judicial police officers, members of the Grand Ducal Police within the police force or civil servants and agents referred to in Article 11, paragraph 1, acting by virtue of a warrant from the investigating judge.
(3) In the exercise of the powers provided for in paragraphs 1 and 2, the members of the Grand-Ducal Police within the police framework and the civil servants and agents referred to in Article 11, paragraph 1 are authorized to:
1°request communication of all the registers, all the writings and all the documents relating to the agricultural products covered by this law, as well as to the animals producing these products;
2°access data from the IT systems of the operators within the framework of the official controls provided for by this law;
3°photograph the non-conformity(ies) observed;
4°carry out or have carried out measurements and examinations of a technical and scientific nature of the installations, premises, sites and means of transport used subject to this law;
5°take samples of agricultural products for examination or analysis. The samples are taken against delivery of an acknowledgment of receipt. part of the sample, sealed or

6° en cas de contravention ou de délit, saisir et au besoin mettre sous séquestre les produits agricoles et les objets qui ont servi à commettre l'infraction ou qui devaient servir à commettre l'infraction ainsi que registres, écritures et documents les concernant;
7° interroger l'opérateur concerné et son personnel.
La saisie prévue au point 6 ne pourra être maintenue que si elle est validée dans les huit jours y non compris les samedis, dimanches et jours fériés par ordonnance du juge d'instruction. La mainlevée de la saisie prononcée par ordonnance du juge d'instruction peut être demandée en tout état de cause, à savoir:
(a) à la chambre du conseil du tribunal d'arrondissement pendant l'instruction;
(b) au juge de police, dans le cas d'une contravention;
(c) à la chambre correctionnelle du tribunal d'arrondissement lorsque celle-ci se trouve saisie par l'ordonnance de renvoi ou par la citation directe;
(d) à la chambre correctionnelle de la Cour d'appel si appel a été interjeté ou s'il a été formé un pourvoi en cassation.
La requête est déposée au greffe de la juridiction appelée à statuer. Il y est statué d'urgence et au plus tard dans les huit jours du dépôt, le ministère public et l'inculpé ou son défenseur entendus en leurs explications orales ou dûment appelés.
(4) Tout opérateur faisant l'objet des mesures prévues au paragraphe 3 est tenu, à la réquisition des membres de la Police grand-ducale relevant du cadre policier et des fonctionnaires et agents visés à l'article 11, paragraphe 1er, de faciliter les opérations auxquelles ceux-ci procèdent en vertu de la présente loi.
(5) Il est dressé procès-verbal des constatations et opérations. Une copie du procès-verbal est délivrée à l'opérateur.
(6) Les frais occasionnés par les mesures prises en vertu du présent article sont compris dans les frais de justice dont ils suivent le sort.

sealed, is returned to the operator, unless the latter expressly waives it or technical reasons prevent it. The owner or holder of the samples taken is compensated at the current price of the value of these samples;
6°in the event of a contravention or offence, seize and, if necessary, sequester the agricultural products and objects which were used to commit the offense or which were to be used to commit the offense as well as registers, records and documents relating to them;
7°interview the operator concerned and his staff.
The seizure provided for in point 6 can only be maintained if it is validated within eight days, excluding Saturdays, Sundays and public holidays, by order of the investigating judge.
The release of the seizure ordered by order of the investigating judge may be requested in any case, namely:
To) in the council chamber of the district court during the investigation;
b) to the police judge, in the case of a contravention;
vs)to the correctional chamber of the district court when it is seized by the order for reference or by the direct summons;
d) to the correctional chamber of the Court of Appeal if an appeal has been lodged or if an appeal has been lodged.
The request is filed with the registry of the court called upon to rule. It is ruled urgently and at the latest within eight days of the filing, the public prosecutor and the accused or his defender heard in their oral explanations or duly summoned.
(4) Any operator subject to the measures provided for in paragraph 3 is required, at the request of the members of the Grand-Ducal Police within the police framework and the civil servants and agents referred to in Article 11, paragraph 1, to facilitate the operations which they carry out under this law.
(5) A report of findings and operations is drawn up. A copy of the report is delivered to the operator.
(6) The costs occasioned by the measures taken by virtue of this article are included in the legal costs of which they follow.

dd. Investigative Powers in the Area of Direct Expenditure

69 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 mainly the European Commission, its agencies and delegations that manage the EU budget in this are, 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 special area. The whole direct expenditure area is **not immune to fraud**. It can

be said that it is **prone to procurement**, or procurement related fraud (causing damage to the expenditure side of the budget).
Luxembourg has an own public procurement portal.[288] OLAF describes and displays investigations in this area as follows:[289]

ee. 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 generally located in EU countries. It includes expenditure in, among others, the **following areas**: **70**

- "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.

[288] See https://marches.public.lu/fr.html. Accessed 30 June 2026.
[289] See OECD, FRAUD AND CORRUPTION IN EUROPEAN STRUCTURAL AND INVESTMENT FUNDS A SPOTLIGHT ON COMMON SCHEMES AND PREVENTIVE ACTIONS, Paris, 2019, p. 7, 14. online: https://www.ospi.es/images/documentos/archivos/Prevention-fraud-corruption-european-funds.pdf. Accessed 30 June 2026: "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 actors8. 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.

71 As a rule, national authorities are not involved in investigating fraud affecting direct expenditure."[290]

72 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.

73 *Examples*: The EU Commission supports large infrastructure projects.

74 OLAF has a **special unit**, which is competent to investigate and detect irregularities in the area of direct expenditure:

- ***Direct Expenditure - Operations and Investigations (OLAF.A.2)*** Rue Joseph II 30/ Josef II-straat 30, 1000, (postal office Box: 1049), Bruxelles/Brussel Belgium[291]

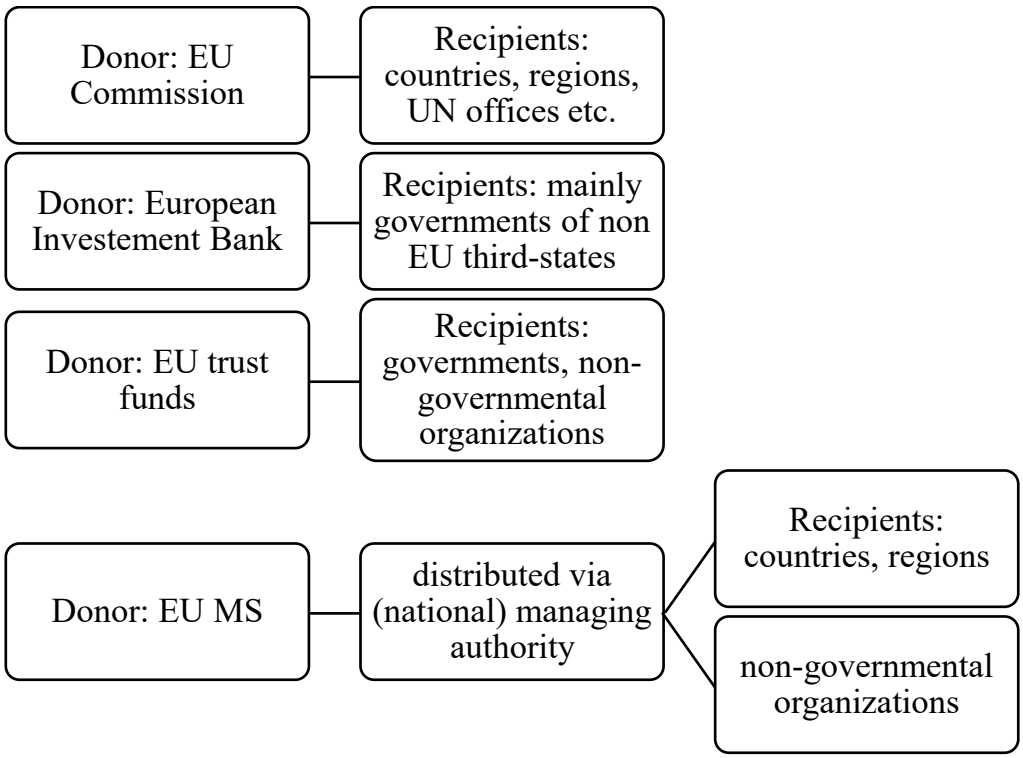
ff. Provisions in the Area of External Aid = Expenditure

75 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.[292] Like in France, this may be special institutions like intergovernmental organizations that operate from the territory and are subject to laws of the Grand-Duchy.

76 *Nota bene*: The **EU Aid explorer** can be used to discover beneficiaries and funding schemes.[293] A common fraud scheme in this area is the "**manipulation of tender processes**".[294]

[290] OLAF, Information on Investigations related to EU expenditure, https://ec.europa.eu/anti-fraud/investigations/investigations-related-eu-expenditure_hr. Accessed 30 June 2026
[291] EU, WHOisWHO, https://op.europa.eu/en/web/who-is-who. Accessed 30 June 2026.
[292] EU Commission, Funding by management mode, https://tinyurl.com/39yam557. Accessed 30 June 2026.
[293] EU external aid explorer, https://euaidexplorer.ec.europa.eu/index_en. Accessed 30 June 2026.
[294] OLAF, Success Stories, May 2022, https://tinyurl.com/3yuvhjd5. Accessed 30 June 2026.

Figure 10: EU External Aid/Expenditure: Art. 3 OLAF Regulation On-the-spot Inspections to Discover EU External Aid Expenditure-related Frauds



For the investigations in the area of external aid OLAF can make use of Administrative Cooperation Agreements (ACAs).[295] **77**

h) Protection of Information

aa. Tax Secrecy (General Tax Code)

§ 22 AO[296] **78**

(1) Tax secrecy is **inviolable**.

(2) A breach of tax secrecy is guilty:

1. Whoever, without authorization, discloses the circumstances of a taxpayer that became known to him as a public official or officially consulted expert in the taxation

[295] 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://tinyurl.com/s8cak9hu. Accessed 30 June 2026.

[296] **§ 22**

(1) Das Steuergeheimnis ist unverletzlich.

(2) Einer Verletzung des Steuergeheimnisses macht sich schuldig:

1. wer Verhältnisse eines Steuerpflichtigen, die ihm als Amtsträger oder amtlich zugezogenem Sachverständigen im Besteuerungsverfahren, im Steuerstrafverfahren oder auf Grund einer Mitteilung einer Steuerbehörde in einem anderen Verfahren bekanntgeworden sind, unbefugt offenbart;

(3) Amtsträger ist ein Beamter oder wer, ohne Beamter zu sein, dazu bestellt ist, obrigkeitliche Aufgaben wahrzunehmen.

proceedings, in criminal tax proceedings or on the basis of a notification from a tax authority in another proceeding;
2[297]. anyone who discloses without authorization the content of negotiations in tax matters in which he was involved as a public official or as an officially consulted expert;
3. anyone who, without authorization, uses a business or trade secret that has been entrusted to him or has become accessible to him as a public official or officially consulted expert in taxation proceedings or criminal tax proceedings.
(3) An official is a civil servant or who, without being a civil servant, is appointed to perform official duties.

bb. Data Secrecy

79 The data secrecy must be ensured in all areas in Luxembourg as the state of Luxembourg is bound by the EU's Data Protection Regulation.

cc. Official Secrecy within the Public Procurement Process

80 During the public procurement process, the Grand-ducal regulation of 8 April 2018 implementing the law of 8 April 2018 on public procurement and modifying the threshold provided for in article 106 point 10° of the amended municipal law of 13 December 1988 applies:

81

Art. 37[298]
Contracting authorities may impose requirements on economic operators aimed at protecting the confidentiality of the information they make available throughout the procurement procedure.

Art. 250
Contracting entities may impose on economic operators requirements aimed at protecting the confidentiality of the information they make available throughout the procurement procedure, including information made available in the context of the operation of

[297] 2. wer den Inhalt von Verhandlungen in Steuersachen, an denen er als Amtsträger oder als amtlich zugezogener Sachverständiger beteiligt war, unbefugt offenbart;
3. wer ein Geschäfts- oder Betriebsgeheimnis, das ihm als Amtsträger oder amtlich zugezogenem Sachverständigen im Besteuerungsverfahren oder im Steuerstrafverfahren anvertraut worden oder zugänglich geworden ist, unbefugt verwertet.

[298] **Section VII – Confidentialité**
Art. 37
Les pouvoirs adjudicateurs peuvent imposer aux opérateurs économiques des exigences visant à protéger la confidentialité des informations qu'ils mettent à disposition tout au long de la procédure de passation de marché.

a system of qualification, whether or not it has been the subject of an opinion on the existence of a qualification system used as a means of calling for competition. [299]

i) Investigation Reports (Customs Code, General Tax Code…)

According to the Public Procurement Law, the **follow-up** of the application of the rules of the public procurement procedure are snared in Art. 261. Art. 261 para 4 requests reports about controls, audits and inspections. **82**

Reports, so-called **mission reports** are although requested by the Budget Laws, such as the Rules on Financial and Budgetary Management in the area of separately managed state services. See e.g.: **83**

4) "At each control during which the agents responsible for internal control find an irregularity concerning the financial management clerk and accountant of the Service, they" ***draw up a contradictory mission report*** and send it to the minister responsible for the service. in its attributions which decides on the continuations to be reserved to him.

j) Single Measures regarding External Investigations of OLAF and National Authorities in Luxembourg

Single measures regarding external investigations of OLAF and national authorities in Luxembourg include interviewing and questioning of "**persons concerned**" (in relation to suspects/defendants), the taking of statements from economic operators and the interviewing and questioning of witnesses. All of these actions take place during a special administrative investigation, e.g. in the customs area, the area of structural funds or tax investigations. Thus, for all of these measures different laws might apply. Some of the actions are discovered below. **84**

aa. Inspections

A normal inspection can already be more than an audit (see above) and may have the aim to find further grounds for an irregularity complaint etc. **85**

[299] **Sous-section III – Confidentialité**
Art. 250
Les entités adjudicatrices peuvent imposer aux opérateurs économiques des exigences visant à protéger la confidentialité des informations qu'elles mettent à disposition tout au long de la procédure de passation de marché, y compris les informations mises à disposition dans le cadre du fonctionnement d'un système de qualification, que celui-ci ait fait ou non l'objet d'un avis sur l'existence d'un système de qualification utilisé comme moyen de mise en concurrence.

(1) Customs Area

86 According to the General Customs and Excise Act 1977 the Customs Département and eh Customs Agents operate like follows:

87

Chapter XIX. – Customs department
(Rmin. of July 5, 2004)
Art. 167[300]
The customs department occupies "the territory of Luxembourg customs airport as well as an area outside this territory over a width of 250 meters from the limits of this territory.

Art. 172[301]
With a view to preventing fraud, the King may regulate and in particular make subject to authorisation, the establishment of factories in the customs area.

Art. 173
(1) Within the customs area, officers are authorized to search all houses and enclosures where they would suspect the existence of prohibited stores and depots.[302]
(2) These visits may only take place between five o'clock in the morning and nine o'clock in the evening, and in the presence of a police officer. the municipal administration or an agent of the public authority appointed for this purpose by the mayor, at the risk of the agents and at their request in writing.
(3) Provided that "junior officials" are not accompanied by one of their superiors, of at least one rank "equal to that of Principal Inspector", visits can only take place with the written authorization of "the receiver of the office on closest, or the "head "of a Customs and Excise Administration inspectorate", who will ensure that they are not multiplied unnecessarily, or that the inhabitants are not exposed to vexations; agents are specially

[300] Chapitre XIX. – Rayon des douanes (Rmin. du 5 juillet 2004) Art. 167. Le rayon des douanes occupe le territoire de l'aéroport douanier de Luxembourg ainsi qu'une zone en dehors de ce terri- toire sur une largeur de 250 mètres à partir des limites de ce territoire.
[301] **Art. 172**
En vue de la prévention de la fraude, le Roi peut réglementer et notamment subordonner à autorisation, l'établissement de fabriques dans le rayon des douanes
[302] **Art. 173**
(1) Dans le rayon des douanes, les agents sont autorisés à faire des recherches dans toutes les maisons et tous enclos où ils soupçonneraient l'existences de magasins et de dépôts interdits.
(2) Ces visites ne pourront s'effectuer qu'entre cinq heures du matin et neuf heures du soir, et en présence d'un agent de l'administration communale ou d'un agent de l'autorité publique commis à cet effet par le bourgmestre, aux risques des agents et sur leur demande par écrit.
(3) Pour autant que des « agents subalternes » 1 ne soient pas accompagnés d'un de leurs supérieurs, d'un rang au moins « égal à celui d'Inspecteur principal » 1, les visites ne pourront avoir lieu que sur autorisation, par écrit, « du receveur du bureau le plus voisin, ou du « chef » 2 d'une inspection de l'Administration des douanes et accises » 1, qui veillera à ce qu'elles ne soient pas multipliées inutilement, ou à ce que les habitants ne soient pas exposés à des vexations; les agents sont spécialement responsables des pertes et dommages qu'ils pourraient occasionner, par ces visites, aux habitants

responsible for sands of the losses and damages that they could cause, by these visits, to the inhabitants

Art. 174[303]
The assistance and authorization mentioned in article 173 are not required for the immediate visit of the houses "or other buildings", located in the customs area, into which goods have been introduced or concealed shielded from the visit of the agents while they were in pursuit of them. These goods will be presumed, until proof of otherwise, form a deposit of defrauded goods falling under the prohibition of article 171.

Art. 175[304]
By extension of the provisions of article 174 and by modification of article 197, and independently of the right of seizure conferred by article 224, the agents provided with their commission, will be able to seize "within the country", when they will have followed the fraud without interruption from the customs department, with the same effect as if the seizure were carried out within the scope of this territory. They will have the right to enter without any authorization or assistance the home where they have seen the introduction of the goods thus prosecuted.

Art. 176[305]
The agents will draw up minutes of each of the visits mentioned in articles 173 to 175, whether they have or have not given rise to a seizure or contravention; this report will explain the reasons and circumstances which committed them or determined to make the visit, and will indicate in particular, in the cases provided for by article 174, the day,

[303] **Art. 174**
L'assistance et l'autorisation mentionnées dans l'article 173 ne sont pas exigées pour la visite immédiate des maisons « ou autres bâtiments » 1, situés dans le rayon des douanes, dans lesquels auront été introduites ou recelées des marchandises soustraites à la visite des agents alors qu'ils étaient à leur poursuite. Ces marchandises seront présumées, jusqu'à preuve du contraire, former un dépôt de marchandises fraudées tombant sous l'interdiction de l'article 171.

[304] **Art. 175**
Par extension des dispositions de l'article 174 et par modification de l'article 197, et indépendamment du droit de saisie conféré par l'article 224, les agents munis de leur commission, pourront saisir « à l'intérieur du pays » 1, lorsqu'ils auront suivi la fraude sans interruption depuis le rayon des douanes, et ce, avec le même effet que si la saisie était effectuée dans l'étendue de ce territoire. Ils auront le droit de pénétrer sans aucune autorisation ou assistance dans le domicile où ils auront vu introduire les marchandises ainsi poursuivies.

[305] **Art. 176**
Les agents dresseront procès-verbal de chacune des visites mentionnées aux articles 173 à 175, soit qu'elles aient ou n'aient pas donné lieu à une saisie ou contravention; ce procès-verbal expliquera les motifs et circonstances qui les ont engagés ou déterminés à faire la visite, et indiquera particulièrement, dans les cas prévus par l'article 174, le jour, l'heure et le lieu auxquels ils ont primitivement aperçu les marchandises « ou leurs moyens de transport; le trajet qu'ils ont suivi pour les rejoindre ou atteindre, et le moment auquel les marchandises auront été introduites dans la maison ou autre bâtiment visité par eux et à l'habitant ou utilisateur duquel ils devront remettre copie de cet acte. »

the hour and the place at which they first saw the goods "or their means of transport; the route they took to reach them or reach, and the time at which the goods will have been brought into the house or other building visited by them and at the inhabitant or user to whom they must submit a copy of this act."

Art. 177
The King may prescribe, within the customs area, the measures he deems necessary to prevent fraudulent importation of cattle herder.

Art. 178
"Without prejudice" to the general provisions contained in Articles 171, 173 and 174, those mentioned in Article 179 are made particularly applicable to excise duties.

Art. 179
With a view to preventing fraud, the King may regulate and in particular make subject to authorisation, the establishment, the operation and sale of shops or debits of excise goods in the customs area.

Chapter XX. – Visits and censuses
Art. 182
(1) The agents, provided with their commission, are authorized to do, at all times and places, that is to say both at night and in the day, and both outside and inside their residence, the visit of "any means of transport", which they will find or assumable loaded with goods, as well as with any goods carried (..) by individuals, and, in addition, with all persons whom they suspect of being carriers of goods, in order to make sure that there is no importing, exporting, transit or transportation contrary to law.
(2) Vessels or buildings closed and moored or at anchor are not subject to inspection during the night.
(3) (Rmin. of January 24, 2020) "If the inspection of ships cannot take place during navigation, it will be carried out instead of the destination, or, in the event of suspicion of fraud, at the first place of unloading, at the expense of the losing party and under agent liability.

Art. 183
Among the "designated means of transport" in Article 182 are included vehicles used for "POST Luxembourg"; but the trunks or packets containing the letters will be exempt from inspection, provided that they are closed or sealed by the care of the Post Office.

Art. 184
(1) In all inspections or checks as to the quantity, nature or kind of the goods, the officers therefor clerks will be able to open the "parcels" and examine their contents; they will also be required, when required, to contain them immediately, and, in any case, they must take care that, following their inspection or verification, the goods suffer no damage, under penalty of compensation"1 according to the estimate to be made by "the "head" 2 of the Inspectorate having customs and excise in its attributions" 1 in the jurisdiction of which it was committed, or if necessary by the administration, saving the interested parties their legal recourse.
(2) "When in the case of inspection of goods under seal during the journey", the agents deem, for particular reasons or serious suspicions, the opening of the parcels necessary, it may be done, but without any charge for the driver with regard to the seals which must again be affixed thereto.

Art. 185
Visits, even those referred to in Articles 173 and 174, may take place every day of the year and therefore also on Sundays and legal holidays when the need to expedite the dispatch of the goods or the interest of the administration will not allow these visits to be postponed until the next day.

Art. 186
(1) All civil servants and agents of public administrations, "in particular those of municipal administrations, police officers, rural and forest wardens,"1 as well as all bailiffs and those carrying constraints are authorized to cooperate, with customs and excise officers, in visits to observe contraventions and make seizures that will result, provided that they are provided with their commission or the document evidencing their public status, and this with the same effect as if they were particularly agents of the administration.
(2) During visits, verifications or censuses, the interested party must always be invited to attend, when it is present.

Art. 187
Independently of the various agents designated in article 186, sworn private guards have the capacity to cooperate in the research and observation of contraventions of customs laws.

Art. 188
The provisions of Articles 197 and 198 are applicable to customs fraud investigations:

Art. 189
Agents who, in execution of the legal provisions on the investigation of customs and excise fraud, practice a visit to a factory, store or any other place, including the private home of an individual, may, "if they have at least the rank of assistant auditor"1, seize and take away any books, correspondence and documents of such a nature as to establish the guilt of the offenders or to trace their accomplices.

Art. 190
(1) Agents are also authorized to compel or coerce the masters of ships which are on the seaward side, between the sea and the place of unloading or loading, to reduce the speed of their ship or to stop that -this; the boatmen or skippers of those who are along the rivers between the foreign territory until near the first office of payment, to approach or to moor their vessels at the banks; and carriers or persons who drive or transport goods within the customs area, to stop with their carriages, horses or other means of transport, or with the bundles or packages they carry.
(2) Captains, boatmen or masters of ships or vessels, as well as carriers, carters or other persons who attempt or allow themselves to evade this obligation, may be compelled to do so by the agents, by such means of rigor as will be necessary to carry out the visit and prevent fraud.
(3) When an agent has abused or made untimely use of these means, and in particular when he has used the weapons entrusted to him, elsewhere than in the territory designated above, or even without the strictest necessity, and while he still had other suitable means to ensure the execution of the law, he will be punished for this head according to the rigor of the penal code.

Art. 191
(1) By extension of section 190, "carriers" who, within "the radius of customs or outside the radius of customs", if the fraud has been followed without interruption from the customs department, will refuse to allow the inspection of "the parcels", after having been requested by the agents, and which will prevent the latter from carrying it out by means of dogs which oppose would be at their approach, will be considered as defrauding at gunpoint.
(2) The agents of the administration are authorized to use their weapons to kill the dogs so employed or used to facilitate the race of "carriers", as well as horses loaded or ridden by fraudsters, when these will not stop at their first requisition

88 Special provisions are contained in the following Articles of the same Act. They concentrate themselves on special areas such as the production sector (wine sector etc.):

Chapter XXI – Special provisions concerning inspections and inventories in terms of excise duties

Art. 193

Are subjected to the visit, between five hours of the morning and nine hours of the evening, "the factories", vineyards, enclosures, built or not built, and land used as factories or workshops, shops or any other enclosed premises, the possession or use of which is subject to the formality of an admission on the part of the administration, or of a declaration to be made to the said administration, as well as those where one carries on an industry the products of which are subject to excise duty, or are subject to any audit under the laws.[306]

Art. 194[307]

Visits may also take place at night in the buildings, factories and other places designated in article 193, if one is working there during this time. With regard to factories for which the time at which the work will begin and end must be declared, and those for which the declaration is made in a limited period, such as breweries, distilleries, the time of their activity will be understood to mean that mentioned in the declaration, even if the works were suspended.

Art. 195[308]

When the factories are not in operation, visits cannot take place before five o'clock in the morning or after nine o'clock in the evening, unless the agents are accompanied by an agent of the municipal administration or an agent of public authority committed by the mayor.

[306] **Art. 193**
Sont assujettis à la visite, entre cinq heures du matin et neuf heures du soir, « les usines » 2, vignobles, enclos, bâtis ou non bâtis, et terrains servant d'usines ou d'ateliers, boutiques ou tous autres lieux clos, dont la possession ou l'usage est assujetti à la formalité d'une admission de la part de l'administration, ou d'une déclaration à faire à ladite administration, ainsi que ceux où l'on exerce une industrie dont les produits sont soumis à l'accise, ou sont assujettis à quelque vérification en vertu des lois.

[307] **Art. 194**
Les visites pourront aussi se faire la nuit dans les bâtiments, fabriques et autres lieux désignés à l'article 193, si l'on y travaille pendant ce temps. Relativement aux fabriques pour lesquelles on doit déclarer l'époque à laquelle les travaux commenceront et finiront, et celles pour lesquelles la déclaration se fait à terme limité, telles que les brasseries, distilleries, on entendra par l'époque de leur activité celle mentionnée dans la déclaration, quand bien même les travaux seraient suspendus.

[308] **Art. 195**
Lorsque les usines ne sont pas en activité, les visites ne pourront se faire avant cinq heures du matin ou après neuf heures du soir, que pour autant que les agents soient accompagnés d'un agent de l'administration communale ou d'un agent de l'autorité publique commis par le bourgmestre.

Art. 196[309]
The "factories and buildings" must always be accessible to the agents, while they are working on them, and there must be someone on the part of those concerned who can give the necessary indications during the visit.

Art. 197[310]
With the exception of the customs department, and in the case provided for in article 174, no visit may be made to the buildings or enclosures of individuals except between five o'clock in the morning and nine o'clock in the evening, and with the authorization "from the judge to the territorially competent police court" in which the buildings or enclosures to be visited are located. This magistrate will accompany himself or will instruct his clerk or other agent of the public authority to accompany the agents in their visit.

Art. 198
(1) Requests for assistance should always be made in writing; they will state the time and place of the visit, and the name of the individual to whom it is to be made.[311]
(2) If the aforementioned assistance must be granted by the municipal administration, it will always be given at the risk and peril of the agents.
(3) In the event that the authorization of the judge of the police court is required, the written request must be made by the "2" head 1 of the Inspectorate having customs and excise in his attributions; on the other hand, the judge at the police court can only refuse authorization on the well-founded presumption that assistance was required without valid reasons.

[309] **Art. 196**
Les « fabriques et bâtiments » devront toujours être accessibles pour les agents, pendant qu'on y travaillera, et il devra s'y trouver quelqu'un de la part des intéressés à même de donner les indications nécessaires lors de la visite.
[310] **Art. 197**
A l'exception du rayon des douanes, et du cas prévu par l'article 174, on ne pourra faire aucune visite dans les bâtiments ou enclos des particuliers qu'entre cinq heures du matin et neuf heures du soir, et sur l'autorisation « du juge au tribunal de police territorialement compétent » 1 dans lequel les bâtiments ou enclos à visiter sont situés. Ce magistrat accompagnera lui-même ou chargera son greffier ou autre agent de l'autorité publique, d'accompagner les agents dans leur visite.
[311] **Art. 198**
(1) Les demandes d'assistance devront toujours être faites par écrit; elles énonceront l'heure et le lieu de la visite, et le nom de l'individu chez lequel elle doit être faite.
(2) Si l'assistance précitée doit être accordée par l'administration communale, elle sera toujours donnée aux risques et périls des agents.
(3) Dans le cas où l'autorisation du juge du tribunal de police est requise, la demande par écrit devra être faite par « le chef » de l'Inspection ayant les douanes et accises dans ses attributions"1; par contre, le juge au tribunal de police ne pourra refuser l'autorisation que sur la présomption bien fondée qu'on a exigé l'assistance sans motifs valables.

Art. 199[312]
The interested party who is present will always be invited to present the registers, receipts, declarations and other documents which could be used to ensure the effect of the visit.

Art. 200[313]
(1) At the inspection mentioned in Article 193, agents shall be required to show all tanks, boilers, cooling tanks, vessels and utensils, as well as the stores relating to the exercise of the industry whose factory or workshop they come to inspect.
(2) If the agents come to do the "stuffing",1 the workers of the factory must help them in this operation, under penalty of incurring a fine which shall not be less than "100.00 euros", and shall not exceed "300.00 euros.

In the customs area the **Grand-Ducal Regulation of 27 April 2015 concerning inspections and revenue offices of the Customs and Excise Administration applies:** **89**

We Henri, Grand Duke of Luxembourg, Duke of Nassau,
Having regard to article 14 of the modified law of July 27, 1993 concerning the organization of the customs and excise administration;
Having regard to the opinion of the Chamber of Civil Servants and Public Employees;
Our Council of State heard;
On the report of Our Minister of Finance and after deliberation by the Government in council;

Art. 1
The Customs and Excise Administration includes, in addition to the Directorate, the Revenue and Verification Service as well as the Surveillance and Control Service.

Art. 2
(1) The Acceptance and Verification Service includes an Audit, Accounting and Risk Analysis inspection, a central acceptance and acceptance offices.

[312] **Art. 199**
La partie intéressée qui se trouve présente sera toujours invitée de représenter les registres, acquits, déclarations et autres pièces qui pourraient servir à assurer l'effet de la visite.
[313] **Art. 200**
(1) A la visite mentionnée à l'article 193, on sera tenu de représenter aux agents toutes cuves, chaudières, bacs-refroidissoirs, vaisseaux et ustensiles, ainsi que les magasins tenant à l'exercice de l'industrie dont ils viennent inspecter la fabrique ou l'atelier.
(2) Si les agents viennent pour faire l'empotement, les ouvriers de la fabrique devront les aider dans cette opération, sous peine d'encourir une amende qui ne sera pas moindre que de « 100,00 euros », et n'excédera pas « 300,00 euros ».

(2) The competences of the Audit, Accounting and Risk Analysis inspection, as well as those of the central revenue, are exercised throughout the national territory.
(3) The delimitation and competence of the revenue offices of the Customs and Excise Administration are regulated in accordance with the indications in the appended table.
(4) The revenue office "Luxembourg-Howald Customs Centre" has exclusive national competence with regard to manufactured tobacco and energy products.
(5) The revenue office "East Customs Center" in Grevenmacher has exclusive national competence with regard to distilleries.
(6) The "Recette autos" revenue office has exclusive national competence with regard to the tax on road vehicles.
(7) In duly justified cases, the Minister of Finance, acting on a proposal from the Director, may temporarily derogate from the indications given in the table mentioned in paragraph 3 above.

Art. 3
(1) The monitoring and control service includes six functional inspections:
To) an "Anti-drugs and sensitive products" inspection;
b) an "Environment/ITM" inspection;
vs) a "Findel" inspection;
d) a "Health" inspection;
e) a "Support" inspection;
f) a "Transport" inspection.
(2) The jurisdiction of the "Findel" inspection is limited to the enclosure of Luxembourg airport as well as the area known as the "customs radius" extending over a depth of 250 meters from the limits of this enclosure.
(3) The competence of the districts of the other functional inspections extends to the whole national territory.

(2) General Breaches Against Union Law Directives and Regulations

90 The Law of 9 August 1971 concerning the execution and sanction of decisions and directives as well as the sanction of regulations of the European Communities in economic, technical, agricultural, forestry, social and transport matters foresee special inspection rights (even at night). See below for the full law text → Art. 11 OLAF Regulation.

(3) Area of Common Market Organizations

91 The inspection and control rights in the area of the common market organization were listed and enumerated above already. For the sake of consistency, the relevant laws are

reproduced here once more as they enable oneself to find the right provisions quickly during an investigation or the plan to set up an investigation:

(4) Public Procurement Law Area

Special contracts e.g. with local authorities, municipal councils can be controlled by the relevant Ministry: **92**

Art. 149 **93**
(1) The Minister of the Interior checks the files of the detailed final projects and contracts.
(2) Before sending the files of the detailed final projects to the Ministry of the Interior, the municipal administrations supplement them, if necessary, with all the opinions, approvals and authorizations provided for by legal and regulatory provisions.
(3) The contract files to be presented to the Minister of the Interior will in all cases include:
(a) precise information on the decisions mentioned in Article 144, respectively under points a) and c) and under points b) and c) if it concerns a works contract;
(b) the contract entered into by the college of mayors and aldermen in accordance with the relevant provisions of these regulations and the reference to the duly approved projects referred to in point b) of Article 144;
(c) the reasoned decisions taken by the college of mayors and aldermen in application of the law;
(d) the tender of the economic operator declared successful bidder and ranked first in cases where two or more tenderers have submitted a tender in accordance with the stipulations of the specifications;
It is) the eliminated tenders in cases where, after examination of the tender documents, the contract in question was awarded not to the tenderer who submitted the tender showing the lowest acceptable prices, but to the benefit of the tenderer ranked second, third or even sixth;
(f) the technical report supported by a proposal for the award of the public contract;
(g) the certificates of non-obligation established by the Center of data processing, affiliation and collection of the contributions common to the institutions of social security, the Administration of the direct contributions and the Administration of the registration and the domains.

bb. Searches and Seizures

Searches and seizures are the common denominators between the Member States if it comes to investigative practice schedules. The relevant law shall be reproduced here with a focus on the customs area and the VAT area: **94**

(1) The System of Different Measures in Luxembourg

Art. 174 Customs Law
The assistance and authorization mentioned in article 173 are not required for the immediate inspection of houses "or other buildings", located within the customs area, into which goods withheld from inspection by the customs authorities have been introduced or concealed. officers while they were in pursuit. These goods will be presumed, until proven otherwise, to form a deposit of fraudulent goods falling under the prohibition of article 171. [314]

Art. 175 Customs Law[315]
By extension of the provisions of article 174 and by modification of article 197, and independently of ***the right of seizure conferred by article 224***, the agents provided with their commission, ***will be able to seize*** "within the country", when they will have followed the fraud without interruption from the customs department, and this, with the same effect as if the seizure were carried out in the extent of this territory. ***They shall have the right to enter, without any authorization or assistance, the domicile where they have seen the goods thus prosecuted introduced***.

Art. 179 [316]
With a view to preventing fraud, the King may regulate and in particular make subject to authorisation, the establishment, operation and sale of shops or debits of excise goods within the customs area.

[314] **Art. 174**
L'assistance et l'autorisation mentionnées dans l'article 173 ne sont pas exigées pour la visite immédiate des maisons « ou autres bâtiments », situés dans le rayon des douanes, dans lesquels auront été introduites ou recelées des marchandises soustraites à la visite des agents alors qu'ils étaient à leur poursuite. Ces marchandises seront présumées, jusqu'à preuve du contraire, former un dépôt de marchandises fraudées tombant sous l'interdiction de l'article 171.
[315] **Art. 175**
Par extension des dispositions de l'article 174 et par modification de l'article 197, et indépendamment du droit de saisie conféré par l'article 224, les agents munis de leur commission, pourront saisir « à l'intérieur du pays », lorsqu'ils auront suivi la fraude sans interruption depuis le rayon des douanes, et ce, avec le même effet que si la saisie était effectuée dans l'étendue de ce territoire. Ils auront le droit de pénétrer sans aucune autorisation ou assistance dans le domicile où ils auront vu introduire les marchandises ainsi poursuivies.
[316] **Art. 179**
En vue de la prévention de la fraude, le Roi peut réglementer et notamment subordonner à autorisation, l'établissement, l'exploitation et la cession de boutiques ou débits de marchandises d'accises dans le rayon des douanes.

Art. 180[317]
When he deems it essential to curb the fraud of one or more kinds of goods, the King can extend, to the extent that he will fix for all the borders and the coast or for one or more sectors only, the customs radius fixed by article 167. The provisions relating to the storage and transport of goods within the customs radius will be applicable, with regard to the goods covered by the measure, throughout the entire extent of the designated area.

Art. 182
(1)[318] Agents, provided with their commission, are authorized to carry out, at all times and places, that is to say both night and day, and both outside and inside their residence, the visit of "any means of transport", which they will find or assume
to be loaded with goods, as well as with any goods transported (..) by individuals, and, in addition, with all persons whom they suspect of being carriers of goods, in order to ascertain whether there is no importation, exportation, transit or transportation in contravention of laws.
(2) Vessels or buildings closed and moored or at anchor are not subject to inspection during the night.
(3) (Rmin. of January 24, 2020) "If the inspection of the ships cannot be done during navigation, it will be carried out at the place of destination, or, in the event of suspicion of fraud, at the first place of unloading, at the costs of the losing party and under the responsibility of the agents.

[317] **Art. 180**
Quand il le juge indispensable pour enrayer la fraude d'une ou de diverses espèces de marchandises, le Roi peut élargir, dans la mesure qu'il fixera pour l'ensemble des frontières et de la côte ou pour un ou plusieurs secteurs seulement, le rayon des douanes fixé par l'article 167. Les dispositions relatives aux dépôts et aux transports de marchandises dans le rayon des douanes seront applicables, en ce qui concerne les marchandises visées par la mesure, dans toute l'étendue de la zone désignée.
[318] **Art. 182**
(1) Les agents, munis de leur commission, sont autorisés à faire, en tous temps et lieux, c'est-à-dire aussi bien la nuit que le jour, et tant au dehors qu'au dedans de leur résidence, la visite de « tout moyen de transport », qu'ils trouveront ou présumeront
être chargé de marchandises, ainsi que de toute marchandise transportée (...) par des individus, et, en outre, de toutes personnes qu'ils soupçonneront être porteurs de marchandises, afin de s'assurer s'il ne se fait point d'importation, d'exportation, de transit ou detransport en contravention aux lois.
(2) Les navires ou bâtiments clos et amarrés ou à l'ancre ne sont pas soumis à la visite pendant la nuit.
(3) (Rmin. du 24 janvier 2020) « Si la visite des navires ne peut se faire pendant la navigation, elle sera effectuée au lieu de la destination, ou, en cas de soupçon de fraude, au premier lieu de déchargement, aux frais de la partie succombante et sous la responsabilité des agents. »

Art. 189[319]
Officers who, in execution of the legal provisions on the search for customs and excise fraud, make a visit to a factory, a store or any other place, including the private residence of an individual, may, "if they have at least the rank of assistant auditor", seize and take away any books, correspondence and documents of a nature to establish the guilt of the offenders or to put on the trail of their accomplices.

Art. 190[320]
(1) Officers are also authorized to compel or compel the captains of ships which are on the seaward side, between the sea and the place of unloading or loading, to reduce the speed of their ship or to stop that -this; the boatmen or skippers of those who are along the rivers between the foreign territory until near the first office of payment, to approach or to moor their vessels at the banks; and carriers or persons driving or transporting goods within the customs area, to stop with their carriages, horses or other means of transport, or with the bundles or packages they are carrying.
(2) Captains, boatmen or masters of ships or vessels, as well as carriers, carters or other persons who attempt or allow themselves to evade this obligation, may be compelled to do so by the agents, by such means of rigor as will be necessary to carry out the visit and prevent fraud.
(3) When an agent has abused or made untimely use of these means, and in particular when he has used the weapons entrusted to him, elsewhere than in the territory designated above, or even without the strictest necessity, and while he still had other suitable means to ensure the execution of the law, he will be punished for this head according to the rigor of the Penal Code.

[319] **Art. 189**
Les agents qui, en exécution des dispositions légales sur la recherche de la fraude en matière de douane et d'accise, pratiquent une visite dans une usine, un magasin ou un tout autre endroit, y compris le domicile privé d'un particulier, peuvent, « s'ils ont au moins le grade de vérificateur adjoint », y saisir et emporter les livres, correspondances et documents quelconques de nature à établir la culpabilité des délinquants ou à mettre sur la trace de leurs complices.
[320] **Art. 190**
(1) Les agents sont aussi autorisés à obliger ou à contraindre les capitaines des navires qui se trouvent du côté de la mer, entre la mer et le lieu de déchargement ou de chargement, de diminuer la vitesse de leur navire ou d'arrêter celui-ci; les bateliers ou patrons de ceux qui se trouvent le long des rivières entre le territoire étranger jusqu'à proximité du premier bureau de paiement, d'aborder ou d'amarrer leurs bâtiments aux rives; et les voituriers ou personnes qui conduisent ou transportent des marchandises dans le rayon des douanes, de s'arrêter avec leurs voitures, chevaux ou autres moyens de transport, ou avec les ballots ou paquets qu'ils portent.
(2) Les capitaines, bateliers ou patrons de navires ou bâtiments, ainsi que les voituriers, charretiers ou autres personnes qui tenteraient ou se permettraient de se soustraire à cette obligation, pourront y être contraints par les agents, par tels moyens de rigueur qui seront nécessaires pour effectuer la visite et prévenir la fraude.
(3) Lorsqu'un agent aura abusé ou fait usage intempestif de ces moyens, et notamment lorsqu'il se sera servi des armes à lui confiées, ailleurs que sur le territoire désigné ci-dessus, ou bien sans la plus stricte nécessité, et tandis qu'il lui restait d'autres moyens convenables pour assurer l'exécution de la loi, il sera puni de ce chef d'après la rigueur du Code pénal.

Art. 191[321]
(1) By extension of Article 190, "carriers" who, within the scope of "the customs radius or outside the customs radius, customs", if the fraud has been monitored without interruption from the customs department, will refuse to allow the inspection of "parcels" to operate, after having been requested to do so by the agents, and who will prevent the latter from carrying it out at the means of dogs which would oppose their approach, will be considered as defrauding at armed robbery.
(2) The agents of the administration are authorized to use their weapons to kill the dogs thus employed or used to facilitate the race of the "carriers", as well as the horses loaded or ridden by fraudsters, when these do not will not stop at their first requisition.

Art. 192
Within a radius of "20" kilometres along the land and sea frontiers, customs and excise officers and the officers who cooperate with them in the repression of fraud can use their prescription weapons to shoot down dogs, horses and other animals used for fraud, introduced fraudulently or circulating irregularly in the country, when it is not possible for them to capture them alive. [322]
They are authorized to use their weapons and all appropriate gear, such as harrows, hedgehogs, cables, rockets, etc.,
to immobilize vehicles (..) when drivers do not obey the signal or the order to stop given to them.

[321] **Art. 191**
(1) Par extension de l'article 190, « les transporteurs » qui, dans l'étendue « du rayon des douanes ou en dehors du rayon des douanes », si la fraude a été suivie sans interruption à partir du rayon des douanes, refuseront de laisser opérer la visite « des colis », après en avoir été requis par les agents, et qui l'empêcheront ces derniers de l'effectuer au moyen de chiens qui s'opposeraient à leur approche, seront considérés comme fraudant à main armée.
(2) Les agents de l'administration sont autorisés à faire usage de leurs armes pour abattre les chiens ainsi employés ou servant à faciliter la course des « transporteurs », ainsi que les chevaux chargés ou montés par des fraudeurs, lorsque ceux-ci ne s'arrêteront pas à leur première réquisition.
[322] **Art. 192**
Dans un rayon de « 20 » kilomètres le long des frontières de terre et de mer, les agents des douanes et des accises et les agents qui concourent avec eux à la répression de la fraude peuvent se servir de leurs armes d'ordonnance pour abattre les chiens, les chevaux et les autres animaux employés pour la fraude, introduits frauduleusement ou circulant irrégulièrement dans le pays, quand il ne leur est pas possible de les capturer vivants. Ils sont autorisés à se servir de leurs armes et de tous engins appropriés, tels que herses, hérissons, câbles, fusées, etc., pour immobiliser les véhicules (...) quand les conducteurs n'obtempèrent pas au signal ou à l'ordre d'arrêt qui leur est donné.
Ils peuvent aussi faire usage de leurs armes:
1° contre les personnes qui les attaquent ou leur résistent à main armée, ou qui les mettent sérieusement en danger d'être blessés ou de perdre la vie;
2° contre les personnes qui, sans obéir à l'ordre de s'arrêter, fuient après les avoir attaqués à main armée, et contre les conducteurs de véhicules pourvus de moteurs mécaniques qui fuient après avoir manoeuvré pour mettre leur vie en péril;
3° pour repousser ceux qui, malgré la sommation de s'éloigner, tendent de leur enlever des marchandises ou des moyens de transport saisis, de les déloger d'un poste où ils exercent leur surveillance, ou de délivrer leurs prisonniers.

They can also make use of their weapons:
1° against persons who attack or resist them with arms, or who put them in serious danger of being injured or losing their life;
(2) against persons who, without obeying the order to stop, flee after having attacked them with arms, and against the drivers of vehicles equipped with mechanical engines who flee after having maneuverer to put their lives in danger;
3° to repel those who, in spite of the summons to move away, tend to remove seized goods or means of transport from them, to dislodge them from a post where they exercise their surveillance, or to free their prisoners.

(2) Seizure of Other Evidence

95 In the area of the Customs Code Art. 224 of the Customs Law applies as well.

(3) The Seizure of Digital Forensic Evidence, Including Bank Account Information

96 The seizure of digital forensic evidence including bank account information becomes more and more important. The changes of the OLAF Regulation No 883/2013 (as amended 2020/2223) codified that OLAF shall under the same conditions that apply to national competent authorities have access to bank account information. The relevant national law shall be displayed on the following pages:

(a) Acquisition of Digital Evidence and Digital Forensic Operations within Inspections or On-the-Spot Checks

97 Digital forensic operations within inspections or on-the-spot checks became more and more important in the last decade already, **Bulgaria**, which has included a special paragraph in the State Investigations Office Act, Art. 31a makes a direct reference to Art. 7 of the applicable provision of Regulation 2185/96 and is therefore a **role model with regard to Digital forensic operations** within inspections or on-the-spot checks of OLAF.

98 An example for such a provision stems from the area of the common organization of the markets. The control provisions contain *expressis verbis* a reference to IT and digital inspections:

99

Art. 5 Powers of control
2° to access the data of the IT systems of the operators within the framework of the official controls provided for by this law; […].

(b) General Remarks

The provisions that allow **access to digitally stored information** become more and more important. Mostly they are still not very prominent within a law. They are regulated in between the other inspection rights and seem like an **annex measure**. Judging from the point-of-view of a real investigation, the legislator should consider that **in the 21st century, especially from 2025 onwards most information will be stored digitally**. Therefore, it would make sense to have a separate and very clear provision for digital inspections and forensic operations. The Constitution of Luxembourg, the EU-CRF, the ECJ case-law and the ECtHR case law ensure a certain level of protection, but the legislator could codify the case-law of the past years as to ensure a higher level of protection of the suspect's rights during such operations. **100**

(c) Formal Requirements

The formal requirements are equal to those in other states. The information can be collected **during a typical inspection** at the premises of a person concerned and regularly the inspectors will make or create a copy of the digital information so that a special IT expert can search the digital data for important information about irregularities or fraudulent conduct. **101**

The competent bodies and authorities are determined by the relevant Ministry. See above for an enumeration of the general rules in this regard. **102**

(d) Substantive Requirements

The suspect will need to be notified about the inspection and the collection of digital data carriers etc. **103**

k) National Procedural Rules for "Checks and Inspections" by the Assisting National Authority

The national procedural rules are mostly directly annexed to the provision, which grants the inspection or control rights to the inspectors. These rules ensure the proportionality principle, the respect of the rights of the EUCFR, ECJ case-law, the ECtHR case law etc. **104**

l) Cooperation and Mutual Assistance Agreements

Cooperation and mutual assistance agreements enable Luxembourg's and OLAF's staff to enforce the anti-fraud legislation and discover irregularities and any fraudulent conduct: **105**

aa. Customs Area

106 The following Act states that Luxembourg takes part in the mutual assistance in customs matters e.g.:

107

Nous *JEAN, par la grâce de Dieu, Grand-Duc de Luxembourg, Duc de Nassau;*
Notre Conseil d'état entendu;
De l'assentiment de la Chambre des Députés;
Vu la décision de la Chambre des Députés du 28 mai 1998 et celle du Conseil d'Etat du 9 juin 1998 portant qu'il n'y a pas lieu à second vote;
***Avons ordonné et ordonnons*:**

Article unique.
Sont approuvés
- l'Accord de partenariat et de coopération entre les Communautés Européennes et leurs Etats membres, d'une part, et la République d'Ouzbékistan, d'autre part
- les Annexes I à V
- le Protocole concernant l'assistance mutuelle entre autorités administratives en matière douanière
- l'Acte final faits à Florence, le 21 juin 1996.

Mandons et ordonnons que la présente loi soit insérée au Mémorial pour être exécutée et observée par tous ceux que la chose concerne.
Palais de Luxembourg, le 25 juin 1998.
Pour le Grand-Duc:
Son Lieutenant-Représentant
Henri
Grand-Duc héritier
Le Ministre des Affaires Etrangères, du Commerce Extérieur et de la Coopération

bb. Public Procurement Area

108 In the area of public procurement awards, tenders etc. the public procurement law applies:

109

Title II – Administrative cooperation and international obligations
Chapter I – Mutual assistance and exchange of information between Member States
Art. 271
(1) For the purposes of mutual assistance which the Member States of the European Union lend to each other and to enable the exchange of information, the ministers having in their respective areas of competence the information referred to, for public contracts whose scope of application falls under Book I or Book II, Articles 29, 31, 32, 34, 36, 38 and 72 of the law as well as Articles 16 to 18 of these regulations, and for contracts

whose scope application falls under Book III, Articles 142 to 146 of the law and Articles 207 to 210 of these regulations, provide, each as far as it is concerned, the information requested within the framework of the internal market information system, (IMI), set up by Regulation (EU) No 1024/2012of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Decision 2008/49/EC of the European Commission, such as laws or regulations, conventions collective standards of general application or national technical standards, or such as the evidence and documents to be provided in relation to test reports, certifications, quality assurance standards and environmental management standards, to authorized economic operators and certification bodies.[323]

(2) At the request of one of the ministers referred to in paragraph 1, the adjudicators provide the information referred to in paragraph 1.

(3) The Minister in charge of Public Works ensures that the databases which contain relevant information concerning economic operators and which can be consulted by the national contracting authorities can also be consulted, under the same conditions, by the contractors from other Member States.

For the purposes of Article 73 of the law, the Minister in charge of Public Works makes available and updates in the e-Certis database a complete list of databases containing

[323] **Titre II – Coopération administrative et obligations internationales**
Chapitre Ier – Assistance mutuelle et échange d'informations entre États membres
Art. 271
(1) Aux fins de l'assistance mutuelle que les États membres de l'Union européenne se prêtent et pour permettre l'échange d'informations, les ministres ayant dans leur domaine de compétence respectif les informations visées, pour les marchés publics dont le champ d'application relève du Livre Ier ou du Livre II, aux articles 29, 31, 32, 34, 36, 38 et 72 de la loi ainsi qu'aux articles 16 à 18 du présent règlement, et pour les marchés dont le champ d'application relève du Livre III, aux articles 142 à 146 de la loi ainsi qu'aux articles 207 à 210 du présent règlement, fournissent, chacun en ce qui le concerne, les renseignements sollicités dans le cadre du système d'information du marché intérieur, (IMI), mis en place par le règlement (UE) n° 1024/2012 du Parlement européen et du Conseil du 25 octobre 2012 concernant la coopération administrative par l'intermédiaire du système d'information du marché intérieur et abrogeant la décision 2008/49/CE de la Commission européenne, telles que les dispositions législatives ou réglementaires, les conventions collectives d'application générale ou les normes techniques nationales, ou telles que les éléments de preuve et documents à fournir relativement aux rapports d'essai, certifications, normes d'assurance de la qualité et normes de gestion environnementale, aux opérateurs économiques agréés et aux organismes de certification.
(2) À la demande d'un des ministres visé au paragraphe 1er, les adjudicateurs fournissent les renseignements visés au paragraphe 1er.
(3) Le ministre ayant les Travaux publics dans ses attributions veille à ce que les bases de données qui contiennent des informations pertinentes concernant les opérateurs économiques et qui peuvent être consultées par les pouvoirs adjudicateurs nationaux puissent l'être également, dans les mêmes conditions, par les pouvoirs adjudicateurs d'autres États membres. Aux fins de l'article 73 de la loi, le ministre ayant les Travaux publics dans ses attributions rend accessible et met à jour dans la base e-Certis une liste complète des bases de données contenant les informations pertinentes relatives aux opérateurs économiques qui peuvent être consultées par les pouvoirs adjudicateurs d'autres États membres. Aux fins de l'article 73 de la loi, et en vue de faciliter la soumission d'offres transnationales, le ministre ayant les Travaux publics dans ses attributions veille à ce que les informations relatives aux certificats et autres formes de pièces justificatives introduites dans la base e-Certis soient tenues à jour en permanence.

relevant information relating to economic operators who may be consulted by the contracting authorities of other Member States.
For the purposes of Article 73 of the law, and with a view to facilitating the submission of transnational tenders, the Minister in charge of Public Works shall ensure that the information relating to the certificates and other forms of supporting documents entered in the e-Certis database are kept up to date at all times.

Chapter II – Informing the European Commission of the difficulties encountered during contracts concluded with third countries
Art. 272
(1) The Government informs the European Commission of any general difficulty encountered[324] and reported by their companies in fact or in law, when they have sought to win service contracts in third countries referred to in Article 147 of the law.
(2) The Government informs the European Commission of any general difficulty encountered and reported by their companies in fact or in law, and resulting from non-compliance with the international labour law provisions referred to in Articles 42 and 154 of the law, when they sought to win contracts in third countries.

3. Article 4 Internal investigations

1. Investigations within the institutions, bodies, offices and agencies in the areas referred to in Article 1 shall be conducted ***in accordance with this Regulation and with the decisions adopted by the relevant institution, body, office or agency*** ('internal investigations').
8. Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an internal investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the institution, body, office or agency concerned. Upon request, the institution, body, office or agency concerned shall inform the Office of any action taken and of its findings on the basis of such information.

[324] **Chapitre II – Information de la Commission européenne des difficultés rencontrées lors des marchés passés avec les pays tiers**
Art. 272
(1) Le Gouvernement informe la Commission européenne de toute difficulté d'ordre général rencontrée et signalée par leurs entreprises en fait ou en droit, lorsqu'elles ont cherché à remporter des marchés de services dans des pays tiers visés à l'article 147 de la loi.
(2) Le Gouvernement informe la Commission européenne de toute difficulté d'ordre général rencontrée et signalée par leurs entreprises en fait ou en droit, et résultant du non-respect des dispositions internationales en matière de droit du travail visées aux articles 42 et 154 de la loi, lorsqu'elles ont cherché à remporter des marchés dans des pays tiers.

Where necessary, the Office shall also inform the ***competent authorities of the Member State concerned***. In this case, the procedural requirements laid down in the second and third subparagraphs of Article 9(4) shall apply. If the competent authorities decide to ***take any action on the basis of the information transmitted to them, in accordance with national law***, they shall, upon request, inform the Office thereof.

Internal investigations of OLAF can lead to **repercussions at national level** i.e. the level of the authorities that cooperate with OLAF and which e.g. employed the economic operator, managed his funds etc. or who are responsible for disciplinary actions for officials that work at Union level or as a national expert for OLAF (corruption cases). The relationship of national disciplinary, union disciplinary proceedings and national criminal proceedings is highly important.[325] **1**

a) References to National Law, Para 8

Any action in accordance with national law may be based e.g. on the amended law of 16 April 1979 laying down the general status of civil servants in Luxembourg. **2**

b) Competent Authorities

The competent authorities have been listed above (see → **Competent Authorities**). **3**

4. Article 5 Opening of Investigations

[…] 5. If the Director-General decides ***not to open an investigation***, he or she may without delay send any relevant information, as appropriate, to the ***competent authorities of the Member State concerned*** for appropriate ***action to be taken in accordance with Union and national law*** or to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules applicable to that institution, body, office or agency. The Office shall agree with that institution, body, office or agency, if appropriate, on suitable measures to protect the confidentiality of the source of that information and shall, if necessary, ask to be informed of the action taken.

If the Director General decides **not to open an investigation**, the national authorities can still exercise their own competence and carry out investigations: The laws in the tax sector could apply: **1**

[325] 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/ndr2020001neutraliseeen.pdf. Accessed 30 June 2026.

- the amended general tax law of 22 May 1931/*la loi générale des impôts modifiée du 22 mai 1931* ("*Abgabenordnung*");

- the amended law of 12 February 1979 concerning value added tax/*la loi modifiée du 12 Février 1979 concernant la taxe sur la valeur ajoutée*

2 For further information on Art. 5 see in the Austrian volume and the other CNP volumes or refer to *Glaser* for an interpretation for Austria or the **OLAF manuals used internally for coherent operations** in the Units. For case law on Art. 5 see the case law tables within the CNP volumes and the e-curia Website as well as OLAF's case digest.

[Article 6 Access to information in databases prior to the opening of an investigation] Not analysed here.

5. Article 7 Investigations Procedure

[…] 3. **The competent authorities of Member States** shall give the necessary assistance to enable the staff of the Office to fulfil their tasks in accordance with this Regulation effectively and without undue delay. When providing such assistance, the competent authorities of Member States shall ***act in accordance with any national procedural rules applicable to them***.
3a. At the request of the Office, which shall be explained in writing, in relation to matters under investigation, the relevant competent authorities of the Member States shall***, under the same conditions as those that apply to the national competent authorities***, provide the Office with the following:
(a) information available in the centralised automated mechanisms referred to in Article 32a(3) of Directive (EU) 2015/849 of the European Parliament and of the Council (4);
(b) where strictly necessary for the purposes of the investigation, the record of transactions.
The request of the Office shall include a justification of the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation. Such request shall refer only to information referred to in points (a) and (b) of the first subparagraph.
Member States shall notify to the Commission the relevant competent authorities for the purposes of points (a) and (b) of the first subparagraph.
6. Where investigations show that it might be appropriate to take precautionary administrative measures to protect the financial interests of the Union, the Office shall without delay inform the institution, body, office or agency concerned of the investigation in progress. The information supplied shall include the following:
(a) the identity of the official, other servant, member of an institution or body, head of office or agency, or staff member concerned and a summary of the facts in question;

(b) any information that could assist the institution, body, office or agency concerned in deciding on the appropriate precautionary administrative measures to be taken in order to protect the financial interests of the Union;
(c) any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or, in the case of an external investigation, within the competence of a national authority, ***in accordance with the national rules applicable to investigations***.
The institution, body, office or agency concerned may at any time consult the Office with a view to taking, in close cooperation with the Office, any appropriate precautionary measures, including measures for the safeguarding of evidence. The institution, body, office or agency concerned shall inform the Office without delay about any precautionary measures taken.
7. Where necessary, it shall be for the competent authorities of the Member States, at the Office's request, to take the ***appropriate precautionary measures under their national law***, in particular measures for the safeguarding of evidence.

a) References to National law

Sources & national sections 3: **1**

Para 3	See above → Art. 3 OLAF Regulation e).
Para 3a (a) (b)	The rules of the Customs Code apply, which must contain specialized rules on automated systems since the transposition deadline of the Directives for these systems have passed long ago. A record or transactions will be either kept by customs authorities or if other financial areas are concerned by a major bank, which controls the local banks.
Para 6 (c)	Para 6 c refers in its last sentence to external investigations. The laws, which apply in external investigations of OLAF in Luxembourg or if OLAF acts together with Luxembourgish authorities have been explained above. The major laws might be the tax law, the customs law, the laws on the observation of spending money in the area of structural funds.
Para 7	Precautionary measures, which have the effect of safeguarding of evidence might include seizures after a search, stopping a transaction of a beneficiary, the granting of money, the blocking of access to a tendering procedure… These measures are appropriate if no other measures are available in the very moment, in which the action is needed and all other possible measures have been tried or would not guarantee the same positive effect.

Sources: The authors. * This table is not exhaustive.

b) References to National Authorities

2 The references to national authorities have been explored already above (see → Competent authorities).

6. Article 8 Duty to Inform the Office

[…] 2. The institutions, bodies, offices and agencies and, unless ***prevented by national law***, the ***competent authorities of the Member States*** shall, at the request of the Office or on their own initiative, transmit without delay to the Office any document or information they hold which relates to an ongoing investigation by the Office. […]
3. The institutions, bodies, offices and agencies and, unless ***prevented by national law***, the ***competent authorities of Member States*** shall transmit without delay to the Office, at the request of the Office or on their own initiative, any other information, documents or data considered pertinent which they hold, relating to the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

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*[326]) 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.

[326] See Art 3 OLAF Regulation above in this Chapter.

II. National Procedural Rules for OLAF Investigations

As OLAF investigations can have elements of both national punitive, **administrative and EU administrative law**, and their findings may lead to criminal proceedings at the national level, fair proceedings that are compliant with procedural guarantees need to be installed and respected.[327] Hereby it is ensured that the acceptance of OLAF final reports as evidence in national courts is made stronger. Without adequate safeguards, courts may refuse to admit these reports, leading to inefficiencies and requiring national authorities to repeat investigative steps.[328] *Bovend'Eerdt* rightly points at the fact that there is a **two-folded situation** with regard to procedural guarantees: a) the rights established and codified by Art. 9 – *Ligeti* pointed out that these are *de facto* general Europeanised defence rights – must be respected in any OLAF investigation b) during on-the-spot checks OLAF must according to the "**yield-rule**" in Art. 3 para 3 respect as well national procedural rights ("in compliance with the rules and practices of the Member State concerned").[329] Only in the **absence of fully harmonized and effective Europeanised defence rights**, the **national rights will apply** and then then need to meet the **requirements of the assimilation rule**. *Bovend'Eerdt*[330] discusses the use of "will-dependent" evidence, such as a witness statement offered to an OLAF investigator as an example of evidence **gathering action of OLAF during on-the-spot checks**, which is a good example for the present discussion of the applicable laws, which will now follow:

1. Article 9 Procedural Guarantees

[…] 3. As soon as an investigation reveals that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, that official, other servant, member of an institution or body, head of office or agency, or staff member shall be informed to that effect, provided that this does not prejudice the conduct of the investigation or of any investigative proceedings ***falling within the remit of a national judicial authority.***
4. […] In duly justified cases where necessary to preserve the confidentiality of the investigation or an ongoing or future criminal investigation by the EPPO or a national judicial authority, the Director-General may, where appropriate after consulting the EPPO or ***the national judicial authority concerned***, decide to defer the fulfilment of the obligation to invite the person concerned to comment. […]

[327] See in-depth with further references only precisely Ligeti 2017, pp. 27 et seq.
[328] Bovend'Eerdt 2024, pp. 140 et seq.
[329] Ibid, p. 141.
[330] Ibid, p. 144: "Is this an EU power or can OLAF only exercise these powers on the basis of the principle of assimilation? For the person concerned, even if he has familiarised himself with the 'yield rule', this is problematic. He must be able to know what it is that Union law regulates to get a sense of the role left to be played by national law. How can a person know the scope of his private sphere or how interferences therewith may take place if he cannot know whether it is Union or national law that applies in a specific instance?"

a) Article 9 para. 3 – Remit of a National Judicial Authority

1 OLAF shall inform, as soon as an investigation involves an official (e.g. a Commission official), other servant (a person from the EU's Civil Service[331]), member of an institution[332] or body[333], head of office[334] or agency[335], or staff member or an interinstitutional service[336] 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. A national judicial authority might carry out disciplinary investigations or it might be conducting a criminal investigation against a person. If OLAF would now inform the person of an OLAF investigation, the investigative remit of this national authority, e.g. an investigating judge in Luxembourg could not rely on the secrecy of an investigation or the own conduction. The remit of the authority shall ensure that the investigation is secured and not disturbed.

b) Article 9 para. 4 – National Judicial Authorities

2 The Director General of OLAF and his/her office need to assess if a decision to defer the fulfilment of the obligation to invite the person concerned to comment is possible. The thresholds for such a decision are that duly justified cases exist.

3 And it can be only done where it is ensured that the confidentiality of the investigation or an ongoing or future criminal investigation by the EPPO or a national judicial authority is preserved. As the Director-General **"may", the decision is in her/his remit**. The requirement to liaise with each other, expressed by the wording "where appropriate after consulting the EPPO or the national judicial authority concerned" shall ensure that each relevant investigator is informed, thus he/she can act accordingly.

[331] This is a common term used to all staff serving the institutions and agencies of the European Union (EU) .
[332] According to Law Insider this term may include "A member of the European Parliament, a member of the European Council, a representative of a Member State at ministerial level."
[333] The main administrative EU bodies, e.g. European Central Bank, European Court of Auditors, Court of Justice. And https://tinyurl.com/47jphtph. Accessed 30 June 2026.
[334] E.g. President of EU Commission, Director of OLAF, Director of the European Central Bank. They are the administrative chiefs of the respective EU IBOA.
[335] Centralized and decentralized agencies are distinguished https://tinyurl.com/33mcsu2t. Accessed 30 June 2026.
[336] See Interinstitutional services: Computer Emergency Response Team (CERT-EU), European School of Administration, European Personnel Selection Office (EPSO), Publications Office.

2. 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. […]

In the area of the administrative jurisdictions in Luxembourg the Law of 1er August 2018[337] on the organisation of the National Data Protection Commission and on the implementation of Regulation (EU) 2016/679 applies.

3. Article 11 Investigation Report and Action to Be Taken Following Investigations

[…] 2. In drawing up the reports and recommendations referred to in paragraph 1, account shall be taken of the relevant provisions of Union law and, in so far as it is applicable, ***of the national law of the Member State concerned***.
Reports drawn up on the basis of the first subparagraph, together with all evidence in support and annexed thereto, shall constitute admissible evidence:
(a) in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States;
(b) in ***criminal proceedings of the Member State*** in which their use proves necessary in the ***same way and under the same conditions*** as administrative reports drawn up by ***national administrative inspectors*** and shall be subject to the ***same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors*** and shall have the same evidentiary value as such reports;
(c) in judicial proceedings before the CJEU and in administrative proceedings in the institutions, bodies, offices and agencies.
Member States shall notify to the Office ***any rules of national law relevant*** for the purposes of point (b) of the second subparagraph.
With regard to point (b) of the second subparagraph, Member States shall, upon request of the Office, send to the Office the ***final decision of the national courts*** once the ***relevant judicial proceedings*** have been finally ***determined*** and the final court decision has become ***public***.

[337] Loi du 1er août 2018 portant organisation de la Commission nationale pour la protection des données et mise en oeuvre du règlement (UE) 2016/679 du Parlement européen et du Conseil du 27 avril 2016 relatif à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données, et abrogeant la directive 95/46/CE (règlement général sur la protection des données), portant modification du Code du travail et de la loi modifiée du 25 mars 2015 fixant le régime des traitements et les conditions et modalités d'avancement des fonctionnaires de l'État.

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.

1 OLAF investigations may lead to an OLAF report suggesting further actions i.e. punitive proceedings, national follow-up, criminal investigation and so on.[338]

a) References to National Law

2 The following table presents an overview of relevant references to national law in Luxembourg:

3 *Sources & national sections 4: Art. 11 OLAF Regulation Luxembourg*

Para 2	The main provisions, which relate to on-the-spot-checks have been analysed and presented above → Art. 3 External investigations.
Para 2 (a)	As requested by para 2a OLAF's Reports shall constitute admissible evidence in judicial proceedings of a non-criminal nature before Luxemburg's courts and in administrative proceedings in Luxembourg. Therefore, the relevant law must be considered: *Loi du 7 Novembre 1996 portant organisation des jurisdictions de l'ordre administratif*/The Law of 7 November 1996 on organization of Administrative Courts, as amended The Law of 21 June 1999 regulating the procedure in front of Administrative Courts, as amended
Para 2 (b)	Final decisions in administrative matters can be obtained here: https://justice.public.lu/fr/jurisprudence/juridictions-administratives.html. Final decisions in criminal matters: https://justice.public.lu/fr/jurisprudence/courcassation.html?q=escroquerie.

[338] See Bovend'Eerdt 2024, pp. 241 et seq., Chapter 3.5.

Para 2 (c)	**Chapter XXIV – Fines and penalties in general** **Art. 220**[339] (1) Any captain of a ship (..) or skipper of any craft whatsoever, any "carrier", driver, porter, and any other individuals who, on entering or leaving, attempt to avoid make, either at the first or at any other office where this should take place, the required declarations, and would thus seek to defraud the rights of the Treasury, any individual with whom a deposit prohibited by the laws in force has been found, will be punished with imprisonment for at least four months and at most one year. (Rmin. of March 23, 2015) "(2) Any person who commits the offenses defined in paragraph 1 with fraudulent intent or with intent to harm and that these offenses either are committed in the context of serious tax evasion, whether organized or not, or have or would have seriously damaged the interests financial institutions of the European Union and anyone who is in a situation of recidivism are punished by imprisonment from 4 months to 5 years. (Rmin. of December 18, 2020 - Belgian law of December 9, 2019) "The financial interests of the European Union must in any case be considered seriously harmed when the damage amounts to more than 100,000 euros." **Art. 221** (1) In the cases provided for by article 220, the goods will be seized and confiscated, and the offenders will incur "a fine of between five and ten times the duties "defrauded, calculated according to the highest customs duties or excise duty. (2) For prohibited goods, the fine shall be "between one and two times their value".[340]

[339] **Chapitre XXIV – Amendes et peines en général**
Art. 220
(1) Tout capitaine de navire (...) ou patron d'une embarcation quelconque, tout « transporteur » ,conducteur, porteur, et tous autres individus, qui, à l'entrée ou à la sortie, tenteraient d'éviter de faire, soit au premier, soit à tout autre bureau où cela devrait avoir lieu, les déclarations requises, et chercheraient ainsi à frauder les droits du Trésor, tout individu chez lequel on aura trouvé un dépôt prohibé par les lois en vigueur, seront punis d'un emprisonnement de quatre mois au moins et d'un an au plus. (Rmin. du 23 mars 2015)
« (2) Celui qui commet les infractions définies au paragraphe 1er dans une intention frauduleuse ou à dessein de nuire et que ces infractions soit sont commises dans Ie cadre de la fraude fiscale grave, organisée ou non, soit ont ou auraient gravement lésé les intérêts financiers de l'Union européenne et celui qui se trouve en situation de récidive sont punis d'un emprisonnement de 4 mois à 5 ans. » (Rmin. du 18 décembre 2020 - Loi belge du 9 décembre 2019) « Les intérêts financiers de l'Union européenne doivent en tout cas être considérés comme gravement lésés lorsque le préjudice se monte à plus de 100 000 euros. »
[340] **Art. 221**

(3) The fine will be doubled in case of recidivism. (Rmin. of February 3, 2006)
"(4) By way of derogation from paragraph 1, the restitution of co fiscated property is granted to the person who owned the property at the time of the seizure and who demonstrates that he is not involved in the offence.
In the event of restitution, any costs related to the seizure, conservation and maintenance of the property remain the responsibility of the owner.

Art. 222[341]
(1) Shall also be seized and confiscated ships or craft, as well as cars, carts or other means of transport (..), used for fraud or used for this purpose, when the undeclared goods have been placed therein "hiding places", or even when no part of the load has been declared.
(2) If the load has been declared in part, the means of transport shall be seizable only insofar as the sum of the duties due on the species of goods not declared, and which will not be placed in hiding places, exceeds a quarter of the number of duties to be paid for the part of the goods declared; if undeclared goods are prohibited, duty will be assumed to be "20%" of their value.
(3) Goods duly declared or circulating freely, which will "manifestly" serve to hide fraudulent objects, will be confiscated. (Rmin. of February 3, 2006)
"(4) By way of derogation from paragraph 1, the means of transport are not confiscated if their owner demonstrates that he is not involved in the offence. In the event that the means of transport are not confiscated, any costs associated with the seizure, retention
and the maintenance in good condition of the means of transport referred to in paragraph 1 remain the responsibility of the owner."
(2) If the cargo has been partially declared, the means of transport shall be subject to seizure only if the sum of the duties due on the undeclared goods

(1) Dans les cas prévus par l'article 220, les marchandises seront saisies et confisquées, et les contrevenants encourront « une amende comprise entre cinq et dix fois les droits » fraudés, calculée d'après les droits les plus élevés de douanes ou d'accises.
(2) Pour les marchandises prohibées, l'amende sera « comprise entre une et deux fois leur valeur ».
(3) L'amende sera double en cas de récidive. (Rmin. du 3 février 2006)
« (4) Par dérogation au paragraphe 1er, la restitution des biens confisqués est accordée à la personne qui était propriétaire des biens au moment de la saisie et qui démontre qu'elle est étrangère à l'infraction.
En cas de restitution, les coûts éventuels liés à la saisie, la conservation et le maintien en état des biens restent à charge du propriétaire. »
[341] **Art. 222**
(1) Seront également saisis et confisqués les navires ou embarcations, ainsi que les voitures, chariots ou autres moyens de transport (...), employés à la fraude ou mis en usage à cet effet, quand les marchandises non déclarées y auront été placées dans « des cachettes », ou bien encore quand aucune partie du chargement n'aura été déclarée

	provided they are not concealed in hiding places exceeds one-quarter of the number of duties payable on the declared goods; if the undeclared goods are prohibited, the duties shall be deemed to be 20% of their value. (3) Goods that have been duly declared or are in free circulation, and which are "manifestly" used to conceal smuggled items, shall be confiscated. (Ministerial Order of 3 February 2006) "(4) Notwithstanding paragraph 1, the means of transport shall not be confiscated if the owner demonstrates that they were not involved in the offense. In the event that the means of transport are not confiscated, any costs associated with the seizure, storage, and maintenance of the means of transport referred to in paragraph 1 shall be borne by the owner." **Art. 227** (1) By extension of Article 226, and without prejudice to the provisions of Articles 66, 67, 69 and 505 of the Penal Code, those who are found to have participated as insurers, as having caused insurance, or as persons interested in any way to an act of fraud, will be liable to the penalties established against the perpetrators. (2) Sentences of fines and costs shall always be pronounced jointly and severally against offenders and accomplices. **Art. 228** The penalty of imprisonment, provided for by article 220, paragraph 1, will not be imposed.. in general, when, as a result of extenuating circumstances, the case has ended in a settlement for the fine and confiscation under article 263. **Art. 229** The prison sentence will always be incurred, when the fraud is carried out in hiding places or in bands of three individuals at least. **Art. 230** The penalty of imprisonment will never be incurred if the seizure takes place solely for non-compliance with the formalities relating to the documents which must be used to justify the transport, or if the goods are recognized as indigenous.

Source: The authors.

b) National Authority and "Any Action that the Results of the External Investigations Warrant", para. 3

aa. Area of Customs Duties

4 In the area of customs (evasion) irregularities and fraudulent conduct the relevant actions that the competent national authority, this is the Customs Service of Luxembourg may take are enshrined in the Customs Code[342]:

5

Art. 281[343]

(1) All actions for contraventions, ***frauds or offences, against which the customs and excise laws pronounce penalties shall be brought in first instance before the correctional courts, and, in the event of appeal, "before the courts of territorially competent arrondissement, and, in the event of an appeal, before the territorially competent Court of Appeal, to be investigated and judged there in accordance with the Code of Criminal Procedure*".**

(2) All such actions aforesaid tending to the application of fines, forfeiture, or the closing of factories or works, shall be brought and prosecuted by the administration or on its behalf in the said courts, which, in

in any case, will rule on these cases only after having heard the conclusions of the public prosecutor. However, on the written request made to it by "the Director of Customs and Excise", the public prosecutor may request the investigating judge to inform, the exercise of the public action remaining for the surplus reserved for the 'administration.

(3)[344] In cases where the same act of transgression of the above-mentioned laws gives rise to two different actions, one of which must be brought by the public prosecutor and

[342] Loi générale sur les douanes et accises. See above in Art. 3 OLAF Regulation for an explantation why the original Belgian Customs Act is executed as well in Luxembourg since 1977.

[343] **Art. 281**

(1) Toutes actions du chef de contraventions, fraudes ou délits, contre lesquels les lois en matière de douanes et accises prononcent des peines seront portées en première instance devant les tribunaux correctionnels, et, en cas d'appel, devant les tribunaux d'arrondissement territorialement compétents, et, en cas d'appel, devant la cour d'appel territorialement compétente, pour y être instruites et jugées conformément au Code de procédure pénale.

(2) Toutes celles des actions susmentionnées qui tendent à l'application d'amendes, de confiscations, ou à la fermeture de fabriques ou usines, seront intentées et poursuivies par l'administration ou en son nom devant lesdits tribunaux, lesquels, en tout cas, ne prononceront sur ces affaires qu'après avoir entendu les conclusions du ministère public. Toutefois, sur la demande écrite qui lui en est faite par « le Directeur des douanes et accises », le ministère public peut requérir le juge d'instruction d'informer, l'exercice de l'action publique restant pour le surplus réservé à l'administration.

[344] (3) Dans les cas qu'un même fait de transgression aux lois précitées donne lieu à deux actions différentes, dont l'une doit être intentée par le ministère public et l'autre par l'administration ou en son nom, ces actions seront instruites simultanément, et il y sera statué par un seul et même jugement; mais, dans ces cas, le ministère public n'agira pas avant que l'administration ait, de son côté, porté plainte ou intenté l'action. (Rmin. du 24 janvier 2020)

the other by the administration or on its behalf, these actions shall be heard simultaneously, and it will be decided by one and the same judgment; but, in these cases, the public prosecutor will not act before the administration has, for its part, lodged a complaint or brought the action. (Rmin. of January 24, 2020)
"(4) In investigating the crimes and misdemeanours referred to in Article 220, paragraph 2, the Director of Customs and Excise may, by written and reasoned decision, instructing a customs and excise officer to request the PIU to communicate passenger data in accordance with Article 13 of the law of 1 August 2018 relating to the processing of passenger name record data. The reasoning for the decision reflects the proportionality with regard to the protection of personal data and subsidiary to any other duty of investigation. The decision and its reasons are notified "to the CNPD established in article 3 of the law of August 1, 2018 on the organization of the National Commission for Data Protection and the general data protection regime".
"The CNPD" prohibits the Director of Customs and Excise from using the data collected under conditions that do not comply with the legal conditions. (Rmin. of March 25, 2011 - Belgian law of December 21, 2009)

Art. 281-2
The provisions of Book One of the Penal Code, (...) with the exception, however, of section 68, are applicable to the offenses provided for by this law and the special laws on customs and excise matters." [345]

Art. 282
All offenses or crimes, provided for and punished by the Penal Code2, which, although committed in relation to customs and excise, shall be prosecuted and tried in the ordinary manner, in accordance with the existing general laws in matters of correction.

« (4) En recherchant les crimes et délits visés à l'article 220, paragraphe 2, le Directeur des douanes et accises peut, par une décision écrite et motivée, charger un agent des douanes et accises, de requérir l'UIP afin de communiquer les données des passagers conformément à l'article 13 de la loi du 1er août 2018 relative au traitement des données des dossiers passagers. La motivation de la décision reflète le caractère proportionnel eu égard à la protection des données à caractère personnel et subsidiaire à tout autre devoir d'enquête. La décision et sa motivation sont notifiées « à la CNPD instituée à l'article 3 de la loi du 1er août 2018 portant organisation de la Commission nationale pour la protection des données et du régime général sur la protection des données ». « La CNPD » 1 interdit au Directeur des douanes et accises d'exploiter les données recueillies dans des conditions qui ne respectent pas les conditions légales » (Rmin. du 25 mars 2011 – Loi belge du 21 décembre 2009).

[345] « **Art. 281-2**
Les dispositions du Livre premier du Code pénal, (...) 3 à l'exception cependant de l'article 68, sont applicables aux infractions prévues par la présente loi et les lois spéciales en matière de douane et accises. »
Art. 282
Tous délits ou crimes, prévus et punis par le Code pénal, lesquels, quoique commis relativement aux douanes et accises, seront poursuivis et jugés de la manière ordinaire, conformément aux lois générales existantes en matière correctionnelle.

Art. 283[346]
When the contraventions, frauds, misdemeanours or crimes referred to in Articles 281 and 282 give rises to the payment of duties or excise duties, and therefore to a civil action, independently of the pursuit of a penalty, the competent judge either criminal, or correctional, will hear the case under this double report and will judge both causes.

Art. 284[347]
In all cases where, according to the laws in force, the appeal in cassation can take place, one may, in accordance with these provisions, make use of this means in cases relating to customs and excise.

Art. 285[348]
Fines imposed by tribunals and courts in police, correctional or criminal matters are subject to restitution when remission is granted after payment, provided that the condemned person has requested pardon within two months of the judgment or judgment if it is contradictory, or of its service if it is by default.

bb. Area of Common Market Organization (Agricultural Products)

6 **Art. 10 Emergency measures Law of 26 April 2022 on official controls of agricultural products**
(1)[349] When non-compliant agricultural products are produced on the territory of the Grand Duchy of Luxembourg, or enter the territory of the Grand Duchy of Luxembourg,

[346] **Art. 283**
Lorsque les contraventions, fraudes, délits ou crimes dont il s'agit dans les articles 281 et 282 donnent lieu au paiement de droits ou accises, et par conséquent à une action civile, indépendamment de la poursuite d'une peine, le juge compétent soit criminel, soit correctionnel, connaîtra de l'affaire sous ce double rapport et jugera l'une et l'autre cause.
[347] **Art. 284**
Dans tous les cas où, d'après les lois en vigueur, le recours en cassation peut avoir lieu, on pourra, conformément à ces dispositions, faire usage de ce moyen dans les affaires en matière de douanes et accises.
[348] **Art. 285**
Les amendes prononcées par les tribunaux et les cours en matière de police, en matière correctionnelle ou en matière criminelle sont sujettes à restitution lorsqu'il en est accordé remise après le paiement, pour autant que le condamné ait demandé sa grâce dans les deux mois du jugement ou de l'arrêt s'il est contradictoire, ou de sa signification s'il est par défaut.
[349] **Art. 10 Mesures d'urgence Loi du 26 avril 2022 relative aux contrôles officiels des produits agricoles**
(1) Lorsque des produits agricoles non-conformes sont produits sur le territoire du Grand-Duché de Luxembourg, ou entrent sur le territoire du Grand-Duché de Luxembourg, en provenance soit d'autres États membres de l'Union européenne soit de pays tiers à l'Union européenne, les directeurs des administrations compétentes, après avoir informé le ministre, sont autorisés à prendre toutes les mesures nécessaires pour remédier aux non-conformités, notamment les mesures d'urgence suivantes:
1° conserver sous contrôle officiel les produits agricoles;

coming either from other Member States of the European Union or from third countries European Union, the directors of the competent administrations, after having informed the Minister, are authorized to take all the necessary measures to remedy the non-conformities, in particular the following emergency measures:
1°keep agricultural products under official control;
2°invalidate official certificates;
3°order the suspension of the release for free circulation of agricultural products;
4°order the withdrawal or recall of agricultural products from the market;
5°order that agricultural products be subjected to any treatment or transformation aimed at making them compliant with this law;
6°order the modification of the labelling of agricultural products or the communication of corrective information to consumers;
7°limit or prohibit the entry, placing on the market and circulation of agricultural products on the territory of the Grand Duchy of Luxembourg;
8°order the removal and destruction of agricultural products;
9°order or prohibit the re-dispatch of agricultural products to the Member State of the European Union or the country outside the European Union from which the agricultural products originate.
10°order the partial or total suspension of the operator's activity;
11°order the partial or total closure of the business, operation, establishment, installation, premises or site and order the partial or total prohibition of the operator's activity.

2° invalider les certificats officiels;
3° ordonner la suspension de la mise en libre pratique des produits agricoles;
4° ordonner le retrait ou le rappel du marché des produits agricoles;
5° ordonner de soumettre les produits agricoles à tout traitement ou toute transformation visant à les rendre conformes à la présente loi;
6° ordonner la modification de l'étiquetage des produits agricoles ou la communication d'informations correctives aux consommateurs;
7° limiter ou interdire l'entrée, la mise sur le marché et la circulation des produits agricoles sur le territoire du Grand-Duché de Luxembourg;
8° ordonner l'enlèvement et la destruction des produits agricoles;
9° ordonner ou interdire la réexpédition des produits agricoles vers l'État membre de l'Union européenne ou le pays tiers à l'Union européenne dont les produits agricoles sont originaires.
10° ordonner la suspension partielle ou totale de l'activité de l'opérateur;
11° ordonner la fermeture, partielle ou totale, de l'entreprise, de l'exploitation, de l'établissement, de l'installation, du local ou du site et ordonner l'interdiction partielle ou totale de l'activité de l'opérateur.
(2) L'ordonnance est notifiée ou remise en main propre à l'opérateur. Elle est motivée et elle prend effet à la date de sa notification.
Les ordonnances d'urgence prescrites ont une durée de validité limitée à 48 heures. Elles doivent être confirmées par une décision du ministre, l'opérateur contre qui les mesures ont été prises, entendu ou appelé.
Les ordonnances prévues au présent paragraphe sont susceptibles d'un recours en réformation devant le tribunal administratif.
Les frais engendrés suite à cette ordonnance sont à la charge de l'opérateur. Le recouvrement des frais se fera comme en matière domaniale.

(2) The prescription is notified or hand-delivered to the operator. It is reasoned and takes effect on the date of its notification.
Prescribed emergency prescriptions have a validity period limited to 48 hours. They must be confirmed by a decision of the minister, the operator against whom the measures have been taken, heard or called.
The orders provided for in this paragraph are subject to an appeal for reversal before the administrative court.
The costs incurred as a result of this order are borne by the operator. Costs will be recovered as in state matters.

7 If OLAF recommends penal sanctions, the Act contains as well penal sanctions that might be judged in a criminal case:

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Art. 13 Penal sanctions
(1) Will be punished with a fine of 150 euros to 2,000 euros, the operator who acts in violation of the provisions:[350]

[350] **Art. 13 Sanctions pénales**
(1) Sera puni d'une amende de 150 euros à 2 000 euros, l'opérateur qui agit en violation des dispositions:
1° des articles 3, 4, 7 et 7bis du règlement (CEE) n° 2136/89;
2° des articles 2, 3, 4, 5 et 6 du règlement (CEE) n° 1536/92;
3° des articles 6, paragraphes 2 à 5, 8, paragraphes 2 et 3, et 11 du règlement (CE) n° 2406/96;
4° des articles 55, paragraphe 2, 56, paragraphe 2, 57, paragraphes 2 et 3, 58, paragraphes 2 à 5 du règlement (UE) n° 1224/2009;
5° des articles 12, paragraphes 1er à 3, 13, paragraphe 1er, 23, paragraphes 1er à 3, 24, paragraphe 1er, 33, paragraphe 1er et 44, paragraphe 1er du règlement (UE) n° 1151/2012;
6° des articles 9, 10, 74, 76, paragraphes 1er à 3, 77, paragraphes 1er à 4, 78, paragraphes 1er et 2, 80, paragraphes 1er et 2, 81, paragraphes 1er et 2, 88, paragraphe 1er, 103, paragraphes 1er et 2, 113, paragraphes 1er et 2, 118, 119, paragraphe 1er, et 121 du règlement (UE) n° 1308/2013;
7° des articles 35, paragraphes 1er et 3, 37, paragraphe 2, et 39 du règlement (UE) n° 1379/2013;
8° des articles 4, paragraphe 1er, 5, paragraphes 1er, 2, 3 et 5, 6, paragraphes 1er et 2, 7, 8 et 20, paragraphes 1er et 2, du règlement (UE) n° 251/2014;
9° des articles 15, paragraphes 1er, 2, 3, 5 et 6, 47, paragraphes 1er, 4 et 5, 50, paragraphes 1er et 3, 56, paragraphes 1er et 4, et 69, paragraphe 1er, du règlement (UE) 2017/625;
10° des articles 9, 11, 12, 13, 15 et 18 du règlement (UE) 2019/787.
(2) Sera puni d'une peine d'emprisonnement de huit jours à trois ans et d'une amende de 2001 euros à 250.000 euros ou d'une de ces peines seulement, l'opérateur qui agit en violation des dispositions:
1° des articles 2, 5 et 6 du règlement (CEE) n° 2136/89;
2° des articles 2 et 4 du règlement (CEE) n° 1536/92;
3° des articles 4 et 5 du règlement (CE) n° 2406/96;
4° des articles 9, paragraphes 1er à 3, 10, 19, paragraphes 1er à 3, 20, paragraphes 1er et 2, 23, paragraphes 1er à 4, 24, paragraphes 1er et 2, 25, paragraphe 1er, 28, paragraphe 1er, 32, paragraphe 1er, et 33, paragraphe 1er, du règlement (CE) n° 834/2007;
5° des articles 12, paragraphes 1er et 4, 14, paragraphes 1er et 2,15, paragraphe 1er, 16, 21, paragraphes 1er et 2, et 42, paragraphe 1er, du règlement (CE) n° 1005/2008;
6° de l'article 4, paragraphe 1er, du règlement (UE) n° 251/2014;
7° des articles 6, 7, 10, 14, paragraphe 1er, 16, 17, 21, paragraphes 1er, 2 et 4, 34 et 36 du règlement (UE) 2019/787.

1°Articles 3, 4, 7 and 7a of Regulation (EEC) No 2136/89;
2°Articles 2, 3, 4, 5 and 6 of Regulation (EEC) No 1536/92;
3°Articles 6, paragraphs 2 to 5, 8, paragraphs 2 and 3, and 11 of Regulation (EC) No 2406/96;
4°Articles 55, paragraph 2, 56, paragraph 2, 57, paragraphs 2 and 3, 58, paragraphs 2 to 5 of Regulation (EU) No 1224/2009;
5°of Articles 12, paragraphs 1 to 3, 13, paragraph 1, 23, paragraphs 1 to 3, 24, paragraph 1, 33, paragraph 1 and 44, paragraph 1 of Regulation (EU) No 1151/ 2012;
6°Articles 9, 10, 74, 76, paragraphs 1 to 3, 77, paragraphs 1 to 4, 78, paragraphs 1 and 2, 80, paragraphs 1 and 2, 81, paragraphs 1 and 2, 88, paragraph 1, 103, paragraphs 1 and 2, 113, paragraphs 1 and 2, 118, 119, paragraph 1, and 121 of Regulation (EU) No 1308/2013;
7°Articles 35, paragraphs 1 and 3, 37, paragraph 2, and 39 of Regulation (EU) No 1379/2013;
8°Articles 4, paragraph 1, 5, paragraphs 1, 2, 3 and 5, 6, paragraphs 1 and 2, 7, 8 and 20, paragraphs 1 and 2, of Regulation (EU) No 251/2014;
9°of Articles 15, paragraphs 1, 2, 3, 5 and 6, 47, paragraphs 1, 4 and 5, 50, paragraphs 1 and 3, 56, paragraphs 1 and 4, and 69, paragraph 1, of the Regulation (EU) 2017/625
10°of Articles 9, 11, 12, 13, 15 and 18 of Regulation (EU) 2019/787.
(2) Will be punished with a prison sentence of eight days to three years and a fine of 2001 euros to 250,000 euros or one of these penalties only, the operator who acts in violation of the provisions:
1°Articles 2, 5 and 6 of Regulation (EEC) No 2136/89;
2°Articles 2 and 4 of Regulation (EEC) No 1536/92;
3°Articles 4 and 5 of Regulation (EC) No 2406/96;
4°Articles 9, paragraphs 1 to 3, 10, 19, paragraphs 1 to 3, 20, paragraphs 1 and 2, 23, paragraphs 1 to 4, 24, paragraphs 1 and 2, 25, paragraph 1, 28(1), 32(1) and 33(1) of Regulation (EC) No 834/2007;
5°Articles 12, paragraphs 1 and 4, 14, paragraphs 1 and 2, 15, paragraph 1, 16, 21, paragraphs 1 and 2, and 42, paragraph 1, of Regulation (EC) No 1005/ 2008;
6°Article 4(1) of Regulation (EU) No 251/2014; [...]

(3) Le juge ordonne, le cas échéant, la confiscation des produits agricoles, du matériel, des engins et des instruments qui ont servi ou qui ont été destinés à commettre l'infraction, ainsi que les véhicules utilisés pour commettre l'infraction.
(4) Le juge peut prononcer une interdiction de commercialiser les produits agricoles pour une durée de trois mois à quinze ans. Cette interdiction produit ses effets à partir du jour où la décision qui l'a prononcée a acquis l'autorité de la chose jugée.
(5) En cas de récidive dans le délai de deux ans, les peines pourront être portées au double au maximum.
(6) En cas de fraude, les peines pourront être portées au double au maximum.

(3) The judge orders, where appropriate, the confiscation of agricultural products, equipment, machinery and instruments which were used or which were intended to commit the offence, as well as the vehicles used to commit the offence.
(4) The judge can impose a ban on the marketing of agricultural products for a period of three months to fifteen years. This prohibition produces its effects from the day when the decision which pronounced it has acquired the authority of res judicata.
(5) In the event of a repeat offense within the two-year period, the penalties may be doubled at most.
(6) In the event of fraud, the penalties may be doubled at most.

Art. 15 Administrative measures[351]
(1) In the event of non-compliance with the provisions of this Act, the Minister may:
1°set the operator a deadline within which the latter must comply with the conditions set out in the approval, a deadline which may not exceed six months;
2°in the event of non-compliance with the compliance deadline, have the approval suspended or withdrawn, after formal notice, or have the business, operation, establishment, facility, premises or site, in whole or in part, and affix seals;
3°order a strengthening of self-checks of agricultural products by the operator.
(2) The measures taken by the Minister pursuant to paragraph 1 are subject to an appeal for reversal before the administrative tribunal which rules as judge on the merits. This appeal must be brought under penalty of forfeiture within forty days of notification of the decision reached.
(3) As soon as it has been noted that the non-conformities having been the subject of the measures provided for in paragraph 1 have been put to an end, the latter shall be lifted.

[351] **Art. 15 Mesures administratives**
(1) En cas de non-respect des dispositions de la présente loi, le ministre peut:
1° impartir à l'opérateur un délai dans lequel ce dernier doit se conformer aux conditions fixées à l'agrément, délai qui ne peut être supérieur à six mois;
2° en cas de non-respect du délai de mise en conformité, faire suspendre ou retirer l'agrément, après une mise en demeure, ou faire fermer l'entreprise, l'exploitation, l'établissement, l'installation, le local ou le site, en tout ou en partie, et apposer des scellés;
3° ordonner un renforcement des autocontrôles des produits agricoles par l'opérateur.
(2) Les mesures prises par le ministre vertu du paragraphe 1er sont susceptibles d'un recours en réformation devant le tribunal administratif qui statue comme juge du fond. Ce recours doit être intenté sous peine de déchéance dans les quarante jours de la notification de la décision intervenue.
(3) Dès qu'il a été constaté qu'il a été mis fin aux non-conformités ayant fait l'objet des mesures prévues au paragraphe 1er, ces dernières sont levées.

cc. Public Procurement Law

Art. 29 Grounds for exclusion from participation in a procurement procedure 9

(1)[352] Contracting authorities shall exclude an economic operator from participating in a procurement procedure where they have established, by carrying out checks in accordance with Article 31 and, for contracts falling within the scope of Book II, in accordance in Article 71, or that they are informed, in any other way, that this economic operator has been the subject of a conviction, pronounced by a final judgment, for one of the following reasons:

To) violation of articles 322 to 324ter of the Penal Code, relating to participation in a criminal organization;

b)[353] violation of articles 246 to 249 of the Penal Code, relating to corruption;

vs) violation of articles 496-1 to 496-4 of the Penal Code relating to fraud and deception;

d) violation of articles 135-1 and following of the Penal Code, relating to terrorism;

e) violation of articles 506-1 and 135-5 of the Penal Code, relating to money laundering and the financing of terrorism and violation of article 8-1 of the amended law of February 19, 1973 concerning the sale of medicinal substances;

f)child labour and other forms of trafficking in human beings defined in article 382-1 of the Penal Code.

The obligation to exclude an economic operator also applies when the person convicted by final judgment is a member of the administrative, management or supervisory body of the said economic operator or holds a power of representation, decision or control in her bosom.

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[352] - Critères de sélection qualitative

Art. 29 Motifs d'exclusion de la participation à une procédure de passation de marché

(1) Les pouvoirs adjudicateurs excluent un opérateur économique de la participation à une procédure de passation de marché lorsqu'ils ont établi, en procédant à des vérifications conformément à l'article 31 et, pour les marchés relevant du champ d'application du Livre II, conformément à l'article 71, ou qu'ils sont informés, de quelque autre manière, que cet opérateur économique a fait l'objet d'une condamnation, prononcée par un jugement définitif, pour l'une des raisons suivantes:

(a) infraction aux articles 322 à 324ter du Code Pénal, relatifs à la participation à une organisation criminelle;

[353] (b) infraction aux articles 246 à 249 du Code Pénal, relatifs à la corruption;

(c) infraction aux articles 496-1 à 496-4 du Code Pénal relatifs à la l'escroquerie et à la tromperie;

(d) infraction aux articles 135-1 et suivants du Code Pénal, relatifs au terrorisme;

(e) infraction aux articles 506-1 et 135-5 du Code Pénal, relatifs au blanchiment de capitaux et au financement du terrorisme et infraction à l'article 8-1 de la loi modifiée du 19 février 1973 concernant la vente de substances médicamenteuses;

(f) travail des enfants et autres formes de traite des êtres humains définis à l'article 382-1 du Code Pénal. L'obligation d'exclure un opérateur économique s'applique aussi lorsque la personne condamnée par jugement définitif est un membre de l'organe administratif, de gestion ou de surveillance dudit opérateur économique ou détient un pouvoir de représentation, de décision ou de contrôle en son sein.

(2)[354] An economic operator shall be excluded from participating in a procurement procedure if the contracting authority becomes aware of a failure by the economic operator to fulfil its obligations relating to the payment of taxes and duties or social security contributions when the latter it has been established by a judicial decision having the force of res judicata or an administrative decision having binding effect, in accordance with the legal provisions of the country in which it is established or with those defined by the Member State of the contracting authority.
Furthermore, an economic operator is excluded from participating in a procurement procedure if the contracting authority can demonstrate, by any appropriate means, that the economic operator has failed to meet its obligations relating to the payment of taxes and duties or social security contributions.
This paragraph no longer applies when the economic operator has fulfilled his obligations by paying or entering into a binding agreement to pay the taxes and duties or social security contributions due, including, where applicable, any accrued interest. or possible fines.
(3)[355] Contracting authorities may exclude any economic operator from participating in a procurement procedure in one of the following cases:

[354] (2) Un opérateur économique est exclu de la participation à une procédure de passation de marché si le pouvoir adjudicateur a connaissance d'un manquement par l'opérateur économique à ses obligations relatives au paiement d'impôts et taxes ou de cotisations de sécurité sociale lorsque celui-ci a été établi par une décision judiciaire ayant force de chose jugée ou une décision administrative ayant un effet contraignant, conformément aux dispositions légales du pays dans lequel il est établi ou à celles définies de l'État membre du pouvoir adjudicateur. En outre, un opérateur économique est exclu de la participation à une procédure de passation de marché si le pouvoir adjudicateur peut démontrer, par tout moyen approprié, que l'opérateur économique a manqué à ses obligations relatives au paiement d'impôts et taxes ou de cotisations de sécurité sociale. Le présent paragraphe ne s'applique plus lorsque l'opérateur économique a rempli ses obligations en payant ou en concluant un accord contraignant en vue de payer les impôts et taxes ou cotisations de sécurité sociale dues, y compris, le cas échéant, tout intérêt échu ou les éventuelles amendes.

[355] (3) Les pouvoirs adjudicateurs peuvent exclure tout opérateur économique de la participation à une procédure de passation de marché dans l'un des cas suivants:
(a) le pouvoir adjudicateur peut démontrer, par tout moyen approprié, un manquement aux obligations applicables visées à l'article 42;
(b) l'opérateur économique est en état de faillite ou fait l'objet d'une procédure d'insolvabilité ou de liquidation, ses biens sont administrés par un liquidateur ou sont placés sous administration judiciaire, il a conclu un concordat préventif, il se trouve en état de cessation d'activités, ou dans toute situation analogue résultant d'une procédure de même nature existant dans les législations et réglementations nationales;
(c) le pouvoir adjudicateur peut démontrer par tout moyen approprié que l'opérateur économique a commis une faute professionnelle grave qui remet en cause son intégrité;
(d) le pouvoir adjudicateur dispose d'éléments suffisamment plausibles pour conclure que l'opérateur économique a conclu des accords avec d'autres opérateurs économiques en vue de fausser la concurrence;
(e) il ne peut être remédié à un conflit d'intérêts au sens de l'article 13 par d'autres mesures moins intrusives;
(f) il ne peut être remédié à une distorsion de la concurrence résultant de la participation préalable des opérateurs économiques à la préparation de la procédure de passation de marché, visée à l'article 27, par d'autres mesures moins intrusives;

To) the contracting authority can demonstrate, by any appropriate means, a breach of the applicable obligations referred to in Article 42;
b) the economic operator is bankrupt or is the subject of insolvency or liquidation proceedings, his assets are administered by a liquidator or are placed under judicial administration, he has entered into a preventive arrangement, he is in state of cessation of activities, or in any analogous situation resulting from a procedure of the same nature existing in national laws and regulations;
vs) the contracting authority can demonstrate by any appropriate means that the economic operator has committed serious professional misconduct which calls into question its integrity;
d) the contracting authority has sufficiently plausible elements to conclude that the economic operator has entered into agreements with other economic operators with a view to distorting competition;
e) a conflict of interest within the meaning of Article 13 cannot be remedied by other less intrusive measures;
f) distortion of competition resulting from the prior participation of economic operators in the preparation of the procurement procedure, referred to in Article 27, cannot be remedied by other less intrusive measures;
g) significant or persistent shortcomings on the part of the economic operator have been observed in the performance of an essential obligation incumbent on him under a previous public contract, a previous contract concluded with a contracting entity or a previous concession, when these failures have given rise to the termination of the said contract or concession, to damages and interest or to another comparable sanction;

(g) des défaillances importantes ou persistantes de l'opérateur économique ont été constatées lors de l'exécution d'une obligation essentielle qui lui incombait dans le cadre d'un marché public antérieur, d'un marché antérieur passé avec une entité adjudicatrice ou d'une concession antérieure, lorsque ces défaillances ont donné lieu à la résiliation dudit marché ou de la concession, à des dommages et intérêts ou à une autre sanction comparable;
(h) l'opérateur économique s'est rendu coupable de fausse déclaration en fournissant les renseignements exigés pour la vérification de l'absence de motifs d'exclusion ou la satisfaction des critères de sélection, a caché ces informations ou n'est pas en mesure de présenter les documents justificatifs requis en application de l'article 31; pour les marchés relevant du champ d'application du Livre II, sont visés les documents justificatifs requis au titre de l'article 72; ou
(i) l'opérateur économique a entrepris d'influer indûment sur le processus décisionnel du pouvoir adjudicateur ou d'obtenir des informations confidentielles susceptibles de lui donner un avantage indu lors de la procédure de passation de marché, ou a fourni par négligence des informations trompeuses susceptibles d'avoir une influence déterminante sur les décisions d'exclusion, de sélection ou d'attribution.
Nonobstant l'alinéa 1er, point b), le pouvoir adjudicateur peut décider de ne pas exclure un opérateur économique qui se trouve dans l'un des cas visés au point b), lorsque le pouvoir adjudicateur a établi que l'opérateur économique en question sera en mesure d'exécuter le marché, compte tenu des règles et des mesures nationales applicables en matière de continuation des activités dans le cadre des situations visées au point b).
(4) À tout moment de la procédure, les pouvoirs adjudicateurs excluent un opérateur économique lorsqu'il apparaît que celui-ci se trouve, compte tenu des actes qu'il a commis ou omis d'accomplir soit avant, soit durant la procédure, dans un des cas visés aux paragraphes 1er et 2. À tout moment de la procédure, les pouvoirs adjudicateurs peuvent exclure un opérateur économique lorsqu'il apparaît que celui-ci se trouve, compte tenu des actes qu'il a commis ou omis d'accomplir soit avant, soit durant la procédure, dans un des cas visés au paragraphe 3.

h) the economic operator is guilty of misrepresentation in providing the information required to verify the absence of grounds for exclusion or satisfaction of the selection criteria, has concealed this information or is unable to present the supporting documents required pursuant to Article 31; for contracts falling within the scope of Book II, the supporting documents required under Article 72 are referred to; Or
i) the economic operator has undertaken to improperly influence the decision-making process of the contracting authority or to obtain confidential information likely to give it an unfair advantage during the procurement procedure, or has negligently provided misleading information likely to have a decisive influence on exclusion, selection or award decisions.
Notwithstanding the first paragraph, point b), the contracting authority may decide not to exclude an economic operator who is in one of the cases referred to in point b), when the contracting authority has established that the economic operator subject will be able to perform the contract, considering the national rules and measures applicable to the continuation of activities in the context of the situations referred to in point (b).
(4) At any time during the procedure, the contracting authorities shall exclude an economic operator when it appears that he is, in view of the acts which he has committed or omitted to perform either before or during the procedure, in one of the cases referred to in paragraphs 1 and 2.
At any time during the procedure, the contracting authorities may exclude an economic operator where it appears that he is, in view of the acts which he has committed or omitted to perform either before or during the procedure, in a of the cases referred to in paragraph 3.
(5)[356] Any economic operator who finds himself in one of the situations referred to in paragraphs 1 and 3 may provide evidence to certify that the measures he has taken are

[356] (5) Tout opérateur économique qui se trouve dans l'une des situations visées aux paragraphes 1er et 3 peut fournir des preuves afin d'attester que les mesures qu'il a prises suffisent à démontrer sa fiabilité malgré l'existence d'un motif d'exclusion pertinent. Si ces preuves sont jugées suffisantes, l'opérateur économique concerné n'est pas exclu de la procédure de passation de marché.
À cette fin, l'opérateur économique prouve qu'il a versé ou entrepris de verser une indemnité en réparation de tout préjudice causé par l'infraction pénale ou la faute, clarifié totalement les faits et circonstances en collaborant activement avec les autorités chargées de l'enquête et pris des mesures concrètes de nature technique et organisationnelle et en matière de personnel propres à prévenir une nouvelle infraction pénale ou une nouvelle faute.
Les mesures prises par les opérateurs économiques sont évaluées en tenant compte de la gravité de l'infraction pénale ou de la faute ainsi que de ses circonstances particulières. Lorsque les mesures sont jugées insuffisantes, la motivation de la décision concernée est transmise à l'opérateur économique. Un opérateur économique qui a été exclu par un jugement définitif de la participation à des procédures de passation de marché ou d'attribution de concession n'est pas autorisé à faire usage de la possibilité prévue au présent paragraphe pendant la période d'exclusion fixée par ledit jugement dans les États membres où le jugement produit ses effets.
(6) Lorsque la période d'exclusion n'a pas été prévue par jugement définitif, elle ne peut dépasser cinq ans à compter de la date de condamnation par jugement définitif dans les cas visés au paragraphe 1er et trois ans à

sufficient to demonstrate his reliability despite the existence of a reason for relevant exclusion. If this evidence is considered sufficient, the economic operator concerned is not excluded from the procurement procedure.
To this end, the economic operator proves that he has paid or undertaken to pay compensation for any damage caused by the criminal offense or the fault, fully clarified the facts and circumstances by actively cooperating with the authorities responsible for investigated and taken concrete measures of a technical, organizational and personnel nature to prevent a new criminal offense or misconduct.
The measures taken by economic operators are assessed considering the seriousness of the criminal offense or misconduct as well as its particular circumstances. When the measures are deemed insufficient, the reasons for the decision concerned are sent to the economic operator.
An economic operator who has been excluded by a final judgment from participating in procurement or concession award procedures is not authorized to make use of the possibility provided for in this paragraph during the period of exclusion set by said judgment in the Member States where the judgment takes effect.
(6) When the period of exclusion has not been provided for by final judgment, it may not exceed five years from the date of conviction by final judgment in the cases referred to in paragraph 1 and three years from the date of event concerned in the cases referred to in paragraph 3.
An exclusion can only take place after the notification of a registered letter clearly specifying the intentions of the contracting authority. A period of at least eight days must be granted to the economic operator to present his written observations.
In the cases referred to in paragraph 3, the Tenders Committee must be asked for its opinion, after the formalities referred to in the preceding paragraph have been completed.

compter de la date de l'événement concerné dans les cas visés au paragraphe 3. Une exclusion ne peut avoir lieu qu'après la notification d'une lettre recommandée précisant clairement les intentions du pouvoir adjudicateur. Un délai d'au moins huit jours doit être accordé à l'opérateur économique pour présenter ses observations écrites. Dans les cas visés au paragraphe 3, la Commission des soumissions doit être demandée en son avis, après que les formalités visées à l'alinéa précédent aient été accomplies. Les décisions d'exclusion sont notifiées à l'opérateur économique visé, par voie de lettre recommandée, aux services publics intéressés et, dans les cas visés au paragraphe 3, à la Commission des soumissions. Les contestations auxquelles donnent lieu les décisions prises dans les cas visés au paragraphe 3 sont de la compétence du Tribunal administratif, statuant comme juge du fond.
(7) Les pouvoirs adjudicateurs vérifient, conformément à l'article 31 et, pour les marchés tombant sous le champ de l'application du Livre II, conformément à l'article 71, s'il existe des motifs d'exclusion des sous-traitants en vertu des dispositions du présent article. Dans de tels cas, le pouvoir adjudicateur exige que l'opérateur économique remplace un sous-traitant à l'encontre duquel ladite vérification a montré qu'il existe des motifs d'exclusion obligatoires. Le pouvoir adjudicateur peut exiger que l'opérateur économique remplace un sous-traitant à l'encontre duquel ladite vérification a montré qu'il existe des motifs d'exclusion non obligatoires.

Exclusion decisions are notified to the targeted economic operator, by registered letter, to the public services concerned and, in the cases referred to in paragraph 3, to the Tenders Committee.
Disputes to which the decisions taken in the cases referred to in paragraph 3 give rise fall within the jurisdiction of the Administrative Tribunal, ruling as judge of the merits.
(7) The contracting authorities verify, in accordance with Article 31 and, for contracts falling within the scope of Book II, in accordance with Article 71, whether there are grounds for the exclusion of subcontractors under of the provisions of this article. In such cases, the contracting authority shall require the economic operator to replace a subcontractor against whom said verification has shown that there are mandatory grounds for exclusion. The contracting authority may require the economic operator to replace a subcontractor against whom said verification has shown that there are non-mandatory grounds for exclusion.

dd. Execution and Sanction of Decisions and Directives

10 A more general Act, which might apply if sanctions are proposed and recommended by OLAF is the **Law of 9 August 1971 concerning the execution and sanction of decisions and directives as well as the sanction of regulations of the European Communities in economic, technical, agricultural, forestry, social and transport matters:**

11

We JEAN, by the grace of God, Grand Duke of Luxembourg, Duke of Nassau, etc., etc., etc.;
Our Council of State heard;
With the consent of the Chamber of Deputies;
Considering the decision of the Chamber of Deputies of July 13, 1971 and that of the Council of State of July 22, 1971 bearing that there is no need for a second vote;
Have ordered and order:

Art. 1st.
The execution and sanction of decisions and directives as well as the sanction of regulations of the European Communities in economic, technical, agricultural, forestry, social and transport matters will be done by public administration regulation to be taken on the mandatory opinion of the Council of State, after having sought the opinion of the professional chambers concerned and received the consent of the working committee of the Chamber of Deputies. Will however be excepted from this regulation, which can derogate from the existing laws, the matters reserved to the law by the Constitution.
These regulations will determine the competent bodies and the other measures necessary for the execution of the directives referred to in the first paragraph of this article.
They may set fines of five hundred and one to one million francs and prison sentences of eight days to five years, applicable cumulatively or alternately.

Nevertheless, the stronger penalties established by the penal code or by other special laws will continue to be applied to the cases provided for therein.
The same regulations may, in addition, provide for the confiscation, to be pronounced by the courts, of the property having been used in the offense as well as of the illicit profits.
The provisions of the first book of the penal code, as well as those of the law of June 18 by that of May 16, 1904 on the attribution to the courts and tribunals of the assessment of attenuating circumstances, will be applicable.
Regulations adopted according to the procedure provided for in the first paragraph of this article shall specify the provisions of the regulations of the European Communities which are to be penalized.

Art. 2
In addition to the officers of the judicial police and the agents of the gendarmerie and the police, the customs agents as well as the agents of the services to be designated by regulation of public administration are responsible for researching and recording the offenses punishable by this law and its implementing regulations.
In the performance of their functions relating to this law, the agents of the gendarmerie, the police and customs as well as the agents to be designated according to the preceding paragraph have the quality of judicial police officers. They note the offenses by official reports being authentic until proof to the contrary. Their jurisdiction extends to the entire territory of the Grand Duchy. Before taking office, they take the following oath before the district court of their domicile sitting in civil matters: "I swear to perform my duties with integrity, accuracy and impartiality. So, help me God!"

Art. 3
With a view to researching and noting infringements of the regulations of the European Communities and those of the regulations implementing the decisions and directives of these same Communities, the control to be carried out by the persons referred to in Article 2 of this law relates to all stages of production and marketing, as well as transport.
Qualified agents have access to the premises, land, means of transport, books and professional documents of persons and companies subject to the regulations made pursuant to Article 1 of this law. They can:
To) enter, even during the night, when there are serious indications leading to the presumption of a breach of this law, the premises and land referred to in paragraph two of this article; however, if it is a private home, a search warrant is required;
b) visit during the day and even during the night, when there are serious indications that a violation of this law may be presumed, the vehicles of transport companies and check the documents required by law and the regulations issued under this law;

vs) require the production of all business records relating to the objects covered by this law;

Art. 4
Will be punished with a prison sentence of eight days to five years and a fine of five hundred and one to one million francs or one of these penalties only those who oppose the control measures provided for in article 3 of this law. Paragraphs 4, 5 and 6 of Article 1 will apply to these offences.
Mandate and order that this law be inserted in the Memorial to be executed and observed by all whom the matter concerns.

The Minister of Foreign Affairs and Foreign Trade,
Eugene Schaus

The Minister of National Economy, Middle Classes and Tourism,
Marcel Mart

The Minister of Agriculture and Viticulture,
Jean Pierre Buchler

The Minister of Transport and Energy,
Marcel Mart
The Minister of Labor and Social Security,
John Dupong

III. Special Rules on OLAF Investigations in Luxembourg

1. Exchange of Information between the Office and the Competent Authorities of the Member States

1. Without prejudice to Articles 10 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may transmit to the competent authorities of the Member States concerned information obtained in the course of external investigations in due time to enable them to take appropriate action ***in accordance with their national law***. It may also transmit such information to the institution, body, office or agency concerned.
2. Without prejudice to Articles 10 and 11, the Director-General shall transmit to the ***judicial authorities of the Member State concerned*** information obtained by the Office, in the course of internal investigations, concerning facts which fall within the ***jurisdiction of a national judicial authority***. […]

3. The ***competent authorities of the Member State concerned*** shall, unless ***prevented by national law***, inform the Office without delay, and in any event within 12 months of receipt of the information transmitted to them in accordance with this Article, of the action taken on the basis of that information.
4. The Office may ***provide evidence*** in proceedings before national courts and tribunals ***in conformity with national law*** and the Staff Regulations. […]

a) Article 12 para. 1 OLAF Regulation: Competent Authorities and Appropriate Action in Accordance with Their National Law

The competent authorities (see above → Art. 3 OLAF Regulation "**Competent Authorities**" and A. II.) shall take, enabled by the information, which the competent OLAF Unit sends to them after an external investigation, an appropriate action. If a customs control e.g. results in the Assessement of an irregularity, the goods can be retained and used if necessary, so that the proceeds are used by the state to recover a duty sum, which was evaded. **1**

b) Article 12 para. 2 OLAF Regulation: Judicial Authorities of the Member State Concerned

"Judicial" is foremost an adjective and according to the Oxford Dictionary it comes usually before noun and is connected with a court, a judge or legal judgement.[357] Secondly the interpretation needs to **be compliant with the ECJ's interpretation of judicial authority**. The problem in this regard is that, the EU legislator uses the term "judicial" quite **widely and uncoherent**. **2**

The French term "*Juridictions Judiciaires*", which is translated with judicial jurisdictions is related to the Luxembourgish system of courts.[358] **3**

The **normal jurisdiction** shall be explored at first: **4**

It distinguishes between **justices of the peace** (*Justices de Paix*), which is the lowest of the judicial jurisdictions encompassing the *tribunal de paix*, the *tribunal de police*, which is competent to judge with a representative of the police and the public prosecutor's office minor criminal conduct, the tribunal de travail and last but not least the *Référé travail*. Next it distinguishes on the level above the justices of the peace between **the district courts**[359], which can decide in criminal matters:[360] **5**

[357] Oxford Advanced Learner's Dictionary at Oxford LearnersDictionaries.com (1.8.2023) "Judicial" adjective – Definition, pictures, pronunciation and usage notes.
[358] La Justice, Grand-Duché du Luxembourg, https://tinyurl.com/26rzfwbc. Accessed 30 June 2026.
[359] La Justice, Grand-Duché du Luxembourg, https://tinyurl.com/26rzfwbc. Accessed 30 June 2026. "The country is divided into two judicial districts and each has a district court, one in Luxembourg and the other in Diekirch. Each court has territorial jurisdiction in the district in which it is located."
[360] La Justice, Grand-Duché du Luxembourg, https://tinyurl.com/26rzfwbc. Accessed 30 June 2026.

"The district courts exercise criminal jurisdiction as criminal courts. They are competent to try all offences, i.e. offences against the law punishable by a misdemeanour, as well as acts classified as crimes by law, which are referred to them by the Council Chamber or the Council Chamber of the Court of Appeal. Accused persons must appear in person, except in cases where the offence is punishable by a fine only; In this case, they may be represented by a lawyer."[361]

6 Next, follows at the **top of the hierarchy of judicial courts** the High Court of Justice. It includes the Court of Cassation and the Court of Appeal, as well as a General Prosecutor's Office.

7 The Court of Cassation is competent to decide in criminal matters, which might include trials, which were initiated from an OLAF Report or in which an OLAF Report plays a role.

8 Generally speaking, the **Cassation court** acts in criminal matters besides the Public Prosecutor's Office and all parties may lodge an appeal in cassation against judgments of the investigating chamber and judgments handed down at last instance in criminal, correctional and police matters, within one month from the day on which they were lawfully aware of the judgement or judgment. An appeal shall be lodged at the registry of the court which issued the contested decision.

9 The **organization of the administrative justice** in Luxembourg is governed by the following laws:

1. *Loi du 7 Novembre 1996 portant organisation des juridictions de l'ordre administratif*/The Law of 7 November 1996 on organization of Administrative Courts, as amended
2. The Law of 21 June 1999 regulating the procedure in front of Administrative Courts, as amended

10 The Administrative Tribunal, Administrative Appeal Court are judicial authorities.

c) Article 12 para. 3 OLAF Regulation: Information to the Office by Competent Authorities of the Member State Concerned

11 The competent authorities (see above → Art. 3 OLAF Regulation (Competent authorities" see A. II. and Institutions) must inform the office within 12 months of any action

[361] Ibid.

taken according to the OLAF Report or the information submitted. This rule ensures that OLAF sees the follow-up and if any has been issued. Thus, OLAF can create statistics.

d) Article 12 para. 4 OLAF Regulation: Providing Evidence in Court Proceedings before National Courts and Tribunals in Conformity with National Law

The **national courts and tribunals** have been listed above under the debate on judicial authorities and they can be retrieved from above → Institutions. **12**

2. Anti-Fraud Coordination Services

Art. 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

Cooperation, Coordination and Facilitation are "**buzz words**" in anti-fraud literature.[362] Anti-fraud coordination services are known worldwide and exist in many international organizations and cooperate with nation states.[363] 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).[364] The obligation to designate these **1**

[362] Kuhl 2019, pp. 135, 160 et seq.; Joseph 2014; Spink 2019; Saporta and Maraney 2022; FCPA 2012. online: https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf. Accessed 30 June 2026; ECA 2022. online: https://www.eca.europa.eu/Lists/ECADocuments/JOURNAL22_01/JOURNAL22_01.pdf; Malan 2022, pp. 135–139; focusing on the customs area Van der Paal et al. 2019; de Vries 2022, pp. 401–463; House of Lords, The Fight Against Fraud on the EU's Finances 12th Report of Session 2012-13, pp. 32 et seq; Belfayol 2021, pp 156–158.

[363] Bartsiotas and Achamkulangare 2016; See World Customs Organization, http://www.wcoomd.org/en/about us/partners/international_organizations.aspx (Accessed 30 June 2026); see UNDOC, https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html (Accessed 30 June 2026), focusing on the designation of anti-corruption bodies. They exist even on national level and are especially common in federal state systems, see Austria, which was special "Betrugsbekämpfungskoordinator:innen" https://www.bmf.gv.at/en/topics/combating-fraud/anti-fraud-units/anti-fraud-coordinators.html: "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 ex-ternal information exchange or cooperation with external institutions and authorities." Accessed 30 June 2026.

[364] Kuhl 2019, p. 164.

services runs and derives from primary Union law. Art. 325 TFEU (ex-Art. 280 TEC) requests the Union *and* the Member States to fight fraud (together). The history of these services, adapted to the financial and budgetary law sector and set-up in the Member States' internal justice and financial systems **dates back to the early 2000s**.[365] Historically, the coordinating bodies emerged primarily in the new Member States that were awaiting accession.

2 The European Parliament has already in 2010 called for the AFCOS to be set up as **independent bodies in the MS**. Today one could not be further from this idea than ever, since the AFCOS are mostly subordinated deep in the structure of a Financial or Treasury Department/Ministry, Financial Inspections Services of the Treasury Department/Ministry, the Department of Commerce or the Ministry/Department of the Interior.

3 The simplicity of the coordination from within a ministry and the size of the administrative apparatus certainly speak in favour of this, but the interconnectedness is also problematic from the point of view of efficiency (states with political goodwill coordinate very easily and others are politically *manoeuvrable*):

"***Friday 24 April 2009 Protection of the Communities' financial interests and the fight against fraud - Annual Report 2007 P6_TA(2009) 0315 European Parliament resolution of 24 April 2009 on the protection of the Communities' financial interests and the fight against fraud – Annual Report 2007 (2008/2242(INI)) 2010/C 184 E/14 The European Parliament,"***

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."[366]

[365] Quirke 2015, pp. 232, 236 et seq.

[366] 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, "68. Points out that the Anti-Fraud Coordination Services (AFCOS) established for OLAF in the Member States that joined the European Union after 2004 are very important sources of information and contact points for OLAF; notes, however, that the functional added value of these offices (particularly regarding the reporting of irregularities to the Commission) is minimal as long as they are not independent of national administrations; therefore calls on the Commission to submit a proposal to the competent parliamentary committee on how the work of these offices could be made more effective, and considers it necessary to improve cooperation with candidate countries;; [...]."

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.[367] 4

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. 5

They have become a *sine qua non* in the EU's fight against fraud and it seems that they are becoming more and more the "eyes and ears" of OLAF in the Member States. They only have their own investigative skills, which would make them an "extended arm" of OLAF in the member states, if at all, e.g. in Bulgaria or Italy. On the other hand, in Germany and France, they are more active in the background and do not appear too clearly. Activity reports may also have to be requested by the Commission, i.e. the responsible departments of OLAF. 6

bb. Legislative Developments

The Commission has evaluated the **impact of the AFCOS in the past decade**.[368] Recent changes at the beginning of the 2020s have enlarged the competences of the AFCOS. These are now even allowed to cooperate with each other and not only with OLAF in Luxembourg alone, which was the case prior to the amendments of the Regulation (EU) 2020/2223. 7

The recent changes describe the role of the AFCOS in the recitals. Thus, by reading them the task and role of these bodies becomes vivid: 8

(23) The Office is able, under Regulation (EU, Euratom) No 883/2013, to enter into administrative arrangements with ***competent authorities of Member States***, such as anti-fraud coordination services, and institutions, bodies, offices and agencies, in order to specify the arrangements for their cooperation under that Regulation, in particular ***concerning the transmission of information, the conduct of investigations and any follow-up action***.
(30) Due to the large diversity of national institutional frameworks, Member States should, on the basis of the principle of sincere cooperation, ***have the possibility to notify to the Office the authorities that are competent to take actions upon recommendations***

[367] Byrne 2018, p. 13. online: https://tinyurl.com/y8r7ev6b. Accessed 30 June 2026.
[368] Commission Staff Working Document Evaluation of the application of Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 Accompanying the document Commission report to the European Parliament and the Council., pp. 3, 12, 72. The Commission document was accompanied by a Report (called ICF Report 2017), which 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://tinyurl.com/2ksdt74d. Accessed 30 June 2026.

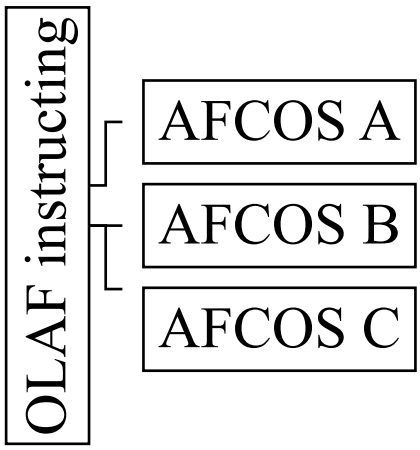
of the Office, as well as the authorities that need to be informed, such as for financial, statistical or monitoring purposes, for the performance of their relevant duties. Such authorities ***may include national anti-fraud coordination services***. In accordance with the settled case-law of the CJEU, the Office recommendations included in its reports have no binding legal effects on such authorities of Member States or on institutions, bodies, offices and agencies.

(37) The anti-fraud coordination services of Member States were introduced by Regulation (EU, Euratom) No 883/2013 to facilitate an effective cooperation and exchange of information, including information of an operational nature, between the Office and Member States. The Commission evaluation report concluded that they have contributed positively to the work of the Office. The Commission evaluation report also identified the ***need to further clarify the role of those anti-fraud coordination services*** in order to ensure that the Office is provided with the necessary assistance to ensure that its investigations are effective, while leaving the organisation and powers of the anti-fraud coordination services to each Member State. In that regard, the anti-fraud coordination services should be able to provide or coordinate the ***necessary assistance*** to the Office ***to carry out its tasks effectively, before, during or at the end of an external or internal investigation***.

(40) It should be possible for the anti-fraud coordination services in the context of coordination activities to provide assistance to the Office, as well as for the anti-fraud coordination services ***to cooperate among themselves***, in order to further reinforce the available mechanisms for cooperation in the fight against fraud.

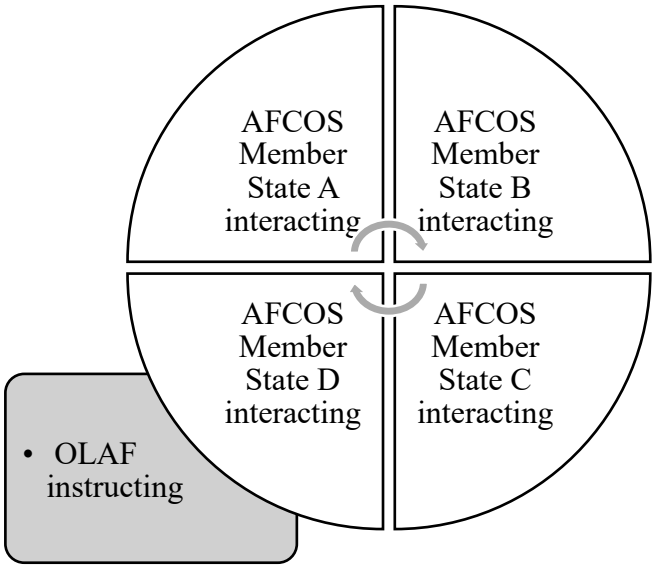
cc. Visualisation of Old (Prior to 2020) vs New (Since 2020) Cooperation and Role of the AFCOS

9 *Figure 11: Visualization of the Old Cooperation by Virtue of Regulation No. 883/2013*



Source: Own Compilation.

Figure 12: Visualization of the New Cooperation by Virtue of Regulation No. 883/2013 (2020/2223) **10**



Source: Own Compilation

b) A Closer Look at the Relevant AFCOS Luxembourg

Luxembourg has placed its AFCOS **within the structure of the Ministry of Finance**. It has given the task to the Directorate of International Financial Relations, Development Aid and Compliance in the Ministry of Finance. (Direction "*Affaires multilatérales, développement et compliance*").[369] **11**

[Article 12b–12d omitted]

3. 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;

[369] See https://annuaire.public.lu/fr.html. Accessed 30 June 2026.

(b) facilitating coordination of specific actions of ***the competent national administrative authorities*** and bodies of the Union; […]

OLAF has contact to the Luxembourgish AFCOS and might coordinate the information flow between Eurojust and OLAF.

[Article 12f–g omitted]

4. 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. […]

According to the information from Eurojust, OLAF may help Eurojust in JIT's or with information concerning criminal gangs operating in different MS. Eurojust has a mandate to act against fraud detrimental to the EU. OLAF has contact to the Luxembourgish AFCOS and might coordinate the information flow between Eurojust and OALF. **Eurojust** has provided on its **Website the following information**: "The **Luxembourgish Desk** is headed by *Olivier Lenert*, who is the National Member for Luxembourg since October 2013. In 2022, the Luxembourgish Desk was involved in 78 new cases, 8 coordination meetings, and 1 joint investigation team."[370]

[Article 14–16 omitted]

5. 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.

[370] Eurojust, https://www.eurojust.europa.eu/states-and-partners/member-states/luxembourg. Accessed 30 June 2026.

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.

Article 17 contains provisions regarding the **office's reporting obligations** and the **safeguarding of procedural guarantees** in the course of its investigations. Paras 4 and 7, in particular, – this is the *telos* – underline OLAF's efforts to balance effective investigative action with the protection of fundamental rights. **1**

The Supervisory Committee noted that **OLAF's country mini-profiles** provided some information on national laws but were insufficient for compensating occasional expertise issues.[371] They also reviewed **OLAF's legality check procedures**, recognizing the importance of expertise in all EU Member States' legal systems. Good relations between investigators and reviewers were seen to positively impact the quality of checks and reviews. OLAF's legality check ensures compliance with legal rules and addresses any breaches swiftly. The check focuses on procedural aspects and may lead to modifications or abandonment of actions if it fails. The committee emphasized the importance of compliance with rights and procedural rules in promoting the rights of those affected. **2**

Article 17 para 4 specifies that the OLAF Director-General is required to **report regularly and at least annually**, to major EU IBOA. The reports should cover the findings of OLAF's investigations, the actions taken and any problems encountered during them. Importantly, these reports must respect the confidentiality of investigations and the legitimate rights of individuals involved, including informants. The provision also requires OLAF to consider national laws applicable to judicial proceedings. **3**

Next, Article 17 para 7 further emphasizes procedural guarantees and compliance with fundamental rights. It mandates the establishment of an internal advisory and control procedure, including a legality check, which OLAF did in the past. **4**

The **legality check** should be carried out by OLAF staff who are experts in law and investigative procedures and focus on the procedural safeguards. This internal control mechanism is relevant for ensuring that national laws are respected. The opinion resulting from this check should then be annexed to the final investigation report, thereby providing transparency and accountability for the decisions made throughout the investigative process. **5**

[371] Supervisory Committee, Opinion No 2/2015, Legality check and review in OLAF, pp. 6 et seq.

6 As noted by *Mavromati* and *Riochet* they recalled that this legality check was introduced as a **new internal advisory and control procedure** in the past.[372] This change, unlike its predecessor (Regulation 1073/1999), was designed to **include an internal legality** check that assesses, among other things, the respect for procedural guarantees and the fundamental rights of individuals under investigation. This internal process is vital for ensuring that OLAF's actions remain compliant with both EU and national standards, e.g. for **upholding the rule of law and protecting the rights of individuals**. Moreover, the importance of these procedural safeguards has been by the ECL C-787/22, which related to the respect for the rights of defence and procedural guarantees during OLAF's investigations were at the Center of the dispute.[373] It was reiterated the need for OLAF to operate in a manner that respects fundamental rights, including the right to be heard and the right to avoid self-incrimination.

[372] Mavromati and Riochet 2024, eucrim, pre-print.
[373] ECJ, Case C-787/22 P, *Sistem ecologica production v EU Commission*, Judgement of 30 November 2023, ECLI:EU:C:2023:940.

D. Annex I Case Law Collection EPPO/OLAF Decisions in the Benelux, 2021–2026

Comparison researched and composed by: *Hauck/Schneider/Karakocaoğlu*

This **case law Annex**[374] may help EDPs, seconded national experts of OLAF and defence lawyers as we have constructed a **map of what they may legally request/ order/ assess/verify or do**, where they must seek judicial authorisation and where challenges dealt with by **Benelux courts**, a very **important region of the EU** as it encompasses the **Ports of Rotterdam and Hamburg,** will arise; hereby we deal with what *Ligeti* already called an "**emerging** [*scil.* **EPPO**] **jurisprudence of national and EU courts** [*scil.* in EPPO Regulation and PIF Directive matters shaping the PIF *Acquis* like never before]".[375] 1

For a **handling EDP**, this is operational guidance. As OLAF staff often works at the junction of EU anti-fraud enforcement and national procedure, this is important, too. This collection shows how national courts "treat" EU fraud bodies and their procedural actions, what kind of procedural safeguards shape Europeanisation, and where information-sharing, evidentiary use, or coordination problems may arise. It is especially useful for understanding how administrative anti-fraud logic intersects with criminal-law judicial control as well. 2

For **defence lawyers** there is real "pressure" to develop a good defence strategy. The cases show that the decisive question is often not whether a measure can be challenged, but where, by whom, and on what ground. Defence needs to know **whether to litigate in the issuing state or executing state, whether a complaint route is criminal or civil**, whether standing exists for third parties, whether proportionality review is actually 3

[374] Be aware that some of these decisions have not been publicised online, yet. Still some of them can be found in the national databases. We pinpoint you to the German Volume and its referencing list of German court decisions, mainly from Country Courts (*Landgerichte*), which we obtained on final EPPO cases (mostly not published previously. They all contain case numbers so they can be cited and some have been published on Open. Juris, Juris or Beck after our requests, *scil.* JMS).

[375] See recently Ligeti 2026, pp. 173–212, see especially her title: "Article 42 of the EPPO Regulation and the emerging jurisprudence of national and EU courts". *Nota bene* that decisions on OLAF actions are quite common as OLAF has an own court digest already and the ECJ and national courts have decided plenty decisions on OLAF reports, access to case files and damage requests after investigations intro irregularities or on *ne bis in idem* cases; see as well Court of Justice of the European Union 2017b, p. 3: "It is apparent from the case-law of the ECtHR that there is an infringement of the *ne bis in idem* principle if the following conditions are satisfied: (1) the existence of two sets of criminal proceedings within the meaning of the ECHR; (2) the identity of the offences prosecuted (*concept of idem*); (3) the existence of a final decision; (4) the duplication of proceedings (*concept of bis*)" and see p. 6: "Moreover, while all the Member States are bound by Article 50 of the Charter 8 which enshrines the same principle and by the interpretation given to it by the Court of Justice in *Åkerberg Fransson*, under Article 51 of the Charter, the scope of hat principle is restricted to situations of implementation of EU law and therefore also fails to include all the situations of cumulation of sanctions which are relevant to the subject matter of this research note."; see at the beginning of every CNP volume within the tables on OLAF decisions concerning the country or OLAF's actions scope in general as well as complaints against OLAF decisions. For a list of that see the Lithuanian volume, after the OLAF part, D.

available, and whether constitutional arguments about impartiality, liberty, or effective remedy still have traction. In other words, the comparison turns a confusing multi-level system into a usable litigation structure.

4 Our collection shows that **EPPO case law is producing a European procedural architecture** of **shared** but (still) "uneven control", and that understanding this architecture is essential for prosecutors, OLAF-linked experts, and defence alike.

5 *Table 8 Emerging EPPO Jurisprudence (2023–2026) from the Benelux Criminal Courts and Other Courts Across the EU Concerning EPPO & OLAF Actions*

Cour de cassation (France), n° 24-82.624, 24.09.2025, ECLI:FR:CCASS:2025:24.82.624	Judicial review of refusal by a European Delegated Prosecutor to lift or modify judicial supervision; Art. 696-119 Code de procédure pénale, Art. 62 Constitution; dispute on effective judicial remedy and competent court; EPPO involvement through decision-making powers of the European Delegated Prosecutor; clarification that review must first be brought before the *juge des libertés et de la détention*.
Cour de cassation (France), n° C2501461, 14.10.2025, ECLI:FR:CCASS:2025:C2501461	Control of substantive legality of criminal asset seizure; dispute on jurisdiction over review of seizure conditions; EPPO context relevant where seizure is linked to EPPO proceedings; clarification that **review lies with courts of the Member State of the handling** European Delegated Prosecutor.
Conseil constitutionnel (France), n° 2025-1169 QPC, 03.10.2025, ECLI:FR:CC:2025:2025.1169.QPC	Constitutionality of Art. 706-112-1 Code de procédure pénale concerning legal assistance for protected adults in police custody; dispute on scope of defence rights and fair trial under Art. 16 DDHC; indirect EPPO relevance as provision stems from legislation linked to EPPO framework; confirmation that optional appointment of counsel via guardian sufficiently guarantees defence rights.

Cour de cassation (France), n° C2501080, 24.09.2025, ECLI:FR: CCASS:2025:C2501080	Judicial review of su**bstantive conditions of a criminal asset seizur**e in EPPO proceedings; Arts. 30–32 Regulation (EU) 2017/1939; dispute on jurisdiction over review of legality of seizure ordered by a European Delegated Prosecutor in another Member State; EPPO directly involved; clarification that review of the merits lies with courts of the Member State of the handling European Delegated Prosecutor; appeal against decision of the Chambre de *l'instruction de la cour d'appel* de Paris, 12.03.2024.
Cour de cassation (France), n° 24-82.625, 24.09.2025, ECLI:FR: CCASS:2025:24.82.625	Cross-border **EPPO asset seizure in large-scale VAT fraud case**; Arts. 30–32 Regulation (EU) 2017/1939, Art. 706-154 Code de procédure pénale; **dispute on legality of seizure** ordered by assisting European Delegated Prosecutor prior to formal delegation and on scope of judicial review and effective remedy under Arts. 17 and 47 CFR; EPPO directly involved through delegation between Belgian handling EDP and French assisting EDP; court held that **informal prior instruction suffices under national law**, seizure requires no formalism, and that review of **substantive legality lies with courts of the handling Member State** while French courts are limited to reviewing execution; appeal against decision of the Chambre de *l'instruction de la cour d'appel* de Paris, 12.03.2024, confirming the order of the *juge des libertés et de la détention* of 29.08.2023 maintaining the seizure.
Cour de cassation (France), n° 25-90.017, 02.09.2025, ECLI:FR: CCASS:2025:25.90.017	QPC proceedings in a case concerning organised fraud affecting financial interests, i.e. PIF offence under Art. 22 EPPO Regulation; provisions challenged: Art. 696-114

	and 696-119 Code de procédure pénale, Art. L. 312-8 Code de l'organisation judiciaire; dispute on constitutionality regarding separation of prosecution and investigation functions, impartiality, equality before the law and defence rights in EPPO proceedings; EPPO directly involved as procedural framework for prosecution; **court held that no constitutional principle prohibits combining prosecutorial and investigative functions within EPPO**, that sufficient safeguards and remedies exist, and that different treatment compared to national proceedings is justified; no referral of the QPC to the Conseil constitutionnel; referral from *Cour d'appel* de Paris, 12.06.2025.
Conseil constitutionnel (France), n° 2025-1153 QPC, 30.07.2025, ECLI: FR:CC:2025:2025.1153.QPC	Constitutionality of powers of the European Delegated Prosecutor to maintain and modify judicial supervision in proceedings concerning offences affecting the financial interests of the EU (PIF offences, Art. 22 EPPO Regulation); Art. 696-119 Code de procédure pénale; **dispute on compatibility with Art. 66 Constitution** (personal liberty), principle of impartiality, equality before the law and effective judicial remedy; EPPO directly involved as prosecuting authority; court held provisions constitutional subject to reservations: **deprivation of liberty exceeding 12 hours per day requires judicial authorisation** (*juge des libertés et de la détention*), and full access to judicial review must be ensured; referral from Cour de cassation (chambre criminelle), 03.06.2025.
Conseil d'État (France), No. 503747, 10.07.2025, ECLI:FR:CE:2025: 503747.20250710	QPC in **administrative proceedings** brought by Mr A.. B.., MGF, and Mobiky Tech in support of an action for annulment

	for excess of power against the implicit refusals of the Prime Minister and the Minister of Justice to repeal Art. D. 47-1-42 Code de procédure pénale and the ministerial circular of 03.06.2021 on the operational start of the EPPO; **challenged provisions: Arts. 696-114 and 696-118 Code de procédure pénale**; dispute on whether entrusting European Delegated Prosecutors with certain acts normally reserved to the investigating judge infringes judicial independence and impartiality, the rights of the defence, and the right to a fair trial under Art. 16 DDHC; EPPO directly involved because the case concerns the French procedural framework implementing EPPO investigations and prosecutions in PIF cases; affected persons mentioned by the court include suspects, accused persons, assisted witnesses, civil parties, and third parties affected by EPPO procedural acts; **the Conseil d'État held that the question was neither new nor serious, found that sufficient guarantees existed under Regulation (EU) 2017/1939 and national law**, and therefore **refused to refer the QPC** to the *Conseil constitutionnel*.
Cour de cassation (France), Chambre criminelle, Case number: C2500914 (pourvoi n° T 25-82.111 F-D) Date: 03 June 2025 ECLI:FR:CCASS:2025:C2500914	QPC referral in criminal proceedings against Mr B. T. concerning PIF-related offences fraudulent declarations to obtain undue advantages, organised fraud, customs money laundering, aggravated money laundering; legal issue: **constitutionality of Art. 696-119** Code de procédure pénale **allowing** the EDP to decide on the **maintenance, modification, or lifting of judicial supervision** despite being the prosecuting authority; dispute over potential violation of impartiality, presumption of innocence,

	effective remedy, equality before the law, and personal liberty; EPPO directly involved as the EDP issued and maintained the judicial supervision measure; appeal directed against the decision of the Chambre de l'instruction of the Paris Court of Appeal of 20 February 2025 confirming the EDP's decision; the Cour de cassation found the constitutional question serious particularly regarding impartiality and therefore **referred the QPC to the *Conseil constitutionnel***.
Cour d'Appel de Paris (France) **Case: No. 2023/06345** **Date: 27 June 2024**	Material scope of EPPO jurisdiction in subsidy fraud, EPPO competence linked to PIF Directive. The court held that jurisdiction depends on substantive scope of PIF Directive, not on national notification under Art. 117 EPPO Regulation; EU funds need not yet be disbursed
Court of Appeal of Liège (Belgium) **Case number: 2023/CO/869** **Date: 20 March 2025 ECLI/URN: urn:lex:be:cour.appel: arret:2025-03-20;2023.co.869**	Appellate decision in fiscal/criminal proceedings concerning customs and excise offences; legal issue: **allocation of competences between national authorities and the EPPO** under Regulation (EU) 2017/1939, in particular whether failure to inform the EPPO renders national proceedings inadmissible; EPPO involved indirectly as potential competent authority in PIF-related offences; the court clarified that the EPPO does not have automatic or exclusive jurisdiction and that **competence remains shared**; the duty of national authorities to inform the EPPO is based on the principle of loyal cooperation but is not sanctioned by nullity; consequently**, failure to inform the EPPO does not render national prosecutions inadmissible or void**; the court upheld the admissibility of

	national proceedings despite the alleged lack of prior notification to the EPPO.
Cour de cassation (Luxembourg) Case number: CAS-2023-00114 (No. 42/2024 pénal) Date: 21 March 2024	**Cassation appeal** brought by SOCIETE1 LLP and its Luxembourg branch against a decision of the Chambre du conseil of the Court of Appeal of Luxembourg of 23 May 2023, which confirmed an investigative judge's order of search and seizure issued upon request of a European Delegated Prosecutor; case concerns EPPO-led cross-border investigation into offences affecting the EU's financial interests (PIF context implied); legal issue: **admissibility of a cassation appeal by a third party** affected by investigative measures, including arguments based on the right to an **effective remedy under Art. 13 ECHR**; EPPO directly involved as prosecuting authority and respondent, represented by a European Delegated Prosecutor; the court held that, according to **Art. 407 Luxembourg Code of Criminal Procedure**, cassation appeals in criminal matters are limited to the public prosecutor, the accused, and the civil party; third parties (such as entities subject to search/seizure) lack standing; the court further held that **this limitation does not violate the right to an effective remedy**, since **judicial review was already available through appeal against the investigative measure;** consequently, the appeal in cassation was declared inadmissible.
District Court of Amsterdam (International Cooperation Chamber) Case number: 13/279805-25 Date: 14 January 2026	Proceedings concerning a European Arrest Warrant (EAW) issued by a European Delegated Prosecutor (EPPO Munich, Germany) **against a Dutch national** suspected of large-scale cross-border VAT fraud; the requested person **challenged the validity of the EAW**, including the existence of a

	national arrest warrant, sufficiency of the facts, proportionality, and detention conditions; the court confirmed that a **separate national arrest warrant exists** and that the EAW is sufficiently reasoned; however, the court raised doubts about effective judicial protection, specifically whether the proportionality of the EAW was subject to prior judicial review in Germany; the **court reopened proceedings** and **requested additional information from the issuing authority** on judicial review of proportionality and possible overlap with Dutch proceedings (*ne bis in idem*); decision suspended pending answers.
District Court of Rotterdam (multi-judge chamber) Case number: 25/013934 Date: 9 February 2026	**Complaint against seizure of bank accounts** and real estate ordered in an investigation led by the European Public Prosecutor's Office (EPPO) into alleged document forgery and misuse of EU funds; the applicant argued lack of suspicion, disproportionality, and violation of the right to defence due to inability to fund lawyers; the court held that there is a **reasonable suspicion of offences** punishable by significant financial penalties and that it i**s not highly unlikely that confiscation or fines will follow**; the **seizure** was deemed **proportionate** in light of the estimated unlawful benefit (~€1.3 million); no violation of Article 6 ECHR was found, as alternative means of legal assistance remain available; complaint dismissed.
District Court of Amsterdam Case number: 13/279805-25 Date: 18 March 2026	Follow-up to the 14 January 2026 decision concerning the same EAW issued by an EPPO Delegated Prosecutor (Germany); after receiving answers from German au-

	thorities, the court found that no clear judicial review exists regarding the proportionality of an EPPO-issued EAW, raising serious concerns about effective judicial protection under EU law; the court requested further clarification and considered the possibility of referring questions to the Court of Justice of the EU; additionally, the court found **that parallel proceedings in the Netherlands and Germany overlap** (*ne bis in idem*), making the refusal ground applicable, but ultimately decided not to apply it due to the early stage of proceedings and the possibility of coordination between states; proceedings again suspended pending further information.
District Court of Rotterdam Date: 7 March 2025 ECLO_NL_ RBROT_2025_3360-1 Type: Complaint procedure (Art. 552a Sv)	**Complaint against seizure** carried out in the Netherlands following a cross-border investigative measure under Article 31 EPPO Regulation initiated by a Belgian European Delegated Prosecutor; during a **house search**, €7,000 was seized; the court held that the EPPO decision only authorized **seizure of documents and items relevant to financial transactions, not cash**; therefore, the assisting Dutch delegated prosecutor exceeded the scope of the authorized measure; the **seizure of €7,000 lacked a legal basis and was unlawful**; complaint upheld and return of money ordered.
District Court of Rotterdam Date: 28 May 2025 ECLI_NL_ RBROT_2025_6285-2 Type: Criminal judgment (merits)	Criminal case concerning participation in a **cross-border VAT fraud scheme**; the defence challenged the jurisdiction of the EPPO, arguing that the €10 million damage threshold was not met; the court held that the **EPPO may estimate total damage across the entire fraud scheme** and

	that a German-linked investigation estimated damages at nearly €40 million; therefore, EPPO jurisdiction was valid; the defendant was convicted of participation in a criminal organization involved in VAT fraud; sentence imposed included a partly suspended prison sentence and community service.
District Court of Amsterdam Date: 22 May 2025 ECLI_NL_ RBAMS_2025_3414-1	Proceedings on a European Arrest Warrant issued by an EPPO Delegated Prosecutor in Berlin for nine fraud-related offences; the defence argued insufficient detail and raised an innocence claim; the court held that the **EAW contained sufficient factual information** and that Dutch courts may not assess the merits of the suspicion; innocence defence is no longer admissible under amended Dutch law; no refusal grounds applied; a return guarantee was provided ensuring the person could serve a sentence in the Netherlands; overleverage (surrender) allowed.
Gerechtshof Den Haag – 15 July 2025, Court: Court of Appeal The Hague Date: 15 July 2025, ECLI_NL_GHDHA_2025_1266	**Civil proceedings seeking lifting of a European Freezing Order** (EFO) issued by a Lithuanian EPPO prosecutor and executed in the Netherlands; the court held that the **delegated European prosecutor cannot be sued as a party**, since only the EPPO itself has legal personality; moreover, the proper remedy is the criminal complaint procedure (Art. 552a Sv), not civil litigation; the court also confirmed that national courts cannot review the substantive grounds of the freezing order, which is reserved for the issuing state; appeal dismissed.
Case: ECLI_NL_RBROT_2024_533 Court: District Court of Rotterdam Date: 23 January 2024	(Complaint against seizure of watches and €18,410 carried out in the Netherlands fol-

	lowing a cross-border investigative measure under Article 31 EPPO Regulation initiated by Italian delegated prosecutors; the defence argued that the Dutch court should also review legality, proportionality, and subsidiarity of the measure; the court held that under Articles 31–32 EPPO Regulation, the executing Member State may only review the execution of the measure, not its justification; such review belongs exclusively to the issuing state (Italy); no exceptional circumstances justified broader review; complaint dismissed).
Court: District Court of Rotterdam Case Date: 26 April 2024 ECLI_ NL_RBROT_2024_4980	**Complaint** against multiple seizures in an EPPO investigation into VAT fraud; seizures included business administration, bank accounts, vehicles, and real estate under Articles 94 and 94a Sv; the court held that there was sufficient suspicion of serious offences and that it was not highly unlikely that fines or confiscation would follow; both evidentiary seizure and conservatory seizure were justified; proportionality and subsidiarity were satisfied, especially as the EPPO provided practical accommodations (e.g., copies of documents, flexibility regarding property); complaint dismissed.
Court: District Court of Amsterdam Case Date: 14 August 2024 ECLI_ NL_RBAMS_2024_5107	EAW issued by Belgian judicial authorities for offences including participation in a criminal organisation and money laundering; the **defence invoked the territoriality refusal ground** (Art. 13 OLW); the court emphasized that surrender is the rule and refusal the exception; despite partial territorial links to the Netherlands, Belgium was the main prosecuting state; detention conditions in Belgium raised general concerns, but individual guarantees (cell

	space, hygiene, activities) removed the risk of inhuman treatment; return guarantee provided; overlevering allowed.
Court: District Court of Amsterdam Date: 20 August 2024 ECLI_NL_ RBAMS_2024_5123	EAW issued by Belgian authorities; **key issue was whether a return guarantee provided by a European Delegated Prosecutor was valid** without attaching the formal ministerial authorization; the court held that under the principle of mutual trust, it must be assumed that the guarantee was properly authorized under national law; absence of supporting documents does not invalidate the guarantee; territoriality objection rejected; overlevering allowed.
Court: District Court of Amsterdam Date: 23 November 2023 ECLI_NL_ RBAMS_2023_7468	EAW issued by an EDP (Germany, EPPO); **defence argued that the EPPO is not a "judicial authority" and that a delegated prosecutor lacks competence to issue an EAW**; the **court held** that Article 33 EPPO Regulation **grants a direct and autonomous power** to delegated prosecutors to issue EAWs; EPPO independence is sufficiently guaranteed under EU law; no need for national judicial authorization; overlevering allowed.
Court: District Court of Amsterdam Date: 23 November 2023 ECLI_NL_ RBAMS_2023_7717	EAW issued by a European Delegated Prosecutor in Germany in a VAT fraud case; the court confirmed that the offences qualify as list offences, so no double criminality test is required; although part of the conduct occurred in the Netherlands, the territoriality refusal ground (Art. 13 OLW) was not applied because Germany was the main prosecuting state; **a return guarantee** ensured that any sentence could be served in the Netherlands; overlevering allowed.
Parket bij de Hoge Raad – 2 June 2023 (Conclusion A-G Ettema)	Case **concerning whether OLAF can conduct investigations in a third country**

	(Taiwan) without a formal cooperation agreement; the A-G concludes that OLAF may conduct such investigations based on voluntary cooperation and existing EU legal frameworks (e.g. Regulation 515/97); even if OLAF lacked competence, evidence obtained would not automatically be excluded; **OLAF reports have significant evidentiary value unless serious doubts undermine their reliability**; recommendation: dismiss the appeal.
Court: Higher Regional Court of Vienna, Date: 1 April 2025, Az. 22 Bs 2_25t	EAW issued by the Regional EPPO office Munich concerning a large-scale cross-border VAT fraud; Austrian authorities **refused surrender** of an Austrian national; although the **offence qualified in principle as prosecutable** and dual criminality was satisfied, the court held that the acts fell within Austrian criminal jurisdiction (cross-border VAT fraud under national law); therefore, **under § 5(2) EU-JZG, surrender is prohibited where domestic jurisdiction exists over national citizens**; additionally, the issuing state's classification as a "list offence" was incorrect because tax offences are not catalogue offences, so dual criminality had to be examined; result: refusal of surrender confirmed.
Court: Higher Regional Court of Munich, Date: 29 April 2025, Az. 2 Ws 224/25	Cross-border EPPO investigation between the Netherlands and Germany concerning fraud involving EU funds, where a Dutch EDP assigned seizure measures to Germany under Article 31 EPPO Regulation; German courts ordered a wide asset freeze *exceeding* the estimated illicit gain; the defendant challenged proportionality and amount; the court held that **German courts cannot review the justification,**

	scope, or proportionality of the EPPO measure, as these belong exclusively to the Member State of the handling Delegated Prosecutor (Netherlands); **judicial review in Germany is limited strictly to execution aspects ("how"), not substance ("whether/why")**; even potential over-securing must be challenged before Dutch courts; result: appeal dismissed, EPPO measure upheld; thus in line with ECJ, 23.12.2023.
Court of Milan (Preliminary Investigations Judge) Date: 5 December 2023	An EPPO-led criminal proceedings for VAT fraud across multiple Member States, in which the defence argued that Italian courts lacked jurisdiction and that prosecution required authorization under national extraterritoriality rules; the court rejected this, holding that **EPPO jurisdiction is governed autonomously by Regulation (EU) 2017/1939**, not by national jurisdiction rules; jurisdiction is determined through the EPPO system, especially by the Permanent Chamber's allocation decision, which designates the competent Member State; once such allocation is made, national courts cannot review or challenge that jurisdictional choice; result: Italian jurisdiction confirmed, prosecution proceeds.
Amtsgericht Frankfurt (Germany) Case: 931 Gs 1371/23 Date: 08 February 2024, Case mentioned by Ligeti 2026, p. 179	Access to case file in EPPO cross-border investigation EPPO involved via assisting European Delegated Prosecutor (Art. 31 EPPO Regulation) court held that access to the file is governed exclusively by the law of the handling EDP; assisting EDP cannot grant access independently and refusal was lawful

Federal Court of Justice (BGH) Date: 6 September 2022, Az. 1 StR 389/21	The defendants imported Chinese solar panels using **false documentation to circumvent anti-dumping duties** by pretending compliance with EU minimum import prices; the trial court acquitted without taking evidence, arguing that the pricing rules were not sufficiently published and thus violated the principle of legality; the BGH overturned this, holding that customs duties clearly arose under EU law, and **false declarations can constitute tax evasion under §370 AO**; moreover, even **in case of acquittal on legal grounds, courts must establish facts** to enable appellate review; result: judgment quashed and remitted.
Court: Federal Court of Justice Date: 16 April 2024 Az. 1 StR 204-23 (LG München, Revision)	Carousel fraud scheme using fictitious platinum and gold trades to generate unjustified VAT refunds; the EPPO sought confiscation of over €3.7 million; the court held that **confiscation requires a causal link between the offence and the asset** ("through the offence"); assets obtained before the actual tax offence (submission of VAT returns) are not proceeds; the defendant only received €22,920 as remuneration, which alone qualifies as confiscable "Tatlohn"; result: EPPO appeal rejected, confiscation limited to remuneration.
Court: Federal Court of Justice Date: 9 April 2025 (Osnabrück case) Az. 1 StR_83-24 Type: EPPO/ confiscation/ customs fraud	The BGH **partially reduced confiscation ordered** by the lower court; where goods were already confiscated, customs debt is extinguished, so additional confiscation of equivalent value is excluded; moreover, confiscation requires that the person actually obtained a benefit; result: confiscation reduced, partly removed.
Court: Federal Court of Justice Date: 7 August 2025 (Munich case)	The BGH **partially discontinued proceedings** because certain tax offences were

Az. 1 StR_155-25 Type: EPPO/ extradition/ procedural limits	not covered by the European Arrest Warrant and extradition authorization; due to the **principle of specialty**, prosecution was barred for those acts; the conviction was adjusted accordingly; result: partial termination of proceedings.

Source: Own Research via different databases e.g. JUCAF, Lexisnexis, Juris, Legilux, Légifrance, Open Jur, JUPortal, ItaligureWeb. Despite these databases we must confirm that access to national jurisprudence, especially first and second instance judgements is not yet fully possible across the EU [criminal/tax/customs and administrative matters, which are relevant for the PIF Acquis are concerned]. A database with all OLAF, EPPO, PIF related judgements *de lege ferenda* would be useful).

E. Annex II EPPO Codenames of Investigations: The Beginning of a Glossary

Luxembourg times said in June 2026: "There has not been a single conviction – or even indictment – for fraud against the EU budget in Luxembourg brought by EPPO, which marked its fifth birthday on Monday, having become fully operational in June 2021."[376] A recent study concerned case studies on the "**codenamed**" **EPPO investigations** and revealed the **typical EU fraud typologies** as described above and within the EPPO's Annual Reports, the PIF and OLAF Reports.[377] We took this study, some of its references and its observations as indication that a little "**glossary of past EPPO investigations**" within the **first five EPPO years** would be helpful despite the clarifications in the EPPO's **Press Releases** and its **Annual Reports** out standers and even defence lawyers of Union staff lose track of the actual contents of these investigations as they are **nowhere publicised coherently**[378] – we try to make the first step: The following cases, which were codenamed concerned the following offences, such as mainly VAT frauds.[379] **1**

For an **overview of an Assessement** of the most frequently used investigation measures by the EPPO see in the Irish Volume within the CNP series and see as well in the Master Index to the EPPO/OLAF CNP volumes. **2**

Operation "Admiral" = Large-scale MTIC (carousel) VAT fraud scheme run by organised crime across multiple Member States, involving shell companies, money laundering and coordinated EU-wide action days.[380] **3**

Operation "Platinum Rush" = Cross-border VAT carousel fraud involving platinum trading, operated by a transnational criminal network with money laundering hubs in Central and Eastern Europe.[381] **4**

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[376] See https://bit.ly/49R8iUF. Accessed 9.6.2026 (manuscript end).

[377] A very good thesis to get a first overview from our pov, see Varì 2023, pp. 108–155 passim. He even named Non-coded investigations (still relevant in our glossary). These concerned e.g. as now even traceable in Annual Reports IT equipment VAT frauds (Latin America links) = Carousel fraud in IT goods with international connections beyond the EU Tungsten electrode customs fraud = Customs evasion and import fraud affecting EU revenue; Mask fraud operation = Fraud and illegal import of COVID-19 medical supplies (PPE); VAT fraud and corruption = Combined financial crime involving bribery and tax fraud; Cigarette smuggling = Excise/customs fraud via illicit tobacco trade; Fuel VAT fraud (petrol/diesel) = Large-scale energy sector tax fraud schemes; "Dutch sandwich" VAT fraud = Complex tax structuring scheme exploiting intra-EU VAT rules.

[378] A very good start though are the comprehensive overviews by Rhiele and Wahl from the eucrim team, see e.g. their section "EPPO's Operational Activities", published online and in print since 2022, https://eucrim.eu/news/eppos-operational-activities-january-march-2024/.

[379] For further information on codenames of Investigations see the UN Guide on Organized Crime and see the EPPO's Press Releases as well as its Annual Reports.

[380] https://bit.ly/4g9chzK.

[381] https://bit.ly/4ukYNEz.

5 **Operation "Blue Wave"** = Cigarette smuggling and customs fraud, involving organised crime and leading to multiple arrests (linked to illicit tobacco trade).[382]

6 **Operation "Huracán"** = Large-scale VAT fraud in the car trade (over 10,000 vehicles) using fake companies and refund schemes, causing tens of millions in damage to EU finances.[383]

7 **Operation "Sentinel"** = Protection of EU financial interests through coordinated investigations (typically involving fraud monitoring and detection mechanisms; case-specific).[384]

8 **Operation "Goliath"** = International organised VAT fraud network with estimated damages of around €85 million, involving coordinated searches and asset seizures.[385]

9 **Operation "Display"** = Cross-border VAT fraud in small electronic goods (e.g. AirPods) using missing traders across multiple Member States.[386]

10 **Operation "Masquerade Ball"** = Complex transnational VAT fraud scheme uncovered through cooperation between multiple investigative and tax authorities.[387]

11 **Operation "Gasosa"** = Fraud involving fuel (gas/oil) trade and VAT evasion, typically linked to excise and cross-border distribution chains.[388]

12 **Operation "Silk Road"** = Cross-border fraud scheme (often digital/commercial trade related) affecting EU financial interests.[389]

13 **Operation "VAT-Games"**/ **"Marengo Rosso"** = Organised VAT fraud schemes, involving structured manipulation of intra-EU transactions and coordinated criminal activity.[390]

14 **Operation "Cheap Ink"** = VAT fraud in printer ink/consumables trade, exploiting intra-community supply chains.[391]

[382] https://bit.ly/3RZE37U.
[383] https://bit.ly/4vwYhnT.
[384] https://bit.ly/4uXLM4S.
[385] https://bit.ly/4xmEcCM.
[386] https://www.eppo.europa.eu/lt/node/442.
[387] https://bit.ly/3QdiCQ9.
[388] https://bit.ly/4eaCM5f.
[389] https://bit.ly/4ebn61U.
[390] https://bit.ly/4dZZ7UA.
[391] https://bit.ly/4aCwSJb.

Operation "Water into Wine" (2025) = Fuel fraud using "designer fuels" relabelled as diesel, enabling evasion of VAT and excise duties through complex cross-border transactions and missing traders.[392] **15**

Investigation "Admiral 2.0" (2024) = Extension of the largest EU VAT carousel fraud ever, uncovering new criminal networks trading electronic goods with estimated hundreds of millions in additional VAT losses.[393] **16**

Operation "Stop the Carousel" (2024) = Fraud involving EU recovery funds (RRF) through shell companies and false funding applications organised by a criminal network.[394] **17**

Operation "Fuel Family" (2024) = Massive VAT fraud in fuel trade, using over 40 missing traders and generating over €1 billion in fake transactions and €260 million VAT damage.[395] **18**

Operation "Midas" (2024) = Large-scale VAT carousel fraud cluster in electronics and PPE, involving shell companies, fake identities, and coordinated actions across 17 countries.[396] **19**

Operation "Final Toast" (2024) = Organised VAT fraud in beverage trade, combined with money laundering and links to organised crime (including mafia connections).[397] **20**

Operation "Kingdom" (2024) = VAT fraud scheme using a Dutch missing trader company, defrauding national tax authorities and transferring proceeds abroad.[398] **21**

Operation "Greasy Hands" (2024) = Fraud in lubricants and fuel market, involving VAT evasion, excise fraud, counterfeit goods and money laundering.[399]

Investigation "Resilient Crime" (2024) = Highly complex fraud involving EU recovery funds (NRRP/RRF) using forged documents and false tax credits with potential damages exceeding €600 million.[400] **22**

[392] https://bit.ly/4x87EvY.
[393] https://bit.ly/49MYURY.
[394] https://eucrim.eu/news/eppos-operational-activities-april-june-2024/.
[395] https://www.cei.int/ansa/142722.
[396] See https://bit.ly/4qMs5f3.
[397] https://pure.mpg.de/rest/items/item_3618665_2/component/file_3618667/content.
[398] https://eucrim.eu/news/eppos-operational-activities-april-june-2024/.
[399] https://eucrim.eu/news/eppos-operational-activities-april-june-2024/.
[400] https://bit.ly/43VzP3N.

23 **Operation "Black Forest"** (2026) = Customs fraud scheme involving aluminium imports, where goods were undervalued and misclassified to evade anti-dumping duties and taxes in the EU.[401]

24 **EIB Investigation (2024–2026 ongoing)** = Investigations into agreements and contracts.[402]

Nota bene: For further information on the EPPO's or OLAF's investigations, see on their Websites and in their Annual Reports.

[401] https://bit.ly/4op2doE.
[402] https://bit.ly/43kPYjh.

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***** The main parts of the terms are listed here. We refer to pages instead of the margin numbers.

This **Luxembourgish EPPO/OLAF volume** deals with EU law and Luxembourg law, focusing on the European Public Prosecutor's Office and on-the-spot checks carried out by the Anti-Fraud Office (OLAF) and its national partners. The introduction is followed by a presentation of EU law and national law, which complement each other. Avocat au Barreau de Luxembourg Sandra Birtel has acted as the publication's national expert.

While written in English, the volume includes footnotes that reproduce the original Luxembourg legislation in the local language. Easily navigable with the help of visual symbols, it is designed as a quick reference tool for academics, students, practitioners and other interested readers.

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