

# THE EPPO/OLAF

XXI

## Compendium of National Procedures

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

Pierre Hauck and Jan-Martin Schneider

# Poland



λογος



The EPPO/OLAF Compendium of National Procedures

*Volume XXI – Poland*

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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 XXI – Poland*

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

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# The EPPO/OLAF Compendium of National Procedures

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## **Preface and Acknowledgements**

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

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

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

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

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

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

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

Giessen/Germany, in November 2023

Pierre Hauck & Jan-Martin Schneider

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*Executive Summary:* If in the first part (A), it is a question of describing both Union law and Polish law related to criminal investigations concerning EU Fraud offences: Who is involved, which provisions do apply, how is the investigation done? This includes hypothetical considerations concerning the potential action of the EPPO in Poland. Therefore the Union Law for the European public prosecutor's office is explained, too and compared to the current situation: Would this situation suffice to join the EPPO one day? The second part of the present Country Chapter on Poland is a Compendium (E.) for OLAF Investigations in Poland. It is intended, for its part, to focus on the fact-finding missions carried out by the Anti-Fraud Office (OLAF) and its national partners as part of external investigations. Before each of the two parts, an introduction precedes the presentation of both Union law and national law, which complement each other. In order to carry out these developments, the body of the text of the whole chapter is translated into English while the footnotes take up the original text in Polish.

*Jeżeli w części pierwszej (A) chodzi o opisanie zarówno prawa unijnego, jak i prawa polskiego, związanych z dochodzeniami w sprawie przestępstw związanych z nadużyciami finansowymi UE: Kto jest zaangażowany, jakie przepisy mają zastosowanie, jak przebiega dochodzenie? Obejmuje to hipotetyczne rozważania dotyczące potencjalnego działania Prokuratury Europejskiej w Polsce. W związku z tym wyjaśniono również prawo Unii dotyczące Prokuratury Europejskiej i porównano je z obecną sytuacją: czy ta sytuacja wystarczy, aby pewnego dnia dołączyć do EPPO? Druga część niniejszego rozdziału krajowego poświęconego Polsce to Podręcznik (B) dotyczący dochodzeń OLAF-u w Polsce. Ze swej strony ma ona koncentrować się na misjach informacyjnych prowadzonych przez Urząd ds. Zwalczania Nadużyć Finansowych (OLAF) i jego partnerów krajowych w ramach dochodzeń zewnętrznych. Przed każdą z dwóch części wstęp poprzedza przedstawienie zarówno prawa unijnego, jak i prawa krajowego, które wzajemnie się uzupełniają. W celu realizacji tych opracowań, tekst całego rozdziału jest tłumaczony na język angielski, a przypisy przejmują oryginalny tekst w języku polskim.*

Experts and authors: Dr. *Dominika Czerniak*, Assistant Professor at the Department of Criminal Proceedings, Faculty of Law, Administration and Economics, University of Wrocław, Poland (Introduction). Compilation and research of the hypothetical EPPO and OLAF Parts (B–C) by Prof. Dr. *Pierre Hauck* LL.M. (Sussex), *Jan-Martin Schneider* (Dipl.-Jur. MR; RA, University of Gießen), *Alastair A. Laird* (RA, University of Gießen), and *Nur Sena Karakocaoğlu* (Dipl.-Jur. FFM; RA, University of Gießen) with the assistance of the expert. Compilation and research of the OLAF Part C arranged with the special help of questionnaire experts/organisations (AFCOS, OAFCN), who consulted and submitted research material, including the Public AFCOS Report and OLAF Reports.



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## Abbreviations

ABW	Agencja Bezpieczeństwa Wewnętrznego/Internal Security Agency
ACAs	Administrative Cooperation Agreements
AFCOS	Anti-fraud coordination service
AML	Anti Money Laundering
ARMA	Agency for Restructuring and Modernization of Agriculture (Agencja Restrukturyzacji i Modernizacji Rolnictwa)
BBK	Forensic research Bureau
CBA	Central Anti-Corruption Bureau
CC	Criminal Code
CDPC	European Committee on Crime Problems
CJEU/ECJ	Court of Justice of the European Union/European Court of Justice
COCOLAF	Advisory Committee for the Coordination of Fraud Prevention
CPC / KPK	Criminal Procedure Code
EAD	European Assessment Document
EAFRD	European Agricultural Fund for Rural Development
EAW	European Arrest Warrant
ECHR	European Convention of Human Rights
ECP	European Chief Prosecutor
ECtHR	European Court of Human Rights
EDPs	European Delegated Prosecutors
EEC	European Economic Community
EIO	European Investigation Order
EP	European Prosecutor
EPPO	European Public Prosecutor's Office
GAFU	Inter-ministerial Team for Combating Financial Irregularities to the Detriment of the Republic of Poland or the EU
GC (aka CFI ex-2009)	General Court of the EU / formerly Court of First Instance
GDPR	General Data Protection Regulation
IBOAs	Institutions, bodies, offices and agencies

## Abbreviations

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KAS	National Revenue administration
KKS	Kodeks karny skarbowy (Fiscal Penal Code)
MS	Member State(s)
NAV	Polish national tax and customs authority
NIK	Supreme Audit Office Ministry of Economic Development Najwyższa Izba Kontroli
OAFCN (-Member)	OLAF Anti-Fraud Communicators' Network
OLAF	European Anti-Fraud Office
PC-OC	Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters
PLN	Złoty
SEDIA	Funding and Tenders Portal
TEC	Treaty Establishing the European Community
TFEU	Treaty on the Functioning of the European Union
UKNF	The Polish Financial Supervision Authority Komisja Nadzoru Finansowego
VAT	Value Added Tax

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## Explanation of Symbols & Highlighting

Text passages highlighted in grey show Union law.

Text passages marked with **boxes** show relevant national law.




















**Plain Tables** display either a synopsis of a foreign law text and the English translation or a summary of institutions and relevant case law.

**Tables with symbols** in the first row contain case studies (EPPO & OLAF cases) or relevant jurisprudence.

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

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

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

Errata: In Volumes III, V, X, XXII, XXV the word ‘Trainee’ was missing prior to Attorney at Law for Austria. Disclaimer: All official Polish data regarding telephone details should be verified. The authors assume no responsibility for the accuracy of email accounts or phone numbers published by the Polish Administration or Government.



## A. General Collection of Material for Part C, D and Part E

### I. Collection of Exemplary Cases in the *PIF Acquis* Area

#### 1. Criminal Investigations and Civil Cases in PIF Area in Poland

Table 1: Pool of Court Decisions relating to the *PIF Acquis*



Court/Identifier <sup>1</sup>	Decision/Content
Budget fraud	
Judgment of the Court of Appeal in Warsaw of 23 July 2015, I ACa 368/14.	Liability of Company, defendant purchased devices using subsidies under the program, OLAF, financial viability.
<b>VAT fraud (example)</b>	
Judgment of the District Court in Białystok of 2 December 2016, III Criminal Division, III K 197/15.	VAT in connection with fuel trade, VAT evasion, revenue fraud, Art. 258 §1 of the Penal Code, VAT invoices documenting the sale (Article 2(31) of the VAT Act, Art. 271 §3 of the Act of June 6, 1997, the Penal Code (2015 wording), AML offences, Art. 299 §1 of the Penal Code, Art. 45 §1 Forfeiture, abuse of position.
Judgment of the District Court in Wrocław (Sąd Okręgowy we Wrocławiu) of 17 September 2019, III K 206/18.	Fraud connected with the defendant's scientific activity (defendant misrepresented his management of EU-funded research and repeatedly declared the same working time on several research projects). One of the pieces of evidence was the OLAF report Article art. 297 § 1 and 2 of Penal Code
Judgment of the Provincial Administrative Court of Krakow (wyrok Wojewódzkiego Sądu Admi-	Tax offences and administrative proceedings, Article 207, 210 § 1 and 4 of Financial/Fiscal Code (Ordynacja podatkowa);

<sup>1</sup> There are several databases that grant access to judgements: <https://orzeczenia.ms.gov.pl/>.

nistracyjnego w Krakowie) of 26 April 2019, III SA/Kr 48/19.	violation of the EU rules with export and import from China
--	---



Table 2: OLAF-related Cases

Civil Cases	
Judgment of the Court of Appeal in Krakow (Sąd Apelacyjny w Krakowie z) of 13 May 2015, I ACa 286/15.	Fraud, OLAF, Waste, Launching a municipal waste incineration plant
Judgment of the Court of Appeal in Warsaw of 31 May 2016, I ACa 1171/15.	Subsidies, OLAF, Article 72(1b) of Council Regulation/EC/No. 1968/2005.
<b>Judgment of the District Court in Gdańsk of 28 April 2017, 15 C 10/16.</b>	European Regional Development Fund, OLAF Final Report, Art. 471 of the Civil Code, Repaor Damage.

## 2. OLAF Regulation Related Cases and Court Decisions in Poland and Important ECJ Cases for the Polish AFCOS

1 This table concerns CJEU, General Court and National Courts decisions.



Relates to following Art. of the Regulation/TFEU	Judgement, ECLI, etc.	Content
<b>Art. 1–4 Cases worth to study</b>	Judgment of the Court (Fifth Chamber) of 9 June 2022, C-187/21, ECLI:EU:C:2022:458.	Reference for a preliminary ruling, Regulation (EEC) No 2913/92, Community Customs Code, Article 30(2)(a) and (b), Customs value, Determination of the transaction value of similar goods.
	Judgment of the Court of 25 February 2021, C-615/19 P, John Dalli v European Commission, ECLI:EU:C:2021:133.	Allegedly illegal conduct of the European Commission and the European Anti-Fraud Office (OLAF), Procedural rules governing the OLAF investigation, Opening of an investigation, Right to be heard
<i>In combination with Art. 263</i>	Order of the General Court (Seventh	Import of markets stainless steel fasteners in the European Union,

<p><i>TFEU, Article 130(1) and (7) of the Rules of Procedure.</i></p>	<p>Chamber) of 21 June 2017, T-289/16, Inox Mare Srl v European Commission, ECLI:EU:T:2017:414.</p>	<p>Italian Customs acting on behalf of OLAF, “42 reports detailing evasion of customs duties followed by 43 recovery notices and 43 decisions imposing penalties totalling in excess of EUR 8.5 million”, Action for annulment, Regulation (EU, Euratom) No 883/2013, External investigation conducted by OLAF, Report and recommendations, Measures not amenable to challenge, Inadmissibility.</p>
<p><b>Art. 3 (right to be heard, digital forensic evidence)</b></p>	<p>CJEU, Complaint filed on 20 May 2016 – Director-General of the European Anti-Fraud Office / Commission, (Case T-251/16).</p>	<p>Privileges and Immunities. Dismissed.</p>
	<p>Metropolitan Court of Appeal, FIT-BJ-2018-181. [Bf.141/2018/14].</p>	<p>On-site inspection on April 26, 2012, no results after first inspection, another on-site inspection on June 21, 2012, OLAF carried out additional inspections, Suspicions for Budget fraud, sales of machines, companies, s. 396 CC, signing documents, OLAF Report as evidence in criminal trial, OLAF obtained computer, OLAF obtained statements.</p>
<p><i>In combination with Art. 7 2185/1996</i></p>	<p>CJEU, Judgment of the General Court of 26 June 2019; Vialto Consulting v Commission, (Case T-617/17).  CJEU, Action brought on 13 September 2018; Vialto</p>	<p>Potential infringement of Article 7(1) of Regulation No 2185/1996, Art. 41 CFR, proportionality principle.</p>

	Consulting v Commission, (Case T-537/18).	
<b>Art. 4 Internal Investigations</b>	Judgment of the Court (First Chamber) of 10 June 2021, European Commission v Fernando de Esteban Alonso. C-591/19 P, ECLI:EU:C:2021:468.	Appeal, Civil service, Internal investigation by the European Anti-fraud Office (OLAF), Forwarding of information by OLAF to the national judicial authorities, Filing of a complaint by the European Commission, Concepts of an official who is ‘referred to by name’ and ‘implicated’, Failure to inform the interested party, Commission’s right to file a complaint with the national judicial authorities before the conclusion of OLAF’s investigation, Action for damages.
	Judgment of the General Court (Sixth Chamber) of 6 February 2019, ECLI:EU:T:2019:63.	European Institute of Innovation and Technology (EIT), based in Budapest (Poland), Civil service; Members of the temporary staff; Recruitment; Notice of vacancy; Head of Unit post; Inclusion on the reserve list; Acceptance of the offer of employment; Withdrawal of the offer of employment; Conditions of employment; Character references; Article 12 of the CEOS; Manifest error of assessment; Processing of personal data; Right to be heard; Liability
<b>Art. 7</b>	ECJ, C-650/19 P, Vialto Consulting Kft. v European Commission, ECLI:EU:C:2021:879.	Appeal, Investigation by the European Anti-Fraud Office (OLAF), On-the-spot checks, Regulation (Euratom, EC) No 2185/96, Article 7, Access to computer data, Digital forensic operation, Principle of legitimate expectations, Right to be heard, Non-material damage

	<p>First Instance: GC, Case T-617/17, 7.9.2017, Vialto Consulting v Commission, ECLI:EU:T:2019:446.</p>	<p>Article 7(1) of Regulation (EC) No 2185/96; Principle of sound administration; Legitimate expectations; Proportionality; Right to be heard; National public procurement; Devolved management; Decision of a national authority; Investigations by OLAF; Non-material damage; Sufficiently serious breach of a rule of law conferring rights on individuals.</p>
<p><b>Art. 10</b></p>	<p>Judgment of the General Court (Eighth Chamber) of 26 May 2016. International Management Group v European Commission. Case T-110/15. Digital reports (Court Reports - general) ECLI identifier: ECLI:EU:T:2016:322</p> <p>Judgment of the Court of First Instance (Second Chamber) of 30 May 2006. Bank Austria Creditanstalt AG v Commission of the European Communities. Case T-198/03. ECLI:EU:T:2006:136</p>	<p>Access to documents; Regulation (EC) No 1049/2001; Documents relating to an OLAF investigation; Access refused; Exception concerning the protection of the purpose of inspections, investigations and audits; Obligation to carry out a specific and individual examination; Category of documents.</p>
<p><b>Claim for damages, Art. 267 TFEU</b></p>	<p>Judgment of the Court (Second Chamber) of 22 September 2022, International</p>	<p>Director-General for International Cooperation and Development of the Commission, OLAF legal analysis, OLAF Report, Implementation of the</p>

	Management Group (IMG) v EU Commission, ECLI:EU:C:2022:722.	EU budget under indirect management by an international organisation, Decision to not entrust any new budget implementation tasks to an entity due to doubts as to its status as an international organisation, Action for annulment, Compliance with a judgment annulling a measure, Res judicata.
	Judgment of the General Court (Sixth Chamber) of 6 February 2019, ECLI:EU:T:2019:63.	Civil service; Members of the temporary staff; Recruitment; Notice of vacancy; Head of Unit post; Inclusion on the reserve list; Acceptance of the offer of employment; Withdrawal of the offer of employment; Conditions of employment; Character references; Article 12 of the CEOS; Manifest error of assessment; Processing of personal data; Right to be heard; Liability.
<b>Art. 9 OLAF, 11 OLAF Report, Access to it</b>	Order of the General Court of 2 June 2022, Tóth v Commission, T-17/22.	Action for annulment, Access to documents, Regulation (EC) No 1049/2001, OLAF investigation concerning the public lighting activities of Élios Innovatív, Application for access to the final investigation report, Implied refusal of access, Express decision to grant access adopted after the action was brought, No need to adjudicate
<b>National Courts</b>	Judgement of the Supreme Administrative Court of 9 March 1989, II SA 961/88	Concerning Relevance of OLAF Report, legal effect, doubts, valuable evidence, relevance in specialised administrative proceedings (tax, customs), etc.
	Judgment of the Supreme Administrative Court	Ibid.

	of 8 September 2016, I GSK 1878/14.	
	Judgment of the Provincial Administrative Court of 23 January 2019, III SA/Gd 835/18.	Ibid.
	Judgment of the Supreme Administrative Court of 5 October 2017, I GSK 1428/15.	Ibid.
	Judgement of the Supreme Administrative Court of 4 July 2013, I GSK 983/12.	Ibid.
	Judgment of the Supreme Administrative Court of 18 October 2017, I GSK 1761/15.	Ibid.
<b>Further EU Court Rulings</b>	General Court, Judgment of 6 April 2006, Camós Grau v Commission, T-309/03, ECLI:EU:T:2006:110.	OLAF Report, legal effect.
	Court of First Instance of 4 October 2006, Tillack v Commission, T-193/04, ECLI:EU:T:2006:292.	OLAF Report, legal effect.
	Judgment of the General Court of 1 September 2021, Homoki v	Access to documents, Regulation (EC) No 1049/2001, Final report of the OLAF investigation into the implementation of a street-lighting investment project in Poland, Refusal

	Commission, T-517/19, no ECLI. OJ C 328, 30.9.2019.	to grant access, Exception relating to the protection of the purpose of inspections, investigations and audits, Exception relating to the protection of the commercial interests of a third party, Exception relating to the protection of privacy and the integrity of the individual, Protection of personal data.
<b>National Courts in Relating to Other proceedings</b>	Administrative and Labor Court Szeged, K.27522/2015/13.	Example for relevance of OLAF Report in Labour and administrative Courts in Poland.
	Tatabánya Administrative and Labor Court, K.27216/2015/14.	Example for relevance of OLAF Report in Labour and administrative Courts in Poland.
	Administrative and Labor Court Veszprém, K.27178/2015/12.	“OLAF recommendation to recover 100% of the grant amount. Defendant: OLAF’s final report does not contain any concrete evidence for the defendant. OLAF’s final report can be used as evidence in accordance with Section 50 (4); The public administration was obliged to take the OLAF report into account.”
<b>Art. 263 TFEU</b>	Order of the General Court (Sixth Chamber) of 20 May 2021, IG v European Commission, ECLI:EU:T:2021:290.	Action for annulment, Protection of the European Union’s financial interests, OLAF investigation, Legal professional privilege, Act not open to challenge, Preparatory act, Inadmissibility.
	Poland v Commission, C-31/13 P, ECLI:EU:C:2014:70.	
	CJEU, Judgment of 14 November 2012, Nexans France and	Legal professional privilege.



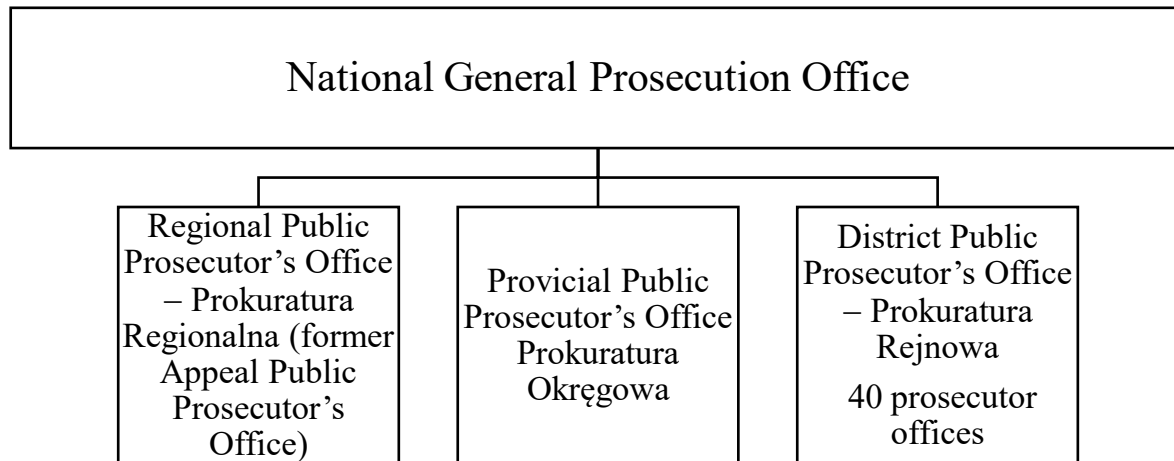
	Nexans v Commission, T-135/09, ECLI:EU:T:2012:596.	
<b>Action on annulment (of an OLAF measure)</b>	General Court, Judgment of 11 November 1981, IBM v Commission, 60/81, ECLI:EU:C:1981:264.	Measures, legal effects, bring a change in the position of the claimant.
	General Court, Judgment of 26 January 2010, Internationaler Hilfsfonds v Commission, C-362/08 P, ECLI:EU:C:2010:40	Measures, legal effects, bring a change in the position of the claimant.
<b>System of judicial review, Art. 47 Charta of Fundamental Rights</b>	CJEU, Judgment of 30 April 2020, Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych v Commission, C-560/18 P, ECLI:EU:C:2020:330.	European Commission was justified in refusing access to certain documents related to ongoing infringement proceedings, see purpose of investigations under Article 4(2) of Regulation No 1049/2001. The Court emphasised that disclosing such documents could undermine the investigation's objectives.
	Order of 29 January 2020, Silgan Closures and Silgan Holdings v Commission, C-418/19 P, not published, ECLI:EU:C:2020:43.	Silgan challenged European Commission's decision to initiate a competition investigation into the metal packaging market. The Court ruled that it was procedural, not a challengeable act, and dismissed the appeal.
<b>Pending cases with relevance to the Compendium</b>	Request for a preliminary ruling of 11 August 2022, C-538/22, Agrárminiszter.	Agriculture, Common Agricultural Policy, Delegated Regulation (EU) No. 640/2014, Aid schemes for animals, Application for production coupled aid for keeping suckler cows, eligibility criteria, Calculation basis,

		Not in accordance with national regulations, Rejection of an application for aid.
--	--	---

## II. Institutions

### 1. The national prosecution services

Table 3: The National Prosecution Offices competent to investigate EU Fraud & Corruption Offences in Poland 2



### 2. The Regional prosecution offices

#### National Prosecutor's Office

- District Prosecutor's Office in Białystok
- District Prosecutor's Office in Bielsko-Biała
- District Prosecutor's Office in Bydgoszcz
- District Prosecutor's Office in Częstochowa
- District Prosecutor's Office in Elbląg
- District Prosecutor's Office in Gdańsk
- District Prosecutor's Office in Gliwice
- District Prosecutor's Office in Gorzów Wielkopolski

- District Prosecutor's Office in Jelenia Góra
- District Prosecutor's Office in Katowice
- District Prosecutor's Office in Kielce
- District Prosecutor's Office in Konin
- District Prosecutor's Office in Koszalin
- District Prosecutor's Office in Krakow
- District Prosecutor's Office in Krosno
- District Prosecutor's Office in Legnica

3

- District Prosecutor's Office in Lublin
- District Prosecutor's Office in Łódź
- District Prosecutor's Office in Łomża
- District Prosecutor's Office in Nowy Sącz
- District Prosecutor's Office in Olsztyn
- District Prosecutor's Office in Opole
- District Prosecutor's Office in Ostrołęka
- District Prosecutor's Office in Ostrow Wielkopolski
- District Prosecutor's Office in Płock
- District Prosecutor's Office in Poznań
- District Prosecutor's Office in Przemyśl
- District Prosecutor's Office in Radom
- District Prosecutor's Office in Rzeszów
- District Prosecutor's Office in Siedlce
- District Prosecutor's Office in Sieradz
- District Prosecutor's Office in Słupsk
- District Prosecutor's Office in Sosnowiec
- District Prosecutor's Office in Suwałki
- District Prosecutor's Office in Szczecin
- District Prosecutor's Office in Świdnica
- District Prosecutor's Office in Tarnobrzeg
- District Prosecutor's Office in Tarnów
- District Prosecutor's Office in Toruń
- District Prosecutor's Office in Warsaw
- District Prosecutor's Office in Warsaw Praga in Warsaw
- District Prosecutor's Office in Włocławek
- District Prosecutor's Office in Wrocław
- District Prosecutor's Office in Zamość
- District Prosecutor's Office in Zielona Góra
- Regional Prosecutor's Office in Białystok
- Regional Prosecutor's Office in Gdańsk
- Regional Prosecutor's Office in Katowice
- Regional Prosecutor's Office in Krakow
- Regional Prosecutor's Office in Lublin
- Regional Prosecutor's Office in Łódź
- Regional Prosecutor's Office in Poznań
- Regional Prosecutor's Office in Rzeszów
- Regional Prosecutor's Office in Szczecin
- Regional Prosecutor's Office in Warsaw
- Regional Prosecutor's Office in Wrocław

## 2. Organisation of the Criminal Justice System in Poland

Table 4: National Authorities involved in PIF Investigations

4

Police	Policja <sup>2</sup>
Criminal Bureau <sup>3</sup> with Different Divisions and Faculties (e.g. Investigation Division) partly competent for Anti-corruption and Asset-Recovery	Biuro Kryminalne
Bureau for Combating Economic Crime of the National Police Headquarters <sup>4</sup>	Biuro Zwalczania Przestępczości Ekonomicznej
Central Investigation Police, which is part of the Police – <i>de facto</i> a special department in the Police. They are mostly involved in organized crime cases and other serious crimes.	Centralne Biuro Śledcze Policji <sup>5</sup>
Central Anti-Corruption Bureau (CBA) = with an own competence to investigate and prosecute, see Article 2 para. 1 of the CBA Act. (has partly a conflict of competence with the Bureau for Combating Economic Crime of the National Police Headquarters, which is the subsidiary authority to fight corruption but has a focus on the criminal process). <sup>6</sup>	Centralne Biuro Antykorupcyjne <sup>7</sup>

<sup>2</sup> Website of the Polish Police, see <https://www.policja.pl/>. Accessed 6 August 2024.

<sup>3</sup> Website of the Criminal Police, see <https://policja.pl/pol/kgp/biuro-kryminalne/aktualnosci>. Accessed 6 August 2024.

<sup>4</sup> Contact; st. Puławska 148/150, 02-624 Warsaw, phone 47 72 13125, fax. 47 72 15386, e-mail: [bzpe@policja.gov.pl](mailto:bzpe@policja.gov.pl).

<sup>5</sup> Website of the Central Investigation Police, see <https://cbsp.policja.pl/>. Accessed 6 August 2024.

<sup>6</sup> Kom. Piotr Kowalski, expert of the Anti-Corruption Department of the Criminal Bureau of the Police Headquarters, The role of the Police in preventing and combating corruption in Poland, Police Quarterly 1/2021.

<sup>7</sup> Website of the Central Anti-Corruption Office, see <https://www.cba.gov.pl/> (Accessed 6 August 2024). Report corruption: <https://www.cba.gov.pl/pl/kontakt/zglos-korupcje/4705,Zglos-korupcje.html>: Call us at 800 808 808 or write to the address [signal@cba.gov.pl](mailto:signal@cba.gov.pl) “We would like to inform you that the officers of the CBA perform activities only within the competence of the CBA and in this respect they are entitled to the procedural rights of the Police, resulting from the provisions of the Code of Criminal Procedure. A report of the possibility of committing a crime cannot be based on unsubstantiated formulations, assumptions and guesses, but must be based on rational and credible premises. Filing a report of a crime not committed is penalised in Art. 238 of the Penal Code.”

Polish Internal Security Agency <sup>8</sup> - Forensic research Bureau <sup>9</sup> (BBK) - Computer Security Incident Response Team	Agencja Bezpieczeństwa Wewnętrznego <sup>10</sup> (ABW) - Biuro Badań Kryminalistycznych - CIRT GOV
National Police Headquarters	
Ministry of Finance, Department for Combating Economic Crime <sup>11</sup>	Departament Zwalczenia Przestępczości Ekonomicznej
Ministry of Finance, Department of the National Revenue Administration <sup>12</sup>	Departament Analiz Krajowej Administracji Skarbowej
Ministry of Finance, Public Funds Audit Department <sup>13</sup>	Departament Audytu Środków Publicznych
National Revenue Administration, which is an organisation (public authority) involved in tax cases ( <i>de facto</i> like a Tax Police).	Krajowa Administracja Skarbowa

<sup>8</sup> Internal Security Agency, Combating economic crimes. online: <https://www.abw.gov.pl/pl/zadania/zwalczenie-przestepstw/10,Zwalczenie-przestepstw-ekonomicznych.html>. Accessed 6 August 2024.

“The Internal Security Agency deals with identifying and combating economic crimes. It cooperates with other state institutions and services. He actively participates in activities aimed at improving the country’s energy security. The efficiency and effectiveness of the economy is of great importance to security issues. The state’s economic security is threatened by embezzlement of public funds and tax fraud. One of the manifestations of criminal activity in the business sphere is ‘money laundering’. Poland’s credibility on the international arena is determined, among others, by transparency in the absorption of EU funds and their proper use.”

ABW Contact: <https://www.abw.gov.pl/pl/o-abw/kontakt/11,Kontakt.html>. Accessed 6 August 2024.

<sup>9</sup> See <https://www.abw.gov.pl/bbk>. Accessed 6 August 2024.

<sup>10</sup> See <https://www.abw.gov.pl/pl/>. Accessed 6 August 2024.

<sup>11</sup> Contact: phone: +48 (22) 694 38 50, +48 (22) 694 38 60, fax: +48 (22) 694 33 27, E-mail: sekretariat.dzp@mf.gov.pl: “The Department is responsible for recognising, detecting and combating e.g. tax crimes and fiscal offences as well as crimes and offences related to the violation of regulations on goods whose trading is subject to prohibitions or restrictions.”

<sup>12</sup> See <https://www.gov.pl/web/finanse/departament-analiz-krajowej-administracji-skarbowej> (Accessed 6 August 2024). Contact details: phone: +48 22 694 47 71, e-mail: sekretariat.dak@mf.gov.pl.

<sup>13</sup> Phone: +48 (22) 694 41 00, fax: +48 (22) 694 51 52, e-mail: sekretariat.DAS@mf.gov.pl.

#### 4. Bodies Related to OLAF Investigations

Please see below → Part C, which focuses on OLAF investigations in Poland.

5

The main authorities can be named already within a short enumeration:

6

Translated Term	Official Term	Website	Reporting Irregularities
<b>From 2006–2022:</b> Government plenipotentiary for combating financial irregularities to the detriment of the Republic of Poland or the European Union <sup>14</sup>	Pełnomocnika rządu do spraw zwalczania nieprawidłowości finansowych na szkodę Rzeczypospolitej Polskiej lub Unii Europejskiej sprawuje	<a href="https://shorturl.at/B0Tg0">https://shorturl.at/B0Tg0</a> .	No reporting to this body. This body drafts the general anti-fraud prevention strategy of the Polish State and works closely together with the Polish AFCOS.

<sup>14</sup> The current Government issued the abolition of an old structure. Thus, only AFCOS remains for OLAF as a contact:

“Removal of the Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the European Union in connection with the performance of its mission.

The abolition of the Plenipotentiary is the second step after the abolition in 2018 of the Inter-ministerial Team for Combating Financial Irregularities to the Detriment of the Republic of Poland or the European Union, with which the Plenipotentiary constituted a complementary structure, appropriate for the purpose of ensuring and coordinating the protection of the financial interests of the European Union (EU) in Poland. The solutions implemented over the years, also as part of the work of the Plenipotentiary and the Team, in the area of close, mutual cooperation of all institutions of the EU funds implementation and control system and authorities, including law enforcement authorities, currently guarantee an adequate level of protection of the expenditure side of the EU budget. Ongoing exchange of information is ensured as well as appropriate coordination of activities in administrative controls and criminal proceedings is ensured. On the revenue side, the reform of the tax and customs services carried out several years ago and the creation of the National Revenue Administration (as well as numerous cooperation agreements with the heads of other relevant services/law enforcement authorities) give the head of the National Revenue Administration full powers to conduct activities in accordance with his property, without the need to engage an additional coordination level in the form of a Proxy. This confirms that the mission entrusted to the Plenipotentiary at the beginning of the process of developing appropriate solutions has been duly performed.

The system of protection of the EU’s financial interests established in Poland (with relevant competences in the area of EU funds held by the minister competent for regional development, and in the area of income - by the Head of the National Revenue Administration), has been designed appropriately, functions in accordance with the requirements and expectations of the European Commission, involves all competent national institutions, including law enforcement authorities to an appropriate extent, and the existing solutions guarantee its proper development in the coming years. Completion of the Proxy’s mission will not result in negative consequences.” See Anna Chałupa Undersecretary of State in the Ministry of Finance, Deputy Head of the National Revenue Administration <https://www.gov.pl/web/premier/projekt-rozporzadzenia-rady-ministrow-w-sprawie-zniesienia-pelnomocnika-rzadu-do-spraw-zwalczania-nieprawidlowosci-finansowych-na-szkode-rzeczypospolitej-polskiej-lub-unii-europejskiej>. Accessed 6 August 2024.

<p><b>From 2006–2022:</b>          Inter-ministerial Team for Combating Financial Irregularities to the Detriment of the Republic of Poland or the EU (GAFU)</p> <ul style="list-style-type: none"> <li>- Working Group for counteracting irregularities in connection with the financing of the Common Agricultural Policy;</li> <li>- 2. Working Group on Combating Cigarette Smuggling;</li> <li>- 3. Working Group for counteracting irregularities in the use of EU funds;</li> <li>- 4. Świętokrzyska Working Group for counteracting and combating irregularities in the use of EU funds;</li> <li>- 5. Wielkopolska Working Group for the Coordination of Actions in the Area of Counteracting Irregularities and Crimes to the Detriment of the Financial Interests of the European Union in the</li> </ul>	<p>Międzyresortowy Zespół do Spraw Zwalczenia Nieprawidłowości Finansowych na Szkodę RP lub UE (GAFU)</p>		<p>No reporting to these bodies. These bodies and groups help draft the general anti-fraud prevention strategy of the Polish State</p>
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Wielkopolskie Voivodeship.			
<b>Department for the Protection of Financial Interests of the European Union as AFCOS (Anti-Fraud Coordination Service)</b> See → Art. 12a OLAF Regulation below in this Compendium volume.	Department Ochrony Interesów Finansowych Unii Europejskiej jako AFCOS (Anti-Fraud Coordination Service)		
Supreme Audit Office (NIK) Ministry of Economic Development	Najwyższa Izba Kontroli	<a href="https://www.nik.gov.pl/">https://www.nik.gov.pl/</a>	
Managing Authority for the Infrastructure and Environment Operational Programme.  Supervision: Ministry of Development Funds and Regional Policy.	Instytucja Zarządzająca Programem Infrastruktura i Środowisko	<a href="https://www.pois.gov.pl/strony/kontakt/">https://www.pois.gov.pl/strony/kontakt/</a> .	In order to report irregularities, you should: use the form (see annex) or send a message to the e-mail address: <a href="mailto:naduzycia.POIS@mfipr.gov.pl">naduzycia.POIS@mfipr.gov.pl</a> . Infrastructure and Environment Program Managing Authority Department of Infrastructure Programs Ministry of Development Funds and Regional Policy Tel.: 22 273 77 01

			<p>Fax: 22 273 89 09 E-mail: sekretariatDPI@mfi.gov.pl.</p> <p>Reporting irregularities concerning projects financed from funds from the Infrastructure and Environment Programme:</p> <p>In order to report irregularities, please use the form.</p>
<p>Coordination of the EU Funds Department Supervisor: Ministry of Development Funds and Regional Policy. Special Offices in Each of the Polish Ministries, which distribute EU funds.</p>			
<p>Centre for European Projects in Warsaw Supervisor: Ministry of Development Funds and Regional Policy.</p>	<p>Centrum Projektów Europejskich w Warszawie</p>	<p><a href="https://www.gov.pl/web/fundusze-regiony/organyzacja-nadzoru-lub-podlegle">https://www.gov.pl/web/fundusze-regiony/organyzacja-nadzoru-lub-podlegle</a>.</p>	
<p>European Funds Ombudsman</p>	<p>Rzecznik Funduszy Europejskich</p>	<p><a href="https://www.pois.gov.pl/strony/o-programie/">https://www.pois.gov.pl/strony/o-programie/</a></p>	<p>How to submit a report?<sup>15</sup> by phone:</p>

<sup>15</sup> The competences of the European Funds Ombudsman do not include, among others:

- conducting administrative, prosecutorial and court proceedings;
- conducting proceedings conducted by public administration bodies on the basis of relevant legal provisions, e.g. appeal proceedings within the meaning of Chapter 15 of the Implementation Act (appeal procedure);

		rzecznik-funduszy-europejskich/	- (22) 273 79 17 - (22) 273 74 28 - (22) 273 84 52 in writing to the following address: Ombudsman for European Funds Ministry of Funds and Regional Policy ul. Wspólna 2/4, 00-926 Warsaw electronically to the e-mail address: Rzecznikfe@mfi.gov.pl or by filling in the form in person (by appointment)
Office of Competition and Consumer Protection	Urząd Ochrony Konkurencji i Konsumentów <sup>16</sup>	<a href="https://uokik.gov.pl/kontakt.php">https://uokik.gov.pl/kontakt.php</a>	- See contact details.
The Polish Financial Supervision Authority (UKNF)	Komisja Nadzoru Finansowego <sup>17</sup>	<a href="https://www.knf.gov.pl/">https://www.knf.gov.pl/</a>	
Public Procurement Office	Urząd Zamówień Publicznych	<a href="https://www.uzp.gov.pl/">https://www.uzp.gov.pl/</a>	
Example of an anti-fraud office in a Voivodship: Voivodeship Labor Office in Toruń	Wojewódzki Urząd Pracy w Toruniu	<a href="https://bit.ly/3M0aNY4">https://bit.ly/3M0aNY4</a> .	

- examining requests for public information;
- providing advice on the possibility of obtaining co-financing for projects.

<sup>16</sup> pl. Powstańców Warszawy 1, 00-950 Warsaw, tel. 22 55 60 800, [uokik@uokik.gov.pl](mailto:uokik@uokik.gov.pl), Office hours: 8:15–16:15 from Monday to Friday. ePUAP address: /UOKiK/SkrytkaESP NIP 5261009497, REGON 006212789.

<sup>17</sup> [https://bip.knf.gov.pl/bip\\_portal](https://bip.knf.gov.pl/bip_portal). Accessed 6 August 2024.

### III. Sources of law

7 In Poland up-to-date legislation can be obtained via the National Resource Library for Laws and Regulations (*Nemzeti Jogszabálytár*).<sup>18</sup>

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


#### 1. National laws

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

- 9
- Criminal Code/*Kodeks karny*
  - Criminal Procedure Act/*Kodeks postępowania karnego*
  - Law on the Public Prosecutor's Office (Journal of Laws of 2021, item 66)/*Prawo o prokuraturze (Dz. U. z 2021 r. poz. 66)*
  - Ordinance the Minister of Justice of July 21, 2021 on the organisation and scope of operation of secretariats and other administration departments in common organisational units of the prosecutor's office/ *Zarządzenie Ministra Sprawiedliwości z dnia 21 lipca 2021 r. w sprawie organizacji i zakresu działania sekretariatów oraz innych działów administracji w powszechnych jednostkach organizacyjnych prokuratury*
  - Central Anti-Corruption Bureau Act (Journal of Laws 2021, 1671)/*Centralnym Biurze Antykorupcyjnym (Dz.U. 2021 poz. 1671)*.
  - Fiscal Penal Code/*Ustawa z dnia 10 września 1999 r. Kodeks karny skarbowy*.
  - Customs Law/*Ustawa z dnia 19 marca 2004 r. Prawo celne*

##### b) Most relevant national Laws concerning OLAF investigations

- 10
- Fiscal Penal Code/*Ustawa z dnia 10 września 1999 r. Kodeks karny skarbowy*.
  - Customs Law/*Ustawa z dnia 19 marca 2004 r. Prawo celne*
  - Act on National Treasury Administration/*Ustawa o Krajowej Administracji Skarbowej*

 *Nota bene and Comment on the Current Situation:* It is important to mention that the National Revenue Administration, which protects the revenue side of the EU budget in Poland has requested the abolition of its former supervisor in 2022. It remains to be seen if this was a clever idea, as the supervising via a special group at the head of the state

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<sup>18</sup> See <https://njt.hu/> (Accessed 6 August 2024): “A Nemzeti Jogszabálytár egy web alapú szolgáltatás, amely jogszabályban meghatározott körben ingyenesen hozzáférhető jogszabálytár szolgáltatást biztosít számítógépen és mobiltelefonon.”

*Nota bene:* “Please note that, in accordance with the Fundamental Law of Poland and Act CXXX of 2010 on law-making, unless provided otherwise in a cardinal Act, only laws promulgated in the official gazette of Poland are binding and have legal effect. The translations published on this website serve informational purposes only, have no legal effect, and cannot be considered the official text of Polish laws.”

In addition to that i.e. the state-based access, private operators offer access to Polish legislation online (in an open access format).

could have created a good anti-fraud coherence in the years of the digitalisation process 2021–2027 (see Regulation of the Council of Ministers of 19 September 2022 on the abolition of the Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the European Union/ *Rozporządzenie Rady Ministrów z dnia 19 września 2022 r. w sprawie zniesienia Pełnomocnika Rządu do Spraw Zwalczania Nieprawidłowości Finansowych na Szkodę Rzeczypospolitej Polskiej lub Unii Europejskiej.*)<sup>19</sup>

## 2. Other National laws

There is **no lex specialis to the actions of the EPPO in Poland**, yet as the EPPO is only a Union body with power in the participating countries (enhanced cooperation, Art. 86 TFEU para 1, subpara 1). But Poland has concluded a Working Agreement with the EPPO according to Art. 105 EPPO Regulation, which shall be presented here:

11  
12

### Relevant Union law (Regulation (EU) 2017/1939)

#### Chapter X Provisions on the Relations of the EPPO with its Partners

##### Article 99 Common provisions

1. In so far as *necessary* for the performance of its tasks, the EPPO **may establish and maintain cooperative relations** with institutions, bodies, offices or agencies of the Union in accordance with their respective objectives, and **with the authorities of Member States of the European Union which do not participate [Poland]** in enhanced cooperation on the establishment of the EPPO, the authorities of third countries and international organisations.

*Nota bene:* The authorities, which are important for OLAF or the EPPO have been listed above (see → A.II **Institutions**).



See as well below for exemplary cases, which show why Poland and the EPPO should conclude at least a Working Arrangement until Poland re-dedides in the futzre on the pafiticpation. See below → Examples and precedents)

13  
14

<sup>19</sup> Repealed Acts:

OJ 2010 No. 164 item 1109, 2022-09-30, Regulation of the Council of Ministers of 16 August 2010 amending the Regulation on the Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the European Union,

OJ 2004 No. 170 item 1789, 2022-09-30, Regulation of the Council of Ministers of 30 July 2004 amending the Regulation on the Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the European Union,

OJ 2003 No. 119 item 1113, 2022-09-30, Regulation of the Council of Ministers of 1 July 2003 on the Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the European Union.

2. In so far as relevant to the performance of its tasks, the EPPO may, in accordance with Article 111, directly exchange all information, with the entities referred to in paragraph 1 of this Article, unless otherwise provided for in this Regulation.

3. For the purposes set out in paragraphs 1 and 2, the EPPO **may conclude working arrangements** with the entities referred to in paragraph 1. Those working arrangements shall be of a **technical and/or operational nature**, and shall in particular aim to **facilitate cooperation** and the **exchange of information** between the parties thereto. The working arrangements may neither form the basis for allowing the exchange of personal data nor have legally binding effects on the Union or its Member States.

**Article 105 Relations with Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO**

1. The working arrangements referred to in Article 99(3) with the authorities of Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO may in particular, concern the exchange of strategic information and the secondment of liaison officers to the EPPO.

2. The EPPO may designate, in agreement with the competent authorities concerned, contact points in the Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO in order to facilitate cooperation in line with the EPPO's needs.

3. In the absence of a legal instrument relating to cooperation in criminal matters and surrender between the EPPO and the competent authorities of the Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO, the Member States shall notify the EPPO as a competent authority for the purpose of implementation of the applicable Union acts on judicial cooperation in criminal matters in respect of cases falling within the competence of the EPPO, in their relations with Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO.

## **B. General Introduction**

### **I. The Special Position of Poland**

Poland had a **very special position towards the EPPO** and the EU from 2015–2023 – at least since the PiS party operated on Polish territory and this party has started many legislative developments, which were in fact detrimental to the EPPO mechanism, the PIF *Acquis* cooperation mechanism and only lately in 2023 Polish legislators began to change the laws – as PiS party members fear to lose the elections as Poland is not awarded any further EU money under the conditionality regime if it does not take back the changes detrimental to EU law. The fear that EU money is lost in dark shadow economies etc. is not unfounded for Poland.<sup>20</sup> As the elections brought back a EU friendly legislator, the option to join the EPPO was finally chosen in 2024. The following volume focuses still on both options, but enables either way quick references to pertinent Polish laws in the area of anti-fraud rules. 1

### **II. Necessary Cooperation – but how?**

One possible way of cooperation, a standard EU cooperation has been explored above, the European Investigation Order in the Special Introduction (see above → Introduction to the Polish judicial system related to the protection of the EU’s financial interests by means of criminal law). First of all, we took a step back above and tried to picture and understand why the search of ways of cooperation, other than the EPPO mechanism is needed. In the next step, we add further information on the request for cooperation. 2

#### **1. The Letter on Poland’s Refusal to Cooperate with the EPPO**

##### **Letter sent to European Commission regarding Poland’s refusal to cooperate with the EPPO** 3

*Published on 16 February 2022<sup>21</sup>*

Today, the European Chief Prosecutor has addressed a letter to the European Commission in line with Recital 16 of Regulation (EU) 2020/2092 of 16 December 2020 on a general regime of conditionality for the protection of the Union Budget pointing at Poland’s refusal to cooperate with the European Public Prosecutor’s Office (EPPO).

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<sup>20</sup> See Lukaszewitsch A (2022) Prosecutors are not very effective in EU fraud cases: “Only 33 percent of cases that EU-OLAF referred to Polish prosecutors ended in indictment. They alone have prosecuted 2,755 people over the course of five years.” Article of 18.8.2022. online: <https://www.rp.pl/zawody-prawnicze/art36890611-prokuratorzy-malo-skuteczni-w-sprawach-unijnych-naduzyc>. Accessed 6 August 2024.

<sup>21</sup> Taken from EPPO News of 16.02.2022. online: <https://www.eppo.europa.eu/en/news/letter-sent-european-commission-regarding-polands-refusal-cooperate-eppo>. Accessed 6 August 2024.

Though Poland does not take part in the enhanced cooperation on the establishment of the EPPO, cooperation between the EPPO and competent judicial authorities in Poland still has to rely on the existing instruments for judicial cooperation and mutual recognition. This includes essential instruments for cross-border criminal investigations like the European Investigation Order (Directive 2014/41/EU) and the European Arrest Warrant (Framework Decision 2002/584/JHA). Accordingly, all the Member States participating to the EPPO notified the EPPO as a competent authority for the application of existing instruments for judicial cooperation.

In this context, the European Chief Prosecutor has been informed that Poland has conditioned the signature of a working arrangement with the EPPO to a prior approval of an amendment of the Polish Criminal procedure code that would allow recognition of the EPPO as competent authority. The practical consequence of Poland's refusal to recognize participating Member States' notifications of the EPPO as a competent authority without prior national law modification is that Poland has been consistently rejecting the EPPO's requests for judicial cooperation since the start of its operations.

Given that whenever the EPPO is carrying out a criminal investigation of a cross-border nature, it is unable to obtain evidence located in Poland, the EPPO's ability to counter criminality affecting the Union budget is systematically hindered. The EPPO currently has 23 ongoing investigations involving Poland, which is the highest number of any non-participating Member State.

## **2. The ECJ's Decisions Condemning Poland's Justice Reform In Conflict with the Rule of Law Principle as Fundamental Union Law Principle**

4

### **“Résumé**

In 2017, two new chambers were established within the Sąd Najwyższy (Supreme Court, Poland), namely the Izba Dyscyplinarna (Disciplinary Chamber) and the Izba Kontroli Nadzwyczajnej i Spraw Publicznych (Extraordinary Review and Public Affairs Chamber).

By a law of 20 December 2019 amending the Law on the Supreme Court, which entered into force in 2020, those two chambers were granted new jurisdiction, in particular, to authorise the initiation of criminal proceedings against judges or to place them in provisional detention. (1) For its part, the Extraordinary Review and Public Affairs Chamber was granted exclusive jurisdiction to examine complaints and questions of law relating to the independence of a court or a judge. (2) In addition, under that amending law, the Supreme Court, including the latter chamber, may not call into question the legitimacy of the courts, the constitutional organs of the State and the organs responsible for reviewing and protecting the law, or establish or assess the lawfulness of the appointment



of a judge. (3) That law also clarifies the concept of disciplinary fault on the part of judges. (4)

The same amending law also amended the Law relating to the organisation of the ordinary courts, by introducing similar provisions to those amending the Law on the Supreme Court. (5) It also determines the regime applicable to any criminal proceedings initiated against judges of the ordinary courts. (6) It requires them, furthermore, as well as judges of the Supreme Court, to make declarations concerning membership of associations, non-profit foundations and political parties, including for periods preceding the taking-up of their office and provides that that information be published online. (7) A large number of those new provisions also apply to the administrative courts. (8)

Considering that, by adopting that new disciplinary regime, the Republic of Poland had failed to fulfil its obligations under EU law, (9) the European Commission brought an action for failure to fulfil obligations before the Court of Justice under Article 258 TFEU.

In the judgment delivered in that case, the Court, sitting as the Grand Chamber, upheld the action brought by the Commission. It finds that those new national provisions undermine the independence of judges guaranteed by the second subparagraph of Article 19(1) TEU in conjunction with Article 47 of the Charter and, moreover, infringe, first, the obligations imposed on national courts in the context of the preliminary ruling procedure and, second, the principle of primacy of EU law. In addition, the provisions establishing declaratory mechanisms in respect of judges and the online publication of the data thus collected infringe the right to respect for private life and the right to the protection of personal data enshrined in the Charter of Fundamental Rights of the European Union ('the Charter') and the General Data Protection Regulation ('the GDPR') (10).<sup>22</sup>

Considering the two official EU – one urgent request, one judicial proceeding – steps aiming at a reduction of conflicts and a more coherent cooperation, the problem prevails. How can the EPPO cooperate these days (see below → C.) and what should be done in the future? **5**

### **3. The Disciplinary of Prosecutors and Judges**

Poland's youngest past casts dark shadows on the presumption of independence of prosecutors and judges. This is a major problem in a Union, which is bound by Art. 2 TEU, Art. 17 TEU, Art. 47–52 European Charter of Fundamental Rights and the principle of Art. 19 TEU, which ensures that Union law is only judged by the ECJ. The impartiality and independence must be ensured for the future. Otherwise the whole prosecution and justice system loses the aspect, which is needed for a rule-of-law state. In most recent **6**

<sup>22</sup> ECJ, Judgment of the Court (Grand Chamber), 5 June 2023, Case C-204/21, *European Commission v Republic of Poland*.

times a **new Chamber of Supreme Court, which is called „Izba Odpowiedzialności Zawodowej“**, which can be roughly translated with “Chamber of Professional Liability”. The new chamber replaced the Disciplinary Chamber. On July, 6 2023 the ECtHR decided that this Chamber cannot also be seen as a court.<sup>23</sup>

#### **4. The Future Relationship De Lege Ferenda: A Few Wishes in Obiter Dictum Style**

- 7 One of the most prominent wishes to our polish friends is that they ask the legislator to consider a practical mechanism, a good solution for cooperation that ensures the concerns of Poland but still operates in favour for the own budget and the EU budget at an equivalent stage. The power that Poland invested in the relationship with Ukraine during the dark times of the Russian war in Ukraine and the big efforts, quick legislative developments in this time should also be used for a good solution towards a world with less EU fraud, which requires prosecution of criminals, who e.g. flee to Poland to hide from the EPPO’s jurisdiction. Despite all wishes this is a political decision and the current situation let us not hope for quick change but the hope for change will die last.

### **III. New Development as of 1 March 2024: Poland joins the EPPO**

- 8 After preparing this manuscript in 2023, the press office of the Polish Ministry of Justice confirmed on 1 March 2024 that Poland will join the EPPO.<sup>24</sup> The Minister of Justice, Adam Bodnar, submitted the request to the Prime Minister Donald Tusk on his first day in office, 13 December 2023. The Polish authorities notified the Commission of their intention to participate in the enhanced cooperation for the establishment of the EPPO on 5 January 2024 and again on 6 February 2024. The latter request stated that the EPPO Regulation should apply to Poland as from 20 November 2017 in order to “better achieve the goals of effective and impartial prosecution of crime affecting the Union’s financial interests.”<sup>25</sup> The Commission nevertheless decided that the EPPO would investigate crimes affecting the financial interests of the Union committed in Poland after 1 June 2021.<sup>26</sup>
- 9 According to the Commission Decision 2024/807 (Article 2 para 2) the Articles 24 to 27 and 31 of the EPPO Regulation shall apply in Poland as from the twentieth day of the appointment of the European Prosecutor from Poland in accordance with Article 16

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<sup>23</sup> See ECtHR, Judgment of 6 July 2023, App. nos. 21181/19 and 51751/20, *Tuleya v. Poland* = ECHR 212 (2023). See as well ECtHR, Judgment of 22 July 2021, App no. 43447/19, *Reczkowicz v. Poland* = ECHR 236 (2021).

<sup>24</sup> Ministry of Justice (Press Office), News from 1 March 2024, <https://www.gov.pl/web/justice/poland-joins-the-european-public-prosecutors-office#:~:text=Minister%20of%20Justice%20Adam%20Bodnar,Commission's%20decision%20enters%20into%20force>. Accessed 2 September 2024.

<sup>25</sup> OJ L, 29.2.2024, Commission Decision 2024/807, p. 2 mn. 12.

<sup>26</sup> OJ L, 29.2.2024, Commission Decision 2024/807, p. 2 mn. 16.

of the Regulation. The decision entered into force 20 days after its publication in the Official Journal of the EU. It is currently in force.

The Polish Ministry of Justice has already informed the public that there will be 24 European Delegated Prosecutors in Poland, working in three or four EPPO offices – one in Warsaw and the rest in the other cities. The EDPs will be Polish district prosecutors. The Minister of Justice, Adam Bodnar, has issued an order for the selection of candidates for the post of European Prosecutor. According to the EPPO website, it seems, the operational work of the EPPO in Poland has not yet started due to the lack of an appointment of the European Prosecutor by the Council. **10**

The Ministry of Justice aims the following with the participation to the EPPO: **11**

“The participation of Polish prosecutors in the work of the European Public Prosecutor’s Office will allow for more effective prosecution of crimes against the financial interests of the Member States, including Poland. Effective combating of financial abuse will reduce the reduction of the EU budget and ensure that the Union has more resources to achieve its goals. Joining the European Public Prosecutor’s Office will contribute to better cooperation between the judiciary of Poland and the EU Member States.”<sup>27</sup>

For the Polish law enforcement bodies the participation to the EPPO will bring a further level of cooperation since they have already been cooperating with the EPPO e.g. providing legal assistance to courts and prosecutors of other countries as well as in the implementation of the EIO and the EAW.<sup>28</sup> **12**

The advent of this new development has finally answered our long-held hopes for change. The following **hypothetical considerations** now have newfound grounding and are presented with the potential to become a reality. This book can be regarded as a valuable source of insight into the connection between EPPO investigations and national law. **13**

<sup>27</sup> Ministry of Justice (Press Office), News from 1 March 2024, <https://www.gov.pl/web/justice/poland-joins-the-european-public-prosecutors-office#:~:text=Minister%20of%20Justice%20Adam%20Bodnar,Commission's%20decision%20enters%20into%20force>. Accessed 2 September 2024.

<sup>28</sup> Ministry of Justice (Press Office), News from 1 March 2024, <https://www.gov.pl/web/justice/poland-joins-the-european-public-prosecutors-office#:~:text=Minister%20of%20Justice%20Adam%20Bodnar,Commission's%20decision%20enters%20into%20force>. Accessed 2 September 2024.



## C. Specific Introduction to the Relationship of the EPPO and Poland

### I. Introduction to the Polish judicial system related to the protection of the EU's financial interests by means of criminal law

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#### 1. Status of Poland

Poland is one of the five countries that have not joined the European Public Prosecutor's Office (EPPO). According to the Ministry of Justice, the decision not to participate in the EPPO initiative was based on systemic differences. The Polish criminal proceedings and prosecutor's office organisational structure differ significantly from those of other EU countries, making cooperation within the framework of the European Public Prosecutor's Office impossible<sup>29</sup>. 1

However, the provisions of the Code of Criminal Procedure acknowledge the necessity of cooperation with EU institutions, including the European Public Prosecutor's Office and OLAF. 2

The Act amending the Code of Criminal Procedure and the Law on the Public Prosecutor's Office<sup>30</sup> added Article 615a to the Code of Criminal Procedure which prescribes provisions for the European Public Prosecutor's Office: 3

- general regulations relating to legal assistance in criminal matters and international cooperation (Chapters 62 and 67 of the Code of Criminal Procedure);
- the seizure of evidence and the freezing of property (Chapters 62a and 62b of the Code of Criminal Procedure. Implementing Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property and evidence);
- the European Investigation Directorate (Chapters 62c and 62d of the Code of Criminal Procedure. implementing Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order in criminal matters);
- European Arrest Warrant Decision (Chapter 65b implementing the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States);

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<sup>29</sup> See Statements at sessions of the Sejm, Meeting No. 58 on 07.07.2022, Retransmission: vice-ministry of Justice Marcin Warchoń explanation: [https://www.sejm.gov.pl/sejm9.nsf/wypowiedz.xsp?posiedzenie=58&dzien=2&wyp=155&symbol=RWYSTAPIENIA\\_WYP&id=411](https://www.sejm.gov.pl/sejm9.nsf/wypowiedz.xsp?posiedzenie=58&dzien=2&wyp=155&symbol=RWYSTAPIENIA_WYP&id=411). Accessed 6 August 2024.

<sup>30</sup> Journal of Laws of 2022, item 2582.

- European Protection Order (Chapter 65d implementing Directive 2011/99/EU of 13 December 2011 on the European Protection Order).

## **2. The Need to change the Polish CPC for Cooperation with the EPPO**

- 4 The legislator rightly identified that resolving the barrier to mutual cooperation between Poland, as a non-participating state in the enhanced cooperation, and the European Public Prosecutor's Office is not achievable through notifications under Article 105 para. 3 of Regulation 2017/1939 alone<sup>31</sup>. Additionally, relevant provisions governing cooperation with the European Public Prosecutor's Office needed to be introduced. Article 615a of the Code of Criminal Procedure lays out the general principles of cooperation within the EU but introduces two notable differences:
- the National Public Prosecutor's Office handles cooperation with the European Public Prosecutor's Office and
  - new grounds for refusal of cooperation have been added.
- 5 This means that requests for the execution of a European Arrest Warrant, for the taking of evidence in connection with the issuing of a European Investigation Order, a European Protection Order, etc., are executed under partially different rules. The European public prosecutor cannot directly address a court or a public prosecutor in Poland with a request to perform a specific action. Instead, the National Public Prosecutor's Office must be enlisted to transmit the request to the relevant national authority. While Article 615a of the Code of Criminal Procedure simplifies cooperation when the activities occur within a participating member state's structures, the legislator has introduced two additional grounds for refusal to cooperate specifically for the European Public Prosecutor's Office. These additional grounds are incompatibility with Poland's fundamental principles of the legal order and violation of Poland's sovereignty.
- 6 Refusing international cooperation due to non-compliance with the basic principles of the legal order in Poland is also applicable to the denial of admissibility of evidence obtained abroad. This applies to both traditional international cooperation (Article 587 of the Code of Criminal Procedure) and evidence collected within joint investigation teams (Article 589c § 7 of the Code of Criminal Procedure). Legal scholars indicate that the term "basic principles of the legal order in Poland" should be interpreted as legal norms involving constitutional guarantees of respect for the right to defence, the dignity of an individual, and the humaneness of proceedings<sup>32</sup>. The Supreme Court has stated that "the limit for the recognition of evidence as fit for use in a Polish trial is not

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<sup>31</sup> Explanatory Memorandum to the Act of 27 October 2022 amending the Act – Code of Criminal Procedure and the Act – Law on the Public Prosecutor's Office.

<sup>32</sup> See Nita-Światłowska 2023, Commentary to Article 587 CCP, in: Skorupka J (ed) Kodeks postępowania karnego.

individual internal regulations, but the principles of the legal order of the Republic of Poland, i.e. rules of a more general and fundamental nature”<sup>33</sup>.

### 3. The Relevance of Art. 587 of the Polish CPC: European Investigation Order

The condition from Article 587 of the Code of Criminal Procedure is justifiable in relations with non-EU states whose legal traditions and model of criminal proceedings differ substantially from the Polish model to the extent that admissibility of evidence cannot be considered. This is not limited to circumstances where there is a real risk that the rights and freedoms of an individual under Article 3 of the ECHR, including freedom from torture, inhuman or degrading treatment, have been violated during the conduct of evidence in another country<sup>34</sup>. The admission of such evidence would lead to unfairness in the proceedings as a whole<sup>35</sup>. 7

The concept of contradiction with the fundamental principles of the legal order in Poland should also include significant differences, such as how cross-examination is conducted in countries with a common law tradition. Cross-examination, which in principle assumes that the witness answers only questions, is challenging to reconcile with the mode of questioning in the Polish criminal trial. In Poland, the primary stage of questioning a witness is the free speech of the witness, where the person is allowed to present information without inhibition. Only afterward does the stage of complementary questions asked by the trial authority and other involved parties come. A questioning model in which the witness is not allowed to speak freely and suggestive questions are not prohibited<sup>36</sup>, is difficult to reconcile with the fundamental principles of the criminal process. 8

In the case of the European Investigation Order – which is executed under the general rules, i.e. when the EIO has been requested by an authorised authority of an EU Member State – the grounds for refusal of execution are regulated in Article 589zj of the Code of Criminal Procedure. 9

*Article 589zj. [Refusal to execute the EAD]* 10

*§ 1. The execution of an EIO shall be refused if:*

- 1) the court or the public prosecutor has not obtained the required authorisation to act with the participation of the person indicated in the EIO;*
- 2) a final judgment has been passed in respect of the person prosecuted in a Member State of the European Union for the same acts as those indicated in the EIO and, in the case of a conviction for the same acts, the person*

<sup>33</sup> Supreme Court, Judgment of 2.12.2019, III KK 505/19, LEX no. 2872977.

<sup>34</sup> ECtHR, *El Haski v. Belgium*, case no. 649/08, judgment of 25.09.2012.

<sup>35</sup> See also Jasiński 2021, pp. 127–153.

<sup>36</sup> See: Article 170 § 4 CCP.

*prosecuted is serving or has served a sentence or the sentence cannot be enforced under the law of the State of conviction;*

*3) the execution of the EIO could compromise the safety of the officer in the performance of operational and exploratory activities and of the person assisting him/her in those activities;*

*4) the EIO relates to an interrogation on a matter subject to an absolute prohibition on interrogation<sup>37</sup>;*

*5) the execution of the EIO would violate the freedoms and rights of a human being and citizen;*

*6) the requested action would endanger national security;*

*7) the EIO relates to the temporary surrender of a person deprived of his or her liberty to the issuing state and its execution would have the effect of prolonging the period of deprivation of liberty of that person.*

*§ 2 The execution of an EIO may be refused if:*

*1) the act giving rise to the EIO, other than that listed in Article 607w, does not constitute an offence under Polish law;*

*2) the offence based on which the END was issued under Polish law was committed wholly or in part within the territory of the Republic of Poland or on a Polish vessel or aircraft and does not constitute an offence under Polish law;*

*3) the execution of the EIO would involve the disclosure of classified information obtained in the course of operational and exploratory activities, as well as information connected with the conduct of such activities;*

*4) under Polish law the investigative measure to which the EIO relates may not be carried out in a case involving a criminal offence on which its issue is based<sup>38</sup>;*

*5) under Polish law, the investigative measure to which the EIO relates may not be carried out in the proceedings in which it was issued;*

*6) the EIO relates to the temporary surrender of a person deprived of liberty to the issuing state or the Republic of Poland, and the person does not consent thereto;*

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<sup>37</sup> E.g. interrogation of a priest for information obtained during a confession, the questioning of a defence counsel (Article 178 CCP), whether the questioning would be conducted under conditions excluding freedom of expression (Article 178 § 5 and 7 CCP).

<sup>38</sup> In the Polish legal system, the only investigation activity in which the legislator has introduced explicit subject-matter limitations is the control and recording of conversations, both procedural (under Article 237 § 3 of the CCP) and non-procedural (based on other legal acts regulating the manner of functioning of the Police, Anticorruption Bureau and others). For all other investigative activities, this premise will not apply unless the legislation changes.



7) *the EIO relates to the interrogation using technical devices enabling this action to be carried out remotely with simultaneous direct transmission of images and sound, and the accused person to be interrogated does not consent thereto;*

8) *the EIO concerns the interrogation of persons referred to in Article 179 § 1<sup>39</sup> or Article 180 § 1<sup>40</sup> and 2<sup>41</sup>, as to the circumstances set out in those provisions.*

The legislator, when implementing Directive 2014/41, did not see the need to invoke the general clause of ‘non-contradiction of the evidentiary act with the fundamental principles of the legal order in Poland’. Because of the harmonisation of the legal orders of EU states, mutual trust and similar values on which the functioning of the EU states should be based, it is difficult to assume that the law in any EU state would differ to such an extent that it would not be possible to cooperate with it in, for example, the cross-border gathering of evidence. It is therefore difficult to understand what the reasons were for invoking this clause in the case of actions carried out on the initiative of the European Public Prosecutor. It also leads to a differentiation of requests coming from the territory of the same EU state depending on whether the request comes directly from an authority of the state in question (a court or a prosecutor) or from a European Public Prosecutor who carries out activities in one of the countries of the Union. **11**

## II. Art. 615a of the Polish CPC

### 1. Relevance

The provision of **Article 615a of the Code of Criminal Procedure** transfers the premise of refusal to carry out an action at the request of an authorised authority other than a national authority to judicial cooperation in the EU. It unnecessarily differentiates the **12**

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<sup>39</sup> Article 179 § 1 CCP: Persons obliged to not disclose information classified as “confidential” or “strictly confidential” may testify as to information to which the above obligation applies only after they are released from the duty of confidentiality by an entitled superior authority.

<sup>40</sup> Article 180 § 1 CCP: Persons obliged to not disclose information classified as “privileged” or “confidential”, or secrets related to their profession or function may refuse to testify as to the information to which this duty extends, unless the court or the public prosecutor, acting in the interest of the administration of justice, releases them from the duty of confidentiality and as long as the specific laws do not provide otherwise. Decisions concerning such a release are subject to interlocutory appeal.

<sup>41</sup> Article 180 § 2 CCP: Persons subject to notary, advocate, legal advisor, tax advisor, physician, reporter’s, statistical or General Counsel’s to the Republic of Poland privilege may be questioned with regard to the facts covered by this privilege only when this is indispensable for the interest of the administration of justice and such facts cannot be established on the basis of any other evidence. In preparatory proceedings, a deposition or a permission to take a deposition is decided upon by the court in a hearing without the attendance of the parties, within a period not exceeding seven days from the application of the public prosecutor. The decision of the court is subject to interlocutory appeal.

principles of cooperation on the basis of the same instruments – the EAW<sup>42</sup>, the EIO, the EPO or freezing orders – by adding general premises that may be interpreted differently in practice. This is not conducive to stability in the practice of state authorities and may be difficult to understand with partners from EU countries.

## 2. Short Analysis

- 13 The reference to “violation of Poland’s sovereignty”<sup>43</sup> as a ground for refusal to execute requests to Polish authorities by the European Public Prosecutor’s Office was not previously indicated in the provisions of the Code of Criminal Procedure. The justification of the amendment project does not explain why this premise was introduced into the provisions of the Code. It also does not appear in the provisions of the Code of Criminal Procedure, which regulate traditional international cooperation. It is impossible to predict how the “violation of Poland’s sovereignty” will be interpreted in the practice of judicial authorities, especially the National Public Prosecutor’s Office, which coordinates the cooperation of Polish authorities with the European prosecutor’s office. Currently, the Constitutional Court interprets “sovereignty” in a way that puts Poland on a collision course with European institutions<sup>44</sup>. Doubts arise as to whether the activities of the European Public Prosecutor’s Office will threaten Poland’s sovereignty, given that the activities of this body involve criminal proceedings in cases of offences detrimental to the EU’s financial interests.
- 14 Furthermore, as noted in the explanatory memorandum to the draft amendment, “Poland, as a Member State of the European Union, is obliged, under Article 4 of the Treaty on European Union, to cooperate with the Union loyally in performing the tasks arising from the Treaties, including by facilitating the achievement of the Union’s tasks and refraining from taking measures which could jeopardize the attainment of the Union’s objectives. Also, Article 325 of the Treaty on the Functioning of the European Union provides that both the Union and its Member States should counter any act affecting the financial interests of the Union and that the Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their financial interests”<sup>45</sup>.

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<sup>42</sup> The issue of “non-compliance with Polish legal order” can be primarily connected with evidentiary acts and their recognition under national law. Thus, in theory, this premise can be combined with EIO or freezing orders. It does not seem possible that it can be applied to the EAW. The implementation of the EAW Framework Decision introduced the possibility to refuse the execution of an EAW if it would lead to a violation of individual rights and freedoms. The conflict with the Polish legal order can be found in this clause.

<sup>43</sup> Only by referring to the principles of traditional international cooperation can the premise of sovereignty protection be included in a potential catalogue of refusals to cooperate with another state. However, within the EU, issues of national sovereignty cannot be considered on the same basis as in traditional cooperation between states.

<sup>44</sup> See judgment of the Constitutional Court of 7.10.2021, K 3/21, OTK-A 2022/65. On 17 July 2023 The European Commission lodged a complaint with the CJEU in relation to this Constitutional Court decision.

<sup>45</sup> Explanatory Memorandum to the Act of 27 October 2022 amending the Act – Code of Criminal Procedure and the Act – Law on the Public Prosecutor’s Office.

### 3. Coordination and Cooperazion

In contrast to cooperation with individual EU member state authorities, which takes place directly between courts/prosecutors, in the case of the European Public Prosecutor's Office, coordination is handled by the National Public Prosecutor's Office. Such a solution was justified on the grounds of uniformity of application of the rules and "uniformity of strategic decision-making"<sup>46</sup> However, it is difficult to avoid the impression that the main purpose behind this solution is to maintain control over the scope and conditions of cooperation with the European Public Prosecutor's Office. In conjunction with the structure of the National Public Prosecutor's Office, the institutional links with the Prosecutor General<sup>47</sup>, and the fact that the Prosecutor General is also the Minister of Justice, i.e., a politician, doubts may arise as to the apolitical nature of cooperation with the European Public Prosecutor's Office<sup>48</sup>. Moreover, coordinating cooperation through the National Public Prosecutor's Office will tend to lengthen the processing of individual applications for EAW/END or other instruments of cooperation within the EU. 15

### III. Conclusion

In conclusion, although the introduced regulations enable cooperation between domestic investigators and European Public Prosecutors, the partially different principles of cooperation, i.e. the intermediary of the National Public Prosecutor's Office, additional grounds for refusal of cooperation, unnecessarily prolong and complicate effective cooperation in combating crime that threatens the financial interests of the EU. 16

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<sup>46</sup> Explanatory Memorandum to the Act of 27 October 2022 amending the Act – Code of Criminal Procedure and the Act – Law on the Public Prosecutor's Office.

<sup>47</sup> Opinion of the Venice Commission about the organisation of Public Prosecutor Office in Poland: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)028-e). Accessed 6 August 2024.

<sup>48</sup> This possibility was highlighted by the Senate. Senate position available at: <https://orka.sejm.gov.pl/Druki9ka.nsf/0/8A66BA1CFAB14E70C12588FE0026B970/%24File/2795.pdf>. Accessed 6 August 2024.



## **D. Cooperation with Polish Justice Authorities**

### **I. Hypothetical considerations on the impact of the EPPO investigations under Art. 105 EPPO Regulation for Polish justice authorities**

At the moment Poland has not concluded a special Working Arrangement with the EPPO. 1

### **II. Polish Participation in Eurojust**

The Polish Desk at Eurojust is one alternative way of establishing cooperation with Polish Judicial authorities.<sup>49</sup> The EPPO has concluded a Working Arrangement with Eurojust.<sup>50</sup> The Legal Service of the EPPO can thus request cooperation with the Polish Desk e.g. for a JIT in an EPPO investigation. This does not enable EDPs of the EPPO to conduct investigations in Poland themselves or request special investigative measures but it at least ensures a channel for communication about transnational fraud cases. Under Art. 7 of the agreement mutual support is possible. Art. 12 foresees high-level meetings. Art. 13 liaison teams. 2

### **III. Polish Cooperation with Europol**

Europol cooperates with the Polish law enforcement authorities, such as: 3

- Border Guard (*Straż Graniczna*)
- Central Anti-Corruption Bureau (*Centralne Biuro Antykorupcyjne*)
- Customs Service (*Służba Celna*)
- Internal Security Agency (*Agencja Bezpieczeństwa Wewnętrznego*)
- the National Police (*Policja*)

### **IV. Projects of the European Council and the EU for better communication of Non-participating countries with the EPPO (2023–2025)**

The current status of cooperation possibilities between the Danish authorities and the EPPO might evolve to a more EU centralised system in the next years until 2026. The country might be involved additionally in an initiative of the European Council from 2022 and 2023: 4

In the future it is possible, as said by the European Committee On Crime Problems (CDPC) and the Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters (PC-OC) that Denmark will be invited with other states to a new legal instrument, which ensures the cooperation of EPPO with non- 5

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<sup>49</sup> See <https://www.eurojust.europa.eu/states-and-partners/member-states/poland>. Accessed 6 August 2024.

<sup>50</sup> See Porozumienie Robocze Między Prokuraturą Europejską (“EPPO”) A Agencją Unii Europejskiej Ds. Współpracy Wymiarów Sprawiedliwości W Sprawach Karnych (“Eurojust”).

participating member states (09/2022).<sup>51</sup> The PC-OC will deliver till 31.12.2023 a “Draft Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 30) on the relations with the European Public Prosecutor’s Office”<sup>52</sup>

## V. Creation of Art. 615a in the Polish Criminal Procedure Code

6 The Polish legislator has enacted a new Article, which prescribes at least the applicability of procedures and established ways of EU criminal cooperation:

7 **Art. 615a [Provisions applicable to cooperation with the European Public Prosecutor’s Office]**

§ 1. The provisions of Chapters 62, 62c, 62d, 63, 65b, 65d and 67, as well as the provisions of Regulation 2018/1805 of the European Parliament and the Council of 14 November 2018 on mutual recognition of freezing and confiscation orders (Official Journal of the EU L 303, 28.11.2018, p. 1), shall apply mutatis mutandis to cooperation between courts, prosecutors and other procedural authorities and the European Public Prosecutor’s Office. Contact between prosecutors and the European Public Prosecutor’s Office, including the transmission of letters or information, shall take place through the National Public Prosecutor’s Office.

§ 2. If the requested action or the provision of information would be contrary to the principles of the legal order of the Republic of Poland or would violate its sovereignty, the court or the public prosecutor shall refuse to perform the action or provide information.

8 As a conclusion we can draw from this new legislative statement, that all mechanisms of cooperation in criminal matters in the EU should be applied in cooperation with the EPPO. But, as one can see, there is room for the discretionary powers of the Polish prosecutor. Thus, it can be assumed probably, that the cooperation between the EPPO and Polish prosecutors will be based on the EIO and will be more formalised if we compare the methods of cooperation between “EPPO states” (see above → Introduction to the Polish judicial system related to the protection of the EU’s financial interests by means of criminal law).

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<sup>51</sup> Council of Europe (CDPC) 2022, List of decisions taken at the 32 nd meeting of the restricted Group of experts on international co-operation (PC-OC Mod) enlarged to all PC-OC members chaired by Joana Gomes Ferreira (Portugal), PC-OC Mod (2022)02, 29.09.2022, online: <https://rm.coe.int/list-of-decisions-of-the-32nd-pc-ocmod-meeting/1680a84a92>. Accessed 6 August 2024.

<sup>52</sup> Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters (PC-OC), Extract from CM(2021)131-addrev, online: <https://rm.coe.int/pc-oc-en/1680a64f4a>. Accessed 6 August 2024.

## E. Polish Authorities Investigating PIF Acquis Offences

### Rules on Investigations of PIF-Acquis Offences in Poland – Taking into account the principle that Poland is currently a non-participating country in relation to the EPPO (Status as of 2023)

*Nota bene:* New developments have taken place since 1 March 2024: Poland announced its intention to participate in the EPPO cooperation (See → General Introduction, New Development as of 1 March 2024: Poland joins the EPPO). At the time of writing this volume, Poland was still a non-participating Member State. This information should be considered while proceeding further.

#### I. Contents of the Chapter and further Analysis

In the past journalists have again<sup>53</sup> and again<sup>54</sup> pointed at the fact that, despite frequently issued OLAF Reports, Rule of Law Reports and national Statistics the European public knows little about the actual scope of EU (funding) frauds in Poland.<sup>55</sup> This raises the question how do Polish criminal justice actors and financial investigation bodies investigate EU frauds and corruption-related offences in Poland? What does the legislator foresee? How is the law interpreted? And is the suspect protected against (very harsh) investigative actions?

The criminal investigations gathering evidence on fraud offences detrimental to the EU in Poland are still based primarily on national prosecution offices.<sup>56</sup> This situation might change one day if Poland enters the enhanced cooperation and becomes a Member of the EPPO.<sup>57</sup>

But even if Poland does not enter the enhanced cooperation, it will receive requests from the EPPO for cooperation in transnational VAT fraud cases, smuggling cases, customs duties evasion cases, corruption cases, OLAF cases and subsidy fraud cases. The

<sup>53</sup> A very prominent case involved the Polish Minister of Justice – Zbigniew Ziobro. His party – Solidarna Polska – was involved in some OLAF investigation and because of problems with financial obligations. The party Solidarna Polska was cancelled, and now, Zbigniew Ziobro is the head of the new political party – Suwerenna Polska. The proceedings in this regard were discontinued in 2019 in Poland – but the OLAF report was one of the pieces of evidence. See for the Answer given by Mr Hahn on behalf of the European Commission on 22.04.2021: [https://www.europarl.europa.eu/doceo/document/E-9-2021-000202-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2021-000202-ASW_EN.html). Accessed 6 August 2024.

<sup>54</sup> Journalist used this case to explain the general public the role of OLAF, see Baczynski M 2022, Ziobro nadzorował śledztwo w sprawie defraudacji pieniędzy we własnej partii. To dlatego Morawiecki chciał badać finanse Solidarnej Polski? Article on Onet News, 03.11.2022, <https://wiadomosci.onet.pl/tylko-w-onecie/zbigniew-ziobro-nadzorowal-sledztwo-ws-defraudacji-we-wlasnej-partii/e22mrrz>. Accessed 6 August 2024.

<sup>55</sup> See Jałoszewski M, Szczygieł K (Fundacja Reporterów) 2020, EU Funding Fraud in Poland We Know Little About, Article on vsquare, 16.4.2020, online: <https://vsquare.org/eu-funding-fraud-in-poland-we-know-little-about/> (Accessed 6 August 2024): “The European Public Prosecutor’s Office (EPPO) has warned EU member countries that Poland is refusing to cooperate with investigations into budget fraud. [...]”

<sup>56</sup> See Schnuer C 2022, EU prosecutor warns Poland holds up investigations, Article on Delano, 17.2.2022, online: <https://delano.lu/article/eu-prosecutor-warns-poland-hol>. Accessed 6 August 2024.

<sup>57</sup> Karsai 2021.

European legal order has a strong influence on the national law and the evidence gathering procedures in Poland.<sup>58</sup>

- 12 The following chapter nevertheless explores hypothetical considerations with regard to such a future and at the same time offers an introduction into Polish national criminal procedure law.
- 13 In the following volume the compendium offers hypothetical considerations for Article 26 in a partial manner, whereby the first part under IV. may be read like a book introduction into the *PIF Acquis in Poland* presenting the different offences (especially the law text e.g. of Budget fraud, s. 286 CC) and partially we strive to comment on hypothetical considerations: What would happen if Art. 27 EPPO would apply in Poland one day? Whom from would the EDPs then evocate cases?
- 14 Part 3 “Conducting fraud investigations in Poland” can be read like an analogy to the investigations these days as foreseen by Art. 28 EPPO Regulation. It can be seen both for national inquiries and for **hypothetical considerations**. It deals with the question which authorities the public prosecutor’s office can contact and *de facto* use in their investigations in Poland. Who may be instructed and commanded by the national prosecution offices? How are Polish criminal police, customs and tax investigators organized and “armed” against occurrences of EU fraud? Do they have **any special awareness structures of EU fraud** that they practice and would this structure be helpful for future EDPs? Even if no EDPs were deployed in Poland any time soon, how are these authorities already helping and could the Government not easily sign a Working Arrangement with the EPPO like e.g. Hungary did?
- 15 This information also helps defence lawyers to get an idea of the situation about the **national authorities** when transnational cases arise in which the EPPO investigates and, for example, wants to have suspects who have fled extradited to Poland (but see also the considerations on arrest and pre-trial detention in Poland, Hypothetical considerations on Art. 33 EPPO).
- 16 Art. 29 exists in the national framework as well as at the supranational level. The deputies and civil servants who are specially protected are in fact particularly immune to corruption and tax investigations. This is a general, transnational principle. The only question is how far it will be taken to the political extreme or whether there is serious interest in clarification, which should be normal for constitutional states and a “checks and balances” structure of states. In the Compendium, the provisions of the constitution are presented and briefly explained.

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<sup>58</sup> Czernaik 2021b.



The next point to address is **investigative measures and their scope. What measures are available to national prosecutors in Poland** and how do they respond to legislative measures to continue investigating effectively in the digital age? **17**

The individual measures that Art. 30 EPPO Regulation knows are also gone through here and excerpts from the CPC are presented. **18**

Art. 33, which deals with arrest and pre-trial detention, is also addressed hypothetically, whereby the explanations can also be read for the currently applicable situation, since they are the substantive power regulations of today's Polish criminal procedure code. Pre-trial detention has become more frequent in cases of fraud, it seems, since cases of investigation – especially in the case of customs and procurement fraud as well as VAT fraud – are becoming more and more extensive. **19**

This chapter helps the reader to get an **overview of the investigations into fraud matters** in Poland. It is rounded off with some brief reflections on fraud defences in Poland and presents the applicable national law. **20**

## **II. Start of Investigations into PIF Acquis Offences**

### **1. The Term “Preparatory Proceedings” (*Postępowanie przygotowawcze*)**

The Polish language differentiates between two types of investigations that are brought under the term preparatory proceedings (*Postępowanie przygotowawcze*). This is: **21**

- “*Śledztwo*”, the term refers to the basic form of an investigation, so to speak the real, common investigation.
- And “*dochodzenie*”. This is translated with a simple enquiry like investigation, which is done on the same basis as the basic and normal form of an investigation.

Both forms of investigation can be used according to the Polish CPC for the offences enshrined in the Polish Criminal Code and they can be used for the economic crime offences in the fiscal penal code. The Polish Law on Prosecutors refers to the General term “preparatory proceedings” in Art. 56 et seq. **22**

**23 Section III Activity of the prosecutor's office**

**Chapter 1 Preparatory proceedings**

**§ 56<sup>59</sup> Prosecutor's tasks as part of preparatory proceedings**

1. Pursuant to the provisions of the Act, the public prosecutor initiates and conducts preparatory proceedings or orders the initiation or conduct of such proceedings to another authorised body, and then performs the activities of the public prosecutor before the court in such cases, unless the head of the superior organisational unit of the public prosecutor's office orders otherwise.
2. The tasks of a public prosecutor referred to in § 1 may be performed by a team of public prosecutors appointed by order of the head of the superior organisational unit of the public prosecutor's office. Such a team may include prosecutors of common organisational units of the prosecutor's office of various levels, as well as officers of other state services.
3. In the course of preparatory proceedings, the prosecutor applies preventive measures against suspects in cases provided for in the laws.

**24** The Polish Criminal Procedure Code further determines and defines the term and the importance of the initiation of an investigation *ex officio*:

**25 Section VII Preparatory proceedings**

**Chapter 33 General Regulations**

**Article 297 Purpose and Scope**

§ 1. The purpose of the preparatory proceedings is:

- 1) determining whether a prohibited act has been committed and whether it constitutes a crime;
- 2) detection and, if necessary, apprehending the perpetrator;
- 3) collecting data pursuant to art. 213 and 214;

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<sup>59</sup> Dział III Działalność prokuratury

Rozdział 1 Postępowanie przygotowawcze

**Art. 56. [Zadania prokuratora w ramach postępowania przygotowawczego]**

§ 1. Prokurator, stosownie do przepisów ustaw, wszczyna i prowadzi postępowanie przygotowawcze albo zleca wszczęcie lub prowadzenie takiego postępowania innemu uprawnionemu organowi, a następnie wykonuje w takich sprawach czynności oskarżyciela publicznego przed sądem, chyba że kierownik nadrzędnej jednostki organizacyjnej prokuratury zarządzi inaczej.

§ 2. Zadania prokuratora, o których mowa w § 1, mogą być realizowane w ramach zespołu prokuratorów, powoływanego zarządzeniem kierownika nadrzędnej jednostki organizacyjnej prokuratury. W skład takiego zespołu mogą wchodzić prokuratorzy powszechnych jednostek organizacyjnych prokuratury różnych stopni, a także funkcjonariusze innych służb państwa.

§ 3. W toku postępowania przygotowawczego prokurator stosuje, w przypadkach przewidzianych w ustawach, środki zapobiegawcze wobec podejrzanych.

§ 4. Postępowanie przygotowawcze może być prowadzone w formie elektronicznej. Prokurator może wnieść do sądu akt oskarżenia wraz z materiałami takiego postępowania przygotowawczego, sporządzony w formie elektronicznej. Dokumenty sporządzone w formie elektronicznej prokurator opatruje podpisem elektronicznym. Przepisy art. 68 stosuje się odpowiednio.

- 4) clarification of the circumstances of the case, including determining the victims and the extent of the damage;  
 5) collecting, securing and, to the extent necessary, preserving evidence for the court.

The main bodies involved in preparatory proceedings are the bodies, which are obliged to investigate in the typical areas of EU frauds: tax, customs and structural funds area. **26**

The CPC states that the police is mainly involved in preparatory proceedings: **27**

**Article 298 [Competence of authorities]<sup>60</sup>** **28**

§ 1. Preparatory proceedings are conducted or supervised by the prosecutor, and to the extent provided for in the Act, they are conducted by the Police. In cases provided for in the Act, the powers of the Police are vested in other authorities.

§ 2. The steps specified in the law in the preparatory proceedings are carried out by the court.

**Article 299 [Parties to the preparatory proceedings]<sup>61</sup>**

§ 1. In the preparatory proceedings, the victim and the suspect are parties.

§ 2. In the cases specified in the Act, certain rights are also available to persons who are not parties.

§ 3. In court actions in preparatory proceedings, the prosecutor has the rights of a party.

An investigation “*Wszczęcie śledztwa*” is only started if there is **reasonable suspicion**. **29**  
 The term in Polish is “*uzasadnione podejrzenie*” and it appears in Art. 303 of the CPC. The full wording is displayed below in the analysis of the Polish Criminal PIF-Acquis Investigations.

**2. Polish Criminal PIF-Acquis Investigations: Jurisdiction, Initiation of Investigations and Allocation of Competence**

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(1) Reasonable Suspicion, Art. 303 CPC .....	78		

<sup>60</sup> **Art. 298. [Właściwość organów]**

§ 1. Postępowanie przygotowawcze prowadzi lub nadzoruje prokurator, a w zakresie przewidzianym w ustawie prowadzi je Policja. W wypadkach przewidzianych w ustawie uprawnienia Policji przysługują innym organom.

§ 2. Określone w ustawie czynności w postępowaniu przygotowawczym przeprowadza sąd.

<sup>61</sup> **Art. 299. [Strony postępowania przygotowawczego]**

§ 1. W postępowaniu przygotowawczym pokrzywdzony i podejrzany są stronami.

§ 2. W wypadkach wskazanych w ustawie określone uprawnienia przysługują również osobom niebędącym stronami.

§ 3. W czynnościach sądowych w postępowaniu przygotowawczym prokuratorowi przysługują prawa strony.

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✍ \* *Nota bene*: The EPPO Regulation does not apply in Poland and is therefore not enforceable on its territory either. Poland is a **non-participating country** to the EPPO. The considerations made in the following are therefore exploring and focusing on Polish *national* investigations if Poland has jurisdiction over a PIF offence. Next for cases for which the EPPO could exercise its jurisdiction as well. And this concerns cases, in which different countries are involved – either participating and non-participating or a citizen of one of those countries, who commits an offence in a non-participating country. These kind of problems exist equally with other non-participating countries, e.g. Ireland, Hungary and Sweden. Denmark does not fall into the scope of these countries as it is not only a non-participating country but as well a country that has opted out of the whole Area of Freedom, Security and Justice.

30 Thus, Art. 26 EPPO Regulation should still be known to Polish Investigation Authorities as it relates to jurisdictional matters and basic questions of the whole Regulation. Above that, one day Poland may decide to join it will need to cope with the wording of the Regulation and its mechanisms.

31 Union law, which would apply if Poland would be part of the EPPO mechanism:

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

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 – Investigating fraud cases in Poland (PIF offences etc.)

32

<b>Overview</b>	
<b>Relevant national law</b>	Sources: Criminal Code/ Criminal Procedure Act/ Fiscal Penal Code/ <i>Ustawa z dnia 10 września 1999 r. Kodeks karny skarbowy.</i> Customs Law/ <i>Ustawa z dnia 19 marca 2004 r. Prawo celne</i>
<b>A PIF-Acquis Offence</b>	See below → “The PIF offences in Poland”.
<b>Sanctions for natural persons</b>	The general rules of the Criminal Code would apply.
<b>Poland and the EPPO</b>  “[competence of] a European Delegated Prosecutor in a Member State [Poland]”	At the moment Poland has no EDPs. Poland is not yet part of the enhanced cooperation according to Art. 86 TFEU para 1 subpara 1. Poland has not even conducted a Working Arrangement like Poland has achieved in 2022 as a non-participant country (see → above “lex specialis”).  In Poland the national prosecution offices (see → “Hypothetical considerations for Art. 27 EPPO” below) investigate fraud cases (e.g. budget fraud cases (see → above “Collection of cases)).
<b>“jurisdiction”</b>	Cf. the primary part from the Polish Criminal Code.

**a) Procedural Questions**

**aa. Initiation of Investigations According to Polish National Law (*Wszczęcie śledztwa*)**

**33** Poland is part of the group of countries that have **preparing or preparatory proceedings** that aim at answering the question whether there are sufficient grounds to start an investigation in order to prosecute eg PIF offences.

**(1) Reasonable Suspicion, Art. 303 CPC**

**34** Art. 303 CPC shall be reproduced here as its wording clearly determines the start of an investigation by the authorities that act on the basis of the Polish Criminal Procedure Code:


**Chapter 34 Initiation of an investigation**

**Article 303<sup>62</sup> Initiation of an investigation**

If there is a reasonable suspicion that a crime has been committed, it seems ex officio or as a result of a notification of a crime, an order to initiate an investigation, which specifies the act being the subject of the proceedings and its legal classification.

**(2) Main Actors to Start an Investigation**

**35** The main actors to start an investigation in criminal matters must be distinguished. Poland has different actors for Fiscal (tax) fraud offences and customs fraud offences.<sup>63</sup> According to the Polish Criminal Procedure Code the **Prosecutor is the main actor** if any other (PIF) offence is believed to have been committed. In most cases the Prosecutor will rely on the **work of the Police** in this matter.<sup>64</sup>

 *Nota bene:* The start of a financial investigation may concern offences, which are classified regularly as PIF Acquis offences, such as revenue-related frauds concerning tax duties and revenue related customs fraud.

**36** Art. 26 EPPO Regulation needs to be seen independent from Art. 27 EPPO Regulation. Art. 26 stands on its own and describes a **principle of legality at Union level**, which has the effect of protecting the Unions's (own) financial interests.

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<sup>62</sup> **Rozdział 34 Wszczęcie śledztwa**

**Art. 303. [Wszczęcie śledztwa]**

Jeżeli zachodzi uzasadnione podejrzenie popełnienia przestępstwa, wydaje się z urzędu lub na skutek zawiadomienia o przestępstwie postanowienie o wszczęciu śledztwa, w którym określa się czyn będący przedmiotem postępowania oraz jego kwalifikację prawną.

<sup>63</sup> See Vervaele, John. A. E., Investigation and Prosecution: Framework of Investigations, in Cullen, Peter (ed.), Enlarging the Fight against Fraud in the European Union: Penal and Administrative Sanctions, Settlement, Whistleblowing and Corpus Juris in the Candidate Countries, Vol. 36, Series of Publications Academy of European Law Trier, Bundesanzeiger Verlag, 2003, pp. 113 (117).

<sup>64</sup> See Vervaele, John. A. E, op. cit., 118.



At the moment Art. 26 EPPO Regulation does not apply in Poland. Therefore the national prosecution offices are competent to investigate budget fraud, subsidy fraud, illegal corruption, customs offences and smuggling detrimental to the financial interests of the Union. If it would apply, the delegated authorities would need to follow the newly established European legality principle. **37**

### **(3) Role of the Prosecutor in Poland**

The role of the prosecutor in Poland is determined by the Polish CPC. **38**

The Polish Prosecution must act in an objective manner, hereby taking into account the circumstances both in favour and against the accused (see Art. 4 CPC). The Prosecutor conducts proceedings *ex officio*, which means that he/she acts unless the law makes the action dependent on the request of a specific person, institution or body, or on the authorisation of the authority (Art. 9 CPC). But cf. also article 10 CPC above, which states that there is the legality principle. **39**

#### **Article 10 [Principle of Legality]<sup>65</sup>**

§ 1. The authority appointed to prosecute crimes is obliged to initiate and conduct preparatory proceedings, and the public prosecutor is also obliged to bring and support the prosecution - for an act prosecuted *ex officio*. **40**

§ 2. Except in cases provided for by law or international law, no one may be absolved of responsibility for a crime committed.

If the prosecution is made conditional, e.g. a request to a certain body such as the Parliamentary Committee for Immunities is necessary, he/she can not act without obtaining the permission to initiate proceedings (see Art. 13). Art 17 § 1 CPC stipulates the *ne bis in idem* principle as it clearly states that the prosecution must think twice about finalising an investigation with an indictment. If it withdraws the indictment, it can not file an indictment against the same person for the same act investigated (see Art. 14 § 2 CPC). **41**

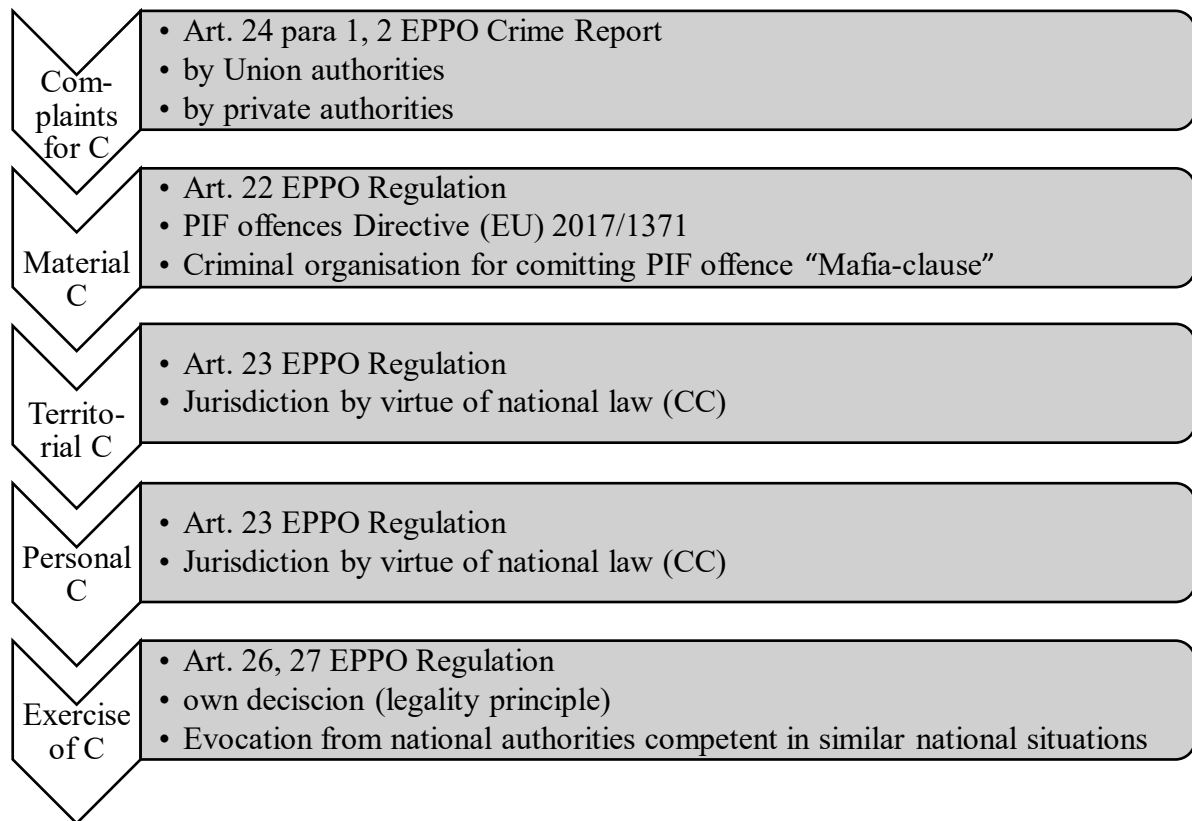
If the EPPO one day acted on Polish ground, the Polish EDPs would follow the structure displayed below: **42**

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<sup>65</sup> **Art. 10.**

§ 1. Organ powołany do ścigania przestępstw jest obowiązany do wszczęcia i przeprowadzenia postępowania przygotowawczego, a oskarżyciel publiczny także do wniesienia i popierania oskarżenia – o czyn ścigany z urzędu.  
 § 2. Z wyjątkiem wypadków określonych w ustawie lub w prawie międzynarodowym nikt nie może być zwolniony od odpowiedzialności za popełnione przestępstwo.

43 *Figure 1: EPPO – Exercise of competence in general*



**(4) What would Change if European Delegated Prosecutors would Act?**

44 But would the effect of the reference to national law be in the case that the Polish EDPs exist? This Compendium tries to explain that the national law for operations of the EPPO already exists. It would only need slight amendments – especially EDPs would need to granted powers equal to those of national prosecutors, what is requested by Art. 13 of the EPPO Regulation. The national legislator needs to come up with a proper solution for this part of the law that is applied by future Polish EDPs.

**bb. Relevant Sources of the Indications for a Criminal Offence Falling Within the Competence of the Polish Prosecution Service**

**(1) General Considerations**

45 If the Polish Prosecution acts *ex officio* (Art. 9 CPC), it does not need a complaint or a special permission (Art. 13 CPC). Still it needs a steady flow of information or sources of information that enables it to decide whether it will initiate investigations or not (Art. 305 CPC).

46 The investigation bodies are enumerated in Art. 311, 312 CPC:

**Article 311<sup>66</sup> [The investigating authorities]**

§ 1. The prosecutor conducts the investigation.

§ 2. The prosecutor may entrust the Police with carrying out the investigation in its entirety or in a specific scope, or with carrying out individual steps of the investigation; in the cases specified in Art. 309 points 2 and 3 can only be entrusted to the Police to carry out individual steps of the investigation.

§ 3. The entrustment provided for in § 2 may not include activities related to the presentation of charges, amendment or supplementation of the order to present charges and the closure of the investigation; however, Art. 308 § 2.

§ 4. In the situation referred to in § 2, the Police may perform other activities, if such a need arises.

§ 5. The prosecutor may reserve for personal execution any act of the investigation, and in particular acts requiring a resolution.

§ 6. (repealed).

§ 7. (repealed).

**Article 312<sup>67</sup> [Other authorised bodies]**

The powers of the Police are also vested in:

1) authorities of the Border Guard, the Internal Security Agency, the National Revenue Administration, the Central Anti-Corruption Bureau and the Military Police, within the scope of their competence; [...].

In the digital era, the citizens already request simple ways of filing complaints and accusations. The Polish CPC does not directly regulate the formalities but simply speaks of e.g. the request of the injured party (Art. 12 § 1–§ 3 CPC). In Poland, some of *ex officio* crimes may be prosecuted only if the victim files a complaint. For example in

**<sup>66</sup> Art. 311. [Organy prowadzące śledztwo]**

§ 1. Śledztwo prowadzi prokurator.

§ 2. Prokurator może powierzyć Policji przeprowadzenie śledztwa w całości lub w określonym zakresie albo dokonanie poszczególnych czynności śledztwa; w wypadkach określonych w art. 309 pkt 2 i 3 można powierzyć Policji jedynie dokonanie poszczególnych czynności śledztwa.

§ 3. Powierzenie przewidziane w § 2 nie może obejmować czynności związanych z przedstawieniem zarzutów, zmianą lub uzupełnieniem postanowienia o przedstawieniu zarzutów oraz zamknięciem śledztwa; może jednak mieć zastosowanie art. 308 § 2.

§ 4. W sytuacji, o której mowa w § 2, Policja może dokonać innych czynności, jeżeli wyłoni się taka potrzeba.

§ 5. Prokurator może zastrzec do osobistego wykonania jakąkolwiek czynność śledztwa, a w szczególności czynności wymagające postanowienia.

§ 6. (uchylony).

§ 7. (uchylony).

**<sup>67</sup> Art. 312. [Inne organy uprawnione]**

Uprawnienia Policji przysługują także:

1) organom Straży Granicznej, Agencji Bezpieczeństwa Wewnętrznego, Krajowej Administracji Skarbowej, Centralnego Biura Antykorupcyjnego oraz Żandarmerii Wojskowej, w zakresie ich właściwości;

2) innym organom przewidzianym w przepisach szczególnych.

cases of theft when a victim and perpetrator are relatives or stalking cases. There are thus different types of *ex officio* offences:

**49 Article 12**

§ 1. In cases concerning offences prosecuted on complaint, after the complaint is filed proceedings are conducted *ex officio*. The prosecuting authority advises the person entitled to file a complaint of his right to do so.

§ 2. If a complaint has only been filed against specific offenders, it is also obligatory to prosecute any other persons whose acts are closely linked with the act of the person indicated in the complaint. The person filing the complaint should be made aware of this. These provisions do not apply to the next of kin of the person filing the complaint.

§ 3. The complaint may be withdrawn during preparatory proceedings with the consent of the public prosecutor. During court proceedings, the complaint may be withdrawn with the consent of the court before the commencement of the trial at the first hearing. The complaint cannot be filed again.

- 50** Reporting offences or possible criminal conduct to the police, is still a common way. Art. 304 CPC obliges everyone who becomes aware of an offence being committed or having been committed, to report it – this is called a special obligation to notify the prosecution office or the police (*ma społeczny obowiązek zawiadomić o tym prokuratora lub Policję*).<sup>68</sup> Even if especially economic offences are not detected by normal citizens, but mostly by specially obliged individuals working in areas, which concern or touch the Union budget – either its stabilisation or the spending of Union money, Art. 304 para 2 still contains furthermore a legal obligation for all public authorities to inform about a crime in this area:

**51 Article 304**

[...] § 2. Public and local government institutions that, in connection with their activity, learn of the perpetration of an offence prosecuted *ex officio*, immediately report the same to the public prosecutor or the Police and, until the arrival of the authority appointed to prosecute offences or the issue by this authority of an appropriate order, undertake actions necessary to prevent the loss of traces and evidence.

§ 3. A report of an offence or the Police's own information confirming the perpetration of such an offence for which an investigation by the public prosecutor is mandatory,

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<sup>68</sup> **Art. 304.**

[...] § 2. Instytucje państwowe i samorządowe, które w związku ze swą działalnością dowiedziały się o popełnieniu przestępstwa ściganego z urzędu, są obowiązane niezwłocznie zawiadomić o tym prokuratora lub Policję oraz przedsięwziąć niezbędne czynności do czasu przybycia organu powołanego do ścigania przestępstw lub do czasu wydania przez ten organ stosownego zarządzenia, aby nie dopuścić do zatarcia śladów i dowodów przestępstwa.

§ 3. Zawiadomienie o przestępstwie lub własne dane świadczące o popełnieniu takiego przestępstwa, co do którego obowiązkowe jest prowadzenie śledztwa przez prokuratora, Policja przekazuje wraz z zebrany materiał niezwłocznie prokuratorowi.

together with the gathered material, is immediately submitted by the Police to the public prosecutor, together with the material.

**(2) Polish Bodies Reporting Offences in the PIF-Acquis-Area**

Typical sources of information in this so-called PIF Acquis Area are the Polish AFCOS Body, which operates within the Polish Ministry of Finance. The Polish AFCOS will report any inconsistencies to the Prosecution. **52**

**(a) Determination by Looking at the Construction of the Union Budget**

As the Union Budget is spend in different ways, the ways of reporting of offences may differ. The scientific literature and the TFEU distinguish primarily own resources (TOR) and allocated resources, which flow into the Union Budget from the budgets of the Member States. Therefore the overall terms that stipulate as well the competent bodies are the revenue obligations and the expenditure. Next, the management of the Union budget is foremost separated into a direct management and a shared management. **53**

**(aa) Bodies Obligated to Report in the Area of Revenue**

Taking for example the allocations from the Value Added Tax Sector, the Polish Tax Offices (see Act of August 29, 1997 – Tax Ordinance (Journal of Laws of 2022)) are the competent bodies, which will identify irregularities and shortcomings as well as criminal suspicions. An obligation to report offences to the Polish Prosecution Offices is enshrined in the Polish Fiscal Penal Code and the Act on the Natonal Treasury Administration, which requests the Tax Administration in Art. 2 “13) [to] recognize, detect and combat tax crimes and fiscal offences, preventing these crimes and offences and prosecuting their perpetrators”. **54**

The National Revenue Administration (KAS) is as well competent to report any indications of corruption offences, such as bribery: **55**

16) recognizing, detecting and combating crimes specified in: **56**

- a) Article 228–231 of the Penal Code, committed by persons employed in KAS organisational units or officers, in connection with the performance of official duties,
- b) Article 229–230a of the Penal Code, committed by persons not employed in KAS organisational units or not being officers, in connection with the performance of official duties by persons employed in KAS organisational units or officers,
- c) Articles 190, 222, 223, 226, 235, 236 and Article 238 of the Penal Code, directed against persons employed in KAS organisational units or officers during the performance of official duties or in connection with their performance,

d) article 239 of the Penal Code – in the case of persons helping the perpetrators of the offences referred to in point ac – and the prevention and prosecution of these crimes; [...].

57 Next the Polish Customs Offices, will be competent to report possible conduct, which may constitute an offence in the area of revenue.

### **(bb) Reporting of Corruption Offences**

58 Poland has a Special Central Anticorruption Bureau (*Centralne Biuro Antykorupcyjne*), which could be competent to deal with any conduct that falls into the scope of its tasks. The overlapping of competencies is specified in the Polish laws sometime, see e.g. Art. 12d of the Act on the National Treasury Administration “The minister competent for public finance [...] extent that it does not violate the competence of the Central Anti-Corruption Bureau.”

### **(cc) Bodies Obligated to Report in the Area of Expenditure**

59 The area of expenditure is vast. It covers all Polish Ministries e.g. Ministry of Economic Affairs, Culture, Schools, Agriculture etc. For years the money, which is allocated to these main State Bodies, is based on different Regulations, such as structural funds related EU Law. The money is spent and allocated to beneficiaries via Special Payment Agencies.



**Example:** The Polish Government has designated the Agency for Restructuring and Modernisation of Agriculture (ARMA/ *Agencja Restrukturyzacji i Modernizacji Rolnictwa*) in 1994 to support the development of agriculture and rural areas in Poland. It acts as an accredited paying agency.<sup>69</sup>

60 In the past, ARMA has managed direct payments and other Union money transfers in the area of the common agricultural policy:

“Range of activity

ARMA under the Common Agricultural Policy and the Common Fisheries Policy for 2014–2020 is the entity implementing aid instruments financed from the following EU funds:

European Agricultural Guarantee Fund (EAGF), under which the Agency implements aid instruments from the first pillar of the CAP: direct payments, common organisation of fruit and vegetable markets.

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<sup>69</sup> See <https://www.gov.pl/web/arimr/informacje-o-arimr>.

European Agricultural Fund for Rural Development (EAFRD), which finances all activities related to the development and increase of competitiveness of Polish agriculture, food processing and rural areas (2nd pillar of the CAP).

European Maritime and Fisheries Fund (EMFF), under which projects are supported to create sustainable and competitive fisheries and aquaculture, social territorial development of fishing areas.”<sup>70</sup>

In this example the ARMA would be obliged to report on the basis of the underlying Union law, any irregularities, corruption or fraudulent conduct to a competent body. This could be the Polish AFCOS, but only if the conduct seems to be an administrative irregularity. If the irregularity seems to be already falling into the scope of an offence, such as forgery of documents or fraud, the ARMA would need to inform the Polish Prosecution as well. **61**

! The National Revenue Administration has according to Art. 2 of the Act on the National Treasury Administration the task to “19) cooperate [with ARMA] in the implementation of the Common Agricultural Policy;”. **62**

Coming back to the European Agricultural Guarantee Fund, it is interesting to mention that the heads of the National Revenue Administration (KAS) are competent to deal itself with irregularities in this area. It is competent to deal as well with the ERASMUS+ funding and the spending within the Polish Universities: **63**

**Article 14 [Tasks of the Head of KAS]** **64**

The tasks of the Head of the National Revenue Administration include:

5) recognizing, detecting and combating tax crimes and fiscal offences, preventing these crimes and offences and prosecuting their perpetrators, to the extent specified in the Fiscal Penal Code;

10) audit of the **management of funds from the European Union budget and non-repayable funds** from the assistance provided by the Member States of the European Free Trade Association (EFTA) in the scope of:

and) management and control system of national operational programs and national programs in managing authorities,

b) common agricultural policy system,

c) security of IT systems used in the implementation of operational programs and the common agricultural policy;

10a) supervision over the audit and its coordination in relation to the management of funds from the European Union budget and non-repayable funds from the assistance provided by the Member States of the European Free Trade Association (EFTA) in the field of audit:

<sup>70</sup> See <https://www.gov.pl/web/arimr/informacje-o-arimr>.

10e) audit of the management of funds under the **Erasmus+ program** referred to in Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing “Erasmus+”: the Union program for education and training, youth and sport and repealing the regulation (EU) No. 1288/2013 (Official Journal EU L 189 of 28.05.2021, p. 1–33);

10f) audit of the management of funds under the **European Solidarity Corps program** referred to in Regulation (EU) 2021/888 of the European Parliament and of the Council of 20 May 2021 establishing the “European Solidarity Corps” program and repealing Regulations (EU) 2018/1475 and (EU) No. 375/2014 (Official Journal EU L 202 of 08/06/2021, pp. 32-54);

11) cooperation with competent authorities of other countries as well as international organisations and international institutions;

12) performing the tasks of the central coordinating unit within the meaning of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on mutual assistance and cooperation between customs administrations, done in Brussels on December 18, 1997 (Journal of Laws of 2008, item 31);

13) **performing the functions of a special unit** within the meaning of Art. 85 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the **common agricultural policy** and repealing Council Regulation (EEC) No 352/78, (EC) No 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008 (OJ L 347 of 20.12.2013, p. 549), hereinafter referred to as “Regulation (EU) No 1306/2013”;

13a) 2 performing the tasks referred to in art. 80 of **Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021** on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 (Official Journal EU L 435 of 06/12/2021, p. 187, as amended), hereinafter referred to as “Regulation 2021/2116”;

#### **Article 16 [Powers of the Head of KAS to control transactions financed from the European Agricultural Guarantee Fund]**

1.3 \_ In order to perform the tasks specified in art. 14 sec. 1 points 13 and 13a, the Head of the National Revenue Administration is entitled to:

1) request from public administration bodies and state organisational units and legal persons all necessary information;

2) 4 commissioning the performance of certain activities to public administration bodies and state organisational units and legal persons authorised to inspect documents that are relevant to the implementation of the tasks set out in Title V, Chapter III of Regulation (EU) No 1306/2013 and in Title IV, Chapter III of Regulation 2021/2116.

2.5 A written request for the provision of information or performance of specific activities should, in particular, specify the content of the request or order and the date of



delivery of information or performance of a specific activity. In the case of entities other than those carrying out inspections in accordance with the provisions of Title V of Chapter III of Regulation (EU) No 1306/2013 or Title IV of Chapter III of Regulation 2021/2116, the request should also contain an indication of the circumstances underlying the request.

3. In the activities commissioned on the basis of sec. 1 point 2 may participate:

- 1) persons employed in KAS organisational units or officers authorised by the Head of the National Revenue Administration;
- 2) representatives of the bodies of the European Union or European Union Member States.

4.6 (repealed).

These powers make the KAS a very important player for reporting conduct or irregularities. The KAS is a “kind of sniffer dog or open eye for the Prosecution” in the administrative area and thus acts as the first basis for identifying irregularities. **65**

It needs to be mentioned as well that KAS operates for the area of customs and tax revenue duties, as a Coordination Unit for OLAF: **66**

**Art. 14 Acts for OLAF or on behalf of the OLAF Regulation:**

18) performing the tasks of the anti-fraud coordination unit referred to in 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 the regulation (EC) No. 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No. 1074/1999 (Official Journal EU L 248 of 18.09.2013, p. 1, as amended), hereinafter referred to as “Regulation (EU) No 883/2013”;

18a) transmitting to the European Anti-Fraud Office (OLAF) at its request referred to in **Art. 8 sec. 2 of Regulation (EU) No 883/2013**, documents or information held by OLAF relating to an administrative investigation;

18b) performing tasks resulting from **art. 7 sec. 3a of Regulation (EU) No 883/2013**; [...].

**(b) The Polish Act on National Treasury Administration**

The Polish Act on National Treasury Administration (*Ustawa o Krajowej Administracji Skarbowej*) refers to the constitutional obligation and the requirements by Union law to protect the financial interest of the Union. Interestingly it concentrates in its preamble very clear on the benefits of the Union, which is the reduction of costs in a Common market, but does really address the costs for a good protection of these benefits. Protecting financial interests without investing in the bodies and agencies, which shall protect **67**

and foster this aim in the preamble seems like an *argumentum absurdum*.<sup>71</sup> But despite this minor fraction at the beginning of the Code, the Act explains in a detailed manner the administration of the revenue side. It specifies the competent bodies and bodies including their organisation. The collection of income from customs duties and other charges related to the import and export of goods is addressed in Art. 2 § 2.

### (3) The Polish AFCOS as a “Kind of Hinge to the Prosecution”?

68 Still the most important body in the area of expenditure remains the **Polish AFCOS**, which is integrated into the **Department for Audit of Public Funds**<sup>72</sup>. In its self-presentation the Department points at the fact that it is competent “to coordinate, in relation to expenditure side of the EU budget, the tasks of the AFCOS service laid down in **Article 12a of the 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 (OJ L 248 18.9.2013, p. 1 with changes)”.<sup>73</sup>

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<sup>71</sup> But see Art. 9 of the Polish Act on the Treasury Administration, which at least speaks of the financing. Still that does not hinder political parties to cut costs of the relevant institutions and is not opportune not political opportunism:

“Article 9 [Financing the activities of KAS]

1. The activities of the KAS are financed from the state budget from the part administered by the minister responsible for public finance.

2. The proper Minister of public finances may authorise the Head of the National Revenue Administration to perform specific activities related to the disposal of the part referred to in para. 1, in the scope of financing the activities of KAS.

3. The head of the National Revenue Administration in the scope referred to in para. 2, may authorise to perform certain activities in the scope of disposing of the part referred to in para. 1, officers or persons employed in KAS organisational units or in the office serving the minister competent for public finance.”

This Act would need *de facta de lege ferenda* Article, which ensures a certain budget, which can constitutionally not be cut by a political party. The Revenue part of the State budget, which must be transferred to Union accounts must be ensured.

<sup>72</sup> Contact: phone: +48 (22) 694 41 00, fax: +48 (22) 694 51 52, e-mail: sekretariat.das@mf.gov.pl.

“The role of the Department for Audit of Public Funds is:

to exercise the tasks of the Audit Authority, Certification Body, independent audit body and to carry out audit of the management of EU funds and non-refundable grants from the aid provided by the member countries of the European Free Trade Association (EFTA) as regards the functioning of the management and control system of national operational programmes at the level of managing authorities; to conduct certification audit under the common agricultural policy, audit related to the security of IT systems used in the implementation of operational programmes (financed under the financial perspectives 2014–2020 and 2021–2027), National Recovery Plan, the European Union Solidarity Fund, ERASMUS+, the European Solidarity Corps, the Brexit Adjustment Reserve, the Common Agricultural Policy, and also: the Asylum, Migration and Integration Fund, the Internal Security Fund, the European Economic Area Grants and the Norway Grants; moreover, the Audit Authority ensures the conduct of audits of the proper functioning of the management and control system of the above-mentioned programmes/funds/mechanisms on the basis of an appropriate sample of operations based on declared expenditure;[...].”

<sup>73</sup> Website of the Ministry of Finance, Department for Audit of Public Funds, online: <https://www.gov.pl/web/finance/departament-dla-audytu-public-funds>. Accessed 6 August 2024.

#### (4) Decision on Initiation of Investigation

The Polish CPC makes clear rules for the prosecutor to decide after he/she has been notified of an offence: 69

#### Article 305 [Initiation, refusal to initiate, discontinuation of the investigation]<sup>74</sup> 70


§ 1. **Immediately after receiving** the notification of the crime, the body appointed to conduct the preparatory proceedings **is obliged to issue a decision on the initiation or refusal to initiate** the investigation.

§ 2. (repealed).

§ 3. **The decision to initiate an investigation is issued by the prosecutor.** The decision to refuse to initiate or to discontinue the investigation is issued by the prosecutor or the Police; the decision issued by the Police is approved by the prosecutor.

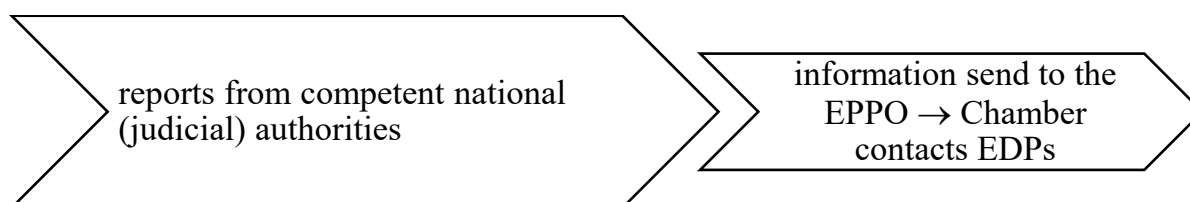
§ 4. The initiation, refusal to initiate or the discontinuation of the investigation shall be notified to the person or state, local government or social institution that submitted the notification of the crime, and to the identified victim, and the discontinuance of the suspect – with instructions on their rights.

#### cc. Hypothetical Consideration: What Would Change If the EPPO Existed in Poland?

The next part is highlighted as a hypothetical consideration for the scenario that Poland joins the EPPO. Afterwards it continues with the description of the investigations in Poland without the EPPO. 

**If the EPPO existed in Poland**, a distinction would have to be made between the direct and the indirect path for the transfer of information related to the competence of the EPPO instead of the national prosecution services: 71

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



<sup>74</sup> Art. 305. [Wszczęcie, odmowa wszczęcia, umorzenie śledztwa]

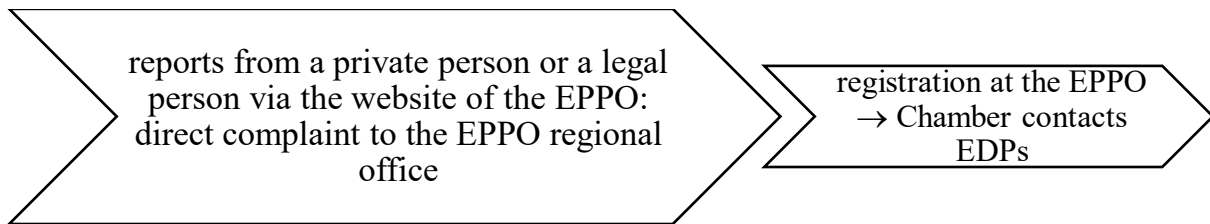
§ 1. Niezwłocznie po otrzymaniu zawiadomienia o przestępstwie organ powołany do prowadzenia postępowania przygotowawczego obowiązany jest wydać postanowienie o wszczęciu bądź o odmowie wszczęcia śledztwa.

§ 2. (uchylony).

§ 3. Postanowienie o wszczęciu śledztwa wydaje prokurator. Postanowienie o odmowie wszczęcia lub o umorzeniu śledztwa wydaje prokurator albo Policja; postanowienie wydane przez Policję zatwierdza prokurator.

§ 4. O wszczęciu, odmowie wszczęcia albo o umorzeniu śledztwa zawiadamia się osobę lub instytucję państwową, samorządową lub społeczną, która złożyła zawiadomienie o przestępstwie, oraz ujawnionego pokrzywdzonego, a o umorzeniu także podejrzanego - z pouczeniem o przysługujących im uprawnieniach.

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



- 72 **Another, third source of information** are the Union bodies, which are obliged to report either to OLAF or to the EPPO (e.g. by obliged by Working Agreements) – depending on the seriousness of the suspected conduct: irregularities only or clear foundations for potential criminal offences. National authorities, who report to OLAF need to obey the Italian “Guidelines on how to report irregularities and fraud to the European Commission“.<sup>75</sup>
- 73 OLAF will either way report conduct that falls in the EPPO’s competence by virtue of Art. 12c OLAF Reg.

#### (1) Determination of the Competence and Verification of Crime Reports

- 74 The first task of the EDPS in an Polish regional office would be to determine whether the EPPO has competence and jurisdiction or can obtain competence and exercise jurisdiction.
- 75 These are formal but essential questions. They are for all countries that already participate determined by means of Union secondary legislation and special delegated guidelines required by secondary legislation, the so-called **Internal Rules on Prodecure [of the EPPO]**.
- 76 This depends on the criteria of the Regulation (see Art. 22, 23).

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

#### (2) The Union Standards (Art. 24 para 6 et seq. EPPO Regulation)

- 77 For the EPPO to be competent, the requirements of the Regulation must be met. Either an examination according to Art. 24 para 6 must show that the EPPO is competent or the delegated prosecutor carries out an examination and assessment by virtue of Art. 26 para 1 EPPO Regulation himself/herself without informing the Permanent Chamber

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<sup>75</sup> Krawczak 2021.

and initiates an investigation about which he/she subsequently informs the Permanent Chamber.

For the current wording of the IRP rules consult another country chapter (see eg. France 78 above). The requirements of Art. 25 para. 2 and 3 must be observed but he/she can still initiate an investigation « without prejudice to the rules set out in Article 25(2) and (3) ». The provisions, jurisdiction (e.g. territory), thresholds i.e. « € » of the Regulation and orders of the Luxembourg Chamber must exist for the exercise of competence.

- **Article 22 Material competence of the EPPO** 79
  - PIF Implementation (see below → p. 95).
  - National databases and information according to Art. 40 para 3 IRP
- **Article 23 Territorial and personal competences of the EPPO**
  - The EPPO is competent if:
    - the criminal offences were committed, in whole or in part, on the territory of one or more participating EU Member States;
    - the criminal offences were committed by a national of a participating EU Member State,
    - the criminal offences were committed by a person subject to the Staff Regulations or rules applicable to EU officials.

## **SECTION 2 Exercise of the competence of the EPPO**

- **Article 24 Communication, registration and verification of information**
  - The transfer of information to the relevant EDPs or the chamber of the EPPO is mainly regulated by Art. 24 EPPO Regulation. If Poland joined the EPPO one day it would need to make this information public to all authorities in Poland by virtue of the EPPO Adoption Act.
  - Two sources can **help to understand the transfer of information**: The Polish Government would need to contact and notify the EPPO by virtue of Art. 11 EPPO Regulation.

### **(3) Competence of the EPPO (Art. 26 para 4)**

If the competence can be shared between two or more EDPs from different countries, 80 the procedure of Art. 26 para 4 (see above) would apply.

### **(4) How to Determine Jurisdiction and Competence of the Prosecutor in Poland for PIF Offences**

**At the moment Poland has no EDPs** and is a de facto non-participating country to the EPPO mechanism. Instead the **national prosecution offices are competent on their own** to investigate fraud offences to the detriment of the EU's budget. Therefore a look at the national prosecution services shall enable us to see how they operate. If external 81

persons understand how the Polish Criminal Investigation is initiated, the relevant persons gain knowledge about possible cooperation with Polish Justice in EPPO affairs.

**82** In the area of the customs and tax revenue obligations, the **heads of the locally competent tax and customs offices** are competent to conduct preparatory proceedings according to the Act on the National Treasury Administration.

**83** **Article 33a [Competences of the head of the customs and tax office in the field of crimes and offences revealed in connection with the customs and tax control]**<sup>76</sup>

1. In cases concerning:

- 1) tax crimes and fiscal offences,
- 2) crimes indicated in art. 2 sec. 1 point 15,
- 3) crimes and offences indicated in art. 33 sec. 1 point 10

- disclosed in connection with the customs and tax control, excluding the control of postal items referred to in Art. 70, the acquisition of verifying, preparatory proceedings, fine proceedings or investigations in cases of petty offences shall be carried out by the head of the customs and tax office performing this control or making the acquisition.

2. In cases of tax crimes and fiscal offences referred to in para. 1, the superior authority over the financial authority of the preparatory proceedings referred to in Art. 53 § 39 point 1 of the Fiscal Penal Code, is the director of the tax administration chamber competent locally according to the seat of the head of the tax and customs office conducting the preparatory proceedings.

3. The head of the national tax administration in particularly justified cases may, ex officio or at the request of the authority referred to in paragraph 1. 1 or 2, appoint to conduct the matters specified in para 1 other head of the customs and tax office.

**84** The KAS can be informed about offences via a Notification E-MAIL or a Hotphone.

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<sup>76</sup> **Artykuł 33a. [Kompetencje naczelnika urzędu celno-skarbowego w zakresie przestępstw i wykroczeń ujawnionych w związku z kontrolą celno-skarbową]**

1. W sprawach dotyczących:

- 1) przestępstwa skarbowe i wykroczenia skarbowe,
- 2) przestępstwa wskazane w art. 2 sekundy. 1 punkt 15,
- 3) przestępstwa i wykroczenia wskazane w art. 33 sek. 1 punkt 10

- ujawnionych w związku z kontrolą celno-skarbową, z wyłączeniem kontroli przesyłek pocztowych, o których mowa w art. 70, przejęcie postępowania sprawdzającego, postępowania przygotowawczego, postępowania karnego lub dochodzenia w sprawach o wykroczenia przeprowadza naczelnik urzędu celno-skarbowego dokonujący tej kontroli lub dokonujący przejęcia.

2. W sprawach o przestępstwa skarbowe i wykroczenia skarbowe, o których mowa w ust. 1, organ zwierzchni nad finansowym organem postępowania przygotowawczego, o którym mowa w art. 53 § 39 pkt 1 Kodeksu karnego skarbowego, jest dyrektorem izby administracji skarbowej właściwym miejscowo według siedziby naczelnika urzędu skarbowo-celnego prowadzącego postępowanie przygotowawcze.

3. Szef Krajowej Administracji Skarbowej w szczególnie uzasadnionych przypadkach może, z urzędu lub na wniosek organu, o którym mowa w ust. 1 lub 2, wyznaczyć do prowadzenia spraw określonych w ust. 1 inny naczelnik urzędu celno-skarbowego.

**KAS National Notification Hotline<sup>77</sup>**

24/7 free notification hotline: 800 060 000

The e-mail address for sending information: [powiadomKAS@mf.gov.pl](mailto:powiadomKAS@mf.gov.pl).

KAS National Notification Hotline is a centralized communication channel for receiving information from our clients on:

- violations of tax law provisions,
- violations of customs legislation,
- opinions on functioning of the National Revenue Administration.

KAS National Notification Hotline replaced, functioning till April 30, 2018, contact channels: “Powiadom Cło” (Notify Customs) and “Krajowy Telefon Interwencyjny Administracji Skarbowej” (National Intervention Hotline for Tax Administration).

KAS National Notification Hotline and e-mail address are uniform throughout the country.

Both the hotline and the e-mail address ensure anonymous transmission of information.

The information received is thoroughly analyzed and properly used.

Every message about break of the law is of a great value for us. Effective fight against crime means more money in the national budget for roads, schools, hospitals and other public expenses. If you have information that can help us, do not keep it for yourself - notify KAS.

The KAS will then know whom to inform within the districts (*Voivodeships*).

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**dd. Methods of investigation, Collecting information and documenting the initiation of an investigation**

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):

86

- EU-level: PIF Reports, Rule of law Report, “Impact of Organised Crime on the EU’s Financial Interests”<sup>78</sup>

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



<sup>77</sup> Website of the Republic of Poland, see <https://www.gov.pl/web/national-revenue-administration/kas-national-notification-hotline> (Information obtained 31-3-23).

<sup>78</sup> Malan/Bosch Chen 2021.

**ee. Decision on Bringing Charges**

**Article 313<sup>79</sup> [Decision on presentation of charges]**


§ 1. If the data existing at the time of the initiation of the investigation or collected in the course of the investigation justify the suspicion that the act was committed by a specific person, a decision is drawn up to present the charges, it is immediately announced to the suspect and the suspect is interrogated, unless the announcement of the order or the questioning of the suspect is not possible due to his hiding or absence from the country.

§ 2. The decision on the presentation of the charges contains an indication of the suspect, a precise description of the alleged act and his legal classification.

§ 3. The suspect may, until he is notified of the date of becoming acquainted with the materials of the investigation, demand that he be provided orally with the grounds for the allegations, as well as a written justification, of which he should be instructed. The justification shall be delivered to the suspect and the appointed defence counsel within 14 days.

§ 4. The justification should in particular indicate what facts and evidence were used as the basis for the allegations.

- 87 It remains questionable for what kind of conduct the prosecution can bring charges in the area of PIF Acquis offences in Poland. Therefore it is worth taking a closer look at the single provisions establishing possible offences criminalizing conduct, which is detrimental to the Union's budget.

 *Nota bene:* This decision has further implications for the role of the suspect. See below → Rules on Defence.

**b) Substantive Matters**

**aa. How to Assess and Verify PIF Offences in Poland**

- 88 Like in other countries in the EU, the initial suspicion of a certain conduct (e.g. for smuggling tobacco, fuels, Business trips by MEPs, a prosecutor being promoted after investigating an EU fraud case, generating very high revenues, little spending – these

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<sup>79</sup> **Art. 313. [Postanowienie o przedstawieniu zarzutów]**

§ 1. Jeżeli dane istniejące w chwili wszczęcia śledztwa lub zebrane w jego toku uzasadniają dostatecznie podejrzenie, że czyn popełniła określona osoba, sporządza się postanowienie o przedstawieniu zarzutów, ogłasza je niezwłocznie podejrzanemu i przesłuchuje się go, chyba że ogłoszenie postanowienia lub przesłuchanie podejrzanego nie jest możliwe z powodu jego ukrywania się lub nieobecności w kraju.

§ 2. Postanowienie o przedstawieniu zarzutów zawiera wskazanie podejrzanego, dokładne określenie zarzucanego mu czynu i jego kwalifikacji prawnej.

§ 3. Podejrzanemu może do czasu zawiadomienia go o terminie zaznajomienia z materiałami śledztwa żądać podania mu ustnie podstaw zarzutów, a także sporządzenia uzasadnienia na piśmie, o czym należy go pouczyć. Uzasadnienie doręcza się podejrzanemu i ustanowionemu obrońcy w terminie 14 dni.

§ 4. W uzasadnieniu należy w szczególności wskazać, jakie fakty i dowody zostały przyjęte za podstawę zarzutów.



can all be clues leading to investigations<sup>80</sup>) is only to determine the impetus, so to speak, the “ball” that gets the criminal proceedings rolling if saying it by using a metaphor. The procedural matters of the initiation of an investigation have been summarised above (see → Initiation of Investigations According to Polish National Law).

But the way in which the public prosecutor’s office learns, for example, of the suspicion of a certain offence can not be seen strictly separated from substantive matters. This means that a suspicion will always lead to a conclusion, or pre-assumption of a certain concrete offence, e.g. subsidy fraud or another offence detrimental to the Union’s financial interests. This is why it is useful to explore the legal scenery, the location and the wording of PIF offences in Poland. **89**

The Legal Scenery, Location and Wording of the PIF offences in Poland is described on the following pages. The national prosecution offices must investigate the PIF offences, which if Polish EDPs existed, would be investigated by them. The following table showcases the relevant Articles. **90**

*Sources and national sections 1: PIF offences in Poland*

**91**

<b>CC fraud &amp; forgery offences</b>	<b>CC corruption + AML offences</b>	<b>Tax and Customs (Decree/Code) offences</b>
<ul style="list-style-type: none"> <li>• Art. 270a</li> <li>• Art. 271a</li> <li>• Art. 272</li> <li>• Art. 273</li> <li>• Art. 275</li> <li>• Art. 277a</li> <li>• Art. 286</li> <li>• Art. 287</li> <li>• Art. 296</li> <li>• Art. 297</li> <li>• Art. 305</li> </ul>	<ul style="list-style-type: none"> <li>• Art. 228</li> <li>• Art. 229</li> <li>• Art. 230</li> <li>• Art. 230a</li> <li>• Art. 250a</li> <li>• Art. 296a</li> <li>• Art. 299 Money Laundering</li> <li>• Art. 302</li> </ul>	<ul style="list-style-type: none"> <li>• Kodeks karny skarbowy (Dz. U. z 2022 r. poz. 859, 1301) - KKS</li> <li>• Articles 54 to 84 of the Penal Fiscal Code is very important as well as the tax crimes and fiscal offences against customs duties</li> <li>• Rules of foreign trade in goods and services regulated by Articles 85 to 96 of the Penal Fiscal Code</li> </ul>

<sup>80</sup> Pankowski M (2023) Śledztwo ws. 100 tys. euro Czarneckiego w martwym punkcie. A prokurator dostał awans [UJAWNIAMY], Article on OK. Press. 26.1.2023, online: <https://oko.press/sledztwo-czarnecki-awans-prokuratora>. Accessed 6 August 2024.

(1) Offences in the Criminal Code

(a) Forgery, False Invoices and Preparing False Signs and Documents

92

(Excerpt CC/*Kodeks Karny*)

**Chapter XXXIV Offences against the credibility of documents**

**Article 270**<sup>81</sup> § 1. Whoever, in order to be used as authentic, counterfeits or alters a document or uses such a document as authentic, shall be subject to [a fine, the penalty of restriction of liberty or imprisonment for a period of 3 months to 5 years] <the penalty of imprisonment for a period of 3 months to 5 years>. § 2. The same penalty shall be imposed on anyone who fills in a blank bearing someone else's signature, contrary to the will of the person signed and to his detriment, or uses such a document. § 2a. In a minor case, the perpetrator shall be subject to a fine, restriction of liberty or imprisonment for up to 2 years. § 3. Who makes preparations for the offence specified in § 1, shall be subject to a fine, restriction of liberty or imprisonment for up to 2 years.

**Article 270a**<sup>82</sup> § 1. Who, in order to use as authentic, forges or alters an invoice in terms of factual circumstances that may be relevant to determine the amount of public debt or its return, or the return of another charge of a tax nature, or uses such an invoice as authentic, shall be subject to the penalty of imprisonment from 6 months to 8 years.

§ 2. If the perpetrator commits the act specified in § 1 against an invoice or invoices containing the total amount of receivables, the value or total value of which is greater than five times the amount of property of great value, or committing the crime has made himself a regular source of income, shall be punishable by imprisonment [for a period of not less than 3 years] <from 3 to 20 years>.

<sup>81</sup> Rozdział XXXIV Przepęstwa przeciwko wiarygodności dokumentów

**Art. 270.** § 1. Kto, w celu użycia za autentyczny, podrabia lub przerabia dokument lub takiego dokumentu jako autentycznego używa,

podlega [grzywnie, karze ograniczenia wolności albo pozbawienia wolności od 3 miesięcy do lat 5] <**karze pozbawienia wolności od 3 miesięcy do lat 5**>.

§ 2. Tej samej karze podlega, kto wypełnia blankiet, opatrzony cudzym podpisem, niezgodnie z wolą podpisanego i na jego szkodę albo takiego dokumentu używa.

§ 2a. W wypadku mniejszej wagi, sprawca

podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

§ 3. Kto czyni przygotowania do przestęstwa określonego w § 1,

podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

<sup>82</sup> **Art. 270a.** § 1. Kto, w celu użycia za autentyczną, podrabia lub przerabia fakturę w zakresie okoliczności faktycznych mogących mieć znaczenie dla określenia wysokości należności publicznoprawnej lub jej zwrotu albo zwrotu innej należności o charakterze podatkowym lub takiej faktury jako autentycznej używa,

podlega karze pozbawienia wolności od 6 miesięcy do lat 8.

§ 2. Jeżeli sprawca dopuszcza się czynu określonego w § 1 wobec faktury lub faktur, zawierających kwotę należności ogółem, której wartość lub łączna wartość jest większa niż pięciokrotność kwoty określającej miarę wielkiej wartości, albo z popełnienia przestęstwa uczynił sobie stałe źródło dochodu, podlega karze pozbawienia wolności [na czas nie krótszy od lat 3] <od lat 3 do 20>.

§ 3. W wypadku mniejszej wagi, sprawca czynu określonego w § 1 lub 2 podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

§ 3. In the case of a minor, the perpetrator of the act specified in § 1 or 2 shall be subject to a fine, restriction of liberty or imprisonment for up to 2 years.

**Article 271**<sup>83</sup> § 1. A public official or other person authorised to issue a document who certifies untruth in it as to the circumstances of legal significance, shall be punishable by imprisonment from 3 months to 5 years.

§ 2. In the case of a minor, the perpetrator shall be subject to a fine or the penalty of restriction of liberty.

§ 3. If the perpetrator commits the act specified in § 1 in order to achieve financial or personal gain, shall be punishable by imprisonment from 6 months to 8 years.

**Article 271a**<sup>84</sup> § 1. Who issues an invoice or invoices containing the total amount of receivables, the value of which or the total value is significant, certifying untruth as to the facts that may be relevant to determine the amount of public debt or its return, or the reimbursement of other tax charges or such invoice or uses invoices, shall be punishable by imprisonment from 6 months to 8 years.

§ 2. If the perpetrator commits the act specified in § 1 against the invoice or invoices, containing the amount of receivables in total, the value or total value of which is greater than five times the amount specifying the property of great value, or he made a permanent source of income from committing the crime, shall be punishable by imprisonment [for a period of not less than 3 years] <from 3 to 20 years>.

§ 3. In the case of a minor, the perpetrator of the act specified in § 1 or 2 shall be punishable by imprisonment of up to 3 years.

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<sup>83</sup> **Art. 271.** § 1. Funkcjonariusz publiczny lub inna osoba uprawniona do wystawienia dokumentu, która poświadcza w nim nieprawdę co do okoliczności mającej znaczenie prawne, podlega karze pozbawienia wolności od 3 miesięcy do lat 5.

§ 2. W wypadku mniejszej wagi, sprawca podlega grzywnie albo karze ograniczenia wolności.

§ 3. Jeżeli sprawca dopuszcza się czynu określonego w § 1 w celu osiągnięcia korzyści majątkowej lub osobistej, podlega karze pozbawienia wolności od 6 miesięcy do lat 8.

<sup>84</sup>Art. 271a. § 1. Kto wystawia fakturę lub faktury, zawierające kwotę należności ogółem, której wartość lub łączna wartość jest znaczna, poświadczając nieprawdę co do okoliczności faktycznych mogących mieć znaczenie dla określenia wysokości należności publicznoprawnej lub jej zwrotu albo zwrotu innej należności o charakterze podatkowym lub takiej faktury lub faktur używa, podlega karze pozbawienia wolności od 6 miesięcy do lat 8.

§ 2. Jeżeli sprawca dopuszcza się czynu określonego w § 1 wobec faktury lub faktur, zawierających kwotę należności ogółem, której wartość lub łączna wartość jest większa niż pięciokrotność kwoty określającej mienie wielkiej wartości, albo z popełnienia przestępstwa uczynił sobie stałe źródło dochodu, podlega karze pozbawienia wolności [na czas nie krótszy od lat 3] <od lat 3 do 20>.

§ 3. W wypadku mniejszej wagi, sprawca czynu określonego w § 1 lub 2 podlega karze pozbawienia wolności do lat 3.

**Article 272**<sup>85</sup> Whoever extorts false certification by fraudulently misleading a public official or other person authorised to issue a document, shall be subject to the penalty of deprivation of liberty for up to 3 years.

**Article 273**<sup>86</sup> Whoever uses the document specified in Art. 271 or 272, is subject to a fine, the penalty of restriction of liberty or imprisonment for 2 years.

**Article 274**<sup>87</sup> Whoever disposes of his own or someone else's identity document, shall be subject to a fine, the penalty of restriction of liberty or imprisonment for up to 2 years.

**Article 275**<sup>88</sup> § 1. Whoever uses a document confirming the identity of another person or their property rights, or steals or appropriates such a document, shall be subject to a fine, the penalty of restriction of liberty or imprisonment for 2 years.

§ 2. The same penalty shall be imposed on anyone who unlawfully transports, transfers or sends abroad a document confirming the identity of another person or her property rights.

**Article 276**<sup>89</sup> Whoever destroys, damages, renders useless, hides or removes a document, which he has no right to dispose of, shall be subject to a fine, the penalty of restriction of liberty or imprisonment for 2 years.

**Article 277**<sup>90</sup> Who border signs destroys, damages, removes, moves or makes invisible or falsely issues, shall be subject to a fine, the penalty of restriction of liberty or imprisonment for 2 years.

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<sup>85</sup> **Art. 272.** Kto wyłudza poświadczenie nieprawdy przez podstępne wprowadzenie w błąd funkcjonariusza publicznego lub innej osoby upoważnionej do wystawienia dokumentu, podlega karze pozbawienia wolności do lat 3.

<sup>86</sup> **Art. 273.** Kto używa dokumentu określonego w art. 271 lub 272, podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

<sup>87</sup> **Art. 274.** Kto zbywa własny lub cudzy dokument stwierdzający tożsamość, podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

<sup>88</sup> **Art. 275.** § 1. Kto posługuje się dokumentem stwierdzającym tożsamość innej osoby albo jej prawa majątkowe lub dokument taki kradnie lub go przywłaszcza, podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

§ 2. Tej samej karze podlega, kto bezprawnie przewozi, przenosi lub przesyła za granicę dokument stwierdzający tożsamość innej osoby albo jej prawa majątkowe.

<sup>89</sup> **Art. 276.** Kto niszczy, uszkadza, czyni bezużytecznym, ukrywa lub usuwa dokument, którym nie ma prawa wyłącznie rozporządzać, podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

<sup>90</sup> **Art. 277.** Kto znaki graniczne niszczy, uszkadza, usuwa, przesuwa lub czyni niewidocznymi albo fałszywie wystawia, podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

**Article 277a**<sup>91</sup> § 1. Who commits the crime specified in Article. 270a § 1 or art. 271a § 1, an invoice or invoices containing the total amount of receivables, the value of which or the total value is greater than ten times the amount specifying the property of great value, shall be punishable by imprisonment [for a period of not less than 5 years or the penalty of 25 years of imprisonment] <from 5 years up to 25>.

§ 2. In the case of a minor, the perpetrator of the act specified in § 1 shall be punishable by imprisonment of up to 5 years.

**Article 277b**<sup>92</sup> In the event of a conviction for an offence specified in Art. 270a § 1 or 2, art. 271a § 1 or 2 or art. 277a § 1, a fine imposed in addition to imprisonment may be imposed in the amount of up to 3,000 daily rates.

**Article 277c**<sup>93</sup> § 1. The court, at the request of the public prosecutor, applies extraordinary leniency to the perpetrator of the offence referred to in Article. 270a § 1 or 2 or art. 271a § 1 or 2, who notified the authority appointed to prosecute crimes and disclosed all the relevant circumstances of the crime, as well as indicated the acts related to the crime committed by him and their perpetrators, before this authority found out about them.

§ 2. The court, at the request of the prosecutor, may waive the imposition of a penalty against the perpetrator of the offence referred to in Article. 270a § 1, 2 or 3, art. 271a § 1, 2 or 3 or art. 277a § 2, who, in addition to meeting the conditions set out in § 1, returned the financial benefit obtained from committing the crime in whole or in a significant part.

§ 3. The court may apply extraordinary leniency to the perpetrator of the offence referred to in Article. 277a § 1, who, in addition to meeting the conditions set out in § 1, returned the financial benefit obtained from committing the crime in whole or in a significant part.

<sup>91</sup> **Art. 277a.** § 1. Kto dopuszcza się przestępstwa określonego w art. 270a § 1 albo art. 271a § 1 wobec faktury lub faktur, zawierających kwotę należności ogółem, której wartość lub łączna wartość jest większa niż dziesięciokrotność kwoty określającej mienie wielkiej wartości podlega karze pozbawienia wolności [na czas nie krótszy od lat 5 albo karze 25 lat pozbawienia wolności] <od lat 5 do 25>.

§ 2. W wypadku mniejszej wagi, sprawca czynu określonego w § 1 podlega karze pozbawienia wolności do lat 5.

<sup>92</sup> **Art. 277b.** W razie skazania za przestępstwo określone w art. 270a § 1 lub 2, art. 271a § 1 lub 2 albo art. 277a § 1, grzywnę orzeczoną obok kary pozbawienia wolności można wymierzyć w wysokości do 3000 stawek dziennych.

<sup>93</sup> **Art. 277c.** § 1. Sąd na wniosek prokuratora stosuje nadzwyczajne złagodzenie kary wobec sprawcy przestępstwa określonego w art. 270a § 1 lub 2 lub art. 271a § 1 lub 2, który zawiadomił o nim organ powołany do ścigania przestępstw i ujawnił wszystkie istotne okoliczności przestępstwa, a także wskazał czyny pozostające w związku z popełnionym przez niego przestępstwem i ich sprawców, zanim organ ten o nich się dowiedział.

§ 2. Sąd na wniosek prokuratora może odstąpić od wymierzenia kary wobec sprawcy przestępstwa określonego w art. 270a § 1, 2 lub 3, art. 271a § 1, 2 lub 3 lub art. 277a § 2, który, oprócz spełnienia warunków określonych w § 1, zwrócił korzyść majątkową osiągniętą z popełnienia tego przestępstwa w całości albo w istotnej części.

§ 3. Sąd może zastosować nadzwyczajne złagodzenie kary wobec sprawcy przestępstwa określonego w art. 277a § 1, który, oprócz spełnienia warunków określonych w § 1, zwrócił korzyść majątkową osiągniętą z popełnienia tego przestępstwa w całości albo w istotnej części.

**Article 277d**<sup>94</sup> The provisions of art. 277c § 1 and 3 shall apply mutatis mutandis to the perpetrator who, after the initiation of the proceedings, revealed to the authority appointed to prosecute crimes all known to him, and previously unknown to this authority, relevant circumstances of the crime, and also indicated the acts related to the crime committed by him and their perpetrators.

- 93 The Polish Legislator has amended the Penal Code several times. The new legislation enters into force as of 1.10.2023:

**Chapter XXXV Property crimes/  
Rozdział XXXV Przestępstwa przeciwko mieniu  
Art. 278 [Theft...]**

New: **Art. 282**<sup>95</sup> § 1. Whoever, in order to achieve financial gain, violence, the threat of an attack on life or health or a violent attack on property, leads another person to dispose of their own or someone else's property or to cease or limit economic activity, shall be punishable by imprisonment from one to 10 years.

§ 2. The same penalty shall be imposed on anyone who, in order to achieve financial gain, threat of publicity regarding another person or the person closest to her, derogatory messages or materially violating privacy or allegations that may humiliate the public or expose the loss of trust needed for a given position, profession or type of activity, leads another person to dispose of their own or someone else's property or to cease or limit business activity.

[Art. 283. In the case of a minor offence, the perpetrator of the act specified in Art. 279 § 1, art. 280 § 1 or in art. 281 or 282, shall be punishable by imprisonment from 3 months to 5 years.]

- 94 The **general fraud offence** of the Polish Penal Code is enshrined in Art. 286:

- 95 **Article 286**<sup>96</sup> [(Budget) Fraud] § 1. Whoever, in order to gain a financial advantage, brings another person to an unfavorable disposal of their own or someone else's property

<sup>94</sup> **Art. 277d.** Przepisy art. 277c § 1 i 3 stosuje się odpowiednio do sprawcy, który po wszczęciu postępowania ujawnił wobec organu powołanego do ścigania przestępstw wszystkie jemu znane, a nieznane dotychczas temu organowi istotne okoliczności przestępstwa, a także wskazał czyny pozostające w związku z popełnionym przez niego przestępstwem i ich sprawców.

<sup>95</sup> **Art. 282.** § 1. Kto, w celu osiągnięcia korzyści majątkowej, przemocą, groźbą zamachu na życie lub zdrowie albo gwałtownego zamachu na mienie, doprowadza inną osobę do rozporządzenia mieniem własnym lub cudzym albo do zaprzestania lub ograniczenia działalności gospodarczej, podlega karze pozbawienia wolności od roku do lat 10. § 2. Tej samej karze podlega, kto, w celu osiągnięcia korzyści majątkowej, groźbą rozgłoszenia dotyczącej innej osoby lub osoby dla niej najbliższej wiadomości uwłaczającej czci lub istotnie naruszającej prywatność lub zarzutu, który może poniżyć w opinii publicznej lub narazić na utratę zaufania potrzebnego dla danego stanowiska, zawodu lub rodzaju działalności, doprowadza inną osobę do rozporządzenia mieniem własnym lub cudzym albo do zaprzestania lub ograniczenia działalności gospodarczej.

<sup>96</sup> **Art. 286.** § 1. Kto, w celu osiągnięcia korzyści majątkowej, doprowadza inną osobę do niekorzystnego rozporządzenia własnym lub cudzym mieniem za pomocą wprowadzenia jej w błąd albo wyzyskania błędu lub

by misleading her or exploiting an error or inability to properly understand the action taken, shall be punishable by imprisonment from 6 months to 8 years.

§ 2. The same penalty shall apply to anyone who requests a financial benefit in exchange for the return of unlawfully taken things.

§ 3. In the case of a minor, the perpetrator shall be subject to a fine, restriction of liberty or imprisonment for up to 2 years.

§ 4. If the act specified in § 1–3 was committed to the detriment of the person closest to you, the prosecution is at the request of the injured party.

**Article 287<sup>97</sup> [IT/Computer fraud]** § 1. Whoever, in order to achieve financial gain or to cause damage to another person, without authorisation, affects the automatic processing, collection or transfer of IT data or changes, deletes or introduces a new record of IT data, shall be subject to imprisonment for 3 years months to 5 years.

§ 2. In the case of a minor, the perpetrator is subject to a fine, the penalty of restriction of liberty or imprisonment for a year.

§ 3. If the fraud was committed to the detriment of the person closest to you, the prosecution is at the request of the injured party.

**Article 305<sup>98</sup> [Public Procurement Influence]** § 1. Whoever hinders or thwarts a tender or public procurement procedure, acting to the detriment of the property owner,

niezdolności do należytego pojmowania przedsiębranego działania, podlega karze pozbawienia wolności od 6 miesięcy do lat 8.

§ 2. Tej samej karze podlega, kto żąda korzyści majątkowej w zamian za zwrot bezprawnie zabranej rzeczy.

§ 3. W wypadku mniejszej wagi, sprawca podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

§ 4. Jeżeli czyn określony w § 1–3 popełniono na szkodę osoby najbliższej, ściganie następuje na wniosek pokrzywdzonego.

<sup>97</sup> Art. 287. § 1. Kto, w celu osiągnięcia korzyści majątkowej lub wyrządzenia innej osobie szkody, bez upoważnienia, wpływa na automatyczne przetwarzanie, gromadzenie lub przekazywanie danych informatycznych lub zmienia, usuwa albo wprowadza nowy zapis danych informatycznych, podlega karze pozbawienia wolności od 3 miesięcy do lat 5.

§ 2. W wypadku mniejszej wagi, sprawca podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do roku.

§ 3. Jeżeli oszustwo popełniono na szkodę osoby najbliższej, ściganie następuje na wniosek pokrzywdzonego.

<sup>98</sup> <Art. 305. § 1. Kto utrudnia lub udaremnia przetarg albo postępowanie o udzielenie zamówienia publicznego, działając na szkodę właściciela mienia, osoby lub instytucji, na rzecz której przetarg jest dokonywany bądź która prowadzi postępowanie, albo na szkodę interesu publicznego, podlega karze pozbawienia wolności do lat 3.

§ 2. Kto, w celu wywarcia bezprawnego wpływu na wynik trwającego lub przygotowywanego przetargu lub postępowania o udzielenie zamówienia publicznego, wchodzi w porozumienie z inną osobą, przekazuje lub rozpowszechnia informacje lub przemilcza istotne okoliczności, działając na szkodę właściciela mienia, osoby lub instytucji, na rzecz której przetarg jest lub ma być dokonywany bądź która prowadzi lub ma prowadzić postępowanie, albo na szkodę interesu publicznego, podlega karze pozbawienia wolności od 3 miesięcy do lat 5.

§ 3. Jeżeli sprawca dopuszcza się czynu określonego w § 1 lub 2 w celu osiągnięcia korzyści majątkowej lub osobistej,

podlega karze pozbawienia wolności od 6 miesięcy do lat 8.

person or institution for whom the tender is being conducted or which conducts the procedure, or to the detriment of the public interest, shall be punishable by imprisonment of up to 3 years.

§ 2. Whoever, in order to exert an unlawful influence on the outcome of a tender or public procurement in preparation, enters into an agreement with another person, provides or disseminates information or conceals important circumstances, acting to the detriment of the owner of the property, person or institution for whom the tender is or is to be conducted or which conducts or is to conduct proceedings, or to the detriment of the public interest,

shall be punishable by imprisonment from 3 months to 5 years.

§ 3. If the perpetrator commits the act specified in § 1 or 2 in order to achieve financial or personal gain,

shall be punishable by imprisonment from 6 months to 8 years.

§ 4. The provisions of § 1-3 shall apply accordingly to auctions.

§ 5. The prosecution of the offence specified in § 1-4 is at the request of the injured party, unless the injured party is the State Treasury or the subject of the tender, auction or public procurement is at least partially financed from public funds.

### (b) Corruption Offences

- 96 In the area of corruption offences it is simple to draw a connection to funds etc. because funds are distributed by natural persons that act as state officials, which are regarded by social science as potential important hinges against fraud and corruption. Thus they can be victims or perpetrators. In Poland the Central Anti-Corruption Bureau and the normal police headquarters can receive reports about corruption. The competence overlaps partially but the CBA tackles mostly corruption in higher state authorities, while the police deals with the corruption at the end of the financial money distribution chain. The main offences are stipulated by the Criminal Code:

97

#### [Excerpt Criminal Code]

**Article 228<sup>99</sup>** § 1. Whoever, in connection with the performance of a public function, accepts a financial or personal benefit or a promise thereof, shall be punishable by imprisonment from 6 months to 8 years.

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§ 4. Przepisy § 1–3 stosuje się odpowiednio do aukcji.

§ 5. Ściganie przestępstwa określonego w § 1–4 następuje na wniosek pokrzywdzonego, chyba że pokrzywdzonym jest Skarb Państwa lub przedmiot przetargu, aukcji lub zamówienia publicznego jest co najmniej w części finansowany ze środków publicznych.>

<sup>99</sup> **Art. 228.** § 1. Kto, w związku z pełnieniem funkcji publicznej, przyjmuje korzyść majątkową lub osobistą albo jej obietnicę, podlega karze pozbawienia wolności od 6 miesięcy do lat 8.

§ 2. W wypadku mniejszej wagi, sprawca podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2



§ 2. In the case of a minor, the perpetrator shall be subject to a fine, restriction of liberty or imprisonment for up to 2 years.

§ 3. Whoever, in connection with the performance of a public function, accepts a financial or personal benefit or a promise thereof for behavior constituting a violation of the law, shall be punishable by imprisonment from one to 10 years.

§ 4. The penalty specified in § 3 is also subject to the one who, in connection with the performance of a public function, makes the performance of an official activity conditional upon receiving a financial or personal benefit or its promise or demands such an advantage.

§ 5. Who, in connection with the performance of a public function, accepts a financial benefit of significant value or its promise, shall be punishable by imprisonment [from 2 to 12 years].

§ 5a. Who, in connection with the performance of a public function, accepts a financial benefit of great value or its promise, shall be punishable by imprisonment from 3 to 20 years.

[§ 6. The penalties specified in § 1–5 are also subject to the person who, in connection with the performance of a public function in a foreign country or in an international organisation, accepts a financial or personal advantage or its promise or demands such an advantage, or makes the performance of official activity conditional since receiving it.]

§ 6. The penalties specified in §§ 1–5a are also subject to those who, in connection with the performance of a public function in a foreign country or in an international organisation, accepts a financial or personal advantage or its promise or demands such an advantage, or makes the performance of official activity conditional since receiving it.

Art. 229 CPC punishes the granting or promise of a financial or personal benefit to a person performing a public function and it includes a in para 6 a regulation, which stipulates that the person concerned is not punished if he/she discloses all relevant information to the police or Anti-Corruption Bureau directly: **98**

**Article 229<sup>100</sup>** § 1. Whoever grants or promises to grant a financial or personal benefit to a person performing a public function in connection with the performance of this function, shall be punishable by imprisonment from 6 months to 8 years. **99**

<sup>100</sup> **Art. 229.** § 1. Kto udziela albo obiecuje udzielić korzyści majątkowej lub osobistej osobie pełniącej funkcję publiczną w związku z pełnieniem tej funkcji, podlega karze pozbawienia wolności od 6 miesięcy do lat 8.

§ 2. W wypadku mniejszej wagi, sprawca podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

§ 3. Jeżeli sprawca czynu określonego w § 1 działa, aby skłonić osobę pełniącą funkcję publiczną do naruszenia przepisów prawa lub udziela albo obiecuje udzielić takiej osobie korzyści majątkowej lub osobistej za naruszenie przepisów prawa, 2023-01-10 podlega karze pozbawienia wolności od roku do lat 10.

§ 4. Kto osobie pełniącej funkcję publiczną, w związku z pełnieniem tej funkcji, udziela albo obiecuje udzielić korzyści majątkowej znacznej wartości,

§ 2. In the case of a minor, the perpetrator shall be subject to a fine, restriction of liberty or imprisonment for up to 2 years.

§ 3. If the perpetrator of the act specified in § 1 acts to induce a person performing a public function to violate the law or gives or promises to give such a person a financial or personal benefit for violating the law, 2023-01-10

shall be punishable by imprisonment from one to 10 years.

§ 4. Who a person performing a public function, in connection with the performance of this function, grants or promises to provide a material benefit of significant value, shall be punishable by imprisonment [from 2 to 12 years] <from 2 to 15 years>.

<§ 4a. Who a person performing a public function, in connection with the performance of this function, grants or promises to provide a financial benefit of great value, shall be punishable by imprisonment from 3 to 20 years.>

[§ 5. The penalties specified in § 1–4 are also subject to the one who gives or promises to give a financial or personal benefit to a person performing a public function in a foreign country or in an international organisation in connection with the performance of this function.]

§ 5. The penalties specified in § 1–4a are also subject to the one who gives or promises to give a material or personal benefit to a person performing a public function in a foreign country or in an international organisation in connection with the performance of this function.

§ 6. The perpetrator of the offence specified in § 1–5 shall not be punished if a financial or personal benefit or their promise has been accepted by a person performing a public function, and the perpetrator has notified the authority appointed to prosecute crimes of this fact and disclosed all relevant circumstances of the crime before the agency became aware of it.

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podlega karze pozbawienia wolności [od lat 2 do 12] <od lat 2 do 15>.

<§ 4a. Kto osobie pełniącej funkcję publiczną, w związku z pełnieniem tej funkcji, udziela albo obiecuje udzielić korzyści majątkowej wielkiej wartości,

podlega karze pozbawienia wolności od lat 3 do 20.>

[§ 5. Karom określonym w § 1–4 podlega odpowiednio także ten, kto udziela albo obiecuje udzielić korzyści majątkowej lub osobistej osobie pełniącej funkcję publiczną w państwie obcym lub w organizacji międzynarodowej, w związku z pełnieniem tej funkcji.]

<§ 5. Karom określonym w § 1–4a podlega odpowiednio także ten, kto udziela albo obiecuje udzielić korzyści majątkowej lub osobistej osobie pełniącej funkcję publiczną w państwie obcym lub w organizacji międzynarodowej, w związku z pełnieniem tej funkcji.>

§ 6. Nie podlega karze sprawca przestępstwa określonego w § 1–5, jeżeli korzyść majątkowa lub osobista albo ich obietnica zostały przyjęte przez osobę pełniącą funkcję publiczną, a sprawca zawiadomił o tym fakcie organ powołany do ścigania przestępstw i ujawnił wszystkie istotne okoliczności przestępstwa, zanim organ ten o nim się dowiedział.

**Article 230**<sup>101</sup> Settling a matter in exchange for a financial or personal benefit or a promise thereof, shall be punishable by imprisonment from 6 months to 8 years.]

§ 1. Whoever, in return for a financial or personal benefit or a promise thereof, undertakes mediation in settling the case, citing influence, causing another person to believe that there is influence, using such a belief or confirming it in the belief that there is influence in:

- 1) a state or local government institution,
- 2) a national or international organisation,
- 3) a domestic or foreign organisational unit that disposes of public funds,
- 4) a state-owned enterprise,
- 5) a commercial company with the participation of the State Treasury, local government or a state legal person, shall be punishable by imprisonment from 6 months to 8 years.

§ 2. In the case of a minor, the perpetrator shall be subject to a fine, restriction of liberty or imprisonment for up to 2 years.

**Article 230a**<sup>102</sup> [§ 1. Whoever provides or promises to provide a financial or personal benefit in exchange for intermediation in settling a case in a state institution, local government, international or national organisation or in a foreign organisational unit with

<sup>101</sup> Art. 230. [§ 1. Kto, powołując się na wpływy w instytucji państwowej, samorządowej, organizacji międzynarodowej albo krajowej lub w zagranicznej jednostce organizacyjnej dysponującej środkami publicznymi albo wywołując przekonanie innej osoby lub utwierdzając ją w przekonaniu o istnieniu takich wpływów, podejmuje się pośrednictwa w załatwieniu sprawy w zamian za korzyść majątkową lub osobistą albo jej obietnicę, podlega karze pozbawienia wolności od 6 miesięcy do lat 8.]

<§ 1. Kto, w zamian za korzyść majątkową lub osobistą albo jej obietnicę, podejmuje się pośrednictwa w załatwieniu sprawy, powołując się na wpływy, wywołując u innej osoby przekonanie o istnieniu wpływów, wykorzystując takie przekonanie lub utwierdzając ją w przekonaniu o istnieniu wpływów w:

- 1) instytucji państwowej lub samorządowej,
- 2) organizacji krajowej lub międzynarodowej, 3) krajowej lub zagranicznej jednostce organizacyjnej dysponującej środkami publicznymi,
- 4) przedsiębiorstwie państwowym,
- 5) spółce handlowej z udziałem Skarbu Państwa, samorządu terytorialnego lub państwowej osoby prawnej, podlega karze pozbawienia wolności od 6 miesięcy do lat 8.>

§ 2. W wypadku mniejszej wagi, sprawca podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

<sup>102</sup> Art. 230a. [§ 1. Kto udziela albo obiecuje udzielić korzyści majątkowej lub osobistej w zamian za pośrednictwo w załatwieniu sprawy w instytucji państwowej, samorządowej, organizacji międzynarodowej albo krajowej lub w zagranicznej jednostce organizacyjnej dysponującej środkami publicznymi, polegające na bezprawnym wywarceniu wpływu na decyzję, działanie lub zaniechanie osoby pełniącej funkcję publiczną, w związku z pełnieniem tej funkcji,

podlega karze pozbawienia wolności od 6 miesięcy do lat 8.]

<§ 1. Kto udziela albo obiecuje udzielić korzyści majątkowej lub osobistej w zamian za pośrednictwo w załatwieniu sprawy w podmiocie wskazanym w art. 230 § 1, polegające na bezprawnym wywarceniu wpływu na decyzję, działanie lub zaniechanie osoby pełniącej funkcję publiczną, w związku z pełnieniem tej funkcji, podlega karze pozbawienia wolności od 6 miesięcy do lat 8.>

§ 2. W wypadku mniejszej wagi, sprawca podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

§ 3. Nie podlega karze sprawca przestępstwa określonego w § 1 albo w § 2, jeżeli korzyść majątkowa lub osobista albo ich obietnica zostały przyjęte, a sprawca zawiadomił o tym fakcie organ powołany do ścigania przestępstw i ujawnił wszystkie istotne okoliczności przestępstwa, zanim organ ten o nim się dowiedział.

public funds, consisting in unlawfully exerting influence on a decision, action or omission a person performing a public function, in connection with the performance of this function, shall be punishable by imprisonment from 6 months to 8 years.]

<§ 1. Whoever provides or promises to provide a financial or personal benefit in exchange for intermediation in settling the matter in the entity indicated in art. 230 § 1, consisting in unlawfully exerting influence on a decision, action or omission of a person performing a public function in connection with the performance of this function, shall be punishable by imprisonment from 6 months to 8 years.>

§ 2. In the case of a minor, the perpetrator

shall be subject to a fine, restriction of liberty or imprisonment for up to 2 years.

§ 3. The perpetrator of the offence referred to in § 1 or § 2 shall not be punished, if a financial or personal benefit or their promise has been accepted, and the perpetrator has notified the authority appointed to prosecute crimes of this fact and disclosed all relevant circumstances of the crime, before this authority before he found out.

**100** It should be mentioned that the “legal **definition of corruption** is contained in the Act of 9 June 2006 on the Central Anti-Corruption Bureau ( Article 1 ( 3a)). Corruption, within the meaning of this Act, is an act:

- consisting in the promise, offer or giving by any person, directly or indirectly, of any undue advantage to a person performing a public function for himself or for any other person in exchange for acting or omission to act in the performance of his function; consisting in demanding or accepting by a person performing a public function, directly or indirectly, any undue advantages for himself or herself
- or for any other person, or accepting an offer or promise of such an advantage in exchange for acting or refraining from acting in the performance of his functions;
- committed in the course of business activity, including the performance of obligations towards a public authority (institution), consisting in promising, proposing or giving, directly or indirectly, any undue benefits to a person managing an entity not included in the public finance sector or working in any capacity for such an entity, for himself or for any other person, in exchange for an act or omission that violates his duties and constitutes socially harmful reciprocity;
- committed in the course of business activity involving the performance of obligations towards a public authority (institution), consisting in demanding or accepting, directly or indirectly, by a person managing an entity not included in the public finance sector or working in any capacity for such an entity, any undue benefits or accepting a proposal or promise such benefits for himself or for any other person

in return for an act or omission that breaches his duties and constitutes socially harmful reciprocity.”<sup>103</sup>

! Corruption can be reported via the different police bodies or the Central Bureau of Anti-Corruption:



<https://policja.pl/pol/antykorrupcja/24603,Zglos-korrupcje.html>.

The Central Bureau of Anti-Corruption Act stipulates in Art. 2 the tasks of the authority and clearly highlights that the sector of funds and allocation of funding schemes falls into the competence of the CBA:

“d) tax obligations and settlements in respect of subsidies and subsidies specified in Chapter 6 of the Act of 10 September 1999 – Fiscal Penal Code (Journal of Laws of 2022, items 859 and 1301), if they are related to corruption or activities detrimental to the economic interests of the state,”

Really important is it that the CBA supervises and controls according to Art. 2 para 4a **101** so-called PPP (Public-Private Partnership Agreements):

“4a) control of the correct implementation of public-partnership agreements”.

### (c) AML Offences

The customs offences and AML offences are partly enshrined in the criminal code and **102** partly in the customs code (*2017. évi CLII. Törvény az uniós vámjog végrehajtásáról*):

#### [Excerpt CC] **103**

#### **Chapter XXXVI Crimes against economic turnover and property interests in civil law transactions**

**Article 299**<sup>104</sup> [Money Laundering] § 1. Who means of payment, financial instruments, securities, foreign exchange values, property rights or other movable or immovable

<sup>103</sup> Police, Police in the fight against corruption, <https://policja.pl/pol/antykorrupcja/24761,Policja-w-walce-z-korrupcja.html>.

<sup>104</sup> Art. 299. § 1. Kto środki płatnicze, instrumenty finansowe, papiery wartościowe, wartości dewizowe, prawa majątkowe lub inne mienie ruchome lub nieruchomości, pochodzące z korzyści związanych z popełnieniem czynu zabronionego, przyjmuje, posiada, używa, przekazuje lub wywozi za granicę, ukrywa, dokonuje ich transferu lub konwersji, pomaga do przenoszenia ich własności lub posiadania albo podejmuje inne czynności, które mogą udaremnić lub znacznie utrudnić stwierdzenie ich przestępnego pochodzenia lub miejsca umieszczenia, ich wykrycie, zajęcie albo orzeczenie przepadku, podlega karze pozbawienia wolności od 6 miesięcy do lat 8.

§ 2. Karze określonej w § 1 podlega, kto będąc pracownikiem lub działając w imieniu lub na rzecz banku, instytucji finansowej lub kredytowej lub innego podmiotu, na którym na podstawie przepisów prawa ciąży obowiązek rejestracji transakcji i osób dokonujących transakcji, przyjmuje, wbrew przepisom, środki płatnicze, instrumenty finansowe, papiery wartościowe, wartości dewizowe, dokonuje ich transferu lub konwersji, lub przyjmuje je w innych okolicznościach wzbudzających uzasadnione podejrzenie, że stanowią one przedmiot czynu określonego w § 1, lub świadczy inne usługi mające ukryć ich przestępne pochodzenie lub usługi w zabezpieczeniu przed zajęciem.

§ 3. (uchylony)

§ 4. (uchylony)

property, derived from the benefits related to the commission of an offence, accepts, holds, uses, transfers or exports abroad, hides, transfers or converts them, helps to transfer their ownership or possession or undertakes other activities that may prevent or significantly hinder the determination of their criminal origin or place of placement, their detection, seizure or adjudication of forfeiture, shall be punishable by imprisonment from 6 months to 8 years.

§ 2. The penalty specified in § 1 is subject to who, being an employee or acting on behalf of or on behalf of a bank, financial or credit institution or other entity which, under the law, is obliged to register transactions and persons making transactions, adopts, contrary to the provisions, means of payment, financial instruments, securities, foreign exchange values, transfers or converts them, or accepts them in other circumstances raising reasonable suspicion that they are the subject of the act specified in § 1, or provides other services to hide their criminal origin or services in protection against seizure.

§ 3. (repealed)

§ 4. (repealed)

§ 5. If the perpetrator commits the act specified in § 1 or 2, acting in concert with other persons, he shall be subject to the penalty of deprivation of liberty from one year to 10 years.

§ 6. The penalty specified in § 5 shall be subject to the perpetrator, if by committing the act specified in § 1 or 2, he achieves a significant financial advantage.

§ 6a. Who makes preparations for the offence specified in § 1 or 2, shall be punishable by imprisonment of up to 3 years.

§ 7. In the event of a conviction for the offence referred to in § 1 or 2, the court shall order the forfeiture of items derived directly or indirectly from the crime, as well as the benefits of this crime or their equivalent, even if they did not constitute the property of the perpetrator. Forfeiture is not in whole or in part, if the object, benefit or its equivalent is to be returned to the victim or another entity.

§ 8. Is not punishable for the offence referred to in § 1 or 2, who voluntarily disclosed to the body responsible for prosecuting crimes information about persons involved in

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§ 5. Jeżeli sprawca dopuszcza się czynu określonego w § 1 lub 2, działając w porozumieniu z innymi osobami, podlega karze pozbawienia wolności od roku do lat 10.

§ 6. Karze określonej w § 5 podlega sprawca, jeżeli dopuszczając się czynu określonego w § 1 lub 2, osiąga znaczną korzyść majątkową.

§ 6a. Kto czyni przygotowania do przestępstwa określonego w § 1 lub 2, podlega karze pozbawienia wolności do lat 3.

§ 7. W razie skazania za przestępstwo określone w § 1 lub 2, sąd orzeka przepadek przedmiotów pochodzących bezpośrednio albo pośrednio z przestępstwa, a także korzyści z tego przestępstwa lub ich równowartość, chociażby nie stanowiły one własności sprawcy. Przepadku nie orzeka się w całości lub w części, jeżeli przedmiot, korzyść lub jej równowartość podlega zwrotowi pokrzywdzonemu lub innemu podmiotowi.

§ 8. Nie podlega karze za przestępstwo określone w § 1 lub 2, kto dobrowolnie ujawnił wobec organu powołanego do ścigania przestępstw informacje dotyczące osób uczestniczących w popełnieniu przestępstwa oraz okoliczności jego popełnienia, jeżeli zapobiegło to popełnieniu innego przestępstwa; jeżeli sprawca czynił starania zmierzające do ujawnienia tych informacji i okoliczności, sąd stosuje nadzwyczajne złagodzenie kary.

the crime and the circumstances of its commission, if it prevented the commission of another crime; if the perpetrator has made efforts to disclose this information and circumstances, the court shall apply extraordinary leniency.

**Chapter XXXVII Offences against trading in money and securities / Rozdział XXXVII Przewinienia przeciwko obrotowi pieniędzmi i papierami wartościowymi**

Customs fraud may be tackled via the general fraud offence (see above Art. 373 CC). **104**

**(2) Offences in Other Codes (Polish Fiscal Penal Code/Kodeks karny skarbowy etc.)**

**(a) General Remarks**

Tax offences are primarily regulated by the Penal Fiscal Code (*Kodeks karny skarbowy* (Dz. U. z 2022 r. poz. 859, 1301) – KKS), which penalizes acts concerning tax law, customs law as well as foreign exchange law and gambling law. **105**

It must be remarked that in proceedings in cases of tax offences and tax misdemeanors, the provisions of the Code of Criminal Procedure shall apply accordingly. This is a fundamental rule, which applies unless the provisions of the Penal Code provide otherwise. **106**

The adjudication in all cases of fiscal offences and fiscal misdemeanors is accomplished by common courts. The powers of administrative financial authorities is restricted to fine proceedings and petty offences as in these cases the authorities do not need to adjudicate on guilt and punishment. **107**

From the European perspective, i.e. the one of the EPPO and OLAF the tax crimes and fiscal offences against tax obligations and settlements for subsidies or grants regulated by Articles 54–84 of the Penal Fiscal Code is very important as well as the tax crimes and fiscal offences against customs duties and the rules of foreign trade in goods and services regulated by Articles 85–96 of the Penal Fiscal Code. **108**

**(b) The Offences in the Polish Fiscal Penal Code**

First of all, it should be said that making false statements in tax documents (issuing unreliable invoices – “blank invoices”) in order to create the impression of justifying a VAT refund would be an offence possibly falling into the EPPO’s competence: **109**

Engaging in an activity aimed at the criminal acquisition of public revenue in the form of value added tax, whereby a number of legally relevant documents were issued or certified as false, stating a factual situation: tax declarations and VAT invoices stating that value added tax was paid on the price charged for the goods sold, while in fact no such tax was paid **110**

111 Article 56 § 2, 54 § 1, 55 § 1 connected with 20 § 2 and Art. 62 § 2, 61 § 1 and 76 § 1 of Fiscal Code and Art. 299 § 1 and 5 of CC.



Judgment of Appeal Court in Poznań, 2017-09-28, II AKa 113/17.

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### Fiscal Penal Code

#### Section II Special part

#### Chapter 6 Tax offences and fiscal offences against obligations tax and settlements for grants or subsidies

**Article 54**<sup>105</sup> § 1. A taxpayer who, by evading taxation, does not disclose to the competent authority of the object or tax base or does not submit declaration, which exposes the tax to depletion, shall be punishable by a fine of up to 720 daily rates or imprisonment liberty, or both.

§ 2. If the amount of tax exposed to depletion is small, the perpetrator of the prohibited act specified in § 1 is subject to a fine of up to 720 daily rates.

§ 3. If the amount of tax exposed to depletion does not exceed statutory threshold, the perpetrator of the prohibited act specified in § 1 is subject to a fine for a tax offence

**Article 55**<sup>106</sup> § 1 A taxpayer who, in order to conceal his business activity self-employment or the actual size of this activity, uses the name and surname, name or business name of another entity and therefore exposes the tax to depletion, shall be punishable by a fine of up to 720 daily rates or imprisonment imprisonment up to 3 years, or to both these penalties jointly

§ 2 If the amount of tax exposed to depletion is small, the perpetrator of the prohibited act specified in § 1 is subject to a fine of up to 720 daily rates

§ 3 If the amount of tax exposed to depletion does not exceed statutory threshold, the perpetrator of the prohibited act specified in § 1 is subject to a fine for a tax offence.

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<sup>105</sup> Dział II Część szczególna Rozdział 6 Przepięstwa skarbowe i wykroczenia skarbowe przeciwko obowiãzkom podatkowym i rozliczeniom z tytułu dotacji lub subwencji

**Art. 54.**

§ 1. Podatnik, który uchylając się od opodatkowania, nie ujawnia właściwemu organowi przedmiotu lub podstawy opodatkowania lub nie składa deklaracji, przez co naraża podatek na uszczuplenie, podlega karze grzywny do 720 stawek dziennych albo karze pozbawienia wolności, albo obu tym karom łącznie.

§ 2. Jeżeli kwota podatku narażonego na uszczuplenie jest małej wartości, sprawca czynu zabronionego określonego w § 1 podlega karze grzywny do 720 stawek dziennych.

§ 3. Jeżeli kwota podatku narażonego na uszczuplenie nie przekracza ustawowego progu, sprawca czynu zabronionego określonego w § 1 podlega karze grzywny za wykroczenie skarbowe.

<sup>106</sup> **Art. 55.** § 1. Podatnik, który w celu zatajenia prowadzenia działalności gospodarczej na własny rachunek lub rzeczywistych rozmiarów tej działalności, posługuje się imieniem i nazwiskiem, nazwą lub firmą innego podmiotu i przez to naraża podatek na uszczuplenie, podlega karze grzywny do 720 stawek dziennych albo karze pozbawienia wolności do lat 3, albo obu tym karom łącznie.

§ 2. Jeżeli kwota podatku narażonego na uszczuplenie jest małej wartości, sprawca czynu zabronionego określonego w § 1 podlega karze grzywny do 720 stawek dziennych.

§ 3. Jeżeli kwota podatku narażonego na uszczuplenie nie przekracza ustawowego progu, sprawca czynu zabronionego określonego w § 1 podlega karze grzywny za wykroczenie skarbowe.



**Article 56 § 1.** A taxpayer who submits to the tax authority, another declaration or declaration to the authorised body or payer untruth or conceals the truth, or fails to comply with the obligation to notify the change data covered by them, which exposes the tax to depletion, shall be punishable by a fine of up to 720 daily rates or imprisonment liberty, or both.

§ 2. If the amount of tax exposed to depletion is small, the perpetrator of the prohibited act specified in § 1 is subject to a fine of up to 720 daily rates.

§ 3. If the amount of tax exposed to depletion does not exceed statutory threshold, the perpetrator of the prohibited act specified in § 1 is subject to a fine for a tax offence.

§ 4. The penalty specified in § 3 is also subject to the taxpayer who, despite the disclosure the subject or the tax base is not submitted to the authority on time the tax payer or the payer of the declaration or statement or contrary to the obligation not submits them via electronic means of communication or submits them inconsistently with electronic document template.

**Article 56a § 1.** A taxpayer who, contrary to the obligation, does not submit to the competent the tax authority of the information referred to in Art. 86a sec. 12 of the Act of March 11, 2004 on tax on goods and services, or submits it after the deadline or provides in it data inconsistent with the actual state, making a tax deduction contrary to the provisions on tax on goods and services, is subject to a fine of up to 720 daily rates.

§ 2. In the case of a minor, the perpetrator of the offence specified in § 1 is punishable by a fine for a tax offence. [...]

**Article 56b § 1.** Whoever, contrary to the obligations set out in Article. 20a sec. 1 and art. 20f sec. 2–4 of the Act of 6 December 2008 on excise duty does not submit an application for entry in the register of intermediary tobacco entities or does not notify about cessation of business as an intermediary tobacco entity, or not notifies of a change in the data contained in the application for entry in the register intermediary tobacco entities or in the application to amend the entry to that register or submits an application or makes a late notification or provides in them data inconsistent with the actual state, is subject to a fine of up to 720 daily rates

§ 2. Whoever, contrary to the obligations set out in Art. 16, Art. 16b, Art. 17 and Art. 19 of the Act of 6 December 2008 on excise tax does not submit a declaration registration, simplified registration declaration, notification, notification of cessation of business activity, or does not report a change in data contained therein, or submits them after the deadline or provides data inconsistent with them is punishable by a fine of up to 120 daily rates.

**Article 57**<sup>107</sup> § 1 A taxpayer who persistently fails to pay tax on time shall be liable to a fine for a fiscal offence.

§ 2. The court may waive the penalty if the tax due has been paid in full to the competent authority prior to the commencement of proceedings for the fiscal offence referred to in § 1.

**Article 60 [Fine for not Keeping book properly]**

**Article 62**<sup>108</sup> § 1. Who, contrary to the obligation, does not issue an invoice or bill, issues them in a defective manner or refuses to issue them, is subject to a fine of up to 180 daily rates.

§ 2. Who issues an invoice or bill in an unreliable way or such uses the document shall be punishable by a fine of up to 720 daily rates or imprisonment freedom for a period of not less than one year, or to both penalties jointly.

§ 2a. Who issues an invoice or bill in an unreliable manner or such document, and the tax amount resulting from the invoice or the sum of the amounts the tax resulting from the invoices is of low value, shall be punishable by a fine of up to 720 daily rates or imprisonment liberty, or both.

§ 3. The penalty specified in § 1 is also the one who, contrary to the obligation, does not stores the issued or received invoice or bill, or proof of purchase goods.

§ 4. The penalty specified in § 1 is also the one who, contrary to the provisions of the Act sells without the cash register or fails to issue a document from the cash register registering the sale.

§ 5. In the case of a minor, the perpetrator of the offence specified in § 1–4 is subject to a fine for a tax offence.

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<sup>107</sup> **Art. 57.** § 1. Podatnik, który uporczywie nie wpłaca w terminie podatku, podlega karze grzywny za wykroczenie skarbowe.

§ 2. Sąd może odstąpić od wymierzenia kary, jeżeli przed wszczęciem postępowania w sprawie o wykroczenie skarbowe określone w § 1 wpłacono w całości należny podatek na rzecz właściwego organu.

<sup>108</sup> **Art. 62.** § 1. Kto wbrew obowiązkowi nie wystawia faktury lub rachunku, wystawia je w sposób wadliwy albo odmawia ich wydania, podlega karze grzywny do 180 stawek dziennych.

§ 2. Kto fakturę lub rachunek wystawia w sposób nierzetelny albo takim dokumentem się posługuje, podlega karze grzywny do 720 stawek dziennych albo karze pozbawienia wolności na czas nie krótszy od roku, albo obu tym karom łącznie.

§ 2a. Kto fakturę lub rachunek wystawia w sposób nierzetelny albo takim dokumentem się posługuje, a kwota podatku wynikająca z faktury albo suma kwot podatku wynikających z faktur jest mniej wartości, podlega karze grzywny do 720 stawek dziennych albo karze pozbawienia wolności, albo obu tym karom łącznie.

§ 3. Karze określonej w § 1 podlega także ten, kto wbrew obowiązkowi nie przechowuje wystawionej lub otrzymanej faktury lub rachunku, bądź dowodu zakupu towarów.

§ 4. Karze określonej w § 1 podlega także ten, kto wbrew przepisom ustawy dokona sprzedaży z pominięciem kasy rejestrującej albo nie wyda dokumentu z kasy rejestrującej, stwierdzającego dokonanie sprzedaży.

§ 5. W wypadku mniejszej wagi, sprawca czynu zabronionego określonego w § 1–4 podlega karze grzywny za wykroczenie skarbowe.

**Article 63**<sup>109</sup> § 1. Whoever, contrary to the provisions of the Act, issues excise goods, for which the excise duty suspension arrangement has been completed, without their prior marking with excise stamps, shall be punishable by a fine of up to 720 daily rates or imprisonment liberty, or both.

§ 2. The same punishment shall be, who, contrary to the provisions of the Act, brings on territory of the country excise goods without their prior marking with excise stamps.

§ 3. The same penalty shall apply to anyone who produces outside a tax warehouse excise goods referred to in art. 47 sec. 1 point 1, 2, 4 or 5 of the Act of December 6, 2008 on excise tax, issued from the warehouse of finished products excise goods without their prior marking with excise stamps.

§ 4. The same punishment is subject to who leads out of the tax warehouse on the basis of a permit to release excise goods as a taxpayer from someone else's tax warehouse outside the excise duty suspension arrangement, products excise duty without prior marking with excise stamps.

§ 5. The penalty specified in § 1 is also subject to who commits the act prohibited specified in § 1–4 in relation to excise goods, which marked incorrectly or with inappropriate excise stamps, in particular marks that are damaged, defaced, counterfeit, tampered with or unimportant.

§ 6. If the excise duty is of low value, the perpetrator of the act prohibited specified in § 1-5 is subject to a fine of up to 720 daily rates.

§ 7. If the excise tax due does not exceed the statutory threshold, the perpetrator of the prohibited act specified in § 1–5 is subject to a fine for a tax offence.

<sup>109</sup> **Art. 63.** § 1. Kto wbrew przepisom ustawy wydaje wyroby akcyzowe, w stosunku do których zakończono procedurę zawieszenia poboru akcyzy, bez ich uprzedniego oznaczenia znakami akcyzy, podlega karze grzywny do 720 stawek dziennych albo karze pozbawienia wolności, albo obu tym karom łącznie.

§ 2. Tej samej karze podlega, kto wbrew przepisom ustawy sprowadza na terytorium kraju wyroby akcyzowe bez ich uprzedniego oznaczenia znakami akcyzy.

§ 3. Tej samej karze podlega, kto, produkując poza składem podatkowym wyroby akcyzowe, o których mowa w art. 47 ust. 1 pkt 1, 2, 4 lub 5 ustawy z dnia 6 grudnia 2008 r. o podatku akcyzowym, wydaje z magazynu wyrobów gotowych wyroby akcyzowe bez ich uprzedniego oznaczenia znakami akcyzy.

§ 4. Tej samej karze podlega, kto wyprowadza ze składu podatkowego na podstawie zezwolenia na wyprowadzanie jako podatnik wyrobów akcyzowych z cudzego składu podatkowego poza procedurą zawieszenia poboru akcyzy, wyroby akcyzowe bez ich uprzedniego oznaczenia znakami akcyzy.

§ 5. Karze określonej w § 1 podlega także, kto dopuszcza się czynu zabronionego określonego w § 1–4 w stosunku do wyrobów akcyzowych, które oznaczono nieprawidłowo lub nieodpowiednimi znakami akcyzy, w szczególności znakami uszkodzonymi, zniszczonymi, podrobionymi, przerobionymi lub nieważnymi.

§ 6. Jeżeli należny podatek akcyzowy jest małej wartości, sprawca czynu zabronionego określonego w § 1–5 podlega karze grzywny do 720 stawek dziennych.

§ 7. Jeżeli należny podatek akcyzowy nie przekracza ustawowego progu, sprawca czynu zabronionego określonego w § 1–5 podlega karze grzywny za wykroczenie skarbowe.

**Article 63a**<sup>110</sup> § 1. Who, contrary to the provisions of the Act, sells excise goods without them previously correctly marked with the appropriate excise stamps, is subject to a fine of up to 720 daily rates or to deprivation of liberty, or both.

§ 2. If the excise duty is of low value, the perpetrator of the act prohibited specified in § 1 is subject to a fine of up to 720 daily rates.

§ 3. If the excise tax due does not exceed the statutory threshold, the perpetrator of the prohibited act specified in § 1 is subject to a fine for fiscal offences.

**Article 64**<sup>111</sup> § 1. Whoever, without notice in writing within the period of the competent authority removes from the tax warehouse excise goods not marked with excise stamps intended for intra-Community delivery or export, is subject to a fine of up to 720 daily rates.

§ 2. The same penalty shall be imposed on anyone who produces wine outside a tax warehouse grapes obtained from self-cultivated grapes in question in art. 47 sec. 1 point 2 of the Act of 6 December 2008 on excise duty, no notification in writing within the time limit of the competent authority shall issue these excise goods not marked with excise stamps intended for their delivery intra-Community or export.

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<sup>110</sup> **Art. 63a.** § 1. Kto wbrew przepisom ustawy sprzedaje wyroby akcyzowe bez ich uprzedniego prawidłowego oznaczenia odpowiednimi znakami akcyzy, podlega karze grzywny do 720 stawek dziennych albo karze pozbawienia wolności, albo obu tym karom łącznie.

§ 2. Jeżeli należny podatek akcyzowy jest małej wartości, sprawca czynu zabronionego określonego w § 1 podlega karze grzywny do 720 stawek dziennych. § 3. Jeżeli należny podatek akcyzowy nie przekracza ustawowego progu, sprawca czynu zabronionego określonego w § 1 podlega karze grzywny za wykroczenia skarbowe.

<sup>111</sup> **Art. 64.** § 1. Kto bez powiadomienia na piśmie w terminie właściwego organu wyprowadza ze składu podatkowego wyroby akcyzowe nieoznaczone znakami akcyzy z przeznaczeniem do dokonania ich dostawy wewnątrzspółnotowej lub eksportu, podlega karze grzywny do 720 stawek dziennych.

§ 2. Tej samej karze podlega, kto produkując poza składem podatkowym wina gronowe uzyskane z winogron pochodzących z upraw własnych, o których mowa w art. 47 ust. 1 pkt 2 ustawy z dnia 6 grudnia 2008 r. o podatku akcyzowym, bez powiadomienia na piśmie w terminie właściwego organu wydaje te wyroby akcyzowe nieoznaczone znakami akcyzy z przeznaczeniem do dokonania ich dostawy wewnątrzspółnotowej lub eksportu.

§ 3. Tej samej karze podlega, kto produkując poza składem podatkowym alkohol etylowy, o którym mowa w art. 47 ust. 1 pkt 4 ustawy z dnia 6 grudnia 2008 r. o podatku akcyzowym, w gorzelnii prawnie i ekonomicznie niezależnej od wszelkich innych gorzelnii oraz niedziałającej na podstawie licencji uzyskanej od innego podmiotu, bez powiadomienia na piśmie w terminie właściwego organu wydaje te wyroby akcyzowe nieoznaczone znakami akcyzy z przeznaczeniem do dokonania ich dostawy wewnątrzspółnotowej lub eksportu.

§ 4. Tej samej karze podlega, kto produkując poza składem podatkowym wyroby akcyzowe z wykorzystaniem wyłącznie wyrobów akcyzowych, od których akcyza została zapłacona w wysokości równej lub wyższej od kwoty akcyzy przypadającej do zapłaty od wyprodukowanych wyrobów akcyzowych, bez powiadomienia na piśmie w terminie właściwego organu wydaje te wyroby akcyzowe nieoznaczone znakami akcyzy z przeznaczeniem do dokonania dostawy wewnątrzspółnotowej lub na eksport.

§ 5. Tej samej karze podlega, kto produkując poza składem podatkowym wyroby akcyzowe, od których została zapłacona przedpłata akcyzy, bez powiadomienia na piśmie w terminie właściwego organu wydaje te wyroby akcyzowe nieoznaczone znakami akcyzy z przeznaczeniem do dokonania dostawy wewnątrzspółnotowej lub na eksport.

§ 6. Karze określonej w § 1 podlega także ten, kto bez powiadomienia na piśmie w terminie właściwego organu umieszcza w wolnym obszarze celnym wyroby akcyzowe nieoznaczone znakami akcyzy, przeznaczone do sprzedaży w jednostkach handlowych tam usytuowanych.

§ 7. W wypadku mniejszej wagi, sprawca czynu zabronionego określonego w § 1–6 podlega karze grzywny za wykroczenie skarbowe.

§ 3. The same penalty shall be imposed on anyone who produces alcohol outside the tax warehouse ethyl, referred to in Art. 47 sec. 1 point 4 of the Act of December 6, 2008 on excise duty, in a legally and economically independent distillery other distilleries and not operating under a license obtained from another entity, without notification in writing within the time limit of the competent authority shall issue these excise goods not marked with excise stamps for the purpose of making them intra-community supply or export.

§ 4. The same penalty shall be imposed on anyone who produces products outside the tax warehouse excise duty using only excise goods on which excise duty is payable was paid in an amount equal to or higher than the amount of excise duty attributable to payment on excise goods produced, without notice in writing within the time limit of the competent authority it seems these excise goods unmarked excise duty intended for intra-Community supplies or to export.

§ 5. The same penalty shall be imposed on anyone who produces products outside the tax warehouse on which the excise duty prepayment was paid, without notification to in writing within the time limit of the competent authority it seems these unmarked excise goods excise stamps intended for intra-Community supplies or for export.

§ 6. The penalty specified in § 1 is also the one who, without notice in writing place the products in the free zone within the time limit of the competent authority excise goods not marked with excise stamps, intended for sale in units shops located there.

§ 7. In the case of a minor offence, the perpetrator of the offence specified in § 1–6 is subject to a fine for a tax offence.

**Article 66** § 1. Who excise means incorrectly or inappropriate excise stamps, in particular damaged ones, damaged, counterfeit, altered or invalid, is subject to a fine of up to 720 daily rates.

§ 2. In the case of a minor, the perpetrator of the offence specified in § 1 is subject to a fine for a tax offence.

**Article 68**<sup>112</sup> § 1. Who does not fulfill the obligation to draw up a list and present it to be confirmed by the competent authority in the case of non-trade the excise duty suspension procedure for unmarked excise goods, marked incorrectly or with inappropriate

<sup>112</sup> **Art. 68.** § 1. Kto nie dopełnia obowiązku sporządzenia spisu i przedstawienia go do potwierdzenia właściwemu organowi w przypadku wystąpienia w obrocie poza procedurą zawieszenia poboru akcyzy wyrobów akcyzowych nieoznaczonych, oznaczonych nieprawidłowo lub nieodpowiednimi znakami akcyzy, w szczególności znakami uszkodzonymi, zniszczonymi, podrobionymi, przerobionymi lub nieważnymi, podlega karze grzywny do 720 stawek dziennych.

§ 2. Tej samej karze podlega, kto nie dopełnia obowiązku oznaczenia wyrobów akcyzowych legalizacyjnymi znakami akcyzy. § 3. W wypadku mniejszej wagi, sprawca czynu zabronionego określonego w § 1 lub 2 podlega karze grzywny za wykroczenie skarbowe.

excise stamps, in particular marks that are damaged, defaced, counterfeit, tampered with or invalid, shall be subject to a fine of up to 720 daily rates.

§ 2. The same penalty shall be imposed on anyone who fails to comply with the obligation to mark products excise stamps with legalization excise stamps.

§ 3. In the case of a minor, the perpetrator of the offence specified in § 1 or 2 is punishable by a fine for a tax offence.

**Article 69**<sup>113</sup> § 1. Whoever takes the test without official verification activities directly related to the production, import or trade in products excise stamps, as well as their marking with excise stamps, is subject to a fine of up to 720 daily rates.

§ 2. Who gives untrue data about the type, quantity or quality manufactured excise goods, is subject to a fine of up to 360 daily rates.

§ 3. Who, contrary to the provisions, removes excise goods from the place of production, processing, consumption, storage or during transport, is subject to a fine of up to 240 daily rates. § 4. Attempting a tax offence specified in § 2 or 3 is punishable.

**Article 70**<sup>114</sup> § 1. Whoever, contrary to the provisions of the Act, disposes or otherwise transfers excise stamps to an unauthorised person, shall be punishable by a fine of up to 720 daily rates or imprisonment liberty, or both.

§ 2. The same penalty shall be imposed on anyone who, in order to use or put into circulation purchases or otherwise accepts excise stamps from an unauthorised person or removes them from the excise goods in order to reuse or introduce them in circulation.

§ 3. Attempting a tax crime specified in § 1 or 2 is punishable.

§ 4. The penalty specified in § 1 is also the one who, without being to this authorised, holds, stores, transports, sends or transfers excise stamps. § 5. In the case of a minor, the perpetrator of the offence specified in § 1, 2 and 4 is subject to a fine for a tax offence.

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<sup>113</sup> **Art. 69.** § 1. Kto bez przeprowadzenia urzędowego sprawdzenia podejmuje czynności bezpośrednio związane z produkcją, importem lub obrotem wyrobami akcyzowymi, a także z ich oznaczaniem znakami akcyzy, podlega karze grzywny do 720 stawek dziennych.

§ 2. Kto podaje nieprawdziwe dane o rodzaju, ilości lub jakości wyprodukowanych wyrobów akcyzowych, podlega karze grzywny do 360 stawek dziennych.

§ 3. Kto wbrew przepisom usuwa wyroby akcyzowe z miejsca produkcji, przerobu, zużycia, przechowywania lub podczas przewozu, podlega karze grzywny do 240 stawek dziennych. § 4. Usiłowanie przestępstwa skarbowego określonego w § 2 lub 3 jest karalne

<sup>114</sup> **Art. 70.** § 1. Kto wbrew przepisom ustawy zbywa lub w inny sposób przekazuje znaki akcyzy osobie nieuprawnionej, podlega karze grzywny do 720 stawek dziennych albo karze pozbawienia wolności, albo obu tym karom łącznie.

§ 2. Tej samej karze podlega, kto w celu użycia lub wprowadzenia w obieg nabywa lub w inny sposób przyjmuje znaki akcyzy od osoby nieuprawnionej lub usuwa je z wyrobu akcyzowego w celu ponownego ich użycia lub wprowadzenia w obieg.

§ 3. Usiłowanie przestępstwa skarbowego określonego w § 1 lub 2 jest karalne.

§ 4. Karze określonej w § 1 podlega także ten, kto, nie będąc do tego uprawnionym, posiada, przechowuje, przewozi, przesyła lub przenosi znaki akcyzy. § 5. W wypadku mniejszej wagi, sprawca czynu zabronionego określonego w § 1, 2 i 4 podlega karze grzywny za wykroczenie skarbowe

## **Chapter 7 Tax offences and fiscal offences against customs duties and the rules of foreign trade in goods and services**

**Article 85** § 1. Who extorts a permit or other similar document concerning conditions for trade in goods or services with foreign countries, regulated by the provisions referred to in Art. 53 § 32 or 33, by fraudulently misleading the authority authorised to issue such documents, shall be punishable by a fine of up to 720 daily rates or imprisonment liberty for up to 2 years, or to both these penalties jointly.

§ 2. The same punishment is subject to who uses the document obtained in a way specified in § 1.

§ 3. Attempting a tax crime specified in § 1 or 2 is punishable. § 4. In the case of a minor, the perpetrator of the offence specified in § 1 or 2 is subject to a fine for a tax offence.

**Article 86<sup>115</sup>** § 1. Who, *failing to fulfill his customs obligation, imports or exports goods from abroad without presenting them* to the authority or customs declaration, which exposes the customs duty to depletion, shall be punishable by a fine of up to 720 daily rates or *imprisonment liberty, or both*.

§ 2. The same penalty shall apply to the perpetrator, if the customs smuggling concerns the goods in foreign trade, for which there is a non-tariff regulation.

§ 3. If the amount of duty exposed to depletion or the value of the goods in foreign trade, for which there is non-tariff regulation, is small values, the perpetrator of the prohibited act specified in § 1 or 2 is subject to a fine of up to 720 daily rates.

§ 4. If the amount of duty exposed to depletion or the value of the goods in foreign trade, for which there is a non-tariff regulation, no exceeds the statutory threshold, the perpetrator of the prohibited act specified in § 1 or 2 is subject to a fine for a tax offence.

§ 5. (repealed).

<sup>115</sup> **Art. 86.** § 1. Kto, nie dopełniając ciążącego na nim obowiązku celnego, przywozi z zagranicy lub wywozi za granicę towar bez jego przedstawienia organowi celnemu lub zgłoszenia celnego, przez co naraża należność celną na uszczuplenie, podlega karze grzywny do 720 stawek dziennych albo karze pozbawienia wolności, albo obu tym karom łącznie.

§ 2. Tej samej karze podlega sprawca, jeżeli przemyt celny dotyczy towaru w obrocie z zagranicą, co do którego istnieje reglamentacja pozataryfowa.

§ 3. Jeżeli kwota należności celnej narażonej na uszczuplenie lub wartość towaru w obrocie z zagranicą, co do którego istnieje reglamentacja pozataryfowa, jest małej wartości, sprawca czynu zabronionego określonego w § 1 lub 2 podlega karze grzywny do 720 stawek dziennych.

§ 4. Jeżeli kwota należności celnej narażonej na uszczuplenie lub wartość towaru w obrocie z zagranicą, co do którego istnieje reglamentacja pozataryfowa, nie przekracza ustawowego progu, sprawca czynu zabronionego określonego w § 1 lub 2 podlega karze grzywny za wykroczenie skarbowe.

§ 5. (uchylony)

**Article 87**<sup>116</sup> § 1. Who by misleading the authority authorised to inspect customs duty exposes the customs duty to depletion, shall be punishable by a fine of up to 720 daily rates or imprisonment liberty, or both.

§ 2. The same penalty shall be imposed on the perpetrator, if the customs fraud concerns the goods or services in foreign trade for which there is a non-tariff regulation.

§ 3. If the amount of customs duty exposed to depletion or the value of goods or services in foreign trade for which there is non-tariff regulation, is of low value, the perpetrator of the prohibited act specified in § 1 or 2 is subject to a fine of up to 720 daily rates.

§ 4. If the amount of duty exposed to depletion or the value of the goods or services in foreign trade for which there is non-tariff regulation, does not exceed the statutory threshold, the perpetrator of the prohibited act specified in § 1 or 2 is subject to a fine for a tax offence.

**Article 88**<sup>117</sup> § 1. Who, being entitled to use the clearance procedure goods covered by this procedure on the basis of a declaration made in the form of orally, does not re-export it or does not take any other action in order to close the procedure, in accordance with art. 215 sec. 1 of the Union Customs Code, thereby exposing the customs duty to depletion, is subject to a fine of up to 720 daily rates.

§ 2. The same penalty shall apply to the perpetrator, if the prohibited act concerns the goods in foreign trade, for which there is a non-tariff regulation.

§ 3. If the amount of duty exposed to depletion or the value of the goods in foreign trade, for which there is a non-tariff regulation, no exceeds the statutory threshold, the perpetrator of the prohibited act specified in § 1 or 2 is subject to a fine for a tax offence.

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<sup>116</sup> **Art. 87.** § 1. Kto przez wprowadzenie w błąd organu uprawnionego do kontroli celnej naraża należność celną na uszczuplenie, podlega karze grzywny do 720 stawek dziennych albo karze pozbawienia wolności, albo obu tym karom łącznie. § 2. Tej samej karze podlega sprawca, jeżeli oszustwo celne dotyczy towaru lub usługi w obrocie z zagranicą, co do których istnieje reglamentacja pozataryfowa

§ 3. Jeżeli kwota należności celnej narażonej na uszczuplenie lub wartość towaru lub usługi w obrocie z zagranicą, co do których istnieje reglamentacja pozataryfowa, jest małej wartości, sprawca czynu zabronionego określonego w § 1 lub 2 podlega karze grzywny do 720 stawek dziennych. § 4. Jeżeli kwota należności celnej narażonej na uszczuplenie lub wartość towaru lub usługi w obrocie z zagranicą, co do których istnieje reglamentacja pozataryfowa, nie przekracza ustawowego progu, sprawca czynu zabronionego określonego w § 1 lub 2 podlega karze grzywny za wykroczenie skarbowe.

<sup>117</sup> **Art. 88.** § 1. Kto, będąc uprawnionym do korzystania z procedury odprawy czasowej towaru objętego tą procedurą na podstawie zgłoszenia dokonanego w formie ustnej, nie dokonuje jego powrotnego wywozu lub nie podejmuje innych czynności w celu zamknięcia procedury, zgodnie z art. 215 ust. 1 unijnego kodeksu celnego, przez co naraża należność celną na uszczuplenie, podlega karze grzywny do 720 stawek dziennych.

§ 2. Tej samej karze podlega sprawca, jeżeli czyn zabroniony dotyczy towaru w obrocie z zagranicą, co do którego istnieje reglamentacja pozataryfowa.

§ 3. Jeżeli kwota należności celnej narażonej na uszczuplenie lub wartość towaru w obrocie z zagranicą, co do którego istnieje reglamentacja pozataryfowa, nie przekracza ustawowego progu, sprawca czynu zabronionego określonego w § 1 lub 2 podlega karze grzywny za wykroczenie skarbowe



**Article 89**<sup>118</sup> § 1. Who uses the goods changes the purpose, purpose or does not keep other condition on which the release of the goods in whole or in part depends from customs duties, in particular from customs duties, or the application of a zero, reduced one or a preferential duty rate, is subject to a fine of up to 720 daily rates.

§ 2. The same penalty shall apply to the perpetrator, if the prohibited act applies to goods or services in foreign trade, which were exempted from non-tariff rationing.

§ 3. If uncollected duty or value of goods or services in circulation with foreign countries, which are exempt from non-tariff regulation, does not exceed statutory threshold, the perpetrator of the prohibited act specified in § 1 or 2 is subject to a fine for a tax offence.

**Article 90**<sup>119</sup> § 1. Who removes goods or means of transport from customs supervision, shall be punishable by a fine of up to 720 daily rates or imprisonment imprisonment up to 3 years, or to both these penalties jointly.

§ 2. The same punishment shall be, who without the consent of the authorised body destroys, damages or removes the Customs seals.

§ 3. In the case of a minor, the perpetrator of the offence specified in § 1 or 2 is subject to a fine for a tax offence.

**Article 91**<sup>120</sup> § 1. Who acquires, stores, transports, sends or transfers goods constituting the subject of a prohibited act specified in art. 86–90 § 1, or helps in its disposal, or

<sup>118</sup> **Art. 89.** § 1. Kto w użyciu towaru zmienia cel, przeznaczenie lub nie zachowuje innego warunku, od którego uzależnione jest zwolnienie towaru w całości lub w części od należności celnej, w szczególności od cła, albo zastosowanie zerowej, obniżonej lub preferencyjnej stawki celnej, podlega karze grzywny do 720 stawek dziennych.

§ 2. Tej samej karze podlega sprawca, jeżeli czyn zabroniony dotyczy towaru lub usługi w obrocie z zagranicą, które zwolniono od reglamentacji pozataryfowej.

§ 3. Jeżeli niepobrana należność celna lub wartość towaru lub usługi w obrocie z zagranicą, które zwolniono od reglamentacji pozataryfowej, nie przekracza ustawowego progu, sprawca czynu zabronionego określonego w § 1 lub 2 podlega karze grzywny za wykroczenie skarbowe

<sup>119</sup> **Art. 90.** § 1. Kto usuwa towar lub środek przewozowy spod dozoru celnego, podlega karze grzywny do 720 stawek dziennych albo karze pozbawienia wolności do lat 3, albo obu tym karom łącznie. § 2. Tej samej karze podlega, kto bez zgody uprawnionego organu niszczy, uszkadza lub usuwa zamknięcie celne. § 3. W wypadku mniejszej wagi, sprawca czynu zabronionego określonego w § 1 lub 2 podlega karze grzywny za wykroczenie skarbowe.

<sup>120</sup> **Art. 91.** § 1. Kto nabywa, przechowuje, przewozi, przesyła lub przenosi towar stanowiący przedmiot czynu zabronionego określonego w art. 86–90 § 1, lub pomaga w jego zbyciu albo ten towar przyjmuje lub pomaga w jego ukryciu, podlega karze grzywny do 720 stawek dziennych albo karze pozbawienia wolności do lat 3, albo obu tym karom łącznie.

§ 2. Kto nabywa, przechowuje, przewozi, przesyła lub przenosi towar, o którym na podstawie towarzyszących okoliczności powinien i może przypuszczać, że stanowi przedmiot czynu zabronionego określonego w art. 86–90 § 1, lub pomaga w jego zbyciu albo ten towar przyjmuje lub pomaga w jego ukryciu, podlega karze grzywny do 720 stawek dziennych.

§ 3. Jeżeli kwota należności celnej lub wartość towaru w obrocie z zagranicą, co do którego istnieje reglamentacja pozataryfowa, jest małej wartości, sprawca czynu zabronionego określonego w § 1 podlega karze grzywny do 720 stawek dziennych.

accepts the goods or helps to hide them, shall be punishable by a fine of up to 720 daily rates or imprisonment imprisonment up to 3 years, or to both these penalties jointly.

§ 2. Who acquires, stores, transports, sends or transfers the goods, which based on the surrounding circumstances should and may assume that it is the subject of the prohibited act specified in Art. 86–90 § 1, or helps in his sale, or accepts the goods or helps to hide them, is subject to a fine of up to 720 daily rates.

§ 3. If the amount of customs duty or the value of the goods traded with foreign countries, what to which there is a non-tariff regulation, is of little value, the perpetrator of the act prohibited specified in § 1 is subject to a fine of up to 720 daily rates.

§ 4. If the amount of customs duty or the value of the goods traded with foreign countries, what to which there is a non-tariff regulation does not exceed the statutory threshold, the perpetrator of the prohibited act specified in § 1 or 2 is subject to a fine for a tax offence.

**Article 92**<sup>121</sup> § 1. Who, by providing data inconsistent with the actual state or concealing the actual state of affairs misleads the competent authority, exposing the undue repayment of duty or remission of duty owed to pay, shall be punishable by a fine of up to 720 daily rates or imprisonment freedom, or both penalties together.

§ 2. If the amount exposed to undue repayment or remission of customs duty is of low value, the perpetrator of the prohibited act specified in § 1 is subject to a fine of up to 720 daily rates.

§ 3. If the amount at risk of undue repayment or remission of customs duties does not exceed the statutory threshold, the perpetrator of the prohibited act specified in § 1 is subject to a fine for a tax offence.

**Article 93**<sup>122</sup> § 1. (repealed).

§ 2. Who grossly violates the provisions of the customs law in terms of conditions the operation of a free zone or customs warehouse, is subject to a fine of up to 240 daily rates.

§ 3. The penalty specified in § 2 is also the one who flagrantly violates the provisions in terms of the conditions for running a temporary storage warehouse.

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§ 4. Jeżeli kwota należności celnej lub wartość towaru w obrocie z zagranicą, co do którego istnieje reglamentacja pozataryfowa, nie przekracza ustawowego progu, sprawca czynu zabronionego określonego w § 1 lub 2 podlega karze grzywny za wykroczenie skarbowe

<sup>121</sup> § 2. Jeżeli kwota narażona na nienależny zwrot lub umorzenie należności celnej jest małej wartości, sprawca czynu zabronionego określonego w § 1 podlega karze grzywny do 720 stawek dziennych.

§ 3. Jeżeli kwota narażona na nienależny zwrot lub umorzenie należności celnej nie przekracza ustawowego progu, sprawca czynu zabronionego określonego w § 1 podlega karze grzywny za wykroczenie skarbowe.

<sup>122</sup> **Art. 93.** § 1. (uchylony)

§ 2. Kto rażąco narusza przepisy prawa celnego w zakresie warunków działalności wolnego obszaru celnego lub składu celnego, podlega karze grzywny do 240 stawek dziennych.

§ 3. Karze określonej w § 2 podlega także ten, kto rażąco narusza przepisy w zakresie warunków prowadzenia magazynu czasowego składowania.

**Article 94**<sup>123</sup> § 1. Who, contrary to the obligation, does not provide oral explanations or explanations relevant for customs control or does not provide the required ones documents relating to foreign trade in goods or services, is subject to a fine of up to 720 daily rates.

§ 2. The same punishment shall be subject to the person who is otherwise entitled to carrying out control activities or customs supervision prevents or hinders performance of an official activity, in particular who refuses to perform an activity preparatory measures for customs control or fails to fulfill the immediate obligation delivery of the goods to the place indicated by the customs authority.

§ 3. In the case of a minor, the perpetrator of the offence specified in § 1 or 2 is subject to a fine for a tax offence.

**Article 95**<sup>124</sup> § 1. Whoever, contrary to the obligation, does not keep documents importance for customs control, is subject to a fine of up to 180 daily rates.

§ 2. In the case of a minor, the perpetrator of the offence specified in § 1 is subject to a fine for a tax offence.

## bb. Examples and precedents

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<sup>125</sup> and national authorities in administrative procedures (especially on the expenditure side, for example in the case of subsidies). It can be distinguished between:

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

<sup>123</sup> **Art. 94.** § 1. Kto wbrew obowiązкови nie udziela wyjaśnień ustnych lub na piśmie mających znaczenie dla kontroli celnej lub nie udostępnia wymaganych dokumentów dotyczących obrotu z zagranicą towarami lub usługami, podlega karze grzywny do 720 stawek dziennych.

§ 2. Tej samej karze podlega ten, kto w inny sposób osobie uprawnionej do przeprowadzania czynności kontrolnych lub dozoru celnego udaremnia lub utrudnia wykonanie czynności służbowej, w szczególności kto odmawia wykonania czynności przygotowawczych do kontroli celnej lub nie dopełnia obowiązku niezwłocznego dostarczenia towaru do miejsca wskazanego przez organ celny.

§ 3. W wypadku mniejszej wagi, sprawca czynu zabronionego określonego w § 1 lub 2 podlega karze grzywny za wykroczenie skarbowe.

<sup>124</sup> **Art. 95.** § 1. Kto wbrew obowiązкови nie przechowuje dokumentów mających znaczenie dla kontroli celnej, podlega karze grzywny do 180 stawek dziennych.

§ 2. W wypadku mniejszej wagi, sprawca czynu zabronionego określonego w § 1 podlega karze grzywny za wykroczenie skarbowe.

<sup>125</sup> Krawczak 2021.

**(1) Examples for Frauds**

**114** Fraud may include primarily damage to the budget. There are two ways the budget may be damaged. First by revenue frauds (aa.) and secondly by expenditure-related budget fraud (bb.).

**(a) Revenue frauds**

**115** Revenue frauds are manifold. First, the scheme should be identified. For this, it is worthwhile to compare the suspected behaviour with known behaviour patterns. From a legal as well as a police point of view, the overview of crime patterns is useful. VAT fraud may be concerned as well as customs duties fraud. A recent dissertation pointed out that:

**(aa) VAT Fraud Scenery**

**116** VAT frauds are quite common and well known in Poland. Just recently in April 2023 the Central Police Bureau for Investigation reported that big carousel group had been identified. It reported that 22 people were suspected of having operated within four organised crime groups, inflicted by the CBŚP and the West Pomeranian division of the National Prosecutor's Office. The general public was informed that there are over 350 suspects in the whole case and the losses of the State Treasury as a result of the activities of gangs are estimated at approx. PLN 140 million, and the amount for which VAT invoices were issued is approx. PLN 1.5 billion.<sup>126</sup> Interestingly the case a connection to Spain, which shows that the case is transnational and of European nature.

**117** If these kind of cases should be investigated faster and easier in the future, Poland will need to decide to opt-in to the EPPO mechanism because VAT frauds are one of the main businesses of the EPPO and it has already reached several convictions in Germany, Italy and had a case that related to Poland in the Frankfurt Regional Office of the EPPO, which showed that criminals use Poland as a kind of hiding in VAT fraud cases (see → German Compendium).

**118** Another Case-Example that we found in Judgement Databases reveals that the smuggling of cigarettes and the exemption from intra-community duties is a common revenue fraud, which would make it more than worth that Poland enter the EPPO mechanism.<sup>127</sup>


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<sup>126</sup> Polish Central Police Investigation Bureau, News 16.5.2023, online: <https://cbssp.policja.pl/cbs/aktualnosci/231150,22-osoby-podejrzane-do-karuzeli-podatkowej.html>. Accessed 6 August 2024.

<sup>127</sup> Today, Polish national authorities are still struggling with international legal aid requests and European Investigation Orders in these cases, where if they were part of the EPPO they could simply use the mechanism of Articles 31 and 32 of the EPPO Regulation, falling back on their same national prosecutors as before, who would be delegated to Luxembourg “only on paper” as double-had prosecutors for the time they investigate on behalf of the EPPO.

Thus closed case showed the same problems and is another example for a national VAT fraud case and its handling by the Polish justice: **119**

*Case Study 1: VAT Fraud Schemes/Examples*

	<b>VAT Fraud Schemes/Examples</b>
<p>This case relates to a national VAT fraud case and judgement:</p>	
<p><b>Sąd Rejonowy w Toruniu z 2019-10-21</b>Data orzeczenia:<b>21 października 2019</b>Data publikacji:<b>9 stycznia 2020</b>Sygnatura:<b>II K 1350/18</b>Sąd:<b>Sąd Rejonowy w Toruniu. [ District Court in Toruń, 2nd Criminal Division].</b></p>	
<p>“As a result of a tax audit carried out at the tax office, it was revealed that the taxpayer overstated the input tax to be deducted in the total amount of PLN 235,322 despite not documenting the right to reduce the tax due by the input tax, which resulted in a depletion of the tax on goods and services for the months from February 2012 to February 2013 year in the total amount of PLN 125,464. The tax inspection authority clearly established that the Ministry of Economy had given untruths in the VAT-7 declarations submitted to the Head (...) in T..”</p>	
<p><b>Sąd Rejonowy w Inowrocławiu z 2016-04-15</b>Data orzeczenia:<b>15 kwietnia 2016</b>Data publikacji:<b>4 kwietnia 2017</b>Data uprawomocnienia:<b>27 października 2016</b></p>	
<p>Example of a case with several defendants and many evidence requests, District Court in Inowrocław, VI Criminal Department.</p>	
<p><b>Court of Appeal in Gdańsk of 2021-09-30</b>Judgment date:<b>September 30, 2021</b>Date of publication:<b>June 30, 2022</b>Validation date:<b>September 30, 2021</b>Signature:<b>II AK 340/20.</b></p>	
<p>This case concerned VAT deductions in criminal matters related to cigarettes, smuggling and customs offences.</p>	
<p><b>District Court in Lublin of 2022-03-31</b>Judgment date:<b>31 mark 2022</b>Date of publication:<b>July 20, 2022</b>Signature:<b>IV K 369/20</b>Court:<b>District Court in Lublin</b></p> <p>“In the period from June 2017 in B. and other towns in the Republic of Poland, among others in N., Ś., St. there was a criminal group involved in the smuggling of cigarettes, omitting the applicable fees regulated by law, across the border with Ukraine across the river B. At that time, the group was led by JM. The group consisted of different people</p>	

in different periods, including KD (1) from April 2018. Also participated in the group KD (3), JD, SM, SP and other fixed and undefined persons. On the Ukrainian side, OS, as well as other persons not covered by these proceedings, participated in the smuggling of cigarettes. The operating scheme of the group consisted in the OS organizing tobacco products in Ukraine. Cigarettes were then delivered by fixed and undetermined persons across the B River on dedicated pontoons. The collection on the Polish side of the border was initially handled by JM and other persons acting on his instructions. Then the cars transported the cigarettes to the agreed places where they were hidden, after which the cigarettes were placed on the market.”

*Nota bene:* This last judgement shows how the new look (layout) of judgements in Poland shall be from now on. It contains a clear division of facts, evidence, tools of investigations, justification etc.].

### **(bb) Customs Revenue Case**

**120** Customs Revenue Cases often relate to typical customs duties and result in fraud if these duties are evaded.

**121** On May, 4th 2023 the Polish Criminal Investigation Bureau informed the general public that it distangled a smuggling and duties evasion case involving cigarettes:

“The findings of the officers show that the organized crime group has been operating since 2015 not only in Poland, but also abroad. According to investigators, its members smuggled tobacco products from Poland to Great Britain, Sweden and France. Illegal cigarettes were produced in Poland or smuggled from Belarus. The cigarettes were then smuggled to other countries through registered transport companies. As a result of the operation of an organised criminal group, the State Treasury’s losses due to failure to pay excise duty and VAT were estimated at approximately PLN 200 million.

Actions in which CBŚP and KAS officers participated were carried out in the following voivodeships: Lubelskie, Lubuskie, Mazowieckie, Kujawsko-Pomorskie, Pomorskie and Podlaskie. As a result, 25 people were detained and 47 houses, flats, offices and other facilities used by the suspects were searched, securing various types of documents, including notarial deeds, bank statements, accounting documentation, but also 3 devices for the production of cigarettes, cigarettes without Polish excise stamps and semi-finished products for their production and packaging. In addition, the officers seized 3 units of firearms, ammunition and narcotics.

In the Lublin Branch Office of the Department for Organized Crime and Corruption of the National Prosecutor’s Office in Lublin, 24 detainees were charged with participation in an organized criminal group, including one person charged with leading

this group. The detained persons are also suspected of fiscal crimes related to trade, intra-Community deliveries and exports of tobacco products for which excise duty and VAT have not been paid in Poland. In addition to the above-mentioned, a family member of one of the suspects was charged with money laundering and obstruction of justice. Suspects' property with a total value of over PLN 10 million, including money in the amount of over PLN 1.3 million, was secured against the penalties and punitive measures imposed on the suspects.

On the basis of the collected evidence, the court imposed a preventive measure in the form of pre-trial detention for 3 months against 10 persons.”<sup>128</sup>

**Comment:** What do all these cases listed above have in common? They would, if Poland would be part of the EPPO potentially fall into the scope of the EPPO (nota bene: Art. 22 and 23 EPPO Regulation). Until then, the Polish Criminal Prosecution Offices investigate these cases under the heavy burden of the mutual recognition laws, the international legal assistance, which is quite slow and complicated as it is mostly still paper-based, without personal contact and decided in the mills of justice. The EPPO mechanism therefore needs intercession in Poland and has to advertise on its own behalf. Above all, however, Poland should commission research into the simplifications of the judiciary in the field of combating fraud of a cross-border nature if Poland were to participate in the EPPO. The case also shows the importance for the EPPO of seeking connections to external partners at an early stage.



## (b) Expenditure frauds

### (aa) Subsidy Fraud Scenery


A recent case (2023) got a lot of attention. The Polish public prosecutor's office in Gdańsk is said to have uncovered a subsidy fraud in the amount of 11 million zloty (approx. 2,432,485.00 euros). **122**

An attachment has already been raised. On 13 April 2023 a message from the Polish Anti-Corruption Bureau was made public. **123**

Let us take a critical look at the case and first present the self-portrayal of the authority. Then we analyse the investigative tools used, ask how the public prosecutor's office found out about the crime of subsidy fraud. **124**

<sup>128</sup> Central Police Investigation Bureau, News 4.5.23, online: <https://cbsp.policja.pl/cbs/aktualnosci/229016, Nielegalne-papierosy-byly-przemycane-do-krajow-UE-i-UK-rozbity-gang-akcyzowy.html>. Accessed 6 August 2024.

125 *Case Study 2: Subsidy Fraud Schemes/Examples*

	<p><b>Subsidy Fraud Schemes/Examples</b></p>
<p>This case relates to a national subsidy fraud case.</p> <p>“An indictment against members of a criminal group extorting EU subsidies has been filed at the District Court in Gdańsk. The defendants include former members of the management board of the Pomeranian Special Economic Zone Ltd., researchers from the Gdańsk University of Technology and a former local government official. The investigation was conducted by officers of the CBA Regional Office in Gdańsk under the supervision of the Regional Prosecutor’s Office in Gdańsk.</p> <p><b>Multi-million zloty frauds</b></p> <p>The indictment was filed against 22 persons, 11 of whom acted as part of an organised crime group.</p> <p>The indictment includes former members of the management board of the Pomeranian Special Economic Zone Ltd., a former deputy director of the Department of Regional Programmes of the Office of the Marshal of the Pomorskie Voivodeship and two academics of the Gdańsk University of Technology.</p> <p>The perpetrators provided inaccurate data on the financial standing of the companies applying for grants, false information about the co-participating entities and overstated the costs of project implementation in their applications for funding for new technology projects.</p> <p>The total amount of defrauded funds amounted to over PLN 11 million. Ultimately, the perpetrators intended to defraud another PLN 112 million.</p> <p>Furthermore, members of the criminal group committed a crime of fraud to the benefit of the Pomorska Special Economic Zone Ltd., causing damage to it of over PLN 4 million, and attempted to defraud two banks for over PLN 10 million.</p> <p><b>Acting to the detriment of the company and abuse of power</b></p> <p>The former members of the management board of the Pomeranian Special Economic Zone Ltd. were charged with acting negligently towards the company’s assets which caused damage to the property of the entity they managed to the amount of over PLN 6 million and were found to have brought a direct threat of damage of over PLN 25 million. The mismanagement of the board was connected with the failure to apply</p>	



the provisions of the Public Procurement Law and the conclusion of contracts that were not economically reasonable.

The local government official was accused of exceeding his powers and failing to fulfil his duties by changing the content of the post-control report in favour of the Pomeranian Special Economic Zone Ltd. in connection with the control carried out in relation to the subsidy for the purchase of equipment for the Gdańsk Science and Technology Park managed by the Pomeranian Special Economic Zone Ltd.

Hundreds of interrogations, thousands of documents – multi-pronged CBA investigation

In the course of the multi-threaded investigation, officers of the Central Anti-Corruption Bureau Regional Office in Gdańsk carried out over one hundred searches, secured over 200 data carriers, and questioned several hundred witnesses, experts and specialists. They conducted over 2.5 thousand visual inspections of secured objects and obtained documents. Motions and European investigation warrants were filed for procedural activities carried out outside Poland. The material gathered contains over 3 million cards. [...]”<sup>129</sup>

The Prosecutor filed different offences, e.g. Art. 286 and 294 Criminal Code.

126

#### **“Criminal liability of perpetrators**

Members of the criminal group have been charged with offences under Article 286 § 1 of the Criminal Code in connection with Article 294 §1 of the Criminal Code and Article 299 § 1, § 5, and § 6 of the Criminal Code. These acts are punishable by up to 10 years of imprisonment.

The former members of the management board of the Pomeranian Special Economic Zone Ltd. and the local government official face similar liability in connection with the qualification of their acts under Articles 296 § 1 and § 3 of the Criminal Code and 231 § 2 of the Criminal Code.

The researchers face a penalty of up to 8 years of imprisonment in connection with the allegation that they committed acts under Article 228 § 1 of the Criminal Code.”<sup>130</sup>


<sup>129</sup> Central Anti-Corruption Bureau, News, online: <https://www.cba.gov.pl/en/news/1029,11-million-zlotys-of-defrauded-subsidies-an-indictment-is-issued.html>. Accessed 6 August 2024.

<sup>130</sup> Central Anti-Corruption Bureau, News, online: <https://www.cba.gov.pl/en/news/1029,11-million-zlotys-of-defrauded-subsidies-an-indictment-is-issued.html>. Accessed 6 August 2024.

**(bb) EARDF Funding**

**127** The following case could easily develop into a criminal case if the sums were higher or the conduct carried out with criminal intent. Expenditure frauds often relate to tendering procedures (procurement frauds) or subsidy frauds i.e. Situations in which the individuals get money from the State or the Union budget to achieve goals (e.g. policy goals).

**128** *Case Study 3: EARDF Funding – A Case, which Involved ARMA*

	<b>EARDF Funding</b>
<p>Ref. act I ACa 1171/15</p> <p>JUDGMENT</p> <p>ON BEHALF OF THE REPUBLIC OF POLAND</p> <p>1. dismisses the appeal;</p> <p>2. Orders (...) the limited liability company with its registered office in K. to the Agency for Restructuring and Modernization of Agriculture with its registered office in W. the amount of PLN 10,800 (ten thousand eight hundred) as reimbursement of the costs of legal representation in the appeal proceedings. [...] [The Defendant, a farmer, who was granted money from a grant under the EARDF Funding, appealed against a judgement that found him</p> <p>Ref. act I ACa 1171/15</p> <p>[Summary of Facts and JUSTIFICATION]</p> <p>The case dealt with limited liability company with its registered office in K. <b>applied for an award from the Agency for Restructuring and Modernization of Agriculture</b> in W. the amount of PLN 19,754,840.80 [...].</p> <p>The agreement concerned the implementation of the operation under the program “Improvement of the competitiveness of the forestry and agricultural sector” measures “increasing the added value of basic agricultural and forestry production”. Under the contract, the claimant undertook to carry out the operation in the <b>form of the construction of a meat processing plant</b> in K. and the defendant undertook to pay the claimant, in accordance with the terms and conditions specified in the agreement and on the basis of the submitted application for payment, assistance in the amount of PLN 19,754,840.80, but not more than 40% of the incurred eligible costs of the operation. The funds came from (...) the <b>Agricultural Fund</b> for (...) O. (...).</p>	

[...]

i.e. in buildings that were built under a co-financing agreement, while the content of the agreement concluded that the aid granted is individualized and is granted only to a specific entrepreneur in return for the fulfillment of specific obligations by him, and is not transferred to the “production plant”. The defendant also argued that during the verification of the application, the fact of the plaintiff’s cooperation with (...) a limited liability company was revealed in the field of meat cutting and renting some rooms in the buildings of the processing plant. According to the defendant, this meant that the reported operation was not used solely for the purposes of the plaintiff’s business and was not used exclusively by her – contrary to § 5 sec. 1 point 4b of the agreement and art. 72 of Council Regulation (EC) No 1698/2005.

The claimant (acting as a beneficiary) and ARiMR concluded on January 11, 2010 an aid granting agreement No. (...) - (...) - (...).

[...]

[Then, t]he beneficiary undertook to implement the operation by means of which the objective of building a meat processing plant in K. was to be achieved. ARMA undertook to pay the beneficiary, under the conditions specified in the agreement and on the basis of the submitted application for payment, aid in the amount of PLN 19,754,840.80, but not more than 40% of the incurred eligible costs of the operation. For its part, the beneficiary undertook to meet a number of conditions, including in terms of hygiene and sanitary standards.

[The farmer was granted the money he needed to achieve the aim of the contract in the following time].

[...]

In the letter of October 26, 2010 of the Voivodship Inspector for Environmental Protection in Ł., it was stated that the claimant meets the requirements of the processing plant in K. environmental requirements.

[...]

The **District Court established that** in a letter of 11 January 2011, ARMA refused to make the payment, citing as the reason for its decision, in the first place, the fact of transferring part of the enterprise and conducting business activity by third parties in the plant built as part of the support provided for the claimant (lease agreement 20 m<sup>2</sup> for office activities of the tenant’s branch, concluded on January 26, 2010 with (...) sp. z oo and concluded on September 20, 2009 with (...) sp. z oo a lease agreement of 756 m<sup>2</sup>- gutter rooms and social rooms), which **constituted a violation of the provisions of the contract and the provisions of Council Regulation (EC) No 1698/2005**. In addition, ARMA pointed out that the claimant failed to comply with

the provisions of the contract concluded by the parties due to **deficiencies in the documentation, which, despite being requested to provide explanations twice, were not supplemented.**

[...] In the **final report of July 3, 2013, the European Fraud Office ( OLAF )** stated that the tender for the construction and outfitting of a slaughterhouse in K. conducted by the claimant had been manipulated, because three companies that participated in the tender had trade relations with each other. Based on the results of the investigation, OLAF concluded that there were no grounds for paying the amount of aid to the claimant.

The **District Court determined that the meat processing plant in K. owned by the claimant is the largest facility of this type in Poland.** It covers 22% of the demand for pork on the domestic market. Initially, the claimant produced meat from 8,000 pigs per day, currently the production is at the level of 16,000 per day, with the employment level of 2,300 employees.

[...] **[Subsequently the evidence of the courts was summarised:]**

The District Court also relied on the testimonies of witnesses JJ and MM (2) and the testimonies of the president of the claimant company given as a party (...) to the extent that they were consistent with the other evidence collected in the case. However, he did not believe them to the extent that these persons claimed that the plaintiff had met all the requirements authorising her to demand payment of the benefit, and the actions of the defendant were a manifestation of reluctance or a campaign, because the circumstances of the case did not give grounds for formulating such conclusions.

The Regional Court pointed out that they did not constitute the basis for making factual findings of the testimony of the witness AP, as their content was in fact an opinion on the dispute between the parties, and did not concern facts.

[...] The **District Court also dismissed the request for evidence from an expert opinion in the field of European Structural Funds** on the correctness and compliance with the procedures of the verification process of the payment application, completeness of the documentation submitted by the claimant and completed during the verification activities carried out by the defendant, implementation of the material scope of the investment agreement. With regard to the circumstances of the verification process of the payment application in accordance with the procedures, he referred to the arguments cited when assessing the legitimacy of taking evidence from the testimony of JK (2).

**[...] [The involvement of OLAF and the importance of its Report for Evidence]**

With regard to the issues raised in the report of the European Anti-Fraud Office (cards 863-887), the District Court stated that pursuant to Art. 9 sec. 2 of Regulation No. 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office ( OLAF) these reports shall be drawn up taking into account the procedural requirements laid down in the national law of the Member State concerned. Reports drawn up on such a basis shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use is needed, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They are subject to the same assessment rules as those applicable to administrative reports drawn up by national administrative controllers and have the same value as those reports. It follows from the above that the report in question should be treated as normal evidence in the case, an official document, with all its consequences. Considering its content, OLAF, the District Court saw no reason to question the conclusions of that report. Their credibility was also not undermined in any way by the claimant, within the scope of her evidence initiative. As already mentioned in the introduction, the consequence of bringing a civil action in this case is the possibility for the Court to examine the entirety of the facts of the case. The claimant cannot raise the objection that the defendant did not ask her for explanations regarding the irregularities indicated in the OLAF report or that these issues were not the basis for the decision to refuse to grant aid, because the present proceedings are not pending before an administrative court and are not limited to examination of the legality of decisions. As part of OLAF 'sof the proceedings, the claimant had the right to submit a comment and present her position, and she exercised this right. Moreover, the Regional Court noted that accepting the plaintiff's reasoning could lead to a paradoxical situation where the court would award the amount of aid from the defendant, citing the fact that the allegation of fraud had not been raised during the aid granting procedure, only for the defendant to subsequently had to initiate proceedings to recover the amount of the subsidy from the claimant. The content of the report showed that the claimant violated the provisions of EU law by submitting an investment for settlement under the EAFRD program, the price of which was manipulated, which excludes the granting of co-financing, and in the event that the funds have already been paid out, obliges them to return them. This circumstance also spoke in favor of recognizing [...] Finally, the investigation carried out by OLAF showed that the tendering procedure for the construction and fitting out of the slaughterhouse in K.has been manipulated. The finding of the above circumstances in the course of the proceedings had to result in the recognition that the plaintiff's claim against the defendant for payment of assistance in the amount of PLN 19,754,840.80 did not deserve to be considered.

[...] In response, the defendant requested that the plaintiff's appeal be dismissed and that the applicant be ordered to pay the costs of the proceedings for the appeal instance, in accordance with the prescribed standards.

The Court of Appeal considered as follows:

The appeal is not upheld. The District Court made the correct findings of fact, which the Court of Appeal accepts as its own. He also made a very thorough and accurate legal analysis. [...] <sup>131</sup>

### (c) Corruption offences

- 129** Corruption offences damage the EU budget as they lead to the wrong distribution of sums paid from the Union's budget to achieve legally goals or policy aims. The problem is that people of the Member State need to decide about the allocation of sums. These officials are potential victims and potential perpetrators of the EU offence against Fraud. The Polish Judgements portal does not offer many decisions that could directly be cited, but newspapers have reported such cases and official statistics as well – the individuals often do not want the judgements to be published – but this should definitely be made transparent and public as it concerns a fundamental issue of the Member States and the EU.

### (d) Money laundering cases

- 130** Europol has reported quite frequently from cases that involved Polish authorities. In this particular case the Budapest Metropolitan Police (*Budapesti Rendőr-főkapitányság*) supported Europol. They investigated a criminal organisation, which was involved in money laundering and perpetrating fraud using administrative documents. <sup>132</sup>


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<sup>131</sup> Court of Appeal of 2016-05-31 Date of ruling: 31 May 2016 Date of publication: 4 August 2016, Date of decision: 31 May 2016, Ref: I ACa 1171/15/Sąd Apelacyjny w Warszawie z 2016-05-31 Data orzeczenia: 31 maja 2016 Data publikacji: 4 sierpnia 2016, Data uprawomocnienia: 31 maja 2016, Sygnatura: I ACa 1171/15.

<sup>132</sup> Europol, Press Release, 30.5.2022, Five arrests in Poland for money laundering across three continents, About EUR 44 million passed through bank accounts linked to the criminal network, <https://www.europol.europa.eu/media-press/newsroom/news/five-arrests-in-Poland-for-money-laundering-across-three-continents>. Accessed 6 August 2024.

**(2) Information about selected judgements decided by the courts in the PIF crimes area***Case Study 4: Fraud and Tax offences*

131

	Case Studies
<p>In the following excerpts and information from the <b>judgements are presented:</b></p> <ul style="list-style-type: none"> <li>- Examples for tax code offences:</li> </ul> <p>District Court in Wrocław, 2019-09-17, III K 206/18 (Sąd Okręgowy we Wrocławiu) Fraud connected with the defendant's scientific activity (defendant misrepresented his management of EU-funded research and repeatedly declared the same working time on several research projects). One of the pieces of evidence was the OLAF report Article art. 297 § 1 and 2 of Penal Code</p> <p>Judgment of the Provincial Administrative Court of Krakow (wyrok Wojewódzkiego Sądu Administracyjnego w Krakowie), 2019-04-26; III SA/Kr 48/19 Tax offences and administrative proceedings Article 207, 210 § 1 and 4 of Financial/Fiscal Code (Ordynacja podatkowa); violation of the EU rules with export and import from China</p>	

**c) Hypothetical consideration: Actions if “Decision to open a case” (Regulation + Rules in IRP, 2020.003 EPPO)**

If he/she decides to initiate an investigation he/she **must note this in the case management system (Art. 45 para 1 EPPO Regulation, 38 IRP<sup>133</sup>)**. In addition, the numerous obligations to provide information from Art. 24 para 3 to 8. **132**

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.** **133**

Specific information are presented by the IRP, Art. 41 relates to the initiation according to Art. 26 EPPO Regulation: Article 41: Decision to initiate an investigation or to evoke a case. **134**

**d) Hypothetical Consideration: Consequences to the “Decision to open a case”**

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 ie a criminal liability and the elements that **135**

<sup>133</sup> Internal Rules of Procedure of the EPPO, online: <https://www.epo.europa.eu/sites/default/files/2020-12/2020.003%20IRP%20-%20final.pdf>. Accessed 6 August 2024.

constitute the whole concept of crime in general. A PIF offence will need to be assessed by the relevant conditions for a crime ie the elements of a particular PIF offence of the present country.

- 136** The EDPs will need to focus on the *actus reus* and the *mens rea* conditions of the relevant offence.<sup>134</sup> In other words: What German criminal justice calls “*Tatbestand*”<sup>135</sup>, in relation to the German substantive criminal law enshrined in the Criminal Code or partly in ancillary (not: secondary) criminal law needs to be assessed according to the requirements that the legislator set up, which includes the concretization of the objective elements (*actus reus*, see above) of the crime<sup>136</sup>, the subjective elements (*mens rea*, see above)<sup>137</sup> as well as the unlawfulness of the conduct (i.e. no written or unwritten justifications/justificatory defences<sup>138</sup> 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.<sup>139</sup>
- 137** Similar or the same conditions exist in relation to the general part of the offence (i.e. a PIF offence, Art. 22 EPPO Regulation, Art. 1–5 PIF Directive) in almost every country in the EU, with a divide running where common law differs and civil law countries encounter.
- 138** In addition, it is important to determine how the indictment should look like: Are several people involved and is there not an isolated act, but possibly a complicity or an indirect perpetrator? In addition, the questions of the criminal liability of a participant must be clarified in order to be able to determine whether an incitement to a PIF offence or an abetting to such an act exists.<sup>140</sup>
- 139** If there is no success to a crime, the question arises as to whether a criminal offence can be determined because of the attempt of a PIF offence.<sup>141</sup>

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<sup>134</sup> See for the common terms in comparing criminal law and criminal procedure *Child/Spencer et al 2022*, Chapter 4 et seq., Chapter 5, Chapter 15 on Fraud (relevant for Ireland, Malta, Cyprus).

<sup>135</sup> *Bohlander 2009*, pp. 29 et seq.

<sup>136</sup> 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/Weisser 2022*, pp 57–94.

<sup>137</sup> See only out of many *Safferling 2008*, who points at the fact that the traditional german terms are “intention” and culpability. But even if the terminology is not congruent and differs in detail, it can be said that these are elements of the subjective offence that occur in continental European criminal codes and are also required separately by the PIF Directive for PIF offences.

<sup>138</sup> This is a worldwide recognised condition as a basic element of the concept of crime, see *Stasi 2021*, pp 31–47.

<sup>139</sup> See *Eser 1987*, pp 17–65, on the historical implications and the differences between the common law and civil law approach; *Bohlander 2009*, pp 29 et seq., 77 et seq. (*Rechtswidrigkeit*), 115 et seq. (“Guilt and Excusatory Defences”).

<sup>140</sup> *Hauck*, EU Fraud Commentary, Commentary on PIF Directive, Art. 5 [soon to be published]. For the various translations of these terms see the EUR-Lex database translations of the PIF Directive 2017/1371.

<sup>141</sup> *Hauck*, EU Fraud Commentary, Commentary on PIF Directive, Art. 5 [soon to be published].



For all of these questions and purposes, the EDPs can additionally to the present **140** presentations, analysis and manual references rely on the existing legal commentaries on the penal codes of the EU Member States and the code of criminal procedures of the Member States, which participate in the EPPO, insofar as national law is concerned, e.g. in the concept of a criminal offence or the start of an investigation.

**2. Hypothetical Considerations for Article 27 EPPO in Poland?**

a) Hypothetical Considerations for Provisions with a Precluding Effect for the Right of Evocation of the EPPO, para 2 .....	139	cc. Abatement of action (dispense with prosecution) .....	142
aa. Statute of limitations, Polish Criminal Code.....	139	dd. Ne bis in idem principle .....	143
bb. Amnesty, Pardon and Immunities and Privileges .....	142	b) Urgent measures of national authorities for securing an investigation and prosecution .....	143



The next part is highlighted as a hypothetical consideration and later continues with the description of the investigations in Poland without the EPPO. **What is special about this section, however, is that it also represents the provisions of Polish law** that Polish public prosecutors (can) use to discontinue national proceedings due to PIF acquis offences, or that state when these become statute-barred and when a second investigation is not possible is (because of *ne bis in idem*) and so on. It is therefore worth studying the chapter as a national prosecutor, OLAF employee, lawyer or reader.

Relevant Union law for the area of investigations by the EPPO, which would apply if Poland decided to be part of the EPPO:

**Art. 27 Right of evocation**

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 accor-

dance with Article 24(2), the EPPO shall take a decision on whether to exercise its right of evocation. The decision shall be taken within the time limits set out in paragraph 1 of this Article.

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

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

6. The right of evocation set out in this Article may be exercised by a European Delegated Prosecutor from any Member State whose competent authorities have initiated an investigation in respect of an offence that falls within the scope of Articles 22 and 23.

Where a European Delegated Prosecutor, who has received the information in accordance with Article 24(2), considers not to exercise the right of evocation, he/she shall inform the competent Permanent Chamber through the European Prosecutor of his/her Member State with a view to enabling the Permanent Chamber to take a decision in accordance with Article 10(4).

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

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

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

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

9. To ensure coherent application of the guidelines, a European Delegated Prosecutor shall inform the competent Permanent Chamber of each decision taken in accordance

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

- 1 If the EDPs in Poland existed and they would not exercise the EPPO's competence by virtue of the Union's legality principle in due time on their own and hereby on behalf (*proprio motu*) of the Union and the Union's interests by analyzing the *notitiae crimini europea*, ie the obligatory European PIF offences notices, which are sent to the European Prosecution Office in order to inform that a PIF offence is alleged or has been committed, the EDPs and the Chambers must decide on the evocation of cases from the national authorities on to the level of the Union competence. If the national prosecutor or a national office vested with investigative powers have already started investigating or the relevant person has taken any steps applying national law afterwards, these actions may have a precluding effect on the Right of evocation of the EPPO (cf. para 2 of Art. 27 EPPO Regulation).


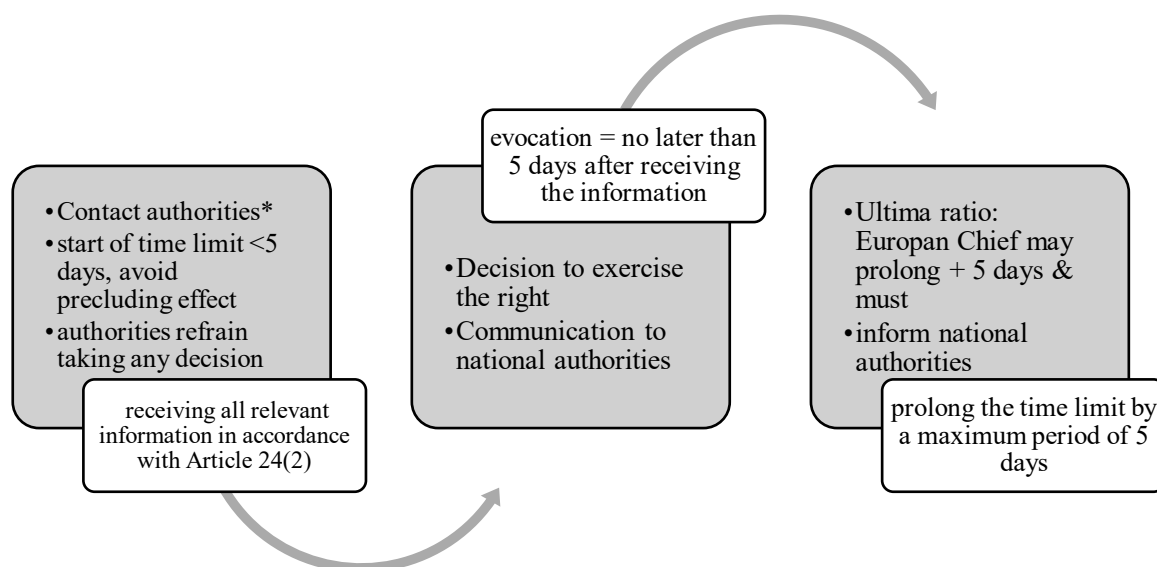
 *Nota bene:* In addition to that, if reading the following provisions one can take into account that some of them will apply as well to the EDPs if they want to file an indictment by virtue of the EPPO Regulation, ie the area, which is not in the focus of this Compendium as the country volumes have the focal point on the start of investigations, the phase, in which, most likely a huge number of operations will cease already. But the same provisions that apply to the national authorities while standing still until the EPPO has decided to exercise its right of evocation or not (Art. 27) will apply in cases of EPPO indictments (Art. 34 et seq.) and preclude the filing of indictment by virtue of national law before a national court.

Figure 4: Right of evocation/time limits/refrain taking decisions that have a precluding effect 2



\* Caption: Authorities<sup>142</sup>

*Nota bene:* For examples see → the German country chapter.

**a) Hypothetical Considerations for Provisions with a Precluding Effect for the Right of Evocation of the EPPO, para 2**

**aa. Statute of limitations, Polish Criminal Code**

Statutes of limitations are a part of the Polish criminal justice system. Due to the so-called COVID regulation, the limitation period for crimes was suspended because of the pandemic (see Article 15 ZZR1). During the state of epidemic threat or state of epidemic announced due to COVID-19, and in the period of 6 months after their cancellation, there is no statute of limitations for the punishability of an act and no statute of limitations for the execution of a penalty in cases of crimes and fiscal offences. This state of epidemic emergency was lifted on July 1, 2023. 3

<sup>142</sup> If Poland would join the EPPO, the following could be competent or designated with the tasks by the Government: Polish Tax Crime Departments, Polish Custom, Polish Internal Audit Office, Audit Office, Payment Services, Government Offices, Prosecutors, National Revenue Authority.

4 **Chapter XI Statute of limitations**

**Article 101 CC**<sup>143</sup> § 1. The criminality of an offence ceases if it has been committed since its commission years have passed:

[1) 30 – when the act constitutes the crime of murder;]

<1) 40 – when the act constitutes the crime of homicide;>

2) 20 – when the act constitutes another crime;

2a) 15-when the act is a misdemeanor punishable by imprisonment exceeding 5 years;

3) 10-when the act is a misdemeanor punishable by imprisonment exceeding 3 years;

4) 5 – when it comes to other misdemeanors.

5) (repealed)

§ 2. The criminality of the crime prosecuted by private accusation ceases one year after the victim learned about the perpetrator offence, but no later than three years after its commission.

[§ 3. In the cases provided for in § 1 or 2, if the crime depends on the occurrence of the effect specified in the act, the limitation period starts from the time the effect occurred.]

<§ 3. If the offence depends on the occurrence of a specific in the effect act, the limitation period starts from the time when the effect occurred.>

§ 3a. In the case of a crime committed over a period longer than one day the limitation period begins with the end of the last day, in which the perpetrator fulfilled the hallmarks of a crime by his conduct.

[§ 4. In the case of:

1) offences against life and health committed to the detriment of a minor, punishable by a maximum penalty of more than five years' imprisonment freedom,

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<sup>143</sup> Rozdział XI Przedawnienie

**Art. 101.**

§ 1. Karalność przestępstwa ustaje, jeżeli od czasu jego popełnienia upłynęło lat:

[1) 30 – gdy czyn stanowi zbrodnię zabójstwa;]

2) 20 – gdy czyn stanowi inną zbrodnię;

2a) 15 – gdy czyn stanowi występki zagrożony karą pozbawienia wolności przekraczającą 5 lat;

3) 10 – gdy czyn stanowi występki zagrożony karą pozbawienia wolności przekraczającą 3 lata;

4) 5 – gdy chodzi o pozostałe występk.

5) (uchylony)

§ 2. Karalność przestępstwa ściganego z oskarżenia prywatnego ustaje z upływem roku od czasu, gdy pokrzywdzony dowiedział się o osobie sprawcy przestępstwa, nie później jednak niż z upływem 3 lat od czasu jego popełnienia.

[§ 3. W wypadkach przewidzianych w § 1 lub 2, jeżeli dokonanie przestępstwa zależy od nastąpienia określonego w ustawie skutku, bieg przedawnienia rozpoczyna się od czasu, gdy skutek nastąpił.]

[§ 4. W przypadku:

1) występki przeciwko życiu i zdrowiu, popełnionych na szkodę małoletniego, zagrożonych karą, której górna granica przekracza 5 lat pozbawienia wolności,

2) przestępstw określonych w rozdziale XXV, popełnionych na szkodę małoletniego albo gdy treści pornograficzne obejmują udział małoletniego – przedawnienie karalności przestępstwa nie może nastąpić przed ukończeniem przez niego 30. roku życia.]

2) offences specified in chapter XXV, committed to the detriment a minor or when the pornographic content includes the participation of a minor – the statute of limitations for punishing a crime cannot occur before its completion by him at the age of 30.]

<§ 4. In the case of crimes:

1) against life and health, committed to the detriment of a minor, punishable by a maximum penalty of more than five years' imprisonment freedom,

2) specified in Chapter XXV, committed to the detriment of a minor, or when the pornographic content involves the participation of a minor – the statute of limitations for the criminalization of a crime cannot occur before when he turned 40.>

**Article 102 CC<sup>144</sup> § 1.** If during the period referred to in Art. 101, initiated proceedings, punishability of crimes specified in Art. 101 § 1 ceases with the passage of time 10 years, and in other cases - after 5 years from the end of this period.

§ 2. If, in the course of the instituted proceedings, justified decisions were taken suspicion of committing another crime, punishability of this crime is extended in the manner specified in § 1 on the date on which it was taken the first procedural step to determine whether it has been committed.

**Article 103 CC<sup>145</sup> § 1.** You cannot execute a penalty if it has become final years have elapsed since the conviction:

1) 30 – in the event of a conviction to imprisonment exceeding 5 years, or a more severe punishment;

2) 15 – in the event of a conviction to imprisonment not exceeding 5 years;

3) 10 – in the event of being sentenced to a different penalty.

§ 2. The provision of § 1 point 3 shall apply accordingly to penal measures, measures compensation and forfeiture.

<sup>144</sup> **Art. 102.** <§ 1.> Jeżeli w okresie, o którym mowa w art. 101, wszczęto postępowanie, karalność przestępstw określonych w art. 101 § 1 ustaje z upływem 10 lat, a w pozostałych wypadkach – z upływem 5 lat od zakończenia tego okresu.

<§ 2. Jeżeli w toku wszczętego postępowania powzięto uzasadnione podejrzenie popełnienia innego przestępstwa, karalność tego przestępstwa ulega przedłużeniu w sposób określony w § 1 z dniem, w którym podjęto pierwszą czynność procesową zmierzającą do ustalenia, czy zostało ono popełnione.>

<sup>145</sup> **Art. 103.** § 1. Nie można wykonać kary, jeżeli od uprawomocnienia się wyroku skazującego upłynęło lat:

1) 30 – w razie skazania na karę pozbawienia wolności przekraczającą 5 lat albo karę surowszą;

2) 15 – w razie skazania na karę pozbawienia wolności nieprzekraczającą 5 lat;

3) 10 – w razie skazania na inną karę.

§ 2. Przepis § 1 pkt 3 stosuje się odpowiednio do środków karnych, środków kompensacyjnych oraz przepadku.

**Article 104 CC**<sup>146</sup> § 1. The limitation period does not run if a provision of the Act does not allow it to initiate or continue criminal proceedings; however, this is not the case no motion or private accusation.

§ 2. (repealed)

**bb. Amnesty, Pardon and Immunities and Privileges**

**5 Article 105 Polish Constitution**

1. A Deputy may not be held responsible for his activities falling within the scope of the Deputy's mandate, neither during its term nor after its expiry. A deputy is responsible for such activities only before the Sejm, and in the case of infringement of the rights of third parties, he may be held liable in court only with the consent of the Sejm.

2. From the date of announcement of election results to the date of expiry of the mandate, a deputy may not be held criminally liable without the consent of the Sejm.

3. Criminal proceedings instituted against a person before the date of his election as a deputy shall be suspended at the request of the Sejm until the mandate expires. In such a case, the limitation period in criminal proceedings is also suspended for that time.

4. A Deputy may consent to being prosecuted. In such a case, the provisions of para. 2 and 3.

5. A Deputy may not be detained or arrested without the consent of the Sejm, except for apprehending him in the act of committing a crime and if his detention is necessary to ensure the proper course of proceedings. The Marshal of the Sejm shall be immediately notified of the detention, who may order the immediate release of the detained person.

6. The detailed rules of bringing deputies to criminal liability and the procedure to be followed shall be specified by statute.

**cc. Abatement of action (dispense with prosecution)**

**6 Article 322 CPC Discontinuation of investigation**

§ 1. If the proceedings have not given grounds for the submission of an indictment and the conditions mentioned in Article 324 are not fulfilled, the investigation is discontinued with-out the necessity of familiarising the suspect with the material of the proceedings and with-out necessity of closing the proceedings.

§ 2. The decision to discontinue the proceedings should include, in addition to the information mentioned in Article 94, an exact description of the offence, its legal qualification and reasons for the discontinuation.

§ 3. If the discontinuation takes place after the decision on presentation of charges was issued or after a person was examined as a suspect, the decision to discontinue the pro-

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<sup>146</sup> **Art. 104.** § 1. Przedawnienie nie biegnie, jeżeli przepis ustawy nie pozwala na wszczęcie lub dalsze prowadzenie postępowania karnego; nie dotyczy to jednak braku wniosku albo oskarżenia prywatnego.

§ 2. (uchylony)



ceedings includes also the name of the suspect and, if necessary, other details concerning his person.

**dd. Ne bis in idem principle**

The *ne bis in idem* principle must be observed as well in the area of sanctions. Ne bis in idem principle is stated in article 17 § 1 point 7. 7

§ 1. Criminal proceedings are not instituted, or, if previously instituted, are discontinued in cases where:

7) criminal proceedings that concern the same act committed by the same person have arrived at a final judgment or, if previously instituted, are still pending,

Article 14 is about prosecutor competences to withdraw the indictment and consequences of this decision. Before 2015 even if prosecutor decided to withdraw accusation, the court did not have to end the proceedings.

Sanctions may derive from tax, customs and criminal law in general. Polish courts must take into account decisions taken by other courts in the EU. Domestic Regulations regulate on this matter. 8

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

A typical urgent measure is necessary if the preparatory proceedings have been initiated according to Art. 305 CPC and the prosecutor needs further information to issue his/her decision to the public whether he/she will really enact an investigation or refuse to initiate an investigation. In this meantime the loss of evidence can be avoided via a fast collection, seizure and search for relevant items: 9

**10 Article 308 CPC<sup>147</sup> [Proceedings to the extent necessary – premises, deadline, scope]**

§ 1. Within the limits necessary to secure traces and evidence of a crime against their loss, distortion or destruction, the prosecutor or the Police may, in any case, in cases of urgency, before issuing a decision to initiate an investigation or investigation, carry out procedural activities to the extent necessary, and in particular visual inspection, if necessary with the participation of an expert, search or activities listed in art. 74 § 2 point 1 in relation to the suspected person, as well as take other necessary steps towards it, including the collection of blood, hair and body secretions. After performing these activities, in cases where conducting an investigation by the prosecutor is mandatory, the person conducting the proceedings immediately transfers the case to the prosecutor.

§ 2. In cases of urgency, in particular when it could result in the obliteration of traces or evidence of a crime, you can, in the course of the activities listed in § 1, question a person suspected of having committed a crime as a suspect before issuing an order to present the charges, if there are conditions for drawing up such an order. The interrogation begins with information about the content of the allegation.

§ 3. In the case provided for in § 2, in cases where the investigation is mandatory, no later than 5 days from the date of the hearing, it seems to be an order to present the charges or, in the absence of conditions for its preparation, the proceedings against the person interviewed are discontinued.

§ 4. In cases where it is mandatory to conduct an investigation, the order provided for in § 3 is issued by the prosecutor.

§ 5. The activities referred to in § 1 and 2 may be performed only within 5 days from the date of the first activity.

<sup>147</sup> **Art. 308. [Postępowanie w niezbędnym zakresie – przesłanki, termin, zakres]**

§ 1. W granicach koniecznych dla zabezpieczenia śladów i dowodów przestępstwa przed ich utratą, zniekształceniem lub zniszczeniem, prokurator albo Policja może w każdej sprawie, w wypadkach niecierpiących zwłoki, jeszcze przed wydaniem postanowienia o wszczęciu śledztwa lub dochodzenia, przeprowadzić w niezbędnym zakresie czynności procesowe, a zwłaszcza dokonać oględzin, w razie potrzeby z udziałem biegłego, przeszukania lub czynności wymienionych w art. 74 § 2 pkt 1 w stosunku do osoby podejrzanej, a także przedsięwziąć wobec niej inne niezbędne czynności, nie wyłączając pobrania krwi, włosów i wydzielin organizmu. Po dokonaniu tych czynności, w sprawach, w których prowadzenie śledztwa przez prokuratora jest obowiązkowe, prowadzący postępowanie przekazuje sprawę niezwłocznie prokuratorowi.

§ 2. W wypadkach niecierpiących zwłoki, w szczególności wtedy, gdy mogłoby to spowodować zatarcie śladów lub dowodów przestępstwa, można w toku czynności wymienionych w § 1 przesłuchać osobę podejrzaną o popełnienie przestępstwa w charakterze podejrzanego przed wydaniem postanowienia o przedstawieniu zarzutów, jeżeli zachodzą warunki do sporządzenia takiego postanowienia. Przesłuchanie rozpoczyna się od informacji o treści zarzutu.

§ 3. W wypadku przewidzianym w § 2, w sprawach, w których prowadzenie śledztwa jest obowiązkowe, najpóźniej w ciągu 5 dni od dnia przesłuchania wydaje się postanowienie o przedstawieniu zarzutów albo, w razie braku warunków do jego sporządzenia, umarza się postępowanie w stosunku do osoby przesłuchanej.

§ 4. W sprawach, w których obowiązkowe jest prowadzenie śledztwa, postanowienie przewidziane w § 3 wydaje prokurator.

§ 5. Czynności, o których mowa w § 1 i 2, mogą być dokonywane tylko w ciągu 5 dni od dnia pierwszej czynności.

§ 6. W wypadkach określonych w § 1 i 2 czas trwania śledztwa lub dochodzenia liczy się od dnia pierwszej czynności.

§ 6. In the cases referred to in § 1 and 2, the duration of the investigation or investigation is counted from the date of the first action.

*See below “Conducting a PIF investigation in Poland”.* 11

There might be special regulations in the CPC for the different areas and authorities, such as: 12

- Art. 220 s. 3 CPC (urgent search measures).
- Art. 237 s. 2 CPC (urgent measures).

For the full text of these provisions see below → “5. Investigation Measures”. 13

### **3. Conducting the investigation (in Polish PIF cases) – Today’s situation without the EPPO and hypothetical considerations for Art. 28 EPPO Regulation**

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**This following section is significant** because it presents the provisions of Polish law that public prosecutors apply during their investigations of PIF acquis offences. At the same time, it examines the requirements of Article 28 of the EPPO Regulation.

#### **Art. 28 Conducting the investigation**

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

2. At any time during the investigations conducted by the EPPO, the competent national authorities shall take urgent measures **in accordance with national law** necessary to ensure effective investigations even where not specifically acting under an instruction given by the handling European Delegated Prosecutor. The national authorities shall without undue delay inform the handling European Delegated Prosecutor of the urgent measures they have taken.

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

- (a) cannot perform the investigation or prosecution; or
- (b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.

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

- (a) the seriousness of the offence, in particular in view of its possible repercussions at Union level;
- (b) when the investigation concerns officials or other servants of the Union or members of the institutions of the Union;
- (c) in the event of failure of the reallocation mechanism provided for in paragraph 3.

In such exceptional circumstances Member States shall ensure that the European Prosecutor is entitled to order or request investigative measures and other measures and that

he/she has all the powers, responsibilities and obligations of a European Delegated Prosecutor in accordance with this Regulation and national law.

The competent national authorities and the European Delegated Prosecutors concerned by the case shall be informed without undue delay of the decision taken under this paragraph.

The conduct of fraud and corruption investigations is dependent on instruction relationships, whereby the dependency in classically national systems, in the area of EU anti-fraud investigations the EPPO (i.e. the college level) has supervisory powers as it is a supranational, independent body. **1**

- Poland is not part of the EPPO at the moment. Therefore the national police and special forces conduct investigations only on behalf of fully national prosecution offices. These offices conduct e.g. investigations into budget fraud.
- If the EPPO existed, the EDPs of Poland would be vested with the same powers as their national homologues and they would have the power to assign tasks to the national police and special forces (see below Art. 30 EPPO Regulation).
- The General Prosecution Offices may interfere and it *de facto* controls the prosecution offices in its area of competence. These interferences would contradict EU law if Poland decided to participate in the enhanced cooperation one day. In Germany e.g. the relevant provision in the Court Constitutions Act has been “deactivated” for EPPO cases in the EPPO Adoption Act (see the German volume of the CNP, Art. 28 EPPO Regulation).



The **following explanations** in italics *do only apply if Poland decides in the near future* to join the EPPO and combat EU fraud on a stronger, supranational, instead of theoretically more weak national, basis, which does not provide measures as easily as the EPPO transfers evidence from one Member State to another or request a search in a house as easily as EDPs: **2**

In her speech for the first anniversary of the EPPO, given at the conference “EPPO one year in action – Towards Resolving Complexity and Bringing Added Value”<sup>148</sup> in the Hémicylce in Luxembourg on 1<sup>st</sup> June 2022, Laura Kövesi outlined that in order to enhance the detection rates of EU fraud specialised customs units and specialised financial experts, groups of specialised EU investigators educated in the typologies of EU frauds are needed to enhance the conduct of investigations. She underlined that these special units could be set up tomorrow and that doing so depended only on political will.<sup>149</sup> **3**

<sup>148</sup> Organised by the University of Luxembourg (Prof. Katalin Ligeti), ECLAN and the EPPO.

<sup>149</sup> EPPO, European Public Prosecutor’s Office One Year In Action, <https://www.youtube.com/watch?v=v2oUUyTEPFU> (Accessed 6 August 2024); Kövesi L (2022) So kommt die EU im Kampf gegen

- 4 As long as there are no special units in all countries as the first Advocate General of the EPPO requested, the detection rates depend on the conduct of investigations and the cooperation with established – e.g. in Italy more than 100 years old structures in the area of tax investigations – national authorities – especially the assignment and instruction of investigative tasks to “those national authorities”. The situation in the present country chapter will be analysed below, stating the cooperation level and important actions to be taken.
- 5 The investigations on national level and at Union-level must be distinguished. Especially at the Union level, the investigation is different than at the national level. In many cases, investigations will be carried out in Union institutions (EU IBOAs). The EPPO has started to set up working arrangements for this type of investigation. For example, the one with the European Investment Bank provides for cooperation with the in-house fraud detection service (“a kind of internal investigation commission”). In the following we shall focus on the national investigations level with regard to the present country.
- 6 For the different PIF offences, the specific country system provides different investigative bodies acting by virtue of different national codes such as the General Tax Code, the police laws and the customs laws including the customs administration laws. Generally speaking, it depends, for the analysis of Art. 28 EPPO Regulation, on whether a centrally governed country of the EU is affected or whether there is a federal system with differentiated competences of the federal units.
- 7 In addition, the lawfulness of the action is very important as a generalization of all instructions from the staff, which are made available to the EPPO and the EDPs from the national resource area.
- 8 The next **section can be read from today’s point of view**, which means that it depicts the national investigation powers e.g. police, customs and tax investigation service. It might as well be read in case that the EPPO welcomes Poland as a full partner instead of only an associated Member by virtue of Art. 104, 105 EPPO Regulation.

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Verbrecherbanden in die Offensive, Die Welt (Welt am Sonntag), 05.06.2022, <https://www.welt.de/debatte/kommentare/article239196661/So-kommt-die-EU-im-Kampf-gegen-die-Kriminalitaet-in-die-Offensive.html> (Accessed 6 August 2024): “Ich fordere deshalb alle zuständigen nationalen Behörden auf, diese bewährte Praxis zu übernehmen und zur Unterstützung unserer Ermittlungen spezialisierte Einheiten einzurichten, die Finanz-, Steuer- und Zollfahnder vereinen. Ich schlage vor, dass wir eine Elitetruppe hoch qualifizierter Finanzbetrugsermittler innerhalb der EU bilden, die über die EPPO länderübergreifend arbeitet. Dafür muss man kein Gesetz ändern; es ist eine reine Organisationsentscheidung der zuständigen nationalen Behörden. Es kann schon morgen geschehen.” This statements was republished by various newspapers and journals across Europe (see e.g. Figaro article in the French country chapter).

**a) Polish prosecutors carrying out the Investigative Measures**

At the moment Poland has no handling EDPs. Thus, the Polish national prosecutor carries out investigative measures. Local and chief-prosecution offices are distinguished. **9**

Art. 46 of the Constitution contains a fundamental Article, which applies in this regard: **10**

**Article 46<sup>150</sup>**

The forfeiture of an item may take place only in cases specified in the law and only on the basis of a final court decision.

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

While the Prosecution conducts the preparatory proceedings, the instruction and the assignment of investigative measures for the national authorities is requested by Art. 326 CPC: **11**

**Chapter 37 Prosecutor’s supervision over preparatory proceedings** **12**

**Article 326 CPC<sup>151</sup>**

§ 1. The prosecutor supervises the preparatory proceedings to the extent that he does not conduct them himself; The prosecutor may also supervise the proceedings referred to in Art. 307.

§ 2. The public prosecutor is obliged to watch over the proper and efficient course of all proceedings supervised by him.

§ 3. Due to the supervision exercised, the prosecutor may, in particular:

- 1) become acquainted with the intentions of the person conducting the proceedings, indicate the directions of the proceedings and issue relevant orders;
- 2) demand the presentation of materials collected in the course of the proceedings;

<sup>150</sup> **Art. 46 Konstytucja Rzeczypospolitej Polskiej**

Przepadek rzeczy może nastąpić tylko w przypadkach określonych w ustawie i tylko na podstawie prawomocnego orzeczenia sądu.

<sup>151</sup> **Rozdział 37 Nadzór prokuratora nad postępowaniem przygotowawczym**

**Art. 326. [Zakres nadzoru, uprawnienia prokuratora]**

§ 1. Prokurator sprawuje nadzór nad postępowaniem przygotowawczym w zakresie, w jakim go sam nie prowadzi; prokurator może także objąć nadzorem postępowanie, o którym mowa w art. 307.

§ 2. Prokurator jest obowiązany czuwać nad prawidłowym i sprawnym przebiegiem całego nadzorowanego przez siebie postępowania.

§ 3. Z tytułu sprawowanego nadzoru prokurator może w szczególności:

- 1) zaznajamiać się z zamierzeniami prowadzącego postępowanie, wskazywać kierunki postępowania oraz wydawać co do tego zarządzenia;
- 2) żądać przedstawienia sobie materiałów zbieranych w toku postępowania;
- 3) uczestniczyć w czynnościach dokonywanych przez prowadzących postępowanie, osobiście je przeprowadzać albo przejąć sprawę do swego prowadzenia;
- 4) wydawać postanowienia, zarządzenia lub polecenia oraz zmieniać i uchylać postanowienia i zarządzenia wydane przez prowadzącego postępowanie.

§ 4. W razie niewykonania przez organ niebędący prokuratorem postanowienia, zarządzenia lub polecenia wydanego przez prokuratora sprawującego nadzór, na jego żądanie przełożony funkcjonariusza wszczynają postępowanie służbowe; o wyniku postępowania informuje się prokuratora.

3) participate in the activities carried out by the persons conducting the proceedings, conduct them personally or take over the case;

4) issue resolutions, orders or orders, as well as amend and repeal decisions and orders issued by the person conducting the proceedings.

§ 4. In the event of non-performance by a body other than a public prosecutor of a decision, order or instruction issued by a public prosecutor exercising supervision, at his request, the officer's superior initiates official proceedings; the prosecutor is informed of the outcome of the proceedings.

13 Art. 326 CPC shows that the prosecutor is a supervisor of the subsidiary proceedings conducted by other authorities. Next, the verifying proceedings, concerning the decision whether to start an investigation/proceeding or not can be named as well.

14 *Table 6: Instructed and assigned National authorities*

<b><i>Instructed and assigned National authorities (list):</i></b>
--

Polish Police (with its different divisions)
--

Polish national tax and customs authority (NAV)
---

Polish Financial Intelligence Service
---------------------------------------

**aa. Criminal and judicial police area**

15 The Criminal Code and Criminal Procedure Code should be consulted for instructions and supervision in the criminal and judicial police area.

16 A main provision in thus regard is Art. 312 CPC, which stipulates the powers that these authorities carry with them:

17 **Art. 312 [Other authorised bodies]<sup>152</sup>**

The powers of the Police are also vested in:

1) authorities of the Border Guard, the Internal Security Agency, the National Revenue Administration, the Central Anti-Corruption Bureau and the Military Police, within the scope of their competence;

2) other bodies provided for in specific regulations.

18 The police (*policja*) will act most likely on behalf of the prosecutor:

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<sup>152</sup> **Art. 312. [Inne organy uprawnione]**

Uprawnienia Policji przysługują także:

1) organom Straży Granicznej, Agencji Bezpieczeństwa Wewnętrznego, Krajowej Administracji Skarbowej, Centralnego Biura Antykorupcyjnego oraz Żandarmerii Wojskowej, w zakresie ich właściwości;

2) innym organom przewidzianym w przepisach szczególnych.



**Chapter 36a Investigation**

19

**Article 325a<sup>153</sup> [Organs; proper application of the provisions on the investigation]**

§ 1. The investigation is conducted by the Police or the authorities referred to in Art. 312, unless they are conducted by the prosecutor.

§ 2. The provisions on the investigation shall apply mutatis mutandis to the investigation, unless the provisions of this chapter provide otherwise.

The official logo of the police looks like a classic emblem with grey, red and blue colours: 20

*Figure 5: Polish Police (Policja)*



Logo: See Policja Website.

**bb. Conducting Investigations to Discover Corruption Offences**

The competences of the police (Criminal Bureau of the Police Headquarters) and the Central Anti-Corruption Bureau partly overlap but both authorities can interact while conducting investigation to discover Corruption Offences. 21

**<sup>153</sup> Rozdział 36a Dochodzenie****Art. 325a. [Organy; odpowiednie stosowanie przepisów o śledztwie]**

§ 1. Dochodzenie prowadzi Policja lub organy, o których mowa w art. 312, chyba że prowadzi je prokurator.

§ 2. Przepisy dotyczące śledztwa stosuje się odpowiednio do dochodzenia, jeżeli przepisy niniejszego rozdziału nie stanowią inaczej.

**Art. 325b. [Pozytywne przesłanki dochodzenia]**

§ 1. Dochodzenie prowadzi się w sprawach o przestępstwa należące do właściwości sądu rejonowego:

1) zagrożone karą nieprzekraczającą 5 lat pozbawienia wolności, z tym że w wypadku przestępstw przeciwko mieniu tylko wówczas, gdy wartość przedmiotu przestępstwa albo szkoda wyrządzona lub grożąca nie przekracza 200 000 zł;

2) przewidziane w art. 159, art. 254a i art. 262 § 2 Kodeksu karnego;

3) przewidziane w art. 279 § 1, art. 286 § 1 i 2 oraz w art. 289 § 2 Kodeksu karnego, jeżeli wartość przedmiotu przestępstwa albo szkoda wyrządzona lub grożąca nie przekracza 200 000 zł.

§ 2. Spośród spraw o przestępstwa wymienione w § 1 pkt 1 nie prowadzi się dochodzenia w sprawach o przestępstwa określone w art. 155, art. 156 § 2, art. 157a § 1, art. 165 § 2, art. 168, art. 174 § 2, art. 175, art. 181-184, art. 186, art. 201, art. 231 § 1 i 3, art. 240 § 1, art. 250a § 1-3, art. 265 § 3 oraz w rozdziale XXXVI, z wyjątkiem art. 297 i art. 300, i rozdziale XXXVII Kodeksu karnego.

Art. 325c.

22 The CBA Act prescribes that the officers of the CBA have according to Art. 13 the same powers as the police in the investigation phase (preparatory proceedings):

23 **Chapter 3 Powers of officers of the Central Anti-Corruption Bureau**

**Article 13**<sup>154</sup> 1. Within the limits of the tasks referred to in Art. 2, officers CBA perform:

1) operational and reconnaissance activities in order to prevent, recognize and detect offences, and – if there is a reasonable suspicion of committing a crime – investigative activities in order to prosecute the perpetrators of crimes;

2) control activities in order to disclose cases of corruption in state institutions and local government and abuses by persons performing public functions, as well as activities detrimental to the economic interests of the state; 3) operational and reconnaissance as well as analytical and information activities in order to obtain and process information relevant to combating corruption in state institutions and local government as well as activities detrimental to the economic interests of the state.

2. The CBA also performs activities at the request of the court or the prosecutor to the extent specified in the Act of 6 June 1997 - Code of Criminal Procedure (Journal of Laws of 2022, item 1375) and the Act of 6 June 1997 - Executive Penal Code (Journal of Laws of 2021, items 53, 472, 1236 and 2054 and of 2022, items 22 and 655).

**3. The officers of the CBA perform activities only within the competence of the CBA and in this respect they are entitled to the procedural rights of the Police, resulting from the provisions of the Act of 6 June 1997 - Code of Criminal Procedure.**

4. While performing the activities referred to in para. 1 and 2, are obliged to respect human dignity and to observe and protect human rights, regardless of their nationality, origin, social situation, political or religious beliefs or world views.

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<sup>154</sup> **Rozdział 3 Uprawnienia funkcjonariuszy Centralnego Biura Antykorupcyjnego**

**Art. 13. 1. W granicach zadań, o których mowa w art. 2, funkcjonariusze**

CBA wykonują:

1) czynności operacyjno-rozpoznawcze w celu zapobiegania popełnieniu przestępstw, ich rozpoznania i wykrywania oraz – jeżeli istnieje uzasadnione podejrzenie popełnienia przestępstwa – czynności dochodzeniowo-śledcze w celu ścigania sprawców przestępstw;

2) czynności kontrolne w celu ujawniania przypadków korupcji w instytucjach państwowych i samorządzie terytorialnym oraz nadużyć osób pełniących funkcje publiczne, a także działalności godzącej w interesy ekonomiczne państwa; 3) czynności operacyjno-rozpoznawcze i analityczno-informacyjne w celu uzyskiwania i przetwarzania informacji istotnych dla zwalczania korupcji w instytucjach państwowych i samorządzie terytorialnym oraz działalności godzącej w interesy ekonomiczne państwa.

2. CBA wykonuje również czynności na polecenie sądu lub prokuratora w zakresie określonym w ustawie z dnia 6 czerwca 1997 r. – Kodeks postępowania karnego (Dz. U. z 2022 r. poz. 1375) oraz ustawie z dnia 6 czerwca 1997 r. – Kodeks karny wykonawczy (Dz. U. z 2021 r. poz. 53, 472, 1236 i 2054 oraz z 2022 r. poz. 22 i 655).

3. Funkcjonariusze CBA wykonują czynności tylko w zakresie właściwości CBA i w tym zakresie przysługują im uprawnienia procesowe Policji, wynikające z przepisów ustawy z dnia 6 czerwca 1997 r. – Kodeks postępowania karnego.

4. Funkcjonariusze CBA podczas wykonywania czynności, o których mowa w ust. 1 i 2, mają obowiązek poszanowania godności ludzkiej oraz przestrzegania i ochrony praw człowieka niezależnie od jego narodowości, pochodzenia, sytuacji społecznej, przekonań politycznych lub religijnych albo światopoglądowych

**Article 14 [Rights of CBA Officers]**

Officers of the CBA, performing service activities implementation of the tasks referred to in art. 2 sec. 1 point 1, have the right:

1) giving instructions to persons to behave in a specific manner within the limits necessary to perform the activities specified in items 2–5a or to perform other official activities undertaken within the scope and in order to perform the statutory tasks of the CBA or in order to avoid a direct threat to the safety of persons or property, when it is necessary to efficient and lawful performance of these activities or to avoid covering up the traces of a crime;

2) legitimizing persons in order to determine their identity;

3) detaining persons in the manner and in the cases specified in the provisions of the Code of Criminal Procedure;

4) search people and premises in the manner and in the cases specified in the provisions of the Code of Criminal Procedure;

5) carry out personal checks, as well as reviewing the contents of luggage and checking loads in ports and stations or other places where travelers or luggage are checked in, and in means of land, air and water transport, in the event of a justified suspicion of committing a prohibited act under penalty or in connection with implementation of the tasks specified in art. 2 sec. 1 points 1–2 and 7;

5a) preventive checks on the terms and in the manner specified in art. 30a;

6) observing and recording, with the use of technical means, the image of events in public places and the sound accompanying these events during the performance of operational and reconnaissance activities undertaken on the basis of the Act;

7) request the necessary assistance from state institutions, authorities government administration and local government as well as entrepreneurs operating in the field of public utility; the listed institutions, authorities and entrepreneurs are obliged, within their scope

actions to provide this assistance free of charge, under applicable law;

8) request the necessary assistance from others than those mentioned above

in point 7 entrepreneurs, organisational units and organisations

social, as well as asking each person for help, within the framework of applicable law.

2. A person detained or subject to a search is entitled to

the rights of the detained person or the person whose rights have been violated, as provided for in the provisions of the Code of Criminal Procedure.

3. Detention of a person may be applied only when other means proved pointless or ineffective.

4. A detained person may be presented, photographed or fingerprinted only if its identity cannot be established otherwise.




5. A detained person should be immediately subjected to a medical examination in case of a justified need or provided with first medical aid.

6. The activities referred to in par. 1 points 1–6, should be performed in the least possible manner infringing the personal rights of the person against whom they were taken.
7. The manner of carrying out the activities referred to in par. 1:
- 1) points 1, 2, 7 and 8, within 7 days from the date of performing the activities,
  - 2) point 6, within 7 days from the date when the entity became aware of the actions taken against it – a complaint may be lodged with the prosecutor competent for the place where the activities were performed. The provisions of the Act of June 6, 1997 – Code of Criminal Procedure in the scope of appeal proceedings shall apply to the complaint.
8. Materials from the activities referred to in par. 1 point 6, which do not constitute information confirming the commission of a crime or a fiscal offence, shall be immediately destroyed by official record. The destruction of the materials is ordered by the Head of the CBA.
9. The Prime Minister shall determine, by regulation, the procedure conducting medical examinations referred to in par. 5, persons detained by CBA officers. The ordinance should specify the persons conducting the examinations as well as the organisation and place of the examinations, as well as the cases justifying the need to provide a detained person with first aid, taking into account the protection of the detained person’s health.
10. The Council of Ministers shall determine, by regulation, the detailed conditions for carrying out and documenting the activities referred to in para. 1 items 1–4 and 6, taking into account the manner in which the CBA officers conduct activities undertaken within the framework of statutory powers, adapted to the situation, and the duties of the officers during the performance of these activities.
11. The Council of Ministers shall determine, by regulation, the detailed manner of carrying out the activities referred to in para. 1 items 7 and 8, taking into account the duties of an officer of the CBA requesting or requesting assistance.

- 24** The officers act on the basis of the same powers as other authorities. These investigative powers result from the Criminal Procedure Code. The investigative powers are displayed below (see → Investigation Measures c)).

**cc. Tax Area**

- 25** The tax area is primarily controlled by the Polish national tax and customs authority, KAS and its criminal department.
- 26** *Tax Investigation authorities 1*

  	<b>Law</b>
Fiscal Penal Code/Ustawa z dnia 10 września 1999 r. Kodeks karny skarbowy (KKS) Customs Law/Ustawa z dnia 19 marca 2004 r. Prawo celne	

The Polish Act of 10 September 1999, the Fiscal Penal Code, KKS (Journal of Laws of 2022, 859, 1301) contains special offences, thus penalizes conduct that can constitute a PIF-offence (see above → 90) **27**


The Legal Scenery, Location and Wording of the PIF offences in Poland).

Next, the KKS establishes the rule that the Polish CPC applies for the investigation of those offences unless the CPC or the Criminal Code state otherwise. **28**

#### **dd. Customs area**

In the area of customs duties and potential offences affecting the EU’s financial interests the National Tax and Customs Administration, KAS is competent to investigate cases. **29**

*Customs Investigation Authorities 1* **30**

	<p><b>Law</b></p>
<p>Criminal Procedure Code/Kodeks postępowania karnego Customs Law/Ustawa z dnia 19 marca 2004 r. Prawo celne</p>	

#### **ee. The Polish Financial Intelligence Service**

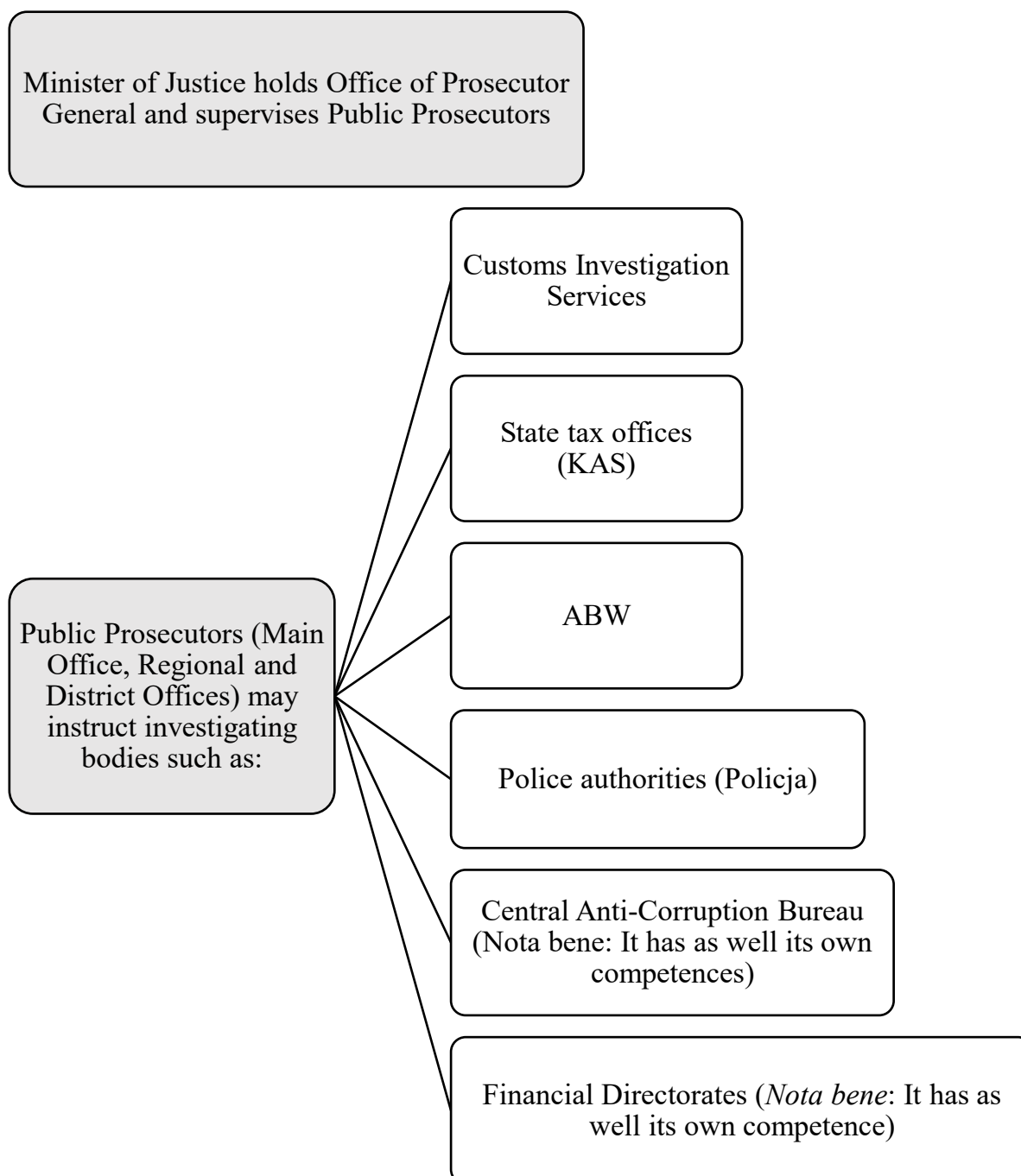
The main competence of the Polish Financial Intelligence Service is the fight against money laundering. If money laundering involves money obtained through PIF offences, the FIU Poland might be competent to deal with these cases.<sup>155</sup> It can only act before a preparatory proceedings has started as it is an analysis institution and not a law enforcement agency. **31**

#### **ff. Visualisation of Instructions and assignment of investigative measures for “those national authorities”**

The following visualisation presents the “whole picture” of the different investigative authorities, which were mentioned above. **32**

<sup>155</sup> Anti-Money Laundering and Terrorist Financing Office, news, <https://pei.nav.gov.hu/>. Accessed 6 August 2024.

33 Figure 6: Polish Prosecution Offices Instructing National Authorities



**c) Ensuring Compliance with National Law**

The higher prosecution offices determine the strategy and the compliance with national law by ensuring that the investigation measures are comparable to the jurisprudence of the highest court in criminal matters. **34**

The Polish criminal justice system and the prosecution offices have to follow a lot of guidelines, e.g. **35**

- Guidelines of the Prosecutor General on the principles of conducting preparatory proceedings for usurious loans and fraud offences resulting in the loss of property ownership rights by the injured parties
- Guidelines of the Prosecutor General on the principles of conducting preparatory proceedings for financial crimes committed to the detriment of many victims with the use of financial instruments and banking activities

These guidelines contain specific rules for certain situations and must be followed by the prosecution offices. In the introduction we described the problematic situation, which lasted in the last years concerning the independence of prosecutors and their fears for disciplinatio n because of political reasons. **36**

**d) Urgent Measures in accordance with National Law necessary to ensure Effective Investigations**

E.g. Provisions in relation to the Gathering Evidence quickly **37**

*See below “Conducting a PIF investigation in Poland”.*

**4. Lifting privileges or immunities (in PIF cases) – Hypothetical considerations for the EPPO**

- a) Privilege Provisions ..... 158
- c) Parliamentary privilege or immunity..... 173
  - aa. National Legislation... 173
  - bb. Provisions on the lifting of immunities?..... 189
- d) Immunities and Privileges under union law, para 2 ..... 192

1 The next part shall explore hypothetical considerations for the current Art. 29 EPPO Regulation and at the same time present Polish national law applicable in national criminal proceedings regarding immunities and privileges. These can stem from political considerations (like in the case of parliamentary protection) as well from thoughts about the telos of the family and near ancestors and descendants in the society (see spousal privilege).

**a) Privilege Provisions**

**aa. Legal (professional) privilege**

**(1) Provisions in Polish law**

2 An advocate is one of the professional representatives of a party in the criminal process. In Poland, the “legal advisor” (*radca prawny*) must be distinguished from the lawyers. Both persons have the same competencies in criminal proceedings, both can be defence lawyers and there is mainly a historical reason why those two professions need to be seen separate. Summing it up shortly, a legal advisor organisation was created after the second World War, and the advocates association has an even longer history. The legal advisor can not only give legal advices but also represents clients in courts of all instances. He/she is a *de facto* solicitor. According to the polish-english legal dictionary this is a lawyer who prepares legal documents and briefs, gives legal advice, and (in the lower courts only) speaks on behalf of his clients.



**The Law On The Advocates Profession<sup>156</sup>**

**Article 3<sup>157</sup> [Practicing the profession; legal adviser secrecy]**

(1) The profession of a legal adviser may be exercised by a person who fulfils the requirements specified in this Act.

(2) The legal adviser shall exercise the profession with diligence resulting from the legal knowledge and ethics of the legal adviser.

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<sup>156</sup> ACT of 26 May 1982 Law on the bar / *USTAWA z dnia 26 maja 1982 r. Prawo o adwokaturze.*

<sup>157</sup> Legal act July, 6 1982 r. of Legal Advistors (ustawa z dnia 6 lipca 1982 r. o radcach prawnych)

**Art. 3. [Wykonywanie zawodu; tajemnica radcy prawnego]**

1. Zawód radcy prawnego może wykonywać osoba, która spełnia wymagania określone niniejszą ustawą.

2. Radca prawny wykonuje zawód ze starannością wynikającą z wiedzy prawniczej oraz zasad etyki radcy prawnego.

3. Radca prawny jest obowiązany zachować w tajemnicy wszystko, o czym dowiedział się w związku z udzieleniem pomocy prawnej.

4. Obowiązek zachowania tajemnicy zawodowej nie może być ograniczony w czasie.

5. Radca prawny nie może być zwolniony z obowiązku zachowania tajemnicy zawodowej co do faktów, o których dowiedział się udzielając pomocy prawnej lub prowadząc sprawę.

6. Obowiązek zachowania tajemnicy zawodowej nie dotyczy informacji:

1) udostępnianych na podstawie przepisów o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu,

2) przekazywanych na podstawie przepisów rozdziału 11a działu III ustawy z dnia 29 sierpnia 1997 r. - Ordynacja podatkowa (Dz. U. z 2021 r. poz. 1540, z późn. zm. 1 )

– w zakresie określonym tymi przepisami.



(3) A legal adviser shall be obliged to keep secret everything he has learnt in connection with the provision of legal assistance.

(4) The obligation of professional secrecy may not be limited in time.

(5) A legal adviser may not be relieved from the obligation of professional secrecy concerning facts which he has become aware of while providing legal assistance or conducting a case.

(6) The obligation of professional secrecy does not apply to information:

1) made available based on the provisions on anti-money laundering and financing of terrorism,

2) provided based on the provisions of Chapter 11a of Chapter III of the Act of 29 August 1997, Tax Ordinance (Journal of Laws of 2021, item 1540, as amended)

- within the scope specified by these provisions.

#### **Article 6<sup>158</sup> [Legal secrets]**

1. An advocate is obliged to keep secret everything that he learns about in connection with the provision of legal aid.

2. The obligation of professional secrecy cannot be limited in time.

3. An advocate may not be released from the obligation to maintain professional secrecy as to the facts which he learned about while providing legal aid or conducting a case.

4. The obligation of professional secrecy does not apply to information:

1) made available on the basis of the provisions on counteracting money laundering and terrorist financing,

2) provided on the basis of the provisions of Chapter 11a, Chapter III of the Act of August 29, 1997 – Tax Ordinance (Journal of Laws of 2020)

– to the extent specified in these provisions.

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#### <sup>158</sup> **Art. 6 [Tajemnica adwokacka]**

1. Adwokat obowiązany jest zachować w tajemnicy wszystko, o czym dowiedział się w związku z udzielaniem pomocy prawnej.

2. Obowiązek zachowania tajemnicy zawodowej nie może być ograniczony w czasie.

3. Adwokata nie można zwolnić od obowiązku zachowania tajemnicy zawodowej co do faktów, o których dowiedział się udzielając pomocy prawnej lub prowadząc sprawę.

4. Obowiązek zachowania tajemnicy zawodowej nie dotyczy informacji:

1) udostępnianych na podstawie przepisów o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu,

2) przekazywanych na podstawie przepisów rozdziału 11a działu III ustawy z dnia 29 sierpnia 1997 r. - Ordynacja podatkowa (Dz. U. z 2020 r. poz. 1325 i 1423)

- w zakresie określonym tymi przepisami.

**Article 7<sup>159</sup> [Legal protection of the advocate]**

1. An advocate enjoys legal protection during and in connection with the performance of professional duties, similarly to a judge and a public prosecutor.
2. The Minister of Justice, by way of an ordinance, determines the official uniform of advocates participating in court hearings, taking into account the ceremonial character of the attire, appropriate to the authority of the court and the established tradition.

**Article 8<sup>160</sup> [Freedom of expression; lawyer's immunity]**

1. When practicing as an advocate, an advocate exercises the freedom of speech and writing within the limits specified by the tasks of the bar and the law.
2. The abuse of this freedom, constituting an insult or defamation of a party, its attorney or defence lawyer, probation officer, witness, expert or interpreter, is subject to disciplinary prosecution only.

**Section 1a Processing of personal data**

**Article 16a<sup>161</sup> [Restrictions on the protection of personal data due to legal secrecy]**

1. The provisions of Art. 15 sec. 1 and 3, art. 18 and art. 19 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation) (Journal of Laws UE L 119 of 04.05.2016, p. 1, as amended) shall apply to the extent that they do not violate the lawyer's obligation to keep the secrecy referred to in Art. 6.

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<sup>159</sup> **Art. 7. [Ochrona prawna adwokata]**

1. Adwokat podczas i w związku z wykonywaniem obowiązków zawodowych korzysta z ochrony prawnej podobnie jak sędzia i prokurator.
2. Minister Sprawiedliwości, w drodze rozporządzenia, określi strój urzędowy adwokatów biorących udział w rozprawach sądowych, uwzględniając uroczysty charakter stroju, odpowiedni do powagi sądu i utrwalonej tradycji.

<sup>160</sup> **Art. 8. [Wolność wypowiedzi; immunitet adwokacki]**

1. Adwokat przy wykonywaniu zawodu adwokackiego korzysta z wolności słowa i pisma w granicach określonych przez zadania adwokatury i przepisy prawa.
2. Nadużycie tej wolności, stanowiące ściąganą z oskarżenia prywatnego zniewagę lub zniesławienie strony, jej pełnomocnika lub obrońcy, kuratora, świadka, biegłego lub tłumacza, podlega ściągnięciu tylko w drodze dyscyplinarnej.

<sup>161</sup> **Art. 16a. [Ograniczenia w zakresie ochrony danych osobowych ze względu na tajemnicę adwokacką]**

1. Przepisy art. 15 ust. 1 i 3, art. 18 i art. 19 rozporządzenia Parlamentu Europejskiego i Rady (UE) 2016/679 z dnia 27 kwietnia 2016 r. w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i w sprawie swobodnego przepływu takich danych oraz uchylenia dyrektywy 95/46/WE (ogólne rozporządzenie o ochronie danych) (Dz. Urz. UE L 119 z 04.05.2016, str. 1, z późn. zm.) stosuje się w zakresie, w jakim nie naruszają obowiązku zachowania przez adwokata tajemnicy, o której mowa w art. 6.
2. Przepisu art. 21 ust. 1 rozporządzenia Parlamentu Europejskiego i Rady (UE) 2016/679 z dnia 27 kwietnia 2016 r. w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i w sprawie swobodnego przepływu takich danych oraz uchylenia dyrektywy 95/46/WE (ogólne rozporządzenie o ochronie danych) w przypadku danych osobowych pozyskanych przez adwokata w związku z udzielaniem pomocy prawnej nie stosuje się.

2. The provision of art. 21 sec. 1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation ) in the case of personal data obtained by an advocate in connection with the provision of legal aid, it does not apply.

**Article 16b<sup>162</sup> [Request by the President of the Personal Data Protection Office to disclose information and legal secrecy]**

The obligation of secrecy referred to in art. 6, does not cease if the President of the Personal Data Protection Office requests the disclosure of information obtained by an advocate in connection with the provision of legal aid.

**Act of August 29, 1997 Tax Code**

3

**Chapter 11a Hearing**

**Article 200a<sup>163</sup> [Hearing in tax proceedings]**

§ 1. In the course of the proceedings, the appellate body will hold a hearing:

- 1) ex officio – if there is a need to clarify the essential circumstances of the facts of the case with the participation of witnesses or experts or by way of inspection, or clarify the legal argumentation presented by the party in the course of the proceedings;
- 2) at the request of the party.

§ 2. In the request for a hearing, a party justifies the need to hold a hearing, indicates what circumstances of the case should be explained and what steps should be taken at the hearing.

§ 3. The appellate body may refuse to hold a hearing if the subject of the hearing are circumstances that are irrelevant to the case or these circumstances are sufficiently confirmed by other evidence.

§ 4. A decision is issued on the refusal to hold a hearing.

<sup>162</sup> **Art. 16b. [Wystąpienie przez Prezesa Urzędu Ochrony Danych Osobowych z żądaniem ujawnienia informacji a tajemnica adwokacka]**

Obowiązek zachowania tajemnicy, o której mowa w art. 6, nie ustaje, w przypadku gdy z żądaniem ujawnienia informacji uzyskanych przez adwokata w związku z udzielaniem pomocy prawnej występuje Prezes Urzędu Ochrony Danych Osobowych.

<sup>163</sup> **Art. 200a. [Rozprawa w postępowaniu podatkowym]**

§ 1. Organ odwoławczy przeprowadzi w toku postępowania rozprawę:

- 1) z urzędu – jeżeli zachodzi potrzeba wyjaśnienia istotnych okoliczności stanu faktycznego sprawy przy udziale świadków lub biegłych albo w drodze oględzin, lub sprecyzowania argumentacji prawnej prezentowanej przez stronę w toku postępowania;
- 2) na wniosek strony.

§ 2. Strona we wniosku o przeprowadzenie rozprawy uzasadnia potrzebę przeprowadzenia rozprawy, wskazuje jakie okoliczności sprawy powinny być wyjaśnione i jakie czynności powinny być dokonane na rozprawie.

§ 3. Organ odwoławczy może odmówić przeprowadzenia rozprawy, jeżeli przedmiotem rozprawy mają być okoliczności niemające znaczenia dla sprawy albo okoliczności te są wystarczająco potwierdzone innym dowodem.

§ 4. W sprawie odmowy przeprowadzenia rozprawy wydaje się postanowienie.

**Art. 200b<sup>164</sup> [Date of the hearing in tax proceedings]**

The date of the hearing should be set in such a way that the delivery of the summons is made no later than 7 days before the hearing.

**Art. 200c<sup>165</sup> [The person presiding over the hearing in tax proceedings]**

§ 1. The hearing is directed by an employee of the appeal body authorised to conduct the hearing.

§ 2. When the proceedings are pending before the local government appeals board, the hearing is managed by the chairman or a designated member of that board.

§ 3. An authorised employee of the first-instance authority against whose decision the appeal was lodged participates in the hearing.

**Art. 200d<sup>166</sup> [Rights of the party and the person presiding over the hearing in tax proceedings]**

§ 1. At the hearing, a party may submit explanations, submit requests, proposals and allegations, and present evidence to support them. In addition, the party may comment on the results of the evidentiary proceedings.

§ 2. The person in charge of the hearing may revoke a question put to a participant in the hearing, if it is not relevant to the case. However, at the request of a party, the content of the repealed question should be entered in the minutes.

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<sup>164</sup> **Art. 200b. [Termin rozprawy w postępowaniu podatkowym]**

Termin rozprawy powinien być tak wyznaczony, aby doręczenie wezwania nastąpiło najpóźniej na 7 dni przed rozprawą.

<sup>165</sup> **Art. 200c. [Osoba kierująca rozprawą w postępowaniu podatkowym]**

§ 1. Rozprawą kieruje upoważniony do przeprowadzenia rozprawy pracownik organu odwoławczego.

§ 2. Gdy postępowanie toczy się przed samorządowym kolegium odwoławczym, rozprawą kieruje przewodniczący albo wyznaczony członek tego kolegium.

§ 3. W rozprawie uczestniczy upoważniony pracownik organu pierwszej instancji, od którego decyzji wniesiono odwołanie.

<sup>166</sup> **Art. 200d. [Uprawnienia strony i kierującego rozprawą w postępowaniu podatkowym]**

§ 1. Na rozprawie strona może składać wyjaśnienia, zgłaszać żądania, propozycje i zarzuty oraz przedstawiać dowody na ich poparcie. Ponadto strona może wypowiadać się co do wyników postępowania dowodowego.

§ 2. Kierujący rozprawą może uchylić pytanie zadane uczestnikowi rozprawy, jeżeli nie ma ono istotnego znaczenia dla sprawy. Jednakże na żądanie strony należy zamieścić w protokole treść uchylonego pytania.

**Criminal Procedure Code [KPK<sup>167</sup>]****Chapter 21 Witnesses****Article 177<sup>168</sup> Obligation to appear and ways of examining a witness**

§ 1. Anyone summoned as a witness must appear and give evidence.

§ 1a. The hearing of a witness may take place with the use of technical devices that enable this activity to be carried out remotely with the simultaneous direct transmission of image and sound. In the proceedings before the court, the court referendary, assistant judge or official employed in the court in whose district the witness resides take part in the activities in the place where the witness resides.

§ 1b. In the place where the witness interviewed in the manner specified in § 1a is, the following persons may be present instead of the persons indicated in that provision:

- 1) a Prison Service officer – if the witness is in a prison or remand center;
- 2) consular officer – if a witness who is a Polish citizen is staying abroad.

§ 2. A witness who is unable to appear due to illness, disability or other insurmountable obstacle may be questioned at his place of stay.

**Article 178<sup>169</sup> Absolute prohibitions to take evidence**

It is not allowed to question as witnesses:

- 1) a defender or an advocate or legal advisor acting on the basis of art. 245 contact of the detained with an attorney or legal advisor, notice of detention § 1 as to the facts about which he learned while providing legal advice or conducting the case;
- 2) clergyman as to the facts he learned about in confession.

<sup>167</sup> Dz.U.2021.0.534 t.j. – Ustawa z dnia 6 czerwca 1997 r. – Kodeks postępowania karnego / Journal of Laws 2021.0.534, i.e. the Act of 6 June 1997 - Code of Criminal Procedure.

<sup>168</sup> **Art. 177. Obowiązek stawienia się i sposoby przesłuchania świadka**

§ 1. Każda osoba wezwana w charakterze świadka ma obowiązek stawić się i złożyć zeznanie.

§ 1a. Przesłuchanie świadka może nastąpić przy użyciu urządzeń technicznych umożliwiających przeprowadzenie tej czynności na odległość z jednoczesnym bezpośrednim przekazem obrazu i dźwięku. W postępowaniu przed sądem w czynności w miejscu przebywania świadka bierze udział referendarz sądowy, asystent sędziego lub urzędnik zatrudniony w sądzie, w którego okręgu świadek przebywa.

§ 1b. W miejscu przebywania świadka przesłuchiwanego w sposób określony w § 1a, zamiast osób wskazanych w tym przepisie, może być obecny:

- 1) funkcjonariusz Służby Więziennej – jeżeli świadek przebywa w zakładzie karnym lub areszcie śledczym;
- 2) urzędnik konsularny – jeżeli świadek będący obywatelem polskim przebywa za granicą.

§ 2. Świadka, który nie może się stawić na wezwanie z powodu choroby, kalectwa lub innej nie dającej się pokonać przeszkody, można przesłuchać w miejscu jego pobytu.

<sup>169</sup> Art. 178. Bezwzględne zakazy dowodowe

Nie wolno przesłuchiwać jako świadków:

- 1) obrońcy albo adwokata lub radcy prawnego działającego na podstawie art. 245 kontakt zatrzymanego z adwokatem lub radcą prawnym, zawiadomienie o zatrzymaniu § 1, co do faktów, o których dowiedział się udzielając porady prawnej lub prowadząc sprawę;
- 2) duchownego co do faktów, o których dowiedział się przy spowiedzi.

**Article 178a<sup>170</sup> Hearing the mediator as a witness**

It is not allowed to question the mediator as a witness as to the facts about which he learned from the accused or the victim while conducting mediation proceedings, with the exception of information about the crimes referred to in Art. 240 punishable failure to notify about a prohibited act § 1 of the Penal Code.

**Article 179<sup>171</sup> Exemption from the obligation to maintain state secrets**

§ 1. Persons obliged to keep secret information classified as “secret” or “top secret” may be questioned as to the circumstances to which this obligation extends, only after such persons are released from the obligation to keep secrets by an authorised superior body.

§ 2. The release may only be refused if the testimony could seriously harm the state.

§ 3. The court or the public prosecutor may apply to the competent supreme body of government administration to release a witness from the obligation of secrecy, unless specific laws provide otherwise.

**Article 180<sup>172</sup> Interrogation of persons bound by professional secrecy**

§ 1. Persons obliged to keep secret information classified as “restricted” or “confidential” or secrecy related to the performance of a profession or function may refuse to testify as to the circumstances to which this obligation extends, unless the court or the prosecutor for the benefit of the administration of justice dismisses these persons from the obligation of secrecy, unless specific laws provide otherwise. A complaint may be lodged against this decision.

[...]

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<sup>170</sup> **Art. 178a. Przesłuchiwanie mediatora w charakterze świadka**

Nie wolno przesłuchiwać jako świadka mediatora co do faktów, o których dowiedział się od oskarżonego lub pokrzywdzonego prowadząc postępowanie mediacyjne, z wyłączeniem informacji o przestępstwach, o których mowa w art. 240 karalne niezawiadomienie o czynie zabronionym § 1 Kodeksu karnego.

<sup>171</sup> **Art. 179. Zwolnienie od obowiązku zachowania tajemnicy państwowej**

§ 1. Osoby obowiązane do zachowania w tajemnicy informacji niejawnych o klauzuli tajności “tajne” lub “ściśle tajne” mogą być przesłuchane co do okoliczności, na które rozciąga się ten obowiązek, tylko po zwolnieniu tych osób od obowiązku zachowania tajemnicy przez uprawniony organ przełożony.

§ 2. Zwolnienia wolno odmówić tylko wtedy, gdyby złożenie zeznania wyrządzić mogło poważną szkodę państwu.

§ 3. Sąd lub prokurator może zwrócić się do właściwego naczelnego organu administracji rządowej o zwolnienie świadka od obowiązku zachowania tajemnicy, jeżeli ustawy szczególne nie stanowią inaczej.

<sup>172</sup> **Art. 180. Przesłuchiwanie osób obowiązanych do zachowania tajemnicy zawodowej**

§ 1. Osoby obowiązane do zachowania w tajemnicy informacji niejawnych o klauzuli tajności “zastrzeżone” lub “poufne” lub tajemnicy związanej z wykonywaniem zawodu lub funkcji mogą odmówić zeznań co do okoliczności, na które rozciąga się ten obowiązek, chyba że sąd lub prokurator dla dobra wymiaru sprawiedliwości zwolni te osoby od obowiązku zachowania tajemnicy, jeżeli ustawy szczególne nie stanowią inaczej. Na postanowienie w tym przedmiocie przysługuje zażalenie.

**Article 226<sup>173</sup> Use of documents containing classified information as evidence**

With regard to the use of documents containing classified information or professional secrecy as evidence in criminal proceedings, the prohibitions and limitations set out in Articles 178-181 shall apply accordingly. However, in the preparatory proceedings, the prosecutor decides about the use of documents containing medical confidentiality as evidence.

**Act from 6 July 1982 about Legal Advisers**

**Chapter 1a Processing of personal data****Article 5a<sup>174</sup> [Restrictions on the protection of personal data due to the confidentiality of legal counsel]**

(1) The provisions of Article 15 (1) and (3), Article 18 and Article 19 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (Official Journal of the EU L 119 of 04.05.2016, p. 1, as amended) shall apply to the extent that they do not violate the obligation of the legal counsel to maintain the confidentiality referred to in Article 3.

(2) The provision of Article 21 (1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) in the case of personal data obtained by the legal counsel in connection with the provision of legal assistance shall not apply.

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**<sup>173</sup> Art. 226 Wykorzystanie jako dowodów dokumentów zawierających informacje niejawne**

W kwestii wykorzystania dokumentów zawierających informacje niejawne lub tajemnicę zawodową, jako dowodów w postępowaniu karnym, stosuje się odpowiednio zakazy i ograniczenia określone w art 178-181. Jednakże w postępowaniu przygotowawczym o wykorzystaniu, jako dowodów, dokumentów zawierających tajemnicę lekarską decyduje prokurator.

**<sup>174</sup> Art. 5a. [Ograniczenia w zakresie ochrony danych osobowych ze względu na tajemnicę radcy prawnego]**

1. Przepisy art. 15 ust. 1 i 3, art. 18 i art. 19 rozporządzenia Parlamentu Europejskiego i Rady (UE) 2016/679 z dnia 27 kwietnia 2016 r. w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i w sprawie swobodnego przepływu takich danych oraz uchylenia dyrektywy 95/46/WE (ogólne rozporządzenie o ochronie danych) (Dz. Urz. UE L 119 z 04.05.2016, str. 1, z późn. zm. 1 ) stosuje się w zakresie, w jakim nie naruszają obowiązku zachowania przez radcę prawnego tajemnicy, o której mowa w art. 3.

2. Przepisu art. 21 ust. 1 rozporządzenia Parlamentu Europejskiego i Rady (UE) 2016/679 z dnia 27 kwietnia 2016 r. w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i w sprawie swobodnego przepływu takich danych oraz uchylenia dyrektywy 95/46/WE (ogólne rozporządzenie o ochronie danych) w przypadku danych osobowych pozyskanych przez radcę prawnego w związku z udzielaniem pomocy prawnej nie stosuje się.

**Article 5b<sup>175</sup> [Request by the President of the Office for Personal Data Protection to disclose information vs. legal adviser confidentiality]**

The obligation of secrecy referred to in Article 3 (4)–(6) does not cease if the President of the Office for Personal Data Protection demands disclosure of information obtained by the legal adviser in connection with the provision of legal assistance.

**Article 5c<sup>176</sup> [Period of retention of personal data].**

(1) The storage period of personal data shall be:

- 1) 5 years from the end of the year in which the proceedings in which the personal data were collected ended – in case of personal data processed by the authorities of legal advisers’ self-government to the extent necessary for the proper performance of the public tasks specified in the Act and personal data processed within the framework of the supervision over the activities of legal advisers’ self-government;
- 2) 10 years from the end of the year in which the proceedings in which the personal data were collected ended - in the case of personal data processed:
  - a) in the course of the proceedings conducted by the bodies of the self-government of legal advisers:
    - administrative,
    - in the scope of complaints and motions,

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<sup>175</sup> **Art. 5b. [Wystąpienie przez Prezesa Urzędu Ochrony Danych Osobowych z żądaniem ujawnienia informacji a tajemnica radcy prawnego]**

Obowiązek zachowania tajemnicy, o której mowa w art. 3 ust. 4-6, nie ustaje, w przypadku gdy z żądaniem ujawnienia informacji uzyskanych przez radcę prawnego w związku z udzielaniem pomocy prawnej występuje Prezes Urzędu Ochrony Danych Osobowych.

<sup>176</sup> **Art. 5c. [Okres przechowywania danych osobowych]**

1. Okres przechowywania danych osobowych wynosi:

- 1) 5 lat od końca roku, w którym zakończyło się postępowanie, w którym dane osobowe zostały zgromadzone - w przypadku danych osobowych przetwarzanych przez organy samorządu radców prawnych w zakresie niezbędnym do prawidłowej realizacji zadań publicznych określonych w ustawie oraz danych osobowych przetwarzanych w ramach nadzoru nad działalnością samorządu radców prawnych;
  - 2) 10 lat od końca roku, w którym zakończyło się postępowanie, w którym dane osobowe zostały zgromadzone - w przypadku danych osobowych przetwarzanych:
    - a) w toku prowadzonych przez organy samorządu radców prawnych postępowań:
      - administracyjnych,
      - w zakresie skarg i wniosków,
      - innych przewidzianych przez ustawę lub wydane na podstawie ustawy akty prawne organów samorządu radców prawnych dotyczących radców prawnych, aplikantów radcowskich lub osób ubiegających się o wpis na listę radców prawnych lub listę aplikantów radcowskich, a także osób przystępujących do egzaminu wstępnego na aplikację radcowską i egzaminu radcowskiego,
    - b) w ramach nadzoru nad tymi postępowaniami, o których mowa w lit. a,
    - c) przez radców prawnych w ramach wykonywania zawodu;
  - 3) 15 lat od końca roku, w którym zakończyło się postępowanie, w którym dane osobowe zostały zgromadzone - w przypadku danych osobowych przetwarzanych w toku prowadzonych przez organy samorządu radców prawnych postępowań dyscyplinarnych wobec radców prawnych i aplikantów radcowskich oraz podczas wykonywania przewidzianych przez ustawę kompetencji nadzorczych nad postępowaniami dyscyplinarnymi w sprawach radców prawnych i aplikantów radcowskich.
2. Po upływie okresów, o których mowa w ust. 1, w przypadku danych osobowych przetwarzanych przez radców prawnych w ramach wykonywania zawodu, dane osobowe ulegają usunięciu.



- other provided for by the Act or legal acts of legal advisers self-government authorities issued on the basis of the Act, concerning legal advisers, trainee legal advisers or persons applying to be entered on the list of legal advisers or the list of trainee legal advisers, as well as persons taking the entrance examination for the legal adviser apprenticeship and the examination for legal advisers,

b) in the supervision of those proceedings referred to in point (a),

c) by legal advisers in the exercise of their profession;

3) 15 years from the end of the year in which the proceedings in which the personal data were collected ended - in the case of personal data processed in the course of disciplinary proceedings conducted by the authorities of the legal advisers' self-government against legal advisers.

## (2) Provisions on Lifting a legal (professional) privilege

### Article 6<sup>177</sup> [Legal secrets]

[...] 3. An advocate may not be released from the obligation to maintain professional secrecy as to the facts which he learned about while providing legal aid or conducting a case.

4. The obligation of professional secrecy does not apply to information:

1) made available on the basis of the provisions on counteracting money laundering and terrorist financing,

2) provided on the basis of the provisions of Chapter 11a, Chapter III of the Act of August 29, 1997 – Tax Ordinance (Journal of Laws of 2020, items 1325 and 1423) – to the extent specified in these provisions.

### Criminal Procedure Code

**Article 180<sup>178</sup> Hearing persons obliged to maintain professional secrecy § 1.** Persons obliged to keep secret information classified as “restricted” or “confidential” or secrecy

<sup>177</sup> **Art. 6 [Tajemnica adwokacka]**

[...] 3. Adwokata nie można zwolnić od obowiązku zachowania tajemnicy zawodowej co do faktów, o których dowiedział się udzielając pomocy prawnej lub prowadząc sprawę.

4. Obowiązek zachowania tajemnicy zawodowej nie dotyczy informacji:

1) udostępnianych na podstawie przepisów o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu,

2) przekazywanych na podstawie przepisów rozdziału 11a działu III ustawy z dnia 29 sierpnia 1997 r. - Ordynacja podatkowa (Dz. U. z 2020 r. poz. 1325 i 1423)

- w zakresie określonym tymi przepisami.

<sup>178</sup> **Art. 180. KPK** Przesłuchiwanie osób obowiązanych do zachowania tajemnicy zawodowej

§ 1. Osoby obowiązane do zachowania w tajemnicy informacji niejawnych o klauzuli tajności “zastrzeżone” lub “poufne” lub tajemnicy związanej z wykonywaniem zawodu lub funkcji mogą odmówić zeznań co do okoliczności, na które rozciąga się ten obowiązek, chyba że sąd lub prokurator dla dobra wymiaru sprawiedliwości zwolni te osoby od obowiązku zachowania tajemnicy, jeżeli ustawy szczególne nie stanowią inaczej. Na postanowienie w tym przedmiocie przysługuje zażalenie.

§ 2. Osoby obowiązane do zachowania tajemnicy notarialnej, adwokackiej, rady prawnego, doradcy podatkowego, lekarskiej, dziennikarskiej lub statystycznej oraz tajemnicy Prokuraturii Generalnej, mogą być przesłuchiwane co do faktów objętych tą tajemnicą tylko wtedy, gdy jest to niezbędne dla dobra wymiaru

related to the performance of a profession or function may refuse to testify as to the circumstances to which this obligation extends, unless the court or the prosecutor for the benefit of the administration of justice dismisses these persons from the obligation of secrecy, unless specific laws provide otherwise. A complaint may be lodged against this decision.

§ 2. Persons obliged to keep notarial, barrister, legal advisor, tax, medical, journalistic or statistical secrets, and the secrets of the General Prosecutor's Office, may be questioned as to the facts covered by this secret only if it is necessary for the good of the administration of justice and the circumstance cannot be established on the basis of other evidence. In the preparatory proceedings, the court decides on the question of a hearing or the consent to the hearing, at a meeting without the participation of the parties, within not more than 7 days from the date of delivery of the prosecutor's request. The court's decision may be appealed against.

§ 3. The journalist's exemption from the obligation to maintain confidentiality may not apply to data enabling the identification of the author of the press material, a letter to the editor or other material of this nature, as well as the identification of persons providing information published or submitted for publication, if these persons have stipulated not to disclose the above data.

§ 4. The provision of § 3 shall not apply if the information concerns an offence referred to in Art. 240 punishable failure to notify about a prohibited act § 1 of the Penal Code.

§ 5. A journalist's refusal to disclose the data referred to in § 3 shall not waive his responsibility for an offence committed by publishing the information.

## **bb. Spousal privilege**

### **(1) Provisions in Polish law**

- 8 The spouse is mentioned in the Polish Criminal Code but is not explicitly addressed as a special witness in the Criminal Procedure Code (Chapter 21).

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sprawiedliwości, a okoliczność nie może być ustalona na podstawie innego dowodu. W postępowaniu przygotowawczym w przedmiocie przesłuchania lub zezwolenia na przesłuchanie decyduje sąd, na posiedzeniu bez udziału stron, w terminie nie dłuższym niż 7 dni od daty doręczenia wniosku prokuratora. Na postanowienie sądu przysługuje zażalenie.

§ 3. Zwolnienie dziennikarza od obowiązku zachowania tajemnicy nie może dotyczyć danych umożliwiających identyfikację autora materiału prasowego, listu do redakcji lub innego materiału o tym charakterze, jak również identyfikację osób udzielających informacji opublikowanych lub przekazanych do opublikowania, jeżeli osoby te zastrzegły nieujawnianie powyższych danych.

§ 4. Przepisu § 3 nie stosuje się, jeżeli informacja dotyczy przestępstwa, o którym mowa w art. 240 karalne niezawiadomienie o czynie zabronionym § 1 Kodeksu karnego.

§ 5. Odmowa przez dziennikarza ujawnienia danych, o których mowa w § 3, nie uchyła jego odpowiedzialności za przestępstwo, którego dopuścił się publikując informację.

**Polish Criminal Code<sup>179</sup>**

9

**Chapter XIV. Explanation of statutory terms****Art. 115 of the CC – The closest person**

§ 11. The closest person is a spouse, an ascendant, descendant, siblings, related in the same line or degree, an adopted person and their spouse, as well as a person living together.

**(2) Provisions on lifting a spousal privilege**

There are no concrete provisions of lifting a spousal privilege.

10

**cc. Privilege against self-incrimination****(1) Enshrinement in Polish law****Criminal Procedure Code**

11

**Article 74<sup>180</sup> Rights and obligations of the accused**

§ 1. The accused is under no obligation to prove his innocence or to provide evidence to his detriment.

<sup>179</sup> Journal of Laws 2020.0.1444, i.e. the Act of June 6, 1997 – Penal Code / *Dz.U.2020.0.1444 t.j. – Ustawa z dnia 6 czerwca 1997 r. - Kodeks karny.*

<sup>180</sup> **Art. 74 Prawa i obowiązki oskarżonego**

§ 1. Oskarżony nie ma obowiązku dowodzenia swej niewinności ani obowiązku dostarczania dowodów na swoją niekorzyść.

§ 2. Oskarżony jest jednak obowiązany poddać się:

1) oględzinom zewnętrznym ciała oraz innym badaniom nie połączonym z naruszeniem integralności ciała; wolno także w szczególności od oskarżonego pobrać odciski, fotografować go oraz okazać w celach rozpoznawczych innym osobom;

2) badaniom psychologicznym i psychiatrycznym oraz badaniom połączonym z dokonaniem zabiegów na jego ciele, z wyjątkiem chirurgicznych, pod warunkiem że dokonywane są przez uprawnionego do tego pracownika służby zdrowia z zachowaniem wskazań wiedzy lekarskiej i nie zagrażają zdrowiu oskarżonego, jeżeli przeprowadzenie tych badań jest nieodzowne; w szczególności oskarżony jest obowiązany przy zachowaniu tych warunków poddać się pobraniu krwi, włosów lub wydzielin organizmu, z zastrzeżeniem pkt 3;

3) pobraniu przez funkcjonariusza Policji wymazu ze śluzówki policzków, jeżeli jest to nieodzowne i nie zachodzi obawa, że zagrażałoby to zdrowiu oskarżonego lub innych osób.

§ 3. W stosunku do osoby podejrzanej można dokonać badań lub czynności, o których mowa w § 2 pkt 1, a także, przy zachowaniu wymagań określonych w § 2 pkt 2 lub 3, pobrać krew, włosy, wymaz ze śluzówki policzków lub inne wydzieliny organizmu.

§ 3a. Oskarżonego lub osobę podejrzaną wzywa się do poddania się obowiązkom wynikającym z § 2 i 3. W razie odmowy poddania się tym obowiązkom oskarżonego lub osobę podejrzaną można zatrzymać i przymusowo doprowadzić, a także stosować wobec nich siłę fizyczną lub środki techniczne służące obezwładnieniu, w zakresie niezbędnym do wykonania danej czynności.

§ 4. Minister Sprawiedliwości w porozumieniu z ministrem właściwym do spraw zdrowia określi, w drodze rozporządzenia, szczegółowe warunki i sposób poddawania oskarżonego oraz osoby podejrzanej badaniom, a także wykonywania z ich udziałem czynności, o których mowa w § 2 pkt 1 i 3 oraz § 3, mając na uwadze, aby gromadzenie, utrwalanie i analiza materiału dowodowego były dokonywane zgodnie z aktualną wiedzą w zakresie kryminalistyki i medycyny sądowej.

§ 2. However, the accused is obliged to submit:

- 1) external examination of the body and other examinations not connected with violation of the integrity of the body; it is also allowed, in particular, to take prints from the accused, photograph them and show them for recognition purposes to other persons;
- 2) psychological and psychiatric examinations as well as examinations involving procedures on his body, with the exception of surgical examinations, provided that they are performed by an authorised health care professional and do not endanger the health of the accused, if such examinations are necessary; in particular, the accused is obliged, under these conditions, to undergo blood, hair or body secretions, subject to point 3;
- 3) taking a smear from the cheek mucosa by a police officer, if it is necessary and there is no fear that it would endanger the health of the accused or other people.

§ 3. In relation to the suspected person, tests or activities referred to in § 2 point 1 can be made, and, subject to the requirements set out in § 2 point 2 or 3, take blood, hair, swab from the mucosa of the cheeks or other body secretions.

§ 3a. The accused or the suspect is called upon to submit to the obligations arising from § 2 and 3. In the event of refusal to submit to these obligations, the accused or the suspect may be detained and forcibly brought about, as well as physical force or technical measures to incapacitate them, to the extent necessary to complete the action.

§ 4. The Minister of Justice, in consultation with the minister competent for health matters, shall determine, by regulation, the detailed conditions and manner of subjecting the accused and the suspect to examination, as well as performing the activities with their participation referred to in § 2 points 1 and 3 and § 3, having regard to bearing in mind that the collection, recording and analysis of the evidence should be carried out in accordance with the current knowledge in the field of forensics and forensics.

### **Article 173<sup>181</sup> Presenting a person or an item**

§ 1. The interviewed person may be shown another person, his image or thing for the purpose of recognition. The presentation should be carried out so as to turn off the suggestion.

§ 2. If necessary, the presentation may also be performed in such a way as to disable the possibility of recognizing the person interviewed by the recognised person.

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#### <sup>181</sup> **Art. 173 Okazanie osoby lub rzeczy**

§ 1. Osobie przesłuchiwanej można okazać inną osobę, jej wizerunek lub rzecz w celu jej rozpoznania. Okazanie powinno być przeprowadzone tak, aby wyłączyć sugestię.

§ 2. W razie potrzeby okazanie można przeprowadzić również tak, aby wyłączyć możliwość rozpoznania osoby przesłuchiwanej przez osobę rozpoznawaną.

§ 3. Podczas okazania osoba okazywana powinna znajdować się w grupie obejmującej łącznie co najmniej cztery osoby.

§ 4. Minister Sprawiedliwości, w porozumieniu z ministrem właściwym do spraw wewnętrznych, określi, w drodze rozporządzenia, warunki techniczne przeprowadzenia okazania, mając na uwadze konieczność zapewnienia sprawnego toku postępowania, a także właściwej realizacji gwarancji procesowych jej uczestników.

§ 3. During the presentation, the person being presented should be in a group of at least four people in total.

§ 4. The Minister of Justice, in consultation with the minister competent for internal affairs, shall determine, by regulation, the technical conditions for the performance of the presentation, bearing in mind the need to ensure the smooth course of the proceedings, as well as the proper implementation of procedural guarantees of its participants.

In Poland the separate right to be released from obligation to testify is enshrined in Art. 185 and the right to refuse to answer a question is stipulated by Art. 183 CPC: **12**

**Article 182<sup>182</sup> The right to refuse to testify**

§ 1. The closest person to the accused may refuse to testify.

§ 2. The right to refuse to testify continues despite the termination of marriage or adoption.

§ 3. The right to refuse to testify is also vested in a witness who, in another pending case, is accused of complicity in the crime covered by the proceedings.

**Article 183<sup>183</sup> Refusal to answer a question**

§ 1. A witness may refuse to answer a question, if the answer might incriminate himself or his next of kin for an offence or a fiscal offence.

§ 2. A witness may request that he or she be heard at a hearing in camera in camera if the content of the testimony could expose him or a person close to him to disgrace next of kin.

**Article 185<sup>184</sup> Release from obligation to testify**

A person in a particularly close personal relationship with the accused may be released from the obligation to testify or to answer questions, if such a person applies for such a release.

<sup>182</sup> **Art. 182 Prawo odmowy zeznań**

§ 1. Osoba najbliższa dla oskarżonego może odmówić zeznań.

§ 2. Prawo odmowy zeznań trwa mimo ustania małżeństwa lub przysposobienia.

§ 3. Prawo odmowy zeznań przysługuje także świadkowi, który w innej toczącej się sprawie jest oskarżony o współudział w przestępstwie objętym postępowaniem.

<sup>183</sup> **Art. 183.** § 1. Świadek może uchylić się od odpowiedzi na pytanie, jeżeli udzielenie odpowiedzi mogłoby narazić jego lub osobę dla niego najbliższą na odpowiedzialność za przestępstwo lub przestępstwo skarbowe.

§ 2. Świadek może żądać, aby przesłuchano go na rozprawie z wyłączeniem jawności, jeżeli treść zeznań mogłaby narazić na hańbę jego lub osobę dla niego najbliższą.

<sup>184</sup> **Art. 185.** Można zwolnić od złożenia zeznania lub odpowiedzi na pytania osobę pozostającą z oskarżonym w szczególnie bliskim stosunku osobistym, jeżeli osoba taka wnosi o zwolnienie.

**Criminal Code****Article 233<sup>185</sup> False testimony**

§ 1. Whoever, by submitting a testimony to be used as evidence in court proceedings or in other proceedings conducted pursuant to the Act, testifies untruthfully or conceals the truth,

shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.

§ 1a. If the perpetrator of the act specified in § 1 testifies untruthfully or conceals the truth for fear of criminal liability to himself or his immediate family, he or she shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

§ 2. The condition of liability is that the person taking the testimony, acting within the scope of his rights, warn the testimony of criminal liability for the false testimony or take a promise from him.

§ 3. Not be punished for the act specified in § 1a, who makes a false testimony, not knowing about the right to refuse to testify or answer questions.

§ 4. Who, as an expert, expert or translator, presents a false opinion, expert opinion or translation intended to serve as evidence in the proceedings referred to in § 1, shall be subject to the penalty of deprivation of liberty for a term of between one and 10 years.

§ 4a. If the perpetrator of the act specified in § 4 acts unintentionally, risking substantial harm to the public interest, he shall be subject to the penalty of deprivation of liberty for up to 3 years.

**<sup>185</sup> Art. 233 Falszywe zeznania**

§ 1. Kto, składając zeznanie mające służyć za dowód w postępowaniu sądowym lub w innym postępowaniu prowadzonym na podstawie ustawy, zeznaje nieprawdę lub zataja prawdę, podlega karze pozbawienia wolności od 6 miesięcy do lat 8.

§ 1a. Jeżeli sprawca czynu określonego w § 1 zeznaje nieprawdę lub zataja prawdę z obawy przed odpowiedzialnością karną grożącą jemu samemu lub jego najbliższemu, podlega karze pozbawienia wolności od 3 miesięcy do lat 5.

§ 2. Warunkiem odpowiedzialności jest, aby przyjmujący zeznanie, działając w zakresie swoich uprawnień, uprzedził zeznającego o odpowiedzialności karnej za fałszywe zeznanie lub odebrał od niego przyrzeczenie.

§ 3. Nie podlega karze za czyn określony w § 1a, kto składa fałszywe zeznanie, nie wiedząc o prawie odmowy zeznania lub odpowiedzi na pytania.

§ 4. Kto, jako biegły, rzeczoznawca lub tłumacz, przedstawia fałszywą opinię, ekspertyzę lub tłumaczenie mające służyć za dowód w postępowaniu określonym w § 1, podlega karze pozbawienia wolności od roku do lat 10.

§ 4a. Jeżeli sprawca czynu określonego w § 4 działa nieumyślnie, narażając na istotną szkodę interes publiczny, podlega karze pozbawienia wolności do lat 3.

§ 5. Sąd może zastosować nadzwyczajne złagodzenie kary, a nawet odstąpić od jej wymierzenia, jeżeli:

1) fałszywe zeznanie, opinia, ekspertyza lub tłumaczenie dotyczy okoliczności niemogących mieć wpływu na rozstrzygnięcie sprawy,

2) sprawca dobrowolnie sprostuje fałszywe zeznanie, opinię, ekspertyzę lub tłumaczenie, zanim nastąpi, chociażby nieprawomocne, rozstrzygnięcie sprawy.

§ 6. Przepisy § 1-3 oraz 5 stosuje się odpowiednio do osoby, która składa fałszywe oświadczenie, jeżeli przepis ustawy przewiduje możliwość odebrania oświadczenia pod rygorem odpowiedzialności karnej.

§ 5. The court may apply extraordinary mitigation of punishment, and even withdraw from its imposition, if:

- 1) a false testimony, opinion, expert opinion or translation concerns circumstances that cannot affect the outcome of the case,
- 2) the perpetrator voluntarily corrects a false testimony, opinion, expert opinion or translation before the settlement of the case, even if it is not final, takes place.

§ 6. The provisions of § 1–3 and 5 shall apply mutatis mutandis to the person who submits a false declaration, if the provision of the Act provides for the possibility of collecting the declaration under pain of criminal liability.

## (2) National legislation

- Resolution The Supreme Court of 10 December 2020 I KK 58/19 Admissibility of prosecution under Art. 233 § 1a of the Penal Code<sup>186</sup>
- Judgment of the SA in Katowice of November 28, 2002, II Aka 398/02, OSA 2003, No. 12, item 121<sup>187</sup>

### dd. Without prejudice privilege

Art. 363 § 1 of the Code of Civil Procedure applies regarding formal validity and Art. 365 of the Code of Civil Procedure for material validity. **14**

## b) Parliamentary privilege or immunity

The following part shall analyse the national legislation regarding the privileges or immunities: **15**

### aa. National Legislation

#### Act of 9 May 1996 on exercising the mandate of deputy and senator<sup>188</sup>

#### Chapter 2 Parliamentary immunity

**Article 6<sup>189</sup> [Material immunity]** 1. A deputy or senator may not be held responsible for his activities falling within the scope of exercising his mandate, either during its **16**

<sup>186</sup> I KK 58/19, Dopuszczalność pociągnięcia do odpowiedzialności karnej na podstawie art. 233 § 1a k.k. – Postanowienie Sądu Najwyższego.

<sup>187</sup> Wyrok SA w Katowicach z dnia 28 listopada 2002 r., II Aka 398/02, OSA 2003, nr 12, poz.

<sup>188</sup> Dz.U.2018.1799 t.j USTAWA z dnia 9 maja 1996 r. o wykonywaniu mandatu posła i senatora.

<sup>189</sup> **Rozdział 2 Immunitet parlamentarny**

**Art. 6 [Immunitet materialny]**

1. Poseł lub senator nie może być pociągnięty do odpowiedzialności za swoją działalność wchodzącą w zakres sprawowania mandatu ani w czasie jego trwania, ani po jego wygaśnięciu, z zastrzeżeniem art. 6a. Za taką działalność poseł lub senator odpowiada tylko przed *Sejmem* lub Senatem.

2. Działalność, o której mowa w ust. 1, obejmuje zgłaszanie wniosków, wystąpienia lub głosowania na posiedzeniach *Sejmu*, Senatu lub Zgromadzenia Narodowego oraz ich organów, na posiedzeniach klubów, kół i

duration or after its expiry, subject to Art. 6a. A deputy or senator is responsible for such activity only before the *Sejm* or Senate.

2. The activities referred to in paragraph 1. 1 shall cover the submission of motions, speeches or votes at the sessions of the *Sejm*, the Senate or the National Assembly and their bodies, at meetings of parliamentary, senate or parliamentary clubs, circles and teams, as well as other activities inherent in the exercise of the mandate.

3. For the activities referred to in paragraph 1, a deputy or senator shall be disciplinary or financial in accordance with the principles set out in the Act and in the regulations of the *Sejm* or Senate.

**Article 6a<sup>190</sup> [Liability for actions infringing the rights of third parties]**

A deputy or senator who, by taking actions falling within the scope of exercising his mandate, violates the rights of third parties, may be brought to justice only with the consent of the *Sejm* or the Senate.

**Article 7<sup>191</sup> [Procedural immunity]**

1. From the day of announcement of the election results to the day of the expiry of the mandate, a deputy or senator may not be held criminally responsible without the consent of the *Sejm* or the Senate, subject to Art. 8 and art. 10b paragraph. 2.

2. The prohibition referred to in paragraph 1. 1, applies to acts committed up to the date of expiry of the mandate, including acts committed before the date of announcement of the election results.

3. The provision of paragraph 1 shall not apply in criminal proceedings instituted before the date of announcement of the election results, against a person who was elected deputy or senator.

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zespołów poselskich, senackich lub parlamentarnych, a także inną działalność związaną nieodłącznie ze sprawowaniem mandatu.

3. Za działalność, o której mowa w ust. 1, poseł lub senator ponosi odpowiedzialność dyscyplinarną lub finansową na zasadach określonych w ustawie oraz w regulaminach *Sejmu* lub Senatu.

<sup>190</sup> **Art. 6a. [Odpowiedzialność za działania naruszające prawa osób trzecich]**

Poseł lub senator, który, podejmując działania wchodzące w zakres sprawowania mandatu, narusza prawa osób trzecich, może być pociągnięty do odpowiedzialności sądowej tylko za zgodą *Sejmu* lub Senatu.

<sup>191</sup> **Art. 7. [Immunitet procesowy]**

1. Od dnia ogłoszenia wyników wyborów do dnia wygaśnięcia mandatu poseł lub senator nie może być pociągnięty do odpowiedzialności karnej bez zgody *Sejmu* lub Senatu, z zastrzeżeniem art. 8 oraz art. 10b ust. 2.

2. Zakaz, o którym mowa w ust. 1, dotyczy czynów popełnionych do dnia wygaśnięcia mandatu, w tym czynów popełnionych przed dniem ogłoszenia wyników wyborów.

3. Przepis ust. 1 nie ma zastosowania w postępowaniu karnym, wszczętym przed dniem ogłoszenia wyników wyborów, wobec osoby, która została wybrana na posła lub senatora.

4. Pociągnięcie do odpowiedzialności karnej może nastąpić tylko za czyn wskazany we wniosku, który był podstawą wyrażenia zgody przez *Sejm* lub Senat. Pociągnięcie posła lub senatora do odpowiedzialności za inny czyn wymaga odrębnej zgody *Sejmu* lub Senatu.



4. Criminal liability may be brought only for the act indicated in the motion which was the basis for the consent of the *Sejm* or the Senate. Holding a deputy or senator responsible for another act requires the separate consent of the *Sejm* or Senate.

**Article 7a<sup>192</sup> [Immunity and limitation of criminal record]**

The statute of limitations in criminal proceedings for an act covered by immunity does not run during the period when the immunity is exercised.

**Article 7b<sup>193</sup> [Request for consent to hold a parliamentarian accountable]**

1. A request for consent to bring a deputy or senator to criminal liability in a case of an offence prosecuted on public prosecution shall be submitted through the Public Prosecutor General.

2. A request for consent to bring a deputy or senator to criminal liability in a case of an offence prosecuted on a private prosecution shall be submitted by the private prosecutor, after the case has been brought to court.

3. The application referred to in paragraph 1. 2 shall be drawn up and signed by an advocate or legal adviser, with the exception of applications submitted in their cases by judges, public prosecutors, advocates, legal advisers, notaries and professors and habilitated doctors of legal sciences.

4. The applications referred to in paragraph 1. 1 and 2 should contain:

- 1) designation of the applicant and the representative, if appointed;
- 2) name and surname as well as date and place of birth of the deputy or senator;
- 3) indication of the legal basis of the application;

<sup>192</sup> **Art. 7a. [Immunitet a przedawnienie karalności]**

Przedawnienie w postępowaniu karnym czynu objętego immunitetem nie biegnie w okresie korzystania z immunitetu.

<sup>193</sup> **Art. 7b. [Wniosek o wyrażenie zgody na pociągnięcie parlamentarzysty do odpowiedzialności]**

1. Wniosek o wyrażenie zgody na pociągnięcie posła lub senatora do odpowiedzialności karnej w sprawie o przestępstwo ścigane z oskarżenia publicznego składa się za pośrednictwem Prokuratora Generalnego.

2. Wniosek o wyrażenie zgody na pociągnięcie posła lub senatora do odpowiedzialności karnej w sprawie o przestępstwo ścigane z oskarżenia prywatnego składa oskarżyciel prywatny, po wniesieniu sprawy do sądu.

3. Wniosek, o którym mowa w ust. 2, sporządza i podpisuje adwokat lub radca prawny, z wyjątkiem wniosków składanych w swoich sprawach przez sędziów, prokuratorów, adwokatów, radców prawnych, notariuszy oraz profesorów i doktorów habilitowanych nauk prawnych.

4. Wnioski, o których mowa w ust. 1 i 2, powinny zawierać:

- 1) oznaczenie wnioskodawcy oraz pełnomocnika, o ile został ustanowiony;
- 2) imię i nazwisko oraz datę i miejsce urodzenia posła lub senatora;
- 3) wskazanie podstawy prawnej wniosku;
- 4) dokładne określenie czynu, którego dotyczy wniosek, ze wskazaniem czasu, miejsca, sposobu i okoliczności jego popełnienia oraz jego skutków, a zwłaszcza charakteru powstałej szkody;
- 5) uzasadnienie.

5. Przepisy ust. 2–4 stosuje się odpowiednio do wniosku o wyrażenie zgody na pociągnięcie posła lub senatora do cywilnej odpowiedzialności sądowej w sprawach, o których mowa w art. 6a.

4) precise specification of the act to which the request relates, indicating the time, place, method and circumstances of its commission and its consequences, in particular the nature of the damage;

5) justification.

5. The provisions of paragraph 1. 2–4 shall apply *mutatis mutandis* to the application for consent to bring a deputy or senator to civil liability in the cases referred to in art. 6a.

### **Article 7c** [*cf. below Lifting*]

#### **Article 8<sup>194</sup> [Statement by a parliamentarian on consent to be held accountable]**

1. In the notification referred to in Art. 7c paragraph. 1, the Marshal of the *Sejm* or the Marshal of the Senate shall set a time limit for the deputy or senator to submit a declaration of consent to be held criminally responsible.

2. If the deputy or senator submits the declaration referred to in para. 1, the provisions of art. 7c paragraph. 2–6 does not apply.

3. The declaration referred to in paragraph 1. 1 shall be directed by the deputy or senator, in writing, to the Marshal of the *Sejm* or the Marshal of the Senate, who shall refer to the authority competent to consider the application referred to in art. 7c paragraph. 1, to submit an opinion as to the formal correctness of this statement.

4. The Marshal of the *Sejm* or the Marshal of the Senate may request a deputy or senator to specify the content of the declaration within the prescribed period. Failure to make the content within this period causes the statement to be left out of the run; in such a case, the provisions of Art. 7c paragraph. 2–6.

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#### <sup>194</sup> **Art. 8. [Oświadczenie parlamentarzysty o wyrażeniu zgody na pociągnięcie do odpowiedzialności]**

1. W zawiadomieniu, o którym mowa w art. 7c ust. 1, Marszałek *Sejmu* lub Marszałek Senatu wyznacza termin na złożenie przez posła lub senatora oświadczenia o wyrażeniu zgody na pociągnięcie do odpowiedzialności karnej.

2. Jeżeli poseł lub senator złoży oświadczenie, o którym mowa w ust. 1, przepisów art. 7c ust. 2-6 nie stosuje się.

3. Oświadczenie, o którym mowa w ust. 1, poseł lub senator kieruje, w formie pisemnej, do Marszałka *Sejmu* lub Marszałka Senatu, który zwraca się do organu właściwego do rozpatrzenia wniosku, o którym mowa w art. 7c ust. 1, o przedstawienie opinii co do formalnej poprawności tego oświadczenia.

4. Marszałek *Sejmu* lub Marszałek Senatu może zwrócić się do posła lub senatora o uściślenie treści oświadczenia w wyznaczonym terminie. Nieuściślenie treści w tym terminie powoduje pozostawienie oświadczenia bez biegu; w takim przypadku mają zastosowanie przepisy art. 7c ust. 2-6.

5. Pociągnięcie do odpowiedzialności karnej może nastąpić tylko za czyn wskazany we wniosku, co do którego poseł lub senator wyraził zgodę w trybie określonym w ust. 1-4. Pociągnięcie do odpowiedzialności za inny czyn wymaga odrębnej zgody, wyrażonej w trybie określonym w ust. 1-4 albo w trybie określonym w art. 7c.

6. W przypadku gdy poseł lub senator wyrazi zgodę na pociągnięcie go do odpowiedzialności karnej za część czynów wskazanych we wniosku, w pozostałym zakresie wniosek jest rozpatrywany w trybie określonym w art. 7c.

7. O złożeniu przez posła lub senatora oświadczenia, o którym mowa w ust. 1, Marszałek *Sejmu* lub Marszałek Senatu niezwłocznie informuje *Sejm* lub Senat.

8. Wycofanie zgody, o której mowa w ust. 1, jest prawnie bezskuteczne.

9. Przepisy ust. 1-8 nie mają zastosowania do spraw, o których mowa w art. 6a.

5. Bringing to criminal liability may take place only for the act indicated in the motion, for which the deputy or senator has consented in the manner specified in para. 1-4. Bringing to liability for another act requires a separate consent, expressed in the manner specified in sec. 1-4 or as specified in Art. 7c.
6. If the deputy or senator agrees to be held criminally responsible for some of the acts indicated in the application, the remaining scope of the application is considered in the manner specified in art. 7c.
7. On the submission by a deputy or senator of the declaration referred to in para. 1, the Marshal of the *Sejm* or the Marshal of the Senate shall immediately inform the *Sejm* or the Senate.
8. Withdrawal of the consent referred to in para. 1 is legally ineffective.
9. The provisions of paragraph 1. 1-8 do not apply to the cases referred to in Art. 6a.

**Article 9<sup>195</sup> [Criminal proceedings pending before the day of the announcement of the election results]**

1. The Public Prosecutor General, within 60 days from the announcement of the election results, informs the Marshal of the *Sejm* or the Marshal of the Senate of any criminal proceedings pending against deputies or senators initiated before the announcement of the election results.
2. If a deputy or senator acquires a mandate during the term of office of the *Sejm* or Senate, the provision of para. 1 shall apply accordingly.
3. A deputy or senator against whom criminal proceedings instituted before the day of election are pending may submit to the *Sejm* or the Senate a request for the *Sejm* or the

<sup>195</sup> **Art. 9. [Postępowania karne toczące się przed dniem ogłoszenia wyników wyborów]**

1. Prokurator Generalny w terminie 60 dni od dnia ogłoszenia wyników wyborów informuje Marszałka *Sejmu* lub Marszałka Senatu o toczących się przeciwko posłom lub senatorom postępowaniach karnych wszczętych przed dniem ogłoszenia wyników wyborów.
2. W przypadku uzyskania przez posła lub senatora mandatu w trakcie kadencji *Sejmu* lub Senatu przepis ust. 1 stosuje się odpowiednio.
3. Poseł lub senator, przeciwko któremu toczy się postępowanie karne wszczęte przed dniem wyboru, może wystąpić do *Sejmu* lub Senatu z wnioskiem o zażądanie przez *Sejm* lub Senat zawieszenia postępowania karnego do czasu wygaśnięcia mandatu. Wniosek nie może dotyczyć wykonania kary orzeczonej prawomocnym wyrokiem sądu.
4. Wniosek, o którym mowa w ust. 3, składa się do Marszałka *Sejmu* lub Marszałka Senatu.
5. Wniosek, o którym mowa w ust. 3, zawiera w szczególności: dokładne oznaczenie sprawy karnej, ze wskazaniem organu, przed którym toczy się postępowanie, uzasadnienie wniosku oraz podpis wnioskodawcy.
6. Jeżeli wniosek, o którym mowa w ust. 3, nie odpowiada warunkom określonym w ust. 3 i 5, Marszałek *Sejmu* lub Marszałek Senatu, po zasięgnięciu opinii Prezydium *Sejmu* lub Prezydium Senatu, zwraca go wnioskodawcy w celu uzupełnienia.
7. Jeżeli wniosek, o którym mowa w ust. 3, odpowiada warunkom określonym w ust. 3 i 5, Marszałek *Sejmu* lub Marszałek Senatu kieruje ten wniosek do rozpatrzenia przez organ właściwy na podstawie regulaminów *Sejmu* lub Senatu.
8. Do postępowania z wnioskiem, o którym mowa w ust. 3, stosuje się odpowiednio przepisy art. 7c ust. 2-5.
9. *Sejm* lub Senat żąda zawieszenia postępowania karnego, o którym mowa w ust. 3, w drodze uchwały podjętej większością 3/5 głosów ustawowej liczby posłów lub senatorów.
10. Poseł lub senator może złożyć Marszałkowi *Sejmu* lub Marszałkowi Senatu oświadczenie, że nie będzie występował z wnioskiem, o którym mowa w ust. 3. Przepisy ust. 5 i 6 oraz art. 8 ust. 7 stosuje się odpowiednio.

Senate to suspend criminal proceedings until the mandate expires. The application may not relate to the execution of a sentence adjudicated by a final court judgment.

4. The application referred to in paragraph 1. 3, consists of the Marshal of the *Sejm* or the Marshal of the Senate.

5. The application referred to in paragraph 1. 3, includes in particular: the precise designation of the criminal case, with an indication of the authority before which the proceedings are pending, the justification for the request and the applicant's signature.

6. If the application referred to in para. 3, does not meet the conditions specified in sec. 3 and 5, the Marshal of the *Sejm* or the Marshal of the Senate, after consulting the Presidium of the *Sejm* or the Presidium of the Senate, shall return it to the mover for supplementation.

7. If the application referred to in para. 3, corresponds to the conditions specified in sec. 3 and 5, the Marshal of the *Sejm* or the Marshal of the Senate shall refer this request to the competent authority on the basis of the regulations of the *Sejm* or Senate.

8. To proceed with the application referred to in para. 3, the provisions of Art. 7c paragraph. 2-5.

9. The *Sejm* or the Senate shall request the suspension of the criminal proceedings referred to in para. 3, by a resolution adopted by a majority of 3/5 votes of the statutory number of deputies or senators.

10. A deputy or senator may submit to the Marshal of the *Sejm* or the Marshal of the Senate a declaration that he will not submit the motion referred to in para. 3. The provisions of para. 5 and 6 and article. 8 sec. 7 shall apply accordingly.

**Article 10<sup>196</sup> [Parliamentary inviolability]** 1. A deputy or senator may not be detained or arrested without the consent of the *Sejm* or the Senate, except if he is caught “red-

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<sup>196</sup> **Art. 10. [Nietykalność parlamentarna]**

1. Poseł lub senator nie może być zatrzymany lub aresztowany bez zgody *Sejmu* lub Senatu, z wyjątkiem ujęcia go na gorącym uczynku przestępstwa i jeżeli jego zatrzymanie jest niezbędne do zapewnienia prawidłowego toku postępowania.

2. Zakaz zatrzymania, o którym mowa w ust. 1, obejmuje wszelkie formy pozbawienia lub ograniczenia wolności osobistej posła lub senatora przez organy stosujące przymus.

3. O zatrzymaniu posła lub senatora, o którym mowa w ust. 1, należy niezwłocznie powiadomić Marszałka *Sejmu* lub Marszałka Senatu. Na żądanie Marszałka *Sejmu* lub Marszałka Senatu poseł lub senator musi być natychmiast zwolniony.

4. Wniosek o wyrażenie zgody na zatrzymanie lub aresztowanie posła lub senatora składa się za pośrednictwem Prokuratora Generalnego.

5. Wniosek, o którym mowa w ust. 4, powinien zawierać:

1) oznaczenie wnioskodawcy;

2) imię i nazwisko oraz datę i miejsce urodzenia posła lub senatora;

3) dokładne określenie czynu oraz jego kwalifikację prawną;

4) podstawę prawną zastosowania określonego środka;

5) uzasadnienie, wskazujące w szczególności na konieczność zastosowania określonego środka.

6. Do postępowania z wnioskiem o wyrażenie zgody na zatrzymanie lub aresztowanie posła lub senatora przepisy art. 7c ust. 1–5 stosuje się odpowiednio.

handed” (*in flagrante delicto*) and if his detention is necessary to ensure the proper course of the proceedings.

2. The prohibition of detention referred to in para. 1 shall cover all forms of deprivation or restriction of the personal freedom of a deputy or senator by organs that apply duress.

3. On the detention of a deputy or senator referred to in para. 1 shall be immediately notified to the Marshal of the *Sejm* or the Marshal of the Senate. At the request of the Marshal of the *Sejm* or the Marshal of the Senate, the deputy or senator must be released immediately.

4. [*cf. below for the procedure of Lifting*].

**Article 10a<sup>197</sup> [Sending the applicant a resolution on consenting or not consenting to holding a parliamentarian accountable; publication of the resolution in Monitor Polski]**

1. The Marshal of the *Sejm* or the Marshal of the Senate shall immediately send the resolution referred to in Art. 7c paragraph. 6, art. 9 sec. 9 and art. 10 sec. 7, or the declaration of a deputy or senator referred to in art. 8 sec. 1, the applicant.

2. The resolutions referred to in para. 1 shall be announced in the Official Journal of the Republic of Poland “Monitor Polski”.

**Article 10b<sup>198</sup> [Liability of parliamentarians for offences]**

1. The provisions of the Act concerning the criminal liability of deputies or senators shall apply accordingly to liability for misdemeanors.

2. In the event that a deputy or senator commits an offence referred to in Chapter XI of the Act of May 20, 1971 – Code of Petty Offences (Journal of Laws of 2018, items 618 and 911), the deputy or senator’s acceptance of a criminal mandate or payment of a fine,

7. *Sejm* lub Senat wyraża zgodę na zatrzymanie lub aresztowanie posła lub senatora w drodze uchwały podjętej bezwzględną większością głosów ustawowej liczby posłów lub senatorów. Nieuzyskanie wymaganej większości głosów oznacza podjęcie uchwały o niewyrażeniu zgody na zatrzymanie lub aresztowanie posła lub senatora.

8. Wymóg uzyskania zgody *Sejmu* lub Senatu nie dotyczy wykonania kary pozbawienia wolności orzeczonej prawomocnym wyrokiem sądu.

<sup>197</sup> **Art. 10a. [Przesłanie wnioskodawcy uchwały w sprawie wyrażenia zgody lub w sprawie niewyrażenia zgody na pociągnięcie parlamentarzysty do odpowiedzialności; publikacja uchwały w Monitorze Polskim]**

1. Marszałek *Sejmu* lub Marszałek Senatu przesyła niezwłocznie uchwałę, o której mowa w art. 7c ust. 6, art. 9 ust. 9 i art. 10 ust. 7, albo oświadczenie posła lub senatora, o którym mowa w art. 8 ust. 1, wnioskodawcy.

2. Uchwały, o których mowa w ust. 1, podlegają ogłoszeniu w Dzienniku Urzędowym Rzeczypospolitej Polskiej “Monitor Polski”.

<sup>198</sup> **Art. 10b. [Odpowiedzialność parlamentarzystów za wykroczenia]**

1. Przepisy ustawy dotyczące odpowiedzialności karnej posłów lub senatorów stosuje się odpowiednio do odpowiedzialności za wykroczenia.

2. W przypadku popełnienia przez posła lub senatora wykroczenia, o którym mowa w rozdziale XI ustawy z dnia 20 maja 1971 r. – Kodeks wykroczeń (Dz. U. z 2018 r. poz. 618 i 911), przyjęcie przez posła lub senatora mandatu karnego albo uiszczenie grzywny, w przypadku ukarania mandatem karnym zaocznym, o którym mowa w art. 98 § 1 pkt 3 ustawy z dnia 24 sierpnia 2001 r. – Kodeks postępowania w sprawach o wykroczenia (Dz. U. z 2018 r. poz. 475, 1039, 1387, 1467 i 1481), stanowi oświadczenie o wyrażeniu przez niego zgody na pociągnięcie go do odpowiedzialności w tej formie.

in the case of a penalty *in absentia*, referred to in Art. 98 § 1 point 3 of the Act of August 24, 2001 – Code of Conduct in Petty Offences (Journal of Laws of 2018, items 475, 1039, 1387, 1467 and 1481), is a declaration of consent to bringing him to justice in this form.

**Article 11<sup>199</sup> [Immunity and parliamentary inviolability of parliamentarians who obtain a mandate during their term of office]**

1. With regard to deputies acquiring a mandate during the term of office of the *Sejm*, the provisions of this chapter shall apply accordingly from the date of filling the mandate in the manner specified in the provisions of the Act of 12 April 2001 – Electoral Law to the *Sejm* of the Republic of Poland and the Senate of the Republic of Poland (Journal of Laws of. of 2007, item 1360, of 2008, item 1056, of 2009, item 999 and of 2010, item 1385) 1.
2. With regard to senators who obtained a mandate as a result of supplementary elections to the Senate, the provisions of this chapter shall apply from the date of announcement of the results of these elections.
3. Resolution expressing consent to bring a deputy or senator to criminal liability, a resolution expressing consent to bringing a deputy or senator to civil liability for activities falling within the scope of exercising a mandate, which infringe the rights of third parties, and a deputy's or senator's declaration of consent to be held accountable criminal penalties are also effective when a deputy or senator is elected to the *Sejm* or Senate of the next term of office.
4. If, after the application referred to in Art. 7b paragraph. 1, 2 or 5 or in article 1. 10 sec. 4, and before the *Sejm* or the Senate decides on these matters, the term of the *Sejm* will expire, the proceedings in the given case shall continue in the *Sejm* or in the Senate of the next term of office, provided that the deputy or senator to whom the motion relates has been elected for that term.

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<sup>199</sup> **Art. 11. [Immunitet i nietykalność parlamentarna parlamentarzystów uzyskujących mandat w trakcie kadencji]**

1. W odniesieniu do posłów uzyskujących mandat w trakcie kadencji *Sejmu*, przepisy niniejszego rozdziału mają odpowiednie zastosowanie od dnia obsadzenia mandatu w trybie określonym w przepisach ustawy z dnia 12 kwietnia 2001 r. - Ordynacja wyborcza do *Sejmu* Rzeczypospolitej Polskiej i do Senatu Rzeczypospolitej Polskiej (Dz. U. z 2007 r. poz. 1360, z 2008 r. poz. 1056, z 2009 r. poz. 999 oraz z 2010 r. poz. 1385) 1.
2. W odniesieniu do senatorów uzyskujących mandat w wyniku wyborów uzupełniających do Senatu przepisy niniejszego rozdziału stosuje się od dnia ogłoszenia wyników tych wyborów.
3. Uchwała wyrażająca zgodę na pociągnięcie posła lub senatora do odpowiedzialności karnej, uchwała wyrażająca zgodę na pociągnięcie posła lub senatora do cywilnej odpowiedzialności sądowej za działalność wchodzącą w zakres sprawowania mandatu, która narusza prawa osób trzecich, oraz oświadczenie posła lub senatora o wyrażeniu zgody na pociągnięcie do odpowiedzialności karnej są skuteczne także w przypadku, gdy poseł lub senator zostanie wybrany do *Sejmu* lub Senatu następnej kadencji.
4. Jeżeli po nadaniu biegu wnioskowi, o którym mowa w art. 7b ust. 1, 2 albo 5 lub w art. 10 ust. 4, a przed podjęciem przez *Sejm* lub Senat rozstrzygnięcia w tych sprawach, upłynie kadencja *Sejmu*, postępowanie w danej sprawie toczy się nadal w *Sejmie* lub w Senacie następnej kadencji, o ile poseł lub senator, którego wniosek dotyczy, został wybrany na tę kadencję.

**Article 12<sup>200</sup> [Detailed procedure in matters related to parliamentary immunity and inviolability – reference to parliamentary regulations]**

The detailed procedure to be followed in matters regulated in this chapter is specified in the regulations of the *Sejm* and the Senate.

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**Resolution of the  
Sejm of the Republic of Poland  
of 30 July 1992**

**Regulations of the Sejm of the Republic of Poland<sup>201</sup>  
Regulations of the *Sejm and the Senate***

**Article 18<sup>202</sup>**

1. The following standing committees are established:  
[...] 18) Regulations, Deputies' Affairs and Immunities, [...].

**Chapter 4 Principles of Regulatory Liability of Members**

**Article 21<sup>203</sup>**

1. For breach or failure to fulfill the obligations set out in Art. 33-35 of the Act on the performance of the mandate of a deputy and senator, the Presidium of the Sejm, by means of a resolution adopted after considering the opinion of the Regulations, Deputies' Affairs and Immunities Committee, may:

1) draw the deputy's attention,

<sup>200</sup> **Art. 12. [Szczegółowy tryb postępowania w sprawach związanych z immunitetami i nietykalnością parlamentarną - odesłanie do regulaminów parlamentarnych]**

Szczegółowy tryb postępowania w sprawach uregulowanych w niniejszym rozdziale określają regulaminy *Sejmu* i Senatu.

<sup>201</sup> According to the legal status of June 24, 2021 – MP 2021, item 607.

<sup>202</sup> **Art. 18**

1. Ustanawia się następujące komisje stałe:  
[...] 18) Regulaminową, Spraw Poselskich i Immunitetowych,

<sup>203</sup> **Art. 21**

1. Za naruszenie lub niedopełnienie obowiązków określonych w art. 33-35 ustawy o wykonywaniu mandatu posła i senatora Prezydium Sejmu, w drodze uchwały podjętej po rozpatrzeniu opinii Komisji Regulaminowej, Spraw Poselskich i Immunitetowych, może:

1) zwrócić posłowi uwagę,  
2) udzielić posłowi upomnienia,  
3) udzielić posłowi nagany.

2. Od uchwały Prezydium Sejmu przysługuje posłowi, w terminie 14 dni od dnia jej doręczenia, odwołanie do Sejmu. Prezydium Sejmu wprowadza odwołanie do porządku dziennego najbliższego posiedzenia Sejmu, który je rozpatruje wysłuchując przedstawiciela Prezydium Sejmu; prawo do zabrania głosu przysługuje również posłowi, który wniósł odwołanie. Nad odwołaniem nie przeprowadza się dyskusji.

3. Sejm po rozpatrzeniu odwołania może, w drodze uchwały, uchylić uchwałę Prezydium Sejmu lub utrzymać ją w mocy.

4. W przypadku niewniesienia odwołania w terminie określonym w ust. 2, uchwałę, o której mowa w ust. 1, Prezydium Sejmu podaje do wiadomości Sejmu.

2) to admonish the deputy,

3) reprimand the deputy.

2. A resolution of the Presidium of the Sejm may be appealed to the Sejm by a deputy within 14 days of its delivery. The Presidium of the Sejm introduces a reference to the agenda of the next sitting of the Sejm, which considers it by hearing a representative of the Presidium of the Sejm; the deputy who lodged the appeal also has the right to speak. There is no discussion on the appeal.

3. After considering the appeal, the Sejm may, by means of a resolution, revoke the resolution of the Presidium of the Sejm or uphold it.

4. In the event of failure to lodge an appeal within the time limit specified in para. 2, the resolution referred to in para. 1 shall be communicated by the Presidium of the Sejm to the Sejm.

#### **Article 22**<sup>204</sup>

1. For failure to perform the duties of a deputy, the Regulations, Deputies' Affairs and Immunities Committee may, by way of a resolution:

1) draw the deputy's attention,

2) to admonish the deputy,

3) reprimand the deputy.

2. A deputy may appeal to the Presidium of the Sejm within 14 days from the date of delivery.

3. The Presidium of the Sejm may, by resolution:

1) revoke the resolution of the Commission,

2) maintain the resolution of the Commission in force.

#### **Article 22a**<sup>205</sup>

The Marshal of the Sejm may state that the deputy has violated the dignity of the Sejm by his behavior at a session of the organs of the Sejm.

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<sup>204</sup> **Art. 22**

1. Za niewykonywanie obowiązków poselskich Komisja Regulaminowa, Spraw Poselskich i Immunitetowych może, w drodze uchwały:

1) zwrócić posłowi uwagę,

2) udzielić posłowi upomnienia,

3) udzielić posłowi nagany.

2. Od uchwały Komisji przysługuje posłowi, w terminie 14 dni od dnia doręczenia, odwołanie do Prezydium Sejmu.

3. Prezydium Sejmu może, w drodze uchwały:

1) uchylić uchwałę Komisji,

2) utrzymać uchwałę Komisji w mocy.

<sup>205</sup> **Art. 22a**

Marszałek Sejmu może stwierdzić, że poseł swoim zachowaniem na posiedzeniu organów Sejmu naruszył powagę Sejmu.



**Article 22b**<sup>206</sup>

The Marshal of the Sejm may state that a deputy in the area managed by the Chancellery of the Sejm has grossly violated peace or order.

**Article 23**<sup>207</sup>

1. In the event of:

- 1) a Deputy has prevented the work of the Sejm or its organs from working, in particular the occurrence of the situation referred to in art. 175 sec. 4,
- 2) violation by a Deputy at a sitting of the Sejm or a sitting of the organs of the Sejm of the seriousness of the Sejm, in particular as stated by the Marshal of the Sejm pursuant to Art. 22a or article. 175 sec. 2a,
- 3) flagrantly violating peace or order by a deputy in the area managed by the Chancellery of the Sejm, in particular as stated by the Marshal of the Sejm on the basis of art. 22b – The Presidium of the Sejm may adopt a resolution to reduce a deputy's salary or the parliamentary allowance in the amount not exceeding 1/2 of the deputy's salary or the full parliamentary allowance per month for a period not longer than 3 months.

2. The resolution on the reduction of the salary or the parliamentary allowance referred to in para. 1, a deputy shall have the right, within 7 days from the date of delivery of the resolution, to request that the matter be reconsidered by the Presidium of the Sejm. The Presidium of the Sejm reconsiders the matter after consulting the Council of Seniors.

3. The deduction shall be made not earlier than after 7 days from the date of the resolution on the reduction of the salary or the parliamentary allowance referred to in para. 1, or after reconsidering the case referred to in para. 2. Information on deductions is public.

<sup>206</sup> **Art. 22b**

Marszałek Sejmu może stwierdzić, że poseł na terenie pozostającym w zarządzie Kancelarii Sejmu w rażący sposób naruszył spokój lub porządek.

<sup>207</sup> **Art. 23**

1. W przypadku:

- 1) uniemożliwienia przez posła pracy Sejmu lub jego organów, w szczególności zaistnienia sytuacji, o której mowa w art. 175 ust. 4,
- 2) naruszenia przez posła na posiedzeniu Sejmu lub posiedzeniu organów Sejmu powagi Sejmu, w szczególności stwierdzonego przez Marszałka Sejmu na podstawie art. 22a lub art. 175 ust. 2a,
- 3) naruszenia przez posła na terenie pozostającym w zarządzie Kancelarii Sejmu w rażący sposób spokoju lub porządku, w szczególności stwierdzonego przez Marszałka Sejmu na podstawie art. 22b- Prezydium Sejmu może podjąć uchwałę o obniżeniu uposażenia lub diety parlamentarnej posła, w wysokości nieprzekraczającej 1/2 uposażenia poselskiego lub pełnej diety parlamentarnej miesięcznie na okres nie dłuższy niż 3 miesiące.

2. Od uchwały o obniżeniu uposażenia lub diety parlamentarnej, o której mowa w ust. 1, posłowi przysługuje, w terminie 7 dni od dnia doręczenia uchwały, wniosek o ponowne rozpatrzenie sprawy przez Prezydium Sejmu. Prezydium Sejmu ponownie rozpatruje sprawę po zasięgnięciu opinii Konwentu Seniorów.

3. Potrącenia dokonuje się nie wcześniej niż po upływie 7 dni od dnia podjęcia uchwały o obniżeniu uposażenia lub diety parlamentarnej, o której mowa w ust. 1, albo po ponownym rozpatrzeniu sprawy, o którym mowa w ust. 2. Informacje dotyczące potrąceń są jawne.

**Article 24**<sup>208</sup>

1. The Marshal of the Sejm shall order a reduction in the salary and the parliamentary allowance or one of these benefits, if only such benefits are due to a deputy:
  - 1) by 1/30 for each day of unexcused absence from a sitting of the Sejm or for failing to participate in more than 1/5 of the votes on a given day,
  - 2) by 1/30 for each day of unexcused absence at the committee meeting, if the number of these absences exceeded 1/5 of the number of committee meetings in a calendar month.
2. In the event of a confluence on a given day, with the exception of cases specified in Art. 7 sec. 8 point 3, unexcused absence at:
  - 1) a sitting of the Sejm and a committee meeting, the reduction referred to in para. 1 point 1,
  - 2) committee meetings, the reduction referred to in para. 1 point 2.
3. The provisions of Art. 21.
4. The Marshal of the Sejm shall notify the Deputy about the deduction order, stating the number and list of days of unexcused absence.
5. Lists of unjustified absences of deputies at a sitting of the Sejm or a committee shall be drawn up within 14 days of the end of each calendar month.
6. A Deputy may, within 14 days from the delivery of the notification, request that the matter be reconsidered by the Marshal of the Sejm against an order of the Marshal of the Sejm to determine the number of days of unexcused absence.

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<sup>208</sup> **Art. 24**

1. Marszałek Sejmu zarządza obniżenie uposażenia i diety parlamentarnej albo jednego z tych świadczeń, jeżeli tylko ono przysługuje posłowi:
  - 1) o 1/30 za każdy dzień nieusprawiedliwionej nieobecności na posiedzeniu Sejmu lub za niewzięcie w danym dniu udziału w więcej niż 1/5 głosowań,
  - 2) o 1/30 za każdy dzień nieusprawiedliwionej nieobecności na posiedzeniu komisji, jeżeli liczba tych nieobecności przekroczyła 1/5 liczby posiedzeń komisji w miesiącu kalendarzowym.
2. W razie zbiegu w danym dniu, z wyłączeniem przypadków określonych w art. 7 ust. 8 pkt 3, nieusprawiedliwionej nieobecności na:
  - 1) posiedzeniu Sejmu i posiedzeniu komisji, stosuje się obniżenie, o którym mowa w ust. 1 pkt 1,
  - 2) posiedzeniach komisji, stosuje się obniżenie, o którym mowa w ust. 1 pkt 2.
3. W stosunku do posłów, którzy nie pobierają uposażenia i diety parlamentarnej, stosuje się odpowiednio przepisy art. 21.
4. O zarządzeniu potrącenia Marszałek Sejmu powiadamia posła, podając liczbę i wykaz dni nieusprawiedliwionej nieobecności.
5. Wykazy nieusprawiedliwionej nieobecności posłów na posiedzeniu Sejmu lub komisji sporządza się w terminie 14 dni od zakończenia każdego miesiąca kalendarzowego.
6. Od zarządzenia Marszałka Sejmu w zakresie ustalenia liczby dni nieusprawiedliwionej nieobecności posłowi przysługuje, w terminie 14 dni od doręczenia powiadomienia, wniosek o ponowne rozpatrzenie sprawy przez Marszałka Sejmu.
7. Potrącenia dokonuje się nie wcześniej niż po upływie 14 dni od dnia, w którym Marszałek Sejmu zarządził potrącenie, lub po ponownym rozpatrzeniu sprawy, o którym mowa w ust. 6. Informacje dotyczące potrąceń są jawne.

7. The set-off shall be made not earlier than after the lapse of 14 days from the date on which the Marshal of the Sejm ordered the set-off, or after reconsidering the case referred to in para. 6. Information on deductions is public.

**Article 25**<sup>209</sup>

1. In the event of expulsion of a deputy from a sitting of the Sejm, pursuant to art. 175 sec. 5, the Marshal of the Sejm shall order a reduction in his deputy's salary or the parliamentary allowance in accordance with the principles referred to in Art. 24 sec. 1 point 1 and sec. 3–7.

2. In the case referred to in par. 1, the Presidium of the Sejm may adopt a resolution to reduce a deputy's salary in the amount not exceeding 1/2 of the deputy's salary or to lose the right to a full parliamentary allowance for a period of up to 6 months.

3. The resolution referred to in para. 2, a deputy shall have the right, within 7 days from the date of delivery of the resolution, to request that the matter be reconsidered by the Presidium of the Sejm. The Presidium of the Sejm reconsiders the matter after consulting the Council of Seniors.

4. The deductions shall be made not earlier than after 7 days from the date of adopting the resolution referred to in sec. 2, or after reconsidering the case referred to in para. 3. Information on deductions is public.

**Chapter 10a Proceedings in Cases of Consent to Seek Persons Holding Certain State Authorities to Responsibility for an Offence or Contribution or Arrest, or Detention**

**Article 130a**<sup>210</sup> Applications for consent to be brought to justice for a crime or misdemeanor, or the arrest or detention of persons acting as:

<sup>209</sup> **Art. 25**

1. W przypadku wykluczenia posła z posiedzenia Sejmu, w trybie art. 175 ust. 5, Marszałek Sejmu zarządza obniżenie jego uposażenia poselskiego lub diety parlamentarnej na zasadach, o których mowa w art. 24 ust. 1 pkt 1 i ust. 3–7.

2. W przypadku, o którym mowa w ust. 1, Prezydium Sejmu może podjąć uchwałę o obniżeniu posłowi uposażenia w wysokości nieprzekraczającej 1/2 uposażenia poselskiego lub o utracie prawa do pełnej diety parlamentarnej na okres do 6 miesięcy.

3. Od uchwały, o której mowa w ust. 2, posłowi przysługuje, w terminie 7 dni od dnia doręczenia uchwały, wniosek o ponowne rozpatrzenie sprawy przez Prezydium Sejmu. Prezydium Sejmu ponownie rozpatruje sprawę po zasięgnięciu opinii Konwentu Seniorów.

4. Potrącenia dokonuje się nie wcześniej niż po upływie 7 dni od dnia podjęcia uchwały, o której mowa w ust. 2, albo po ponownym rozpatrzeniu sprawy, o którym mowa w ust. 3. Informacje dotyczące potrąceń są jawne.

<sup>210</sup> **Art. 130a**

Wnioski w sprawie wyrażenia zgody na pociągnięcie do odpowiedzialności za przestępstwo lub wykroczenie albo aresztowanie bądź zatrzymanie osób pełniących funkcje:

- 1) Rzecznika Praw Obywatelskich,
- 2) Prezesa Najwyższej Izby Kontroli,
- 3) Rzecznika Praw Dziecka,
- 4) Prezesa Urzędu Ochrony Danych Osobowych,
- 5) Prezesa Instytutu Pamięci Narodowej - Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu- rozpatruje Komisja Regulaminowa, Spraw Poselskich i Immunitetowych.

- 1) the Ombudsman,
- 2) the President of the Supreme Audit Office,
- 3) the Ombudsman for Children,
- 4) the President of the Personal Data Protection Office,
- 5) the President of the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation - considered by the Regulations, Deputies' Affairs and Immunities Committee.

**Article 130b**<sup>211</sup>

The date of examination of the application in the cases referred to in Art. 130a, the person to whom the application relates shall be notified immediately. The provisions of the Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws of 2021, item 534) regarding the delivery of letters intended for participants in the proceedings shall apply accordingly to the notification.

**Article 130c**<sup>212</sup> In the meetings of the Regulations, Deputies' Affairs and Immunities Committee, at which the matters referred to in Art. 130a, the person to whom the application relates may participate or its representative may participate, provided that one has been appointed.

**Article 130d**<sup>213</sup> Report of the Regulations, Deputies' Affairs and Immunities Committee on matters referred to in Art. 130a, shall be delivered immediately to the deputies.

**Article 130e**<sup>214</sup> The Sejm considers the report referred to in Art. 130d, only hearing the rapporteur. The right to speak is also vested in the requested person. There is no discussion of this report.

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<sup>211</sup> **Art. 130b**

O terminie rozpatrzenia wniosku w sprawach, o których mowa w art. 130a, niezwłocznie zawiadamia się osobę, której dotyczy wniosek. Do zawiadamiania stosuje się odpowiednio przepisy ustawy z dnia 6 czerwca 1997 r. - Kodeks postępowania karnego (Dz. U. z 2021 r. poz. 534) dotyczące doręczania pism przeznaczonych dla uczestników postępowania.

<sup>212</sup> **Art. 130c**

W posiedzeniach Komisji Regulaminowej, Spraw Poselskich i Immunitetowych, na których rozpatrywane są sprawy, o których mowa w art. 130a, może uczestniczyć osoba, której dotyczy wniosek lub może uczestniczyć jej pełnomocnik, o ile został ustanowiony.

<sup>213</sup> **Art. 130d**

Sprawozdanie Komisji Regulaminowej, Spraw Poselskich i Immunitetowych w sprawach, o których mowa w art. 130a, doręcza się niezwłocznie posłom.

<sup>214</sup> **Art. 130e**

Sejm rozpatruje sprawozdanie, o którym mowa w art. 130d, wysłuchując jedynie sprawozdawcy. Prawo do zabrania głosu przysługuje również osobie, której dotyczy wniosek. Nad sprawozdaniem tym nie przeprowadza się dyskusji.

## **Chapter 11 Procedures in Disciplinary Matters of Members and in Cases of Members Handling Accountability for Crimes or Failures or Arrest or Detention**

**Article 131**<sup>215</sup> 1. Matters of deputies accused of violating or failing to fulfill the obligations set out in Art. 33–35 of the Act on exercising the mandate of a deputy and senator, the Presidium of the Sejm shall refer it for consideration by the Regulations, Deputies' Affairs and Immunities Committee.

2. After considering the matter, the Committee shall submit to the Presidium of the Sejm a report containing an opinion on the matter and, possibly, a draft resolution referred to in Art. 21, or an application for discontinuation of the proceedings on the allegations.

3. The Deputy whom the allegations concern shall have the right to participate in the sitting of the Committee at which the allegations are examined; he / she also has the right to speak out of sequence.

**Article 132**<sup>216</sup> 1. Matters of deputies accused of failing to perform their deputy duties shall be referred by the Presidium of the Sejm to the Rules, Deputies' Affairs and Immunities Committee for consideration.

2. Appeals against a resolution of the Committee shall be submitted through the chairman of the Committee, who shall present it to the Presidium of the Sejm, attaching materials from the meeting (sittings) of the Committee on this matter. The Presidium of the Sejm may also consult the club or circle of which the deputy is a member.

**Article 133**<sup>217</sup> 1. The Regulations, Deputies' Affairs and Immunities Committee shall consider motions submitted by the Marshal of the Sejm to express consent to holding a Deputy accountable for a crime or misdemeanor, or arrest or detention.

### <sup>215</sup> **Art. 131**

1. Sprawy posłów, którym zarzuca się naruszenie lub niedopełnienie obowiązków określonych w art. 33-35 ustawy o wykonywaniu mandatu posła i senatora, Prezydium Sejmu kieruje do rozpatrzenia przez Komisję Regulaminową, Spraw Poselskich i Immunitetowych.

2. Po rozpatrzeniu sprawy Komisja przedstawia Prezydium Sejmu sprawozdanie zawierające opinię w sprawie oraz ewentualnie projekt uchwały, o której mowa w art. 21, albo wniosek o umorzenie postępowania w sprawie zarzutów.

3. W posiedzeniu Komisji, na którym następuje rozpatrzenie zarzutów, ma prawo brać udział poseł, którego zarzuty dotyczą; ma on też prawo do zabierania głosu poza kolejnością.

### <sup>216</sup> **Art. 132**

1. Sprawy posłów, w stosunku do których przedstawia się zarzut, że nie wykonują obowiązków poselskich, Prezydium Sejmu kieruje do rozpatrzenia przez Komisję Regulaminową, Spraw Poselskich i Immunitetowych.

2. Odwołanie od uchwały Komisji składa się za pośrednictwem przewodniczącego Komisji, który przedstawia je Prezydium Sejmu, dołączając materiały z posiedzenia (posiedzeń) Komisji w tej sprawie. Prezydium Sejmu może ponadto zasięgnąć opinii klubu albo koła, którego poseł jest członkiem.

### <sup>217</sup> **Art. 133**

1. Komisja Regulaminowa, Spraw Poselskich i Immunitetowych rozpatruje przekazane przez Marszałka Sejmu wnioski w sprawie wyrażenia zgody na pociągnięcie posła do odpowiedzialności za przestępstwo lub wykroczenie albo aresztowanie bądź zatrzymanie.

1a. W głosowaniu na posiedzeniu Komisji nad sprawozdaniem Komisji nie bierze udziału członek Komisji, którego dotyczy wniosek.

1a. The member of the Commission affected by the request shall not vote on the report of the Commission at the meeting of the Commission.

2–4. (repealed or deleted).

5. The report of the Committee shall be delivered immediately to the deputies.

6. The Sejm considers the Committee's report only hearing the rapporteur. The right to speak shall also be vested in the deputy concerned by the motion. There is no discussion of this report.

7–9. (deleted).

**Article 134**<sup>218</sup> In the event that an authorised body submits a motion to express consent to prosecute a deputy – member of the Secret Services Committee for the crime of disclosure or use of classified information, the Presidium of the Sejm shall perform the tasks of the Regulations, Deputies' Affairs and Immunities Committee referred to in Art. 133.

**Article 135**<sup>219</sup> The provisions of Art. 134 shall apply accordingly to a deputy - member of the Deputies' Ethics Committee in the event of a breach of the provisions on the protection of classified information on the "restricted" or confidential "classification".

**Article 136**<sup>220</sup> In the cases referred to in Art. 132–135, a deputy may appoint his defence counsel from among the deputies.

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2. (uchylony), 3. (uchylony), 4. (uchylony).

5. Sprawozdanie Komisji doręcza się niezwłocznie posłom.

6. Sejm rozpatruje sprawozdanie Komisji wysłuchując jedynie sprawozdawcy. Prawo do zabrania głosu przysługuje również posłowi, którego wniosek dotyczy. Nad sprawozdaniem tym nie przeprowadza się dyskusji.

7–9.

<sup>218</sup> **Art. 134**

W wypadku zgłoszenia przez uprawniony organ wniosku w sprawie wyrażenia zgody na pociągnięcie do odpowiedzialności karnej posła - członka Komisji do Spraw Służb Specjalnych za przestępstwo ujawnienia lub wykorzystania informacji niejawniej, Prezydium Sejmu wykonuje w stosunku do niego zadania Komisji Regulaminowej, Spraw Poselskich i Immunitetowych, o których mowa w art. 133.

<sup>219</sup> **Art. 135**

Przepisy art. 134 stosuje się odpowiednio do posła - członka Komisji Etyki Poselskiej w przypadku naruszenia przepisów o ochronie informacji niejawniej o klauzuli tajności "zastrzeżone" lub poufne".

<sup>220</sup> **Art. 136**

W sprawach, o których mowa w art. 132-135, poseł może ustanowić swojego obrońcę spośród posłów.

**bb. Provisions on the lifting of immunities?**

18

**Act of 9 May 1996  
on exercising the mandate of deputy and senator**

**Article 7<sup>221</sup> [Procedural immunity]**

1. From the day of announcement of the election results to the day of the expiry of the mandate, a deputy or senator may not be held criminally responsible without the consent of the *Sejm* or the Senate, subject to Art. 8 and art. 10b paragraph. 2.

[...] 4. Criminal liability may be brought only for the act indicated in the motion which was the basis for the consent of the *Sejm* or the Senate. Holding a deputy or senator responsible for another act requires the separate consent of the *Sejm* or Senate.

**Article 7b<sup>222</sup> [Request for consent to hold a parliamentarian accountable]**

1. A request for consent to bring a deputy or senator to criminal liability in a case of an offence prosecuted on public prosecution shall be submitted through the Public Prosecutor General.

2. A request for consent to bring a deputy or senator to criminal liability in a case of an offence prosecuted on a private prosecution shall be submitted by the private prosecutor, after the case has been brought to court.

3. The application referred to in paragraph 1. 2 shall be drawn up and signed by an advocate or legal adviser, with the exception of applications submitted in their cases by judges, public prosecutors, advocates, legal advisers, notaries and professors and habilitated doctors of legal sciences.

**<sup>221</sup> Art. 7. [Immunitet procesowy]**

1. Od dnia ogłoszenia wyników wyborów do dnia wygaśnięcia mandatu poseł lub senator nie może być pociągnięty do odpowiedzialności karnej bez zgody *Sejmu* lub Senatu, z zastrzeżeniem art. 8 oraz art. 10b ust. 2.

[...] 4. Pociągnięcie do odpowiedzialności karnej może nastąpić tylko za czyn wskazany we wniosku, który był podstawą wyrażenia zgody przez *Sejm* lub Senat. Pociągnięcie posła lub senatora do odpowiedzialności za inny czyn wymaga odrębnej zgody *Sejmu* lub Senatu.

**<sup>222</sup> Art. 7b. [Wniosek o wyrażenie zgody na pociągnięcie parlamentarzysty do odpowiedzialności]**

1. Wniosek o wyrażenie zgody na pociągnięcie posła lub senatora do odpowiedzialności karnej w sprawie o przestępstwo ścigane z oskarżenia publicznego składa się za pośrednictwem Prokuratora Generalnego.

2. Wniosek o wyrażenie zgody na pociągnięcie posła lub senatora do odpowiedzialności karnej w sprawie o przestępstwo ścigane z oskarżenia prywatnego składa oskarżyciel prywatny, po wniesieniu sprawy do sądu.

3. Wniosek, o którym mowa w ust. 2, sporządza i podpisuje adwokat lub radca prawny, z wyjątkiem wniosków składanych w swoich sprawach przez sędziów, prokuratorów, adwokatów, radców prawnych, notariuszy oraz profesorów i doktorów habilitowanych nauk prawnych.

4. Wnioski, o których mowa w ust. 1 i 2, powinny zawierać:

1) oznaczenie wnioskodawcy oraz pełnomocnika, o ile został ustanowiony;

2) imię i nazwisko oraz datę i miejsce urodzenia posła lub senatora;

3) wskazanie podstawy prawnej wniosku;

4) dokładne określenie czynu, którego dotyczy wniosek, ze wskazaniem czasu, miejsca, sposobu i okoliczności jego popełnienia oraz jego skutków, a zwłaszcza charakteru powstałej szkody;

5) uzasadnienie.

5. Przepisy ust. 2–4 stosuje się odpowiednio do wniosku o wyrażenie zgody na pociągnięcie posła lub senatora do cywilnej odpowiedzialności sądowej w sprawach, o których mowa w art. 6a.

4. The applications referred to in paragraph 1. 1 and 2 should contain:

- 1) designation of the applicant and the representative, if appointed;
- 2) name and surname as well as date and place of birth of the deputy or senator;
- 3) indication of the legal basis of the application;
- 4) precise specification of the act to which the request relates, indicating the time, place, method and circumstances of its commission and its consequences, in particular the nature of the damage;
- 5) justification.

5. The provisions of paragraph 1. 2–4 shall apply *mutatis mutandis* to the application for consent to bring a deputy or senator to civil liability in the cases referred to in art. 6a.

**Article 7c<sup>223</sup> [Consideration of the application; a resolution expressing consent to holding a parliamentarian accountable]**

1. A request for consent to bring a deputy or senator to criminal liability shall be submitted to the Marshal of the *Sejm* or the Marshal of the Senate.

1a. If the application does not meet the formal requirements referred to in Art. 7b paragraph. 3 or 4, the Marshal of the *Sejm* or the Marshal of the Senate shall call the applicant to correct or supplement the application within 14 days, indicating the necessary scope of the correction or supplementation. If the application is not corrected or supplemented

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<sup>223</sup> **Art. 7c. [Rozpatrzenie wniosku; uchwała o wyrażeniu zgody na pociągnięcie parlamentarzysty do odpowiedzialności]**

1. Wniosek o wyrażenie zgody na pociągnięcie posła lub senatora do odpowiedzialności karnej składa się Marszałkowi *Sejmu* lub Marszałkowi Senatu.

1a. Jeżeli wniosek nie spełnia wymogów formalnych, o których mowa w art. 7b ust. 3 lub 4, Marszałek *Sejmu* lub Marszałek Senatu wzywa wnioskodawcę do poprawienia lub uzupełnienia wniosku w terminie 14 dni, wskazując niezbędny zakres poprawienia lub uzupełnienia. W przypadku niepoprawienia lub nieuzupełnienia wniosku we wskazanym terminie i zakresie Marszałek *Sejmu* lub Marszałek Senatu postanawia o pozostawieniu wniosku bez biegu.

1b. Jeżeli wniosek spełnia wymogi formalne, o których mowa w art. 7b ust. 3 i 4, Marszałek *Sejmu* lub Marszałek Senatu kieruje go do organu właściwego do rozpatrzenia wniosku na podstawie regulaminów *Sejmu* lub Senatu, zawiadamiając jednocześnie posła lub senatora o treści wniosku.

2. Organ właściwy do rozpatrzenia wniosku, o którym mowa w ust. 1, powiadamia posła lub senatora, którego wniosek dotyczy, o terminie rozpatrzenia wniosku.

3. Na żądanie organu właściwego do rozpatrzenia wniosku, o którym mowa w ust. 1, sąd albo odpowiedni organ, przed którym toczy się postępowanie wobec posła lub senatora, udostępnia akta postępowania.

4. Poseł lub senator, którego wniosek dotyczy, przedstawia organowi właściwemu do rozpatrzenia wniosku, o którym mowa w ust. 1, wyjaśnienia i własne wnioski w tej sprawie w formie pisemnej lub ustnej.

5. Po rozpatrzeniu sprawy organ właściwy do rozpatrzenia wniosku, o którym mowa w ust. 1, uchwała sprawozdanie wraz z propozycją przyjęcia lub odrzucenia wniosku.

6. *Sejm* lub Senat wyraża zgodę na pociągnięcie posła lub senatora do odpowiedzialności karnej w drodze uchwały podjętej bezwzględną większością głosów ustawowej liczby posłów lub senatorów. Nieuzyskanie wymaganej większości głosów oznacza podjęcie uchwały o niewyrażeniu zgody na pociągnięcie posła lub senatora do odpowiedzialności karnej.

7. Przepisy ust. 1–6 oraz art. 10a stosuje się odpowiednio do rozpatrzenia wniosku, o którym mowa w art. 7b ust. 5.



within the indicated time and scope, the Marshal of the *Sejm* or the Speaker of the Senate shall decide not to proceed with the application.

1b. If the application meets the formal requirements referred to in Art. 7b paragraph. 3 and 4, the Marshal of the *Sejm* or the Marshal of the Senate shall refer it to the body competent to consider the motion on the basis of the regulations of the *Sejm* or Senate, notifying at the same time the deputy or senator about the content of the motion.

2. The authority competent to examine the application referred to in para. 1 shall notify the deputy or senator to whom the motion relates about the date of examination of the motion.

3. At the request of the authority competent to examine the application referred to in para. 1, the court or the appropriate body before which proceedings are pending against a deputy or senator shall make the files of the proceedings available.

4. The deputy or senator to whom the request relates shall be presented to the body competent to consider the request referred to in para. 1, explanations and own conclusions on this matter in written or oral form.

5. After considering the case, the authority competent to consider the application referred to in para. 1, adopts the report along with the proposal to accept or reject the application.

6. The *Sejm* or Senate consents to bringing a deputy or senator to criminal liability by way of a resolution adopted by an absolute majority of votes of the statutory number of deputies or senators. Failure to obtain the required majority of votes shall mean adopting a resolution not to consent to bringing a deputy or senator to criminal liability.

7. The provisions of paragraph 1. 1-6 and art. 10a shall apply *mutatis mutandis* to the examination of the application referred to in article 1. 7b paragraph. 5.

**Article 10<sup>224</sup> [Parliamentary inviolability]**

[cf. above for the general para 1–3]

4. The application for consent to detain or arrest a deputy or senator is submitted through the Public Prosecutor General.
5. The application referred to in paragraph 1. 4, should contain:
  - 1) designation of the applicant;
  - 2) name and surname as well as date and place of birth of the deputy or senator;
  - 3) precise specification of the act and its legal classification;
  - 4) the legal basis for the application of a specific measure;
  - 5) justification indicating in particular the necessity to apply a specific measure.
6. The provisions of art. 7c paragraph. 1-5 shall apply accordingly.
7. The *Sejm* or Senate shall consent to the detention or arrest of a deputy or senator by means of a resolution adopted by an absolute majority of votes of the statutory number of deputies or senators. Failure to obtain the required majority of votes shall mean adopting a resolution not to consent to the detention or arrest of a deputy or senator.
8. The requirement to obtain the consent of the *Sejm* or Senate does not apply to the execution of a custodial sentence imposed by a valid court judgment.

**c) Immunities and Privileges under union law, para 2**

- 19 Cf. → Art. 29 EPPO-RG and the subsequent analysis (in other volumes III, V, XXII). Union law differs from national law and is not researched within this volume. **Union law contains** a protocol, which will apply if the immunity or a privilege of a Union

<sup>224</sup> **Art. 10. [Nietykalność parlamentarna]**

1. Poseł lub senator nie może być zatrzymany lub aresztowany bez zgody *Sejmu* lub Senatu, z wyjątkiem ujęcia go na gorącym uczynku przestępstwa i jeżeli jego zatrzymanie jest niezbędne do zapewnienia prawidłowego toku postępowania.
2. Zakaz zatrzymania, o którym mowa w ust. 1, obejmuje wszelkie formy pozbawienia lub ograniczenia wolności osobistej posła lub senatora przez organy stosujące przymus.
3. O zatrzymaniu posła lub senatora, o którym mowa w ust. 1, należy niezwłocznie powiadomić Marszałka *Sejmu* lub Marszałka Senatu. Na żądanie Marszałka *Sejmu* lub Marszałka Senatu poseł lub senator musi być natychmiast zwolniony.
4. Wniosek o wyrażenie zgody na zatrzymanie lub aresztowanie posła lub senatora składa się za pośrednictwem Prokuratora Generalnego.
5. Wniosek, o którym mowa w ust. 4, powinien zawierać:
  - 1) oznaczenie wnioskodawcy;
  - 2) imię i nazwisko oraz datę i miejsce urodzenia posła lub senatora;
  - 3) dokładne określenie czynu oraz jego kwalifikację prawną;
  - 4) podstawę prawną zastosowania określonego środka;
  - 5) uzasadnienie, wskazujące w szczególności na konieczność zastosowania określonego środka.
6. Do postępowania z wnioskiem o wyrażenie zgody na zatrzymanie lub aresztowanie posła lub senatora przepisy art. 7c ust. 1–5 stosuje się odpowiednio.
7. *Sejm* lub Senat wyraża zgodę na zatrzymanie lub aresztowanie posła lub senatora w drodze uchwały podjętej bezwzględną większością głosów ustawowej liczby posłów lub senatorów. Nieuzyskanie wymaganej większości głosów oznacza podjęcie uchwały o niewyrażeniu zgody na zatrzymanie lub aresztowanie posła lub senatora.
8. Wymóg uzyskania zgody *Sejmu* lub Senatu nie dotyczy wykonania kary pozbawienia wolności orzeczonej prawomocnym wyrokiem sądu.

official needs to be lifted. It is enshrined in the consolidated version of the Treaty on the Functioning of the European Union **Protocol (No 7) on the privileges and immunities of the European Union** (OJ C 326, 26.10.2012, p. 266–272).

Under Article 29 of the EPPO Regulation, the EPPO can request the lifting of immunities when it presents an obstacle to an investigation. The EPPO must submit a reasoned written request to the relevant authority: the President of the European Parliament for Members of the EP (Article 5) or the Secretary-General of the EP for EP staff (Article 6). In certain situations, the EPPO may be exempt from informing the individual whose immunity is being waived, provided that the request includes the grounds for not hearing the person (Article 6).<sup>225</sup> For officials of the European Investment Bank (EIB), the request is directed to the EIB's contact point as outlined in Article 23 of the Working Arrangement between the EPPO and the EIB. The EPPO must use the specified templates provided in the annexes to ensure the submission is complete and in line with the procedures set out (Annexes 1 and 3).<sup>226</sup> These templates help maintain clarity and confidentiality in the process. **20**

In Case C 831/18 P the ECJ emphasises that the person whose immunity is being waived must be heard, except in exceptional cases where this may interfere with the investigation. This is significant for safeguarding the individual's rights while maintaining the effectiveness of legal processes.<sup>227</sup> **21**

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<sup>225</sup> European Parliament (2023). Working Arrangement of the European Parliament and the EPPO. Available at: <https://www.europarl.europa.eu/resources/library/media/20241128RES25671/20241128RES25671.pdf>. Accessed 1 February 2025.

<sup>226</sup> European Investment Bank (2021). Working Arrangement between the European Investment Bank and the EPPO. <https://www.eib.org/attachments/press/working-arrangement-epo-eib-eif-7-december-2021>. Accessed 1 February 2025.

<sup>227</sup> ECJ, Case C 831/18 P, *European Commission v RQ*, Judgement of 19 December 2019.

### III. National Law applicable in PIF Acquis Investigation with Special Focus on Investigation Measures

- 1 The EPPO Regulation, which does not apply in Poland at the moment, contains in Section 2 **Rules on investigation measures and other measures**. As Poland is a **non-participating country** the rules of Art. 30 EPPO Regulation do, as said, not apply in Poland, but still **Polish Criminal Investigation Authorities operate mostly with an identical tool box of investigation measures** which does not mean that the conditions of the Regulation would be readily met immediately. The powers of the prosecutor in the national investigation is determined by the Polish Criminal Procedure Code and can be reconstructed if analysing the investigation measures, which the prosecutor can rely on.<sup>228</sup>
- 2 The following considerations are based on the structure of Art. 30 EPPO Regulation, but can be seen as a collection of the relevant investigative provisions of the criminal procedure code. It can be assumed that measures such as searches, seizures, bank account inspections and the freezing of assets are ideal measures that are used internationally in the area of white-collar crime – thus as well in Poland.
- 3 How the Polish authorities use what kind of specific measures, how often and how long they last, cannot be summed up in a single sentence, but results from the individual cases and the specific judicial approvals and the extent of the crime in question.

#### 1. Investigation measures in Polish PIF cases (Article 30 EPPO Regulation)

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<sup>228</sup> See *Kremens* 2021, who compares Germany, Italy and Poland from the perspective of the initiation of investigations.

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**Relevant Union law, which would apply, if Poland was part of the EPPO:**

**Art. 30 Investigation measures and other measures**

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

(a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;

(b) obtain the production of any relevant object or document either in its original form or in some other specified form;

(c) obtain the production of stored computer data, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council;

(d) freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the judgement ordering confiscation.

(e) intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using;

(f) track and trace an object by technical means, including controlled deliveries of goods.

2. Without prejudice to Article 29, the investigation measures set out in paragraph 1 of this Article may be subject to conditions in accordance with the applicable national law if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.

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

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

5. The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 4 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where

there is no less intrusive measure available which could achieve the same objective. The procedures and the modalities for taking the measures shall be governed by the applicable national law.

It shall be answered what kind of **possibilities to discover EU frauds** exist in Poland. They include intrusive and effective means of investigative tools. If conducting the investigations it is important to closely obey the law and follow the details. The following provisions from the Criminal Procedure Code of Poland is not “law in the books” but rather the fundamental requisite to combat EU frauds *in praxi*. **1**

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

At this moment Poland is not part of the EPPO and has therefore not adopted any law that would grant national prosecutors the rights of an EDP. Instead the **competent national prosecution Office will have to decide how to conduct the investigation and find evidence** that sums up the conduct and be used as evidence in a main hearing before a criminal court. **2**

**b) The role of the Polish Judge during the conduct of an investigation**

Mostly the court as an authority has the task to grant permission to certain acts which are considered intrusive investigation measures. **3**

The role of the court may be divided into three groups:

- The authority which decides about the most intrusive investigative measures (such as phone tapping, secret surveillance, limiting the scope of the advocate/legal advisor secrecy) or protective measures (such as pre-trial detention) **4**
- The authority which decides about claims (*zażalenia*) against certain decisions of the prosecutor (like e.g. decision about non-custodial protective measures, decision about discontinuing proceedings)

Sometimes the court interrogate certain category of witnesses, Article 185a, 185b, 185c and 316 § 3. **5**

If the permission was granted and the secret measures could be used, the question arises if this evidence may be used in court, which depends on the conduction of the relevant measure: Is it proportional, careful enough, reasonable or useless, falsely carried out, misadopted or done without reason? **6**

**Article 316 § 3:**

§ 3. If there is a risk that it will not be possible to examine a witness at the trial, a party, the public prosecutor or other agency conducting the proceedings may request the court to ex-amine the witness. **7**

**8 Article 185a Verification of an aggrieved party in the capacity of a witness.**

§ 1. In cases concerning offences committed with the use of violence or illegal threat or defined in Chapters XXIII, XXV and XXVI of the Criminal Code, an injured party who is below the age of 15 at the time of the examination testifies as a witness only once, unless important circumstances come to light, the clarification of which requires a second examination, or unless the accused who was not assisted by a defence counsel during the first testimony so demands.

§ 2. The examination is conducted by the court with the attendance of an expert psychologist. The public prosecutor, the defence counsel and the attorney of the aggrieved party may participate in the examination. The person mentioned in Article 51 § 2 or an adult person indicated by the aggrieved party referred to in § 1 may attend the examination, if this does not limit the freedom of expression of the person giving testimony. If the accused notified of this procedure does not have a defence counsel of his own choice, the court appoints for him a defence counsel *ex officio*.

§ 3. The transcript from the examination is read at the main trial. If the vision and sound of the hearing were recorded, they should be played.

§ 4. In cases concerning offences referred to in § 1, a minor injured party who at the time of the examination has attained 15 years of age, is examined in the conditions specified in § 1–3, if there is a justified concern that the examination carried out in different conditions might have a negative impact on his mental state.

**Article 185b Conditions of examination of a minor.**

§ 1. In cases concerning offences committed with the use of violence or illegal threat or offences defined in Chapter XXV or XXVI of the Criminal Code, a witness who, at the time of testifying, is not yet 15 may be subject to an examination upon conditions defined in Article 185a § 1–3, if his testimonies may be of vital importance to the case.

§ 2. In cases concerning offences referred to in § 1, a minor injured party who at the time of the examination has attained 15 years of age, is examined in the conditions specified in Article 177 § 1a, if there is a justified concern that a direct presence of the accused might hinder the witness's testimonies or have a negative impact on his mental state.

§ 3. The provisions of § 1 and 2 do not apply to a witness, who co-perpetrated the offence, with which criminal proceedings are concerned, or to a witness, whose offence is connected with the offence, with which criminal proceedings are concerned.

**Article 185c Examination of aggrieved party in the capacity of a witness.**

§ 1. In cases concerning offences referred to in Articles 197–199 of the Criminal Code, re-port of the offence submitted by the aggrieved party should be limited to the most important facts and evidence.



§ 2. The examination of the aggrieved party in the capacity of a witness is conducted by the court in a hearing, which may be attended by the public prosecutor, the defence counsel and the attorney of the aggrieved party. At the main trial, the vision and sound recording of the examination is played and the transcript of the examination is read.

§ 3. If it is necessary to repeat the examination of the aggrieved party in the capacity of a witness, the examination is carried out in the conditions specified in Article 177 § 1a, if there is a justified concern that a direct presence of the accused might hinder the witness's testimonies or have a negative impact on his mental state.

§ 4. If the examination is carried out with the participation of an expert psychologist, at the request of the aggrieved party it should be ensured that the expert psychologist be of the same gender as the aggrieved party, unless this might hinder the proceedings.

### c) Investigation Measures

The investigation measures cover search measures, seizure, obtainment of banking account data, freezing of assets, interception of telecommunication and tracking and tracing an object. 9

#### aa. Para 1 (a) Search Measures and Conservatory measures necessary to preserve their integrity / necessary to avoid the loss/necessary to avoid the contamination of evidence

The Polish Criminal Procedure Code allows like all other Criminal Procedure Codes of the member states the search of premises, things and data. Searches are powerful tools in an investigation and need judicial control mechanisms.<sup>229</sup> Chapter 25 contains the relevant provisions. Art. 217 CPC is the first and main provision: 10

#### Chapter 25 Stopping things. Search

**Article 217<sup>230</sup>** § 1. Items that may constitute evidence in the case or are subject to seizure in order to secure property penalties, punitive measures property, forfeiture, compensatory measures or claims for redress damages must be issued at the request of the court 11

<sup>229</sup> *Kremens* 2021, pp 1585–1626.

<sup>230</sup> **Rozdział 25 Zatrzymanie rzeczy. Przeszukanie**

**Art. 217.** § 1. Rzeczy mogące stanowić dowód w sprawie lub podlegające zajęciu w celu zabezpieczenia kar majątkowych, środków karnych o charakterze majątkowym, przepadku, środków kompensacyjnych albo roszczeń o naprawienie szkody należy wydać na żądanie sądu lub prokuratora, a w wypadkach niecierpiących zwłoki – także na żądanie Policji lub innego uprawnionego organu.

§ 2. Osobę mającą rzecz podlegającą wydaniu wzywa się do wydania jej dobrowolnie.

§ 3. W razie zatrzymania rzeczy stosuje się odpowiednio przepis art. 228. Protokołu można nie sporządzać, jeżeli rzecz załącza się do akt sprawy.

§ 4. Jeżeli wydania żąda Policja albo inny uprawniony organ działający we własnym zakresie, osoba, która rzecz wyda, ma prawo niezwłocznie złożyć wniosek o sporządzenie i doręczenie jej postanowienia sądu lub prokuratora o zatwierdzeniu zatrzymania, o czym należy ją pouczyć. Doręczenie powinno nastąpić w terminie 14 dni od zatrzymania rzeczy. § 5. W razie odmowy dobrowolnego wydania rzeczy można przeprowadzić jej odebranie. Przepisy art. 220 § 3 i art. 229 stosuje się odpowiednio.

or the prosecutor, and in cases urgent – also at the request of the Police or other authorised body.

§ 2. The person who has the thing subject to release is called upon to issue it freely.

§ 3. In the event of detention, the provision of art. 228. The Protocol may not be drawn up if the thing is attached to the case file.

§ 4. If the release is requested by the police or other authorised body acting in on their own, the person who issues the item has the right to submit it immediately an application for the preparation and delivery of a decision of the court or the prosecutor o approving the detention, which she should be instructed about. Delivery should take place within 14 days of stopping the goods.

§ 5. In the event of refusal to voluntarily release things can be carried out picking her up. The provisions of art. 220 § 3 and art. 229 shall apply accordingly.

**Article 219**<sup>231</sup> § 1. In order to detect or arrest or forcibly to bring a suspect, as well as to find things that can constitute evidence in a case or subject to seizure in criminal proceedings, rooms and other places, if any, may be searched reasonable grounds to believe that the person suspected or named things are there.

§ 2. To find things listed in § 1 and provided specified in this provision and taking into account the principles and limits set out in art. 227, it is also possible to search a person, his clothes and handhelds items.

**Article 220**<sup>232</sup> § 1. A search may be carried out by the prosecutor or by order of the court or prosecutor, the Police, and in the cases specified in the Act - also another authority.

§ 2. The order of the court or the prosecutor must be shown to the person who the search is to be conducted.

§ 3. In cases of urgency, if the court order or the prosecutor could not be issued, the body conducting the search proves the order of the head of his unit or an official ID card, and then returns it immediately to the court or prosecutor to authorise the search. The decision of the court or the prosecutor regarding the approval must be served the person

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<sup>231</sup> **Art. 219.** § 1. W celu wykrycia lub zatrzymania albo przymusowego doprowadzenia osoby podejrzanej, a także w celu znalezienia rzeczy mogących stanowić dowód w sprawie lub podlegających zajęciu w postępowaniu karnym, można dokonać przeszukania pomieszczeń i innych miejsc, jeżeli istnieją uzasadnione podstawy do przypuszczenia, że osoba podejrzana lub wymienione rzeczy tam się znajdują. § 2. W celu znalezienia rzeczy wymienionych w § 1 i pod warunkiem określonym w tym przepisie oraz z uwzględnieniem zasad i granic określonych w art. 227 można też dokonać przeszukania osoby, jej odzieży i podręcznych przedmiotów

<sup>232</sup> **Art. 220.** § 1. Przeszukania może dokonać prokurator albo na polecenie sądu lub prokuratora Policja, a w wypadkach wskazanych w ustawie – także inny organ. § 2. Postanowienie sądu lub prokuratora należy okazać osobie, u której przeszukanie ma być przeprowadzone. § 3. W wypadkach niecierpiących zwłoki, jeżeli postanowienie sądu lub prokuratora nie mogło zostać wydane, organ dokonujący przeszukania okazuje nakaz kierownika swojej jednostki lub legitymację służbową, a następnie zwraca się niezwłocznie do sądu lub prokuratora o zatwierdzenie przeszukania. Postanowienie sądu lub prokuratora w przedmiocie zatwierdzenia należy doręczyć osobie, u której dokonano przeszukania, w terminie 7 dni od daty czynności na zgłoszone do protokołu żądanie tej osoby. O prawie zgłoszenia żądania należy ją pouczyć.

on whom the search was carried out, within 7 days from the date of the action on this person's request for the record. About the right to submit a request belongs to her instruct.

**Article 221**<sup>233</sup> § 1. A search of inhabited premises can be made at night only in urgent cases; is considered night time from 10 p.m. to 6 a.m.

§ 2. A search started during the day can be carried out despite the advent night time.

§ 3. During the night, you can search premises available at that time for an unspecified number of people or used to store items.

**Article 222**<sup>234</sup> § 1. At the beginning of the search of a room or place closed, belonging to a state or local government institution, belongs to notify the head of the institution or him of the intended search deputy or superior authority and allow them to participate in the activities. § 2. A search of a room occupied by the military may take place only in the presence of the commander or a person designated by him.

**Article 223**<sup>235</sup> A search of a person and clothing on it should be made as far as possible by a person of the same sex.

**Article 224**<sup>236</sup> § 1. The person to whom the search is to take place must be prior to commencement of the activity, inform about its purpose and call for surrender wanted items.

§ 2. During the search, the person mentioned in § 1 has the right to be present and a person adopted by the person conducting the activity. In addition, it may be present the person indicated by the person at whom the search is carried out, if not this prevents the search or does not hinder it in a significant way.

<sup>233</sup> **Art. 221.** § 1. Przeszukania zamieszkałych pomieszczeń można dokonać w porze nocnej tylko w wypadkach niecierpiących zwłoki; za porę nocną uważa się czas od godziny 22 do godziny 6. § 2. Przeszukanie rozpoczęte za dnia można prowadzić nadal mimo nastania pory nocnej. § 3. W porze nocnej można przeszukać lokale dostępne w tym czasie dla nieokreślonej liczby osób albo służące do przechowywania przedmiotów

<sup>234</sup> **Art. 222.** § 1. Przy rozpoczęciu przeszukania pomieszczenia lub miejsca zamkniętego, należącego do instytucji państwowej lub samorządowej, należy o zamierzonym przeszukaniu zawiadomić kierownika tej instytucji lub jego zastępcę albo organ nadrzędny i dopuścić ich do udziału w czynności. § 2. Przeszukanie pomieszczenia zajętego przez wojsko może nastąpić jedynie w obecności dowódcy lub osoby przez niego wyznaczonej.

<sup>235</sup> **Art. 223.** Przeszukania osoby i odzieży na niej należy dokonywać w miarę możliwości za pośrednictwem osoby tej samej płci

<sup>236</sup> **Art. 224.** § 1. Osobę, u której ma nastąpić przeszukanie, należy przed rozpoczęciem czynności zawiadomić o jej celu i wezwać do wydania poszukiwanych przedmiotów. § 2. Podczas przeszukania ma prawo być obecna osoba wymieniona w § 1 oraz osoba przybrana przez prowadzącego czynność. Ponadto może być obecna osoba wskazana przez tego, u kogo dokonuje się przeszukania, jeżeli nie uniemożliwia to przeszukania albo nie utrudnia go w istotny sposób. § 3. Jeżeli przy przeszukaniu nie ma na miejscu gospodarza lokalu, należy do przeszukania przywołać przynajmniej jednego dorosłego domownika lub sąsiada.

§ 3. If the search is not in place of the host of the premises, belongs to searches to summon at least one adult member of the household or neighbor.

12 General Provisions, which are presented below and that are enshrined in the Polish Constitution may govern the **search measures** in the background from a constitutional point-of-view:

13 **Polish Constitution**

**Article 47**<sup>237</sup> Everyone shall have the right to legal protection of his private and family life, of his honor and good reputation and to make decisions about his personal life.

**Article 48**<sup>238</sup> Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions.

Limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment.

**Article 49**<sup>239</sup> The freedom and privacy of communication shall be ensured. Any limitations thereon may be imposed only in cases and in a manner specified by statute.

14 **Article 50**<sup>240</sup> The inviolability of the home shall be ensured. Any search of a home, premises or vehicles may be made only in cases and in a manner specified by statute.

15 **Article 51**<sup>241</sup> No one may be obliged, except on the basis of statute, to disclose information concerning his person.

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<sup>237</sup> **Art. 47.** Każdy ma prawo do ochrony prawnej życia prywatnego, rodzinnego, czci i dobrego imienia oraz do decydowania o swoim życiu osobistym.

<sup>238</sup> **Art. 48.** 1. Rodzice mają prawo do wychowania dzieci zgodnie z własnymi przekonaniami. Wychowanie to powinno uwzględniać stopień dojrzałości dziecka, a także wolność jego sumienia i wyznania oraz jego przekonania.

2. Ograniczenie lub pozbawienie praw rodzicielskich może nastąpić tylko w przypadkach określonych w ustawie i tylko na podstawie prawomocnego orzeczenia sądu.

<sup>239</sup> **Art. 49.** Zapewnia się wolność i ochronę tajemnicy komunikowania się. Ich ograniczenie może nastąpić jedynie w przypadkach określonych w ustawie i w sposób w niej określony.

<sup>240</sup> **Art. 50.** Zapewnia się nienaruszalność mieszkania. Przeszukanie mieszkania, pomieszczenia lub pojazdu może nastąpić jedynie w przypadkach określonych w ustawie i w sposób w niej określony.

<sup>241</sup> **Art. 51.** 1. Nikt nie może być obowiązany inaczej niż na podstawie ustawy do ujawniania informacji dotyczących jego osoby.

2. Władze publiczne nie mogą pozyskiwać, gromadzić i udostępniać innych informacji o obywatelach niż niezbędne w demokratycznym państwie prawnym.

3. Każdy ma prawo dostępu do dotyczących go urzędowych dokumentów i zbiorów danych. Ograniczenie tego prawa może określić ustawa.

4. Każdy ma prawo do żądania sprostowania oraz usunięcia informacji nieprawdziwych, niepełnych lub zebranych w sposób sprzeczny z ustawą.

5. Zasady i tryb gromadzenia oraz udostępniania informacji określa ustawa.

Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state ruled by law

Everyone shall have a right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute.

Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.

Principles and procedures for collection of and access to information shall be specified by statute.

**Article 52**<sup>242</sup> Freedom of movement as well as the choice of place of residence and sojourn within the territory of the Republic of Poland shall be ensured to everyone.

Everyone may freely leave the territory of the Republic of Poland.

The freedoms specified in paras. 1 and 2 above may be subject to limitations specified by statute.

A Polish citizen may not be expelled from the country nor forbidden to return to it.

Anyone whose Polish origin has been confirmed in accordance with statute may settle permanently in Poland.

#### Excerpt Criminal Procedure Code

**Article 217**<sup>243</sup> § 1. Objects which may serve as evidence, or be subject to seizure in order to secure penalties regarding property, penal measures involving property or claims to redress damage, should be surrendered when so required by the court, the state prosecutor, and in cases not amenable to delay, by the Police or other authorised agency.

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<sup>242</sup> **Art. 52.**

1. Każdemu zapewnia się wolność poruszania się po terytorium Rzeczypospolitej Polskiej oraz wyboru miejsca zamieszkania i pobytu.

2. Każdy może swobodnie opuścić terytorium Rzeczypospolitej Polskiej.

3. Wolności, o których mowa w ust. 1 i 2, mogą podlegać ograniczeniom określonym w ustawie.

4. Obywatela polskiego nie można wydalic z kraju ani zakazać mu powrotu do kraju.

5. Osoba, której pochodzenie polskie zostało stwierdzone zgodnie z ustawą, może osiedlic się na terytorium Rzeczypospolitej Polskiej na stałe.

<sup>243</sup> **Art. 217.** Wydanie, odebranie i zatrzymanie rzeczy

§ 1. Rzeczy mogące stanowić dowód w sprawie lub podlegające zajęciu w celu zabezpieczenia kar majątkowych, środków karnych o charakterze majątkowym, przepadku, środków kompensacyjnych albo roszczeń o naprawienie szkody należy wydać na żądanie sądu lub prokuratora, a w wypadkach niecierpiących zwłoki – także na żądanie Policji lub innego uprawnionego organu.

§ 2. Osobę mającą rzecz podlegającą wydaniu wzywa się do wydania jej dobrowolnie.

§ 3. W razie zatrzymania rzeczy stosuje się odpowiednio przepis art. 228 postępowanie z przedmiotami znalezionymi w czasie przeszukania. Protokołu można nie sporządzać, jeżeli rzecz załącza się do akt sprawy.

§ 4. Jeżeli wydania żąda Policja albo inny uprawniony organ działający we własnym zakresie, osoba, która rzecz wyda, ma prawo niezwłocznie złożyć wniosek o sporządzenie i doręczenie jej postanowienia sądu lub prokuratora o zatwierdzeniu zatrzymania, o czym należy ją pouczyć. Doręczenie powinno nastąpić w terminie 14 dni od zatrzymania rzeczy.

§ 5. W razie odmowy dobrowolnego wydania rzeczy można przeprowadzić jej odebranie. Przepisy art. 220 zasady dokonywania przeszukania § 3 i art. 229 dodatkowe elementy protokołu przeszukania stosuje się odpowiednio.

§ 2. A person holding the objects subject to surrender shall be called upon to release them voluntarily, but in the event of refusal, the seizure may be effected.

§ 3. If the surrender is demanded by an agency other than the state prosecutor, it shall produce to the holder of the objects liable to surrender, an order of the court or of the state prosecutor or, if it has not been possible to obtain the order prior to seizure, a warrant from the chief of unit, or an official identity card. The agency should then apply without delay, to the court or the state prosecutor for approval of the seizure of the objects. The holder shall be served, within 7 days of the seizure of the objects, an order of the court or the state prosecutor authorising the action.

§ 4. A psychiatric dossier shall be surrendered only to the court or the state prosecutor.

§ 5. In the event of a refusal to voluntarily release the item, it may be collected. The provisions of Art. 220 rules for making a search § 3 and art. 229, additional elements of the search protocol shall apply *mutatis mutandis*.

17 From expert knowledge it should be mentioned that the main judgement in this area is the Judgment of the Constitutional Court from 14 December 2017, K 17/14. The Constitutional Court assessed rules of search and seizure and partially decided that they are unconstitutional. Also the Court reminded the limits of search and seizure and focus on applying the balancing test.

18 Poland is bound by ECtHR case law.<sup>244</sup>

#### **bb. Para 1(b) Obtainment of the production of any relevant object or document**

19 **Article 218<sup>245</sup> Obligation to issue correspondence, parcels and data**

§ 1. Offices, institutions and entities operating in in the field of mail or telecommunications, customs and tax offices and transport institutions and companies are obliged to issue to the court or to the prosecutor, at the request contained in the decision, correspondence and shipments and the data referred to in art. 180c and art. 180d of the Act of July 16, 2004 – Telecommunications Law (Journal of Laws of 2021,

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<sup>244</sup> ECtHR, *Doroż v. Poland*, app. no. 71205/11, Judgment of 29.01.2021, [https://hudoc.echr.coe.int/fre#{%22tabview%22:\[%22document%22\],%22itemid%22:\[%22001-205378%22\]}](https://hudoc.echr.coe.int/fre#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-205378%22]}). Accessed 6 August 2024.

<sup>245</sup> **Art. 218.** § 1. Urzędy, instytucje i podmioty prowadzące działalność w dziedzinie poczty lub działalność telekomunikacyjną, urzędy celno-skarbowe oraz instytucje i przedsiębiorstwa transportowe obowiązane są wydać sądowi lub prokuratorowi, na żądanie zawarte w postanowieniu, korespondencję i przesyłki oraz dane, o których mowa w art. 180c i art. 180d ustawy z dnia 16 lipca 2004 r. – Prawo telekomunikacyjne (Dz. U. z 2021 r. poz. 576 oraz z 2022 r. poz. 501), jeżeli mają znaczenie dla toczącego się postępowania. Tylko sąd lub prokurator mają prawo je otwierać lub zarządzić ich otwarcie.

§ 2. Postanowienie, o którym mowa w § 1, doręcza się adresatom korespondencji oraz abonentowi telefonu lub nadawcy, którego wykaz połączeń lub innych przekazów informacji został wydany. Doręczenie postanowienia może być odroczone na czas oznaczony, niezbędny ze względu na dobro sprawy, lecz nie później niż do czasu prawomocnego zakończenia postępowania. § 3. Pozbawioną znaczenia dla postępowania karnego korespondencję i przesyłki należy niezwłocznie zwrócić właściwym urządóm, instytucjom lub przedsiębiorstwóm wymienionym w § 1.

item 576 and of 2022, item 501), if are relevant to the proceeding. Only the court or the prosecutor have the right to open them or order them to be opened.

§ 2. The order referred to in § 1 shall be delivered to the addressees correspondence and to the telephone subscriber or sender whose list of calls or other remittances of information has been released. Delivery of the order may be postponed for a specified period of time, necessary for the good of the case, but not later than until the final conclusion of the proceedings.

§ 3. Correspondence irrelevant to the criminal proceedings and shipments should be immediately returned to the relevant offices, institutions or companies listed in § 1.

**Article 218a**<sup>246</sup> § 1. Offices, institutions and business entities telecommunications or providing electronic services and service providers they are obliged to immediately secure, at the request of the court or prosecutor included in the decision, for a definite period of time, however not exceeding 90 days, IT data stored in devices containing this data on a carrier or in a computer system. In cases of specified crimes in art. 200b, art. 202 § 3, 4, 4a, 4b or art. 255a of the Penal Code and in chapter 7 of the Act of 29 July 2005 on counteracting drug addiction (Journal of Laws of 2020 pos. 2050, of 2021, item 2469 and of 2022, item 763 and 764) security can be combined with the obligation to prevent access to such data. Recipe article 218 § 2, second sentence shall apply accordingly. § 2. IT data of no relevance to criminal proceedings, referred to in § 1, should be immediately released from security.

§ 3. The provisions of § 1 and 2 shall apply accordingly to securing content published or made available electronically, and the entity may also be obliged to comply with the request of the court or the prosecutor content administrator. § 4. If the publication or sharing of the content referred to in § 3, constituted a prohibited act referred to in § 1, the court or the prosecutor may order the removal of this content, imposing an obligation to comply with the decision on entities referred to in § 1 or 3.

<sup>246</sup> **Art. 218a.** § 1. Urzędy, instytucje i podmioty prowadzące działalność telekomunikacyjną lub świadczące usługi drogą elektroniczną oraz dostawcy usług cyfrowych obowiązani są niezwłocznie zabezpieczyć, na żądanie sądu lub prokuratora zawarte w postanowieniu, na czas określony, nieprzekraczający jednak 90 dni, dane informatyczne przechowywane w urządzeniach zawierających te dane na nośniku lub w systemie informatycznym. W sprawach o przestępstwa określone w art. 200b, art. 202 § 3, 4, 4a, 4b lub art. 255a Kodeksu karnego oraz w rozdziale 7 ustawy z dnia 29 lipca 2005 r. o przeciwdziałaniu narkomanii (Dz. U. z 2020 r. poz. 2050, z 2021 r. poz. 2469 oraz z 2022 r. poz. 763 i 764) zabezpieczenie może być połączone z obowiązkiem uniemożliwienia dostępu do tych danych. Przepis art. 218 § 2 zdanie drugie stosuje się odpowiednio.

§ 2. Pozbawione znaczenia dla postępowania karnego dane informatyczne, o których mowa w § 1, należy niezwłocznie zwolnić spod zabezpieczenia.

§ 3. Przepisy § 1 i 2 stosuje się odpowiednio do zabezpieczania treści publikowanych lub udostępnianych drogą elektroniczną, przy czym podmiotem obowiązany do wykonania żądania sądu lub prokuratora może być również administrator treści.

§ 4. Jeżeli publikacja lub udostępnienie treści, o których mowa w § 3, stanowiło czyn zabroniony, o którym mowa w § 1, sąd lub prokurator może zarządzić usunięcie tych treści, nakładając obowiązek wykonania postanowienia na podmioty, o których mowa w § 1 lub 3.

**Article 218b**<sup>247</sup> Minister of Justice in consultation with the minister competent for communications, the minister competent for computerization, Minister of National Defence and the minister competent for internal affairs determine, by regulation, the method of technical preparation of the systems and networks used to transfer information - to collect data about which referred to in Art. 218 § 1, not constituting the content of a telephone conversation or other transmission of information, as well as methods of securing IT data, referred to in Art. 218 § 1 and art. 218a § 1, and the content referred to in art. 218a § 3, in devices containing this data and in systems and on IT data carriers, taking into account the need for security this data and content against their loss, distortion or unauthorised use disclosure, and in the case of combining a security with an obligation prevent access to these IT data or content, also the need to protect them against unauthorised access and disclosure, and in the case of content removal - against their unauthorised recovery.

**Article 225**<sup>248</sup> **Handling documents containing classified information found in the course of a search**

§ 1. If the head of a state or local government institution, or the person with whom the goods were seized or where the search is carried out, declares that the letter or other document issued or found during the search contains classified information or infor-

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<sup>247</sup> **Art. 218b.** Minister Sprawiedliwości w porozumieniu z ministrem właściwym do spraw łączności, ministrem właściwym do spraw informatyzacji, Ministrem Obrony Narodowej oraz ministrem właściwym do spraw wewnętrznych określi, w drodze rozporządzenia, sposób technicznego przygotowania systemów i sieci służących do przekazywania informacji – do gromadzenia danych, o których mowa w art. 218 § 1, niestanowiących treści rozmowy telefonicznej lub innego przekazu informacji, a także sposoby zabezpieczania danych informatycznych, o których mowa w art. 218 § 1 i art. 218a § 1, oraz treści, o których mowa w art. 218a § 3, w urządzeniach zawierających te dane oraz w systemach i na informatycznych nośnikach danych, mając na uwadze konieczność zabezpieczenia tych danych oraz treści przed ich utratą, zniekształceniem lub nieuprawnionym ujawnieniem, a w przypadku połączenia zabezpieczenia z obowiązkiem uniemożliwienia dostępu do tych danych informatycznych lub treści, również konieczność ich zabezpieczenia przed nieuprawnionym dostępem i ujawnieniem, a w przypadku usunięcia treści – przed ich nieuprawnionym odzyskaniem.

<sup>248</sup> **Art. 225.** § 1. Jeżeli kierownik instytucji państwowej lub samorządowej albo też osoba, u której dokonano zatrzymania rzeczy lub u której przeprowadza się przeszukanie, oświadczy, że wydane lub znalezione przy przeszukaniu pismo lub inny dokument zawiera informacje niejawne lub wiadomości objęte tajemnicą zawodową lub inną tajemnicą prawnie chronioną albo ma charakter osobisty, organ przeprowadzający czynność przekazuje niezwłocznie pismo lub inny dokument bez jego odczytania prokuratorowi lub sądowi w opieczętowanym opakowaniu. § 2. Tryb wskazany w § 1 nie obowiązuje w stosunku do pism lub innych dokumentów, które zawierają informacje niejawne o klauzuli „zastrzeżone” lub „poufne” albo dotyczą tajemnicy zawodowej lub innej tajemnicy prawnie chronionej, jeżeli ich posiadaczem jest osoba podejrzana o popełnienie przestępstwa, ani w stosunku do pism lub innych dokumentów o charakterze osobistym, których jest ona posiadaczem, autorem lub adresatem. § 3. Jeżeli obrońca lub inna osoba, od której żąda się wydania rzeczy lub u której dokonuje się przeszukania, oświadczy, że wydane lub znalezione w toku przeszukania pisma lub inne dokumenty obejmują okoliczności związane z wykonywaniem funkcji obrońcy, organ dokonujący czynności pozostawia te dokumenty wymienionej osobie bez zapoznawania się z ich treścią lub wyglądem. Jeżeli jednak oświadczenie osoby niebędącej obrońcą budzi wątpliwości, organ dokonujący czynności przekazuje te dokumenty z zachowaniem rygorów określonych w § 1 sądowi, który po zapoznaniu się z dokumentami zwraca je w całości lub w części, z zachowaniem rygorów określonych w § 1, osobie, od której je zabrano, albo wydaje postanowienie o ich zatrzymaniu dla celów postępowania. § 4. Wydaną, odebraną lub znaną w toku przeszukania dokumentację psychiatryczną organ przeprowadzający czynność przekazuje, z zachowaniem rygorów określonych w § 1, sądowi lub prokuratorowi.



mation covered by professional secrecy or other legally protected secret or is of the nature of personal, the authority carrying out the activity shall immediately forward the letter or other document without reading it to the prosecutor or the court in a sealed package.

§ 2. The procedure specified in § 1 does not apply to letters or other documents that contain classified information classified as “restricted” or “confidential” or concern professional secrets or other legally protected secrets, if their holder is a person suspected of committing a crime, or in relation to letters or other documents of a personal nature, of which it is the holder, author or addressee.

§ 3. If the defender or another person from whom the item is requested or where the search is carried out, declares that the letters or other documents issued or found in the course of the search include circumstances related to the performance of the defender’s function, the authority performing the activities leaves these documents to the named person without reviewing them. their content or appearance. However, if the statement of a person who is not a defence attorney raises doubts, the authority carrying out the activities shall transfer these documents, in compliance with the rigors specified in § 1, to the court, which, after reading the documents, returns them in whole or in part, in compliance with the rigors specified in § 1, to the person from from whom they were taken, or it issues an order to detain them for the purposes of the proceedings.

§ 4. Subject to the rigors specified in § 1, the authority carrying out the activity shall hand over the psychiatric documentation issued, received or found in the course of the search to the court or the public prosecutor.

**Article 226<sup>249</sup> Use of documents containing classified information as evidence**

With regard to the use of documents containing classified information or professional secrecy as evidence in criminal proceedings, the prohibitions and limitations set out in Articles 178–181 shall apply accordingly. However, in the preparatory proceedings, the prosecutor decides about the use of documents containing medical confidentiality as evidence.

<sup>249</sup> **Art. 226.** W kwestii wykorzystania dokumentów zawierających informacje niejawne lub tajemnicę zawodową, jako dowodów w postępowaniu karnym, stosuje się odpowiednio zakazy i ograniczenia określone w art. 178–181. Jednakże w postępowaniu przygotowawczym o wykorzystaniu, jako dowodów, dokumentów zawierających tajemnicę lekarską decyduje prokurator.

**cc. Para 1(c) Obtainment of the production of stored computer data, encrypted or decrypted**


**20 Article 218a<sup>250</sup> Obligation to secure IT data at the request of the court or the prosecutor**

§ 1. Offices, institutions and entities conducting telecommunications activities or providing services by electronic means, and digital service providers are obliged to immediately secure, at the request of the court or the prosecutor, contained in the decision, for a specified period, not exceeding 90 days, IT data stored in devices containing this data on a carrier or in the IT system. In cases of offences referred to in article 1. 200b public promotion of pedophile content, art. 202 presentation and distribution of pornography § 3, 4, 4a, 4b or article. 255a the dissemination of content that facilitates the commission of a terrorist offence Of the Penal Code and in Chapter 7 of the Act of 29 July 2005 on counteracting drug addiction (Journal of Laws of 2020, item 2050), security may be combined with the obligation to prevent access to this data. The provision of art. 218, the obligation to issue correspondence, parcels and data § 2, second sentence, shall apply mutatis mutandis.

§ 2. The IT data, which are irrelevant to criminal proceedings, referred to in § 1, should be immediately released from security.

§ 3. The provisions of § 1 and 2 shall apply accordingly to securing the content published or made available electronically, and the entity obliged to comply with the request of the court or the public prosecutor may also be the content administrator.

§ 4. If the publication or disclosure of the content referred to in § 3 was a prohibited act referred to in § 1, the court or the prosecutor may order the removal of such content, imposing the obligation to implement the decision on the entities referred to in § 1 or 3.

 In relation to the Banc account secrecy the following jurisprudence shall be heard: the Decision of the Appeal Court in Kraków 2018-07-17, II Aka 495/18.

**21** The key facts are:

- Limits of the possibility to withdraw banc account secrecy.
- Position of public prosecutor and the possibility to make a claim to the court.
- The institution of release from bank secrecy is of an exceptional and definitive nature.

**22** This means, therefore, that the court, when examining the prosecutor's application for exemption from the obligation to maintain bank secrecy, grants its consent only if it is necessary to achieve the objectives of the pending proceedings. The court, when considering such a request, having regard to the exceptional nature of this instrument,

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<sup>250</sup> See above for the Polish text.

should carefully examine these circumstances and thus determine whether it is necessary to apply this exceptional provision in the case, or whether the prosecutor can gather the necessary evidence without the need to waive bank secrecy.

The granting of a waiver of bank secrecy must be preceded by an authoritative exhaustion of the possibility of obtaining the data needed by the prosecutor. In other words, as long as the prosecutor has not exhausted the possibility of obtaining the data without resorting to seeking a bank secrecy waiver, the waiver must be considered premature. **23**

**dd. Para 1(d) Freezing instrumentalities or proceeds of crime, including assets**

Polish law contains the security of property. According to the law, it is possible to “freeze” a certain amount of money if one of the possible punishments maybe a fine or a monetary performance, a forfeiture, a compensatory measure, a return to the aggrieved party or to another entitled entity a financial benefit, which the offender obtained from the offence, or its equivalent. **24**

**Polish Constitution**

**Article 46<sup>251</sup>**

Property may be forfeited only in cases specified by statute, and only by virtue of a final judgment of a court. **25**

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<sup>251</sup> **Art. 46.** Przepadek rzeczy może nastąpić tylko w przypadkach określonych w ustawie i tylko na podstawie prawomocnego orzeczenia sądu.

26 The detailed provisions follow:

**Article 291<sup>252</sup> Basis**

§ 1. If the accused is charged with an offence liable to or in connection with which it is possible to order:

- 1) a fine,
- 2) a monetary performance,
- 3) a forfeiture,
- 4) a compensatory measure,
- 5) a return to the aggrieved party or to another entitled entity a financial benefit, which the offender obtained from the offence, or its equivalent,

- the enforcement of the judgment may be secured ex officio on the property of the accused or on the property referred to in Article 45 § 2 of the Criminal Code, if there is a justified concern that without such a security the enforcement of the judgment as to the penalty or penal measures will be impossible or significantly hindered.

§ 2. The execution of the judgment referred to in § 1 point 3 or 5 may also be secured on the property of a natural person referred to in Article 44a of the Criminal Code, or of a natural or legal or an organisational entity without legal personality referred to in Article 45 § 3 of the Criminal Code, or on property, which would be liable to forfeiture in

<sup>252</sup> Art. 291 [Podstawa]

§ 1. W razie zarzucenia oskarżonemu popełnienia przestępstwa, za które lub w związku z którym można orzec:

- 1) grzywnę,
- 2) świadczenie pieniężne,
- 3) przepadek,
- 4) środek kompensacyjny,
- 5) zwrot pokrzywdzonemu lub innemu uprawnionemu podmiotowi korzyści majątkowej, jaką sprawca osiągnął z popełnionego przestępstwa, albo jej równowartości

- może z urzędu nastąpić zabezpieczenie wykonania tego orzeczenia na mieniu oskarżonego lub na mieniu, o którym mowa w art. 45 § 2 Kodeksu karnego, jeżeli zachodzi uzasadniona obawa, że bez takiego zabezpieczenia wykonanie orzeczenia będzie niemożliwe albo znacznie utrudnione.

§ 2. W razie popełnienia przestępstwa, w związku z którym można orzec przepadek wskazany w § 1 pkt 3 lub zwrot wskazany w § 1 pkt 5, zabezpieczenie wykonania orzeczenia może nastąpić również:

- 1) na mieniu osoby fizycznej, o której mowa w art. 44a Kodeksu karnego, lub osoby fizycznej, prawnej lub jednostki organizacyjnej niemającej osobowości prawnej, o której mowa w art. 45 § 3 Kodeksu karnego, lub na mieniu, które podlegałyby przepadkowi na podstawie art. 33 § 3 Kodeksu karnego skarbowego;
- 2) już po wszczęciu postępowania karnego - na mieniu, które podlegałyby:
  - a) przepadkowi lub zwrotowi na podstawie art. 45a § 1 lub 2 Kodeksu karnego oraz art. 43 § 1 lub 2 lub art. 43a Kodeksu karnego skarbowego,
  - b) przepadkowi lub zwrotowi na podstawie art. 44 Kodeksu karnego, jeżeli co do tego mienia na podstawie odrębnych przepisów zastosowano wstrzymanie transakcji lub blokadę rachunku.

§ 2a. Zabezpieczenie wykonania orzeczenia zwrotu korzyści majątkowej albo jej równowartości lub orzeczenia przepadku świadczenia albo jego równowartości wobec podmiotu zobowiązanego określonego w art. 91a może z urzędu nastąpić na mieniu tego podmiotu.

§ 3. Z urzędu może także nastąpić na mieniu oskarżonego zabezpieczenie wykonania orzeczenia o kosztach sądowych, jeżeli zachodzi uzasadniona obawa, że bez takiego zabezpieczenia wykonanie orzeczenia w tym zakresie będzie niemożliwe albo znacznie utrudnione.

§ 4. Zabezpieczenie majątkowe należy niezwłocznie uchylić w całości lub w części, jeżeli ustaną przyczyny, wskutek których zostało ono zastosowane w określonym rozmiarze, lub powstaną przyczyny uzasadniające jego uchylenie choćby w części.

accordance with Article 45a § 1 or 2 of the Criminal Code and Article 33 § 3, Article 43 § 1 or 2 or Article 43a of the Fiscal Criminal Code.

§ 2a. A judgment concerning the return of material benefit or its equivalent or a judgment concerning forfeiture of a material benefit or its equivalent issued against an entity referred to in Article 91a may be secured ex officio on the property of this entity.

§ 3. The execution of the judgment concerning court costs may also be secured ex officio on the property of the accused, if there is a justified concern that without such a security the enforcement of the judgment in this respect will be impossible or significantly hindered.

§ 4. Security established on the property of the accused should be immediately annulled in whole or in part, if circumstances due to which it was established ceased to exist or reasons have arisen justifying its even partial annulment.

§ 5. Security established on the property of the accused should be immediately annulled in whole or in part, if circumstances due to which it was established ceased to exist or reasons have arisen justifying its even partial annulment.

#### **Article 292<sup>253</sup> Manner of securing**

§ 1. Security is established in the manner set forth in the provisions of the Code of Civil Procedure, unless the law provides otherwise.

§ 2. If the property of the accused is likely to be forfeited, security consists in the seizure of moveable property, receivables and other property rights and by prohibiting alienation or encumbrance of real estate. This prohibition should be disclosed in the real estate and mortgage register and, if such a register has not been established, in the relevant documents deposited with the court. If necessary, management of the real estate owned by the accused may be established.

§ 3. Article 232 applies accordingly.

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<sup>253</sup> **Art. 292 [Sposób zabezpieczenia]**

§ 1. Zabezpieczenie następuje w sposób wskazany w przepisach Kodeksu postępowania cywilnego, chyba że ustawa stanowi inaczej.

§ 2. Zabezpieczenie grożącego przepadku następuje przez zajęcie ruchomości, wierzytelności i innych praw majątkowych oraz przez ustanowienie zakazu zbywania i obciążania nieruchomości. Zakaz ten podlega ujawnieniu w księdze wieczystej, a w jej braku, w zbiorze złożonych dokumentów. W miarę potrzeby może być ustanowiony zarząd nieruchomości oskarżonego.

§ 3. Przepis art. 232 stosuje się odpowiednio.

**Article 292a<sup>254</sup> Security by way of compulsory administration**

§ 1. The execution of the judgment referred to in Article 291 § 1 may also be secured by establishing a compulsory administration and appointing an administrator. The decision specifies the enterprise or an organised part thereof and appoints an administrator from the list of persons holding a license of a restructuring advisor referred to in the Act of 15 June 2007 on the License of Restructuring Advisor (Journal of Laws of 2016, item 883).

§ 2. In preparatory proceedings, the decision establishing the security by way of a compulsory management is issued by the public prosecutor. The decision is subject to court's approval.

§ 3. After the issue of the decision referred to in § 2 the public prosecutor, within seven days petitions to the court for its approval. The court rules on the approval within seven days of the receipt of the decision.

§ 4. The security is annulled when the ruling denying approval of the decision referred to in § 2 becomes final and binding.

§ 5. The public prosecutor's decision on the security is approved in preparatory proceedings, at the public prosecutor's request, by the district court, in whose circuit the

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<sup>254</sup> **Art. 292a [Postanowienie o zabezpieczeniu przez ustanowienie przymusowego zarządu]**

§ 1. Zabezpieczenie wykonania orzeczenia, o którym mowa w art. 291 § 1, może nastąpić również przez ustanowienie przymusowego zarządu przedsiębiorstwa i wyznaczenie zarządcy. W postanowieniu określa się przedsiębiorstwo lub jego zorganizowaną część oraz wskazuje się zarządcę spośród osób posiadających licencję doradcy restrukturyzacyjnego, o której mowa w ustawie z dnia 15 czerwca 2007 r. o licencji doradcy restrukturyzacyjnego (Dz.U. z 2020 r. poz. 242 i 2320 oraz z 2021 r. poz. 1080).

§ 2. W postępowaniu przygotowawczym postanowienie o zabezpieczeniu przez ustanowienie przymusowego zarządu wydaje prokurator. Postanowienie podlega zatwierdzeniu przez sąd.

§ 3. Po wydaniu postanowienia, o którym mowa w § 2, prokurator najpóźniej w ciągu 7 dni występuje do sądu o jego zatwierdzenie. W przedmiocie zatwierdzenia sąd rozstrzyga w ciągu 7 dni od dnia przekazania mu postanowienia.

§ 4. Zabezpieczenie upada z chwilą uprawomocnienia się postanowienia sądu o odmowie zatwierdzenia postanowienia, o którym mowa w § 2.

§ 5. W przedmiocie zatwierdzenia postanowienia prokuratora o zabezpieczeniu orzeka na wniosek prokuratora w postępowaniu przygotowawczym sąd rejonowy, w którego okręgu prowadzi się postępowanie, a po wniesieniu aktu oskarżenia w przedmiocie zatwierdzenia orzeka sąd, przed którym sprawa się toczy.

§ 6. Po wniesieniu aktu oskarżenia postanowienie o zabezpieczeniu przez ustanowienie przymusowego zarządu wydaje sąd, przed którym sprawa się toczy.

§ 7. Na postanowienie sądu w przedmiocie zatwierdzenia postanowienia o zabezpieczeniu lub w przedmiocie zabezpieczenia stronom, pokrzywdzonemu oraz właścicielowi lub osobie kierującej przedsiębiorstwem w jego imieniu przysługuje zażalenie.

§ 8. Zarządca zapewnia ciągłość pracy zabezpieczonego przedsiębiorstwa oraz przekazuje sądowi lub prokuratorowi posiadane informacje mające znaczenie dla toczącego się postępowania, w szczególności o sposobie i okolicznościach wykorzystania tego przedsiębiorstwa do popełnienia przestępstwa lub ukrycia osiągniętej z niego korzyści oraz o rzeczach i dokumentach mogących stanowić dowód w sprawie.

§ 9. Zarządca sporządza spis składników majątku i praw majątkowych przedsiębiorstwa i przekazuje go prokuratorowi lub sądowi, który wydał postanowienie o zabezpieczeniu. Właściciel lub inna osoba kierująca przedsiębiorstwem w jego imieniu może wносить do prokuratora lub sądu, który wydał postanowienie o zabezpieczeniu, o wyłączenie określonych składników majątku lub praw majątkowych z zabezpieczenia.

§ 10. Na postanowienie w przedmiocie wyłączenia określonych składników majątku lub praw majątkowych z zabezpieczenia stronom, pokrzywdzonemu oraz właścicielowi lub innej osobie kierującej przedsiębiorstwem w jego imieniu przysługuje zażalenie.

proceedings are conducted and, after the submission of the indictment, by the court, before which the case is pending.

§ 6. After the submission of the indictment, the decision on the establishment of the security by way of compulsory administration is issued by the court, before which the case is pending.

§ 7. The court decision on the approval of the decision on the security or on establishment of the security is subject to interlocutory appeal by the parties, the aggrieved party, the owner or other person managing the enterprise on his behalf.

§ 8. The administrator ensures the continuity of the enterprise's operations and provides the court or the public prosecutor with all information important from the point of view of the pending proceedings, and in particular about the manner and circumstances, in which the enterprise was used to commit the offence or conceal the proceeds of the offence and about the documents, which may be used as evidence in the case.

§ 9. The administrator makes the list of assets and property rights making part of the enterprise and submits it to the public prosecutor or to the court, which issued the decision on security. The owner of the enterprise or the person managing the enterprise on his behalf may petition the public prosecutor or the court, which issued the decision, to exclude certain assets or property rights from the security.

§ 10. The decision excluding from the security certain assets or property rights is subject to interlocutory appeal by the parties, the aggrieved party, the owner or other person managing the enterprise on his behalf.

**Article 292b<sup>255</sup>** Security on enterprise of a collective entity. A security referred to in Article 292a § 1 may also be established on an enterprise of a collective entity within the meaning of the Act of 28 October 2002 on the Responsibility of Collective Entities for Acts Prohibited Under Penalty (Journal of Laws of 2016, item 1541 and of 2017, item 724 and 933), if in view of the evidence it seems highly probable that this entity may be held criminally liable in accordance with the act.

<sup>255</sup> **Art. 292b [Zabezpieczenie w stosunku do przedsiębiorstwa podmiotu zbiorowego]** Zabezpieczenie, o którym mowa w art. 292a § 1, może nastąpić również w stosunku do przedsiębiorstwa podmiotu zbiorowego w rozumieniu ustawy z dnia 28 października 2002 r. o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary (Dz.U. z 2020 r. poz. 358 oraz z 2021 r. poz. 1177), jeśli zebrane dowody wskazują na wysokie prawdopodobieństwo, że podmiot ten może podlegać odpowiedzialności na podstawie tej ustawy.

**Article 293<sup>256</sup> Decision, interlocutory appeal**

§ 1. The decision concerning security on property is issued by the court and, in preparatory proceedings, by the public prosecutor.

§ 2. The decision determines the scope and modality of establishing security, taking into consideration the amount of fine possible to impose in the circumstances of a given case, penal measures, forfeiture or compensatory measures. The dimension of the security should correspond exclusively with the needs of the claim to be secured. The necessity of determining the amount of security does not apply to the security on assets subject to forfeiture, coming directly from an offence or destined to be used for the commission of an offence.

§ 3. The decision concerning security on property is subject to interlocutory appeal.

§ 4. If the decision has been issued by the public prosecutor and preparatory proceedings are conducted in the circuit of the court other than the court competent as to the matter or venue, interlocutory appeal should be filed with the court of first instance competent to the matter, in whose circuit preparatory proceedings are being conducted.

§ 5. Since the moment of issue, the decision concerning security on property constitutes an enforcement title.

§ 6. If the security has been established on objects previously surrendered by the accused to the judicial authority or seized as a result of actions mentioned in Chapter 25, enforcement activities aimed at obtaining enforcement clause and carry out the decision on security are not undertaken.

§ 7. A natural or legal person, or a legal entity without legal personality referred to in Article 45 § 3 of the Criminal Code, may file a motion against the State Treasury for the

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<sup>256</sup> **Art. 293 [Postanowienie; zażalenie]**

§ 1. Postanowienie o zabezpieczeniu majątkowym wydaje sąd, a w postępowaniu przygotowawczym prokurator.

§ 2. W postanowieniu określa się kwotowo zakres i sposób zabezpieczenia, uwzględniając rozmiar możliwej do orzeczenia w okolicznościach danej sprawy grzywny, środków karnych, przepadku lub środków kompensacyjnych. Rozmiar zabezpieczenia powinien odpowiadać jedynie potrzebom tego, co ma zabezpieczać. Wymóg kwotowego określenia zabezpieczenia nie dotyczy zabezpieczenia na zajętych przedmiotach podlegającym przepadkowi, jako pochodzącym bezpośrednio z przestępstwa lub służącym albo przeznaczonym do jego popełnienia.

§ 3. Na postanowienie w przedmiocie zabezpieczenia przysługuje zażalenie. Przepis art. 254 § 2 stosuje się odpowiednio.

§ 4. Jeżeli postanowienie wydał prokurator, a postępowanie przygotowawcze prowadzone jest w okręgu innego sądu niż sąd miejscowo i rzeczowo właściwy, zażalenie przysługuje do sądu rzeczowo właściwego do rozpoznania tej sprawy w pierwszej instancji, w którego okręgu prowadzone jest postępowanie przygotowawcze.

§ 5. Postanowienie o zabezpieczeniu majątkowym z chwilą wydania stanowi tytuł wykonawczy.

§ 5a. Postanowienie o uchyleniu zabezpieczenia majątkowego lub o zmianie prowadzącej do obniżenia wartości zabezpieczonego mienia staje się wykonalne z dniem uprawomocnienia.

§ 6. Jeżeli zabezpieczenie nastąpiło na rzeczach, które uprzednio oskarżony wydał organowi procesowemu lub które zatrzymano w wyniku czynności, o których mowa w rozdziale 25, nie podejmuje się czynności egzekucyjnych dla wykonania postanowienia o zabezpieczeniu.

§ 7. Osoba fizyczna, prawna lub jednostka organizacyjna niemająca osobowości prawnej, o której mowa w art. 45 § 3 Kodeksu karnego, może wystąpić z powództwem przeciwko Skarbowi Państwa o ustalenie, że mienie lub jego część nie podlega przepadkowi. Do czasu prawomocnego rozstrzygnięcia sprawy postępowanie egzekucyjne ulega zawieszeniu.



establishment, that the property or a part thereof is not liable to forfeiture. Until the case is resolved in a final and binding way, the enforcement proceedings are suspended.

**Article 294<sup>257</sup> Cancellation of security.**

§ 1. Security is cancelled if neither a fine, forfeiture, exemplary damages, monetary performance or an obligation to remedy damage caused or compensate for harm done have not been imposed with a final court judgment and such claims have not been filed within three months of the day, on which the judgment became final.

§ 2. If a claim is filed within the term referred to in § 1, the security will stay in force, unless the court decides otherwise in the civil proceedings.

**Article 295<sup>258</sup> Temporary seizure.**

§ 1. If an offence referred to in Article 291 is committed, the Police may temporarily seize the moveable property of the accused, if it is feared that the accused might try to remove it.

§ 2. Articles 217–235 apply accordingly.

§ 3. Temporary seizure may not concern property, which is not liable to enforcement.

§ 4. Temporary seizure is annulled, if within seven days of the seizure a decision securing the claim has not been issued.

Poland takes part in the **Regulation 2018/1805**, which regulates the mutual recognition of freezing orders and confiscation orders in the EU. The Polish authorities need to follow the rules, which were established by the Council of Ministers as of 4 February 2020: 27

- Regulation of the Council of Ministers of February 4, 2020 on the method of exchanging information between the contact point and authorised entities and law enforcement authorities of the European Union Member States, third countries, European Union agencies.

<sup>257</sup> **Art. 294 [Upadek zabezpieczenia]**

§ 1. Zabezpieczenie upada, gdy nie zostaną prawomocnie orzeczone: grzywna, przepadek, nawiązka, świadczenie pieniężne lub nie zostanie nałożony obowiązek naprawienia szkody lub zadośćuczynienia za doznaną krzywdę, a powództwo o te roszczenia nie zostanie wytoczone przed upływem 3 miesięcy od daty uprawomocnienia się orzeczenia.

§ 2. W razie wytoczenia powództwa w terminie wskazanym w § 1 zabezpieczenie pozostaje w mocy, jeżeli w postępowaniu cywilnym sąd nie orzeknie inaczej.

<sup>258</sup> **Art. 295 [Tymczasowe zajęcie]**

§ 1. W razie popełnienia przestępstwa, o którym mowa w art. 291, Policja może dokonać tymczasowego zajęcia mienia ruchomego osoby podejrzanej, jeżeli zachodzi obawa usunięcia tego mienia.

§ 2. Przepisy art. 217–235 stosuje się odpowiednio.

§ 3. Tymczasowe zajęcie nie może dotyczyć przedmiotów, które nie podlegają egzekucji.

§ 4. Tymczasowe zajęcie upada, jeżeli w ciągu 7 dni od daty jego dokonania nie zostanie wydane postanowienie o zabezpieczeniu majątkowym.

28 The Request for Information and Intelligence is based on the following form:

Figure 7: Request for Information and Intelligence between the EU Member States – Form Example

REQUEST FOR INFORMATION AND INTELLIGENCE (EU Member States)				
<b>I - Administrative Information</b>				
<b>Requesting authority (name, address, telephone, fax, e-mail, member state):</b>				
<b>Details of the handling agent (optional):</b>				
<b>To the following Member State</b>				
<b>Date and time of this request:</b>				
<b>Reference number of this request:</b>				
<b>Previous requests</b>				
<input type="checkbox"/> This is the first request on this case				
<input type="checkbox"/> This request follows previous requests in the same case				
<i>Previous request(s)</i>			<i>Answer(s)</i>	
	<i>Date</i>	<i>Reference number (in the requesting Member State)</i>	<i>Date</i>	<i>Reference number (in the requested Member State)</i>
1				
2				
3				
4				
<b>Requested Member State(s):</b>				
<b>Channel</b>				
<input type="checkbox"/> ENU/Europol Liaison Officer		<input type="checkbox"/> For information	<input type="checkbox"/> For execution	
<input type="checkbox"/> Interpol NCB		<input type="checkbox"/> For information	<input type="checkbox"/> For execution	
<input type="checkbox"/> SIRENE		<input type="checkbox"/> For information	<input type="checkbox"/> For execution	
<input type="checkbox"/> Liaison Officer		<input type="checkbox"/> For information	<input type="checkbox"/> For execution	
<input type="checkbox"/> Other (please specify):		<input type="checkbox"/> For information	<input type="checkbox"/> For execution	
If the same request is sent to other Member State, please specify the other Member State and the channel used (optional)				

**II - Time limits**

Reminder: time limits under Article 4 of Framework Decision 2006/960/JHA

A – The offence falls under Article 2(2) of Framework Decision 2002/584/JHA

and

the requested information or intelligence is held in a database directly accessible by a law enforcement authority

→ The request is urgent

→ Time limit: 8 hours with possibility to postpone

→ The request is not urgent

→ Time limit: 1 week

B – Other cases: time limit: 14 days

<input type="checkbox"/> Urgency IS requested
<input type="checkbox"/> Urgency IS NOT requested
Grounds for urgency (e.g. suspects are being held in custody, the case has to go to court before a specified date)
Information or intelligence requested
<b>Type of crime(s) or criminal activity(ies) being investigated</b>
<b>Description of the circumstances in which the offence(s) was (were) committed</b> , including the time, place and degree of participation in the offence(s) by the person who is the subject of the request for information or intelligence:

<b>Nature of the offence(s)</b>	
<input type="checkbox"/> <b>A</b> – Application of Article 4(1) or 4(3) of the Framework Decision 2006/960/JHA A.1. The offence is punishable by a maximum term of imprisonment of at least three years in the requesting Member State <b>AND</b> A.2. The offence is one (or more) of the following:	
<input type="checkbox"/> Participation in a criminal organization <input type="checkbox"/> Terrorism <input type="checkbox"/> Trafficking in human beings <input type="checkbox"/> Sexual exploitation of children and child pornography <input type="checkbox"/> Illicit trafficking in narcotic drugs and psychotropic substances <input type="checkbox"/> Illicit trafficking in weapons, munitions and explosives <input type="checkbox"/> Corruption <input type="checkbox"/> Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests <input type="checkbox"/> Organised and armed robbery <input type="checkbox"/> Illicit trafficking in cultural goods, including antiques and works of art <input type="checkbox"/> Swindling <input type="checkbox"/> Racketeering and extortion <input type="checkbox"/> Counterfeiting and piracy of products <input type="checkbox"/> Forgery of administrative documents and trafficking therein <input type="checkbox"/> Forgery of means of payment <input type="checkbox"/> Illicit trafficking in hormonal substances and other growth promoters	<input type="checkbox"/> Laundering of the proceeds of crime <input type="checkbox"/> Counterfeiting of currency, including the euro <input type="checkbox"/> Computer-related crime <input type="checkbox"/> Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties <input type="checkbox"/> Facilitation of unauthorized entry and residence <input type="checkbox"/> Murder, grievous bodily injury <input type="checkbox"/> Illicit trade in human organs and tissue <input type="checkbox"/> Kidnapping, illegal restraint and hostage-taking <input type="checkbox"/> Racism and xenophobia <input type="checkbox"/> Illicit trafficking in nuclear or radioactive materials <input type="checkbox"/> Trafficking in stolen vehicles <input type="checkbox"/> Rape <input type="checkbox"/> Arson <input type="checkbox"/> Crimes within the jurisdiction of the International Criminal Court <input type="checkbox"/> Unlawful seizure of aircraft/ships <input type="checkbox"/> Sabotage
→ The offence therefore falls under Article 2(2) of Framework Decision 2002/584/JHAa Article 4(1) (urgent cases) and 4(3) (non urgent cases) of Framework Decision 2006/960/JHA are therefore applicable as regards time limits for responding to this request	
Or <input type="checkbox"/> <b>B</b> – The offence(s) is (are) not covered under A. <b>In this case, description of the offence(s):</b>	
<b>Purpose for which the information or intelligence is requested</b>	

<b>Connection between the purpose for which the information or intelligence is requested and the person who is the subject of the information or intelligence</b>
<b>Identity(ies) (as far as known) of the <u>person(s)</u> being the main subject(s) of the criminal investigation or criminal intelligence operation underlying the request for information or intelligence</b>
<b>Reasons for believing that the information or intelligence is in the requested Member State</b>
<b>Restrictions on the use of information contained in this request for purposes other than those for which it has been supplied or for preventing an immediate and serious threat to public</b>
<input type="checkbox"/> use granted <input type="checkbox"/> use granted, but do not mention the information provider <input type="checkbox"/> do not use without authorisation of the information provider <input type="checkbox"/> do not use

**ee. Para 1(e) Interception of electronic communications to and from the suspect or accused person**

- 29 The interception of electronic communications to and from the suspect or accused person in Poland may be achieved via the secret investigation measures, which are stipulated by the 26<sup>th</sup> Chapter of the CPC.<sup>259</sup>

**Chapter 26 Control and recording of conversations**

**Article 237<sup>260</sup>** § 1. After the initiation of the proceedings, the court may, at the request of the public prosecutor

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<sup>259</sup> Czerniak 2021a, pp 123–159.

<sup>260</sup> **Art. 237.** § 1. Po wszczęciu postępowania sąd na wniosek prokuratora może zarządzić kontrolę i utrwalanie treści rozmów telefonicznych w celu wykrycia i uzyskania dowodów dla toczącego się postępowania lub zapobieżenia popełnieniu nowego przestępstwa.

§ 2. W wypadkach niecierpiących zwłoki kontrolę i utrwalanie treści rozmów telefonicznych może zarządzić prokurator, który jest obowiązany zwrócić się w terminie 3 dni do sądu z wnioskiem o zatwierdzenie postanowienia. Sąd wydaje postanowienie w przedmiocie wniosku w terminie 5 dni na posiedzeniu bez udziału stron. W wypadku niezatwierdzenia postanowienia prokuratora sąd w postanowieniu wydanym w przedmiocie wniosku zarządza zniszczenie wszystkich utrwalonych zapisów. Zaskarżenie postanowienia wstrzymuje jego wykonanie.

§ 3. Kontrola i utrwalanie treści rozmów telefonicznych są dopuszczalne tylko wtedy, gdy toczące się postępowanie lub uzasadniona obawa popełnienia nowego przestępstwa dotyczy:

- 1) zabójstwa;
- 2) narażenia na niebezpieczeństwo powszechne lub spowodzenia katastrofy;
- 3) handlu ludźmi;
- 4) uprowadzenia osoby;
- 5) wymuszania okupu;
- 6) uprowadzenia statku powietrznego lub wodnego;
- 7) rozboju, kradzieży rozbójniczej lub wymuszenia rozbójniczego;
- 8) zamachu na niepodległość lub integralność państwa;
- 9) zamachu na konstytucyjny ustrój państwa lub jego naczelne organy, albo na jednostkę Sił Zbrojnych Rzeczypospolitej Polskiej;
- 10) szpiegostwa lub ujawnienia informacji niejawnych o klauzuli tajności „tajne” lub „ściśle tajne”;
- 11) gromadzenia broni, materiałów wybuchowych lub radioaktywnych;
- 12) fałszowania oraz obrotu fałszywymi pieniędzmi, środkami lub instrumentami płatniczymi albo zbywalnymi dokumentami uprawniającymi do otrzymania sumy pieniężnej, towaru, ładunku albo wygranej rzeczowej albo zawierającymi obowiązek wpłaty kapitału, odsetek, udziału w zyskach lub stwierdzenie uczestnictwa w spółce;
- 12a) podrabiania lub przerabiania faktur lub używania faktur podrobionych lub przerobionych w zakresie okoliczności faktycznych mogących mieć znaczenie dla określenia wysokości należności publicznoprawnej lub jej zwrotu albo zwrotu innej należności o charakterze podatkowym oraz wystawiania i używania faktur poświadczających nieprawdę co do okoliczności faktycznych mogących mieć znaczenie dla określenia wysokości należności publicznoprawnej lub jej zwrotu albo zwrotu innej należności o charakterze podatkowym;
- 13) wytwarzania, przetwarzania, obrotu i przemytu środków odurzających, prekursorów, środków zastępczych lub substancji psychotropowych;
- 14) zorganizowanej grupy przestępczej;
- 15) mienia znacznej wartości;
- 16) użycia przemocy lub groźby bezprawnej w związku z postępowaniem karnym;
- 16a) składania fałszywych zeznań oraz przedstawiania przez biegłego, rzeczoznawcę lub tłumacza fałszywej opinii, ekspertyzy lub tłumaczenia;
- 16b) fałszywego oskarżenia innej osoby o popełnienie przestępstwa, przestępstwa skarbowego lub wykroczenia skarbowego;
- 16c) tworzenia fałszywych dowodów lub innych podstępnych zabiegów, kierujących przeciwko innej osobie ściganie o przestępstwo, przestępstwo skarbowe lub wykroczenie skarbowe albo podejmowania takich zabiegów w toku postępowania;

order the control and recording of the content of telephone conversations for the purpose of detection

and to obtain evidence for ongoing proceedings or to prevent a commission a new crime.

§ 2. In cases of urgency, control and recording of the content of conversations telephone calls may be ordered by the prosecutor who is obliged to apply within 3 days to the court with a request for approval of the decision. The court issues decision on the application within 5 days at a meeting without participation pages. In the event of non-approval of the prosecutor's decision, the court in its decision on the application, it orders destruction all recorded records. An appeal against the decision suspends it execution.

§ 3. Control and recording of the content of telephone conversations is acceptable only when pending proceedings or a well-founded fear of being committed the new offence concerns:

- 1) homicides;
- 2) exposure to public danger or catastrophe;
- 3) human trafficking;
- 4) abduction of a person;
- 5) extortion;
- 6) hijacking of an aircraft or watercraft;
- 7) robbery, robbery or robbery extortion;
- 8) an attack on the independence or integrity of the state;
- 9) an attack on the constitutional system of the state or its chief organs, or on a unit of the Polish Armed Forces;
- 10) espionage or disclosure of classified information classified as "secret" or "top secret";
- 11) collecting weapons, explosives or radioactive materials;
- 12) counterfeiting and trading in counterfeit money, funds or instruments payment or negotiable documents giving the right to receive sum of money, goods, cargo or material winnings or

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16d) zatajenia dowodów niewinności osoby podejrzanej o popełnienie przestępstwa, przestępstwa skarbowego lub wykroczenia skarbowego;

16e) zawiadomienia organu powołanego do ścigania o niepopelnionym przestępstwie lub przestępstwie skarbowym;

16f) poplecznictwa;

16g) niezawiadomienia o przestępstwie;

17) łapownictwa i płatnej protekcji;

18) stręczycielstwa, kuplerstwa i sutenerstwa;

19) przestępstw określonych w rozdziale XVI ustawy z dnia 6 czerwca 1997 r. – Kodeks karny (Dz. U. z 2021 r. poz. 2345 i 2447) oraz w art. 5–8 Rzymskiego Statutu Międzynarodowego Trybunału Karnego, sporządzonego w Rzymie dnia 17 lipca 1998 r. (Dz. U. z 2003 r. poz. 708 oraz z 2018 r. poz. 1753), zwanego dalej „Statutem”.

containing the obligation to pay capital, interest, share in profits or statement of participation in the company;

12a) forging or altering invoices or using counterfeit invoices or processed to the extent of the factual circumstances that may have importance for determining the amount of public law liability or its return or refund of other tax receivables and issuing and using invoices that prove untrue as to factual circumstances that may be relevant to the determination of the amount public law receivable or its return or return of another receivable o tax nature;

13) production, processing, trade and smuggling of narcotic drugs, precursors, substitutes or psychotropic substances;

14) organized criminal group;

15) property of significant value;

16) use of violence or unlawful threats in connection with the proceedings criminal;

16a) giving false testimony and presenting it by an expert, an appraiser or translator of a false opinion, expert opinion or translation;

16b) falsely accusing another person of committing a crime, a crime tax or tax offence;

16c) creating false evidence or other deceptive measures, prosecuting against another person for a crime, a crime or a fiscal offence or undertaking such procedures in the course of the proceedings;

16d) concealment of evidence of innocence of a person suspected of committing a crime a crime, tax offence or tax misdemeanor;

16e) notification of the authority appointed to prosecute about not committed crime or tax offence;

16f) endorsement;

16g) failure to notify about the crime;

17) bribery and influence;

18) procuring, hustling and pimping;

19) offences specified in Chapter XVI of the Act of June 6, 1997 – Penal Code (Journal of Laws of 2021, items 2345 and 2447) and in art. 5–8 Roman Statute of the International Criminal Court, drawn up in Rome of 17 July 1998 (Journal of Laws of 2003, item 708 and of 2018, item 1753), hereinafter referred to as the “Statute”.



§ 3a.<sup>261</sup> Controlling and recording the content of telephone conversations is acceptable also in order to disclose property at risk of forfeiture referred to in article 45 § 2 of the Penal Code or Art. 33 § 2 of the Fiscal Penal Code.

§ 4. Control and recording of the content of telephone conversations is acceptable against the suspect, the accused and against the victim or any other person with whom the accused may have contact, or that may be related to the offender or to a threatened crime.

§ 5. Offices and institutions conducting telecommunications activities and telecommunications undertaking within the meaning of the Act of July 16, 2004 – Telecommunications Law, they are obliged to enable the execution of the decision the court or the prosecutor with regard to the control of telephone calls and ensure that the fact that such an inspection has been carried out is recorded.

§ 6. The right to play records has the court or the prosecutor, and in cases urgent, with the consent of the court or the prosecutor, also the Police.

§ 7. The right to get acquainted with the register of call controls carried out telephone numbers are provided by the court, and in the proceedings by the court socialite – prosecutor.

§ 8. (repealed)

**Article 237a**<sup>262</sup> If, as a result of the inspection, evidence of committing by the person against whom the control was applied, another prosecuted crime ex officio or a tax offence than the offence covered by the order control, or an offence prosecuted ex officio or a fiscal offence committed by a person other than the person covered by the inspection order, the prosecutor decides on the use of this evidence in the proceedings penalty.

**Article 237b (repealed)**

<sup>261</sup> § 3a. Kontrola i utrwalanie treści rozmów telefonicznych są dopuszczalne również w celu ujawnienia mienia zagrożonego przypadkiem, o którym mowa w art. 45 § 2 Kodeksu karnego albo art. 33 § 2 Kodeksu karnego skarbowego.

§ 4. Kontrola i utrwalanie treści rozmów telefonicznych są dopuszczalne w stosunku do osoby podejrzanej, oskarżonego oraz w stosunku do pokrzywdzonego lub innej osoby, z którą może się kontaktować oskarżony albo która może mieć związek ze sprawcą lub z grożącym przestępstwem.

§ 5. Urzędy i instytucje prowadzące działalność telekomunikacyjną oraz przedsiębiorca telekomunikacyjny w rozumieniu ustawy z dnia 16 lipca 2004 r. – Prawo telekomunikacyjne, obowiązani są umożliwić wykonanie postanowienia sądu lub prokuratora w zakresie przeprowadzenia kontroli rozmów telefonicznych oraz zapewnić rejestrowanie faktu przeprowadzenia takiej kontroli.

§ 6. Prawo odtwarzania zapisów ma sąd lub prokurator, a w wypadkach niecierpiących zwłoki, za zgodą sądu lub prokuratora, także Policja.

§ 7. Prawo zapoznawania się z rejestrem przeprowadzonych kontroli rozmów telefonicznych ma sąd, a w postępowaniu przygo.

<sup>262</sup> **Art. 237a.** Jeżeli w wyniku kontroli uzyskano dowód popełnienia przez osobę, wobec której kontrola była stosowana, innego przestępstwa ściganego z urzędu lub przestępstwa skarbowego niż przestępstwo objęte zarządzeniem kontroli, lub przestępstwa ściganego z urzędu lub przestępstwa skarbowego popełnionego przez inną osobę niż objętą zarządzeniem kontroli, prokurator podejmuje decyzję w przedmiocie wykorzystania tego dowodu w postępowaniu karnym.

**Article 238**<sup>263</sup> § 1. The control and recording of telephone conversations may be introduced for a maximum period of 3 months, with the possibility of extension, in a particularly justified case, for a maximum period of further 3 months. § 2. The control should be completed immediately after the reasons have ceased listed in Art. 237 § 1–3, at the latest, however, at the end of the period for which has been introduced.

§ 3. After the inspection is completed, the prosecutor asks for an order of destruction all recorded records, if in their entirety they are not relevant to criminal proceedings. The court shall rule on the application without delay, on meeting without the participation of the parties.

§ 4. After the end of the preparatory proceedings, the prosecutor requests to order the destruction of recorded records in the part they do not have relevant to the criminal proceedings in which control and recording were ordered telephone conversations, and do not constitute the evidence referred to in Art. 237a. The court decides on the application at a hearing in which they may attend pages.

§ 5. With a request to order the destruction of fixed records, no earlier than after completion of the preparatory proceedings may occur also the person mentioned in art. 237 § 4. The court decides on the application for meeting attended by the parties and the applicant.

**Article 239**<sup>264</sup> § 1. Announcement of the provisions on the control and recording of conversations telephone calls to the person concerned may be postponed for the time necessary for the good of the cause

§ 2. Announcement of the provisions referred to in § 1 in the proceedings preparation may be postponed no later than until its completion proceedings.

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<sup>263</sup> **Art. 238.** § 1. Kontrola i utrwalanie rozmów telefonicznych mogą być wprowadzone najwyżej na okres 3 miesięcy, z możliwością przedłużenia, w szczególnie uzasadnionym wypadku, na okres najwyżej dalszych 3 miesięcy. § 2. Kontrola powinna być zakończona niezwłocznie po ustaniu przyczyn wymienionych w art. 237 § 1–3, najpóźniej jednak z upływem okresu, na który została wprowadzona. § 3. Prokurator po zakończeniu kontroli wnosi o zarządzenie zniszczenia wszystkich utrwalonych zapisów, jeżeli w całości nie mają znaczenia dla postępowania karnego. Sąd orzeka w przedmiocie wniosku niezwłocznie, na posiedzeniu bez udziału stron. § 4. Po zakończeniu postępowania przygotowawczego prokurator wnosi o zarządzenie zniszczenia utrwalonych zapisów w części, w jakiej nie mają znaczenia dla postępowania karnego, w którym zarządzono kontrolę i utrwalanie rozmów telefonicznych, oraz nie stanowią dowodu, o którym mowa w art. 237a. Sąd orzeka w przedmiocie wniosku na posiedzeniu, w którym mogą wziąć udział strony. § 5. Z wnioskiem o zarządzenie zniszczenia utrwalonych zapisów, nie wcześniej niż po zakończeniu postępowania przygotowawczego, może wystąpić także osoba wymieniona w art. 237 § 4. Sąd orzeka w przedmiocie wniosku na posiedzeniu, w którym mogą wziąć udział strony oraz wnioskodawca.

<sup>264</sup> **Art. 239.** § 1. Ogłoszenie postanowienia o kontroli i utrwalaniu rozmów telefonicznych osobie, której ono dotyczy, może być odroczone na czas niezbędny ze względu na dobro sprawy.

§ 2. Ogłoszenie postanowienia, o którym mowa w § 1, w postępowaniu przygotowawczym może być odroczone nie później niż do czasu zakończenia tego postępowania.

**Article 240**<sup>265</sup> Complaints can be made. The person to whom the provision applies may in the complaint, demand that the legitimacy and legality of the control and recording be examined phone calls. A complaint against the order of the prosecutor recognizes the court.

**Article 241**<sup>266</sup> The provisions of this chapter shall apply accordingly to inspections and to record the content of other conversations using technical means or information transfers, including correspondence sent by e-mail.

**Article 242**<sup>267</sup> The Minister of Justice, in consultation with the competent minister for computerization, the Minister of National Defence and the competent minister for internal affairs, will determine, by regulation, the technical method preparation of networks for the transmission of information, for the control of conversations telephone or other information transfers made using of these networks and the method of making, recording, storing and reproducing and destroy records of controlled telephone conversations and other content conversations or information transfers, including correspondence sent by post electronically, taking into account the need for proper security records against their loss, distortion or unauthorised use disclosure.

For real interception the CPC does not apply, but the law on interception into tele- 30  
communication means applies.

Art. 179 s. 44a of the Telecommunications Law in combination with Art. 180d Tele- 31  
communications Law allows the same interception.

#### **ff. Para 1(f) Tracking & Tracing an Object**

Tracking and Tracing and object in Poland is possible according to the CPC.

<sup>265</sup> **Art. 240.** Na postanowienie dotyczące kontroli i utrwalania rozmów telefonicznych przysługuje zażalenie. Osoba, której dotyczy postanowienie, może w zażaleniu domagać się zbadania zasadności oraz legalności kontroli i utrwalania rozmów telefonicznych. Zażalenie na postanowienie prokuratora rozpoznaje sąd.

<sup>266</sup> **Art. 241.** Przepisy rozdziału niniejszego stosuje się odpowiednio do kontroli oraz do utrwalania przy użyciu środków technicznych treści innych rozmów lub przekazów informacji, w tym korespondencji przesyłanej pocztą elektroniczną.

<sup>267</sup> **Art. 242.** Minister Sprawiedliwości, w porozumieniu z ministrem właściwym do spraw informatyzacji, Ministrem Obrony Narodowej oraz ministrem właściwym do spraw wewnętrznych, określi, w drodze rozporządzenia, sposób technicznego przygotowania sieci służących do przekazywania informacji, do kontroli rozmów telefonicznych lub innych przekazów informacji dokonywanych z wykorzystaniem tych sieci oraz sposób dokonywania, rejestracji, przechowywania, odtwarzania i niszczenia zapisów z kontrolowanych rozmów telefonicznych oraz treści innych rozmów lub przekazów informacji, w tym korespondencji przesyłanej pocztą elektroniczną, mając na uwadze konieczność właściwego zabezpieczenia dokonywanych zapisów przed ich utratą, zniekształceniem lub nieuprawnionym ujawnieniem.

**d) Para 2: Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation, Art. 29**

*Without prejudice to Article 29, the investigation measures set out in paragraph 1 of this Article may be subject to **conditions in accordance with the applicable national law if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.***

- 32 See → Art. 29 above, which explains all possible LLP related law provisions in Poland and enables to read into the legal setting.

**e) Para 3: Conditions/ Thresholds for investigation measures**

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

- 33 **aa. Conditions and Limitations for investigation measures of Para 1(c), (e) and (f)**

- 34 The rules of the Constitution must be taken into account – especially the inviolability of premise and other private entities:

**(1) For every Measure**

35 **Article 41**

1. Everyone shall be guaranteed personal inviolability and personal freedom. Deprivation or restriction of liberty may only take place on the terms and in the manner specified in the Act.
2. Anyone deprived of his liberty not pursuant to a court order shall have the right to appeal to a court in order to have the lawfulness of such deprivation determined without delay. The family or the person indicated by the deprived person shall be immediately notified of the deprivation of liberty.
3. Each detained person should be promptly and in a manner understandable for him informed about the reasons for his detention. He should be placed at the disposal of the court within 48 hours from the time of his arrest. The detained person must be released if within 24 hours of being placed at the disposal of the court he or she is not served with the court's decision on pre-trial detention together with the presented charges.
4. Everyone deprived of their liberty should be treated humanely.

5. Everyone unlawfully deprived of liberty has the right to compensation.

**(2) For Seizures**

Often a protocol of a measure ensures that at a later stage the defence can check if the measure itself was lawful or if fit needs to pledge against the use of it as evidence: **36**

**Article 227** A search or seizure of things should be made in accordance with the purpose of this activity, with moderation, and within limits necessary to achieve the purpose of these activities while maintaining due diligence, respecting the privacy and dignity of the persons involved in this activity applies, and without causing unnecessary damage or discomfort. **37**

**Article 228** § 1. Items issued or found during the search after inspection, drawing up the list and description, it should be taken away or given for safekeeping to a trustworthy person with an indication of the obligation to present at the request of the investigating authority. § 2. The same should be done with those found during the search items that may constitute evidence of another crime, subject to forfeit or possession of which is prohibited. § 3. The persons concerned should be immediately given a receipt stating what items were seized and by whom.

**Article 229** The protocol of seizure or search should, in addition to requirements listed in art. 148 and Art. 148a, contain the designation of the case, with which the seizure or search is related, and the exact details the start and end times of the activity, the exact list of items seized and, if necessary, their description, and also an indication of the order of the court or prosecutor. If the order has not been previously issued, it shall be included in the minutes mention of informing the person on whom the action was carried out that the application will receive a decision on the approval of the activity.

**Article 230** § 1. If the seizure or search took place without prior order of the court or prosecutor, and within 7 days from the date of the action no it has been approved, you should immediately return the retained items to the person entitled person, unless voluntary surrender has taken place and that person has not submitted it the request referred to in Art. 217 § 4.

§ 2. You should also return the person entitled retained items immediately after they have been found to be unnecessary for criminal proceedings. If a dispute arises as to the ownership of the thing, and there is insufficient evidence to do so immediate resolution, the persons concerned are referred to the process civil.

§ 3. Items which are prohibited, shall be transferred to the competent authority office or institution. If the items have scientific, artistic or history, at the request or with the consent of the museum, they may be transferred to that museum.

**bb. Serious offences Limitation for offences of Para 1(e) and (f)**

**38** Limitations can only be taken from the law text itself, see above.

**f) Para 4: Any other measure(s) in the Member State**

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

**39** Art. 1143 § 3 of the Code of Civil Procedure allows to hear an expert on foreign law in a criminal trial and invite him/her to comment on the investigations.

## 2. Pre-trial arrest and cross-border surrender

a) General relation to national law: applicable Codes.....	229	bb. Pre-trial detention.....	233
b) Para 1: Provisions for arrest and pre-trial detention .....	229	(1) Chapter 28 CPC Preventive measures, Art. 249 .....	233
aa. Arrest.....	229	(2) Art. 250 Provisional Arrest .....	234
(1) Personal Inviolability and Deprivation of Liberty: Art. 41 Polish Constitution .....	230	c) Rules relating to Cross Border Scenarios: EAWS and Extradition.....	236
(2) Chapter 27 CPC Arrest by Everyone .....	231		

Relevant Union law text, which would apply, if Poland would be part of the EPPO (any time in the future):

### Art. 33 Pre-trial arrest and cross-border surrender

1. The handling European Delegated Prosecutor may order or request the arrest or pre-trial detention of the suspect or accused person **in accordance with the national law applicable in similar domestic cases.**

2. Where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA ( 3 ).

#### a) General relation to national law: applicable Codes

The Polish CPC applies in PIF cases and if a suspect shall be arrested or pre-trial detention in a corruption, budgetary fraud case or other PIF offence case shall be ordered. **1**

#### b) Para 1: Provisions for arrest and pre-trial detention

##### aa. Arrest

First of all it is important to consider the Polish Constitution and the fundamental rights that govern both, arrest and pre-trial attention: **2**

**(1) Personal Inviolability and Deprivation of Liberty: Art. 41 Polish Constitution**

3

**Polish Constitution**

**Article 41**<sup>268</sup> Personal inviolability and security shall be ensured to everyone. Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute.

Anyone deprived of liberty, except by sentence of a court, shall have the right to appeal to a court for immediate decision upon the lawfulness of such deprivation. Any deprivation of liberty shall be immediately made known to the family of, or a person indicated by, the person deprived of liberty.

Every detained person shall be informed, immediately and in a manner comprehensible to him, of the reasons for such detention. The person shall, within 48 hours of detention, be given over to a court for consideration of the case. The detained person shall be set free unless a warrant of temporary arrest issued by a court, along with specification of the charges laid, has been served on him within 24 hours of the time of being given over to the court's disposal.

Anyone deprived of liberty shall be treated in a humane manner.

Anyone who has been unlawfully deprived of liberty shall have a right to compensation.

**Article 42**<sup>269</sup>

Only a person who has committed an act prohibited by a statute in force at the moment of commission thereof, and which is subject to a penalty, shall be held criminally responsible. This principle shall not prevent punishment of any act which, at the moment of its commission, constituted an offence within the meaning of international law.

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<sup>268</sup> **Art. 41.**

1. Każdemu zapewnia się nietykalność osobistą i wolność osobistą. Pozbawienie lub ograniczenie wolności może nastąpić tylko na zasadach i w trybie określonych w ustawie.

2. Każdy pozbawiony wolności nie na podstawie wyroku sądowego ma prawo odwołania się do sądu w celu niezwłocznego ustalenia legalności tego pozbawienia. O pozbawieniu wolności powiadamia się niezwłocznie rodzinę lub osobę wskazaną przez pozbawionego wolności.

3. Każdy zatrzymany powinien być niezwłocznie i w sposób zrozumiały dla niego poinformowany o przyczynach zatrzymania. Powinien on być w ciągu 48 godzin od chwili zatrzymania przekazany do dyspozycji sądu. Zatrzymanego należy zwolnić, jeżeli w ciągu 24 godzin od przekazania do dyspozycji sądu nie zostanie mu doręczone postanowienie sądu o tymczasowym aresztowaniu wraz z przedstawionymi zarzutami.

4. Każdy pozbawiony wolności powinien być traktowany w sposób humanitarny.

5. Każdy bezprawnie pozbawiony wolności ma prawo do odszkodowania.

<sup>269</sup> **Art. 42.**

1. Odpowiedzialności karnej podlega ten tylko, kto dopuścił się czynu zabronionego pod groźbą kary przez ustawę obowiązującą w czasie jego popełnienia. Zasada ta nie stoi na przeszkodzie ukaraniu za czyn, który w czasie jego popełnienia stanowił przestępstwo w myśl prawa międzynarodowego.

2. Każdy, przeciw komu prowadzone jest postępowanie karne, ma prawo do obrony we wszystkich stadiach postępowania. Może on w szczególności wybrać obrońcę lub na zasadach określonych w ustawie korzystać z obrońcy z urzędu.

3. Każdego uważa się za niewinnego, dopóki jego wina nie zostanie stwierdzona prawomocnym wyrokiem sądu.



Anyone against whom criminal proceedings have been brought shall have the right to defence at all stages of such proceedings. He may, in particular, choose counsel or avail himself – in accordance with principles specified by statute - of counsel appointed by the court.

Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court.

## (2) Chapter 27 CPC Arrest by Everyone

The Polish CPC holds in Chapter 27 Rules on Arrest by everyone, the police and special authorities: 4

**Article 243**<sup>270</sup> § 1. Everyone has the right to apprehend a person in the act of committing a crime or in a hot pursuit undertaken immediately after the commission of the offence, if applicable fear that the person may go into hiding or cannot be identified.

§ 2. The person apprehended should be immediately handed over to the Police.

**Article 244**<sup>271</sup> § 1. The police have the right to detain a suspected person, if there is one there is a reasonable suspicion that she has committed an offence, and there is a concern

### <sup>270</sup> DZIAŁ VI Środki przymusu Rozdział 27 Zatrzymanie

**Art. 243.** § 1. Każdy ma prawo ująć osobę na gorącym uczynku przestępstwa lub w pościgu podjętym bezpośrednio po popełnieniu przestępstwa, jeżeli zachodzi obawa ukrycia się tej osoby lub nie można ustalić jej tożsamości. § 2. Osobę ujętą należy niezwłocznie oddać w ręce Policji.

<sup>271</sup> **Art. 244.** § 1. Policja ma prawo zatrzymać osobę podejrzaną, jeżeli istnieje uzasadnione przypuszczenie, że popełniła ona przestępstwo, a zachodzi obawa ucieczki lub ukrycia się tej osoby albo zatarcia śladów przestępstwa bądź też nie można ustalić jej tożsamości albo istnieją przesłanki do przeprowadzenia przeciwko tej osobie postępowania w trybie przyspieszonym. § 1a. Policja ma prawo zatrzymać osobę podejrzaną, jeżeli istnieje uzasadnione przypuszczenie, że popełniła ona przestępstwo z użyciem przemocy na szkodę osoby wspólnie zamieszkującej, a zachodzi obawa, że ponownie popełni przestępstwo z użyciem przemocy wobec tej osoby, zwłaszcza gdy popełnieniem takiego przestępstwa grozi. § 1b. Policja zatrzymuje osobę podejrzaną, jeśli przestępstwo, o którym mowa w § 1a, zostało popełnione przy użyciu broni palnej, noża lub innego niebezpiecznego przedmiotu, a zachodzi obawa, że ponownie popełni ona przestępstwo z użyciem przemocy wobec osoby wspólnie zamieszkującej, zwłaszcza gdy popełnieniem takiego przestępstwa grozi. § 2. Zatrzymanego należy natychmiast poinformować o przyczynach zatrzymania i o przysługujących mu prawach, w tym o prawie do skorzystania z pomocy adwokata lub radcy prawnego, do korzystania z bezpłatnej pomocy tłumacza, jeżeli nie włada w wystarczającym stopniu językiem polskim, do złożenia oświadczenia i odmowy złożenia oświadczenia, do otrzymania odpisu protokołu zatrzymania, do dostępu do pierwszej pomocy medycznej oraz o prawach wskazanych w art. 245, art. 246 § 1 i art. 612 § 2, jak również o treści art. 248 § 1 i 2, a także wysłuchać go. § 3. Z zatrzymania sporządza się protokół, w którym należy podać imię, nazwisko i funkcję dokonującego tej czynności, imię i nazwisko osoby zatrzymanej, a w razie niemożności ustalenia tożsamości – jej rysopis oraz dzień, godzinę, miejsce i przyczynę zatrzymania z podaniem, o jakie przestępstwo się ją podejrzewa. Należy także wciągnąć do protokołu złożone przez zatrzymanego oświadczenia oraz zaznaczyć udzielenie mu informacji o przysługujących prawach. Odpis protokołu doręcza się zatrzymanemu. § 4. Niezwłocznie po zatrzymaniu osoby podejrzananej należy przystąpić do zebrania niezbędnych danych, a także o zatrzymaniu zawiadomić prokuratora.

W razie istnienia podstaw, o których mowa w art. 258 § 1–3, należy wystąpić do prokuratora w sprawie skierowania do sądu wniosku o tymczasowe aresztowanie. § 5. Minister Sprawiedliwości określi, w drodze rozporządzenia, wzór pouczenia, o którym mowa w § 2, zawierającego w szczególności informacje o przysługujących zatrzymanemu uprawnieniach: do korzystania z bezpłatnej pomocy tłumacza, do złożenia

the escape or hiding of that person, or covering up the traces of the crime, or not its identity can be established or there are grounds for conducting it expedited proceedings against that person.

§ 1a. The police have the right to detain a suspect, if there is one reasonable suspicion that she has committed a violent crime to the detriment of a person living together, and there is a fear that he will commit again a violent crime against that person, especially when committed threatens such a crime.

§ 1b. The police detain a suspect if the crime referred to referred to in § 1a, was committed using a firearm, knife or other dangerous object, and there is a fear that he will commit it again a violent crime against a person living together, especially when there is a risk of committing such a crime.

§ 2. The detainee must be immediately informed of the reasons detention and his rights, including the right to exercise with the assistance of a lawyer or legal adviser, to use free assistance an interpreter, if he does not have a sufficient command of the Polish language, to submit a statement and refuse to submit a statement, to receive a copy detention protocol, access to first aid and rights indicated in art. 245, art. 246 § 1 and art. 612 § 2, as well as about the content of art. 248 § 1 and 2, and also listen to it.

§ 3. A protocol shall be drawn up from the detention, in which the name, the name and function of the person performing this activity, the name and surname of the person detainee, and if it is impossible to determine the identity - her description and the day, time, place and reason for detention, specifying the offence for which it was committed suspects. The detainee's submissions should also be included in the protocol declaration and mark providing him with information about his rights. A copy of the protocol is delivered to the detainee.

§ 4. Immediately after the arrest of the suspect should proceed to collect the necessary data, and notify the prosecutor about the arrest. In the event of the grounds referred to in Art. 258 § 1–3, should be applied to the prosecutor's request to the court for temporary detention.

§ 5. The Minister of Justice shall determine, by regulation, the pattern instruction referred to in § 2, containing in particular information about the detained person's rights: to use the free one assistance of an interpreter, to make a statement and refuse to make a statement, to receiving a copy of the detention report, access to first aid medical, as well as the rights indicated in § 2, in art. 245, art. 246 § 1 and article 612 § 2 and information about the content of art. 248 § 1 and 2, having regard to the need to understand the instruction also by people who do not use the help proxy.

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oświadczenia i odmowy złożenia oświadczenia, do otrzymania odpisu protokołu zatrzymania, do dostępu do pierwszej pomocy medycznej, jak również o prawach wskazanych w § 2, w art. 245, art. 246 § 1 oraz art. 612 § 2 oraz informację o treści art. 248 § 1 i 2, mając na względzie konieczność zrozumienia pouczenia także przez osoby niekorzystające z pomocy pełnomocnika

**bb. Pre-trial detention****(1) Chapter 28 CPC Preventive measures, Art. 249****[Excerpt Criminal Code]**

5

**Chapter 28 Preventive measures**

**Article 249**<sup>272</sup> § 1. Preventive measures can be used to protect the proper course of the proceedings, and exceptionally also for the purpose of prevention the commission of a new, serious crime by the accused; you can them only be used when the accumulated evidence points to a large one probability that the accused committed the crime. § 2. Measures may be used in the preparatory proceedings preventive only in relation to the person against whom the order was issued of presenting the allegations. § 3. Before applying a preventive measure, the court or the prosecutor the person applying the measure interrogates the accused, unless this is impossible for some reason his hiding or his absence from the country. Participation should be allowed during the interrogation, the appointed defender, if he appears; notice to the defender about the date of the hearing is not mandatory, unless the accused requests it, and it will not hinder the operation. Court hearing date notifies the prosecutor.

§ 4. Preventive measures may be applied until they start execution of the sentence. This provision applies to pre-trial detention only in the event of a custodial sentence.

§ 5. The prosecutor and the defender have the right to attend the court session concerning the extension of the application of pre-trial detention and examination of a complaint against the application or extension of this measure preventive. At the request of the accused who does not have a defender, a public defender shall be appointed for this action. The order may also be issued by the referendary judicial. Failure to appear by the defender or the prosecutor duly notified on time does not prevent the case from being heard.

<sup>272</sup> **Rozdział 28 Środki zapobiegawcze**

**Art. 249.** § 1. Środki zapobiegawcze można stosować w celu zabezpieczenia prawidłowego toku postępowania, a wyjątkowo także w celu zapobiegnięcia popełnieniu przez oskarżonego nowego, ciężkiego przestępstwa; można je stosować tylko wtedy, gdy zebrane dowody wskazują na duże prawdopodobieństwo, że oskarżony popełnił przestępstwo.

§ 2. W postępowaniu przygotowawczym można stosować środki zapobiegawcze tylko względem osoby, wobec której wydano postanowienie o przedstawieniu zarzutów.

§ 3. Przed zastosowaniem środka zapobiegawczego sąd albo prokurator stosujący środek przesłuchuje oskarżonego, chyba że jest to niemożliwe z powodu jego ukrywania się lub jego nieobecności w kraju. Należy dopuścić do udziału w przesłuchaniu ustanowionego obrońcę, jeżeli się stawi; zawiadomienie obrońcy o terminie przesłuchania nie jest obowiązkowe, chyba że oskarżony o to wnosi, a nie utrudni to przeprowadzenia czynności. O terminie przesłuchania sąd zawiadamia prokuratora.

§ 4. Środki zapobiegawcze mogą być stosowane aż do chwili rozpoczęcia wykonania kary. Przepis niniejszy stosuje się do tymczasowego aresztowania tylko w razie orzeczenia kary pozbawienia wolności.

§ 5. Prokurator i obrońca mają prawo wziąć udział w posiedzeniu sądu dotyczącym przedłużenia stosowania tymczasowego aresztowania oraz rozpoznania zażalenia na zastosowanie lub przedłużenie tego środka zapobiegawczego. Na żądanie oskarżonego, który nie ma obrońcy, wyznacza się do tej czynności obrońcę z urzędu. Zarządzenie może wydać także referendarz sądowy. Niestawiennictwo obrońcy lub prokuratora należycie zawiadomionych o terminie nie tamuje rozpoznania sprawy

**Article 249a**<sup>273</sup> § 1. The basis for the decision on application or extension pre-trial detention may be findings made on the basis of: 1) evidence open to the accused and his defence counsel; 2) evidence from the testimonies of witnesses referred to in Art. 250 § 2b.

§ 2. The court, in advance of the prosecutor, also takes into account ex officio circumstances that the prosecutor did not disclose after their disclosure at the hearing, if they are favourable to the accused.

## (2) Art. 250 Provisional Arrest

**Article 250**<sup>274</sup> § 1. Provisional arrest may only take place pursuant to court order.

§ 2. Provisional detention applies in the preparatory proceedings at the request of the prosecutor, the district court in whose district it is conducted proceedings, and in urgent cases also another district court. After Provisional detention is applied by the court before which the indictment is brought the case is pending.

§ 2a. The application for the application of pre-trial detention mentions evidence indicating a high probability that the accused committed crime, circumstances supporting the existence of threats to the proper course of the proceedings or the possibility of the accused committing a new, serious crime and a specific basis for applying the measure and the necessity of its use.

§ 2b. If there is a justified fear of danger to life, health or freedom of the witness or the person closest to him, the prosecutor joins to the application referred to in § 2a, in a separate set of documents, evidence from the testimony of a witness, which is not made available to the accused and his defence counsel.

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<sup>273</sup> **Art. 249a.** § 1. Podstawę orzeczenia o zastosowaniu lub przedłużeniu tymczasowego aresztowania mogą stanowić ustalenia poczynione na podstawie: 1) dowodów jawnych dla oskarżonego i jego obrońcy; 2) dowodów z zeznań świadków, o których mowa w art. 250 § 2b. § 2. Sąd, uprzedzając o tym prokuratora, uwzględnia z urzędu także okoliczności, których prokurator nie ujawnił, po ich ujawnieniu na posiedzeniu, jeżeli są one korzystne dla oskarżonego.

<sup>274</sup> **Art. 250.** § 1. Tymczasowe aresztowanie może nastąpić tylko na mocy postanowienia sądu.

§ 2. Tymczasowe aresztowanie stosuje w postępowaniu przygotowawczym na wniosek prokuratora sąd rejonowy, w którego okręgu prowadzi się postępowanie, a w wypadkach niecierpiących zwłoki także inny sąd rejonowy. Po wniesieniu aktu oskarżenia tymczasowe aresztowanie stosuje sąd, przed którym sprawa się toczy.

§ 2a. We wniosku o zastosowanie tymczasowego aresztowania wymienia się dowody wskazujące na duże prawdopodobieństwo, że oskarżony popełnił przestępstwo, okoliczności przemawiające za istnieniem zagrożeń dla prawidłowego toku postępowania lub możliwości popełnienia przez oskarżonego nowego, ciężkiego przestępstwa oraz określonej podstawy stosowania tego środka zapobiegawczego i konieczności jego stosowania.

§ 2b. Jeżeli zachodzi uzasadniona obawa niebezpieczeństwa dla życia, zdrowia albo wolności świadka lub osoby dla niego najbliższej, prokurator dołącza do wniosku, o którym mowa w § 2a, w wyodrębnionym zbiorze dokumentów, dowody z zeznań świadka, których nie udostępnia się oskarżonemu i jego obrońcy. § 3. Prokurator, przysyłając wraz z aktami sprawy wnioski, o którym mowa w § 2, poucza podejrzanego o przysługujących mu w wypadku zastosowania tymczasowego aresztowania uprawnieniach oraz zarządza jednocześnie doprowadzenie go do sądu § 3a. Jeżeli tymczasowe aresztowanie stosowane jest w postępowaniu sądowym, pouczenia oskarżonego o przysługujących mu w wypadku zastosowania tymczasowego aresztowania uprawnieniach dokonuje sąd niezwłocznie po ogłoszeniu lub doręczeniu oskarżonemu postanowienia o zastosowaniu tego środka zapobiegawczego.

§ 3. The Prosecutor, sending together with the files of the case the request in question in § 2, instructs the suspect about his rights in the event of application pre-trial detention powers and manages at the same time bringing him to court.

§ 3a. If pre-trial detention is used in the proceedings court, to instruct the accused about the rights he is entitled to in the event of application provisional detention powers shall be made by the court immediately after announcement or delivery to the accused of the decision on the application of this measure preventive.

§ 3b.<sup>275</sup> Compulsory court proceedings may be waived of the suspect, if the participation of the suspect in the meeting is ensured, w in particular, providing explanations by him, using technical devices, enabling this meeting to be held remotely and simultaneously direct image and sound transmission. [§ 3c. In the case referred to in § 3b, the meeting takes place in place residence of the suspect, a court referendary or an employed assistant to a judge in the court in whose district the suspect or officer of the Service is staying Prison, if the suspect is in a prison or a remand centre.]

§ 3c. In the case referred to in § 3b in the meeting participates a court referendary or an assistant at the suspect's place of residence a judge employed in the court in whose district the suspect resides, or a representative of the administration of the prison or detention centre, if the suspect is in a penal institution or a remand centre.

§ 3d. The defence counsel participates in the meeting conducted in a manner specified in § 3b at the place of residence of the accused, unless the defender appears for this purpose in court or the court obliges him to attend a meeting in the building court due to the need to waive the risk of failure to resolve the application in on the application of pre-trial detention before the expiration date the time allowed for the accused to be detained.

<sup>275</sup> § 3b. Można odstąpić od przymusowego doprowadzenia do sądu podejrzanego, jeżeli zostanie zapewniony udział podejrzanego w posiedzeniu, w szczególności złożenie przez niego wyjaśnień, przy użyciu urządzeń technicznych, umożliwiających przeprowadzenie tego posiedzenia na odległość z jednoczesnym bezpośrednim przekazem obrazu i dźwięku. [§ 3c. W wypadku określonym w § 3b w posiedzeniu bierze udział w miejscu przebywania podejrzanego referendarz sądowy lub asystent sędziego zatrudniony w sądzie, w którego okręgu przebywa podejrzany lub funkcjonariusz Służby Więziennej, jeżeli podejrzany przebywa w zakładzie karnym lub areszcie śledczym.] § 3d. obrońca bierze udział w posiedzeniu przeprowadzonym w sposób określony w § 3b w miejscu przebywania oskarżonego, chyba że obrońca stawi się w tym celu w sądzie lub sąd zobowiąże go do udziału w posiedzeniu w budynku sądu z uwagi na konieczność uchylecia ryzyka nierozstrzygnięcia wniosku w przedmiocie zastosowania tymczasowego aresztowania przed upływem dopuszczalnego czasu zatrzymania oskarżonego.

§ 3e. W wypadku, gdy obrońca bierze udział w posiedzeniu przebywając w innym miejscu niż oskarżony, sąd na wniosek oskarżonego lub obrońcy może zarządzić przerwę na czas oznaczony i zezwolić na telefoniczny kontakt obrońcy z oskarżonym, chyba że uwzględnienie wniosku może zakłócić prawidłowy przebieg posiedzenia lub stwarza ryzyko nierozstrzygnięcia wniosku w przedmiocie zastosowania tymczasowego aresztowania przed upływem dopuszczalnego czasu zatrzymania oskarżonego. § 3f. Przepisu § 3b nie stosuje się w wypadku oskarżonego, którego dotyczą okoliczności wskazane w art. 79 § 1 pkt 2. § 3g. Tłumacz może wziąć udział w posiedzeniu również w miejscu przebywania oskarżonego.

§ 3h. Przepisy art. 517ea stosuje się odpowiednio.

§ 4. Inne środki zapobiegawcze stosuje sąd, a w postępowaniu przygotowawczym także prokurator

§ 3e. In the event that the defender participates in the meeting while staying in other place than the accused, the court may, at the request of the accused or the defence counsel order a break for a fixed period of time and allow the defender to contact you by phone with the accused, unless the application may interfere with the proper one the course of the meeting or poses a risk of the motion not being resolved on the application of pre-trial detention before the expiration date the time allowed for the accused to be detained.

§ 3f. The provision of § 3b does not apply in the case of the accused to whom they apply circumstances indicated in art. 79 § 1 point 2. § 3g. The interpreter may also attend the meeting on site the presence of the accused. § 3h. The provisions of art. 517ea applies accordingly.

§ 4. Other preventive measures shall be applied by the court, and in the proceedings also a preparatory prosecutor.

### c) Rules relating to Cross Border Scenarios: EAWS and Extradition

6

#### Polish Constitution

##### Article 55<sup>276</sup>

The extradition of a Polish citizen shall be prohibited, except in cases specified in paras 2 and 3.

Extradition of a Polish citizen may be granted upon a request made by a foreign state or an international judicial body if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organisation of which the Republic of Poland is a member, provided that the act covered by a request for extradition:

- 1) was committed outside the territory of the Republic of Poland, and
- 2) constituted an offence under the law in force in the Republic of Poland or would have constituted an offence under the law in force in the Republic of Poland if it had been

<sup>276</sup> Art. 55.

1. Ekstradycja obywatela polskiego jest zakazana, z wyjątkiem przypadków określonych w ust. 2 i 3.

2. Ekstradycja obywatela polskiego może być dokonana na wniosek innego państwa lub sądowego organu międzynarodowego, jeżeli możliwość taka wynika z ratyfikowanej przez Rzeczpospolitą Polską umowy międzynarodowej lub ustawy wykonującej akt prawa stanowionego przez organizację międzynarodową, której Rzeczpospolita Polska jest członkiem, pod warunkiem że czyn objęty wnioskiem o ekstradycję:

1. został popełniony poza terytorium Rzeczypospolitej Polskiej, oraz

2. stanowił przestępstwo według prawa Rzeczypospolitej Polskiej lub stanowiłby przestępstwo według prawa Rzeczypospolitej Polskiej w razie popełnienia na terytorium Rzeczypospolitej Polskiej, zarówno w czasie jego popełnienia, jak i w chwili złożenia wniosku.

3. Nie wymaga spełnienia warunków określonych w ust. 2 pkt 1 i 2 ekstradycja mająca nastąpić na wniosek sądowego organu międzynarodowego powołanego na podstawie ratyfikowanej przez Rzeczpospolitą Polską umowy międzynarodowej, w związku z objętą jurysdykcją tego organu zbrodnią ludobójstwa, zbrodnią przeciwko ludzkości, zbrodnią wojenną lub zbrodnią agresji.

4. Ekstradycja jest zakazana, jeżeli dotyczy osoby podejrzanej o popełnienie bez użycia przemocy przestępstwa z przyczyn politycznych lub jej dokonanie będzie naruszać wolności i prawa człowieka i obywatela.

5. W sprawie dopuszczalności ekstradycji orzeka sąd.

committed within the territory of the Republic of Poland, both at the time of its commitment and at the time of the making of the request.

Compliance with the conditions specified in para. 2 subparas 1 and 2 shall not be required if an extradition request is made by an international judicial body established under an international treaty ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression, covered by the jurisdiction of that body.

The extradition of a person suspected of the commission of a crime for political reasons but without the use of force shall be forbidden, so as an extradition which would violate rights and freedoms of persons and citizens.

The courts shall adjudicate on the admissibility of extradition.

The Polish CPC rules on the Application of the EAW:

7

### **Chapter 65b<sup>277</sup> Request by a Member State of the European Union for the transfer of a person prosecuted on the basis of the European Arrest Warrant**

**Article 607w<sup>278</sup>** If the European warrant concerns a non-citizen Polish, the fact that the act is not a crime under Polish law, no constitutes an obstacle to the execution of the

<sup>277</sup> **Rozdział 65b Wystąpienie państwa członkowskiego Unii Europejskiej o przekazanie osoby ściganej na podstawie europejskiego nakazu aresztowania**

<sup>278</sup> **Art. 607w.** Jeżeli nakaz europejski dotyczy osoby niebędącej obywatelem polskim, okoliczność, że czyn nie jest przestępstwem według prawa polskiego, nie stanowi przeszkody do wykonania nakazu europejskiego, o ile dotyczy on czynu zagrożonego w państwie jego wydania karą co najmniej 3 lat pozbawienia wolności albo czynu, za który może być orzeczony co najmniej w tym samym wymiarze inny środek polegający na pozbawieniu wolności, będącego przestępstwem:

- 1) udziału w zorganizowanej grupie albo związku mających na celu popełnianie przestępstw;
- 2) o charakterze terrorystycznym;
- 3) handlu ludźmi;
- 4) przeciwko wolności seksualnej lub obyczajności na szkodę małoletniego;
- 5) nielegalnego wytwarzania, przetwarzania, przemytu środków odurzających, prekursorów, środków zastępczych lub substancji psychotropowych lub obrotu nimi;
- 6) nielegalnego obrotu bronią, amunicją, materiałami wybuchowymi lub radioaktywnymi;
- 7) łapownictwa i płatnej protekcji;
- 8) oszustwa;
- 9) wprowadzania do obrotu finansowego wartości majątkowych pochodzących z nielegalnych lub nieujawnionych źródeł;
- 10) fałszowania oraz obrotu fałszywymi pieniędzmi lub innymi środkami płatniczymi;
- 11) przeciwko ochronie danych gromadzonych, przechowywanych, przetwarzanych lub przekazywanych w systemie informatycznym;
- 12) przeciwko środowisku naturalnemu, w tym nielegalnego obrotu zagrożonymi gatunkami zwierząt i roślin;
- 13) udzielenia pomocy w nielegalnym przekroczeniu granicy lub pobycie;
- 14) zabójstwa;
- 15) spowodowania ciężkiego uszczerbku na zdrowiu;
- 16) nielegalnego obrotu organami i tkankami ludzkimi;
- 17) bezprawnego pozbawienia człowieka wolności;
- 18) uprowadzenia człowieka dla okupu;
- 19) wzięcia lub przetrzymywania zakładnika;
- 20) popełnionym z powodów narodowościowych, etnicznych, rasowych,

European warrant, as far as it concerns an act punishable in the country of issue by at least 3 years of imprisonment or an act for which another may be convicted at least to the same extent a measure involving deprivation of liberty which is a criminal offence:

- 1) Participation in an organized group or association aimed at committing crimes;
- 2) of a terrorist nature;
- 3) human trafficking;
- 4) against sexual freedom or decency to the detriment of a minor;
- 5) illegal production, processing, smuggling of narcotic drugs, precursors, substitutes or psychotropic substances or trade in them;
- 6) illegal trade in weapons, ammunition, explosives or radioactive;
- 7) bribery and influence;
- 8) fraud;
- 9) introducing the originating property values into financial circulation from illegal or undisclosed sources;
- 10) counterfeiting and trading in counterfeit money or other means payment;
- 11) against the protection of data collected, stored, processed or transferred in the IT system;
- 12) against the natural environment, including illegal trade in endangered animals animal and plant species;
- 13) providing assistance in illegal border crossing or stay;
- 14) homicides;
- 15) causing serious damage to health;
- 16) illegal trade in human organs and tissues;
- 17) unlawful deprivation of liberty;
- 18) abduction of a person for ransom;
- 19) taking or holding a hostage;
- 20) committed for national, ethnic or racial reasons, religious or due to non-denominationalism;

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wyznaniowych albo ze względu na bezwyznaniowość;

- 21) rozboju z użyciem broni palnej lub groźby jej użycia;
- 22) wymuszenia rozbójniczego z użyciem broni palnej lub groźby jej użycia;
- 23) nielegalnego obrotu dobrami kultury;
- 24) sprzeniewierzenia cudzego mienia;
- 25) podrabiania oraz obrotu podrobionymi wyrobami;
- 26) fałszowania oraz obrotu sfałszowanymi dokumentami;
- 27) nielegalnego obrotu hormonami lub podobnymi substancjami;
- 28) obrotu kradzionymi pojazdami mechanicznymi;
- 29) zgwałcenia;
- 30) podpalenia;
- 31) należącym do właściwości Międzynarodowego Trybunału Karnego;
- 32) porwania statku wodnego lub powietrznego; [...].



- 21) robbery with the use of firearms or the threat of their use;
- 22) extortion of robbery with the use of firearms or the threat of their use;
- 23) illegal trade in cultural goods;
- 24) misappropriation of someone else's property;
- 25) counterfeiting and trade in counterfeit products;
- 26) forgery and trade in forged documents;
- 27) illegal trade in hormones or similar substances;
- 28) trade in stolen motor vehicles;
- 29) rape;
- 30) arson;
- 31) falling within the jurisdiction of the International Criminal Court;
- 32) hijacking of a ship or aircraft; [...].

**3. Some provisions on Defence laws relating to EPPO actions concerning PIF Crime offences**

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- 1 In Poland the **suspect** and the **victim** are **parties of the preparatory proceedings** and the investigation measures (see Art. 299 CPC):

**Article 299<sup>279</sup>**

§ 1. In the preparatory proceedings, the victim and the suspect are parties.

§ 2. In the cases specified in the Act, certain rights are also available to persons who are not parties.

§ 3. In court actions in preparatory proceedings, the prosecutor has the rights of a party.

- 2 Art. 77 and 88 of the CPC restrict the suspect's rights to have max. 3 defence lawyers.
- 3 Section 6 of the Polish Criminal Procedure Code outlines the right of the accused to effective protection in criminal proceedings:

**4 [Excerpt Criminal Procedure Code]**

**Article 3** Within the limits specified in the Act, criminal proceedings are conducted with the participation of the social factor.

**Article 4** Authorities conducting criminal proceedings are obliged to investigate and take into account circumstances both in favor and against accused.

**Article 5 § 1.** The accused is presumed innocent until his fault will be proven and confirmed by a final judgment.

§ 2. Unremovable doubts are resolved in favor of the accused.

<sup>279</sup> **Art. 299. [Strony postępowania przygotowawczego]**

§ 1. W postępowaniu przygotowawczym pokrzywdzony i podejrzany są stronami.

§ 2. W wypadkach wskazanych w ustawie określone uprawnienia przysługują również osobom niebędącym stronami.

§ 3. W czynnościach sądowych w postępowaniu przygotowawczym prokuratorowi przysługują prawa strony.

**Article 6** The accused has the right to defence, including the right to use the help of a defender, which he should be instructed about.

**Article 7** The authorities of the proceedings form their convictions on the basis of all the evidence taken, freely assessed taking into account the principles of correct reasoning and the indications of knowledge and life experience.

**a) Specialised legal law firms**

At the moment there are no special legal law firms that concentrate only on EU Fraud cases or budgetary fraud cases in Poland. All criminal lawyers might therefore be relevant partners and contact persons for potential victims as well as perpetrators in Poland. It is useful to contact and visit the Websites of the Bar or the relevant Regions. **5**

**b) Defence in the investigation phase**

The defence in the investigation phase is particularly important. The Polish Constitution already holds that: **6**

**Article 42<sup>280</sup>**

1. Only a person who has committed an act prohibited under penalty by the law in force at the time of its commission shall be subject to criminal liability. This principle does not preclude punishment for an act which, at the time when it was committed, constituted a crime under international law.
  2. Everyone against whom criminal proceedings are conducted has the right to defence at all stages of the proceedings. In particular, he may choose a defence counsel or, on the terms set out in the Act, use a public defender.
  3. Everyone is presumed innocent until proven guilty by a final judgment of a court.
- 7**

<sup>280</sup> **Art. 42.**

1. Odpowiedzialności karnej podlega ten tylko, kto dopuścił się czynu zabronionego pod groźbą kary przez ustawę obowiązującą w czasie jego popełnienia. Zasada ta nie stoi na przeszkodzie ukaraniu za czyn, który w czasie jego popełnienia stanowił przestępstwo w myśl prawa międzynarodowego.

2. Każdy, przeciw komu prowadzone jest postępowanie karne, ma prawo do obrony we wszystkich stadiach postępowania. Może on w szczególności wybrać obrońcę lub na zasadach określonych w ustawie korzystać z obrońcy z urzędu.

3. Każdego uważa się za niewinnego, dopóki jego wina nie zostanie stwierdzona prawomocnym wyrokiem sądu.

**Article 45**<sup>281</sup>

1. Everyone has the right to a fair and public hearing, without undue delay, by a competent, impartial and independent court.
2. The hearing may be closed to the public for reasons of morality, state security and public order, as well as for the protection of the private life of the parties or other important private interest. The judgment is announced publicly.

**Article 46**<sup>282</sup>

Forfeiture of things may occur only in the cases specified in the Act and only on the basis of a final court decision.

**Article 47**<sup>283</sup>

Everyone has the right to legal protection of private and family life, honour and good name, and to make decisions about his personal life.

**Article 49**<sup>284</sup>

Freedom and secrecy of communications are guaranteed. They may be limited only in the cases specified in the Act and in the manner specified therein.

**Article 50**<sup>285</sup>

The inviolability of the apartment is ensured. A house, room or vehicle may be searched only in the cases specified in the Act and in the manner specified therein.

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<sup>281</sup> **Art. 45.**

1. Każdy ma prawo do sprawiedliwego i jawnego rozpatrzenia sprawy bez nieuzasadnionej zwłoki przez właściwy, niezależny, bezstronny i niezawisły sąd.

2. Wyłączenie jawności rozprawy może nastąpić ze względu na moralność, bezpieczeństwo państwa i porządek publiczny oraz ze względu na ochronę życia prywatnego stron lub inny ważny interes prywatny. Wyrok ogłaszany jest publicznie.

<sup>282</sup> **Art. 46.**

Przepadek rzeczy może nastąpić tylko w przypadkach określonych w ustawie i tylko na podstawie prawomocnego orzeczenia sądu.

<sup>283</sup> **Art. 47.**

Każdy ma prawo do ochrony prawnej życia prywatnego, rodzinnego, czci i dobrego imienia oraz do decydowania o swoim życiu osobistym.

<sup>284</sup> **Art. 49.**

Zapewnia się wolność i ochronę tajemnicy komunikowania się. Ich ograniczenie może nastąpić jedynie w przypadkach określonych w ustawie i w sposób w niej określony.

<sup>285</sup> **Art. 50.**

Zapewnia się nienaruszalność mieszkania. Przeszukanie mieszkania, pomieszczenia lub pojazdu może nastąpić jedynie w przypadkach określonych w ustawie i w sposób w niej określony.

**c) Access to national case file**

The Access to the national case file<sup>286</sup> is granted on the basis of an Application that is regulated by the Polish CPC. The Legislator has lastly amended the access rights in 2021. Art. 156 CPC stipulates the requisites:

**[Excerpt Criminal Procedure Code]****Chapter 17 The Suspect's Access to Case files and the Right to Make Copies****Article 156<sup>287</sup>**

§ 1. The parties, defenders, attorneys and statutory representatives shall be provided with court case files and shall be given the opportunity to make copies or copies thereof. With the consent of the president of the court, these files may also be made available to other persons. Information on case files may also be made available via the ICT system, if technical reasons do not preclude it.

§ 1a. (repealed)

§ 2. At the request of the accused or his defenders, copies of documents from the case files are issued for a fee. Such copies are issued against payment, upon request, also to

<sup>286</sup> This shall not be confused with the Access to the National Criminal Register.

<sup>287</sup> **Rozdział 17 Przeglądanie akt i sporządzanie odpisów**

**Art. 156.** § 1. Stronom, obrońcom, pełnomocnikom i przedstawicielom ustawowym udostępnia się akta sprawy sądowej oraz daje możliwość sporządzenia z nich odpisów lub kopii. Za zgodą prezesa sądu akta te mogą być udostępnione również innym osobom. Informacje o aktach sprawy mogą być udostępnione także za pomocą systemu teleinformatycznego, jeżeli względy techniczne nie stoją temu na przeszkodzie.

§ 1a. (uchylony)

§ 2. Na wniosek oskarżonego lub jego obrońcy wydaje się odpłatnie kopie dokumentów z akt sprawy. Kopie takie wydaje się odpłatnie, na wniosek, również innym stronom, pełnomocnikom i przedstawicielom ustawowym. Zarządzenie w przedmiocie wniosku może wydać również referendarz sądowy. Od kopii wykonanej samodzielnie nie pobiera się opłaty. § 3. Prezes sądu lub referendarz sądowy może w razie uzasadnionej potrzeby zarządzić wydanie odpłatnie uwierzytelnionych odpisów z akt sprawy.

§ 4. Jeżeli zachodzi niebezpieczeństwo ujawnienia informacji niejawnych o klauzuli tajności „tajne” lub „ściśle tajne”, przeglądanie akt, sporządzanie odpisów i kopii odbywa się z zachowaniem rygorów określonych przez prezesa sądu lub sąd. Uwierzytelnionych odpisów i kopii nie wydaje się, chyba że ustawa stanowi inaczej.

§ 5. Jeżeli nie zachodzi potrzeba zabezpieczenia prawidłowego toku postępowania lub ochrony ważnego interesu państwa, w toku postępowania przygotowawczego stronom, obrońcom, pełnomocnikom i przedstawicielom ustawowym udostępnia się akta, umożliwia sporządzanie odpisów lub kopii oraz wydaje odpłatnie uwierzytelnione odpisy lub kopie. W przedmiocie udostępnienia akt, sporządzenia odpisów lub kopii lub wydania uwierzytelnionych odpisów lub kopii prowadzący postępowanie przygotowawcze wydaje zarządzenie. W wypadku odmowy udostępnienia akt pokrzywdzonemu na jego wniosek należy poinformować go o możliwości udostępnienia mu akt w późniejszym terminie. Z chwilą powiadomienia podejrzanego lub obrońcy o terminie końcowego zaznajomienia z materiałami postępowania przygotowawczego pokrzywdzonemu, jego pełnomocnikowi lub przedstawicielowi ustawowemu nie można odmówić udostępnienia akt, umożliwienia sporządzania odpisów lub kopii oraz wydania odpisów lub kopii. Za zgodą prokuratora akta w toku postępowania przygotowawczego mogą być w wyjątkowych wypadkach udostępnione innym osobom. Prokurator może udostępnić akta w postaci elektronicznej.

§ 5a. W razie złożenia w toku postępowania przygotowawczego wniosku o zastosowanie albo przedłużenie tymczasowego aresztowania podejrzanemu i jego obrońcy udostępnia się niezwłocznie akta sprawy w części zawierającej treść dowodów dołączonych do wniosku, z wyłączeniem dowodów z zeznań świadków, o których mowa w art. 250 § 2b.

§ 5b. Przepis § 5 stosuje się odpowiednio do udostępniania akt zakończonego postępowania przygotowawczego.

§ 6. Minister Sprawiedliwości określi, w drodze rozporządzenia, wysokość opłaty za wydanie kopii dokumentów oraz uwierzytelnionych odpisów z akt sprawy, mając na uwadze koszt wykonania takich kopii i odpisów.

other parties, attorneys and statutory representatives. An order on the application may also be issued by a court referendary. No fee is charged for a copy made independently.

§ 3. The president of the court or a court referendary may, in the event of a justified need, order the release of certified copies of the case files for a fee.

§ 4. If there is a danger of disclosure of classified information classified as “secret” or “top secret”, the review of files, the preparation of copies and copies takes place in accordance with the rigors specified by the president of the court or the court. Certified copies and copies shall not be issued, unless the law provides otherwise.

§ 5. If there is no need to secure the proper course of the proceedings or to protect an important interest of the state, in the course of the preparatory proceedings, the parties, defenders, attorneys and statutory representatives shall be made available to files, enable the preparation of copies, and issue certified copies or copies for a fee. With regard to the access to files, the preparation of copies, or the issue of certified copies or copies, the person conducting the preparatory proceedings issues an order. In the event of refusal to make the files available to the aggrieved party at his request, he should be informed about the possibility of making the files available to him at a later date. Upon notification of the suspect or the defender of the date of final acquaintance with the materials of the preparatory proceedings, the victim, his attorney or legal representative may not be refused access to files, the possibility of making copies or copies, and the issue of copies or copies. With the consent of the prosecutor, files in the course of preparatory proceedings may, in exceptional cases, be made available to other persons. The prosecutor may make the files available in electronic form.

§ 5a. In the event of an application for the application or extension of pre-trial detention in the course of the preparatory proceedings, the suspect and his defence counsel shall be provided with the case files immediately in the part containing the content of the evidence attached to the application, with the exception of evidence from the testimonies of witnesses referred to in Article 250 § 2b.

§ 5b. The provision of § 5 shall apply accordingly to making available files of completed preparatory proceedings.

§ 6. The Minister of Justice shall determine, by regulation, the amount of the fee for issuing copies of documents and certified copies of the case files, bearing in mind the cost of making such copies.

- 10** This provision is essential for the suspect in the preparatory proceedings and a common denominator in the criminal proceedings in Poland. The provision says that the state authorities shall provide access and allow the making of copies. This means that the suspect needs to ask for the application of its right to the case file first. The opportunity to make copies will require a certain standard in the department, office or surroundings, where the suspect appears. The personal right to inspect the files may be extended to other persons with a permission by the court’s president. It remains questionable

whether the copies must be in printing or if in the digital era the suspect can use his smartphone and a simple PDF Scanner file App from any Free App Store. Section 2 stipulates the obligation to pay a fee for the access to the case files. It is questionable whether this requirement infringes the suspect's right from the Data protection Regulation, which offers each individual the right to obtain any information stored about him/her by a state authority for free. Section 4 restricts the right of access to serious reasons that pose a threat to the state or citizens.

#### **d) Closing the Investigation, Presenting the Charges and the Rights of the Suspect**

Insight into the files might be useful to determine the view of the prosecution office. If the collection of data by the prosecutor seems lacking information, the suspect may request the prosecution office to carry out further investigations: 11

#### **Chapter 36 Closing the investigation**

##### **Article 321<sup>288</sup> [Closing of the investigation, familiarization with the materials]**

§ 1. If there are grounds to close the investigation, at the request of the suspect or his defender for final acquaintance with the materials of the proceedings, the person conducting the proceedings shall notify the suspect and the defender of the date of final familiarization, instructing them about the right to review the files in advance within a period appropriate to the importance or complexity of the case, as specified by the authority. process. In order to review the files, the prosecutor may make the files available in electronic form.

§ 2. The time limit for familiarizing the suspect with the materials of the proceedings should be set in such a way that at least 7 days elapse from the date of delivery of the notification to the suspect and his defence counsel.

§ 3. The defence counsel has the right to participate in the activities of acquainting the suspect with the materials of the proceedings.

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<sup>288</sup> **Rozdział 36**

**Zamknięcie śledztwa**

**Art. 321. [Zamknięcie śledztwa, zaznajomienie z materiałami]**

§ 1. Jeżeli istnieją podstawy do zamknięcia śledztwa, na wniosek podejrzanego lub jego obrońcy o końcowe zaznajomienie z materiałami postępowania, prowadzący postępowanie powiadamia podejrzanego i obrońcę o terminie końcowego zaznajomienia, pouczając ich o prawie uprzedniego przejrzania akt w terminie odpowiednim do wagi lub zawikłości sprawy, określonym przez organ procesowy. W celu przejrzania akt prokurator może udostępnić akta w postaci elektronicznej.

§ 2. Termin zaznajomienia podejrzanego z materiałami postępowania powinien być tak wyznaczony, aby od daty doręczenia zawiadomienia o nim podejrzanemu i jego obrońcy upłynęło co najmniej 7 dni.

§ 3. W czynnościach zaznajomienia podejrzanego z materiałami postępowania ma prawo uczestniczyć obrońca.

§ 4. Nieusprawiedliwione niestawiennictwo podejrzanego lub jego obrońcy nie tamuje dalszego postępowania.

§ 5. W terminie 3 dni od daty zaznajomienia podejrzanego z materiałami postępowania strony mogą składać wnioski o uzupełnienie śledztwa. Przepis art. 315 § 2 stosuje się odpowiednio.

§ 6. Jeżeli nie zachodzi potrzeba uzupełnienia śledztwa, wydaje się postanowienie o jego zamknięciu i ogłasza się je lub o jego treści zawiadamia się podejrzanego oraz jego obrońcę.

§ 4. The unjustified failure of the suspect or his lawyer to appear does not stop further proceedings.

§ 5. Within 3 days from the date of acquainting the suspect with the materials of the proceedings, **the parties may submit requests to supplement the investigation.** The provision of art. 315 § 2 shall apply accordingly.

§ 6. If there is no need to supplement the investigation, an order is made to close it and it is announced or its content is notified to the suspect and his defender.

13 Art. 325g to 325i CPC regulate the investigation as follows:

14 **Article 325g [Presentation of charges, closure of the investigation]**

§ 1. It is not required to draw up a decision on the presentation of charges and to issue a decision to close the investigation, unless the suspect is in pre-trial detention.

§ 2. The interrogation of the suspect begins with the notification of the content of the allegation entered in the interrogation protocol. This person is considered a suspect from the start of the interrogation.

§ 3. The suspect should be allowed to prepare for defence, and in particular to appoint or appoint a defence lawyer.

**Article 325h [Scope of investigation, limited protocol]**

§ 1. The investigation may be limited to determining whether there are sufficient grounds to bring an indictment or otherwise terminate the proceedings. However, the actions provided for in Art. 321 § 1–5 and in art. 325g § 2, interrogate the suspect and the victim and carry out and record in the protocols of activities that cannot be repeated. Consolidation of other evidence activities takes place in the form of a protocol limited to the recording of the most important statements of persons participating in the activities; the provision of art. 148 § 2, first sentence, shall not apply.

§ 2. The provision of art. 315a applies.

**Article 325i [Enquiry completed; deadline]**

§ 1. The investigation should be completed within 2 months. The public prosecutor may extend this period to 3 months, and in particularly justified cases – for a further specified period.

§ 2. (repealed).

§ 3. The powers of the prosecutor specified in Art. 335, art. 336 and Art. 387 § 2 are also entitled to authorities other than the public prosecutor entitled to bring and support prosecution in cases of offences prosecuted by public indictment.



**e) Information Rights During the Investigation**

While the investigation is on-going the suspect has a limited right to be informed about potential conduct and later he/she has the right to be informed about the charges: **15**

**Article 300<sup>289</sup> [Suspect – obligation to be informed]****16**

§ 1. Before the first interrogation, the suspect should be instructed about his rights: to provide explanations, to refuse to provide explanations or to refuse to answer questions, to information about the content of the allegations and their changes, to submit requests for investigation or investigation activities, to use the assistance of a defence including to apply for a public defender in the case specified in Art. 78 and on the content of art. 338b, to the final acquaintance with the materials of the preparatory proceedings, as well as the powers referred to in art. 23a § 1, art. 72 § 1, art. 156 § 5 and 5a, art. 301, art. 335, art. 338a and art. 387 and about the obligations and consequences indicated in art. 74, art. 75, art. 133 § 2, art. 138 and Art. 139. The caution should be given to the suspect in writing; the suspect confirms receipt of the instruction with his signature.

§ 2. Prior to the first interrogation or immediately after the determination of the victim, if his interrogation is waived, the victim is instructed about having the status of a party to the proceedings in the preparatory proceedings and the ensuing rights, in particular: those activities referred to in art. 51, art. 52 and Art. 315–318, to use the assistance of a

<sup>289</sup> **Art. 300. [Podejrzany – obowiązek pouczenia]**

§ 1. Przed pierwszym przesłuchaniem należy pouczyć podejrzanego o jego uprawnieniach: do składania wyjaśnień, do odmowy składania wyjaśnień lub odmowy odpowiedzi na pytania, do informacji o treści zarzutów i ich zmianach, do składania wniosków o dokonanie czynności śledztwa lub dochodzenia, do korzystania z pomocy obrońcy, w tym do wystąpienia o obrońcę z urzędu w wypadku określonym w art. 78 oraz o treści art. 338b, do końcowego zaznajomienia z materiałami postępowania przygotowawczego, jak również o uprawnieniach określonych w art. 23a § 1, art. 72 § 1, art. 156 § 5 i 5a, art. 301, art. 335, art. 338a i art. 387 oraz o obowiązkach i konsekwencjach wskazanych w art. 74, art. 75, art. 133 § 2, art. 138 i art. 139. Pouczenie należy wręczyć podejrzanemu na piśmie; podejrzanym otrzymanie pouczenia potwierdza podpisem.

§ 2. Przed pierwszym przesłuchaniem albo niezwłocznie po ustaleniu pokrzywdzonego, jeżeli odstępuje się od jego przesłuchania, poucza się pokrzywdzonego o posiadaniu statusu strony procesowej w postępowaniu przygotowawczym oraz o wynikających z tego uprawnieniach, w szczególności: do składania wniosków o dokonanie czynności śledztwa lub dochodzenia i warunkach uczestniczenia w tych czynnościach, określonych w art. 51, art. 52 i art. 315-318, do korzystania z pomocy pełnomocnika, w tym do złożenia wniosku o wyznaczenie pełnomocnika z urzędu w okolicznościach wskazanych w art. 78, jak również o uprawnieniach określonych w art. 23a § 1, art. 156, art. 204, art. 306 i art. 315a oraz o obowiązkach i konsekwencjach wskazanych w art. 138 i art. 139. Pouczenie obejmuje również informację o: możliwościach naprawienia szkody przez oskarżonego lub uzyskania kompensaty państwowej, dostępie do pomocy prawnej, dostępnych środkach ochrony i pomocy, o których mowa w ustawie z dnia 28 listopada 2014 r. o ochronie i pomocy dla pokrzywdzonego i świadka, pomocy przewidzianej w art. 43 § 8 Kodeksu karnego wykonawczego, możliwości wydania europejskiego nakazu ochrony, organizacjach wsparcia pokrzywdzonych, treści art. 337a oraz możliwości zwrotu kosztów poniesionych w związku z udziałem w postępowaniu. Pouczenie należy wręczyć pokrzywdzonemu na piśmie; pokrzywdzony otrzymanie pouczenia potwierdza podpisem. W razie odstąpienia od przesłuchania pokrzywdzonego pouczenie podlega doręczeniu.

§ 3. Przed pierwszym przesłuchaniem poucza się świadka o jego uprawnieniach i obowiązkach określonych w art. 177-192a oraz dostępnych środkach ochrony i pomocy, o których mowa w ustawie z dnia 28 listopada 2014 r. o ochronie i pomocy dla pokrzywdzonego i świadka.

§ 4. Minister Sprawiedliwości określi, w drodze rozporządzenia, wzory pisemnych pouczeń, o których mowa w § 1-3, mając na względzie konieczność zrozumienia pouczenia także przez osoby niekorzystające z pomocy obrońcy lub pełnomocnika.

proxy, including to submit an application for the appointment of a proxy ex officio in the circumstances indicated in art. 78, as well as the rights specified in Art. 23a § 1, art. 156, art. 204, art. 306 and Art. 315a and about the obligations and consequences indicated in art. 138 and Art. 139. The instruction also includes information about: Act of 28 November 2014 on protection and assistance for the victim and the witness, assistance provided for in art. 43 § 8 of the Executive Penal Code, the possibility of issuing a European protection order, victim support organisations, the content of Art. 337a and the possibility of reimbursement of costs incurred in connection with participation in the proceedings. The instruction should be given to the injured party in writing; the aggrieved party confirms the receipt of the instruction with his/her signature. In the event of withdrawal from the questioning of the injured party, the instruction shall be delivered.

§ 3. Before the first interrogation, the witness is instructed about his rights and obligations specified in art. 177–192a and the available protection and assistance measures referred to in the Act of 28 November 2014 on protection and assistance for the victim and the witness.

§ 4. The Minister of Justice shall determine, by regulation, the patterns of written instructions referred to in § 1–3, taking into account the need to understand the instructions also by persons who do not use the assistance of a defender or attorney.

#### **Article 301<sup>290</sup> [Hearing in the presence of a defence lawyer]**

At the request of the suspect, he should be interrogated with the participation of the appointed defender. The failure of a defence attorney to appear does not stop the hearing.

#### **Article 313<sup>291</sup> [Order to lay charges]**

§ 1. If the data existing at the time of the initiation of the investigation or collected in the course of the investigation justify the suspicion that the act was committed by a specific person, an order is drawn up to present the charges, it is immediately announced to the suspect and the suspect is interrogated, unless the announcement of the order or

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<sup>290</sup> **Art. 301. [Przesłuchanie w obecności obrońcy]** Na żądanie podejrzanego należy przesłuchać go z udziałem ustanowionego obrońcy. Niestawiennictwo obrońcy nie tamuje przesłuchania.

<sup>291</sup> **Art. 313. [Postanowienie o przedstawieniu zarzutów]**

§ 1. Jeżeli dane istniejące w chwili wszczęcia śledztwa lub zebrane w jego toku uzasadniają dostatecznie podejrzenie, że czyn popełniła określona osoba, sporządza się postanowienie o przedstawieniu zarzutów, ogłasza je niezwłocznie podejrzanemu i przesłuchuje się go, chyba że ogłoszenie postanowienia lub przesłuchanie podejrzanego nie jest możliwe z powodu jego ukrywania się lub nieobecności w kraju.

§ 2. Postanowienie o przedstawieniu zarzutów zawiera wskazanie podejrzanego, dokładne określenie zarzucanego mu czynu i jego kwalifikacji prawnej.

§ 3. Podejrzanym może do czasu zawiadomienia go o terminie zaznajomienia z materiałami śledztwa żądać podania mu ustnie podstaw zarzutów, a także sporządzenia uzasadnienia na piśmie, o czym należy go pouczyć. Uzasadnienie doręcza się podejrzanemu i ustanowionemu obrońcy w terminie 14 dni.

§ 4. W uzasadnieniu należy w szczególności wskazać, jakie fakty i dowody zostały przyjęte za podstawę zarzutów.

the questioning of the suspect is not possible due to his hiding or absence from the country.

§ 2. The decision on the presentation of the charges contains an indication of the suspect, a precise description of the alleged act and his legal classification.

§ 3. The suspect may, until he is notified of the date of becoming acquainted with the materials of the investigation, demand that he be provided orally with the grounds for the allegations, as well as a written justification, of which he should be instructed. The justification shall be delivered to the suspect and the appointed defence counsel within 14 days.

§ 4. The justification should in particular indicate what facts and evidence were used as the basis for the allegations.

### f) Complaint the Objection

If the investigation is over, the suspect may have a right to recall and object to certain acts of the investigation authorities: **17**

### Chapter 50 Complaint and objection

#### Article 459<sup>292</sup>

§ 1. A complaint may be lodged against the court's decisions closing the way to a judgment, unless the law provides otherwise.

§ 2. A complaint may also be made against the provisions on the precautionary measure and other provisions in the cases provided for in the Act.

§ 3. The parties, as well as the person directly affected by the decision, are entitled to a complaint, unless the law provides otherwise.

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<sup>292</sup> **Rozdział 50 Zażalenie i sprzeciw**

#### **Art. 459. [Postanowienia podlegające zaskarżeniu]**

§ 1. Zażalenie przysługuje na postanowienia sądu zamykające drogę do wydania wyroku, chyba że ustawa stanowi inaczej.

§ 2. Zażalenie przysługuje także na postanowienia co do środka zabezpieczającego oraz na inne postanowienia w wypadkach przewidzianych w ustawie.

§ 3. Zażalenie przysługuje stronom, a także osobie, której postanowienie bezpośrednio dotyczy, chyba że ustawa stanowi inaczej.

#### 4. Results of an Investigation: A Criminal Process Deciding on Acquittal or Judgement?

19 The results of an investigation may lead to a criminal or financial penal process and a court will adjudicate the case presented by the Polish Prosecutor.

20 The Criminal Code contains the penalties and custodial sentences for PIF offences (see above →

The Legal Scenery, Location and Wording of the PIF offences in Poland, B. I. 90.).

21 The area of revenue-related offences is either regulated by the Fiscal Penal Code (KKS) or the Customs Code. The Special Investigation Authorities for these sectors (such as the KAS) and the CBA for corruption offences will decide on the basis of the respective acts.

22 The National Revenue Administration explains and defines this special area as follows:

“In all cases of fiscal offences and fiscal misdemeanors, common courts or military courts adjudicate, which excludes the powers of administrative financial authorities to adjudicate on guilt and punishment for fiscal crimes and fiscal petty offences. The exception is fine proceedings, as a special procedure applicable in the case of fiscal offences.

A tax offence is an act prohibited by the Penal Code under the threat of a fine specified in daily rates, a penalty of restriction of liberty or a penalty of imprisonment.

##### **[Imposition of a Fine]**

When imposing a fine, the court specifies the number of rates and the amount of one daily rate, and unless the Code provides otherwise, the lowest number of rates is 10, the highest - 720. However, the amount of the daily rate may not be lower than one-thirtieth of the minimum wage or exceed four hundred times it..

The minimum remuneration is the remuneration for work determined on the basis of the Act of 10 October 2002 on the minimum remuneration for work (Journal of Laws of 2020, item 2207). In turn, in accordance with the Regulation of the Council of Ministers of September 13, 2022 on the amount of the minimum remuneration for work and the amount of the minimum hourly rate in 2023 (Journal of Laws of 2022, item 1952), from January 1 to June 30 2023, the minimum remuneration for work is PLN 3,490.00, and from July 1 to December 31, 2023, the minimum remuneration for work will be PLN 3,600.00.

Unless otherwise provided by the Code, imprisonment lasts for the shortest 5 days, and for the longest - 5 years; it is measured in days, months and years.

A fiscal offence is an act prohibited by the Penal Code under the penalty of a fine specified in the amount, if the amount of the depleted or threatened with depletion

of public law receivables or the value of the subject of the act does not exceed five times the amount of the minimum wage at the time of its commission.

A tax offence is also another prohibited act, if the code so provides.

A fine for committing a fiscal offence may range from one tenth to twenty times the amount of the minimum wage, unless the Code provides otherwise. In addition, for committing a tax offence, the financial authority of the preparatory proceedings may also impose a fine on the offender by means of a penalty ticket within the limits not exceeding five times the amount of the minimum wage.

A necessary condition for bringing the perpetrator to criminal liability for fiscal offences and fiscal offences is, apart from meeting the characteristics of the prohibited act by the perpetrator, the existence of a subjective element, i.e. proving the perpetrator's guilt. A tax offence or a fiscal misdemeanor may, as a rule, be committed only intentionally, and unintentionally only when the code so provides. A prohibited act is committed intentionally if the perpetrator intends to commit it, i.e. wants to commit it or, anticipating the possibility of committing it, consents to it. A prohibited act is committed unintentionally if the perpetrator, having no intention of committing it, nevertheless commits it as a result of failing to exercise caution required in the given circumstances, even though the possibility of committing this act was foreseen or could have been foreseen. prohibited, whose social harmfulness is negligible.

The special part of the Fiscal Penal Code contains individual types of fiscal offences and fiscal offences which, due to the type of violated standards, have been classified in separate chapters concerning:

- tax crimes and fiscal offences against tax obligations and settlements for subsidies or grants (Articles 54–84 of the Penal Code),
- tax crimes and fiscal offences against customs duties and the rules of foreign trade in goods and services (Articles 85–96 of the Penal Code),
- tax crimes and tax offences against foreign exchange trading (Articles 97–106 of the Penal Code),
- tax offences and fiscal offences against the organisation of gambling games (Articles 107–111 of the PCC).<sup>293</sup>

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<sup>293</sup> See Ministry of Finance – National Revenue Administration, Traszka, Honorata, <https://www.gov.pl/web/kas/sprawny-kanne-skarbowe>. Accessed 6 August 2024.

## 5. Enforcement of Judgements against PIF-Acquis Offenders

23 Last but not least it can be shortly summed up, what kind of steps follow a judgement in Poland and which Act applies. If an accused is convicted with a PIF-Acquis offence (see above → 90

The Legal Scenery, Location and Wording of the PIF offences in Poland), the judgments will need to be enforced by Polish authorities. The enforcement of these judgements in criminal proceedings, in proceedings in cases of tax crimes and tax offences and in proceedings in cases of misdemeanors is regulated by the Executive Penal Code of June 6 1997 (as amended 2023 Journal of Laws / *Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*). This Act contains provisions on the executing authorities, the respect and dignity of the convicted person, the control and constant penitentiary supervision.

## **F. OLAF-Regulation (EU, EURATOM) No 883/2013**

### **I. National References of the OLAF Regulation (Art. 3–8)**

#### **1. General Remarks**

Only recently in May 2023 the Reporters Foundation, an investigative forum has reported in a FRONTSTORY.PL about fraud with structural funds in Poland.<sup>294</sup> The EU Body, which can operate in Poland and help to discover spending irregularities and frauds with EU money is OLAF. OLAF operates on the basis of the OLAF Regulation. It is questionable what kind of national law could help OLAF and which is applicable in cases of resistance of economic operators.

*The Report revealed:*

*“[R]ecently [2022/2023] in Poland, fraudsters are finding new ways to embezzle EU funds. One such way is to extort money for various types of IT projects (creating websites or software), which turn out to be fakes. OLAF estimates that up to €11 million was siphoned off in this way in 2021. Organized crime is also a problem in Poland. Among other things, in Poland, the illegal production of cigarettes is more often noticed. As a result of one operation carried out by OLAF (together with Interpol, Eurojust and Europol) in several countries in 2021, 6.7 million illegal cigarettes and 2.6 tonnes of raw tobacco and half a tonne of drugs were arrested, fifteen smugglers were arrested and over 200 forged documents detected. The criminals acted in Poland.*

*Poland is a country where the most important state bodies are governed by one political environment. The populist United Right coalition, which has been in power since 2015, decides how to distribute EU funds, and also manages the institutions responsible for prosecuting corruption. The Central Anti-Corruption Bureau (CBA) reports to Minister Mariusz Kamiński, an MP from the ruling party. In 2015, Kamiński was convicted against a final judgment for exceeding his powers during one of the CBA’s operations. In November 2015, before the verdict became final, Polish President Andrzej Duda, elected a few months earlier (also from PiS), applied the law of pardon to him.*

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<sup>294</sup> Bodoky T, Fülöp O (Atlatszo), Tchobanov A (BIRD), Plzáková K (Investigace), Sepiolo M (FRONTSTORY.PL) 2023, Millions Stolen From EU (II), Article on Frontstory.pl, 5.5.2023, online: <https://frontstory.pl/fundusze-ue-defraudacja-korupcja-occrp/>. Accessed 6 August 2024.

*Since 2016, the investigations into the embezzlement of EU funds have been monitored by the Polish National Prosecutor's Office. In 2016-2022, it was headed by Bogdan Świączkowski, a prosecutor and politician closely associated with Zbigniew Ziobro. He was replaced by Dariusz Barski, a former PiS parliamentarian.*"<sup>295</sup>

### **a) OLAF's Role and Task**

- 1 In Poland the European-Anti-Fraud Office is referred to with the term "*Urząd do spraw Zwalczenia Nadużyć Finansowych*".<sup>296</sup> This term can equally be used for the national control bodies. OLAF's task and role as well as its actions are determined primarily by Union law. The history of OLAF can be traced back to the early 2000s and its predecessor UCLAF.<sup>297</sup> OLAF has a renewed role within the changed anti-fraud architecture of the Union in the 2020s and is an important actor against fraud within the Multi-annual framework legislation and the Union's policies, which depend on the action of the Member States and the agreements concluded on the political levels.

### **b) Information Flow**

- 2 The information flow to OLAF has been described in a 2012 Study by experts of the Council of the European Union:

"On a central level contacts between OLAF and the Prosecution Service are with the Department for the Fight against Organised Crime and Corruption for cases which are related to organised crime<sup>37</sup>, for other cases the Department for Preparatory Proceedings is responsible<sup>38</sup>. However, during investigations prosecutors in the various units for the fight against organised crime or financial crime in the appellate and regional offices cooperate with OLAF, and can be in direct contact with it (Article 316). Under article 317 of the Regulation those prosecutors can ask OLAF in EU fraud cases for information or request OLAF to give access to its findings or to take coordination measures. OLAF has to be given, by the prosecution service and within the limits laid down by the law, information or access to the collected evidence for the purpose of the performance of its duties. This last provision is in line with article 7 of Regulation (EC) n° 1073/1999<sup>39</sup>. Additionally, one Polish prosecutor is an expert seconded to OLAF. These cooperation

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<sup>295</sup> Bodoky T, Fülöp O (Atlatszo), Tchobanov A (BIRD), Plzáková K (Investigace), Sepiolo M (FRONTSTORY.PL) 2023, Millions Stolen From EU (II), Article on Frontstory.pl, 5.5.2023, online: <https://frontstory.pl/fundusze-ue-defraudacja-korupcja-occrp/>. Accessed 6 August 2024.

<sup>296</sup> Krawczak 2021, pp. 24–40.

<sup>297</sup> See Hauck, EU Fraud Commentary [soon to be published], Chronology Part 3 and 4 as well as the Commentary on Art. 1 OLAF Regulation.



mechanisms ensure the transfer of information to OLAF on the outcome of relevant criminal proceedings.”<sup>298</sup>

Thus it can be concluded that formerly Polish Legislators used to set-up rules concerning the transmission of data to OLAF or the right to request information from OLAF in Regulations of the justice Minister, which have in fact not the quality of a law passed by parliament.<sup>299</sup> **3**

### c) OLAF’s Working Area

In addition to that OLAF and its investigators shall follow internal guidelines<sup>300</sup>, manuals on procedures<sup>301</sup> reports and working arrangements with union partners<sup>302</sup> as well as Administrative Cooperation Agreements (ACAs) with national partners, EU external actors<sup>303</sup>. OLAF issues compendia, researches itself, organizes meetings and conferences and workshops for its national partners. All of these non-binding guides and handbooks might be useful in the course of investigations.<sup>304</sup> The statistics on latest actions and the past year can be deduced from the OLAF Reports, equal to the new EPPO’s annual report and the PIF Report, which is issued by the EU Commission in close cooperation with OLAF, IBOAs and the EPPO as well as the input from ECA and national AFCOS, governments and researchers. **4**

### d) OLAF Within the EU’s Anti-Fraud Architecture

The European Anti-fraud office is well accommodated in the Union anti-fraud architecture these days (see EU Fraud Commentary, Art. 1 PIF Directive) and the academic research is extensive and long lasting since the 2000s.<sup>305</sup> Last decade’s landmark judgement “*Sigma Orionis SA vs European Commission*”, decided by the **5**

<sup>298</sup> See Council of the European Union 2017.

<sup>299</sup> See Regulation of 24 March 2010 of the Justice Minister containing rules for the organisation of the prosecution service. This Regulation has been repealed.

<sup>300</sup> See European Commission (OLAF) 2021; OLAF 2021; European Commission (OLAF) 2016.

<sup>301</sup> Brüner 2009, whereby it is unclear if certain Manuals are really still used by investigators and the Office staff.

<sup>302</sup> OLAF, Working Arrangement between EPPO & OLAF, Point 4: “Exchange of information”, 4.5 and 4.6 (cross double check between the databases for a PIF offence action), 5 (“Mutual Reporting and transmission of potential cases”), 5.1, 5.1.1. European Commission – “Agreement establishing the modalities of cooperation between the European Commission and the European Public Prosecutor’s Office” 18 June 2021, Art. 5 para 1, 4, 5 (“Reporting by the Commission”) in combination with Annex I Contact points: “information will be transmitted via the head of OLAF to the head of operation at EPPO/central office”, Annex III.A (“Information on the Initiation of an Investigation – template”).

<sup>303</sup> Prosecution Office of Poland and OLAF. See State of Play – July 2022 Administrative Cooperation Arrangements (ACAs) with partner authorities in non-EU countries and territories and counterpart administrative investigative services of International Organisations, online: [https://anti-fraud.ec.europa.eu/system/files/2022-07/list\\_signed\\_acas\\_en.pdf](https://anti-fraud.ec.europa.eu/system/files/2022-07/list_signed_acas_en.pdf). Accessed 6 August 2024.

<sup>304</sup> See European Commission (OLAF) 2011; European Commission (OLAF) 2017b; European Commission (OLAF) 2013; European Commission (DG regional Policy) 2009; European Commission (DG Policy, U2) 2017.

<sup>305</sup> Brüner 2001, pp 17–26; Brüner 2009; Brüner 2008, pp 859–872; Gellert 2009, pp 85–88.

European General Court<sup>306</sup>, clarified the application of national law and Union law<sup>307</sup> in relation to external investigations of OLAF.<sup>308</sup> In the light of this jurisprudence the resistance to the actions of OLAF, in order to awaken national law, might be a defence strategy that Economic operators use. If this is the case, OLAF has to rely on national homologue investigators and thus as well limitations, thresholds and conditions of national law i.e. investigative powers in various areas of budget spending and structural funds (direct management) and revenue-related obligations (indirect management).

### e) Current Debates

- 6 Current debates evolve around the effectiveness of investigations with regard to digital evidence by virtue of the Regulation 2185/96, which stems in parts from a more analogue society.<sup>309</sup> More and more questions are raised if the analogue society in law enforcement and the area of criminal justice is a problem of the digital age and presents obstacles to effective investigations. The access to bank accounts and registers is 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), 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 volume.

### f) OLAF Reports

- 7 Another question and debate has 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.<sup>310</sup>

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<sup>306</sup> GC (aka CFI), Case T-48/16, 3.5.2018, *Sigma Orionis SA v. Commission*, paras. 70 et seq., 80–81 published in the electronic Reports of Cases (Court Reports – general) and in the OJ, 01/06/2018.

<sup>307</sup> See de Bellis 2021, pp 431 et seq.; Herrnfeld, in: Herrnfeld et al 2021, pp. 426 et seq.; recently Wouters, in: Wouters et al 2020, pp 132 et seq.

<sup>308</sup> de Bellis 2021, pp 431 et seq.; see OLAF Website, List of rulings of the Court of Justice of the EU concerning OLAF, online: [https://anti-fraud.ec.europa.eu/about-us/legal-background/list-rulings-court-justice-eu-concerning-olaf\\_en](https://anti-fraud.ec.europa.eu/about-us/legal-background/list-rulings-court-justice-eu-concerning-olaf_en) (last consulted 31.3.2022).

<sup>309</sup> See Carrera et al 2021.

<sup>310</sup> See Luchtman/Vervaele 2017.

**g) Structure of the Compendium Part E**

The volume Part E, similar to the parts on the EPPO and its investigative powers, gives a « *bilingue* » **collection of the relevant laws** – including the recently adopted on-the-spot checks laws (in relation to Regulation (EC) 2185/96) of certain countries – in relation to investigations and investigative powers as well as examples from Case law and trials, which relied upon evidence gathered by OLAF (Selected Case Studies from our jurisprudence and judgement studies). In addition to the analysis parts of this chapter mentioned above the national authorities and the role of *the* special unit, body or agency in the countries Federal Ministry of Finances (e.g. in Germany the AFCOS is part of the Federal Ministry of Finance, Referat E6a) is explained below.

**Art. 1 Objectives and Tasks**

1. In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Union and of the European Atomic Energy Community (hereinafter referred to collectively, when the context so requires, as ‘the Union’), the European Anti-Fraud Office established by Decision 1999/352/EC, ECSC, Euratom (‘the Office’) shall exercise the powers of investigation conferred on the Commission by:

- (a) The relevant Union acts; and
- (b) The relevant cooperation and mutual assistance agreements concluded by the Union with third countries and international organisations.

2. The Office shall provide the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities in order to coordinate their action aimed at protecting the financial interests of the Union against fraud. The Office shall contribute to the design and development of methods of preventing and combating fraud, corruption and any other illegal activity affecting the financial interests of the Union. The Office shall promote and coordinate, with and among the Member States, the sharing of operational experience and best procedural practices in the field of the protection of the financial interests of the Union, and shall support joint anti-fraud actions undertaken by Member States on a voluntary basis.

3. This Regulation shall apply without prejudice to:

- (a) Protocol No 7 on the privileges and immunities of the European Union attached to the Treaty on European Union and to the Treaty on the Functioning of the European Union;
- (b) the Statute for Members of the European Parliament;
- (c) the Staff Regulations;
- (d) Regulation (EU) 2016/679 of the European Parliament and of the Council;
- (e) Regulation (EU) 2018/1725 of the European Parliament and of the Council

4. Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties ('institutions, bodies, offices and agencies'), the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end, it shall investigate serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations (hereinafter collectively referred to as 'officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members').

4a. The Office shall establish and maintain a close relationship with the European Public Prosecutor's Office (EPPO) established in enhanced cooperation by Council Regulation (EU) 2017/1939 ( 3 ). That relationship shall be based on mutual cooperation, information exchange, complementarity and the avoidance of duplication. It shall aim in particular to ensure that all available means are used to protect the financial interests of the Union through the complementarity of their respective mandates and the support provided by the Office to the EPPO.

5. For the application of this Regulation, competent authorities of the Member States and institutions, bodies, offices and agencies may establish administrative arrangements with the Office. Those administrative arrangements may concern, in particular, the transmission of information, the conduct of investigations and any follow-up action.

- 9 Art. 2 of the OLAF Regulation contains definitions, which apply for all assessments of Seconded National Experts, Investigators, AFCOS staff or national authorities managing structural funds or other EU programmes. It might be cited e.g. for an OLAF Report (see → Art. 11 below) in order to subsume a conduct, which was investigated. The definitions have legal value and force. They stem from the original legislator of the Regulation. They are open to interpretation by parties and courts:

#### **Art. 2 Definitions**

For the purposes of this Regulation:

(1) 'financial interests of the Union' shall include revenues, expenditures and assets covered by the budget of the European Union and those covered by the budgets of the institutions, bodies, offices and agencies and the budgets managed and monitored by them;

(2) 'irregularity' shall mean 'irregularity' as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95;

(3) 'fraud, corruption and any other illegal activity affecting the financial interests of the Union' shall have the meaning applied to those words in the relevant Union acts and the

notion of ‘any other illegal activity’ shall include irregularity as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95;

(4) ‘administrative investigations’ (‘investigations’) shall mean any inspection, check or other measure undertaken by the Office in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation; those investigations shall not affect the powers of the EPPO or of the competent authorities of Member States to initiate and conduct criminal proceedings;

(5) ‘person concerned’ shall mean any person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the Union and who is therefore subject to investigation by the Office;

(6) ‘economic operator’ shall have the meaning applied to that term by Regulation (EC, Euratom) No 2988/95 and Regulation (Euratom, EC) No 2185/96;

(7) ‘administrative arrangements’ shall mean arrangements of a technical and/or operational nature concluded by the Office, which may in particular aim at facilitating the cooperation and the exchange of information between the parties thereto, and which do not create additional legal obligations;

(8) ‘member of an institution’ means a member of the European Parliament, a member of the European Council, a representative of a Member State at ministerial level in the Council, a member of the Commission, a member of the Court of Justice of the European Union (CJEU), a member of the Governing Council of the European Central Bank or a member of the Court of Auditors, with respect to the obligations imposed by Union law in the context of the duties they perform in that capacity.

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[...] 2. The Office shall ***carry out on-the-spot checks and inspections in accordance with this Regulation and, to the extent not covered by this Regulation, in accordance with Regulation (Euratom, EC) No 2185/96.***

4. Where, in accordance with paragraph 3 of this Article, the ***economic operator concerned submits*** to an on-the-spot check and inspection authorised pursuant to this Regulation, Article 2(4) of Regulation (EC, Euratom) No 2988/95, the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96 and Article 7(1) of Regulation (Euratom, EC) No 2185/96 ***shall not apply insofar as those provisions require compliance with national law*** and are capable of restricting access to information and documentation by the Office to the same conditions as those that apply to national administrative inspectors.

5. At the request of the Office, the **competent authority of the Member State** concerned shall, without undue delay, provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2).

The **Member State concerned shall ensure**, in accordance with Regulation (Euratom, EC) No 2185/96, that the **staff of the Office are allowed access to all information, documents and data relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that the staff are able to assume custody of documents or data to ensure that there is no danger of their disappearance**. Where privately owned devices are used for work purposes, those devices may be subject to inspection by the Office. The Office shall subject such devices to inspection only under the same conditions and to the same extent that national control authorities are allowed to investigate privately owned devices and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

6. Where the staff of the Office find that an **economic operator resists** an on-the-spot check and inspection authorised pursuant to this Regulation, namely where the economic operator refuses to grant the Office the necessary access to its premises or any other areas used for business purposes, conceals information or prevents the conduct of any of the activities that the Office needs to perform in the course of an on-the-spot check and inspection, the **competent authorities, including, where appropriate, law enforcement authorities of the Member State concerned shall afford the staff of the Office the necessary assistance so as to enable the Office to conduct its on-the-spot check and inspection effectively and without undue delay**.

*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 authorisation 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 con-

cerned 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<sup>311</sup>, but not enough for all countries. For Poland, it is worth taking a closer look at the applicable provisions.
  - a) **On the spot-checks and inspections – Renouncing the applicable national law – Para 2, 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.
  - b) **Assistance needed, competent authorities and access to information in the Member States, para 5**
- 3 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.).
  - c) **Resistance by the economic operator vs. law enforcement and effective investigations, para 6 or the new model and the relevance of resistance or conformity of the Economic Operator**
- 4 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.
  - d) **The basic principle of conformity to Regulations 2185/96 and 883/2013**
    - aa. **Submission: Compliance with Union law**
- 5 In the case of compliance of an Polish Economic Operator Union law applies, thus the Regulation allows OLAF officials to conduct on-the-spot checks without prior information of national authorities.
  - bb. **Resistance: Assistance in conformity with national procedural rules applicable**
- 6 Does the participant, the personal or Economic operator concerned resist, the Regulation indicates that OLAF has to follow national law and inform national

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<sup>311</sup> See Bovend'eerdt 2018.

authorities that can provide assistance in conformity with national procedural rules applicable.<sup>312</sup>

**e) Competent authorities**

The table shows non-extensively the most important competent authorities, which need to be contacted if the Economic operator resists and thus national law applies if OLAF wants to conduct investigations into irregularities: 7

Who is responsible depends on which area is affected (direct or shared management) and which type of irregularity or fraud is suspected, as well as in which payment (expenditure) or payment (revenue) area. 8

*Table 7: National Authorities Operating Together with OLAF (Art. 3 OLAF Regulation)* 9

<b>Translated Term</b>	<b>Official Term</b>	<b>Website</b>	<b>Reporting Irregularities</b>
<b>Department for the Protection of Financial Interests of the European Union as AFCOS (Anti-Fraud Coordination Service)</b> See Art. 12a OLAF Regulation below in this volume.	Departament Ochrony Interesów Finansowych Unii Europejskiej jako AFCOS (Anti-Fraud Coordination Service)		
<b>Customs Authorities</b> <sup>313</sup>			Revenue Area, contact via the main Customs

<sup>312</sup> ECJ, Case T-48/16 *Sigma Orionis v the Commission*, mn. 112: “Finally, it should be noted that, according to the rules applicable to the actions carried out by OLAF, the requirement to obtain a judicial authorisation, if provided for by national law, only applies in the case of an objection raised by the economic operator and that OLAF must then have recourse to national police forces which, according to the rules applicable to them, must comply with national law.”

<sup>313</sup> Customs authorities and their jurisdiction

Show other time versions of this recipe Article 69. 1. The customs authority, according to its jurisdiction, is:

1) the head of the customs and tax office – as the authority of the first instance;

			Office or the regional offices. Reporting of Irregularities whenever a suspicion exists.
<b>Supreme Audit Office (NIK) Ministry of Economic Development</b>	Najwyższa Izba Kontroli	<a href="https://www.nik.gov.pl/">https://www.nik.gov.pl/</a>	
<b>Managing Authority for the Infrastructure and Environment Operational Programme.</b>  <b>Supervision: Ministry of Development Funds and Regional Policy.</b>	Instytucja Zarządzająca Programem Infrastruktura i Środowisko	<a href="https://www.pois.gov.pl/strony/kontakt/">https://www.pois.gov.pl/strony/kontakt/</a>	In order to report irregularities, you should: use the form (see annex) or send a message to the e-mail address: <a href="mailto:naduzycia.POIS@mfi.pr.gov.pl">naduzycia.POIS@mfi.pr.gov.pl</a> . Infrastructure and Environment Program Managing Authority Department of Infrastructure Programs Ministry of Development Funds and Regional Policy Tel.: 22 273 77 01

2) director of the tax administration chamber – as:

- a) the appeal body against the decision of the head of the customs and tax office,
- b) the authority of the first instance in matters specified in the provisions of customs law and separate provisions,
- c) an appeal body against decisions issued by that body in the first instance, unless a specific provision provides otherwise;

3) Head of the National Revenue Administration - as:

- (a) the first instance authority in matters relating to the entry in the list referred to in Art. 52,
- b) an appeal body against decisions issued in the cases referred to in point (a); and in art. 70 sec. 2;
- 4) the proper minister of public finances - as an appeal body against decisions issued by this body in the first instance.

2. Higher level bodies are appeal bodies.

Article 71. The minister competent for public finances shall specify, by regulation, the local jurisdiction of the customs authorities, taking into account, in particular, the scope of tasks performed by these authorities, as well as the types of customs procedures under which goods may be placed. The regulation should take into account the possibility of exercising customs supervision and customs control, as well as the economic needs of entrepreneurs.

			<p>Fax: 22 273 89 09 E-mail: sekretariatDPI@mfi.pr.gov.pl.</p> <p>Reporting irregularities concerning projects financed from funds from the Infrastructure and Environment Programme: In order to report irregularities, please use the form.</p>
<p><b>Coordination of the EU Funds Department Supervisor: Ministry of Development Funds and Regional Policy. + Special Offices in Each of the Polish Ministries, which distribute EU funds.</b></p>			
<p><b>Centre for European Projects in Warsaw Supervisor: Ministry of Development Funds and</b></p>	<p>Centrum Projektów Europejskich w Warszawie</p>	<p><a href="https://www.gov.pl/web/fundusze-regiony/organy-nadzorowane-lub-podlegle">https://www.gov.pl/web/fundusze-regiony/organy-nadzorowane-lub-podlegle</a>.</p>	

<b>Regional Policy.</b>			
<b>European Funds Ombudsman</b>	Rzecznik Funduszy Europejskich	<a href="https://www.pois.gov.pl/strony/o-programie/rzecznik-funduszy-europejskich/">https://www.pois.gov.pl/strony/o-programie/rzecznik-funduszy-europejskich/</a>	How to submit a report? <sup>314</sup> by phone: - (22) 273 79 17 - (22) 273 74 28 - (22) 273 84 52 in writing to the following address: Ombudsman for European Funds Ministry of Funds and Regional Policy ul. Wspólna 2/4, 00-926 Warsaw electronically to the e-mail address: <a href="mailto:Rzecznikfe@mfi.pr.gov.pl">Rzecznikfe@mfi.pr.gov.pl</a> or by filling in the form in person (by appointment)
<b>Office of Competition and Consumer Protection</b>	Urząd Ochrony Konkurencji i Konsumentów <sup>315</sup>	<a href="https://uokik.gov.pl/kontakt.php">https://uokik.gov.pl/kontakt.php</a>	- See contact details.
<b>The Polish Financial Supervision</b>	Komisja Nadzoru Finansowego <sup>316</sup>	<a href="https://www.knf.gov.pl/">https://www.knf.gov.pl/</a>	


<sup>314</sup> The competences of the European Funds Ombudsman do not include, among others:

- conducting administrative, prosecutorial and court proceedings;
- conducting proceedings conducted by public administration bodies on the basis of relevant legal provisions, e.g. appeal proceedings within the meaning of Chapter 15 of the Implementation Act (appeal procedure);
- examining requests for public information;
- providing advice on the possibility of obtaining co-financing for projects.

<sup>315</sup> pl. Powstańców Warszawy 1, 00-950 Warsaw, tel. 22 55 60 800, [uokik@uokik.gov.pl](mailto:uokik@uokik.gov.pl), Office hours: 8:15 - 16:15 from Monday to Friday.

ePUAP address: /UOKiK/SkrytkaESP NIP 5261009497, REGON 006212789.

<sup>316</sup> [https://bip.knf.gov.pl/bip\\_portal](https://bip.knf.gov.pl/bip_portal).

<b>Authority (UKNF)</b>			
<b>Public Procurement Office</b>	Urząd Zamówień Publicznych	<a href="https://www.uzp.gov.pl/">https://www.uzp.gov.pl/</a>	
<b>Example of an anti-fraud office in a Voivodeship: Voivodeship Labor Office in Toruń</b>	Wojewódzki Urząd Pracy w Toruniu <sup>317</sup>	<a href="https://bit.ly/3M0aN Y4">https://bit.ly/3M0aN Y4</a> .	
<p> <i>Nota bene:</i> In all cases the Polish Enforcement Authorities are competent to help OLAF with its investigations. The enforcement authorities are stipulated by the Act on Enforcement in the Administration from 1966 (as amended 2022).</p> <p><b>Article 5<sup>318</sup> [entities initiating enforcement proceedings]</b> § 1. Those entitled to demand performance by way of administrative enforcement of the obligations specified in art. 2 is:</p>			

<sup>317</sup> Voivodeship Labor Office in Toruń, see [https://wuptorun.praca.gov.pl/wykaz-zawodow-refundowanych?p\\_p\\_id=101&p\\_p\\_lifecycle=0&p\\_p\\_state=maximized&p\\_p\\_mode=view&\\_101\\_assetEntryId=5105012&\\_101\\_urlTitle=5105008-naduzycia-finansowe&\\_101\\_groupId=5078407&\\_101\\_type=content&\\_101\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content](https://wuptorun.praca.gov.pl/wykaz-zawodow-refundowanych?p_p_id=101&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&_101_assetEntryId=5105012&_101_urlTitle=5105008-naduzycia-finansowe&_101_groupId=5078407&_101_type=content&_101_struts_action=%2Fasset_publisher%2Fview_content). Accessed 6 August 2024-

<sup>318</sup> **Art. 5. [Podmioty inicjujące postępowanie egzekucyjne]**

§ 1. Uprawnionym do żądania wykonania w drodze egzekucji administracyjnej obowiązków określonych w art. 2 jest:

- 1) w odniesieniu do obowiązków wynikających z decyzji lub postanowień organów administracji rządowej i organów jednostek samorządu terytorialnego - właściwy do orzekania organ I instancji, z zastrzeżeniem pkt 4 i 4c;
- 2) dla obowiązków wynikających z orzeczeń sądów lub innych organów albo bezpośrednio z przepisów prawa - organ lub instytucja bezpośrednio zainteresowana w wykonaniu przez zobowiązanego obowiązku albo powołana do czuwania nad wykonaniem obowiązku, a w przypadku braku takiej jednostki lub jej bezczynności - podmiot, na którego rzecz wydane zostało orzeczenie lub którego interesy prawne zostały naruszone w wyniku niewykonania obowiązku;
- 3) dla obowiązków wynikających z tytułów wykonawczych wystawionych przez ministra właściwego do spraw finansów publicznych na podstawie art. 44 ustawy o poręczeniach i gwarancjach udzielanych przez Skarb Państwa oraz art. 16 ustawy o udzielaniu przez Skarb Państwa wsparcia instytucjom finansowym - minister właściwy do spraw finansów publicznych;
- 4) w odniesieniu do obowiązków wynikających z wydanych przez naczelnika urzędu celno-skarbowego decyzji, postanowień lub mandatów karnych, z przyjętych przez naczelnika urzędu celno-skarbowego zgłoszeń celnych, deklaracji, informacji o opłacie paliwowej, informacji o opłacie emisyjnej albo rozliczeń zamknięcia - właściwy naczelnik urzędu skarbowego;
- 4a) w odniesieniu do obowiązków wynikających z wydanych przez Szefa Krajowej Administracji Skarbowej decyzji lub postanowień - naczelnik urzędu skarbowego właściwy według adresu siedziby Szefa Krajowej Administracji Skarbowej, z zastrzeżeniem pkt 4c;

- 1) with regard to obligations arising from decisions or resolutions of government administration bodies and local government units – the authority of the first instance competent to adjudicate, subject to points 4 and 4c;
- 2) for obligations arising from decisions of courts or other authorities or directly from legal provisions – an authority or institution directly interested in the performance of the obligation by the obligated party or appointed to supervise the performance of the obligation, and in the absence of such an entity or its inactivity - the entity for which the decision was issued or whose legal interests have been violated as a result of failure to perform the obligation;
- 3) for the obligations resulting from the enforcement titles issued by the minister responsible for public finance pursuant to art. 44 of the Act on Sureties and Guarantees Granted by the State Treasury and Art. 16 of the Act on providing support to financial institutions by the State Treasury – the minister responsible for public finance;
- 4) with regard to the obligations arising from decisions, resolutions or fines issued by the head of the customs and tax office, from customs declarations, declarations, information on the fuel surcharge, information on the emission fee or closing settlements accepted by the **head of the customs and tax office** - the competent head of the tax office;
- 4a) **with regard to the obligations arising from decisions or provisions issued by the Head of the National Revenue Administration – the head of the tax office** competent at the address of the Head of the National Revenue Administration, subject to point 4c;
- 4b) with regard to the obligations arising from decisions or provisions issued by the director of the tax administration chamber – the head of the tax office competent at the address of the seat of the director of the tax administration chamber;

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4b) w odniesieniu do obowiązków wynikających z wydanych przez dyrektora izby administracji skarbowej decyzji lub postanowień - naczelnik urzędu skarbowego właściwy według adresu siedziby dyrektora izby administracji skarbowej;

4c) w odniesieniu do obowiązków wynikających z wydanych przez Szefa Krajowej Administracji Skarbowej decyzji lub postanowień w toku postępowania podatkowego, o którym mowa:

a) w art. 119g § 1 i 3 ustawy z dnia 29 sierpnia 1997 r. - Ordynacja podatkowa - właściwy naczelnik urzędu skarbowego,

b) w art. 119g § 2 ustawy z dnia 29 sierpnia 1997 r. - Ordynacja podatkowa - organ jednostki samorządu terytorialnego, na wniosek którego postępowanie podatkowe zostało przejęte;

5) w odniesieniu do grzywien nałożonych w drodze mandatu karnego w postępowaniu w sprawach o wykroczenia, stanowiących dochód budżetu państwa, z wyłączeniem grzywien nakładanych przez organy Inspekcji Transportu Drogowego - właściwy naczelnik urzędu skarbowego;

6) 11 w odniesieniu do opłat dodatkowych, o których mowa w art. 37ge ust. 1 i 2 ustawy z dnia 27 października 1994 r. o autostradach płatnych oraz o Krajowym Funduszu Drogowym - właściwy naczelnik urzędu skarbowego. § 2. 12 Uprawnione do żądania wykonania, w drodze egzekucji administracyjnej, obowiązków, o których mowa w art. 2 § 1 pkt 8 lit. a-f i h oraz pkt 9, jest również państwo członkowskie lub państwo trzecie.

§ 2a. Uprawniona do żądania wykonania, w drodze egzekucji administracyjnej, obowiązków, o których mowa w art. 2 § 1 pkt 8 lit. g, jest Państwowa Inspekcja Pracy.

§ 3. W postępowaniu egzekucyjnym wszczętym na wniosek państwa członkowskiego lub państwa trzeciego nie stosuje się przepisów regulujących prawa i obowiązki wierzyciela, chyba że ratyfikowana umowa międzynarodowa, której stroną jest Rzeczpospolita Polska, lub przepisy ustawy stanowią inaczej.



4c) with regard to the obligations arising from decisions or provisions issued by the Head of the National Revenue Administration in the course of the tax proceedings referred to:

And) in art. 119g § 1 and 3 of the Act of August 29, 1997 – Tax Ordinance – the competent head of the tax office,

b) in art. 119g § 2 of the Act of August 29, 1997 – Tax Code – the body of the local government unit, at the request of which the tax proceedings were taken over;

5) with regard to fines imposed by means of a penalty notice in proceedings in petty offence cases, constituting the state budget's income, excluding fines imposed by the Road Transport Inspection authorities - the competent head of the tax office;

6) 11 with regard to the additional fees referred to in Art. 37ge sec. 1 and 2 of the Act of 27 October 1994 on toll motorways and the National Road Fund – the competent head of the tax office.

§ 2. Authorised to demand performance, by way of administrative enforcement, of the obligations referred to in Art. 2 § 1 point 8 lit. af ih and point 9 is also a Member State or a third country.

§ 2a. Entitled to demand performance, by way of administrative enforcement, of the obligations referred to in Art. 2 § 1 point 8 lit. g, is the National Labor Inspectorate.

§ 3. In enforcement proceedings initiated at the request of a Member State or a third country, the provisions governing the rights and obligations of the creditor shall not apply, unless a ratified international agreement to which the Republic of Poland is a party, or the provisions of the Act provide otherwise.

Source: The authors.

## f) National law and “checks and inspections” of OLAF

The national law for checks and inspections in Poland can be summarised like follows: **10**

### National Law Relating to Checks

- Code of Administrative Procedure<sup>319</sup>
- Customs Law
- Code of conduct in cases of misdemeanours

### National Law Relating to Recommendations by OLAF

- Code of Criminal Procedure<sup>320</sup>
- Fiscal penal code<sup>321</sup>
- The Penal Code<sup>322</sup>

<sup>319</sup> Kodeks postępowania administracyjnego.

<sup>320</sup> Kodeks postępowania karnego.

<sup>321</sup> Kodeks karny skarbowy.

<sup>322</sup> Kodeks karny.

**aa. Administrative procedure in general**

- 11** The Polish Administrative procedure in general is regulated by the Code of Administrative Procedure, which aim it is to enable the Polish authorities to decide on the granting of administrative acts – e.g. positive decisions for the allocation of sums of a certain project etc.
- 12** The whole Act has the following structure:

Section 1. General provisions	Chapter 10. Appeals
Chapter 1. Scope	Chapter 11. Complaints
Chapter 2. General rules	Chapter 12. Resumption of proceedings
Chapter 3. Higher level authorities and supreme authorities	Chapter 13. Repeal, change and annulment of the decision
Chapter 4. Jurisdiction of authorities	Chapter 14 Simplified Proceedings
Chapter 5. Exclusion of the employee and the authority	Section III. Special provisions in matters of social security
Chapter 6. Page	Section IV. Participation of the prosecutor
Chapter 7. Getting things done	Section IVa. Administrative fines
Chapter 8. Deliveries	Section V. (repealed)
Chapter 9. Summons	Section VI. (repealed)
Chapter 10. Deadlines	Section VII. Issuing certificates
Section II. Procedure	Section VIII. Complaints and requests
Chapter 1. Initiation of proceedings	Chapter 1. General provisions
Chapter 2. Metrics, protocols and annotations	Chapter 2. Complaints
Chapter 3. File Sharing	Chapter 3. Conclusions
Chapter 4. Evidence	Chapter 4. Participation of the press and social organisations
Chapter 5. Hearing	Chapter 5. Receiving complaints and requests
Chapter 5a. Mediation	Chapter 6. Supervision and control
Chapter 6. Suspension of proceedings	Section VIIIa. European administrative cooperation
Chapter 7. Decisions	Section IX. Fees and costs of proceedings
Chapter 8. Settlement	Section X. Final provisions
Chapter 8a. Silent settlement of the matter	
Chapter 9. Provisions	

Art. 1 of this Act outlines the main objectives of the whole Act:

13

## Section I. General provisions

14

### Chapter 1. Scope

#### Article 1<sup>323</sup> Scope of regulation of the act

The Code of Administrative Procedure regulates:

- 1) proceedings before public administration authorities in individual cases falling within the jurisdiction of these authorities, resolved by administrative decisions or dealt with tacitly;
- 2) proceedings before other state authorities and other entities when they are established by law or under agreements to deal with the matters specified in point 1;
- 3) proceedings for resolving disputes over jurisdiction between the authorities of local government units and government administration authorities and between the authorities and entities referred to in point 2;
- 4) proceedings in matters of issuing certificates;
- 5) imposing or imposing administrative fines or granting relief in their execution;
- 6) the mode of European administrative cooperation.

Art. 1 para 6 is quite important as it ensures the application of Union law principles on Polish territory, the partnership and cooperation with other MS and an equal level of administration within the EU. According to Art. 3 para 1 1) this Act does not apply to proceedings in fiscal criminal cases.

15

The administrative procedure has to follow the objective truth:

16

#### Article 7<sup>324</sup> Principle of objective truth

In the course of the proceedings, public administration bodies guard the rule of law, ex officio or at the request of the parties, they take all actions necessary to thoroughly clarify the facts and to settle the matter, bearing in mind the public interest and the legitimate interest of citizens.

17

#### <sup>323</sup> Art. 1. Zakres regulacji ustawy

Kodeks postępowania administracyjnego normuje:

- 1) postępowanie przed organami administracji publicznej w należących do właściwości tych organów sprawach indywidualnych rozstrzyganych w drodze decyzji administracyjnych albo załatwianych milcząco;
- 2) postępowanie przed innymi organami państwowymi oraz przed innymi podmiotami, gdy są one powołane z mocy prawa lub na podstawie porozumień do załatwiania spraw określonych w pkt 1;
- 3) postępowanie w sprawach rozstrzygania sporów o właściwość między organami jednostek samorządu terytorialnego i organami administracji rządowej oraz między organami i podmiotami, o których mowa w pkt 2;
- 4) postępowanie w sprawach wydawania zaświadczeń;
- 5) nakładanie lub wymierzanie administracyjnych kar pieniężnych lub udzielanie ulg w ich wykonaniu;
- 6) tryb europejskiej współpracy administracyjnej.

#### <sup>324</sup> Art. 7. Zasada prawdy obiektywnej

W toku postępowania organy administracji publicznej stoją na straży praworządności, z urzędu lub na wniosek stron podejmują wszelkie czynności niezbędne do dokładnego wyjaśnienia stanu faktycznego oraz do załatwienia sprawy, mając na względzie interes społeczny i słuszny interes obywateli.

18 According to Section 2 of the Act, which regulates the Administrative procedure, the procedure is started either ex officio or via a request of a party:

19 **Chapter 1. Initiation of proceedings**

**Article 61<sup>325</sup> Initiation of administrative proceedings**

§ 1. Administrative proceedings are initiated at the request of a party or ex officio.

§ 2. A public administration body may, due to a particularly important interest of a party, initiate proceedings ex officio also in a case where the law requires an application by the party. The authority is obliged to obtain the consent of the party in the course of the proceedings, and if the consent is not obtained - discontinue the proceedings.

§ 3. The date of initiation of proceedings at the request of a party is the date of delivery of the request to the public administration body.

§ 3a. The date of initiation of the proceedings at the request of the party submitted electronically is the date of issuing the proof of receipt referred to in art. 41 conditions for issuing proofs of receipt the Act of November 18, 2020 on electronic deliveries.

§ 4. The initiation of the proceedings ex officio or at the request of one of the parties must be notified to all persons who are parties to the case.

§ 5. The public administration body shall provide the information referred to in Art. 13 information provided in the case of collecting data from the data subject sec. 1 and 2 of Regulation 2016/679, at the first action addressed to the party, unless the party has this information and its scope or content has not changed.

**bb. Special administrative powers and provisions in certain areas of revenue and expenditure**

20 Duties subject to enforcement and therefore part of investigations (in case of irregularities or fraud) are according to the Act on Enforcement Proceedings in Administration the following EU-law derived duties:

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<sup>325</sup> **Art. 61. Wszczęcie postępowania administracyjnego**

§ 1. Postępowanie administracyjne wszczyna się na żądanie strony lub z urzędu.

§ 2. Organ administracji publicznej może ze względu na szczególnie ważny interes strony wszcząć z urzędu postępowanie także w sprawie, w której przepis prawa wymaga wniosku strony. Organ obowiązany jest uzyskać na to zgodę strony w toku postępowania, a w razie nieuzyskania zgody - postępowanie umorzyć.

§ 3. Datą wszczęcia postępowania na żądanie strony jest dzień doręczenia żądania organowi administracji publicznej.

§ 3a. Datą wszczęcia postępowania na żądanie strony wniesione drogą elektroniczną jest dzień wystawienia dowodu otrzymania, o którym mowa w art. 41 warunki wystawiania dowodów otrzymania ustawy z dnia 18 listopada 2020 r. o doręczeniach elektronicznych.

§ 4. O wszczęciu postępowania z urzędu lub na żądanie jednej ze stron należy zawiadomić wszystkie osoby będące stronami w sprawie.

§ 5. Organ administracji publicznej przekazuje informacje, o których mowa w art. 13 informacje podawane w przypadku zbierania danych od osoby, której dane dotyczą ust. 1 i 2 rozporządzenia 2016/679, przy pierwszej czynności skierowanej do strony, chyba że strona posiada te informacje, a ich zakres lub treść nie uległy zmianie.

**Article 2<sup>326</sup> Duties subject to enforcement**

§ 1. The following obligations are subject to administrative enforcement:

8) Monetary claims of a Member State arising from:

and) taxes and duties collected by or on behalf of that country, by or on behalf of its territorial or administrative subdivisions, including local authorities, and on behalf of the European Union,

b) refunds, interventions and other measures forming part of the total or partial financing system of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), including the amounts due in connection with these measures,

c) fees and other pecuniary charges provided for under the common organisation of the market of the European Union for the sugar sector,

d) penalties, fines, administrative fees and surcharges related to the pecuniary claims referred to in point (a) ac, imposed by the authorities competent to collect taxes and customs duties or competent to conduct administrative proceedings regarding taxes and customs duties or confirmed by administrative or court authorities at the request of the authorities competent in the field of taxes and customs duties.

**(1) Administrative provisions****(a) Administrative provisions in the area of customs duties and value added tax (VAT) = revenue****(aa) Principle of investigation and General principles**

In the area of customs duties the Customs law, an Act of 19 March 2004 (last amendment 2023) applies. The Polish Customs law has the following structure: **22**

**<sup>326</sup> Art. 2. [Obowiązki podlegające egzekucji]**

§ 1. Egzekucji administracyjnej podlegają następujące obowiązki:

8) należności pieniężne państwa członkowskiego wynikające z tytułu:

a) podatków i należności celnych pobieranych przez to państwo lub w jego imieniu, przez jego jednostki podziału terytorialnego lub administracyjnego, w tym organy lokalne, lub w imieniu tych jednostek lub organów, a także w imieniu Unii Europejskiej,

b) refundacji, interwencji i innych środków stanowiących część całkowitego lub częściowego systemu finansowania Europejskiego Funduszu Rolniczego Gwarancji (EFRG) oraz Europejskiego Funduszu Rolniczego Rozwoju Obszarów Wiejskich (EFRROW), w tym kwot należnych w związku z tymi działaniami,

c) opłat i innych należności pieniężnych przewidzianych w ramach wspólnej organizacji rynku Unii Europejskiej dla sektora cukru,

d) kar, grzywnien, opłat i dopłat administracyjnych związanych z należnościami pieniężnymi, o których mowa w lit. a-c, nałożonych przez organy właściwe do pobierania podatków i należności celnych lub właściwe do prowadzenia postępowań administracyjnych dotyczących podatków i należności celnych lub potwierdzonych przez organy administracyjne lub sądowe na wniosek organów właściwych w sprawie podatków i należności celnych,

23

Chapter 1. General provisions (Articles 1–13b)
Chapter 2. Bringing goods into the customs territory of the Union and regularizing the situation of goods (Articles 14–35b)
Chapter 3. Duty exemptions (Articles 36–50)
Chapter 4. Customs debt (Articles 51–68a)
Chapter 4a. The export referred to in Art. 140 sec. 2 of the Delegated Regulation (Article 68b)
Chapter 5. Customs authorities and their jurisdiction (Articles 69–72)
Chapter 6. Proceedings in customs matters (Articles 73–95b)
Chapter 7. Rules for dealing with goods covered by the Common Agricultural Policy (Article 96)
Chapter 8. Records and statistics on trade in goods with the Member States of the Union (Articles 97–102)
Chapter 9. Final provision (Article 103)

24 In the area of tax collection the Tax Code and the VAT Code apply. The *ex officio* principle is regulated by the Tax Code:

25

### Initiation of proceedings

**Article 165<sup>327</sup> Decision to initiate tax proceedings** § 1. Tax proceedings are initiated at the request of a party or *ex officio*.

#### <sup>327</sup> Wszczęcie postępowania

##### **Art. 165 [Postanowienie o wszczęciu postępowania podatkowego]**

§ 1. Postępowanie podatkowe wszczyna się na wniosek strony lub z urzędu.

§ 2. Wszczęcie postępowania z zastosowaniem w formie postanowienia.

§ 3. Datą wszczęcia postępowania na wniosek strony jest data doręczenia wniosku organowi podatkowemu, z zastrzeżeniem art. 165a.

§ 3a. Organ podatkowy zawiadamia pozostałe strony sprawy o wszczęciu postępowania na wniosek jednej ze stron.

§ 3b. Datą wszczęcia postępowania na wniosek strony złożony na adres do doręczeń drogą elektroniczną jest data wystawienia potwierdzenia odbioru, o którym mowa w art. 41 ustawy z dnia 18 listopada 2020 r. o doręczeniach drogą elektroniczną.

§ 4. Datą wszczęcia postępowania z postępowaniem jest dzień doręczenia strony przepisów o wszczęciu postępowania.

§ 5. Przepisów § 2 i § 4 nie stosuje się do postępowania w sprawie:

1) określenie zobowiązania podatkowego, które zgodnie z odrębnymi przepisami ustalane jest corocznie, jeżeli nie zmieniły się okoliczności, na podstawie których ustalono wysokość zobowiązania podatkowego za poprzedni okres;

2) umorzenie zaległości podatkowej w przypadkach, o których mowa w art. 67d § 1;

3) nadanie decyzji natychmiastowej wykonalności;

4) bezpieczeństwo;

5) uznania wpłaty, nadpłaty lub zwrotu podatku;

6) zawieszenie wykonania decyzji;

7) wygaśnięcie decyzji.

§ 6. (uchylony).

§ 7. Organ podatkowy nie wydaje decyzji o wszczęciu postępowania, jeżeli:

§ 2. Initiation of proceedings ex officio takes the form of a decision.

§ 3. The date of initiation of the proceedings at the request of the party is the date of delivery of the request to the tax authority, subject to art. 165a.

§ 3a. The tax authority shall notify all other parties to the case of the initiation of the proceedings at the request of one of the parties.

§ 3b. The date of initiation of the proceedings at the party's request submitted to the address for electronic service is the date of issuing the proof of receipt referred to in Art. 41 of the Act of November 18, 2020 on electronic deliveries.

§ 4. The date of initiation of proceedings ex officio is the date of delivery to the party of the decision to initiate proceedings.

§ 5. The provisions of § 2 and § 4 shall not apply to proceedings in the case of:

- 1) determination of tax liabilities, which, in accordance with separate regulations, are determined annually, if the facts on the basis of which the amount of the tax liability for the previous period was established has not changed;
- 2) remission of tax arrears in the cases referred to in Art. 67d § 1;
- 3) making the decision immediately enforceable;
- 4) security;
- 5) crediting the payment, overpayment or tax refund;
- 6) suspension of the execution of a decision;
- 7) expiry of the decision.

§ 6. (repealed).

§ 7. The tax authority does not issue a decision to initiate proceedings if:

- 1) tax return by inheritance and gift tax payers;
- 2) information by taxpayers of real estate tax, agricultural tax and forestry tax;
- 3) declarations for the assessment of income tax advances on income from special sections of agricultural production by taxpayers of personal income tax;
- 4) information about the tax scheme.

§ 8. In the cases listed in § 7, the date of initiation of the proceedings is the date of submission of the testimony, declaration or information, respectively.

§ 9. The tax authority shall provide the information referred to in Art. 13 sec. 1 and 2 of Regulation 2016/679, at the first action addressed to the party, unless the party has this information and its scope or content has not changed.

1) zeznanie podatkowe przez podatników podatku od spadków i darowizn;

2) informacje przez podatników podatku od nieruchomości, podatku rolnego i podatku leśnego;

3) deklaracje do wymiaru zaliczek na podatek dochodowy od dochodów z działów specjalnych produkcji rolnej przez podatników podatku dochodowego od osób fizycznych;

4) informacje o schemacie podatkowym.

§ 8. W przypadkach wymienionych w § 7 datą wszczęcia postępowania jest data złożenia odpowiednio zeznań, oświadczenia lub informacji.

§ 9. Organ podatkowy przekazuje informacje, o których mowa w art. 13 sek. 1 i 2 rozporządzenia 2016/679, przy pierwszej czynności skierowanej do strony, chyba że strona posiada te informacje, a ich zakres lub treść nie uległy zmianie.

**Article 165a<sup>328</sup> [Order refusing to initiate tax proceedings]** § 1. When the request referred to in Art. 165, was brought by a person who is not a party or for any other reasons the proceedings cannot be initiated, the tax authority shall issue a decision refusing to initiate the proceedings. The provision of art. 165 § 9 shall apply accordingly.  
 § 2. The order referred to in § 1 may be appealed against.

**Article 165b<sup>329</sup> [Initiation of proceedings after disclosing irregularities by tax inspection]**

§ 1. If the tax audit reveals irregularities as to the controlled party's compliance with the obligations arising from the provisions of the tax law and the taxpayer fails to submit a declaration or fails to correct the declaration in its entirety taking into account the revealed irregularities, the tax authority shall initiate tax proceedings in the case that was the subject of the tax audit not later than within 6 months from the end of the inspection.

§ 2. The provision of § 1 shall not apply if the explanations or objections to the inspection report submitted by the inspected party have been fully taken into account by the inspectors.

§ 3. In the case referred to in § 1, tax proceedings may also be initiated after 6 months from the end of the tax audit, if:

- 1) the taxpayer makes a new correction of the declaration, which will not take into account the irregularities revealed in the tax inspection;
- 2) the tax authority receives information from the tax authorities or other authorities justifying the initiation of tax proceedings.

26 The controls in this area are prescribed by the National Tax and Revenue Authority Act:

<sup>328</sup> Art. 165a. [Postanowienie o odmowie wszczęcia postępowania podatkowego]

§ 1. Gdy żądanie, o którym mowa w art. 165, zostało wniesione przez osobę niebędącą stroną lub z jakichkolwiek innych przyczyn postępowanie nie może być wszczęte, organ podatkowy wydaje postanowienie o odmowie wszczęcia postępowania. Przepis art. 165 § 9 stosuje się odpowiednio.

§ 2. Na postanowienie, o którym mowa w § 1, służy zażalenie.

<sup>329</sup> Art. 165b. [Wszczęcie postępowania po ujawnieniu nieprawidłowości przez kontrolę podatkową]

§ 1. W przypadku ujawnienia przez kontrolę podatkową nieprawidłowości co do wywiązywania się przez kontrolowanego z obowiązków wynikających z przepisów prawa podatkowego oraz niezłożenia przez podatnika deklaracji lub niedokonania przez niego korekty deklaracji w całości uwzględniającej ujawnione nieprawidłowości, organ podatkowy wszczyna postępowanie podatkowe w sprawie, która była przedmiotem kontroli podatkowej, nie później niż w terminie 6 miesięcy od zakończenia kontroli.

§ 2. Przepisu § 1 nie stosuje się w przypadku, gdy złożone przez kontrolowanego wyjaśnienia lub zastrzeżenia do protokołu kontroli zostały w całości uwzględnione przez kontrolujących.

§ 3. W przypadku, o którym mowa w § 1, postępowanie podatkowe może być wszczęte także po upływie 6 miesięcy od zakończenia kontroli podatkowej, jeżeli:

- 1) podatnik dokona ponownej korekty deklaracji, w której nie zostaną uwzględnione nieprawidłowości ujawnione w kontroli podatkowej;
- 2) organ podatkowy otrzyma informacje od organów podatkowych lub od innych organów, uzasadniające wszczęcie postępowania podatkowego.



**Article 62<sup>330</sup> [Checks]** 1. Customs and fiscal control is initiated ex officio, based on the authorisation to carry out customs and fiscal control granted to the inspector.

The jurisdiction of Polish authorities in **the area of tax duties** is regulated by the Tax Code: **27**

**Chapter 2 Jurisdiction of the tax authorities** **28**

**Article 15 [Obligation to comply with the properties by the tax authorities]**

§ 1. The tax authorities shall ex officio observe their material and local jurisdiction.

§ 2. The property and local jurisdiction is determined taking into account also the scope of tasks and the territorial scope of operation of the tax authorities, specified on the basis of separate provisions.

**Article 16 [competence of the tax authorities]**

The jurisdiction of the tax authorities shall be determined in accordance with the provisions specifying the scope of their activities.

**Article 17 [place of jurisdiction of the tax authorities]**

§ 1. Unless the tax laws provide otherwise, the jurisdiction of the tax authorities shall be determined according to the place of residence or the address of the registered office of the taxpayer, tax remitter, tax collector or entity referred to in art. 133 § 2.

§ 2. The proper Minister of public finances may determine, by regulation, the local jurisdiction of the tax authorities in matters of certain tax liabilities or specific categories of taxpayers, payers or tax collectors in a manner different from that specified in § 1, taking into account, in particular, having a place of residence or registered office abroad, the place of obtaining income and the location of the subject of taxation.

These general principles apply in the tax area. **29**

**Section IV Tax proceedings**

**Chapter 1 General rules**

**Article 120<sup>331</sup> [Principle of legalism in tax proceedings]**

Tax authorities operate on the basis of the law.

<sup>330</sup> **Art. 62. [Czynności kontrolne]**

1. Wszczęcie kontroli celno-skarbowej następuje z urzędu, na podstawie upoważnienia do przeprowadzenia kontroli celno-skarbowej udzielonego kontrolującemu.

<sup>331</sup> **Art. 120. [Zasada legalizmu w postępowaniu podatkowym]** Organy podatkowe działają na podstawie przepisów prawa.

**Article 121<sup>332</sup> [The principle of conducting tax proceedings in a trustworthy manner; information principle]**

§ 1. Tax proceedings should be conducted in a manner that inspires confidence in the tax authorities.

§ 2. In tax proceedings, the tax authorities are obliged to provide the necessary information and explanations about the provisions of the tax law related to the subject of the proceedings.

**Article 122<sup>333</sup> [The principle of objective truth in tax proceedings]**

In the course of the proceedings, the tax authorities take all necessary actions in order to thoroughly clarify the facts and settle the matter in tax proceedings.

**Article 123<sup>334</sup> [Principle of active participation of parties in tax proceedings]**

§ 1. The tax authorities are obliged to ensure the active participation of the parties at every stage of the proceedings, and before issuing a decision, enable them to comment on the collected evidence and materials and the submitted requests.

§ 2. The tax authority may depart from the rule provided for in § 1, if, as a result of the proceedings initiated at the request of the party, a decision is to be issued that fully takes into account the request of the party, and in the cases referred to in art. 200 § 2 point 2.

**(bb) External audit**

30 The tax audits are regulated by the General Tax Code.

31 **Chapter 3 Tax audit**

**Article 20zg. [Types and purposes of tax audit]**

The tax audit is carried out by the Head of the National Revenue Administration towards the taxpayer before the conclusion of the cooperation agreement (preliminary audit) and during the term of the cooperation agreement (monitoring audit) in order to check:

<sup>332</sup> **Art. 121. [Zasada prowadzenia postępowania podatkowego w sposób budzący zaufanie; zasada udzielania informacji]**

§ 1. Postępowanie podatkowe powinno być prowadzone w sposób budzący zaufanie do organów podatkowych.

§ 2. Organy podatkowe w postępowaniu podatkowym obowiązane są udzielać niezbędnych informacji i wyjaśnień o przepisach prawa podatkowego pozostających w związku z przedmiotem tego postępowania.

<sup>333</sup> **Art. 122. [Zasada prawdy obiektywnej w postępowaniu podatkowym]** W toku postępowania organy podatkowe podejmują wszelkie niezbędne działania w celu dokładnego wyjaśnienia stanu faktycznego oraz załatwienia sprawy w postępowaniu podatkowym.

<sup>334</sup> **Art. 123. [Zasada czynnego udziału stron w postępowaniu podatkowym]**

§ 1. Organy podatkowe obowiązane są zapewnić stronom czynny udział w każdym stadium postępowania, a przed wydaniem decyzji umożliwić im wypowiedzenie się co do zebranych dowodów i materiałów oraz zgłoszonych żądań.

§ 2. Organ podatkowy może odstąpić od zasady przewidzianej w § 1, jeżeli w wyniku postępowania wszczętego na wniosek strony ma zostać wydana decyzja w całości uwzględniająca wniosek strony, oraz w przypadkach, o których mowa w art. 200 § 2 pkt 2.

- 1) correct fulfillment of tax obligations;
- 2) the effectiveness and adequacy of the internal tax oversight framework.

**Article 20zh. [Obligation to provide documents and information necessary to conduct a tax audit]**

§ 1. The taxpayer is obliged to provide, at the request of the Head of the National Revenue Administration, documents and information necessary to conduct a tax audit.

§ 2. Documents and information recognized by the Head of the National Revenue Administration as containing a trade secret are destroyed within 2 months from the date of:

- 1) termination of the cooperation agreement;
- 2) completion of the pre-audit, if the pre-audit was completed with an opinion - if the cooperation agreement was not concluded;
- 3) completion of the verification of the taxpayer's compliance with the issued recommendations referred to in art. 20zi § 1 point 2 - in the event of failure to conclude a cooperation agreement.

**Article 20zi. [Opinions and recommendations prepared on the basis of a tax audit]**

§ 1. From the conducted tax audit, the Head of the National Revenue Administration draws up:

- 1) positive feedback or
- 2) recommendations indicating what actions the taxpayer should take in order to remove the irregularities found during this audit, together with the justification, or
- 3) negative opinion.

§ 2. The monitoring audit is performed on a continuous basis.

§ 3. The opinion and recommendations are immediately forwarded to the taxpayer.

§ 4. The deadline for the implementation of actions taken in connection with the submitted recommendations is agreed by the taxpayer with the Head of the National Revenue Administration.

§ 5. If the taxpayer complies with the recommendations of the initial audit, the audit may be resumed for the period necessary to verify the taxpayer's compliance with these recommendations.

**Article 20 zj. [Preliminary Audit]**

§ 1. The Head of the National Revenue Administration decides about the conduct of the preliminary audit and its scope, taking into account the assessment of the tax risk identified with the taxpayer applying for the conclusion of the cooperation agreement.

§ 2. The taxpayer is informed about the scope of the preliminary audit.

§ 3. The schedule of activities undertaken as part of the preliminary audit is agreed by the Head of the National Revenue Administration with the taxpayer.

§ 4. The preliminary audit in terms of the correctness of fulfilling tax obligations covers 2 tax years preceding the year in which the taxpayer applied for signing the cooperation agreement, and the period from the beginning of the tax year in which the taxpayer submitted the application to the date of completion of this audit.


§ 5. The preliminary audit in terms of the correctness of the fulfillment of tax obligations by the legal successor of the taxpayer who has entered into a cooperation agreement may cover a shorter period than specified in § 4.

**Article 282 [Taking tax audit ex officio]**

Tax audit is undertaken ex officio.

**(cc) Tax and customs investigation (Customs Code/General Tax Code)**

*Case Study 5: No conflict situation*

	<p><b>Case-Study:</b></p>
<p>In the area of customs and taxes the customs law and the tax Ordinance apply.</p> <p>The customs law stipulates:</p> <p><b>Article 88</b><sup>335</sup> Proceedings concerning a tax offence, tax offence or criminal proceedings shall not constitute an obstacle to conducting customs proceedings.</p>	

**(dd) Fiscal supervision**

32 The Fiscal Supervision is organized by the Polish Ministry of Justice.

33 **Article 14**<sup>336</sup> **[Supervision in tax matters]** § 1. The Head of the National Revenue Administration exercises general supervision in tax matters.

§ 2. As part of the supervision referred to in § 1, the Head of the National Revenue Administration, in order to perform statutory tasks, in particular analytical and reporting tasks, may process data resulting from tax returns submitted to the heads of tax offices and heads of customs and tax offices, as well as information obtained on the basis of the provisions of Section III, Chapter 11a.

<sup>335</sup> **Art. 88.** Prowadzenie postępowania w sprawie o przestępstwo skarbowe, wykroczenie skarbowe lub postępowania karnego nie stanowi przeszkody do prowadzenia postępowania w sprawie celnej.

<sup>336</sup> **Art. 14. [Nadzór w sprawach podatkowych]**

§ 1. Szef Krajowej Administracji Skarbowej sprawuje ogólny nadzór w sprawach podatkowych.

§ 2. W ramach nadzoru, o którym mowa w § 1, Szef Krajowej Administracji Skarbowej w celu wykonywania ustawowych zadań, w szczególności zadań analityczno-sprawozdawczych, może przetwarzać dane wynikające z deklaracji podatkowych składanych do naczelników urzędów skarbowych oraz naczelników urzędów celno-skarbowych, a także informacje uzyskane na podstawie przepisów działu III rozdziału 11a.

§ 3. Przetwarzanie danych, o którym mowa w § 2, odbywa się z zachowaniem przepisów o ochronie danych osobowych oraz tajemnic ustawowo chronionych.

§ 4. (uchylony).

§ 3. The data processing referred to in § 2 is carried out in compliance with the provisions on the protection of personal data and secrets protected by law.

§ 4. (repealed)

The Polish Tax Administration accepts the determination of EU law in this area and the judgements of the ECJ: **34**

### **Chapter 1a Interpretations of tax law provisions**

#### **Article 14a [General tax interpretations; tax explanations]**

§ 1. The minister competent for public finance shall strive to ensure uniform application of tax law by tax authorities, in particular:

- 1) when interpreting them, ex officio or upon request (general interpretations),
  - 2) issuing ex officio general explanations of tax law provisions regarding the application of these provisions (tax explanations)
- taking into account the jurisprudence of the courts, the Constitutional Tribunal or the Court of Justice of the European Union.

**35**

#### **(b) Administrative provisions in the area of structural funds and internal policies (interne Politiken) = expenditure**

##### **(aa) Structural funds**

In the area of structural funds the beneficiaries are bound by many obligations. If they do not follow these obligations, which are either requested by the EU Regulations itself or the Polish national law, they might trigger the suspicion for irregularities. Taking the ERASMUS+ Regulation as an example for EU financing via EU structural funds in Poland, one can see that the importance of EU law must be controlled by national authorities. The process encompasses the procurement of the money reserved for projects that fulfill the small aims of the whole Regulation and the sectoral aims in general. The current Regulation, which is applicable is Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation (EU) No 1288/2013. **36**

The recitals of this Regulation explains and defines national authorities as “one or more authorities in charge, at national level, of monitoring and supervising the management of the Programme in a Member State or in a third country associated to the Programme”. Above this general definition the new legislation has obliged the Member States to act in the following manner: **37**

38

“Chapter X Management and Audit System

Art. 26 National authority

3. By 29 August 2021, the national authority shall designate a national agency for the duration of the Programme. A national authority shall not designate a ministry as a national agency. National authorities may designate more than one national agency. In cases where there is more than one national agency, Member States shall establish an appropriate mechanism to coordinate the management of the implementation of the Programme at national level, particularly with a view to ensuring coherent and cost-efficient implementation of the Programme and effective contact with the Commission in that respect, and to facilitating the possible transfer of funds between national agencies, thereby allowing for flexibility and better use of funds allocated to Member States. Each Member State shall determine how it organises the relationship between its national authority and the national agency, including tasks such as the establishment of the national agency’s work programme.”<sup>337</sup>

39 Above the overall preventive tasks, which must be implemented by these authorities, the main authority must as well operate in the area of audits:

40 “10. The national authority shall take responsibility for the proper management of the Union funds transferred by the Commission to the national agency in the framework of the Programme.

11. In the event of any irregularity, negligence or fraud attributable to the national agency, or any serious shortcomings or underperformance on the part of the national agency, where this gives rise to claims by the Commission against the national agency, the national authority shall reimburse the Commission for the funds not recovered.

12. In the circumstances referred to in paragraph 11, the national authority may, on its own initiative or upon request from the Commission, revoke the mandate of the national agency. Where the national authority wishes to revoke that mandate for any other justified reason, it shall notify the Commission of the revocation at least six months before the envisaged date of termination of the mandate of the national agency. In such cases,

<sup>337</sup> 3. Do dnia 29 sierpnia 2021 r. organ krajowy wyznacza agencję narodową na czas trwania Programu. Władza krajowa nie wyznacza ministerstwa jako agencji narodowej. Organy krajowe mogą wyznaczyć więcej niż jedną agencję narodową. W przypadku gdy istnieje więcej niż jedna agencja narodowa, państwa członkowskie ustanawiają odpowiedni mechanizm koordynujący zarządzanie wdrażaniem programu na poziomie krajowym, w szczególności w celu zapewnienia spójnej i oszczędnej realizacji programu oraz skutecznego kontaktu z Komisją w tym zakresie oraz ułatwianie ewentualnego transferu środków między agencjami krajowymi, umożliwiając w ten sposób elastyczność i lepsze wykorzystanie funduszy przyznanych państwom członkowskim. Każde państwo członkowskie określa, w jaki sposób organizuje stosunki między swoim organem krajowym a agencją narodową, w tym takie zadania, jak ustalanie programu pracy agencji narodowej.

the national authority and the Commission shall formally agree on specific and timed transition measures.”<sup>338</sup>

Most problematic irregularities in the area of structural funds and internal policies are eligible costs. 41

**(bb) Internal policies**

The internal policies are regulated by several laws. Poland changed its laws in 2023 in order to settle disputes within the conditionality mechanism. 42

- Ordinance of the Minister of Agriculture and Rural Development 1 of June 15, 2023 on the conditions and procedure for granting and settling advance payments and the scope and deadlines for submitting payment applications under the program financed with the participation of the European Maritime and Fisheries Fund<sup>339</sup>

Mostly special rules are established by the Ministries of the relevant sector in Poland and issued public via Regulations or Ordinances. 43

**(c) Administrative provisions in the area of the common organisation of the markets= expenditure**

In the area of the common organisation of the markets, one special provision from the Polish Customs Law shall be mentioned as it relates to the important sector of agriculture: 44

**Chapter 7 Rules for dealing with goods covered by the Common Agricultural Policy** 45

**Article 96**<sup>340</sup> 1. To the extent provided for customs authorities, the handling of goods covered by the Common Agricultural Policy shall include activities related to the

<sup>338</sup> 10. Władza krajowa ponosi odpowiedzialność za właściwe zarządzanie środkami unijnymi przekazanymi przez Komisję agencji narodowej w ramach Programu.

11. W przypadku jakichkolwiek nieprawidłowości, zaniedbań lub nadużyć finansowych, które można przypisać agencji narodowej, lub jakichkolwiek poważnych uchybień lub słabych wyników ze strony agencji narodowej, jeżeli powoduje to roszczenia Komisji wobec agencji narodowej, organ krajowy zwrócić Komisji nieodzyskane środki.

12. W okolicznościach, o których mowa w ust. 11, organ krajowy może, z własnej inicjatywy lub na wniosek Komisji, cofnąć mandat agencji narodowej. Jeżeli organ krajowy chce cofnąć ten mandat z jakiegokolwiek innego uzasadnionego powodu, powiadamia o tym Komisję co najmniej sześć miesięcy przed przewidywaną datą wygaśnięcia mandatu agencji narodowej. W takich przypadkach organ krajowy i Komisja formalnie uzgadniają konkretne i określone w czasie środki przejściowe.

<sup>339</sup> Rozporządzenie Ministra Rolnictwa i Rozwoju Wsi z dnia 15 czerwca 2023 r. w sprawie warunków i trybu udzielania i rozliczania zaliczek oraz zakresu i terminów składania wniosków o płatność w ramach programu finansowanego z udziałem środków Europejskiego Funduszu Morskiego i Rybackiego.

<sup>340</sup> **Rozdział 7 Zasady postępowania z towarami objętymi Wspólną Polityką Rolną**  
Pokaż inne wersje czasowe tego przepisu

importation of goods into and exportation of goods from the customs territory of the Union, and:

- 1) checking and balancing import or export licenses and IP certificates referred to in Art. 1 sec. 1 of Commission Regulation (EC) No 1488/2001 of 19 July 2001 laying down rules for the application of Council Regulation (EC) No 3448/93 as regards the inclusion of certain quantities of certain basic products listed in Annex I to the Treaty establishing the European Community with processing arrangements without prior examination of economic conditions (Journal of Laws UE L 196 of 20.07.2001, p. 9, as amended; Journal of Laws of the UE Polish special edition, chapter 3, vol. 33, p. 126, as amended);
- 2) accepting, checking and confirming applications for reimbursement;
- 3) collection and laboratory testing of samples of goods;
- 4) issuing permits to run food warehouses;
- 5) issuing authorisations for the planned procedure;
- 6) recognition of loading places for the purposes of clearance of goods exported with an application for a refund;

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**Art. 96.** 1. W zakresie przewidzianym dla organów celnych postępowanie z towarami objętymi Wspólną Polityką Rolną obejmuje czynności związane z przywozem towarów na obszar celny Unii i wywozem towarów z tego obszaru oraz:

- 1) sprawdzanie i saldowanie pozwoleń na przywóz lub wywóz oraz świadectw IP, o których mowa w art. 1 ust. 1 rozporządzenia Komisji (WE) nr 1488/2001 z dnia 19 lipca 2001 r. ustanawiającego zasady stosowania rozporządzenia Rady (WE) nr 3448/93 w odniesieniu do obejmowania pewnych ilości niektórych produktów podstawowych wymienionych w załączniku I do Traktatu ustanawiającego Wspólnotę Europejską ustaleniami dotyczącymi uszlachetniania czynnego bez uprzedniego badania warunków gospodarczych (Dz. Urz. UE L 196 z 20.07.2001, str. 9, z późn. zm.; Dz. Urz. UE Polskie wydanie specjalne, rozdz. 3, t. 33, str. 126, z późn. zm.);
  - 2) przyjmowanie, sprawdzanie i potwierdzanie wniosków o refundację;
  - 3) pobór i badania laboratoryjne próbek towarów;
  - 4) wydawanie pozwoleń na prowadzenie magazynów żywnościowych;
  - 5) wydawanie pozwoleń na stosowanie procedury planowej;
  - 6) uznawanie miejsc załadunku dla potrzeb odpraw towarów wywożonych z wnioskiem o refundację;
  - 7) wykonywanie czynności dozoru i kontroli celnej w miejscach, w których towary objęte refundacją są składowane lub przetwarzane przed ich wywozem;
  - 8) inne czynności wynikające z przepisów unijnych regulujących Wspólną Politykę Rolną.
2. Przy wykonywaniu czynności, o których mowa w ust. 1, przepisy dotyczące przywozu towarów na obszar celny Unii i wywozu towarów z tego obszaru oraz wykonywania czynności kontroli celnej stosuje się odpowiednio.
3. Czynności w ramach postępowania z towarami objętymi Wspólną Polityką Rolną w zakresie przewidzianym dla organów celnych są realizowane we współpracy z właściwą agencją płatniczą ustanowioną w przepisach odrębnych.
4. Minister właściwy do spraw finansów publicznych w porozumieniu z ministrem właściwym do spraw rynków rolnych może określić, w drodze rozporządzenia, sposób współpracy organów celnych z agencją płatniczą przy wykonywaniu zadań wynikających z przepisów unijnych regulujących Wspólną Politykę Rolną, uwzględniając konieczność zapewnienia prawidłowej realizacji tych zadań.
5. Minister właściwy do spraw finansów publicznych w porozumieniu z ministrem właściwym do spraw rynków rolnych może określić, w drodze rozporządzenia, dokumenty stosowane w obrocie towarami objętymi Wspólną Polityką Rolną oraz szczegółowe warunki i tryb postępowania z tymi towarami, w zakresie przewidzianym dla organów celnych, mając na uwadze zapewnienie właściwego dozoru i kontroli celnej oraz wykonywania zadań wynikających z przepisów unijnych regulujących Wspólną Politykę Rolną. Rozporządzenie powinno określać wzory i szczegółowy sposób stosowania dokumentów, szczegółowe warunki i tryb wydawania pozwoleń na prowadzenie magazynów żywnościowych i stosowanie procedury planowej oraz szczegółowe warunki i tryb uznawania miejsc uznanych na potrzeby załadunku.



- 7) performing supervision and customs control activities in places where the goods covered by the refund are stored or processed before their export;
- 8) other activities resulting from the EU regulations governing the Common Agricultural Policy.
2. When performing the activities referred to in para. 1, the provisions on the import of goods into the customs territory of the Union and the export of goods from this area and the performance of customs control activities shall apply accordingly.
3. Activities in the course of dealing with goods covered by the Common Agricultural Policy to the extent provided for the customs authorities are carried out in cooperation with the competent paying agency established in separate provisions.
4. The minister competent for public finances in consultation with the minister competent for agricultural markets may specify, by regulation, the manner of cooperation between the customs authorities and the paying agency in the performance of tasks resulting from the EU provisions governing the common agricultural policy, taking into account the need to ensure the proper implementation of these tasks.
5. The minister competent for public finance, in consultation with the minister competent for agricultural markets, may specify, by regulation, the documents used in the circulation of goods covered by the common agricultural policy and the detailed conditions and procedure for dealing with these goods, to the extent provided for the customs authorities, having regard to ensuring proper supervision and customs control as well as performing tasks resulting from EU regulations governing the Common Agricultural Policy. The regulation should specify the templates and detailed method of using documents, detailed conditions and procedure for issuing permits for running food warehouses and the use of the planned procedure, as well as detailed conditions and procedure for recognizing places approved for the purposes of loading.

## **(2) Investigative powers**

Investigative powers are very important for the detection of any irregularity or conduct, which is detrimental to the EU's budget. **46**

### **(a) Investigative powers in the area of customs duties and VAT (General Tax Code)**

#### **(aa) Customs Duties Area**

Very problematic are customs exemptions. They are often used as a fraudulent loophole. Fraudsters try to explain that the relevant goods, which they want to import are free of duties (exempt from duties as said by the law) and then hide the fact that they de facto import goods, which are clearly goods with customs duties. If the evasion functions in the sense of the fraudsters, the budget of the EU is damaged – this is mostly the case because customs duties are harmonized because of the internal market of the EU. **47**

Therefore this area, which is part of import and export of goods to the EU and herewith a large sector needs large and intensive investigation powers:

- Act of June 17, 1966 on enforcement proceedings in administration as amended 2022<sup>341</sup>
- Act on the National Revenue Administration, Chapter 1, Art. 54 et seq.
- Act on Enforcement authorities in the Administration Area

The special controlling rights and powers are displayed below Art. 3 1. g), which takes a closer look at single provisions.

48 The authorities exercising the intensive investigation powers are the competent authorities. Which were mentioned above (see → Art. 3, e).

**(bb) Tax Area**

49 In the area of tax duties the tax authorities from the Polish tax administration are competent:

50 **Section II Tax authorities and their jurisdiction**

**Chapter 1 Tax authorities**

**Article 13**<sup>342</sup> [Tax Authorities] § 1. The tax authority, according to its jurisdiction, is:

- 1) head of the tax office, head of the customs and tax office, commune head, mayor (president of the city), staroste or marshal of the voivodeship – as the first instance authority;
  - 1a) the head of the customs and tax office as an appeal body in the scope of decisions referred to in art. 83 sec. 4 and 5 of the Act of 16 November 2016 on the National Revenue Administration (Journal of Laws of 2022, item 813, as amended);
- 2) director of the tax administration chamber - as: and) the appeal body against the decision of the head of the tax office or the head of the customs and tax office, respectively, subject to point 1a,
  - b) first instance authority, on the basis of separate regulations,
  - c) an appeal body against a decision issued by that body in the first instance;

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<sup>341</sup> Ustawa z dnia 17 czerwca 1966 r. o postępowaniu egzekucyjnym w administracji.

<sup>342</sup> **Art. 13. [Organy podatkowe]**

§ 1. Organem podatkowym, stosownie do swojej właściwości, jest:

1) naczelnik urzędu skarbowego, naczelnik urzędu celno-skarbowego, wójt, burmistrz (prezydent miasta), starosta albo marszałek województwa - jako organ pierwszej instancji;

1a) (uchylony);

2) dyrektor izby administracji skarbowej - jako:

a) organ odwoławczy odpowiednio od decyzji naczelnika urzędu skarbowego albo naczelnika urzędu celno-skarbowego,

b) organ pierwszej instancji, na podstawie odrębnych przepisów,

c) organ odwoławczy od decyzji wydanej przez ten organ w pierwszej instancji;

3) samorządowe kolegium odwoławcze - jako organ odwoławczy od decyzji wójta, burmistrza (prezydenta miasta), starosty albo marszałka województwa.

- 3) local government appeals board - as an appeal body against the decision of the head of the commune, mayor (president of the city), starost or marshal of the voivodeship.
- § 2.<sup>343</sup> The Head of the National Revenue Administration is the tax authority – as:
- 1) the first instance authority in matters of annulment of the decision, resumption of proceedings, amendment or repeal of the decision or declaration of its expiry - ex officio;
  - 2) an appeal body against decisions issued in the cases referred to in points 1 and 7;
  - 3) the competent authority in matters of advance pricing agreements referred to in section III of the Act of 16 October 2019 on resolving double taxation disputes and concluding advance pricing agreements (Journal of Laws item 2200 and of 2021 item 2105);

<sup>343</sup> § 2. Szef Krajowej Administracji Skarbowej jest organem podatkowym - jako:

- 1) organ pierwszej instancji w sprawach stwierdzenia nieważności decyzji, wznowienia postępowania, zmiany lub uchylecia decyzji lub stwierdzenia jej wygaśnięcia - z urzędu;
- 2) organ odwoławczy od decyzji i postanowień wydanych w sprawach, o których mowa w pkt 1, 7 i 9;
- 3) organ właściwy w sprawach uprzednich porozumień cenowych, o których mowa w dziale III ustawy z dnia 16 października 2019 r. o rozstrzygnięciu sporów dotyczących podwójnego opodatkowania oraz zawieraniu uprzednich porozumień cenowych (Dz. U. z 2023 r. poz. 948);
- 4) organ właściwy w sprawach dotyczących interpretacji przepisów prawa podatkowego, o których mowa w art. 14b § 1, w zakresie określonym w art. 14e § 1;
- 5) organ właściwy w sprawach informacji przekazywanych przez banki i spółdzielcze kasy oszczędnościowo-kredytowe o otwartych i zamkniętych rachunkach bankowych związanych z prowadzeniem działalności gospodarczej;
- 6) organ właściwy w sprawach opinii zabezpieczających;
- 7) organ pierwszej instancji w sprawach, o których mowa w art. 119g § 1 i 8;
- 8) organ właściwy w sprawach dotyczących informacji o schematach podatkowych;
- 9) organ pierwszej instancji właściwy w sprawach zmiany albo uchylecia:
  - a) wiążącej informacji stawkowej, o której mowa w przepisach ustawy z dnia 11 marca 2004 r. o podatku od towarów i usług (Dz. U. z 2023 r. poz. 1570, 1598 i 1852), w przypadkach, o których mowa w art. 42h ust. 4 tej ustawy,
  - b) wiążącej informacji akcyzowej, o której mowa w przepisach ustawy z dnia 6 grudnia 2008 r. o podatku akcyzowym (Dz. U. z 2023 r. poz. 1542, 1598 i 1723), w przypadkach, o których mowa w art. 7ha ust. 6 tej ustawy;
- 10) organ właściwy w sprawach dotyczących realizacji współdziałania, o którym mowa w dziale IIB;
- 11) organ właściwy w sprawach opinii, o której mowa w art. 119zzl § 1.

§ 2a. Dyrektor Krajowej Informacji Skarbowej jest organem podatkowym - jako:

- 1) organ właściwy w sprawach dotyczących wydawania interpretacji przepisów prawa podatkowego, o których mowa w art. 14b § 1 i art. 14e § 1a;
- 2) organ pierwszej instancji właściwy w sprawach wydawania:
  - a) wiążącej informacji stawkowej, o której mowa w przepisach ustawy z dnia 11 marca 2004 r. o podatku od towarów i usług,
  - b) wiążącej informacji akcyzowej, o której mowa w przepisach ustawy z dnia 6 grudnia 2008 r. o podatku akcyzowym;
- 3) organ odwoławczy od decyzji i postanowień wydanych w sprawach, o których mowa w pkt 2 i 4;
- 4) organ pierwszej instancji właściwy w sprawach zmiany albo uchylecia:
  - a) wiążącej informacji stawkowej, o której mowa w przepisach ustawy z dnia 11 marca 2004 r. o podatku od towarów i usług,
  - b) wiążącej informacji akcyzowej, o której mowa w przepisach ustawy z dnia 6 grudnia 2008 r. o podatku akcyzowym.

§ 2b. Minister właściwy do spraw finansów publicznych jest organem podatkowym - jako organ właściwy w sprawach, o których mowa w art. 14a § 1 i dziale IIC.

§ 2c. W zakresie rozstrzygania spraw podatkowych uprawnienia naczelnika urzędu skarbowego, naczelnika urzędu celno-skarbowego oraz dyrektora izby administracji skarbowej, jako organu podatkowego, przysługują także radcy skarbowemu, wykonującemu czynności orzecznicze w tym organie.

§ 3. Organami podatkowymi wyższego stopnia są organy odwoławcze.

- 4) the competent authority in matters relating to the interpretation of the provisions of the tax law referred to in Art. 14b § 1, to the extent specified in Art. 14e § 1;
- 5) the authority competent for information provided by banks and cooperative savings and credit unions on open and closed bank accounts related to conducting business activity;
- 6) the authority competent for securing opinions;
- 7) first instance authority in the cases referred to in Art. 119g § 1 and 8;
- 8) the authority competent for information on tax schemes;
- 9) the authority competent to amend or repeal the binding rate information referred to in the provisions of the Act of 11 March 2004 on tax on goods and services (Journal of Laws of 2022, item 931, as amended);
- 10) the authority competent in matters relating to the implementation of cooperation referred to in Section IIB.

§ 2a. The Director of the National Tax Information is a tax authority – as:

- 1) the competent authority in matters relating to the issuance of interpretations of tax law provisions referred to in Art. 14b § 1 and art. 14e § 1a;
- 2) the first instance authority in matters relating to the issuance of binding rate information referred to in the provisions of the Act of 11 March 2004 on tax on goods and services;
- 3) an appeal body against decisions issued in the cases referred to in point 2;
- 4) the authority competent to change the binding rate information in the cases referred to in Art. 42h sec. 3 of the Act of March 11, 2004 on tax on goods and services.

§ 2b. The proper minister of public finances is the tax authority – as the competent authority in the matters referred to in art. 14a § 1 and section IIC.

§ 2c. In terms of settling tax matters, the powers of the head of the tax office, the head of the customs and tax office and the director of the tax administration chamber, as the tax authority, are also vested in the tax adviser performing judicial activities in this authority.

§ 3. Higher tax authorities are appeal bodies.

### **Article 13a<sup>344</sup> [Special Tax Authorities]**

The Council of Ministers may, by regulation, grant powers to tax authorities:

- 1) Head of the Intelligence Agency,

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<sup>344</sup> **Art. 13a. [Szczególne organy podatkowe]**

Rada Ministrów może, w drodze rozporządzenia, nadać uprawnienia organów podatkowych:

- 1) Szefowi Agencji Wywiadu,
- 2) Szefowi Agencji Bezpieczeństwa Wewnętrznego,
- 3) Szefowi Centralnego Biura Antykorupcyjnego,
- 4) Szefowi Służby Wywiadu Wojskowego,
- 5) Szefowi Służby Kontrwywiadu Wojskowego

- jeżeli jest to uzasadnione ochroną informacji niejawnych i wymogami bezpieczeństwa państwa.

- 2) Head of the Internal Security Agency,
  - 3) Head of the Central Anti-Corruption Bureau,
  - 4) Head of the Military Intelligence Service,
  - 5) Head of the Military Counterintelligence Service
- if it is justified by the protection of classified information and state security requirements.

**(b) Investigative powers in the area of structural funds and internal policies**

In the area of structural funds audits and controls e.g. in relation to the ERASMUS + programme as an example of structural funds are possible via the national laws that implement the EU Regulations in this area. 51

In Poland the administration uses templates for the audits and on-the-spot checks. 52  
 An example is the “Template of the General Conditions of the European Commission (EC) for the multi-beneficiary agreement of the Erasmus+ program”<sup>345</sup>.

**(c) Investigative powers in the area of direct expenditure**

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. 53  
 If it is mainly the European Commission, its agencies and delegations that manage the EU budget in this area, they are competent to supervision the accounting of projects in this area. The EU Commission runs e.g. the Funding and Tenders Portal (SEDIA) for this special area. The whole direct expenditure area is not immune to fraud. It can be said that it is prone to procurement, or procurement related fraud (causing damage to the expenditure side of the budget).<sup>346</sup>

<sup>345</sup> See <http://erasmusplus.org.pl/dokumenty>. Accessed 6 August 2024.

<sup>346</sup> See OECD 2019, pp. 7, 14: “The implementation stage of the project cycle brings with it numerous fraud and corruption risks due to the number of actors potentially involved in project implementation and the complexity of some of the processes at this stage. For projects with high investment value, such as large-scale infrastructure projects, this stage becomes even more vulnerable to fraud and corruption. Furthermore, tenders put out either directly by the MA or beneficiary are common during the implementation stage, and procurement processes are notoriously prone to fraud and corruption. As shown in the illustrated schemes in the final part of the guide, there are a number of procurementspecific risks that occur at this stage. For example, members of an MA or beneficiary may tailor tender specifications or leak commercially sensitive tender information to favour one particular company or individual. Companies or contractors may also take part in collusive bidding schemes to manipulate competitive procedures. Responses from an OECD survey that was distributed to programme authorities show that procurement-related fraud and corruption risks at the level of beneficiaries are sometimes overlooked in risk analysis activities. In addition, some MAs generally base the identification of fraud risks on their own experience, without any additional input from other knowledgeable actors<sup>8</sup>. 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.”

54 OLAF describes and displays investigations in this area as follows:

55 **“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:

- research and innovation (e.g. Horizon Europe programme)
- education, training and mobility of young people (e.g. ERASMUS+ programme)
- supporting the competitiveness of industry and in particular of micro, small and medium-sized enterprises (e.g. Single Market programme)
- environment and climate action (LIFE programme)
- improving the capacity of the EU to face security threats (Internal Security Fund)
- European public administration.

As a rule, national authorities are not involved in investigating fraud affecting direct expenditure.”<sup>347</sup>

56 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 between the recipient and the monitoring payment office.



*Examples:* The EU Commission supports large infrastructure projects.

57 OLAF has a **special unit**, which is competent to investigate and detect irregularities in the area of direct expenditure:

- ***Direct Expenditure - Operations and Investigations (OLAF.A.2)*** Rue Joseph II 30 / Josef II-straat 30, 1000, (postal office Box: 1049), Bruxelles / Brussel Belgium<sup>348</sup>


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<sup>347</sup> OLAF, Information on Investigations related to EU expenditure, [https://ec.europa.eu/anti-fraud/investigations/investigations-related-eu-expenditure\\_hr](https://ec.europa.eu/anti-fraud/investigations/investigations-related-eu-expenditure_hr). Accessed 6 August 2024.

<sup>348</sup> EU, WHOisWHO, [https://op.europa.eu/en/web/who-is-who/organisation/-/organisation/OLAF/COM\\_CRF\\_230282](https://op.europa.eu/en/web/who-is-who/organisation/-/organisation/OLAF/COM_CRF_230282). Accessed 6 August 2024.

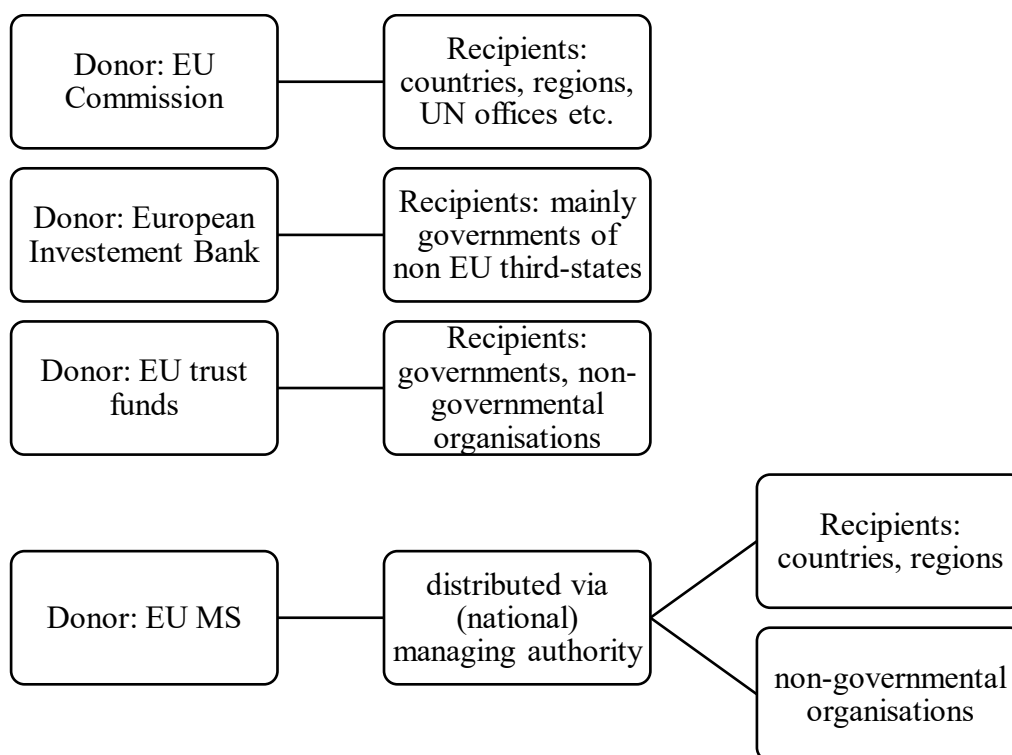
**(d) Provisions in the area of external aid = expenditure**

In the area of indirect management the budget is implemented by various actors that have to carry out delegated tasks, which the Commission carries out itself in the area of direct management.<sup>349</sup> **58**

*Nota bene:* The **EU Aid explorer** can be used to discover beneficiaries and funding schemes.<sup>350</sup> 

- A common fraud scheme in this area is the “manipulation of tender processes”.<sup>351</sup>

*Figure 8: EU external aid/expenditure (indirect management) – Art. 3 OLAF Regulation on-the-spot inspections to discover EU external aid expenditure-related frauds* **59**



Source: EU Commission.

For the investigations in the area of external aid OLAF can make use of Administrative Cooperation Agreements (ACAs).<sup>352</sup> **60**

<sup>349</sup> European Commission, Funding by management mode, [https://ec.europa.eu/info/funding-tenders/find-funding/funding-management-mode\\_en](https://ec.europa.eu/info/funding-tenders/find-funding/funding-management-mode_en). Accessed 6 August 2024.

<sup>350</sup> EU external aid explorer, [https://euaidexplorer.ec.europa.eu/index\\_en](https://euaidexplorer.ec.europa.eu/index_en). Accessed 6 August 2024.

<sup>351</sup> OLAF, Success Stories, May 2022, [https://ec.europa.eu/anti-fraud/investigations/success-stories\\_en#external-aid](https://ec.europa.eu/anti-fraud/investigations/success-stories_en#external-aid). Accessed 6 August 2024.

<sup>352</sup> OLAF, State of Play – June 2021 Administrative Cooperation Arrangements (ACAs) with partner authorities in non-EU countries and territories and counterpart administrative investigative services of International Organisations, [https://ec.europa.eu/anti-fraud/system/files/2021-07/list\\_signed\\_acas\\_en\\_7fd50a9cbe.pdf](https://ec.europa.eu/anti-fraud/system/files/2021-07/list_signed_acas_en_7fd50a9cbe.pdf). Accessed 6 August 2024.

**(3) Protection of information**

**(a) Tax secrecy (General Tax Code) and Banking Secrecy**

61 The Banking Secrecy can be lifted and information protected by it disclosed to the tax authorities according to the Tax Code:

62 **Article 182<sup>353</sup> [Abrogation of bank secrecy at the request of the tax authority]**

§ 1. If the evidence collected in the course of the tax proceedings shows the need to supplement this evidence or to compare it with information from the bank, the bank is obliged, at the written request of the head of the tax office, and in the course of appeal proceedings at the request of the director of the tax administration chamber, hereinafter referred to as “the authorised bodies tax”, to prepare and provide information regarding the party to the proceedings in the scope of:

- 1) bank accounts or savings accounts held, the number of these accounts, as well as the turnover and balances of these accounts;
- 2) held cash accounts or securities accounts, the number of these accounts, as well as the turnover and balances of these accounts;
- 3) concluded loan agreements or cash loan agreements, as well as deposit agreements;

<sup>353</sup> **Art. 182. [Uchylenie tajemnicy bankowej na żądanie organu podatkowego]**

§ 1. Jeżeli z dowodów zgromadzonych w toku postępowania podatkowego wynika potrzeba uzupełnienia tych dowodów lub ich porównania z informacjami pochodzącymi z banku, bank jest obowiązany na sporządzone na piśmie żądanie naczelnika urzędu skarbowego, a w toku postępowania odwoławczego na żądanie dyrektora izby administracji skarbowej, zwanych dalej "upoważnionymi organami podatkowymi", do sporządzenia i przekazania informacji dotyczących strony postępowania w zakresie:

- 1) posiadanych rachunków bankowych lub rachunków oszczędnościowych, liczby tych rachunków, a także obrotów i stanów tych rachunków;
- 2) posiadanych rachunków pieniężnych lub rachunków papierów wartościowych, liczby tych rachunków, a także obrotów i stanów tych rachunków;
- 3) zawartych umów kredytowych lub umów pożyczek pieniężnych, a także umów depozytowych;
- 4) nabytych za pośrednictwem banków akcji Skarbu Państwa lub obligacji Skarbu Państwa, a także obrotu tymi papierami wartościowymi;
- 5) obrotu wydawanymi przez banki certyfikatami depozytowymi lub innymi papierami wartościowymi.

§ 2. Przepisy § 1 stosuje się odpowiednio do zakładów ubezpieczeń, funduszy inwestycyjnych, dobrowolnych funduszy emerytalnych i banków prowadzących działalność maklerską, w zakresie prowadzonych indywidualnych kont emerytalnych oraz indywidualnych kont zabezpieczenia emerytalnego, a także do domów maklerskich oraz spółdzielczych kas oszczędnościowo-kredytowych.

§ 3. Towarzystwa funduszy inwestycyjnych na sporządzone na piśmie żądanie upoważnionego organu podatkowego są obowiązane do sporządzania informacji o umorzonych jednostkach uczestnictwa. Przepis § 1 w części dotyczącej wystąpienia z żądaniem stosuje się odpowiednio.

§ 3a. Podmioty prowadzące rachunki zbiorcze w rozumieniu przepisów ustawy z dnia 29 lipca 2005 r. o obrocie instrumentami finansowymi (Dz. U. z 2022 r. poz. 1500, 1488, 1933 i 2185), na sporządzone na piśmie żądanie upoważnionego organu podatkowego są obowiązane do sporządzania informacji o wysokości dochodów (przychodów) przekazanych na rzecz podatników uprawnionych z papierów wartościowych zapisanych na takich rachunkach oraz o kwocie pobranego podatku. Przepis § 1 w części dotyczącej wystąpienia z żądaniem stosuje się odpowiednio.

§ 4. Żądanie udzielenia informacji, o którym mowa w § 1, następuje w drodze postanowienia.

§ 5. Udzielenie informacji następuje nieodpłatnie.

§ 6. (uchylony).



4) Treasury shares or Treasury bonds purchased through banks, as well as trading in these securities;

5) trading in certificates of deposit or other securities issued by banks.

§ 2. The provisions of § 1 shall apply accordingly to insurance companies, investment funds, voluntary pension funds and banks conducting brokerage activities, in the scope of individual retirement accounts and individual retirement security accounts, as well as to brokerage houses and cooperative savings and credit unions.

§ 3. Investment fund companies, at the written request of the authorised tax authority, are obliged to prepare information on redeemed units. The provision of § 1 in the part concerning the request shall apply accordingly.

§ 3a. Entities maintaining omnibus accounts within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments (Journal of Laws of 2022, items 1500, 1488, 1933 and 2185), at the written request of the authorised tax authority, are obliged to preparing information on the amount of income (revenue) transferred to taxpayers entitled from securities registered on such accounts and on the amount of tax withheld. The provision of § 1 in the part concerning the request shall apply accordingly.

§ 4. The request for information referred to in § 1 shall be made by way of a resolution.

§ 5. The information is provided free of charge.

§ 6. (repealed).

#### **Article 184<sup>354</sup> [Content of the request to waive banking secrecy]**

§ 1. The authorised tax authority, making the request referred to in art. 182, should pay particular attention to the principle of special trust between financial institutions and their clients.

§ 1a. If the contract with a bank or other financial institution was concluded by the taxpayer jointly with other entities, the bank does not provide information on entities that are not affected by the request of the authorised tax authority.

#### <sup>354</sup> **Art. 184. [Treść żądania uchylenia tajemnicy bankowej]**

§ 1. Upoważniony organ podatkowy, występując z żądaniem, o którym mowa w art. 182, powinien zwracać szczególną uwagę na zasadę szczególnego zaufania pomiędzy instytucjami finansowymi a ich klientami.

§ 1a. Jeżeli umowa z bankiem lub inną instytucją finansową została zawarta przez podatnika wspólnie z innymi podmiotami, bank nie przekazuje informacji dotyczących podmiotów, których nie dotyczy żądanie upoważnionego organu podatkowego.

§ 2. W żądaniu określa się zakres informacji, okres, którego informacje mają dotyczyć, oraz termin ich przekazania.

§ 2a. Żądanie oznacza się klauzulą: "Tajemnica skarbowa", a jego przekazanie następuje w trybie przewidzianym dla dokumentów zawierających informacje niejawnie o klauzuli "zastrzeżone".

§ 3. Żądanie zawiera ponadto:

1) wskazanie przesłanek uzasadniających konieczność uzyskania informacji objętych żądaniem;

2) dowody potwierdzające, że strona:

a) odmówiła udzielenia informacji lub

b) nie wyraziła zgody na udzielenie upoważnionemu organowi podatkowemu upoważnienia do zażądania tych informacji, lub

c) w terminie określonym przez upoważniony organ podatkowy nie udzieliła informacji albo upoważnienia.

§ 4. (uchylony).

§ 2. The request specifies the scope of information, the period to which the information is to refer, and the date of its submission.

§ 2a. The request shall be marked with the clause: “Secret tax”, and its transfer takes place in the manner provided for documents containing classified information with the clause “restricted”.

§ 3. The request also includes:

1) indication of the premises justifying the need to obtain the information covered by the request;

2) evidence that the party:

and) refused to provide information or

b) has not consented to authorise the authorised tax authority to request this information, or

c) has not provided information or authorisation within the time limit specified by the authorised tax authority.

§ 4. (repealed).

**Article 185<sup>355</sup> [Refusal to provide information to the tax authority]**

Financial institutions listed in Art. 182 refuse to provide information, if the request of the authorised tax authority does not meet the requirements set out in art. 184 § 2 and 3.

**63** The fiscal secrecy is regulated in the Tax Code:

**64** **Section VII Treasury secret**

**Article 293 [Scope of fiscal secrecy]**

§ 1. Individual data contained in the declaration and other documents submitted by taxpayers, tax remitters or collectors are subject to fiscal secrecy.

§ 2. The provision of § 1 also applies to data contained in:

1) tax information provided to tax authorities by entities other than those listed in § 1;

2) files documenting verification activities;

3) files of tax proceedings, tax control, customs and tax control and files of proceedings in cases of tax crimes or tax misdemeanors;

4) accounting documentation of the tax authority;

5) information obtained by the authorities of the National Revenue Administration from banks and other sources than those mentioned in § 1 or in point 1;

6) information obtained in the course of double taxation dispute resolution procedures and in the course of proceedings to issue advance pricing agreements referred to in the Act of 16 October 2019 on resolving double taxation disputes and concluding advance pricing agreements;

<sup>355</sup> **Art. 185. [Odmowa udzielenia informacji organowi podatkowemu]**

Instytucje finansowe wymienione w art. 182 odmawiają udzielenia informacji, jeżeli żądanie upoważnionego organu podatkowego nie spełnia wymogów określonych w art. 184 § 2 i 3.

- 7) files documenting the control referred to in Chapter 9, Section III of the Act of 9 March 2017 on the exchange of tax information with other countries;
- 8) information on the results of the risk analysis referred to in Art. 119zn § 1, and other information and documents referred to in section IIIB;
- 9) information and documents referred to in Section III in Chapter 11a;
- 10) files of the proceedings regarding the issuance of a securing opinion and files of the proceedings specified in Section IIIA in Chapter 5;
- 11) information on determining the likelihood of delays referred to in Art. 299f;
- 12) information provided by the taxpayer as part of the cooperation referred to in section IIB;
- 13) files of the proceedings specified in section II in chapter 1a;
- 14) information provided by the investor under the investment agreement;
- 15) files documenting the verification acquisition.

§ 3. The provisions of § 1 and 2 shall not apply to the disclosure to the counterparty of the taxpayer conducting economic activity about:

- 1) failure to submit or submit a declaration or other document by the taxpayer, which he was obliged to submit under the provisions of tax laws;
- 2) the taxpayer's failure to include or include in the submitted declaration or other document the events which he was obliged to include under the provisions of tax laws;
- 3) arrears or not arrears by the taxpayer in taxes resulting from the declaration or other document submitted pursuant to the provisions of tax laws.

#### **Article 294 [Scope of subjective fiscal secrecy]**

§ 1. The following persons are obliged to observe fiscal secrecy:

- 1) employees of tax administration chambers;
  - 1a) officers;
  - 1b) employees of the National Tax Information;
- 2) commune head, mayor (city president), starost, voivodeship marshal and employees of offices serving them;
- 3) members of local government appeal boards, as well as employees of the offices of these boards;
- 4) the minister competent for public finance and the employees of the office supporting that minister;
  - 4a) Head of the National Revenue Administration;
- 5) persons undergoing an internship, professional or student internship in the office serving the minister competent for public finance or in other tax authorities;
- 6) representatives of a foreign authority residing in the seats of tax authorities, present in the course of tax proceedings or present in the course of control activities, in connection with the exchange of information;
- 7) Council members;

8) members of the advisory commission and commission for out-of-court dispute resolution as well as persons affected by the dispute, their representatives and attorneys referred to in the Act of 16 October 2019 on resolving double taxation disputes and concluding advance pricing agreements.

§ 2. The persons listed in § 1 are obliged to make a written promise as follows:

“I promise that I will observe fiscal secrets. I declare that I am aware of the provisions on criminal liability for disclosing fiscal secrets.”

§ 3. Fiscal secrecy also applies after termination of employment, completion of internship or apprenticeship or termination of membership in the Council.

§ 4. Other persons to whom information subject to fiscal secrecy has been made available are also obliged to observe fiscal secrecy, unless their disclosure is permitted by law.

§ 5. The provision of § 4 does not apply to persons to whom information covered by fiscal secrecy applies.

**65** The General Tax Code regulates the fiscal secrecy but it although includes penalties for the situation that someone publishes data, which is restricted by confidentiality.

**66** **Article 305<sup>356</sup> [Unauthorised disclosure or use of information]**

§ 1. Who, without being authorised to do so, discloses or uses:

- 1) algorithms referred to in Art. 119zn § 3,
- 2) risk indicator information,
- 3) information and statements referred to in Art. 119zp § 1, art. 119zq and art. 119zs § 1,
- 4) information covered by the requests of the Head of the National Revenue Administration referred to in Art. 119zo § 9, art. 119zv § 3, art. 119zw § 3 and art. 119zz § 2, shall be punishable by imprisonment of up to 5 years.

§ 2. If the perpetrator of the act specified in § 1 acts unintentionally, he is subject to a fine.

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<sup>356</sup> **Art. 305r. [Nieuprawnione ujawnianie lub wykorzystanie informacji]**

§ 1. Kto, nie będąc do tego uprawnionym, ujawnia lub wykorzystuje:

- 1) algorytmy, o których mowa w art. 119zn § 3,
- 2) informacje o wskaźniku ryzyka,
- 3) informacje i zestawienia, o których mowa w art. 119zp § 1, art. 119zq i art. 119zs § 1,
- 4) informacje objęte żądaniem Szefa Krajowej Administracji Skarbowej, o których mowa w art. 119zo § 9, art. 119zv § 3, art. 119zw § 3 i art. 119zz § 2, podlega karze pozbawienia wolności do lat 5.

§ 2. Jeżeli sprawca czynu określonego w § 1 działa nieumyślnie, podlega grzywnie.

**Article 306<sup>357</sup> [Disclosure of information subject to fiscal secrecy]**

§ 1. Who, being obliged to keep tax secret, discloses information covered by this secret, shall be punishable by imprisonment of up to 5 years.

§ 2. Who, being obliged to keep the secret of the tax, discloses the information referred to in article 1. 182,

shall be punishable by imprisonment from 6 months to 5 years.

§ 3. If the perpetrator of the act specified in § 1 or 2 acts unintentionally, shall be punishable by imprisonment of up to 2 years.

§ 4. If the victim is not the State Treasury, the prosecution takes place at the request of the victim.

**(b) Customs secrecy (Administrative laws)**

The Customs Secrecy is enshrined in Art. 95b of the Customs Law:

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**Article 95b<sup>358</sup>**

1. Individual data contained in the customs declaration and other documents submitted by the declarant are covered by **customs secrecy**.

2. The provision of sec. 1 also applies to data contained in:

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<sup>357</sup> **Art. 306. [Ujawnienie informacji objętej tajemnicą skarbową]**

§ 1. Kto, będąc obowiązany do zachowania tajemnicy skarbowej, ujawnia informacje objęte tą tajemnicą, podlega karze pozbawienia wolności do lat 5.

§ 2. Kto, będąc obowiązany do zachowania tajemnicy skarbowej, ujawnia informacje określone w art. 182, podlega karze pozbawienia wolności od 6 miesięcy do lat 5.

§ 3. Jeżeli sprawca czynu określonego w § 1 lub 2 działa nieumyślnie, podlega karze pozbawienia wolności do lat 2.

§ 4. Jeżeli pokrzywdzonym nie jest Skarb Państwa, ściganie następuje na wniosek pokrzywdzonego.

<sup>358</sup> **Art. 95b.** 1. Indywidualne dane zawarte w zgłoszeniu celnym oraz innych dokumentach składanych przez zgłaszającego objęte są tajemnicą celną.

2. Przepis ust. 1 stosuje się również do danych zawartych w:

1) aktach postępowania celnego oraz aktach postępowania w sprawach o przestępstwa skarbowe lub wykroczenia skarbowe;

2) dokumentacji rachunkowej organu celnego;

3) informacjach uzyskanych przez Szefa Krajowej Administracji Skarbowej lub naczelnika urzędu celno-skarbowego z banków oraz z innych źródeł niż wymienione w ust. 1.

3. Do przestrzegania tajemnicy celnej obowiązani są funkcjonariusze Służby Celno-Skarbowej oraz członkowie korpusu służby cywilnej zatrudnieni w jednostkach organizacyjnych Krajowej Administracji Skarbowej, którzy w związku z wykonywaniem obowiązków uzyskali dostęp do informacji stanowiących tajemnicę celną.

4. Osoby wymienione w ust. 3 są obowiązane do złożenia na piśmie przyrzeczenia następującej treści:

„Przyrzekam, że będę przestrzegał tajemnicy celnej. Oświadczam, że są mi znane przepisy o odpowiedzialności karnej za ujawnienie tej tajemnicy.”.

5. Do przestrzegania tajemnicy celnej obowiązane są również inne osoby, którym udostępniono informacje objęte tajemnicą celną, chyba że na ich ujawnienie zezwała przepis prawa.

6. Przepisu ust. 5 nie stosuje się do osób, które przekazały informacje objęte tajemnicą celną.

7. W zakresie nieuregulowanym w ust. 1-6 przepisy art. 294 § 3, art. 295, art. 296-297a oraz art. 299-299b i art. 301 ustawy z dnia 29 sierpnia 1997 r. - Ordynacja podatkowa stosuje się odpowiednio.

8. Naruszenie tajemnicy celnej podlega odpowiedzialności karnej jak za naruszenie tajemnicy skarbowej.

9. Przepisów o tajemnicy celnej nie stosuje się do informacji podlegających ochronie na podstawie przepisów o ochronie informacji niejawnych.

- 1) files of customs proceedings and files of proceedings in cases of fiscal offences or fiscal offences;
  - 2) accounting documentation of the customs authority;
  - 3) information obtained by the head of the National Revenue Administration or the head of the customs and tax office from banks and other sources than those listed in para. 1.
3. Customs and Tax Service officers and members of the civil service corps employed in organisational units of the National Revenue Administration who, in connection with the performance of their duties, have gained access to information constituting customs secret, are obliged to observe customs secrecy.
4. Persons listed in par. 3 are obliged to make a written promise as follows:  
“I promise that I will keep customs secret. I declare that I am aware of the provisions on criminal liability for disclosing this secret.”
5. Other persons to whom information covered by customs secrecy has been made available shall also be obliged to observe customs secrecy, unless their disclosure is permitted by law.
6. The provision of sec. 5 shall not apply to persons who have provided information covered by customs secrecy.
7. To the extent not regulated in sec. 1–6 provisions of art. 294 § 3, art. 295, art. 296–297a and art. 299–299b and art. 301 of the Act of August 29, 1997 – Tax Code shall apply accordingly.
- 8. Violation of customs secret is subject to criminal liability as for breach of fiscal secrecy.**
9. The provisions on customs secrecy shall not apply to information subject to protection under the provisions on the protection of classified information.

**(c) Data secrecy (Data protection laws)**

- 69** In the area of general data secrecyes the data protection laws and the general data protection regulation applies.

**(4) Investigation and Inspection reports (Customs Code, General Tax Code)**

- 70** The General administrative procedure code requests the public authorities to draw case reports and reports of the proceedings as well as interrogation reports. OLAF Units will need these reports or they may be submitted to OLAF in order to allow Union officials to decide on recommendations to the relevant country in case of irregularities:

**Chapter 2 Metrics, protocols and annotations****Article 66a<sup>359</sup> Case record**

§ 1. The records of the case are assumed in the case files.

§ 2. The contents of the case record indicate all persons who participated in taking actions in the administrative proceedings and specify all actions taken by these persons, together with an appropriate reference to the documents specifying these actions.

§ 3. The record of the case, together with the documents to which it refers, constitutes an obligatory part of the case file and is updated on an ongoing basis.

§ 4. The minister competent for public administration shall specify, by regulation, the pattern and manner of keeping the metrics of the case, taking into account the content and form of the metrics specified in § 1 and 2 and the obligation to update the metrics on an ongoing basis, and also that based on the content of the metrics it is possible determination of the content of activities in administrative proceedings undertaken by individual persons in the case.

§ 5. The proper Minister of public administration determines, by regulation, the types of cases in which the obligation to keep the metrics of the case is excluded due to the disproportionality of the effort necessary to keep the metrics in relation to the simple and repeatable nature of these cases.

**Article 67<sup>360</sup> Recorded activities**

§ 1. A public administration body shall draw up a concise record of each activity of the proceedings, which is significant for the resolution of the case, unless the activity has been otherwise recorded in writing.

**<sup>359</sup> Art. 66a. Metryka sprawy**

§ 1. W aktach sprawy zakłada się metrykę sprawy.

§ 2. W treści metryki sprawy wskazuje się wszystkie osoby, które uczestniczyły w podejmowaniu czynności w postępowaniu administracyjnym oraz określa się wszystkie podejmowane przez te osoby czynności wraz z odpowiednim odesłaniem do dokumentów określających te czynności.

§ 3. Metryka sprawy, wraz z dokumentami do których odsyła, stanowi obowiązkową część akt sprawy i jest na bieżąco aktualizowana.

§ 4. Minister właściwy do spraw administracji publicznej określa, w drodze rozporządzenia, wzór i sposób prowadzenia metryki sprawy, uwzględniając treść i formę metryki określoną w § 1 i 2 oraz obowiązek bieżącej aktualizacji metryki, a także, aby w oparciu o treść metryki było możliwe ustalenie treści czynności w postępowaniu administracyjnym podejmowanych w sprawie przez poszczególne osoby.

§ 5. Minister właściwy do spraw administracji publicznej określa, w drodze rozporządzenia, rodzaje spraw, w których obowiązek prowadzenia metryki sprawy jest wyłączony ze względu na nieproporcjonalność nakładu środków koniecznych do prowadzenia metryki w stosunku do prostego i powtarzalnego charakteru tych spraw.

**<sup>360</sup> Art. 67. Czynności protokolowane**

§ 1. Organ administracji publicznej sporządza zwięzły protokół z każdej czynności postępowania, mającej istotne znaczenie dla rozstrzygnięcia sprawy, chyba że czynność została w inny sposób utrwalona na piśmie.

§ 2. W szczególności sporządza się protokół:

- 1) przyjęcia wniesionego ustnie podania;
- 2) przesłuchania strony, świadka i biegłego;
- 3) oględzin i ekspertyz dokonywanych przy udziale przedstawiciela organu administracji publicznej;
- 4) rozprawy;
- 5) ustnego ogłoszenia decyzji i postanowienia.

§ 2. In particular, the protocol shall be drawn up:

- 1) acceptance of an oral application;
- 2) questioning of the party, the witness and the expert;
- 3) inspections and expert opinions carried out with the participation of a representative of a public administration body;
- 4) hearings;
- 5) verbal announcement of decisions and orders.

**Article 68<sup>361</sup>**

§ 1. The protocol shall be drawn up in such a way that it follows from it who, when, where and what activities were performed, who and in what capacity was present, what and how as a result of these activities was established and what comments were made by the present persons.

§ 2. The protocol is read to all persons present, participating in official activities, who should then sign the protocol. Refusal or lack of signature of any person should be discussed in the minutes.

**Article 69<sup>362</sup> Protocol of the interrogation**

§ 1. The protocol of the hearing should be read and submitted for signature to the person testifying immediately after the testimony.

§ 2. In the minutes of the hearing of the person who made the testimony in a foreign language, you must provide a translation into Polish the content of the testimony and indicate the person and address of the translator who made the translation; the interpreter should sign the protocol of the interrogation.

72 The tax inspection report is a kind of investigation report and it is prescribed by the Tax Code. Art. 290 speaks of tax inspection report.

73 **Article 290 [Tax inspection report]**

§ 1. The course of the inspection is documented by the inspector in the protocol. The facts may also be recorded using image and sound recording equipment or on IT data carriers.

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<sup>361</sup> **Art. 68. Protokół z czynności**

§ 1. Protokół sporządza się tak, aby z niego wynikało, kto, kiedy, gdzie i jakich czynności dokonał, kto i w jakim charakterze był przy tym obecny, co i w jaki sposób w wyniku tych czynności ustalono i jakie uwagi zgłosiły obecne osoby.

§ 2. Protokół odczytuje się wszystkim osobom obecnym, biorącym udział w czynności urzędowej, które powinny następnie protokół podpisać. Odmowę lub brak podpisu którejkolwiek osoby należy omówić w protokole.

<sup>362</sup> **Art. 69. Protokół przesłuchania**

§ 1. Protokół przesłuchania powinien być odczytany i przedstawiony do podpisu osobie zeznającej niezwłocznie po złożeniu zeznania.

§ 2. W protokołach przesłuchania osoby, która złożyła zeznanie w języku obcym, należy podać w przekładzie na język polski treść złożonego zeznania oraz wskazać osobę i adres tłumacza, który dokonał przekładu; tłumacz ten powinien podpisać protokół przesłuchania.



§ 2. The inspection report includes in particular:

- 1) indication of the controlled;
- 2) indication of controlling persons;
- 3) determination of the subject and scope of the inspection;
- 4) specifying the place and time of the inspection;
- 5) a description of the factual findings made;
- 6) documentation of the evidence taken;
- 6a) legal assessment of the case being the subject of the inspection;
- 7) instruction on the right to submit reservations or explanations and the right to submit corrections to the declaration;
- 8) instruction on the obligation to notify the tax authority by the controlled party of any change of its address made within 6 months from the date of completion of the tax audit, if irregularities were revealed in the course of the tax audit, and the consequences of failure to comply with this obligation.

§ 3. (repealed).

§ 4. The protocols of the activities referred to in Art. 289 § 1.

§ 5. The inspection report may also contain arrangements for auditing the books to the extent provided for in art. 193. In this case, a separate audit report of the books referred to in Art. 193 § 6.

§ 6. The protocol is drawn up in two copies. One copy of the inspection report shall be delivered to the inspected party, with the exception of photocopies, copies and printouts from files, books and other documents attached to the inspection report, made available by the inspected party, which have been returned by the inspecting party, making a mention of it in the inspection report.

#### **Article 290a [Statutory delegation]**

The minister competent for public finances in consultation with the Minister of Justice and the minister competent for computerization, by regulation, shall determine the method of securing, reproducing and using evidence recorded by means of image and sound recording apparatus or on IT data carriers, taking into account the types of external factors that the action may cause the destruction or damage of the evidence, the presence of a representative of the controlling authority during their reconstruction, the form of marking the evidence and recording the activities of reconstruction and use of the evidence.

#### **Article 290b [Declaration of lack of local jurisdiction of the body conducting the inspection]**

§ 1. If it is found in the course of the inspection that the body conducting the inspection was locally inappropriate at the time of initiating the inspection, the inspector draws up a report on inspection activities. The steps taken in the initiated tax audit remain in force.

§ 2. The inspection report is drawn up in three copies, one copy of the inspection report shall be delivered to the controlled person, and the other shall be transferred to the tax authority competent in the case.

§ 3. The provisions on the control protocol shall apply accordingly to the control protocol, with the exception of art. 290 § 2 point 6a and 8.

74 The Act on the National Tax and Revenue Authority obliges the inspectors as well to draw an inspection report.

75 **Article 81<sup>363</sup> [Report of inspection activities]**

1. Control activities relevant to the case, in particular:

- 1) inspection,
  - 2) securing evidence,
  - 3) controlled or witness interrogation,
  - 4) searches of a person,
  - 5) search of premises, other rooms, places or things,
  - 6) control of documents and records,
  - 7) revision,
  - 8) taking samples of goods and products and testing them
- the protocol is drawn up.

2. The report is drawn up in such a way that its content shows who, when, where and what control activities were carried out, who and in what capacity was present at them, what and how as a result of these activities was determined and what comments were made by the persons present.

<sup>363</sup> **Art. 81 [Protokół z czynności kontrolnych]**

1. Z czynności kontrolnych mających istotne znaczenie dla sprawy, w szczególności z:

- 1) oględzin,
- 2) zabezpieczenia dowodów,
- 3) przesłuchania kontrolowanego lub świadka,
- 4) przeszukania osoby,
- 5) przeszukania lokali, innych pomieszczeń, miejsc lub rzeczy,
- 6) kontroli dokumentów i ewidencji,
- 7) rewizji,
- 8) pobierania próbek towarów i wyrobów oraz ich badania – sporządza się protokół.

2. Protokół sporządza się tak, aby z jego treści wynikało, kto, kiedy, gdzie i jakich czynności kontrolnych dokonał, kto i w jakim charakterze był przy nich obecny, co i w jaki sposób w wyniku tych czynności ustalono i jakie uwagi zgłosiły obecne osoby.

3. Protokół odczytuje się osobom obecnym, biorącym udział w czynności kontrolnej, które powinny następnie protokół podpisać. Odmowę złożenia lub brak podpisu którejkolwiek osoby należy odnotować w protokole.

4. Protokół przesłuchania powinien być odczytany i przedłożony do podpisu osobie zeznającej niezwłocznie po złożeniu zeznania.

5. W protokole przesłuchania osoby, która złożyła zeznanie w języku obcym, należy podać, w tłumaczeniu na język polski, treść złożonego zeznania oraz imię, nazwisko i adres tłumacza. Tłumacz powinien podpisać protokół przesłuchania.

6. Protokół podpisuje kontrolujący, który przeprowadzał czynności kontrolne.

7. Protokół z czynności kontrolnych wykonywanych w miejscach, o których mowa w art. 62 ust. 5 i 13, jest sporządzany w przypadku stwierdzenia nieprawidłowości lub na żądanie kontrolowanego, chyba że czynność ta została udokumentowana w sposób określony w przepisach odrębnych.

3. The protocol is read out to the persons present participating in the control activity, who should then sign the protocol. Refusal to submit or lack of signature of any person should be noted in the minutes.
4. The record of the interrogation should be read and submitted for signature to the person testifying immediately after submitting the testimony.
5. The record of the interrogation of the person who made the statement in a foreign language should include, translated into Polish, the content of the statement and the name, surname and address of the translator. The interpreter should sign the interrogation report.
6. The report is signed by the inspector who carried out the inspection activities.
7. Protocol on control activities carried out in the places referred to in art. 62 sec. 5 and 13, is drawn up in the event of irregularities or at the request of the inspected party, unless this activity has been documented in the manner specified in separate provisions.

### **(5) Support to the inspectors**

In the area of the tax duties, the support to inspectors must be provided:

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#### **Chapter 11 Tax information**

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##### **Article 82 [Obligation to provide tax information]**

§ 1. Legal persons, organisational units without legal personality and natural persons conducting business activity are obliged to prepare and provide information:

- 1) at the written request of the tax authority - about events arising from civil law relationships or labor law that may affect the creation of the tax obligation or the amount of the tax liability of persons or entities with whom the contract was concluded;
- 2) without a summons by the tax authority - on contracts concluded with non-residents within the meaning of the foreign exchange law;
- 3) to the extent and on the terms set out in separate acts.

§ 1a. (repealed).

§ 1b. (repealed).

§ 1c. 14 The provision of § 1 point 2 shall not apply to the entities referred to in § 1, which are obliged to prepare information on transfer pricing pursuant to the provisions of Art. 23zf sec. 1 of the Act of 26 July 1991 on personal income tax and art. 11t sec. 1 of the Act of February 15, 1992 on Corporate Income Tax, excluding entities obliged to prepare information on transfer pricing, which carry out controlled transactions in a given tax year, referred to in Art. 23 in sec. 2a of the Act of 26 July 1991 on personal income tax or art. 11k sec. 2a of the Act of February 15, 1992 on corporate income tax.

The Polish Act on the National Tax and Revenue Authority contains a provision that asks the individuals to cooperate:

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**Article 72<sup>364</sup> [Obligations of the inspected party and other persons]**

1. The inspected party, its employee, a person cooperating with the inspected party, the entity keeping or storing tax books or documents, and the person performing activities subject to customs and fiscal control are obliged to:

1) enable access to documents and records covered by the scope of customs and fiscal control, including commercial, accounting and financial documents, even if they are confidential, including electronic documents;

1a) in the case of keeping tax books using computer programs, submit in electronic form corresponding to the logical structure referred to in art. 193a § 2 of the Tax Ordinance, all or part of tax books and accounting documents, covered by the scope of customs and fiscal control, by means of electronic communication or on IT data carriers, indicating the type of tax books and the period to which they relate;

2) provide necessary technical assistance if documents or records subject to customs and fiscal control have been prepared using electronic data processing techniques;

<sup>364</sup> **Art. 72 [Obowiązki kontrolowanego oraz innych osób]**

1. Kontrolowany, jego pracownik, osoba współdziałająca z kontrolowanym, podmiot prowadzący lub przechowujący księgi podatkowe lub dokumenty oraz osoba wykonująca czynności podlegające kontroli celno-skarbowej są obowiązani:

1) umożliwić wgląd w dokumenty i ewidencje objęte zakresem kontroli celno-skarbowej w tym dokumenty handlowe, księgowo i finansowe, nawet jeżeli mają charakter poufny, w tym dokumenty elektroniczne;

1a) w przypadku prowadzenia ksiąg podatkowych przy użyciu programów komputerowych, przekazać w postaci elektronicznej odpowiadającej strukturze logicznej, o której mowa w art. 193a § 2 Ordynacji podatkowej, całość lub część ksiąg podatkowych oraz dowodów księgowych, objętych zakresem kontroli celno-skarbowej, za pomocą środków komunikacji elektronicznej lub na informatycznych nośnikach danych, wskazując rodzaj ksiąg podatkowych oraz okres, którego dotyczą;

2) udzielać niezbędnej pomocy technicznej, jeżeli dokumenty lub ewidencje będące przedmiotem kontroli celno-skarbowej zostały sporządzone z zastosowaniem technik elektronicznego przetwarzania danych;

3) przedstawiać na żądanie urzędowe tłumaczenie na język polski dokumentów mających znaczenie dla kontroli celno-skarbowej, sporządzonych w języku obcym;

4) udostępniać towary, urządzenia oraz środki przewozowe oraz zapewnić dostęp do pomieszczeń oraz innych miejsc będących przedmiotem kontroli celno-skarbowej;

5) wydawać za pokwitowaniem towary lub dokumenty na czas trwania kontroli celno-skarbowej, jeżeli jest to niezbędne na potrzeby kontroli;

6) przeprowadzać na żądanie spis z natury w zakresie niezbędnym na potrzeby kontroli celno-skarbowej;

7) umożliwiać zbadanie towarów, surowców, półproduktów i wyrobów gotowych, w tym przez pobranie ich próbek;

8) udostępniać w niezbędnym zakresie środki łączności, a także inne urządzenia techniczne, jeżeli są one niezbędne do wykonania kontroli celno-skarbowej;

9) umożliwiać, nieodpłatnie, sporządzanie kopii i szkiców, filmowanie i fotografowanie oraz dokonywanie nagrań dźwiękowych;

10) zapewniać warunki do wykonywania czynności kontrolnych, w tym - w miarę posiadanych możliwości - samodzielne pomieszczenie odpowiednie do rodzaju wykonywanych czynności i miejsce do przechowywania dokumentów;

11) udzielać wyjaśnień dotyczących przedmiotu kontroli celno-skarbowej.

2. Osoba posiadająca towary podlegające kontroli celno-skarbowej jest obowiązana, na swój koszt, do wykonywania czynności umożliwiających przeprowadzenie kontroli, w szczególności do rozładowania, okazania oraz załadowania towaru po zakończeniu czynności kontrolnych.

3. Osoby upoważnione do reprezentowania lub prowadzenia spraw kontrolowanego są obowiązane udzielać wyjaśnień dotyczących przedmiotu kontroli celno-skarbowej, wynikających z zakresu wykonywanych czynności lub zadań.

- 3) present, on request, an official translation into Polish of documents relevant for customs and fiscal control, prepared in a foreign language;
  - 4) provide goods, equipment and means of transport and provide access to premises and other places subject to customs and fiscal control;
  - 5) issue goods or documents against receipt for the duration of the customs and tax inspection, if it is necessary for the purposes of the inspection;
  - 6) conduct a physical inventory upon request to the extent necessary for the purposes of customs and tax control;
  - 7) enable the examination of goods, raw materials, semi-finished products and finished products, including by taking their samples;
  - 8) make available, to the extent necessary, means of communication, as well as other technical devices, if they are necessary to perform customs and fiscal control;
  - 9) enable, free of charge, making copies and sketches, filming and photographing, and making sound recordings;
  - 10) provide conditions for performing control activities, including - as far as possible - an independent room appropriate to the type of activities performed and a place to store documents;
  - 11) provide explanations regarding the subject of customs and fiscal control.
2. A person who has goods subject to customs and tax control is obliged, at his own expense, to perform activities enabling the control, in particular to unload, present and load the goods after the control activities are completed.
  3. Persons authorised to represent or conduct the affairs of the inspected party are obliged to provide explanations regarding the subject of customs and fiscal control, resulting from the scope of performed activities or tasks.

#### **(6) Collection and Preservation of Evidence (Customs Code, General Tax Code)**

The Code on Administrative Procedure (see Art. 7, 75, 76, 77 § 1, 80 et seq. contains **80** rules on the collection and preservation of evidence<sup>365</sup> and in the area of tax duties, the Tax Code contains rules on evidence gathering:

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<sup>365</sup> Zapadka 2020.

**81 Article 180<sup>366</sup> [Definition of evidence in tax proceedings. Statement of Assets]**

§ 1. Everything that may contribute to the clarification of the case and is not contrary to the law should be admitted as evidence.

§ 2. If the law does not require official confirmation of specific facts or legal status by way of a certificate, the tax authority receives from the party, at its request, a statement made under pain of criminal liability for false testimony; provision of art. 196 § 3 shall apply accordingly.

§ 3. If there is a reasonable assumption that a party who is a natural person has not disclosed all turnover or revenue relevant to determining or determining the amount of the tax liability, the tax authority may request the party to submit a declaration of assets as at a specific date. This statement is made under pain of criminal liability for false testimony. When requesting a declaration, the tax authority shall warn the party of criminal liability for false testimony.

§ 4. The provision of § 3 shall apply accordingly to natural persons who are partners in a company without legal personality which is a party to the proceedings.

**Article 181<sup>367</sup> [Catalog of evidence in tax proceedings]**

Evidence in tax proceedings may include, in particular, tax books, declarations submitted by a party, witness statements, expert opinions, materials and information collected as a result of inspection, tax information and other documents collected in the course of analytical activities of the National Revenue Administration, verification activities, tax inspection or customs and fiscal control and materials collected in the course of criminal proceedings or proceedings in cases of fiscal crimes or fiscal petty offences.

**Article 187 [Principle of the officiality of evidence proceedings]**

§ 1. The tax authority is obliged to collect and exhaustively consider all the evidence.

**<sup>366</sup> Art. 180. [Definicja dowodu w postępowaniu podatkowym. Oświadczenie o stanie majątkowym]**

§ 1. Jako dowód należy dopuścić wszystko, co może przyczynić się do wyjaśnienia sprawy, a nie jest sprzeczne z prawem.

§ 2. Jeżeli przepis prawa nie wymaga urzędowego potwierdzenia określonych faktów lub stanu prawnego w drodze zaświadczenia, organ podatkowy odbiera od strony, na jej wniosek, oświadczenie złożone pod rygorem odpowiedzialności karnej za fałszywe zeznania; przepis art. 196 § 3 stosuje się odpowiednio.

§ 3. Jeżeli zachodzi uzasadnione przypuszczenie, że strona będąca osobą fizyczną nie ujawniła wszystkich obrotów lub przychodów mających znaczenie dla określenia lub ustalenia wysokości zobowiązania podatkowego, organ podatkowy może zwrócić się do strony o złożenie oświadczenia o stanie majątkowym na określony dzień. Oświadczenie to składane jest pod rygorem odpowiedzialności karnej za fałszywe zeznania. Organ podatkowy, zwracając się o złożenie oświadczenia, uprzedza stronę o odpowiedzialności karnej za fałszywe zeznania.

§ 4. Przepis § 3 stosuje się odpowiednio do osób fizycznych będących współnikami spółki nieposiadającej osobowości prawnej będącej stroną postępowania.

**<sup>367</sup> Art. 181. [Katalog środków dowodowych w postępowaniu podatkowym]** Dowodami w postępowaniu podatkowym mogą być w szczególności księgi podatkowe, deklaracje złożone przez stronę, zeznania świadków, opinie biegłych, materiały i informacje zebrane w wyniku oględzin, informacje podatkowe oraz inne dokumenty zgromadzone w toku działalności analitycznej Krajowej Administracji Skarbowej, czynności sprawdzających, kontroli podatkowej lub kontroli celno-skarbowej oraz materiały zgromadzone w toku postępowania karnego albo postępowania w sprawach o przestępstwa skarbowe lub wykroczenia skarbowe.

§ 2. The tax authority may at any stage of the proceedings change, supplement or repeal its decision regarding the taking of evidence.

§ 3. Commonly known facts and facts known to the tax authority ex officio do not require proof. Facts known to the tax authority ex officio should be communicated to the party.

#### **Article 188 [Request by a party to tax proceedings regarding the taking of evidence]**

A party's request to take evidence should be taken into account if the subject of evidence are circumstances relevant to the case, unless these circumstances are sufficiently established by other evidence.

#### **Article 189 [Deadline for submitting evidence in tax proceedings]**

§ 1. The tax authority may set a time limit for the party to submit the evidence in its possession.

§ 2. The time limit shall be determined taking into account the nature of the evidence and the state of the proceedings, but it may not be shorter than 3 days.

§ 3. The tax authority may require the party to provide a translation into Polish of the documentation submitted by the party in a foreign language. The party is obliged to perform these activities at its own expense.

### **(7) The Right to Inspect the Files**

The data subject, the individual part of an investigation – either in the tax, customs or the general administrative law area – has the right to inspect the files containing information about its activities or the conduct investigated. The General Administrative Procedure Code contains a provision, which is applicable in this area: 82

### **Chapter 3 File Sharing**

#### **Article 73<sup>368</sup>**

§ 1. A party has the right to inspect the case files, make notes, copies or copies of them. This right also applies after the conclusion of the proceedings. 83

#### <sup>368</sup> **Art. 73. Udostępnianie stronie akt sprawy**

§ 1. Strona ma prawo wglądu w akta sprawy, sporządzania z nich notatek, kopii lub odpisów. Prawo to przysługuje również po zakończeniu postępowania.

§ 1a. Czynności określone w § 1 są dokonywane w lokalu organu administracji publicznej w obecności pracownika tego organu.

§ 1b. Wgląd w akta sprawy w przypadku, o którym mowa w art. 236 właściwość organu do rozpatrzenia skargi § 2, następuje z pominięciem danych osobowych osoby składającej skargę.

§ 3. Organ administracji publicznej może zapewnić stronie dokonanie czynności, o których mowa w § 1, w swoim systemie teleinformatycznym, po uwierzytelnieniu strony w sposób określony w art. 20a identyfikacja użytkownika systemów teleinformatycznych ust. 1 albo 2 ustawy z dnia 17 lutego 2005 r. o informatyzacji działalności podmiotów realizujących zadania publiczne.

§ 1a. The activities specified in § 1 are performed at the premises of a public administration body in the presence of an employee of that body.

§ 1b. Access to the case files in the case referred to in Art. 236 § 2, the authority of the authority to consider the complaint, omitting the personal data of the person lodging the complaint.

§ 3. The public administration body may ensure that the party performs the activities referred to in § 1 in its ICT system, after authenticating the party in the manner specified in art. 20a identification of the user of ICT systems sec. 1 or 2 of the Act of 17 February 2005 on the computerization of the activities of entities performing public tasks.

**Article 74<sup>369</sup> Exclusion of the party’s right to inspect the case files**

§ 1. The provision of art. 73, the sharing of the case file page does not apply to case files containing classified information classified as “secret” or “top secret”, as well as to other files that the public administration authority will exclude due to an important state interest.

§ 2. Refusal to allow the page to view the files of the case, to make notes, copies and copies of them, to authenticate such copies and copies or to issue certified copies by way of provisions, which can be complained against.

**84** This provision is important for Art. 9 OLAF Regulation.

**g) A closer Look at Single Investigation Measures**

**85** A closer look at single measures – especially investigation measures from the aforementioned branches that concern OLAF’s investigation shall enable the reader to take into account the legal wording of the provisions (in the footnotes) and a translation with short interpretation of the provisions in English (in the main text):

**aa. Interviewing / Questioning of “persons concerned” (in relation to suspects / defendants)**

**86** In the tax duties area, the Tax Code prescribes the taking into account of questions and answers from persons concerned.

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<sup>369</sup> **Art. 74. Wyłączenie prawa strony do wglądu w akta sprawy**

§ 1. Przepisu art. 73 udostępnianie stronie akt sprawy nie stosuje się do akt sprawy zawierających informacje niejawnie o klauzuli tajności “tajne” lub “ściśle tajne”, a także do innych akt, które organ administracji publicznej wyłączy ze względu na ważny interes państwowy.

§ 2. Odmowa umożliwienia stronie przeglądania akt sprawy, sporządzania z nich notatek, kopii i odpisów, uwierzytelnienia takich kopii i odpisów lub wydania uwierzytelnionych odpisów następuje w drodze postanowienia, na które służy zażalenie.



**bb. The taking of statements from Economic Operators**

The taking of statements from the person inspected e.g. the economic operators is possible under the Act on the National Tax and Revenue Authority: **87**

**Article 76<sup>370</sup> [Interrogation of the controlled or witness at a distance]** **88**

1. The questioning of the controlled person or the witness may take place with the use of technical devices enabling this activity to be carried out at a distance with simultaneous direct transmission of image and sound.
2. In the activity referred to in para. 1, is attended by a person employed or an officer serving in the KAS organisational unit competent for the locality where the inspected person or the witness resides.
3. The interrogation is recorded with the use of a video and audio recording device.
4. A protocol is drawn up from the hearing, the content of which is limited to the recording of the most important statements of the persons taking part in it. The video and audio recordings are attached to the protocol.
5. The controlled person has the right to receive, at his own expense, one copy of the audio or video recording.
6. The minister competent for public finances, in consultation with the Minister of Justice, shall specify, by regulation, the types of devices and technical means used to record the image or sound for the purposes of customs and tax control, the manner of storing, reproducing and copying the records, the manner and mode of making available to the inspected representative the controlled and the proxy of the image or sound recording and providing them with a copy of the image or sound recording, as well as the amount of the fee for preparing and providing a copy of the image or sound recording, bearing in mind the need to properly protect the recorded image or sound against loss of evidence, distortion or unauthorised disclosure, and ensuring that the amount of the fee

**<sup>370</sup> Art. 76. [Przesłuchanie kontrolowanego lub świadka na odległość]**

1. Przesłuchanie kontrolowanego lub świadka może nastąpić przy użyciu urządzeń technicznych umożliwiających przeprowadzenie tej czynności na odległość z jednoczesnym bezpośrednim przekazem obrazu i dźwięku.
2. W czynności, o której mowa w ust. 1, bierze udział osoba zatrudniona lub funkcjonariusz pełniący służbę w jednostce organizacyjnej KAS właściwej dla miejscowości, w której kontrolowany lub świadek przebywa.
3. Przesłuchanie utrwalą się za pomocą urządzenia rejestrującego obraz i dźwięk.
4. Z przesłuchania sporządza się protokół, którego treść ograniczona jest do zapisu najbardziej istotnych oświadczeń osób biorących w nim udział. Zapis obrazu i dźwięku stanowią załącznik do protokołu.
5. Kontrolowany ma prawo otrzymać, na swój koszt, jedną kopię zapisu dźwięku lub obrazu.
6. Minister właściwy do spraw finansów publicznych w porozumieniu z Ministrem Sprawiedliwości określi, w drodze rozporządzenia, rodzaje urządzeń i środków technicznych służących do utrwalania obrazu lub dźwięku dla celów kontroli celno-skarbowej, sposób przechowywania, odtwarzania i kopiowania zapisów, sposób i tryb udostępniania kontrolowanemu, reprezentantowi kontrolowanego i pełnomocnikowi zapisu obrazu lub dźwięku oraz przekazywania im kopii zapisu obrazu lub dźwięku, jak również wysokość opłaty za sporządzenie i przekazanie kopii zapisu obrazu lub dźwięku, mając na uwadze konieczność właściwego zabezpieczenia utrwalonego obrazu lub dźwięku przed utratą dowodu, jego zniekształceniem lub nieuprawnionym ujawnieniem, a także zapewnienia, aby wysokość opłaty odpowiadała rzeczywistym kosztom sporządzenia i przekazania kopii zapisu obrazu lub dźwięku.

corresponds to the actual costs of making and transmitting a copy of the video or sound recording.

89 In the tax area the Tax Code provides for summons and rules thereto:

### **Chapter 6 Summons**

#### **Article 155<sup>371</sup> [Summon in tax proceedings]**

§ 1. The tax authority may summon a party or other persons to provide explanations, testify, submit documents or perform a specific action in person, by proxy or in writing, if it is necessary to clarify the facts or settle the case.

§ 1a. The tax authority is obliged to make efforts to ensure that the satisfaction of the summons is not burdensome.

§ 2. If the summoned person cannot appear due to illness, disability or other important reason, the tax authority may accept an explanation or testimony or perform activities at the place of stay of that person.

#### **Article 156<sup>372</sup> [Personal appearance in tax proceedings]**

§ 1. The summoned person is obliged to appear in person only in the area of the province in which he resides or stays.

§ 2. If the locally competent to consider the case is the tax authority established in a province other than those referred to in § 1, the person required to appear in person may stipulate that he wants to appear before the authority competent to consider the case.

§ 3. In the case of the initiation of tax proceedings ex officio, the tax authority in the order to initiate the proceedings shall instruct the party about the possibility of submitting, within 7 days from the date of service of the order, the reservations referred to in § 2.

#### <sup>371</sup> **Wezwania**

##### **Art. 155. [Wezwanie w postępowaniu podatkowym]**

§ 1. Organ podatkowy może wezwać stronę lub inne osoby do złożenia wyjaśnień, zeznań, przedłożenia dokumentów lub dokonania określonej czynności osobiście, przez pełnomocnika lub na piśmie, jeżeli jest to niezbędne dla wyjaśnienia stanu faktycznego lub rozstrzygnięcia sprawy.

§ 1a. Organ podatkowy obowiązany jest dążyć do tego, aby zadośćuczynienie wezwaniu nie było uciążliwe.

§ 2. Jeżeli osoba wezwana nie może stawić się z powodu choroby, kalectwa lub innej ważnej przyczyny, organ podatkowy może przyjąć wyjaśnienie lub zeznanie albo dokonać czynności w miejscu pobytu tej osoby.

##### <sup>372</sup> **Art. 156. [Osobiste stawiennictwo w postępowaniu podatkowym]**

§ 1. Wezwany jest obowiązany do osobistego stawienia się tylko na obszarze województwa, w którym zamieszkuje lub przebywa.

§ 2. Jeżeli właściwym miejscowo do rozpatrzenia sprawy jest organ podatkowy mający siedzibę na obszarze województwa innego niż określone w § 1, osoba obowiązana do osobistego stawienia się może zastrzec, że chce stawić się przed organem właściwym do rozpatrzenia sprawy.

§ 3. W przypadku wszczęcia postępowania podatkowego z urzędu organ podatkowy w postanowieniu o wszczęciu postępowania poucza stronę o możliwości złożenia, w terminie 7 dni od dnia doręczenia postanowienia, zastrzeżenia, o którym mowa w § 2.

§ 4. Wezwany w postępowaniu prowadzonym przez organ wyznaczony na podstawie art. 18c jest obowiązany do osobistego stawienia się także poza obszarem województwa, w którym zamieszkuje lub przebywa.

§ 5. Wezwany w toku postępowania w sprawie, o której mowa w art. 119g § 1, jest obowiązany do osobistego stawienia się także poza obszarem województwa, w którym zamieszkuje lub przebywa.

§ 4. Summoned in proceedings conducted by the body designated pursuant to Art. 18c is obliged to appear in person also outside the province in which he resides or stays.

§ 5. Summoned in the course of the proceedings in the case referred to in Art. 119g § 1, is obliged to appear in person also outside the area of the province in which he resides or stays.

### cc. Interviewing/Questioning of witnesses

In the general administrative procedure, the witnesses might be heard by the authorities on the basis of the rights granted to them by the General Administrative Procedure Code: **90**

#### **Article 86<sup>373</sup> Hearing a party**

If, after the exhaustion of evidence or due to the lack thereof, the facts relevant to the resolution of the case remain unexplained, the public administration body may hear the party to explain them. Provisions concerning witnesses shall apply to the questioning of the parties, with the exception of the provisions on coercive measures. **91**

Witnesses may be concerned (of either the tax or the customs proceedings): **92**

#### **Act from 29 August 1997 Tax Ordinance**

#### **Article 190<sup>374</sup> [Notification of the party to the tax proceedings about the taking of evidence]**

§ 1. The party should be notified of the place and date of taking evidence from witnesses, expert opinions or inspection at least 7 days before the date.

§ 2. A party has the right to participate in the taking of evidence, may ask questions to witnesses and experts and provide explanations. **93**

#### **Article 195<sup>375</sup> [An absolute ban on questioning as a witness in tax proceedings]**

Witnesses cannot be:

1) people unable to perceive or communicate their perceptions;

#### <sup>373</sup> **Art. 86. Przesłuchanie strony**

Jeżeli po wyczerpaniu środków dowodowych lub z powodu ich braku pozostały nie wyjaśnione fakty istotne dla rozstrzygnięcia sprawy, organ administracji publicznej dla ich wyjaśnienia może przesłuchać stronę. Do przesłuchania stron stosuje się przepisy dotyczące świadków, z wyłączeniem przepisów o środkach przymusu.

#### <sup>374</sup> **Art. 190. [Zawiadomienie strony postępowania podatkowego o przeprowadzeniu dowodu]**

§ 1. Strona powinna być zawiadomiona o miejscu i terminie przeprowadzenia dowodu z zeznań świadków, opinii biegłych lub oględzin przynajmniej na 7 dni przed terminem.

§ 2. Strona ma prawo brać udział w przeprowadzaniu dowodu, może zadawać pytania świadkom i biegłym oraz składać wyjaśnienia.

#### <sup>375</sup> **Art. 195. [Bezwzględny zakaz przesłuchiwanie w charakterze świadka w postępowaniu podatkowym]** Świadkami nie mogą być:

- 1) osoby niezdolne do postrzegania lub komunikowania swych spostrzeżeń;
- 2) osoby obowiązane do zachowania w tajemnicy informacji niejawnych na okoliczności objęte tajemnicą, jeżeli nie zostały, w trybie określonym obowiązującymi przepisami, zwolnione od obowiązku zachowania tej tajemnicy;
- 3) duchowni prawnie uznanych wyznań - co do faktów objętych tajemnicą spowiedzi.

- 2) persons obliged to keep secret classified information for the circumstances covered by the secret, if they have not been released from the obligation to keep this secret in accordance with applicable regulations;
- 3) clergy of legally recognized denominations – as to the facts covered by the secret of confession.

**Article 196<sup>376</sup> [Relative ban on questioning as a witness in tax proceedings]**

§ 1. No one has the right to refuse to testify as a witness, with the exception of the party's spouse, ascendants, descendants and siblings of the party and relatives of the first degree, as well as persons related to the party by adoption, custody or guardianship. The right to refuse to testify also continues after the termination of marriage, adoption, guardianship or guardianship.

§ 2. The witness may refuse to answer questions when the answer could expose him or his relatives listed in § 1 to criminal liability, penal fiscal or cause a violation of the obligation to maintain professional secrecy protected by law.

§ 3. Before taking the testimony, the tax authority instructs the witness about the right to refuse to testify and answer questions, and warns about criminal liability for false testimony.

§ 4. The proper Minister of public finances in consultation with the Minister of Justice shall determine, by regulation, the manner of drawing up and storing testimonial reports covering the circumstances to which the obligation to protect classified information or to maintain professional secrecy extends.

**dd. Inspections**

**(1) According to the General Administrative Procedure Code**

- 94** According to the General Administrative Procedure Code, an inspection might be carried out to discover relevant facts for an administrative procedure:

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<sup>376</sup> **Art. 196. [Względny zakaz przesłuchiwania w charakterze świadka w postępowaniu podatkowym]**

§ 1. Nikt nie ma prawa odmówić zeznań w charakterze świadka, z wyjątkiem małżonka strony, wstępnych, zstępnych i rodzeństwa strony oraz powinowatych pierwszego stopnia, jak również osób pozostających ze stroną w stosunku przysposobienia, opieki lub kurateli. Prawo odmowy zeznań trwa także po ustaniu małżeństwa, przysposobienia, opieki lub kurateli.

§ 2. Świadek może odmówić odpowiedzi na pytania, gdy odpowiedź mogłaby narazić jego lub jego bliskich wymienionych w § 1 na odpowiedzialność karną, karną skarbową albo spowodować naruszenie obowiązku zachowania ustawowo chronionej tajemnicy zawodowej.

§ 3. Przed odebraniem zeznania organ podatkowy poucza świadka o prawie odmowy zeznań i odpowiedzi na pytania oraz uprzedza o odpowiedzialności karnej za fałszywe zeznania.

§ 4. Minister właściwy do spraw finansów publicznych w porozumieniu z Ministrem Sprawiedliwości określi, w drodze rozporządzenia, sposób sporządzania oraz przechowywania protokołów zeznań obejmujących okoliczności, na które rozciąga się obowiązek ochrony informacji niejawnych lub dochowania tajemnicy zawodowej.

**Article 85<sup>377</sup> Inspection**

§ 1. A public administration body may, if necessary, carry out an inspection.

§ 2. If the subject of inspection is with third parties, these persons are required to call the authority to show the subject of inspection.

**(2) Inspections in the Tax Area**

The main provision in the tax law area is:

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**Article 198<sup>378</sup> [Inspection in tax proceedings]**

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§ 1. The tax authority may, if necessary, carry out an inspection.

§ 2. If the subject of the inspection is with third parties, these persons are obliged, at the request of the tax authority, to present this item.

Further rules on inspections are regulated in Section V and Section VI:

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**Section V Inspection activities**

**Article 272 [Purpose of checks]**

Tax authorities of the first instance, subject to art. 272a, perform checks aimed at:

1) timeliness check:

and) submitting declarations,

b) paying taxes, including those collected by tax remitters and collectors;

2) confirmation of the formal correctness of the documents listed in point 1;

3) determination of the facts to the extent necessary to confirm compliance with the submitted documents;

4) verification of expenses incurred by the taxpayer and obtained taxable revenue (income) or untaxed revenue (income) – to the extent necessary to disclose the tax base for revenue not covered by disclosed sources or from undisclosed sources;

5) verification of data and documents provided by taxpayers making tax registration;

6) verification of data and documents submitted by entities submitting a registration application in accordance with Art. 16 of the Act of 6 December 2008 on excise duty and the simplified registration application in accordance with Art. 16b of this Act.

7) checking the fulfillment of the conditions entitling to taxation with a lump sum on the income of companies and the reliability and timeliness of submitting a statement to the taxpayer by its shareholder or shareholder, referred to in Chapter 6b of the Act of February 15, 1992 on corporate income tax.

<sup>377</sup> **Art. 85. Oględziny**

§ 1. Organ administracji publicznej może w razie potrzeby przeprowadzić oględziny.

§ 2. Jeżeli przedmiot oględzin znajduje się u osób trzecich, osoby te są obowiązane na wezwanie organu do okazania przedmiotu oględzin.

<sup>378</sup> **Art. 198 [Kontrola w postępowaniu podatkowym]**

§ 1. Organ podatkowy może w razie potrzeby przeprowadzić kontrolę.

§ 2. Jeżeli przedmiotem kontroli są osoby trzecie, osoby te są obowiązane, na żądanie organu podatkowego, do okazania tego przedmiotu.

**Article 272a [Checks on documents submitted as part of the VAT information exchange]**

The head of the national tax administration or the tax authority authorised by the minister responsible for public finances in the exchange of information on tax on goods and services with the Member States of the European Union, performs checks relating to the documents submitted to this authority.

**Article 274c [Request for documents from the taxpayer's counterparty]**

§ 1. The tax authority, in connection with tax proceedings or tax audits, may request from the taxpayer's business partners:

- 1) presentation of documents, in the scope covered by the proceedings or the taxpayer's inspection, in order to verify their correctness and reliability;
- 2) transfer, by means of electronic communication or on an IT data carrier, an excerpt from tax books and accounting documents saved in electronic form corresponding to the logical structure referred to in art. 193a § 2, if the taxpayer's counterparty keeps tax books using computer programs.

§ 1a. A protocol shall be drawn up from the activities verifying the taxpayer's counterparty.

§ 1b. The activities specified in § 1 point 2, the taxpayer's counterparty is obliged to perform at his own expense.

§ 1c. The provisions of § 1–1b also apply to entities conducting business activity participating in the delivery of the same goods or the provision of the same service, being both suppliers and buyers participating directly or indirectly in the delivery of goods or the provision of services. In this case, the request referred to in § 1 may only concern documents related to the delivery of the goods or the provision of the service.

§ 2. If the place of residence, registered office or place of business of the taxpayer's counterparty are outside the area of operation of the authority conducting the proceedings or control, the checks referred to in § 1 may also be made by the locally competent authority at the request of that authority.

**Article 276 [inspection of a dwelling by the tax authority]**

§ 1. The tax authority, with the consent of the taxpayer, may inspect the dwelling or part of the dwelling, if it is necessary to verify the compliance of the facts with the data resulting from the declaration submitted by the taxpayer and other documents confirming the incurring of expenses for housing purposes.

§ 2. In the case referred to in § 1, an employee of the tax authority, in consultation with the taxpayer, sets the date for the inspection. An annotation of the date of the inspection, signed by the taxpayer, shall be included in the case file.

§ 3. In the event of failure to make the dwelling available within the agreed period, the tax authority may set a new date for the inspection.

§ 4. An employee of the tax authority draws up a report of the inspection carried out, which is attached to the case file.

§ 5. The provisions of § 1–4 shall apply accordingly if the taxpayer benefits from investment allowances.

## Section VI Tax inspection

### Article 281 [Tax inspection]

§ 1. The tax authorities of the first instance carry out a tax audit of taxpayers, tax remitters, collectors and legal successors, hereinafter referred to as “controlled”.

§ 2. The purpose of the tax inspection is to check whether the inspected persons comply with the obligations arising from the provisions of the tax law.

#### (a) General Rules

A special provision in the tax area is regulated within Chapter 2, Art. 119g:

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### Chapter 2 Tax proceedings in case of tax avoidance

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**Article 119g<sup>379</sup> [Initiation or takeover of proceedings]** § 1. The head of the National Revenue Administration initiates tax proceedings or, by way of a decision, in whole or

#### <sup>379</sup> Postępowanie podatkowe w przypadku unikania opodatkowania

##### Art. 119g. [Wszczęcie lub przejęcie postępowania]

§ 1. Szef Krajowej Administracji Skarbowej wszczyna postępowanie podatkowe lub, w drodze postanowienia, w całości lub w części na wniosek organu podatkowego przejmuje do dalszego prowadzenia postępowanie podatkowe, kontrolę podatkową lub kontrolę celno-skarbową, jeżeli w sprawach:

- 1) określenia lub ustalenia wysokości zobowiązania podatkowego,
  - 2) określenia wysokości straty podatkowej,
  - 3) stwierdzenia nadpłaty lub określenia wysokości nadpłaty albo zwrotu podatku,
  - 4) odpowiedzialności płatnika za podatek niepobraný lub pobrany a niewpłacony, oraz odpowiedzialności podatnika za podatek niepobraný przez płatnika,
  - 5) o zakresie odpowiedzialności lub uprawnień spadkobiercy
- może być wydana decyzja z zastosowaniem art. 119a.

§ 2. W przypadku podatków, do których ustalania lub określania uprawnieni są wójt, burmistrz (prezydent miasta), starosta lub marszałek województwa, Szef Krajowej Administracji Skarbowej na wniosek właściwego organu podatkowego może wyłącznie przejąć postępowanie podatkowe.

§ 3. Przejmując kontrolę podatkową lub kontrolę celno-skarbową, Szef Krajowej Administracji Skarbowej z urzędu ją zawiesza i jednocześnie wszczyna postępowanie podatkowe. Do zawieszony kontroli podatkowej lub kontroli celno-skarbowej przepisów art. 201 § 3 i art. 205 § 2 nie stosuje się.

§ 4. W postanowieniu, o którym mowa w § 1, Szef Krajowej Administracji Skarbowej wskazuje, w jakim zakresie przejmuje postępowanie podatkowe, kontrolę podatkową lub kontrolę celno-skarbową.

§ 5. Czynności dokonane przez organ podatkowy przed przejęciem postępowania podatkowego, kontroli podatkowej lub kontroli celno-skarbowej pozostają w mocy.

§ 6. Postanowienie o przejęciu postępowania podatkowego, kontroli podatkowej lub kontroli celno-skarbowej doręcza się stronie albo kontrolowanemu oraz organowi, który prowadził postępowanie lub kontrolę.

§ 7. W przypadku gdy będącą stroną postępowania podatkowego spółka cywilna, jawna, partnerska, komandytowa albo komandytowo-akcyjna została rozwiązana w jego trakcie, postępowanie podatkowe kończy się decyzją, o której mowa w art. 115 § 4.

§ 8. Jeżeli w sprawie może być wydana decyzja z zastosowaniem środków ograniczających umowne korzyści, przepisy art. 119a § 7 oraz niniejszego rozdziału stosuje się odpowiednio.

in part, at the request of the tax authority, takes over the tax proceedings, tax control or customs and tax control for further conduct, if in the cases:

- 1) determining or determining the amount of tax liability,
  - 2) determining the amount of tax loss,
  - 3) determination of overpayment or determination of the amount of overpayment or tax refund,
  - 4) the payer's liability for the tax not collected or collected but not paid, and the taxpayer's liability for the tax not collected by the payer,
  - 5) on the scope of responsibility or rights of the heir
- a decision may be issued pursuant to Art. 119a.

§ 2. In the case of taxes to which determination or determination are entitled mayor, mayor (president of the city), staroste or marshal of the province, the head of the national tax administration at the request of the competent tax authority may only take over the tax proceedings.

§ 3. When taking over a tax audit or a customs and tax audit, the Head of the National Revenue Administration suspends it ex officio and at the same time initiates tax proceedings. To the suspended tax audit or customs and tax audit of the provisions of art. 201 § 3 and art. 205 § 2 shall not apply.

§ 4. In the order referred to in § 1, the Head of the National Revenue Administration indicates to what extent it takes over the tax proceedings, tax control or customs and tax control.

§ 5. Actions taken by the tax authority before the takeover of the tax proceedings, tax audit or customs and tax audit remain in force.

§ 6. The decision to take over the tax proceedings, tax inspection or customs and tax inspection shall be delivered to the party or the inspected party and to the authority that conducted the proceedings or inspection.

§ 7. Where a civil partnership, general partnership, partnership, limited partnership or limited joint-stock partnership which is a party to the tax proceedings has been dissolved

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Art. 119ga. [Elementy i procedowanie wniosku o przejęcie postępowania podatkowego, kontroli podatkowej lub kontroli celno-skarbowej przez Szefa KAS]

§ 1. Wniosek określony w art. 119g § 1 i 2 zawiera w szczególności oznaczenie strony lub kontrolowanego, zakres prowadzonego postępowania podatkowego, kontroli podatkowej lub kontroli celno-skarbowej, opis ustaleń faktycznych, informację o stwierdzonych nieprawidłowościach oraz uzasadnienie odnośnie do możliwości zastosowania art. 119a wraz ze wskazaniem korzyści podatkowej oraz sposobu jej wyliczenia.

§ 2. Przed przejęciem postępowania podatkowego, kontroli podatkowej lub kontroli celno-skarbowej Szef Krajowej Administracji Skarbowej może zlecić organowi podatkowemu przeprowadzenie dodatkowych czynności.

§ 3. Szef Krajowej Administracji Skarbowej przejmuje do dalszego prowadzenia postępowanie podatkowe, kontrolę podatkową lub kontrolę celno-skarbową, jeżeli z załączonych do wniosku akt postępowania, w tym zgromadzonych dowodów, wynika, że w sprawie może zostać wydana decyzja z zastosowaniem art. 119a.

§ 4. W przypadku niespełnienia przesłanek określonych w § 1 lub 3 Szef Krajowej Administracji Skarbowej zwraca akta sprawy właściwemu organowi podatkowemu.



in the course of the tax proceedings, the tax proceedings shall end with the decision referred to in art. 115 § 4.

§ 8. If a decision may be issued in the case with the use of measures limiting contractual benefits, the provisions of art. 119a § 7 and this chapter shall apply accordingly.

Article 119ga. [Elements and processing of the application for taking over tax proceedings, tax audit or customs and tax audit by the Head of KAS]

§ 1. The application specified in Art. 119g § 1 and 2 contain, in particular, the designation of the party or the controlled party, the scope of the tax proceedings, tax audit or customs and tax audit, a description of the findings of fact, information on irregularities found and justification regarding the possibility of applying art. 119a, together with an indication of the tax benefit and the method of its calculation.

§ 2. Before taking over the tax proceedings, tax control or customs and tax control, the head of the national tax administration may order the tax authority to carry out additional activities.

§ 3. The head of the National Revenue Administration takes over the conduct of tax proceedings, tax audits or customs and tax audits for further conduct, if the files of the proceedings attached to the application, including the collected evidence, show that a decision may be issued in the application of art. 119a.

§ 4. In the event of failure to meet the conditions set out in § 1 or 3, the head of the national tax administration returns the case file to the competent tax authority.

## **(b) Special Rules and Powers of the Inspector**

### **Article 286 [Rights of the inspector in the course of a tax audit]**

§ 1. The inspectors, to the extent resulting from the authorisation, are in particular entitled to:

- 1) access to the land and buildings, premises or other premises of the inspected entity;
- 2) access to residential premises in the case referred to in art. 276 § 1;
- 3) demand the presentation of the property subject to inspection and to inspect it;
- 4) request access to files, books and all kinds of documents related to the subject of the inspection and to make copies, copies, extracts, notes, printouts and documented downloading of data in electronic form;
- 5) collecting other necessary materials within the scope covered by the control;
- 6) securing collected evidence;
- 7) legitimizing persons in order to determine their identity, if it is necessary for the purposes of control;
- 8) requesting a physical inventory;
- 9) interrogation of witnesses, the controlled party and other persons listed in Art. 287 § 4;
- 10) consulting experts.

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§ 2. The inspector may request the issuance, for the duration of the inspection, against receipt:

1) samples of goods;

2) files, books and documents referred to in § 1 point 4:

and) in the event of a reasonable suspicion that they are unreliable, or

b) when the taxpayer does not provide the inspectors with conditions enabling them to perform inspection activities related to the examination of this documentation, and in particular does not provide the inspectors with an independent room and place to store documents.

§ 3. Reviewing the files of preparatory and court proceedings, files of court cases, as well as documents containing classified information or constituting professional secrecy, and making copies and notes from them takes place in compliance with the relevant provisions.

#### **Article 286a [Help or assistance with tax audit]**

§ 1. The inspector may, in the event of a justified need, summon, in urgent cases also orally, the assistance of the Police, Border Guard or municipal (municipal) guards, if he encounters resistance preventing or hindering the conduct of inspection activities, or ask for their assistance when there is a reasonable assumption that that it will encounter resistance. If resistance is put up by a soldier in active military service, the inspector shall call for assistance from the competent military authority, unless the delay threatens to frustrate the inspection activities, and there is no military authority on site.

§ 2. The authorities listed in § 1 may not refuse to provide assistance or assistance.

§ 3. The minister competent for internal affairs, in consultation with the Minister of National Defence, shall determine, by regulation, the detailed scope of duties of the authorities providing assistance or assisting in the performance of inspection activities, the mode of providing assistance or assistance, the manner of documenting the course of assistance or assistance and the local competence of the authorities to provide assistance or assistance. assists.

§ 4. When issuing the regulation referred to in § 3, account shall be taken, in particular, of the diversity of the scope of duties of the authorities providing assistance depending on the manner of resisting.

#### **Article 287 [Obligations of the inspected party in the course of a tax audit]**

§ 1. The inspected party, his employee and the person cooperating with the inspected party are obliged to enable the performance of the activities referred to in Art. 286, in particular:

1) enable, free of charge, filming, photographing, making sound recordings and recording the facts by means of other information carriers, if a film, photograph, recording or

information stored on another carrier may constitute evidence or contribute to the preservation of evidence in the matter being the subject of the inspection;

2) provide, at the request of the inspector, a translation into Polish of documentation prepared in a foreign language concerning the matters subject to the inspection;

3) provide, by means of electronic communication or on an IT data carrier, an excerpt from tax books and accounting documents saved in electronic form corresponding to the logical structure referred to in Art. 193a § 2, if the controlled keeps tax books using computer programs.

§ 2. The activities specified in § 1, points 2 and 3, the inspected party is obliged to perform at its own expense.

§ 3. The inspected person is obliged to provide all explanations regarding the subject of the inspection within the prescribed period, provide the inspector with the requested documents and provide the inspector with working conditions, including, if possible, a separate room and a place to store documents.

§ 4. A representative of the inspected party, an employee and a person cooperating with the inspected party are obliged to provide explanations regarding the subject of the inspection, to the extent resulting from the activities or tasks performed.

§ 5. The inspectors are entitled to enter the premises of the controlled entity and move around it on the basis of an official ID card without the need to obtain a pass and are not subject to a person search provided for in the internal regulations of this entity; however, they are subject to the provisions on occupational health and safety applicable in the inspected entity.

#### **Article 288 [Access of the inspector to real estate in the course of tax inspection]**

§ 1. The inspecting party has the right to enter the controlled area, building or dwelling in order to:

1) inspection, if:

a) they have been indicated as a place of business or as the registered office of the controlled entity,

b) it is necessary to determine or determine the amount of tax liability or tax base,

c) it is necessary to verify the fact of incurring housing expenses entitling to tax reliefs;

2) inspect and search residential premises, other rooms or things, if information has been obtained about running a business activity not reported for taxation, or if objects, tax books, files or other documents are stored there that may affect the determination of the existence of a tax obligation or the determination of the amount of the liability tax.

§ 2. The activities listed in § 1 point 2 shall be carried out by authorised employees of the tax authority after obtaining, at the request of the tax authority, the consent of the district prosecutor. Prior to the commencement of these activities, the inspected person is provided with the prosecutor's decision to consent to them. The provisions of the Code of Criminal Procedure on searches applicable to the Police also apply to

inspectors. A protocol of these activities is drawn up, which requires the approval of the prosecutor. In the event of refusal to approve the Protocol, the materials and information collected in the course of the activities do not constitute evidence in tax proceedings.

§ 3. The activities listed in § 1 point 1 are carried out with the consent of the inspected party. In the absence of such consent, the provision of § 2 shall apply accordingly.

§ 4. Where real estate or their parts or items are held by third parties, these persons are obliged to make them available for search or inspection at the request of the tax authority. The provisions of § 2 and 3 shall apply accordingly.

### (3) Inspection and Control Rights for Searches etc. in the Customs Area

101 The Act about the National Revenue Administration contains rules on controls and inspections as well as the control rights and powers of the agents in the area of customs duties:

#### 102 Chapter 1 Customs and tax control

**Article 54<sup>380</sup> [Scope of customs and tax control]** 1. Customs and tax control is subject to compliance with the following regulations:

<sup>380</sup> **Rozdział 1 Zobacz wszystkie Krajowa Administracja Skarbowa  
Kontrola celno-skarbowa**

**Art. 54. [Zakres kontroli celno-skarbowej]**

1. Kontroli celno-skarbowej podlega przestrzeganie przepisów:

- 1) prawa podatkowego w rozumieniu art. 3 pkt 2 Ordynacji podatkowej;
- 2) prawa celnego oraz innych przepisów związanych z przywozem i wywozem towarów w obrocie między obszarem celnym Unii Europejskiej a państwami trzecimi, w szczególności przepisów dotyczących towarów objętych ograniczeniami lub zakazami;
- 3) regulujących urządzenie i prowadzenie gier hazardowych, o których mowa w ustawie z dnia 19 listopada 2009 r. o grach hazardowych (Dz. U. z 2023 r. poz. 227), a także zgodność tej działalności ze zgłoszeniem, udzieloną koncesją lub zezwoleniem oraz zatwierdzonym regulaminem;
- 3a) w zakresie posiadania automatów do gier hazardowych;
- 4) prawa dewizowego w zakresie ograniczeń i obowiązków określonych dla rezydentów i nierezydentów oraz warunków udzielonych na ich podstawie zezwoleń dewizowych, a także warunków wykonywania działalności kantorowej;
- 5) o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu;
- 6) art. 1ja ust. 1, art. 1k ust. 1, art. 1u ust. 1, art. 1z, art. 2, art. 4 ust. 2 i art. 5 rozporządzenia 765/2006;
- 7) art. 2, art. 7 i art. 8 ust. 1 rozporządzenia 269/2014;
- 8) art. 2e ust. 1 i 3, art. 3 ust. 1 i 2, art. 3a ust. 1, art. 3g ust. 1, art. 3h ust. 1, art. 5 ust. 1-6, art. 5a ust. 1, 2 i 4, art. 5aa ust. 1, art. 5b ust. 1, art. 5f ust. 1, art. 5g, art. 5i ust. 1 i art. 5j ust. 1 i 2 rozporządzenia 833/2014;
- 9) ustawy z dnia 13 kwietnia 2022 r. o szczególnych rozwiązaniach w zakresie przeciwdziałania wspieraniu agresji na Ukrainę oraz służących ochronie bezpieczeństwa narodowego (Dz. U. z 2023 r. poz. 129 i 185).

2. Kontroli celno-skarbowej podlega również:

- 1) rodzaj paliwa w zbiorniku środka przewozowego;
- 1a) produkcja i obrót automatami do gier hazardowych;
- 2) przystosowanie zakładów produkcyjnych do rejestrowania i stosowania receptur zarejestrowanych we właściwej agencji płatniczej ustanowionej zgodnie z art. 3 ustawy z dnia 30 lipca 2003 r. o uruchamianiu środków pochodzących z Sekcji Gwarancji Europejskiego Funduszu Orientacji i Gwarancji Rolnej (Dz. U. poz. 1611 oraz z 2004 r. poz. 386 i 890);
- 3) stosowanie receptur, o których mowa w pkt 2, oraz prawidłowość deklaracji dotyczących surowców wykorzystywanych przy produkcji towarów wywożonych z refundacją wywozową;

- 1) tax law within the meaning of art. 3 point 2 of the Tax Ordinance;
  - 2) customs law and other regulations related to the import and export of goods in circulation between the customs territory of the European Union and third countries, in particular regulations regarding goods subject to restrictions or prohibitions;
2. Customs and tax control is also subject to:
- 1) type of fuel in the tank of the means of transport;
    - 1a) production and trading of gaming machines;
    - 2) adaptation of production plants to the registration and use of recipes registered with the competent paying agency established in accordance with Art. 3 of the Act of 30 July 2003 on mobilizing funds from the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (Journal of Laws, item 1611 and of 2004, items 386 and 890);
    - 3) the use of the recipes referred to in point 2 and the correctness of the declarations concerning the raw materials used in the production of goods exported with an export refund;
    - 4) activities of production and processing plants in terms of the correctness of declarations on raw materials used in the production of goods exported with an application for an export refund;
    - 5) the regularity of the payment of export refunds granted for the export of agricultural products to third countries, implemented under the financing of the common agricultural policy, in accordance with the provisions of Regulation (EU) No 1306/2013 and in accordance with the rules set out in Chapter III of Title V of that Regulation; [...]

#### **Article 59<sup>381</sup> [Place of inspection activities]**

1. Inspection activities may be performed at the customs and tax office, at the registered office of the inspected party, at the place where tax books are kept or stored, and at any

4) działalność zakładów produkcyjnych i przetwórczych w zakresie prawidłowości deklaracji dotyczących surowców wykorzystywanych przy produkcji towarów wywożonych z wnioskiem o refundację wywozową;

5) prawidłowość wypłaty refundacji wywozowych przyznawanych w przypadku wywozu produktów rolnych do państw trzecich, realizowanych w ramach finansowania wspólnej polityki rolnej, zgodnie z przepisami rozporządzenia (UE) nr 1306/2013 i na zasadach określonych w tytule V rozdziale III tego rozporządzenia;

#### <sup>381</sup> **Art. 59. [Miejsce wykonywania czynności kontrolnych]**

1. Czynności kontrolne mogą być wykonywane w urzędzie celno-skarbowym, w siedzibie kontrolowanego, w miejscu prowadzenia lub przechowywania ksiąg podatkowych oraz w każdym innym miejscu związanym z prowadzoną przez kontrolowanego działalnością, w tym w lokalu mieszkalnym lub w miejscach, w których mogą się znajdować urządzenia, towary lub dokumenty dotyczące tych urządzeń, towarów lub czynności podlegających kontroli. Czynności kontrolne mogą być również wykonywane w innych urządach obsługujących organy KAS.

2. Czynności kontrolne w zakresie określonym w art. 54 ust. 1 pkt 2 i ust. 2 pkt 1 i 11 oraz art. 62 ust. 5 pkt 13-15, a także w zakresie przemieszczania i obrotu wyrobami akcyzowymi mogą być wykonywane w każdym miejscu znajdującym się na terytorium Rzeczypospolitej Polskiej lub – jeżeli ratyfikowane umowy międzynarodowe tak stanowią – poza nim. W tym zakresie funkcjonariusze mogą w szczególności podejmować czynności kontrolne wobec towaru znajdującego się na terytorium Rzeczypospolitej Polskiej w celu ustalenia, czy towar został wprowadzony na obszar celny Unii Europejskiej zgodnie z przepisami prawa.

3. Kontrole celno-skarbowe, o których mowa w art. 54 ust. 2 pkt 8, wykonywane są na przejściach granicznych oraz w oddziałach celnych urzędów celno-skarbowych.

other place related to the activity conducted by the inspected party, including in a dwelling or in places where devices may be located, goods or documents relating to those controlled devices, goods or activities. Control activities may also be performed in other offices servicing KAS bodies.

2. Control activities within the scope specified in art. 54 sec. 1 point 2 and sec. 2 points 1 and 11 and art. 62 sec. 5 points 13–15, as well as in the field of movement and circulation of excise goods may be performed in any place located on the territory of the Republic of Poland or – if ratified international agreements so provide - outside of it. In this regard, the officers may, in particular, undertake control activities in relation to goods located on the territory of the Republic of Poland in order to determine whether the goods have been introduced into the customs territory of the European Union in accordance with the law.

3. Customs and tax inspections referred to in Art. 54 sec. 2 point 8, are carried out at border crossings and in customs departments of customs and tax offices.

**103** The following provision, Art. 64 of the Act on the National Tax and Revenue Authority offers a broad concept of controlling rights:

**104** **Article 64<sup>382</sup> [Controlling rights]**

1. As part of the customs and tax inspection, you are entitled to:

<sup>382</sup> **Art. 64 [Uprawnienia kontrolujących]**

1. W ramach kontroli celno-skarbowej przysługuje uprawnienie do: 1) żądania udostępniania akt, ewidencji, ksiąg i wszelkiego rodzaju dokumentów związanych z przedmiotem kontroli celno-skarbowej oraz do sporządzania z nich odpisów, kopii, wyciągów, notatek, wydruków i udokumentowanego pobierania danych w postaci elektronicznej oraz do żądania przekazania w postaci elektronicznej całości lub części ksiąg podatkowych oraz dowodów księgowych za pomocą środków komunikacji elektronicznej lub na informatycznych nośnikach danych w przypadku prowadzenia ksiąg podatkowych przy użyciu programów komputerowych; 2) wstępu, przebywania i poruszania się na gruncie oraz w budynku, lokalu lub innym pomieszczeniu kontrolowanego; 3) dokonywania oględzin; 4) legitymowania lub ustalania w inny sposób tożsamości osób, jeżeli jest to niezbędne na potrzeby kontroli; 5) przesłuchiwania kontrolowanego lub świadków; 6) przeszukiwania lokali, w tym lokali mieszkalnych, innych pomieszczeń i miejsc oraz rzeczy, w tym z użyciem urządzeń technicznych i psów służbowych; 7) zasięgania opinii biegłych; 8) zabezpieczania zebranych dowodów; 9) żądania przeprowadzenia spisu z natury; 10) sporządzania szkiców, kopiowania, filmowania, fotografowania oraz dokonywania nagrań dźwiękowych; 11) zbierania innych niezbędnych materiałów w zakresie objętym kontrolą celno-skarbową; 12) badania towarów, surowców, półproduktów i wyrobów, w tym pobrania próbek towarów, surowców, półproduktów i wyrobów gotowych, w celu ich zbadania; 13) żądania powtórzenia, jeżeli to możliwe, każdej czynności, w wyniku której uzyskuje się dane o przyjmowanych, wydawanych lub wprowadzanych do procesu produkcyjnego surowcach, materiałach, produkcji w toku i półproduktach oraz uzyskanych produktach, wyrobach gotowych i wysokości strat produkcyjnych; 14) przeprowadzania w uzasadnionych przypadkach, w drodze eksperymentu, doświadczenia lub odtworzenia możliwości gry na automacie lub gry na innym urządzeniu; 15) żądania zamknięcia dokumentacji dotyczącej towarów i czynności podlegających kontroli celno-skarbowej w celu umożliwienia porównania stanu rzeczywistego ze stanem ewidencyjnym; 16) uczestniczenia w podlegających kontroli celno-skarbowej czynnościach w zakresie produkcji, przemieszczania i zużycia wyrobów akcyzowych, w szczególności ich wytwarzania, uszlachetniania, przerabiania, skażania, rozlewu, przyjmowania, magazynowania, wydawania, przewozu i niszczenia, oraz w zakresie stosowania i oznaczania tych wyrobów znakami akcyzy; 17) żądania złożenia wyjaśnień dotyczących przedmiotu kontroli celno-skarbowej; 18) nakładania zamknięć urzędowych na urządzenia, pomieszczenia, naczynia oraz środki przewozowe.

- 1) **request access to files, records, books and all kinds of documents related to the subject of customs and fiscal control** and to make copies, copies, extracts, notes, printouts and documented downloading of data in electronic form and to request the transfer of all or part of the books in electronic form tax and accounting documents by means of electronic communication or on IT data carriers in the case of keeping tax books using computer programs;
- 2) **enter, stay and move around on the ground and in the building, premises or other controlled room;**
- 3) **inspection;**
- 4) legitimating or otherwise establishing the identity of persons, if it is necessary for the purposes of control;
- 5) controlled or witness interviews;

2. Funkcjonariusze w ramach kontroli celno-skarbowej są uprawnieni również do: 1) przeprowadzania rewizji towarów, wyrobów i środków przewozowych, w tym z użyciem urządzeń technicznych i psów służbowych; 2) przeszukania osób; 3) konwoju i strzeżenia towarów; 4) kontroli przesyłek pocztowych; 5) zatrzymywania pojazdów i wykonywania innych czynności z zakresu kontroli ruchu drogowego w trybie i przypadkach określonych w ustawie z dnia 20 czerwca 1997 r. - Prawo o ruchu drogowym; 6) zatrzymywania i kontrolowania statków w rozumieniu ustawy z dnia 18 września 2001 r. - Kodeks morski (Dz. U. z 2018 r. poz. 2175, z 2022 r. poz. 2642 oraz z 2023 r. poz. 261) i ustawy z dnia 21 grudnia 2000 r. o żegludze śródlądowej (Dz. U. z 2022 r. poz. 1097 i 2642); 7) przeprowadzenia kontroli rodzaju używanego paliwa przez pobranie próbek paliwa ze zbiornika środka przewozowego.

3. Żądanie, o którym mowa w ust. 1 pkt 1, może dotyczyć akt, ksiąg i wszelkiego rodzaju dokumentów związanych z przedmiotem kontroli, także za okres inny niż okres objęty kontrolą, jeżeli nie upłynął jeszcze termin ich przechowywania przewidziany w odrębnych przepisach.

4. Kontrolujący są uprawnieni do wstępu na teren kontrolowanego oraz poruszania się po tym terenie na podstawie legitymacji służbowej bez potrzeby uzyskiwania przepustki oraz nie podlegają rewizji osobistej przewidzianej w regulacjach wewnętrznych tej jednostki. Kontrolujący podlegają przepisom o bezpieczeństwie i higienie pracy obowiązującym u kontrolowanego.

5. Kontrolujący są uprawnieni do wydawania osobom poleceń określonego zachowania się, w granicach niezbędnych do wykonania czynności, o których mowa w ust. 1 pkt 3, 4 i 6 oraz ust. 2 pkt 1, 5 i 6, albo w celu uniknięcia bezpośredniego zagrożenia bezpieczeństwa osób lub mienia.

6. Jeżeli nie ma możliwości korzystania z dróg, funkcjonariusze są uprawnieni do przebywania i poruszania się po gruntach bez uzyskania zgody ich właścicieli lub użytkowników w czasie bezpośredniego pościgu, przy czym do rozpatrywania ewentualnych odszkodowań za wyrządzone szkody mają zastosowanie przepisy Kodeksu cywilnego.

7. Z zastrzeżeniem przepisów odrębnych, rewizji nie podlegają: 1) na zasadzie wzajemności: a) towary przeznaczone dla obcych przedstawicielstw dyplomatycznych urzędów konsularnych oraz misji specjalnych w Rzeczypospolitej Polskiej, a także organizacji międzynarodowych mających siedziby lub placówki w Rzeczypospolitej Polskiej, b) towary przeznaczone dla osób korzystających z przywilejów i immunitetów dyplomatycznych, c) opatrzone pieczęcią urzędową przedstawicielstwa dyplomatycznego, urzędu konsularnego, ministerstwa spraw zagranicznych obcego państwa lub pieczęcią urzędową misji specjalnej albo organizacji lub instytucji, która misję ustanowiła, przesyłki urzędowe przesyłane do obcych przedstawicielstw dyplomatycznych, urzędów konsularnych i misji specjalnych w Rzeczypospolitej Polskiej oraz opatrzone taką pieczęcią przesyłki przez nie wysyłane; 2) opatrzone pieczęcią urzędową przesyłki przesyłane między urzędem obsługującym ministra właściwego do spraw zagranicznych a polskimi przedstawicielstwami dyplomatycznymi, urzędami konsularnymi i misjami specjalnymi za granicą.

8. W przypadku, o którym mowa w ust. 1 pkt 1, kontrolujący może żądać przekazania całości lub części tych ksiąg oraz dowodów księgowych za pomocą środków komunikacji elektronicznej lub na informatycznych nośnikach danych, w postaci elektronicznej odpowiadającej strukturze logicznej, o której mowa w art. 193a § 2 Ordynacji podatkowej, wskazując rodzaj ksiąg podatkowych oraz okres, którego dotyczą.

9. Do przeszukania, o którym mowa w ust. 1 pkt 6, przepisy Kodeksu postępowania karnego stosuje się odpowiednio.

- 6) search premises, including residential premises, other rooms and places and things, including with the use of technical devices and service dogs;
  - 7) seeking expert opinions;
  - 8) securing collected evidence;
  - 9) requesting a physical inventory;
  - 10) making sketches, copying, filming, photographing and making sound recordings;
  - 11) collecting other necessary materials within the scope covered by customs and fiscal control;
  - 12) testing of goods, raw materials, semi-finished products and products, including taking samples of goods, raw materials, semi-finished products and finished products in order to test them;
  - 13) request repetition, if possible, of each activity as a result of which data is obtained on raw materials, materials, work in progress and semi-finished products received, issued or introduced into the production process, as well as obtained products, finished products and the amount of production losses;
  - 14) conducting, in justified cases, by way of experiment, experience or recreate the possibility of playing a slot machine or playing on another device;
  - 15) requests to close documentation regarding goods and activities subject to customs and tax control in order to enable comparison of the actual state with the record state;
  - 16) participate in activities subject to customs and fiscal control in the field of production, movement and consumption of excise goods, in particular their manufacture, processing, processing, contamination, bottling, acceptance, storage, issue, transport and destruction, and in the scope of using and marking these goods with marks excise;
  - 17) request explanations regarding the subject of the customs and tax inspection;
  - 18) applying official seals to equipment, rooms, vessels and means of transport.
2. As part of the **customs and tax inspection, officers are also entitled to:**
- 1) **carrying out inspections of goods, products and means of transport**, including the use of technical devices and service dogs;
  - 2) searches of persons;
  - 3) convoy and guarding of goods;
  - 4) control of postal items;
  - 5) stopping vehicles and performing other activities in the field of road traffic control in the mode and cases specified in the Act of 20 June 1997 - Road Traffic Law;
  - 6) stopping and inspecting ships within the meaning of the Act of 18 September 2001 - Maritime Code (Journal of Laws of 2018, item 2175, of 2022, item 2642 and of 2023, item 261) and the Act of December 21, 2000 on inland navigation (Journal of Laws of 2022, item 1097 and 2642);
  - 7) checking the type of fuel used by taking fuel samples from the tank of the means of transport.



3. The request referred to in para. 1 point 1 may apply to files, books and all kinds of documents related to the subject of the inspection, also for a period other than the period covered by the inspection, if the period for their storage provided for in separate regulations has not yet expired.
4. The inspectors **are entitled to enter the controlled area and move around** it on the basis of an official ID card without the need to obtain a pass and are not subject to personal search provided for in the internal regulations of this unit. The inspectors are subject to the regulations on occupational health and safety applicable at the inspected party.
5. The controllers are entitled to issue instructions to persons to behave in a specific way, within the limits necessary to perform the activities referred to in para. 1 points 3, 4 and 6 and sec. 2 points 1, 5 and 6, or in order to avoid a direct threat to the safety of persons or property.
6. If it is not possible to use roads, officers are entitled to stay and move on land without obtaining the consent of their owners or users during a direct pursuit, while the provisions of the Civil Code apply to the consideration of possible compensation for damage caused.
7. Subject to separate provisions, the following are not subject to revision:
  - 1) on the basis of reciprocity:
    - a) goods intended for foreign diplomatic representations, consular offices and special missions in the Republic of Poland, as well as international organisations having their registered offices or offices in the Republic of Poland,
    - b) goods intended for persons enjoying diplomatic privileges and immunities,
    - c) stamped with the official seal of a diplomatic mission, consular office, foreign ministry of foreign affairs or with the official stamp of a special mission or organisation or institution that established the mission, official parcels sent to foreign diplomatic representations, consular offices and special missions in the Republic of Poland, and parcels bearing such a seal by not sent;
  - 2) consignments bearing an official seal sent between the office servicing the minister competent for foreign affairs and Polish diplomatic representations, consular offices and special missions abroad.
8. In the case referred to in paragraph. 1 item 1, the inspector may request the transfer of all or part of these books and accounting documents by means of electronic communication or on IT data carriers, in an electronic form corresponding to the logical structure referred to in Art. 193a § 2 of the Tax Ordinance, indicating the type of tax books and the period to which they relate.
9. For the search referred to in para. 1 point 6, the provisions of the Code of Criminal Procedure shall apply accordingly.

**ee. Searches and Seizures: The Enforcement authorities**

**(1) Act on Enforcement Activities**

**105** The Act on enforcement authorities contains a provision on searches by different authorities, which are according to the Enforcement Act competent to deal with the collection of different duties (e.g. customs or tax duties):

**106 Article 48<sup>383</sup> [Search of clothing and other items of the debtor]**

§ 1. The executor may search the clothing on the person liable and briefcases, suitcases and similar items that are required to carry with you, if the execution relates to money or the release of things.

§ 2. A search of clothing on the person liable and his briefcases, suitcases and similar items outside the apartment, business, establishment or farm of the principal may only take place on the basis of a written order of the enforcement authority. The enforcer is obliged to show the command of the enforcement authority to the principal before proceeding with enforcement activities.

§ 3. If, during the enforcement activities referred to in § 1 and 2, the executor notices that the required gave the items sought to his household or other person to hide, the executor may search the clothing of that person and its briefcases, suitcases and similar items that she he has with him.

§ 4. A search of clothing should only be carried out by a person of the same sex as the person being searched.

§ 5. Clothes searches on a soldier in active military service or an officer of the Police, the State Protection Service, the Internal Security Agency, the Foreign Intelligence Agency, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau or the Border Guard shall be carried out in the presence of the executor by a soldier of the Military Police or a military law enforcement authority, respectively, or a person appointed by the officer's superior.

<sup>383</sup> **Art. 48. [Przeszukanie odzieży i innych przedmiotów zobowiązanego]**

§ 1. Egzekutor może przeszukać odzież na osobie zobowiązanego oraz teczki, walizy i tym podobne przedmioty, które zobowiązany ma przy sobie, jeżeli egzekucja dotyczy należności pieniężnej lub wydania rzeczy.

§ 2. Przeszukanie odzieży na osobie zobowiązanego oraz jego teczek, waliz i tym podobnych przedmiotów poza mieszkaniem, przedsiębiorstwem, zakładem lub gospodarstwem zobowiązanego może nastąpić tylko na podstawie pisemnego polecenia organu egzekucyjnego. Egzekutor obowiązany jest okazać polecenie organu egzekucyjnego zobowiązanemu przed przystąpieniem do czynności egzekucyjnych.

§ 3. Jeżeli w czasie dokonywania czynności egzekucyjnych, o których mowa w § 1 i 2, egzekutor zauważy, że zobowiązany oddał poszukiwane przedmioty swemu domownikowi lub innej osobie do ukrycia, egzekutor może przeszukać odzież tej osoby oraz jej teczki, walizy i tym podobne przedmioty, jakie ona ma przy sobie.

§ 4. Przeszukanie odzieży powinno być dokonane tylko przez osobę tej samej płci co osoba przeszukiwana.

§ 5. Przeszukania odzieży na żołnierzu w czynnej służbie wojskowej albo funkcjonariuszu Policji, Służby Ochrony Państwa, Agencji Bezpieczeństwa Wewnętrznego, Agencji Wywiadu, Służby Kontrwywiadu Wojskowego, Służby Wywiadu Wojskowego, Centralnego Biura Antykorupcyjnego lub Straży Granicznej przeprowadza w obecności egzekutora odpowiednio żołnierz Żandarmerii Wojskowej lub wojskowego organu porządkowego albo osoba wyznaczona przez przełożonego funkcjonariusza.

**Article 49<sup>384</sup> [Right to participate in the search]**

§ 1. He has the right to be present during the search.

§ 2. If the required or other person present during the search behaves inappropriately or interferes with enforcement activities, the executor may admonish, and after an unsuccessful admonition, expel that person from the place of enforcement activities.

**Article 49a<sup>385</sup> [Search rules]**

The search of items is carried out in accordance with the purpose of this activity, with moderation and respect for the dignity of the persons concerned, and without causing unnecessary damage and discomfort.

**Article 50<sup>386</sup> [Protection of areas and facilities]**

§ 1. In the premises and other premises of state authorities and on railway and airport areas, enforcement activities may be carried out only after prior notification of these state authorities or managers (commandants) of these facilities. This provision does not apply to cases where, under specific provisions, enforcement authorities are competent to act in railway areas and airports.

<sup>384</sup> Art. 49. [Prawo uczestnictwa zobowiązanego w przeszukaniu]

§ 1. Podczas przeszukania ma prawo być obecny zobowiązany.

§ 2. Jeżeli zobowiązany lub inna obecna przy przeszukaniu osoba zachowuje się niewłaściwie lub przeszkadza w dokonywaniu czynności egzekucyjnych, egzekutor może upomnieć, a po bezskutecznym upomnieniu wydaląc z miejsca dokonywania czynności egzekucyjnych tę osobę.

<sup>385</sup> Art. 49a. [Zasady przeszukania]

Przeszukanie rzeczy dokonywane jest zgodnie z celem tej czynności, z zachowaniem umiaru i poszanowania godności osób, których ta czynność dotyczy, oraz bez wyrządzania niepotrzebnych szkód i dolegliwości.

<sup>386</sup> Art. 50. [Ochrona terenów i obiektów]

§ 1. W lokalach i innych pomieszczeniach organów państwowych oraz na terenach kolejowych i lotnisk można dokonywać czynności egzekucyjnych tylko po uprzednim zawiadomieniu tych organów państwowych lub zarządców (komendantów) tych obiektów. Przepis ten nie dotyczy przypadków, gdy z mocy szczególnych przepisów organy egzekucyjne właściwe są do działania na terenach kolejowych oraz lotnisk.

§ 2. W obrębie budynków wojskowych i zajmowanych przez Policję, Służbę Ochrony Państwa, Agencję Bezpieczeństwa Wewnętrznego, Agencję Wywiadu, Służbę Kontrwywiadu Wojskowego, Służbę Wywiadu Wojskowego, Centralne Biuro Antykorupcyjne lub Straż Graniczną oraz na okrętach wojennych można dokonywać czynności egzekucyjnych tylko po uprzednim zawiadomieniu odpowiednio właściwego komendanta lub kierownika jednostki i w asyście wyznaczonego organu wojskowego lub organu Policji, Służby Ochrony Państwa, Agencji Bezpieczeństwa Wewnętrznego, Agencji Wywiadu, Służby Kontrwywiadu Wojskowego, Służby Wywiadu Wojskowego, Centralnego Biura Antykorupcyjnego lub Straży Granicznej.

§ 3. Sposób asystowania przy wykonywaniu czynności egzekucyjnych, uwzględniając w szczególności przypadki i miejsca, w których wymagana jest asysta organów, sposób postępowania przy wykonywaniu asysty, tryb powiadamiania właściwych organów, wymagane dokumenty, sposób dokumentowania wykonywanych czynności i rozliczania ich kosztów, określi, w drodze rozporządzenia:

1) Minister Obrony Narodowej - w przypadku wykonywania asysty przez Służbę Kontrwywiadu Wojskowego, Służbę Wywiadu Wojskowego, Żandarmerię Wojskową lub wojskowe organy porządkowe;

2) minister właściwy do spraw wewnętrznych - w przypadku wykonywania asysty przez Policję, Służbę Ochrony Państwa lub Straż Graniczną;

3) Prezes Rady Ministrów - w przypadku wykonywania asysty przez Agencję Bezpieczeństwa Wewnętrznego, Agencję Wywiadu lub Centralne Biuro Antykorupcyjne.

§ 4. Przeszukania rzeczy osoby obowiązanej do zachowania tajemnicy zawodowej dokonuje się w obecności przedstawiciela organizacji zawodowej, do której osoba ta przynależy.

§ 2. Within military buildings and buildings occupied by the Police, the State Protection Service, the Internal Security Agency, the Foreign Intelligence Agency, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau or the Border Guard, as well as on warships, enforcement actions may be carried out only after prior notification to the competent commander or head of the unit and assisted by a designated military authority or authority of the Police, the State Protection Service, the Internal Security Agency, the Foreign Intelligence Agency, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau or the Border Guard.

§ 3. How to assist in the performance of enforcement activities, taking into account, in particular, cases and places where the assistance of the authorities is required, how to proceed in the performance of assistance, the mode of notification to the competent authorities, the required documents, how to document the activities performed and the settlement of their costs, shall determine by regulation:

- 1) Minister of National Defence – in the case of assistance provided by the Military Counterintelligence Service, the Military Intelligence Service, the Military Police or military law enforcement authorities;
- 2) the minister competent for internal affairs – in the case of assistance provided by the Police, the State Protection Service or the Border Guard;
- 3) Prime Minister – in the case of assistance provided by the Internal Security Agency, the Foreign Intelligence Agency or the Central Anti-Corruption Bureau.

§ 4. A search of the belongings of a person obliged to maintain professional secrecy shall be carried out in the presence of a representative of the professional organisation to which that person belongs.

#### **Article 51<sup>387</sup> [Witnesses of enforcement activities]**

§ 1. At the request of the principal, and when the executor deems it necessary, a witness may be summoned to be present at enforcement activities.

§ 2. The enforcer summons at least two witnesses, if required cannot be present at enforcement activities as a result of expulsion from the place of enforcement activities or for other reasons, unless there is a fear that as a result of the passage of time needed to summon witnesses, the execution will be thwarted.

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#### <sup>387</sup> **Art. 51. [Świadkowie czynności egzekucyjnych]**

§ 1. Na wniosek zobowiązanego, a także gdy egzekutor uzna to za konieczne, może być przywołany świadek do obecności przy czynnościach egzekucyjnych.

§ 2. Egzekutor przywołuje co najmniej dwóch świadków, jeżeli zobowiązany nie może być obecny przy czynnościach egzekucyjnych na skutek wydalenia z miejsca dokonywania czynności egzekucyjnych lub z innych przyczyn, chyba że zachodzi obawa, iż wskutek upływu czasu potrzebnego na przywołanie świadków egzekucja będzie udaremniona.

§ 3. Świadcami mogą być także pełnoletni członkowie rodziny i domownicy zobowiązanego.

§ 4. Świadkowie nie otrzymują wynagrodzenia.

§ 3. Witnesses may also be adult family members and household members of the obligated party.

§ 4. Witnesses are not paid.

**Article 52<sup>388</sup> [Admissibility of executions on days off from work and at night]**

§ 1. If the purpose of the enforcement so requires, the enforcement authority will authorise the enforcement authority in writing to carry out enforcement activities on non-working days or at night between 21:00 and 7:00.

§ 2. Enforcement activities may be carried out at night only in the presence of a witness.

**(2) Act on the National tax and Revenue Authority**

**Article 77<sup>389</sup> [Searching residential premises]**

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1. The inspector may search residential premises in order to find evidence relevant to the conducted customs and fiscal control, after obtaining the consent of the competent district prosecutor. Prior to the search, the inspected person is provided with the prosecutor's decision to consent to the search. The provisions of the Code of Criminal Procedure on searches relating to the Police shall apply accordingly to inspectors.

2. In cases of urgency, the inspector may conduct the search referred to in para. 1, when there are reasonable grounds to believe that the evidence is at the place of search, without the prior consent of the prosecutor. The provision of sec. 1, third sentence applies.

3. The search referred to in para. 2 is subject to approval by the competent district prosecutor.

<sup>388</sup> **Art. 52. [Dopuszczalność egzekucji w dni wolne od pracy i w porze nocnej]**

§ 1. Jeśli cel egzekucji tego wymaga, organ egzekucyjny zezwoli pisemnie egzekutorowi na dokonanie czynności egzekucyjnej w dni wolne od pracy lub w porze nocnej pomiędzy godziną 21 a godziną 7. Egzekutor jest obowiązany okazać zezwolenie organu egzekucyjnego zobowiązanemu przed przystąpieniem do czynności egzekucyjnych.

§ 2. Czynności egzekucyjne mogą być dokonywane w porze nocnej tylko w obecności świadka.

<sup>389</sup> **Art. 77. [Przeszukanie lokali mieszkalnych]**

1. Kontrolujący może dokonać przeszukania lokali mieszkalnych w celu znalezienia dowodów mających znaczenie dla prowadzonej kontroli celno-skarbowej, po uzyskaniu zgody właściwego prokuratora rejonowego. Przed przystąpieniem do przeszukania kontrolowanemu okazuje się postanowienie prokuratora o wyrażeniu na nie zgody. Przepisy Kodeksu postępowania karnego o przeszukaniu odnoszące się do Policji stosuje się odpowiednio do kontrolujących.

2. W przypadkach niecierpiących zwłoki kontrolujący może dokonać przeszukania, o którym mowa w ust. 1, gdy istnieją uzasadnione podstawy do przypuszczenia, że dowody znajdują się w miejscu przeszukania, bez uprzedniej zgody prokuratora. Przepis ust. 1 zdanie trzecie stosuje się.

3. Przeszukanie, o którym mowa w ust. 2, podlega zatwierdzeniu przez właściwego prokuratora rejonowego.

4. W zakresie nieuregulowanym w ust. 1-3 przepisy Kodeksu postępowania karnego stosuje się odpowiednio.

5. W razie odmowy zatwierdzenia przeszukania materiały i informacje zebrane w toku czynności nie stanowią dowodu w kontroli celno-skarbowej, kontroli podatkowej, postępowaniu podatkowym, postępowaniu celnym lub postępowaniu w sprawach o przestępstwa skarbowe lub wykroczenia skarbowe.

6. W przypadku gdy nieruchomości lub ich części albo rzeczy znajdują się w posiadaniu osób trzecich, osoby te są obowiązane je udostępnić, w celu przeszukania, na żądanie naczelnika urzędu celno-skarbowego. Przepisy ust. 1-5 stosuje się odpowiednio.

4. To the extent not regulated in sec. 1–3 of the provisions of the Code of Criminal Procedure shall apply accordingly.
5. In the event of refusal to approve the search, the materials and information collected in the course of the activities shall not constitute evidence in the customs and tax inspection, tax inspection, tax proceedings, customs proceedings or proceedings in cases of fiscal offences or fiscal offences.
6. In the event that real estate or their parts or things are in the possession of third parties, these persons are obliged to make them available for search, at the request of the head of the customs and tax office. The provisions of sec. 1–5 apply accordingly.

**Article 78<sup>390</sup> [Searching a person]**

1. If it is impossible to determine in any other way whether a person is transporting goods for which the requirements provided for by law have not been met, in particular if the goods have not been presented or declared in accordance with the requirements of customs law, the officer may search that person.
2. The search should not violate the personal dignity of the searched person and should be conducted by a person of the same sex, in conditions excluding the presence of third parties.
3. In the event of a justified suspicion that a person is hiding goods in his body, that person may be referred for specialist medical examination.
4. In the case of performing the tests referred to in par. 3, at the request of the person who has undergone these tests, the head of the customs and tax office issues a certificate of the date and place of their performance.

**ff. The seizure of digital forensic evidence including bank account information**

**108** The seizure of digital forensic evidence including bank account information becomes more and more important. The recent changes of the OLAF Regulation No 883/2013 (as amended 2020/2223) codified that OLAF shall under the same conditions that apply to national competent authorities have access to bank account information. The relevant national law, which the Polish Parliament designed in 2022, shall be displayed on the following pages:

<sup>390</sup> **Art. 78. [Przeszukanie osoby]**

1. Jeżeli nie można w inny sposób stwierdzić, czy osoba przewozi towary, co do których nie zostały spełnione wymogi przewidziane przepisami prawa, w szczególności jeżeli towary nie zostały przedstawione lub zgłoszone zgodnie z wymogami wynikającymi z przepisów prawa celnego, funkcjonariusz może przeszukać tę osobę.
2. Przeszukanie nie powinno naruszać godności osobistej osoby przeszukiwanej oraz powinno być przeprowadzone przez osobę tej samej płci, w warunkach wykluczających obecność osób postronnych.
3. W przypadku uzasadnionego podejrzenia, że osoba ukrywa towary w swoim organizmie, można skierować tę osobę na specjalistyczne badania lekarskie.
4. W przypadku wykonania badań, o których mowa w ust. 3, na wniosek osoby, która została poddana tym badaniom, naczelnik urzędu celno-skarbowego wydaje zaświadczenie o terminie i miejscu ich przeprowadzenia.

First of all the Banking Law contains new references to OLAF:

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Art. 37. In the Act of 29 August 1997 – **Banking Law (Journal of Laws of 2022, items 2324, 2339, 2640 and 2707) in art. 105**

in sec. 1:

1) point 1f is replaced by the following:

“1f) the Head of the National Revenue Administration and the clearing house referred to in Art. 67, to the extent necessary to perform the tasks and duties referred to in:

a) section IIIB of the Act of August 29, 1997 - Tax Ordinance,

b) the Act of 1 December 2022 on the Financial Information System (Journal of Laws of 2023, item 180);”;

2) in point 2 in letter e the following sixth indent is added:

“– **in connection with a request for information submitted pursuant to Art. 7 sec. 3a 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 (Official Journal EU L 248 of September 18, 2013, page 1, as amended d.10)”**

The Supreme Administrative Court indicated in a judgment of July 13, 2022 that the suspicion that an entity participated in a tax fraud is enough for the blocking of a banking account.<sup>391</sup>

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The Tax Code contains a provision that aims at counteracting the tax fraud:

111

**Section IIIB Counteracting the use of the financial sector for tax fraud**

112

**Chapter 1 General Regulations**

**Article 119zg. [Legal definitions]**

Whenever this section mentions:

1) bank – it means:

and) a domestic bank within the meaning of Art. 4 sec. 1 point 1 of the Act of August 29, 1997 – Banking Law (Journal of Laws of 2022, items 2324 and 2339),

b) branch of a credit institution within the meaning of Art. 4 sec. 1 point 18 of the Act of August 29, 1997 – Banking Law,

c) branch of a foreign bank within the meaning of Art. 4 sec. 1 point 20 of the Act of August 29, 1997 – Banking Law;

2) blocking the account of a qualified entity – it is understood as temporarily preventing the disposal of funds accumulated on the account of a qualified entity kept by a bank or a cooperative savings and credit union and the use of these funds;

<sup>391</sup> Michal Malinowski, LEX/el. 2023.

3) clearing house – shall mean the clearing house referred to in Art. 67 of the Act of August 29, 1997 – Banking Law, which settled the largest number of orders in the calendar year preceding the calendar year in which the duties set out in this section will be performed by 2 years transfer in PLN from all clearing houses operating on the basis of this provision;

3a) proxy for the account of the qualified entity – it means a person authorised to submit instructions regarding the account of the qualified entity, cash deposits to the account of the qualified entity or cash withdrawals from the account of the qualified entity, on behalf of its holder, including using a payment card within the meaning of Art. 2 point 15a of the Act of 19 August 2011 on payment services issued to the account of a qualified entity;

4) qualified entity – it means:

and) a natural person who is an entrepreneur within the meaning of art. 4 seconds 1 of the Act of March 6, 2018 – Entrepreneurs’ Law,

b) a natural person who is self-employed and is not an entrepreneur within the meaning of the Act referred to in point (a) and,

c) legal person,

d) an organisational unit without legal personality, which the law grants legal capacity;

5) account of a qualified entity – it means:

and) the settlement account referred to in Art. 49 sec. 1 point 1 of the Act of August 29, 1997 – Banking Law, qualified entity,

b) a term deposit account of a qualified entity,

c) account of a member of a cooperative savings and credit union who is a qualified entity,

d) VAT account within the meaning of art. 2 point 37 of the Act of 11 March 2004 on tax on goods and services maintained for the account referred to in point a or c;

6) STIR – it means the ICT system of the clearing house that meets the minimum requirements for ICT systems specified in the regulations issued on the basis of art. 18 of the Act of February 17, 2005 on the computerization of the activities of entities performing public tasks;

7) transaction – it means crediting or debiting the account of a qualified entity on the basis of instructions of its holder or third parties;

8) risk indicator – it means the indicator of using the activities of banks and cooperative savings and credit unions for purposes related to tax fraud;

9) tax fraud – it means:

and)

tax crimes referred to in Art. 54 § 1 and 2, art. 55 § 1 and 2, art. 56 § 1 and 2, art. 62 § 1–2a and art. 76 § 1 and 2 of the Act of September 10, 1999 – Fiscal Penal Code,



b) crimes referred to in Art. 270a § 1 and 2, art. 271a § 1 and 2 and art. 277a § 1 of the Act of June 6, 1997 – Penal Code (Journal of Laws of 2022, items 1138, 1726, 1855 and 2339),

c) crimes referred to in Article 258 § 1–3 of the Act of June 6, 1997 – Penal Code, aimed at committing tax offences referred to in point a, or the crimes referred to in point b.

**Article 119zr<sup>392</sup> [Scope of information provided]** § 1. Information referred to in art. 119zp § 1 point 1 and art. 119zq point 1, include:

<sup>392</sup> **Art. 119zr. [Zakres przekazywanych informacji]**

§ 1. Informacje, o których mowa w art. 119zp § 1 pkt 1 i art. 119zq pkt 1, obejmują:

1. identyfikator banku lub spółdzielczej kasy oszczędnościowo-kredytowej;
2. datę i godzinę wysłania danych;
3. rodzaj rachunku podmiotu kwalifikowanego, kod waluty rachunku podmiotu kwalifikowanego, numer rachunku podmiotu kwalifikowanego w formacie Numeru Rachunku Bankowego lub inny numer - w przypadku rachunku lokaty terminowej, datę zakończenia okresu, na jaki umowa lokaty terminowej została zawarta - w przypadku rachunku lokaty terminowej, oraz datę otwarcia i zamknięcia rachunku podmiotu kwalifikowanego;
4. dane identyfikacyjne podmiotu kwalifikowanego, jeżeli są dostępne, zawierające:
  - a) firmę, nazwę albo imię i nazwisko osoby fizycznej, o której mowa w art. 119zq pkt 4 lit. b,
  - b) rodzaj prowadzonej działalności, numer w Krajowym Rejestrze Sądowym i datę rejestracji lub rozpoczęcia działalności oraz kraj rejestracji podmiotu kwalifikowanego lub rezydencji podatkowej,
  - c) numer PESEL, numer identyfikacyjny REGON oraz numer identyfikacji podatkowej, a w przypadku podmiotu kwalifikowanego mającego miejsce zamieszkania, siedzibę lub zarząd w państwie lub na terytorium spoza Unii Europejskiej - EURONIP lub inny numer identyfikacji podatkowej,
  - d) dane adresowe prowadzonej działalności, siedziby oraz adres korespondencyjny podmiotu kwalifikowanego zawierający kod kraju, kod pocztowy, miejscowość, ulicę, numer domu i lokalu,
  - e) numer telefonu i adres poczty elektronicznej podmiotu kwalifikowanego;
5. dane identyfikacyjne pełnomocnika do rachunków podmiotu kwalifikowanego i reprezentanta podmiotu kwalifikowanego, a także jego beneficjenta rzeczywistego w rozumieniu art. 2 ust. 2 pkt 1 ustawy z dnia 1 marca 2018 r. o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu, jeżeli są dostępne, zawierające:
  - a) imię i nazwisko,
  - b) numer PESEL oraz rodzaj, serię i numer dokumentu tożsamości,
  - c) datę i kraj urodzenia oraz obywatelstwo,
  - d) dane adresowe zawierające kod kraju, kod pocztowy, miejscowość, ulicę, numer domu i lokalu,
  - e) numer telefonu i adres poczty elektronicznej.

§ 2. Informacje, o których mowa w art. 119zp § 1 pkt 1 i art. 119zq pkt 1, obejmują także:

1. datę ustanowienia pełnomocnika do rachunku podmiotu kwalifikowanego i reprezentanta podmiotu kwalifikowanego;
2. zakres umocowania pełnomocnika do rachunku podmiotu kwalifikowanego;
3. informacje o blokadach rachunku podmiotu kwalifikowanego oraz o blokadach środków na rachunku podmiotu kwalifikowanego dokonanych na podstawie odrębnych ustaw zawierające:
  - a) wskazanie, czy blokada dotyczy jednego rachunku podmiotu kwalifikowanego,
  - b) kwotę blokady,
  - c) termin, do którego obowiązuje blokada,
  - d) organ, na żądanie którego została dokonana blokada - jeżeli są dostępne;
4. informacje o zajęciach wierzytelności z rachunku podmiotu kwalifikowanego zawierające:
  - a) wskazanie, czy zajęcie dotyczy jednego rachunku podmiotu kwalifikowanego,
  - b) wskazanie, czy zajęcie zostało dokonane w postępowaniu egzekucyjnym czy w postępowaniu zabezpieczającym,
  - c) kwotę należności pieniężnej, na poczet której dokonano zajęcia,
  - d) organ egzekucyjny, który dokonał zajęcia - jeżeli są dostępne;
5. wskazanie numeru rachunku VAT w rozumieniu art. 2 pkt 37 ustawy z dnia 11 marca 2004 r. o podatku od towarów i usług prowadzonego dla rachunku rozliczeniowego, o którym mowa w art. 49 ust. 1 pkt 1 ustawy z dnia

- 1) identifier of the bank or cooperative savings and credit union;
- 2) date and time of sending the data;
- 3) type of account of the qualified entity, currency code of the account of the qualified entity, account number of the qualified entity in the format of the Bank Account Number or other number – in the case of a term deposit account, the end date of the period for which the term deposit agreement was concluded – in the case of a term deposit account, and the date opening and closing an account of a qualified entity;
- 4) identification data of the qualified entity, if available, including:
  - a) the company, name or surname of the natural person referred to in point 4(b) of Article 119zg,
  - b) type of business, number in the National Court Register and date of registration or commencement of business and country of registration of the qualified entity or tax residence,
  - c) PESEL number, REGON identification number and tax identification number, and in the case of a qualified entity having its place of residence, registered office or management board in a country or territory outside the European Union – EURONIP or other tax identification number,

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29 sierpnia 1997 r. - Prawo bankowe, albo rachunku członka spółdzielczej kasy oszczędnościowo-kredytowej będącego podmiotem kwalifikowanym;

6. wskazanie, czy rachunek wymieniony w art. 119zg pkt 5 lit. a i c jest rachunkiem, o którym mowa w art. 15 ust. 1hb pkt 2 ustawy z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych.

§ 3. Zestawienia, o których mowa w art. 119zp § 1 pkt 2 i art. 119zq pkt 3, obejmują:

1. dane identyfikacyjne nadawcy i odbiorcy transakcji, jeżeli są dostępne, zawierające:

a) imię i nazwisko lub nazwę,

b) dane adresowe zawierające kod kraju, kod pocztowy, miejscowość, ulicę, numer domu i lokalu;

2. numer rachunku nadawcy transakcji i rachunku odbiorcy transakcji;

3. datę obciążenia lub uznania rachunku podmiotu kwalifikowanego;

4. kwotę i walutę transakcji;

5. tytuł i opis transakcji;

6. saldo początkowe i saldo końcowe zestawienia transakcji dotyczących rachunku podmiotu kwalifikowanego;

7. dane identyfikacyjne osoby, o której mowa w § 1 pkt 5 - w przypadku gdy osoba ta złożyła dyspozycję przeprowadzenia transakcji dotyczącej rachunku podmiotu kwalifikowanego, dokonała wpłaty gotówkowej na rachunek podmiotu kwalifikowanego lub dokonała wypłaty gotówkowej z rachunku podmiotu kwalifikowanego, w imieniu jego posiadacza, w tym przy użyciu karty płatniczej w rozumieniu art. 2 pkt 15a ustawy z dnia 19 sierpnia 2011 r. o usługach płatniczych wydanej do rachunku podmiotu kwalifikowanego - jeżeli są dostępne;

8. informację o łącznej kwocie środków zajętych przez organ egzekucyjny lub zablokowanych na rachunku podmiotu kwalifikowanego;

9. numer rachunku prowadzonego w celu automatycznej identyfikacji dyspozycji składanych z rachunku podmiotu kwalifikowanego (rachunek wirtualny), jeżeli dyspozycje dotyczą uznania takiego rachunku - w przypadku zestawień przekazywanych przez bank albo spółdzielczą kasę oszczędnościowo-kredytową prowadzące ten rachunek.

§ 4. Informacje, o których mowa w art. 119zp § 1 pkt 3, obejmują:

1. identyfikator banku lub spółdzielczej kasy oszczędnościowo-kredytowej;

2. datę i godzinę przekazania informacji;

3. kody walut rachunków, o których mowa w art. 119zp § 1 pkt 3, numery tych rachunków w formacie Numeru Rachunku Bankowego oraz daty ich otwarcia i zamknięcia.

§ 5. Dane, o których mowa w art. 119zp § 1 oraz art. 119zq, są przekazywane w postaci elektronicznej odpowiadającej strukturze logicznej dostępnej w Biuletynie Informacji Publicznej na stronie podmiotowej urzędu obsługującego ministra właściwego do spraw finansów publicznych.

d) address details of the business, registered office and correspondence address of the qualified entity, including the country code, postal code, city, street, house and apartment number,

d) telephone number and e-mail address of the qualified entity;

5) identification data of the proxy for the accounts of the qualified entity and the representative of the qualified entity, as well as its beneficial owner within the meaning of Art. 2 sec. 2 point 1 of the Act of 1 March 2018 on counteracting money laundering and financing terrorism, if available, containing:

a) first name and last name,

b) PESEL number and the type, series and number of the identity document,

c) date and country of birth and citizenship,

d) address data containing the country code, postal code, city, street, house and apartment number,

e) telephone number and e-mail address.

§ 2. Information referred to in art. 119zp § 1 point 1 and art. 119zq point 1, also include:

1) the date of appointing the proxy for the account of the qualified entity and the representative of the qualified entity;

2) the scope of authorisation of the proxy to the account of the qualified entity;

3) information on blockades of the account of the qualified entity and blockades of funds on the account of the qualified entity made on the basis of separate acts, including:

a) indication whether the blockade applies to one account of the qualified entity,

b) block amount,

c) the period until which the blockade is valid,

d) the authority at whose request the blocking was made

– if available;

4) information on attachments of receivables from the account of the qualified entity, including:

a) indication whether the seizure concerns one account of the qualified entity,

b) indication whether the seizure was made in enforcement proceedings or in security proceedings,

c) the amount of the monetary claim against which the seizure was made,

d) enforcement authority that carried out the seizure

– if available;

5) indication of the VAT account number within the meaning of art. 2 point 37 of the Act of 11 March 2004 on tax on goods and services kept for the settlement account referred to in Art. 49 sec. 1 point 1 of the Act of 29 August 1997 – Banking Law, or the account of a member of a cooperative savings and credit union who is a qualified entity;

6) indication whether the account mentioned in art. 119zg point 5 lit. aic is the account referred to in Art. 15 sec. 1hb point 2 of the Act of February 15, 1992 on corporate income tax.

§ 3. The lists referred to in Art. 119zp § 1 point 2 and art. 119zq point 3, include:

1) identification data of the sender and recipient of the transaction, if available, including:

a) name and surname or name,

b) address data containing the country code, postal code, city, street, house and apartment number;

2) account number of the sender of the transaction and the account of the recipient of the transaction;

3) date of debiting or crediting the account of the qualified entity;

4) transaction amount and currency;

5) transaction title and description;

6) the opening balance and closing balance of the statement of transactions relating to the account of the qualified entity;

7) identification data of the person referred to in § 1 item 5 – if that person has placed an instruction to carry out a transaction concerning the account of a qualified entity, made a cash payment to the account of a qualified entity or made a cash withdrawal from the account of a qualified entity, on behalf of its holder, including using a payment card within the meaning of art. 2 point 15a of the Act of 19 August 2011 on payment services issued to the account of a qualified entity – if available;

8) information on the total amount of funds seized by the enforcement authority or blocked on the account of the qualified entity;

9) the number of the account maintained for the purpose of automatic identification of instructions placed from the account of a qualified entity (virtual account), if the instructions relate to crediting such an account – in the case of statements provided by a bank or a cooperative savings and credit union maintaining this account.

§ 4. Information referred to in art. 119zp § 1 point 3, include:

1) identifier of the bank or cooperative savings and credit union;

2) date and time of submission of the information;

3) currency codes of the accounts referred to in Art. 119zp § 1 point 3, the numbers of these accounts in the format of the Bank Account Number and the dates of their opening and closing.

§ 5. Data referred to in art. 119zp § 1 and art. 119zq, are transferred in electronic form corresponding to the logical structure available in the Public Information Bulletin on the website of the office serving the minister responsible for public finance.

**Article 119zs<sup>393</sup> [Request for additional information]**

§ 1. In order to verify or supplement the information held by the Head of the National Revenue Administration necessary to perform the tasks referred to in this section, the Head of the National Revenue Administration may request the bank or cooperative savings and credit union to provide:

1) information or summaries other than those provided pursuant to Art. 119zq, while the provisions of art. 119zr § 1–3 shall apply accordingly;

2) (repealed);

3) (repealed).

4) IP addresses from which:

a) logins to the electronic banking services enabling access to the account of the qualified entity were made, together with an indication of the identifier used to log in, as well as the date and time of these logins,

b) instructions to conduct transactions concerning the account of a qualified entity have been submitted, together with an indication of the identifier used to submit the instruction, as well as the date and time of submitting these instructions – if the instructions were not submitted using electronic banking services – if available.

§ 2. The bank and the cooperative savings and credit union shall provide the Head of the National Revenue Administration with the data covered by the request referred to in § 1 immediately, but not later than within 3 days from the date of receipt of the request, and if these data are in a form that prevents their automatic processing – no later than:

1) 7 days from the date of receipt of the request – in the case of data referred to in § 1 point 1;

**<sup>393</sup> Art. 119zs. [Żądanie przekazania dodatkowych informacji]**

§ 1. W celu weryfikacji lub uzupełnienia posiadanych przez Szefa Krajowej Administracji Skarbowej informacji niezbędnych do wykonywania zadań, o których mowa w niniejszym dziale, Szef Krajowej Administracji Skarbowej może żądać przekazania przez bank lub spółdzielczą kasę oszczędnościowo-kredytową:

1) informacji lub zestawień innych niż przekazane na podstawie art. 119zq, przy czym przepisy art. 119zr § 1-3 stosuje się odpowiednio;

2) (uchylony);

3) (uchylony).

4) adresów IP, z których:

a) następowały logowania do usług bankowości elektronicznej umożliwiających dostęp do rachunku podmiotu kwalifikowanego wraz ze wskazaniem identyfikatora, z którego użyciem dokonano logowania, oraz daty i godziny tych logowań,

b) zostały złożone dyspozycje przeprowadzenia transakcji dotyczących rachunku podmiotu kwalifikowanego wraz ze wskazaniem identyfikatora, z którego użyciem złożono dyspozycję, oraz daty i godziny złożenia tych dyspozycji - w przypadku gdy dyspozycje nie zostały złożone z wykorzystaniem usług bankowości elektronicznej - jeżeli są dostępne.

§ 2. Bank oraz spółdzielcza kasa oszczędnościowo-kredytowa przekazują Szefowi Krajowej Administracji Skarbowej posiadane dane objęte żądaniem, o którym mowa w § 1, niezwłocznie, jednak nie później niż w terminie 3 dni od dnia otrzymania żądania, a jeżeli dane te znajdują się w formie uniemożliwiającej ich automatyczne przetwarzanie - nie później niż w terminie:

1) 7 dni od dnia otrzymania żądania - w przypadku danych, o których mowa w § 1 pkt 1;

2) 14 dni od dnia otrzymania żądania - w przypadku danych, o których mowa w § 1 pkt 4.

2) 14 days from the date of receipt of the request – in the case of data referred to in § 1 point 4.

**Article 119zt [Providing information and summaries to entities other than the Head of KAS]**

The information and statements referred to in Art. 119zp § 1 and art. 119zq, are granted by the clearing house to entities other than the Head of the National Revenue Administration only at the request of:

- 1) court or prosecutor – in connection with pending tax fraud proceedings against a qualified entity being the holder of an account of a qualified entity;
- 2) the President of the Supreme Audit Office – to the extent necessary to carry out the control proceedings specified in the Act of 23 December 1994 on the Supreme Audit Office (Journal of Laws of 2022, item 623);
- 3) Internal Security Agency, Military Counterintelligence Service, Foreign Intelligence Agency, Military Intelligence Service, Central Anti-Corruption Bureau, Police, Military Police, Border Guard, Prison Service, State Protection Service and their officers or soldiers with a written authorisation – to the extent necessary to conduct the proceedings inspector on the basis of the provisions on the protection of classified information;
- 4) the President of the Office for Personal Data Protection – to the extent necessary to perform the statutory tasks set out in the provisions on the protection of personal data;
- 5) Head of the Central Anti-Corruption Bureau – to the extent necessary to perform statutory tasks – via the ICT system, on the terms and in the manner specified in Art. 22a of the Act of 9 June 2006 on the Central Anti-Corruption Bureau (Journal of Laws of 2022, item 1900);
- 6) Head of the Internal Security Agency – to the extent necessary to perform statutory tasks – via the ICT system, on the terms and in the manner specified in art. 34 of the Act of 24 May 2002 on the Internal Security Agency and the Foreign Intelligence Agency (Journal of Laws of 2022, item 557, 1488 and 2185);
- 6a) 26 the Commander-in-Chief of the Police, the Commander of the Central Police Investigation Bureau, the Commander of the Police Internal Affairs Bureau, the Commander of the Central Bureau for Combating Cybercrime, the Voivodeship Police Commander or the Capital City Police Commander – to the extent necessary to perform statutory tasks – via the ICT system, on the terms and in the manner specified in art.. 20 of the Act of 6 April 1990 on the Police (Journal of Laws of 2023, item 171 and of 2022, item 2600);
- 6b) 27 the Commander-in-Chief of the Border Guard, the Commander of the Border Guard Bureau of Internal Affairs or the commanding officer of the Border Guard unit – to the extent necessary to perform statutory tasks – via the ICT system, on the terms and in the manner specified in Art. 10a of the Act of 12 October 1990 on the Border Guard (Journal of Laws of 2022, items 1061, 1115, 1855 and 2600);

- 7) General Inspector of Financial Information – to the extent necessary to perform the tasks set out in the Act of 1 March 2018 on counteracting money laundering and financing terrorism;
- 8) Chairman of the Polish Financial Supervision Authority – to the extent necessary to perform the tasks set out in the Act of 21 July 2006 on financial market supervision (Journal of Laws of 2022, items 660, 872, 1488, 1692, 2185 and 2339).

### **gg. Acquisition of digital evidence**

The acquisition of digital evidence is an allowed annex measure of the provisions on search. This is regulated by the Customs Law, the tax ordinance, the Act on Enforcement authorities and the Act on the National Tax and Customs Authority. **113**

### **hh. Digital forensic operations within inspections or on-the-spot checks**

Digital forensic operations within inspections or on-the-spot checks became more and more important in the last decade already, **114**

Bulgaria, which has included a special paragraph in the State Investigations Office Act, Art. 31a (see Bulgarian volume) 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. **115**

Digital information, data and IT documents or tax books e.g. may be requested during an investigation according to Art. 193a Tax Code. **116**

### **Article 193a<sup>394</sup> [Transmission of tax books and accounting documents in electronic form; uniform control file]** **117**

§ 1. In the case of keeping tax books using computer programs, the tax authority may request the transfer of all or part of these books and accounting documents by means of

#### **<sup>394</sup> Artykuł 193a. [Przesyłanie ksiąg podatkowych i dokumentów księgowych w formie elektronicznej; jednolity plik kontrolny]**

§ 1. W przypadku prowadzenia ksiąg podatkowych przy pomocy programów komputerowych organ podatkowy może żądać przesłania całości lub części tych ksiąg i dowodów księgowych za pomocą środków komunikacji elektronicznej lub na informatycznych nośnikach danych, w postaci elektronicznej odpowiadającej strukturze logicznej, o której mowa w ust. § 2, wskazując rodzaj ksiąg podatkowych oraz okres, którego dotyczą.

§ 1a. Przepisu § 1 nie stosuje się do faktur strukturyzowanych w rozumieniu art. 2 pkt 32a ustawy z dnia 11 marca 2004 r. o podatku od towarów i usług.

§ 2. Struktura logiczna formy elektronicznej ksiąg podatkowych i dowodów księgowych, uwzględniająca możliwość jej tworzenia z powszechnie stosowanych przez przedsiębiorców programów informatycznych oraz automatycznej analizy danych, dostępna jest w Biuletynie Informacji Publicznej na stronie internetowej urzędu obsługującego ministra właściwy do spraw finansów publicznych.

§ 3. Minister właściwy do spraw finansów publicznych określi, w drodze rozporządzenia, sposób przesyłania ksiąg podatkowych, części tych ksiąg oraz dowodów księgowych w postaci elektronicznej za pomocą środków komunikacji elektronicznej, a także wymagania techniczne dla informatycznych nośników danych, na których księgi, części tych ksiąg i dokumentów księgowych. być ewidencjonowane i przekazywane z uwzględnieniem konieczności zapewnienia bezpieczeństwa, wiarygodności i niezaprzeczalności danych zawartych w księgach oraz konieczności zabezpieczenia ich przed dostępem osób nieupoważnionych.

electronic communication or on IT data carriers, in electronic form corresponding to the logical structure referred to in § 2, indicating the type of tax books and the period to which they relate.

§ 1a. The provision of § 1 does not apply to structured invoices within the meaning of Art. 2 point 32a of the Act of 11 March 2004 on tax on goods and services.

§ 2. The logical structure of the electronic form of tax books and accounting documents, taking into account the possibility of its creation from IT programs commonly used by entrepreneurs and automatic data analysis, is available in the Public Information Bulletin on the website of the office serving the minister competent for public finance.

§ 3. The proper minister of public finances shall determine, by regulation, the method of sending tax books, parts of these books and accounting documents in electronic form by means of electronic communication, as well as the technical requirements for IT data carriers on which books, parts of these books and accounting documents may be used. be recorded and transferred, taking into account the need to ensure the security, reliability and non-repudiation of data contained in the books and the need to protect them against unauthorised access.

## **ii. Investigative missions in third countries**

- 118** The Polish Authorities might conduct with OLAF investigative missions in third countries. OLAF has concluded Association Agreements for these situations. The Agreements are published on the OLAF Website.

### **h) National procedural rules for “checks and inspections” by the assisting national authority**

- 119** The national procedural rules for “checks and inspections” are those, which are established by the various laws, such as tax, customs or structural funds inspection laws. Procedural rules are e.g. the rules of the legislator on how to conduct a search, an inspection, when to carry out the actions and what to do afterwards (e.g. write a report). Some of these rules have been explored by full provisions above.

### **i) Cooperation and mutual assistance agreements**

- 120** The area of mutual assistance is governed by the Act of 11 October 2013 on mutual assistance in the recovery of taxes, customs duties and other pecuniary duties (Journal of Laws of 2021, item 2157).<sup>395</sup>

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<sup>395</sup> Ustawa z dnia 11 października 2013 r. o wzajemnej pomocy w odzyskiwaniu podatków, ceł i innych należności pieniężnych (Dz. U. z 2021 r. poz. 2157).



### 3. Article 4 Internal investigations

1. Investigations within the institutions, bodies, offices and agencies in the areas referred to in Article 1 shall be conducted *in accordance with this Regulation and with the decisions adopted by the relevant institution, body, office or agency* (‘internal investigations’).

8. Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an internal investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the institution, body, office or agency concerned. Upon request, the institution, body, office or agency concerned shall inform the Office of any action taken and of its findings on the basis of such information.

Where necessary, the Office shall also inform the *competent authorities of the Member State concerned*. In this case, the procedural requirements laid down in the second and third subparagraphs of Article 9(4) shall apply. If the competent authorities decide to *take any action on the basis of the information transmitted to them, in accordance with national law*, they shall, upon request, inform the Office thereof.

Internal investigations of OLAF can lead to repercussions at national level ie the level of the authorities that cooperate with OLAF and which eg 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.<sup>396</sup>

In relation to para 8 and the requisite of “**Any action on the basis of information transmitted to them, in accordance with national law**”, the following can be said:

A possible action of a competent authority (see above ↗ → Competent authorities) in Poland may be based, if concerning the tax area, on the measures available according to the Tax Code. In case of suspicion of tax fraud, the National Revenue Administration may order the banks concerned to install a blockade of the account, which was presumably used for these actions.

#### Chapter 3 Blockade of the account of a qualified entity

**Article 119zv<sup>397</sup> [Request to block the account of a qualified entity]** § 1. The head of the National Revenue Administration may request the account of a qualified entity to be

<sup>396</sup> See ECJ, Research note, Impact of ongoing criminal proceedings on the conduct of disciplinary proceedings, [https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-09/ndr\\_2020\\_001\\_neutralisee\\_en.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-09/ndr_2020_001_neutralisee_en.pdf). Accessed 6 August 2024.

<sup>397</sup> **Blokada rachunku podmiotu kwalifikowanego**

**Art. 119zv. [Żądanie blokady rachunku podmiotu kwalifikowanego]**

blocked for a period not longer than 72 hours, if the information held, in particular the results of the risk analysis referred to in Art. 119zn § 1, indicate that a qualified entity may use the activities of banks or cooperative savings and credit unions for purposes related to tax fraud or for activities aimed at tax fraud, and blocking the account of a qualified entity is necessary to prevent this.

§ 2. The request to block the account of a qualified entity includes:

- 1) designation of the account number of the qualified entity;
- 2) the period of blocking the account of the qualified entity.

§ 3. In the case referred to in § 1, the Head of the National Revenue Administration shall provide:

- 1) bank or cooperative savings and credit union – request to block the account of a qualified entity;
- 2) the head of the tax office competent for the qualified entity, the head of the customs and tax office and the prosecutor – notification of blocking the account of the qualified entity containing the data specified in the request to block the account of the qualified entity.

§ 4. The bank and the cooperative savings and credit union immediately after receiving the request referred to in § 3 point 1:

- 1) note the date and time of receipt;
- 2) block the account of a qualified entity;
- 3) inform the Head of the National Revenue Administration of:

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§ 1. Szef Krajowej Administracji Skarbowej może zażądać blokady rachunku podmiotu kwalifikowanego na okres nie dłuższy niż 72 godziny, jeżeli posiadane informacje, w szczególności wyniki analizy ryzyka, o której mowa w art. 119zn § 1, wskazują, że podmiot kwalifikowany może wykorzystywać działalność banków lub spółdzielczych kas oszczędnościowo-kredytowych do celów mających związek z wyłudzeniami skarbowymi lub do czynności zmierzających do wyłudzenia skarbowego, a blokada rachunku podmiotu kwalifikowanego jest konieczna, aby temu przeciwdziałać.

§ 2. Żądanie blokady rachunku podmiotu kwalifikowanego zawiera:

- 1) oznaczenie numeru rachunku podmiotu kwalifikowanego;
- 2) okres blokady rachunku podmiotu kwalifikowanego.

§ 3. W przypadku, o którym mowa w § 1, Szef Krajowej Administracji Skarbowej przekazuje:

- 1) bankowi lub spółdzielczej kasie oszczędnościowo-kredytowej - żądanie blokady rachunku podmiotu kwalifikowanego;
- 2) właściwemu dla podmiotu kwalifikowanego naczelnikowi urzędu skarbowego, naczelnikowi urzędu celno-skarbowego oraz prokuratorowi - zawiadomienie o blokadzie rachunku podmiotu kwalifikowanego zawierające dane określone w żądaniu blokady rachunku podmiotu kwalifikowanego.

§ 4. Bank oraz spółdzielcza kasa oszczędnościowo-kredytowa niezwłocznie po otrzymaniu żądania, o którym mowa w § 3 pkt 1:

- 1) odnotowują datę i godzinę jego otrzymania;
- 2) dokonują blokady rachunku podmiotu kwalifikowanego;
- 3) informują Szefa Krajowej Administracji Skarbowej o:
  - a) dacie i godzinie otrzymania żądania, o którym mowa w § 3 pkt 1, i dokonania blokady rachunku podmiotu kwalifikowanego oraz saldzie tego rachunku podmiotu kwalifikowanego w momencie dokonania blokady rachunku podmiotu kwalifikowanego,
  - b) nieprowadzeniu rachunku podmiotu kwalifikowanego wskazanego w żądaniu, o którym mowa w § 3 pkt 1.

a) date and time of receiving the request referred to in § 3 point 1 and blocking the account of the qualified entity and the balance of this account of the qualified entity at the time of blocking the account of the qualified entity,

b) failure to maintain the account of the qualified entity indicated in the request referred to in § 3 point 1.

§ 4a.<sup>398</sup> The bank and the cooperative savings and credit union shall not disclose to the qualified entity information about the transfer of the request or the blocking of the account of the qualified entity.

§ 4b. The bank and the cooperative savings and credit union shall inform the qualified entity about the transfer of the request or the blocking of the account of the qualified entity only at its request, after prior confirmation by the Head of the National Revenue Administration that all submitted requests to block the accounts of this qualified entity have been carried out.

§ 4c. In the event of an instruction to carry out a transaction concerning the account of a qualified entity subject to blocking, the bank and the cooperative savings and credit union shall immediately inform the Head of the National Revenue Administration of:

- 1) date and time of placing the instruction;
- 2) the content of the transaction being the subject of the instruction to the extent specified in art. 119zr § 3.

§ 4d. Immediately after receiving the application referred to in § 4b, the bank and the cooperative savings and credit union shall inform the Head of the National Revenue Administration of:

<sup>398</sup> § 4a. Bank oraz spółdzielcza kasa oszczędnościowo-kredytowa nie ujawniają podmiotowi kwalifikowanemu informacji o przekazaniu żądania lub dokonaniu blokady rachunku podmiotu kwalifikowanego.

§ 4b. Bank oraz spółdzielcza kasa oszczędnościowo-kredytowa informują podmiot kwalifikowany o przekazaniu żądania lub dokonaniu blokady rachunku podmiotu kwalifikowanego wyłącznie na jego wniosek, po uprzednim potwierdzeniu przez Szefa Krajowej Administracji Skarbowej, że wszystkie przekazane żądania blokady rachunków tego podmiotu kwalifikowanego zostały wykonane.

§ 4c. W przypadku złożenia dyspozycji przeprowadzenia transakcji dotyczących rachunku podmiotu kwalifikowanego będącego przedmiotem blokady bank oraz spółdzielcza kasa oszczędnościowo-kredytowa niezwłocznie informują Szefa Krajowej Administracji Skarbowej o:

- 1) dacie i godzinie złożenia dyspozycji;
- 2) treści transakcji będącej przedmiotem dyspozycji w zakresie określonym w art. 119zr § 3.

§ 4d. Niezwłocznie po otrzymaniu wniosku, o którym mowa w § 4b, bank oraz spółdzielcza kasa oszczędnościowo-kredytowa informują Szefa Krajowej Administracji Skarbowej o:

- 1) dacie i godzinie złożenia wniosku;
- 2) adresie poczty elektronicznej, z którego złożono wniosek, jeżeli jest dostępny - w przypadku gdy wniosek został złożony za pośrednictwem poczty elektronicznej;
- 3) adresie IP, z którego nastąpiło logowanie, jeżeli jest dostępny - w przypadku gdy wniosek został złożony za pośrednictwem serwisu internetowego służącego do obsługi rachunku podmiotu kwalifikowanego lub w inny sposób umożliwiający identyfikację tego adresu;
- 4) numerze telefonu, za pośrednictwem którego został złożony wniosek, jeżeli jest dostępny - w przypadku gdy wniosek został złożony telefonicznie;
- 5) adresie placówki banku, spółdzielczej kasy oszczędnościowo-kredytowej albo ich oddziału, w których został złożony wniosek - w przypadku gdy wniosek został złożony osobiście;
- 6) adresie nadawcy, jeżeli jest dostępny - w przypadku gdy wniosek został złożony za pośrednictwem operatora pocztowego w rozumieniu ustawy z dnia 23 listopada 2012 r. - Prawo pocztowe.

- 1) date and time of submitting the application;
- 2) e-mail address from which the application was submitted, if available – if the application was submitted via e-mail;
- 3) IP address from which the login was made, if available – if the application was submitted via the website used to service the account of the qualified entity or in another way enabling identification of this address;
- 4) telephone number through which the application was submitted, if available – if the application was submitted by telephone;
- 5) address of the bank branch, cooperative savings and credit union or their branch where the application was submitted – if the application was submitted in person;
- 6) sender's address, if available - if the application was submitted via the postal operator within the meaning of the Act of 23 November 2012 – Postal Law.

§ 5.<sup>399</sup> Blocking the account of a qualified entity is also effective with regard to the account of a qualified entity of which the qualified entity is a co-holder.

§ 6. The head of the National Revenue Administration, immediately after receiving the information referred to in § 4 point 3 lit. and, with regard to all requests regarding the qualified entity submitted until receipt of this information, shall provide this entity with a notice of blocking its account containing the data specified in these requests.

§ 7. During the period of blocking the account of a qualified entity, the Head of the National Revenue Administration:

- 1) may limit the scope of blocking the account of a qualified entity or
- 2) revokes the blockade if it finds that the condition for blocking the account of the qualified entity has ceased to exist.

§ 8. The provisions of § 2-6 shall apply accordingly to limiting the scope and canceling the blockade of the account of a qualified entity.

§ 9. The proper Minister of public finances shall carry out, at least once a quarter, the control of compliance with the provisions of § 1, 2, 6 and 7 by the head of the national tax administration, and in the case of authorisation, in accordance with the provisions issued on the basis of art. 11b sec. 1 of the Act of 16 November 2016 on the National

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<sup>399</sup> § 5. Blokada rachunku podmiotu kwalifikowanego jest skuteczna również w odniesieniu do rachunku podmiotu kwalifikowanego, którego podmiot kwalifikowany jest współposiadaczem.

§ 6. Szef Krajowej Administracji Skarbowej niezwłocznie po otrzymaniu informacji, o której mowa w § 4 pkt 3 lit. a, w odniesieniu do wszystkich żądań dotyczących podmiotu kwalifikowanego przekazanych do momentu otrzymania tej informacji, przekazuje temu podmiotowi zawiadomienie o blokadzie jego rachunku zawierające dane określone w tych żądaniach.

§ 7. W okresie blokady rachunku podmiotu kwalifikowanego Szef Krajowej Administracji Skarbowej:

- 1) może ograniczyć zakres blokady rachunku podmiotu kwalifikowanego lub
- 2) uchyla blokadę, jeżeli stwierdzy, że ustała przesłanka blokady rachunku podmiotu kwalifikowanego.

§ 8. Do ograniczenia zakresu oraz uchylecia blokady rachunku podmiotu kwalifikowanego przepisy § 2-6 stosuje się odpowiednio.

§ 9. Minister właściwy do spraw finansów publicznych przeprowadza, nie rzadziej niż raz na kwartał, kontrolę przestrzegania przepisów § 1, 2, 6 i 7 przez Szefa Krajowej Administracji Skarbowej, a w przypadku upoważnienia, zgodnie z przepisami wydanymi na podstawie art. 11b ust. 1 ustawy z dnia 16 listopada 2016 r. o Krajowej Administracji Skarbowej, innego organu Krajowej Administracji Skarbowej - przez ten organ.

Revenue Administration, another body of the National Revenue Administration - by this body.

#### 4. Article 5 Opening of investigations

[...] 5. If the Director-General decides not to open an investigation, he or she may without delay send any relevant information, as appropriate, to the *competent authorities of the Member State concerned* for appropriate *action to be taken in accordance with Union and national law* or to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules applicable to that institution, body, office or agency. The Office shall agree with that institution, body, office or agency, if appropriate, on suitable measures to protect the confidentiality of the source of that information and shall, if necessary, ask to be informed of the action taken.

##### a) Competent authorities

See above → Competent authorities.

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##### b) National rules for appropriate action to be taken in accordance with national law

National rules for appropriate action to be taken in accordance with national law have been already listed under Art. 4 OLAF Regulation above, where an example from the tax area was presented. This example could likewise apply for the content of Art. 5 OLAF Regulation.

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Another example is a Polish tax officer, who is accused of irregularities. The Tax Code foresees in this case an exclusion from the tasks in the tax control area:

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**Chapter 2 Exclusion of an employee of the tax authority and the tax authority**  
**Article 130<sup>400</sup> [Exclusion of an employee of the tax authority]** § 1. An officer of the Customs and Tax Service, hereinafter referred to as the “officer”, an employee of the

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<sup>400</sup> **Wyłączenie pracownika organu podatkowego oraz organu podatkowego**

**Art. 130. [Wyłączenie pracownika organu podatkowego]**

§ 1. Funkcjonariusz Służby Celno-Skarbowej, zwany dalej “funkcjonariuszem”, pracownik urzędu gminy (miasta), starostwa, urzędu marszałkowskiego, izby administracji skarbowej, Krajowej Informacji Skarbowej, urzędu obsługującego ministra właściwego do spraw finansów publicznych oraz członek samorządowego kolegium odwoławczego podlegają wyłączeniu od udziału w postępowaniu w sprawach dotyczących zobowiązań podatkowych oraz innych spraw normowanych przepisami prawa podatkowego, w których:

- 1) są stroną;
- 2) pozostają ze stroną w takim stosunku prawnym, że rozstrzygnięcie sprawy może mieć wpływ na ich prawa lub obowiązki;
- 3) stroną jest ich małżonek, rodzeństwo, wstępny, zstępny lub powinowaty do drugiego stopnia;
- 4) stronami są osoby związane z nimi z tytułu przysposobienia, opieki lub kurateli;

commune (city), starosty, marshal's office, chamber of tax administration, the National Tax Information, the office of the minister responsible for public finance and a member of the local government appeals board shall be excluded from participation in the proceedings in matters relating to tax liabilities and other matters regulated by tax law, in which:

- 1) are a party;
- 2) are in such a legal relationship with the party that the settlement of the case may affect their rights or obligations;
- 3) the party is their spouse, sibling, ascendant, descendant or relative by blood up to the second degree;
- 4) the parties are persons related to them by virtue of adoption, custody or guardianship;
- 5) were witnesses or experts, were or are representatives of the taxpayer, or the taxpayer's representative is one of the persons listed in points 3 and 4;
- 6) participated in the adoption of the contested decision;
- 7) there were circumstances in connection with which official, disciplinary or criminal proceedings were initiated against them;
- 8) a party is a person who is in a relationship of official superiority to them.

§ 2. The reasons for exclusion from settling the case also last after the termination of marriage, adoption, guardianship or guardianship.

§ 3. The immediate superior of an employee or officer is obliged, at his request or at the request of a party or ex officio, to exclude him from participation in the proceedings, if it is probable that there are circumstances not listed in § 1 that may raise doubts as to the impartiality of the employee or officer.

§ 4. If an employee or officer is excluded, the head of the tax office, the head of the customs and tax office, respectively, the commune head, the mayor (president of the

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5) byli świadkami lub biegłymi, byli lub są przedstawicielami podatnika albo przedstawicielem podatnika jest jedna z osób wymienionych w pkt 3 i 4;

6) brali udział w wydaniu zaskarżonej decyzji;

7) zaistniały okoliczności, w związku z którymi wszczęto przeciw nim postępowanie służbowe, dyscyplinarne lub karne;

8) stroną jest osoba pozostająca wobec nich w stosunku nadrzędności służbowej.

§ 2. Przyczyny wyłączenia od załatwienia sprawy trwają także po ustaniu małżeństwa, przysposobienia, opieki lub kurateli.

§ 3. Bezpośredni przełożony pracownika lub funkcjonariusza jest obowiązany na jego żądanie lub na żądanie strony albo z urzędu wyłączyć go od udziału w postępowaniu, jeżeli zostanie uprawdopodobnione istnienie okoliczności niewymienionych w § 1, które mogą wywołać wątpliwości co do bezstronności pracownika lub funkcjonariusza.

§ 4. Jeżeli nastąpi wyłączenie pracownika lub funkcjonariusza, odpowiednio naczelnik urzędu skarbowego, naczelnik urzędu celno-skarbowego, wójt, burmistrz (prezydent miasta), starosta albo marszałek województwa, dyrektor izby administracji skarbowej, dyrektor Krajowej Informacji Skarbowej, Szef Krajowej Administracji Skarbowej wyznaczają innego pracownika lub funkcjonariusza do prowadzenia sprawy.

§ 5. W przypadku wyłączenia członka samorządowego kolegium odwoławczego jego prezes wyznacza osobę uprawnioną do zastąpienia osoby wyłączonej. Jeżeli samorządowe kolegium odwoławcze na skutek wyłączenia jego członków nie może załatwić sprawy z braku pełnego składu orzekającego, Prezes Rady Ministrów, w drodze postanowienia, wyznacza do załatwienia sprawy inne samorządowe kolegium odwoławcze.

city), the staroste or the marshal of the voivodeship, the director of the tax administration chamber, the director of the National Tax Information, the head of the National Revenue Administration shall appoint another employee or officer, respectively, to conduct the case.

§ 5. In the event of exclusion of a member of the self-government appeal board, its president shall designate a person authorised to replace the excluded person. If the local government appeal college, as a result of the exclusion of its members, cannot settle the case due to the lack of a full adjudicating panel, the Prime Minister, by way of an order, shall designate another local government appeal college to deal with the case.

**[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.

*Sources & national sections 1: Art. 7 OLAF*

<b>Para 3</b>	For the competent authorities see above → <u>Competent authorities.</u>
<b>Para 3a (a) (b)</b>	<p>First of all the Banking Law contains new references to OLAF:                  Art. 37. In the Act of 29 August 1997 – Banking Law (Journal of Laws of 2022, items 2324, 2339, 2640 and 2707) in art. 105 in sec. 1:</p> <p>1) point 1f is replaced by the following:                  “1f) the Head of the National Revenue Administration and the clearing house referred to in Art. 67, to the extent necessary to perform the tasks and duties referred to in:                  a) section IIIB of the Act of August 29, 1997 – Tax Ordinance,                  b) the Act of 1 December 2022 on the Financial Information System (Journal of Laws of 2023, item 180);”;</p> <p>2) in point 2 in letter e the following sixth indent is added:                  “– in connection with a request for information submitted pursuant to Art. 7 sec. 3a 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)</p>



No. 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No. 1074/1999 (Official Journal EU L 248 of September 18, 2013, page 1, as amended d.10)”

**Article 40**

In the Act of November 5, 2009 on Cooperative Savings and Credit Unions (Journal of Laws of 2022

pos. 924, 1358, 1488, 1933, 2339 and 2640) in art. 9f in sec. 1:

1) point 5c is replaced by the following:

“5c) the Head of the National Revenue Administration and the clearing house referred to in Art. 67 of the Act of August 29, 1997 – Banking Law, to the extent necessary to perform the tasks and duties referred to in:

a) section IIIB of the Act of August 29, 1997 – Tax Ordinance (Journal of Laws of 2022, items 2651 and 2707, and of 2023 item 180),

b) the Act of 1 December 2022 on the Financial Information System (Journal of Laws of 2023, item 180);”;

2) in point 16:

a) in point b the semicolon is replaced by a comma and the word “or” is added,

(b) the following point is added: c as follows:

“(c) in connection with a request for information made pursuant to Art. 7 sec. 3a 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 (Official Journal EU L 248 of September 18, 2013, p. 1, as amended12);”

**Article 42**

In the Act of 16 November 2016 on the National Revenue Administration (Journal of Laws of 2022, item 813, as amended

d.14) is amended as follows:

1) in Art. 14 in sec. 1:

(a) point 18 is replaced by the following:

“18) performing the tasks of the anti-fraud coordination unit referred to in Regulation (EU, Euratom) No. 883/2013 of the European Parliament and of the Council of 11 September 2013 on

investigations 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 (OJ L 248 of 18/09/2013, p. 1, as amended<sup>15</sup>), hereinafter referred to as “Regulation (EU) No 883/2013”;

Source: The authors.

## 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. The obligations exist throughout the different areas of irregularities (tax revenue related, customs revenue related; tax expenditure related ie 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*<sup>401</sup>) or those that must be informed by the Director General if he/she decides not open a case according to Art. 5 para 5 OLAF Regulation No 883/2013 as amended 2020/2223.
- 2 The Polish KAS can report certain information according to the National Act on Treasury Administration:

<sup>401</sup> See Art 3 OLAF Regulation above in this Chapter.

**Article 34a<sup>402</sup> [Authorisation to process personal data]**

3

1. The KAS authority may authorise employees or officers serving in KAS organisational units to process personal data to the extent necessary to perform the tasks entrusted to these persons. The authorisation is issued in writing by way of a personal authorisation, position authorisation or an internal act, unless a specific provision provides otherwise. The KAS authority keeps a register of persons authorised to process personal data.

2. The provision of sec. 1 shall apply accordingly to the National School of Treasury.

The National Act on the Treasury Administration refers to Art. 8 para 2 of the OLAF Regulation in Art. 14: 4

**Article 14 [Tasks of the Head of KAS]**

5

1. The tasks of the Head of the National Revenue Administration include:

18) performing the tasks of the anti-fraud coordination unit referred to in 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 the regulation (EC) No. 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No. 1074/1999 (Official Journal EU L 248 of 18.09.2013, p. 1, as amended), hereinafter referred to as “Regulation (EU) No 883/2013”;

**18a) transmitting to the European Anti-Fraud Office (OLAF) at its request referred to in Art. 8 sec. 2 of Regulation (EU) No 883/2013, documents or information held by OLAF relating to an administrative investigation;**

18b) performing tasks resulting from art. 7 sec. 3a of Regulation (EU) No 883/2013;

19) providing physical and technical protection to persons employed in KAS organisational units and officers, and in justified cases also to other persons, authorities and state institutions;

The Organisational Structure of the KAS reveals how complicated the search for the locally competent authority would be, if OLAF, could not easily contact the heads of these institutions: 6

**<sup>402</sup> Artykuł 34a. [Upoważnienie do przetwarzania danych osobowych]**

1. Organ KAS może upoważnić pracowników lub funkcjonariuszy pełniących funkcje w jednostkach organizacyjnych KAS do przetwarzania danych osobowych w zakresie niezbędnym do wykonania powierzonych tym osobom zadań. Upoważnienie wydawane jest w formie pisemnej w drodze upoważnienia imiennego, pozycyjnego lub aktu wewnętrznego, chyba że przepis szczególny stanowi inaczej. Organ KAS prowadzi rejestr osób upoważnionych do przetwarzania danych osobowych.

2. Przepis ust. 1 stosuje się odpowiednio do Krajowej Szkoły Skarbu Państwa.

7

“Organisational structure

The new, consolidated NRA consists of the following organisational units:

revenue administration regional offices (16),

tax offices (400),

customs and tax control offices (16), customs offices (43) and customs branch (134),

National Revenue Administration Information Center (headquarters in Bielsko-Biała, 5 regional offices and 2 branch offices),

Tax & Customs Academy (headquarters in Warsaw and 8 branches).

The director of the revenue administration regional office supervises the fulfillment of tasks by heads of tax offices and heads of customs and tax control offices.

Heads of tax offices have competences similar to those attributed till 28 of February 2017 to heads of tax offices and heads of customs offices, connected with the collection of taxes, customs duties, charges and tax-free budget appropriations (and others duties laid down under other legislation or administrative recovery of claims). They also provide the service and support for clients.

Whereas the tasks of the head of customs and tax control office include the elements such as tax and customs control, establishing and determining taxes, charges and tax-free budget appropriations (and others duties laid down under other legislation) or placing of goods under customs procedures.

The structure before the reform

The regional structure in force until 28 of February 2017 consisted of three independent pillars:

Tax administration (16 tax chambers (regional offices) and 400 tax offices, Customs Service (16 customs chambers, 45 customs offices and 143 customs branch offices), Tax control (16 tax control offices (UKS), 8 representations of tax control offices.

This resulted in dispersion and duplication of certain tasks connected with the collections of taxes and duties – which made consistent and effective exercise (executions) of such tasks difficult or impossible. In addition, the legislation applicable at that time differently regulated the matters of controls, executed by tax authorities, tax control authorities and customs authorities.

The structure before the reform remained unchanged in this form in Poland, except for certain amendments (modifications), for more than 30 years. For this reason it was necessary to adapt it to the state of the global economy reality and to the expectations of clients.

The reform contributed to the optimum use of available personnel and organisational and financial resources.”<sup>403</sup>

Contacting the KAS:

8

**National Revenue Administration**

ADDRESS

Świętokrzyska 12  
00-916 Warszawa  
NIP 5260250274  
Regon 000002217

**KAS National Notification Hotline**

9

24/7 free notification hotline: 800 060 000

The e-mail address for sending information: powiadomKAS@mf.gov.pl.

KAS National Notification Hotline is a centralized communication channel for receiving information from our clients on:

- **violations of tax law provisions,**
- **violations of customs legislation,**
- **opinions on functioning of the National Revenue Administration.**

KAS National Notification Hotline replaced, functioning till April 30, 2018, contact channels: “Powiadom Cło” (Notify Customs) and “Krajowy Telefon Interwencyjny Administracji Skarbowej” (National Intervention Hotline for Tax Administration).

KAS National Notification Hotline and e-mail address are uniform throughout the country.

Both the hotline and the e-mail address ensure anonymous transmission of information.

The information received is thoroughly analyzed and properly used.

Every message about break of the law is of a great value for us. Effective fight against crime means more money in the national budget for roads, schools, hospitals and other public expenses. If you have information that can help us, do not keep it for yourself – notify KAS.

Another example of a prevention obligation, comes from the **Polish Tax Code**:

10

**Article 296 [File Keeping]**

§ 1. Case files containing information:

- 1) originating from banks or cooperative savings and credit unions and other financial institutions,
- 2) specified in the Act of March 9, 2017 on the exchange of tax information with other countries, obtained from foreign countries, from banks and other financial institutions,

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<sup>403</sup> See <https://www.gov.pl/web/national-revenue-administration/organisational-structure>.

3) obtained in the procedure for issuing an advance pricing agreement referred to in section III of the Act of 16 October 2019 on resolving double taxation disputes and concluding advance pricing agreements,

4) provided by the taxpayer as part of the cooperation referred to in section IIB, containing a business secret – is stored in rooms secured in accordance with the provisions on the protection of classified information.

§ 2. The information referred to in § 1, after their use, are excluded from the case files and stored in accordance with the rules set out for classified information classified as “proprietary”. Annotations about exclusion are made in the case files.

§ 3. The information referred to in § 1 shall be included in the case files again only in the cases specified in Art. 297 and 297a.

### **Article 297 [Sharing Files]**

§ 1. Files, including files containing the information listed in Art. 182, heads of tax offices and heads of customs and tax offices provide only:

1) the minister competent for public finance, the head of the National Revenue Administration, the director of the tax administration chamber – in the course of tax proceedings, proceedings in cases of tax crimes or tax offences, tax audit or customs and tax audit;

2) other heads of tax offices or heads of customs and tax offices – in connection with instituted tax proceedings, proceedings in cases of tax crimes or tax misdemeanors, tax control, customs and tax control or in connection with proceedings taken over pursuant to art. 18d;

2a) General Inspector of Financial Information – in accordance with the provisions on counteracting money laundering and financing terrorism;

2b) the minister competent for internal affairs, the General Inspector of Financial Information and the Head of the National Revenue Administration – to the extent necessary to carry out the tasks set out in the Act of April 13, 2022 on special solutions for counteracting the promotion of aggression against Ukraine and for the protection of national security (Journal U. item 835 and 1713) and in Section Va of the Act of 16 November 2016 on the National Revenue Administration;

2c) the minister competent for foreign affairs – to the extent necessary to take restrictive measures in connection with actions destabilizing the situation in Ukraine;

3) courts or the prosecutor – in connection with pending proceedings;

4) Ombudsman – in connection with his participation in proceedings before the administrative court;

5) To the Prosecutor General – at the request of the competent prosecutor:

a) in the cases specified in Section IV of the Code of Administrative Procedure,

b) in connection with the participation of the prosecutor in proceedings before the administrative court;

- 6) (repealed);
- 7) the Internal Security Agency, the Military Counterintelligence Service, the Foreign Intelligence Agency, the Military Intelligence Service, the Central Anti-Corruption Bureau, the Police, the Military Police, the Border Guard, the Prison Service, the State Protection Service and officers or soldiers holding a written authorisation to the extent necessary to conduct vetting proceedings on the basis of the provisions on the protection of classified information;
- 8) Central Anti-Corruption Bureau – to the extent necessary to perform the tasks specified in art. 2 sec. 1 of the Act of June 9, 2006 on the Central Anti-Corruption Bureau;
- 8a) Internal Security Agency – to the extent necessary to perform the tasks specified in art. 5 sec. 1 of the Act of 24 May 2002 on the Internal Security Agency and the Foreign Intelligence Agency;- on the terms and in the manner specified in Art. 22a of the Act of 9 June 2006 on the Central Anti-Corruption Bureau;
- 9) Internal Supervision Inspector – to the extent necessary to perform the tasks specified in art. 11a sec. 3 point 7 of the Act of 21 June 1996 on specific forms of supervision by the minister responsible for internal affairs (Journal of laws of 2021, items 2073 and 2448 and of 2022, items 1488 and 1933);
- 9a) Head of the Internal Inspectorate of the Prison Service – to the extent necessary to perform the tasks specified in art. 23p of the Act of 9 April 2010 on the Prison Service (Journal of Laws of 2021, item 1064, as amended);
- 10) Chairman of the Polish Financial Supervision Authority – to the extent and on the terms set out in the Act of 21 July 2006 on financial market supervision;
- 11) President of the Office of Competition and Consumer Protection – in connection with the conducted:
- a) explanatory proceedings, antimonopoly proceedings, proceedings to declare the provisions of standard contracts illegal and proceedings concerning practices infringing collective consumer interests referred to in Art. 47 sec. 1 of the Act of February 16, 2007 on competition and consumer protection (Journal of Laws of 2021, item 275),
- b) proceedings regarding practices unfairly using contractual advantage and explanatory proceedings, conducted pursuant to the provisions of the Act of November 17, 2021 on counteracting the unfair use of contractual advantage in trading in agricultural and food products (Journal of Laws, item 2262 and of 2022, item 1370),
- c) proceedings on excessive delays in the provision of cash benefits referred to in Art. 13c of the Act of 8 March 2013 on counteracting excessive delays in commercial transactions (Journal of Laws of 2022, item 893 and 2414),
- d) preliminary verification proceedings and control proceedings referred to in the Act of 24 July 2015 on the control of certain investments (Journal of Laws of 2020, item 2145 and of 2022, item 1137).
- § 2. In the cases specified in § 1 point 1 or 2, the provision of art. 295.

§ 3. In the cases referred to in § 1, case files are marked and transferred in the manner provided for in Art. 184 § 2a.

§ 4. Heads of tax offices and heads of customs and tax offices make available to the Supreme Chamber of Control, in connection with the ongoing control proceedings, the files referred to in § 1, after excluding from them the information listed in art. 182, unless such information has previously been provided to the Supreme Audit Office on the basis of separate regulations.

§ 5. Heads of tax offices shall make available to the National Electoral Commission, in connection with the examination of the report of the election committee, the information referred to in art. 34 sec. 1, or the report referred to in Art. 38 of the Act of 27 June 1997 on political parties (Journal of Laws of 2022, item 372), the files referred to in § 1.

**Article 297a [Protection of tax information and files obtained from EU Member States]**

**Article 297c [Sharing data obtained as part of counteracting the use of the financial sector for tax fraud]**

§ 1. The data, information and documents referred to in section IIIB, including those containing data constituting a bank secret or professional secret, shall be made available only by the Head of the National Revenue Administration:

- 1) authorities of the National Revenue Administration – in order to carry out their statutory tasks;
- 2) General Inspector of Financial Information – in accordance with the provisions on counteracting money laundering and financing terrorism;
- 3) other authorities listed in Art. 297 – on the terms set out in these regulations.

§ 2. The disclosure referred to in § 1 may be made via the ICT system.

12 Art. 298 includes a special reference to OLAF:

13 **Article 298 [Catalogue of entities to which files covered by fiscal secrecy may be made available]**

Files that do not contain the information referred to in Art. 182, the tax authorities provide:

- 1) the minister competent for public finance;
  - 1a) Head of the National Revenue Administration;
  - 2) other tax authorities;
  - 3) (repealed);
  - 3a) (repealed);
- 4) the Supreme Audit Office – to the extent and on the terms set out in the provisions on the Supreme Audit Office;



- 5) the court, the prosecutor, as well as officers of the Police, the Internal Security Agency, the Border Guard or the Central Anti-Corruption Bureau authorised in writing by the prosecutor – in connection with pending proceedings;
- 5a) the Internal Security Agency, the Military Counterintelligence Service, the Foreign Intelligence Agency, the Military Intelligence Service, the Central Anti-Corruption Bureau, the Police, the Military Police, the Border Guard, the Prison Service, the State Protection Service and officers or soldiers holding a written authorisation to the extent necessary to conduct the vetting proceedings on the basis of the provisions on the protection of classified information;
- 5b) the Central Anti-Corruption Bureau, the Internal Supervision Bureau, the Police, the Military Police, the Border Guard, the Internal Inspectorate of the Penitentiary Service and their officers or soldiers holding a written authorisation, if it is necessary for the effective prevention or detection of crimes, identifying the perpetrators and obtaining evidence or disclosing property at risk of forfeiture;
- 6) experts appointed in the course of tax proceedings or tax audits – to the extent specified by the tax authority;
- 6a) the voivode and the Head of the Office for Foreigners – in the scope of conducted proceedings regarding the legalization of the stay of foreigners on the territory of the Republic of Poland;
- 6aa) voivode – in the field of customs and tax inspections of compliance with the regulations issued on the basis of art. 46 sec. 4 point 2 of the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans (Journal of Laws of 2022, items 1657 and 2280);
- 6b) the General Prosecutor's Office of the Republic of Poland – in connection with the ongoing proceedings and issuing a legal opinion;
- 6c) mining supervision authorities – in order to verify the measurement of copper ore output, extracted natural gas and extracted crude oil within the meaning of the Act of March 2, 2012 on the minerals extraction tax (Journal of Laws of 2022, item 1539);
- 6d) Chairman of the Polish Financial Supervision Authority – to the extent necessary to conduct the explanatory proceedings pursuant to the Act of 21 July 2006 on financial market supervision;
- 6e) competent authorities in cases of violation of public finance discipline - to the extent necessary to carry out verification activities and proceedings based on the provisions on liability for violation of public finance discipline;
- 6f) President of the Office of Competition and Consumer Protection – in connection with the pending proceedings conducted pursuant to the provisions of the Act of 16 February 2007 on competition and consumer protection, the provisions of the Act of 8 March 2013 on counteracting excessive delays in commercial transactions and the provisions of the Act of November 17, 2021 on counteracting the unfair use of contractual advantage in trading in agricultural and food products;

6f) (repealed);

**6g) 34 the European Anti-Fraud Office (OLAF) – in connection with an ongoing administrative investigation conducted by this Office or before the initiation of the investigation;**

7) other authorities – in cases and on the terms set out in separate acts and ratified international agreements to which the Republic of Poland is a party, as well as in agreements concluded on the basis of these agreements.

**14** Another special rules preventing national public authorities to submit information according to the duty of Art. 8 OLAF Regulation to OLAF is stipulated by Art. 96j of the General Administrative Procedure Code:

**15** **Article 96j<sup>404</sup> Obligation to keep secret the facts of mediation**

§ 1. Mediation is not public.

§ 2. The mediator, participants in mediation and other persons involved in mediation are obliged to keep secret all the facts they learned in connection with mediation, unless mediation participants decide otherwise.

§ 3. Settlement proposals, disclosed facts or statements made in the course of mediation may not be used after its completion, except for the arrangements contained in the mediation protocol.

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<sup>404</sup> Art. 96j. Obowiązek zachowania w tajemnicy faktów z mediacji

§ 1. Mediacja nie jest jawna.

§ 2. Mediator, uczestnicy mediacji i inne osoby biorące udział w mediacji są obowiązani zachować w tajemnicy wszelkie fakty, o których dowiedzieli się w związku z prowadzeniem mediacji, chyba że uczestnicy mediacji postanowią inaczej.

§ 3. Propozycje ugodowe, ujawnione fakty lub oświadczenia złożone w toku mediacji nie mogą być wykorzystywane po jej zakończeniu, z wyjątkiem ustaleń zawartych w protokole z przebiegu mediacji.

## II. National Procedural Rules for OLAF Investigations

### 1. Article 9 Procedural guarantees

[...] 3. As soon as an investigation reveals that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, that official, other servant, member of an institution or body, head of office or agency, or staff member shall be informed to that effect, provided that this does not prejudice the conduct of the investigation or of any investigative proceedings *falling within the remit of a national judicial authority*.

4. [...] In duly justified cases where necessary to preserve the confidentiality of the investigation or an ongoing or future criminal investigation by the EPPO or a national judicial authority, the Director-General may, where appropriate after consulting the EPPO or *the national judicial authority concerned*, decide to defer the fulfilment of the obligation to invite the person concerned to comment. [...]

#### a) Art. 9 para 3 – remit of a national judicial authority

A national judicial authority with investigative function is the National Revenue Administration (KAS). It operates, as explained above, on the basis of the Act on the National Treasury Administration. Art. 36, 37, 37a et seq. stipulate the scope of investigations of the heads of the local customs and tax offices. They are competent to conduct preparatory investigations. 1

If a case, which is part of an internal investigation, concerns a Polish authority, e.g. in the area of agricultural funds or payments, OLAF may need to report to the KAS as well, because it operates as the national Coordination Unit for OLAF in the area of revenue and some kind of expenditure situations. 2

#### b) Art. 9 para 4 – national judicial authorities

Art. 9 para 4 OLAF Regulation is not fully applicable in Poland. Any reference to the EPPO has no effect in the country. Still the second part refers to the same Polish authorities, which are competent under Art. 9 para 3 OLAF Regulation. 3

### 2. Article 10 Confidentiality and data protection

[...] 3. The institutions, bodies, offices or agencies concerned shall ensure that the confidentiality of the investigations conducted by the Office is respected, together with the legitimate rights of the persons concerned, and, where judicial proceedings have been initiated, that *all national rules applicable to such proceedings* have been adhered to. [...]

**a) National rules applicable to judicial proceedings in the MS**

- 1 An example of national rules applicable to judicial proceedings in Poland is the right to refuse to testify, which is enshrined in the general administrative **Act on the Administrative Procedure**. These rules constitute legitimate rights of the persons concerned:

2 **Article 82**

Witnesses may not be:

- 1) persons incapable of perceiving or communicating their observations;
- 2) persons obliged to maintain the secrecy of classified information for the circumstances covered by the secrecy, if they have not been exempted from the obligation to maintain secrecy in accordance with applicable regulations;
- 3) clergy as to the facts covered by the secret of confession.

**Article 83 Right to refuse to testify and refuse to answer questions**

§ 1. No one has the right to refuse to testify as a witness, with the exception of the party's spouse, ascendants, descendants and siblings of the party and her relatives of the first degree, as well as persons remaining with the party in relation to adoption, custody or guardianship. The right to refuse to testify also continues after the termination of marriage, adoption, guardianship or guardianship.

§ 2. A witness may refuse to answer questions when the answer could expose him or his relatives listed in § 1 to criminal liability, disgrace or direct financial damage, or cause a breach of the obligation to maintain professional secrecy protected by law.

§ 3. Before taking the testimony, the public administration body warns the witness about the right to refuse to testify and answer questions, and about liability for false testimony.

§ 4. The mediator may not be questioned as a witness as to the facts which he learned in connection with the conduct of mediation, unless the mediation participants release him from the obligation to maintain the secrecy of mediation.

**b) Specifications**

- 3 If national judicial proceedings have started, the following Polish Act apply: the **Act on Courts** (*Prawo o ustroju sądów powszechnych*).

### 3. Article 11 Investigation report and action to be taken following investigations

[...] 2. In drawing up the reports and recommendations referred to in paragraph 1, account shall be taken of the relevant provisions of Union law and, in so far as it is applicable, *of the national law of the Member State concerned*.

Reports drawn up on the basis of the first subparagraph, together with all evidence in support and annexed thereto, **shall constitute admissible evidence**:

(a) *in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States*;

(b) *in criminal proceedings of the Member State* in which their use proves necessary in the *same way and under the same conditions* as administrative reports drawn up by *national administrative inspectors* and shall be subject to the *same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors* and shall have the same evidentiary value as such reports;

(c) in judicial proceedings before the CJEU and in administrative proceedings in the institutions, bodies, offices and agencies.

Member States shall notify to the Office *any rules of national law relevant* for the purposes of point (b) of the second subparagraph.

With regard to point (b) of the second subparagraph, Member States shall, upon request of the Office, send to the Office the *final decision of the national courts* once the *relevant judicial proceedings* have been finally *determined* and the final court decision has become *public*.

The power of the CJEU and national courts and competent bodies *in administrative and criminal proceedings to freely assess the evidential value* of the reports drawn up by the Office shall not be affected by this Regulation. [...]

3. Reports and recommendations drawn up following an external investigation and any relevant related documents shall be sent to the *competent authorities of the Member States* concerned in accordance with the rules relating to external investigations and, if necessary, to the institution, body, office or agency concerned. The competent authorities of the Member State concerned and, if applicable, the institution, body, office or agency shall take such action as the results of the external investigation warrant and shall report thereon to the Office within a timelimit laid down in the recommendations accompanying the report and, in addition, at the request of the Office. Member States may notify to the Office the relevant national authorities competent to deal with such reports, recommendations and documents.

**a) References to national law**

- 1 Evidence in national proceedings is a particular powerful tool of the EU Office OLAF, which is nevertheless not used to its optimum in Poland apparently.<sup>405</sup> This area has been well researched by a great scholar, Celina Nowak and practitioners in the past.<sup>406</sup> And Lothar Kuhl has outlined on 12<sup>th</sup> May 2004 in the Select Committee on European Union, in the Minutes on Evidence in the U.K. Parliament a very clear description of how Art. 11 OLAF Regulation became one of the most important articles of the whole Regulation and how OLAF ensures that evidence, which the Investigators obtain is valuable evidence in a national, e.g. criminal trial:

“Mr Kuhl: My Lord Chairman, the European Anti-Fraud Office was created by a Commission decision in 1999. In the area of fraud investigations, the mandate given to OLAF to undertake administrative investigations is granted to OLAF on the basis of a regulation adopted by the Community legislator, the European Parliament and the Council. At the same time as it has an investigative function, OLAF has equally a function to assist Member States in coordinating their cooperation to prevent and to counter fraud. This is a mandate which has been entrusted to the Commission, here represented by OLAF, in the EC Treaty, Article 280.

Therefore, our role in this context is a role which is very much linked to the fact that OLAF has an investigative function. This is an **administrative investigative function**, but concerning **facts which may give rise later on to criminal and judicial follow-up**. In this respect the role of OLAF is to ensure that the proper contact is made with the judicial authorities, and that in

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<sup>405</sup> Łukasiewicz A (2022) Prokuratorzy mało skuteczni w sprawach unijnych nadużyć [Prosecutors are not very effective in EU fraud cases]: “Poland is one of the notorious leaders of countries where many irregularities to the detriment of the EU’s financial interests are uncovered, write the deputies of the Prosecutor General in an interpellation. As evidence, they cite data showing that in Poland in 2016–2020 only 33 percent were affected. Criminal proceedings carried out on the recommendation of OLAF ended with the drafting of an indictment. What is the Polish prosecutor doing to improve these bad statistics? – the deputies, the authors of the interpellation, wanted to know. They were answered by prosecutor Dariusz Barski. As he explained, the monitoring of criminal proceedings conducted in Poland, the subject of which were acts detrimental to the financial interests of the European Union, began in 2006. From 2015 to 17 June 2022, OLAF inspectors submitted a total of 21 OLAF investigation reports to the National Prosecutor’s Office with recommendations to initiate criminal proceedings in the country. These reports would be subjected to detailed analysis, prosecutor Barski assured, adding that once analyzed, they would either form the basis for launching a preliminary investigation or – in the case of ongoing proceedings – would be forwarded to the relevant prosecutor’s office for inclusion in case files and further review of the circumstances raised. The figures for the individual years show that there are only very few of these cases. And yes, in 2015 there was such a case; no report was sent in 2016; in 2017 there were 6; in 2018 – 3; in 2019 – 4; in 2020 – 3; in 2021 – 2 and by June 2022 also two. In the past five years, only three trials in such cases have resulted in an indictment. Most remain.” Article on Rzeczpospolita, 18.8.2022, online: <https://www.rp.pl/zawody-prawnicze/art36890611-prokuratorzy-malo-skuteczni-w-sprawach-unijnych-naduzyc>. Accessed 6 August 2024.

<sup>406</sup> See Nowak 2013. See Zapadka 2020, pp. 11–17.

particular its investigative reports are transmitted to those authorities in the Member States competent for criminal investigations and prosecutions.

It is an obligation of OLAF under the OLAF regulation to transmit such information as it may have uncovered in its investigations which warrants a criminal follow-up to the judicial authorities in the Member States. At the same time there is, on the basis of the investigations, a final case report which is drawn up by OLAF and the final case report is an element which should, as far as possible and as far as compatible with the national procedural systems, serve as an element of evidence in national proceedings, be they administrative, criminal, or judicial proceedings.

In this respect **OLAF has** obviously taken care for a couple of years to **develop investigative measures which comply with judicial requirements** such as to ensure that what comes out of the investigations may be **admissible evidence in national proceedings**.

To this end, **OLAF has developed inside the office**, as I tend to say, **a judicial or a magistrate's function**. I would like to explain this. **Magistrates working within OLAF** are not vested with any criminal investigative or prosecution powers while working with OLAF. They are Community agents. They are simply **putting at the disposal of the office their experience, their know-how, their professional culture** so as to ensure that what the investigators do is sound, complies with the law and may be used in particular in the national proceedings which follow the investigation. That is it, perhaps, in a nutshell.<sup>407</sup>

In the following table we try thus to summarise some key-points on the references to national law, e.g. Polish law in Art. 11 OLAF Regulation: 2

*Sources & national sections 2: Art. 11 OLAF Regulation* 3

<b>Para 2</b>	The main legal Acts, which apply in OLAF investigations can be read above (see above → Most relevant national Laws concerning OLAF investigations).
<b>Para 2 (a)</b>	In the area of judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in Poland, the General Act on the Administrative Procedure applies.

<sup>407</sup> Examination of Witnesses (Questions 69–79), 12 May 2004, Mr Lothar Kuhl and Mr Sebastien Combeaud, online: <https://publications.parliament.uk/pa/ld200304/ldselect/lddeucom/138/4051206.htm>. Accessed 6 August 2024.

It contains special provisions on evidence and the use of experts (e.g. OLAF officials in a national judicial proceeding):

#### **Chapter 4 Evidence**

##### **Article 75<sup>408</sup> Evidence in proceedings**

§ 1. As evidence, you must admit everything that may contribute to the clarification of the case, and is not contrary to the law. In particular, evidence may include documents, witness statements, expert opinions and inspections.

§ 2. If a provision of law does not require official confirmation of specific facts or legal status by way of a certificate issued by a competent administrative authority, the public administration authority shall receive from the party, at its request, a statement made under pain of liability for false testimony. The provision of art. 83 the right to refuse to testify and refuse to answer questions § 3 shall apply accordingly.

##### **Article 76<sup>409</sup> Official documents**

§ 1. Official documents drawn up in the prescribed form by the competent state authorities within their scope of action constitute evidence of what has been officially stated in them.

§ 2. The provision of § 1 shall apply *mutatis mutandis* to official documents drawn up by the bodies of organisational units or entities, in the scope of entrusted to them by law or agreement matters listed in art. 1, the scope of regulation of the Act, points 1 and 4.

§ 3. The provisions of § 1 and 2 do not exclude the possibility of taking evidence against the content of the documents listed in these provisions.

#### <sup>408</sup> **Art. 75. Dowód w postępowaniu**

§ 1. Jako dowód należy dopuścić wszystko, co może przyczynić się do wyjaśnienia sprawy, a nie jest sprzeczne z prawem. W szczególności dowodem mogą być dokumenty, zeznania świadków, opinie biegłych oraz oględziny.

§ 2. Jeżeli przepis prawa nie wymaga urzędowego potwierdzenia określonych faktów lub stanu prawnego w drodze zaświadczenia właściwego organu administracji, organ administracji publicznej odbiera od strony, na jej wniosek, oświadczenie złożone pod rygorem odpowiedzialności za fałszywe zeznania. Przepis art. 83 prawo odmowy zeznań i odmowy odpowiedzi na pytania § 3 stosuje się odpowiednio.

#### <sup>409</sup> **Art. 76. Dokumenty urzędowe**

§ 1. Dokumenty urzędowe sporządzone w przepisanej formie przez powołane do tego organy państwowe w ich zakresie działania stanowią dowód tego, co zostało w nich urzędowo stwierdzone.

§ 2. Przepis § 1 stosuje się odpowiednio do dokumentów urzędowych sporządzanych przez organy jednostek organizacyjnych lub podmioty, w zakresie poruczonych im z mocy prawa lub porozumienia spraw wymienionych w art. 1 zakres regulacji ustawy pkt 1 i 4.

§ 3. Przepisy § 1 i 2 nie wyłączają możliwości przeprowadzenia dowodu przeciwko treści dokumentów wymienionych w tych przepisach.



**Article 76a<sup>410</sup> Copies and excerpts from documents**

§ 1. If the document is in the files of the authority or entity referred to in Art. 76 § 1 or 2, it is enough to present an officially certified copy or extract from the document. The public administration authority will request a copy or extract if the party cannot obtain them on its own. When the authority considers it necessary to review the original document, it may request its delivery.

§ 2. Instead of the original of the document, a party may submit a copy of the document, if its compliance with the original has been certified by a notary public or by a representative of the party appearing in the case who is a lawyer, legal advisor, patent attorney or tax advisor.

§ 2a. If a copy of the document has been made in writing recorded in electronic form, the certification of its compliance with the original referred to in § 2 shall be made using a qualified electronic signature, trusted signature or personal signature. Copies of documents certified electronically are prepared in the data formats specified in the regulations issued on the basis of Art. 18, point 1 of the Act of 17 February 2005 on the computerization of the activities of entities performing public tasks.

§ 2b. At the party's request, an authorised employee of the authority conducting the proceedings, to whom the original of the document with a copy has been presented, shall certify the compliance of the copy of the document with the original. The certification includes the

**<sup>410</sup> Art. 76a. Odpisy i wyciągi z dokumentów**

§ 1. Jeżeli dokument znajduje się w aktach organu lub podmiotu, o którym mowa w art. 76 dokumenty urzędowe § 1 lub 2, wystarczy przedstawić urzędowo poświadczony przez ten organ lub podmiot odpis lub wyciąg z dokumentu. Organ administracji publicznej zażąda udzielenia odpisu lub wyciągu, jeżeli strona sama uzyskać ich nie może. Gdy organ uzna za konieczne przejrzanie oryginału dokumentu, może wystąpić o jego dostarczenie.

§ 2. Zamiast oryginału dokumentu strona może złożyć odpis dokumentu, jeżeli jego zgodność z oryginałem została poświadczona przez notariusza albo przez występującego w sprawie pełnomocnika strony będącego adwokatem, radcą prawnym, rzecznikiem patentowym lub doradcą podatkowym.

§ 2a. Jeżeli odpis dokumentu został sporządzony na piśmie utrwalonym w postaci elektronicznej, poświadczenia jego zgodności z oryginałem, o którym mowa w § 2, dokonuje się przy użyciu kwalifikowanego podpisu elektronicznego, podpisu zaufanego lub podpisu osobistego. Odpisy dokumentów poświadczane elektronicznie sporządzane są w formatach danych określonych w przepisach wydanych na podstawie art. 18 delegacja ustawowa pkt 1 ustawy z dnia 17 lutego 2005 r. o informatyzacji działalności podmiotów realizujących zadania publiczne.

§ 2b. Upoważniony pracownik organu prowadzącego postępowanie, któremu został okazany oryginał dokumentu wraz z odpisem, na żądanie strony, poświadcza zgodność odpisu dokumentu z oryginałem. Poświadczenie obejmuje podpis pracownika, datę i oznaczenie miejsca sporządzenia poświadczenia, a na żądanie strony, również godzinę sporządzenia poświadczenia. Jeżeli dokument zawiera cechy szczególne (dopiski, poprawki lub uszkodzenia), należy stwierdzić to w poświadczeniu.

§ 3. Zawarte w odpisie dokumentu poświadczenie zgodności z oryginałem przez występującego w sprawie pełnomocnika strony będącego adwokatem, radcą prawnym, rzecznikiem patentowym lub doradcą podatkowym albo przez upoważnionego pracownika organu prowadzącego postępowanie ma charakter dokumentu urzędowego.

§ 4. Jeżeli jest to uzasadnione okolicznościami sprawy, organ administracji publicznej zażąda od strony składającej odpis dokumentu, o którym mowa w § 2, przedłożenia oryginału tego dokumentu.

employee's signature, date and place of certification, and, at the party's request, also the time of certification. If the document contains special features (additions, corrections or damages), this must be stated in the certification.

§ 3. The certified copy of the document contained in the copy of the document by the representative of the party appearing in the case who is a lawyer, legal adviser, patent agent or tax advisor, or by an authorised employee of the body conducting the proceedings, has the nature of an official document.

§ 4. If it is justified by the circumstances of the case, the public administration authority shall request the party submitting a copy of the document referred to in § 2 to submit the original of this document.

**Article 77<sup>411</sup> Obligations of the authority with regard to evidence**

§ 1. The public administration body is obliged to exhaustively collect and consider all the evidence.

§ 2. The authority may at any stage of the proceedings change, supplement or repeal its order regarding the taking of evidence.

§ 3. The authority conducting the proceedings at the request of the authority competent to settle the case ( Article 52 legal assistance of the authorities ) may, ex officio or at the request of the party, also hear new witnesses and experts on the circumstances being the subject of the proceedings.

§ 4. Commonly known facts and facts known to the authority ex officio do not require proof. Facts known to the authority ex officio should be communicated to the party.

**Article 84<sup>412</sup> Expert** § 1. When special information is required in the case, the public administration body may ask an expert or experts for an opinion.

<sup>411</sup> **Art. 77. Obowiązki organu w zakresie materiału dowodowego**

§ 1. Organ administracji publicznej jest obowiązany w sposób wyczerpujący zebrać i rozpatrzeć cały materiał dowodowy.

§ 2. Organ może w każdym stadium postępowania zmienić, uzupełnić lub uchylić swoje postanowienie dotyczące przeprowadzenia dowodu.

§ 3. Organ przeprowadzający postępowanie na wezwanie organu właściwego do załatwienia sprawy (art. 52 pomoc prawna organów) może z urzędu lub na wniosek strony przesłuchać również nowych świadków i biegłych na okoliczności będące przedmiotem tego postępowania.

§ 4. Fakty powszechnie znane oraz fakty znane organowi z urzędu nie wymagają dowodu. Fakty znane organowi z urzędu należy zakomunikować stronie.

<sup>412</sup> **Art. 84. Biegły**

	<p>§ 2. The expert is subject to exclusion on the terms and in the manner specified in art. 24 exclusion of an employee of the authority from participation in the proceedings. In addition, the provisions on the examination of witnesses apply to experts.</p>
<p><b>Para 2 (b)</b></p>	<p>The polish criminal process and trial is based on principles related to the taking of evidence at each stage of the procedure. These are the principle of substantive truth, the principle of immediacy, speed and concentration of the procedure, and the free assessment of evidence.<sup>413</sup> The relevant articles of the Polish Code of Criminal Procedure can be found in Chapter 20, Artt. 167 et seq. Chapter 21 rules on witnesses and their tasks and obligations in a criminal proceeding. Art. 180 CPC, which establishes a special professionals secrecy might be of importance for an OLAF investigation.</p> <p>The reports are assimilated to administrative inspection reports. Thus the rules on evidence in an administrative process (cf. Administrative Court Procedure Code (<i>Prawo o postępowaniu przed sądami administracyjnymi</i>) Art. 90 et seq., which stipulates that the rules on evidence in the Civil Procedure Code apply, must be compared to the rules in the Polish CPC and it must be assessed whether these rules are equal. If not, a solution must be found to equalize the thresholds for the use in the criminal process. The rules of the Administrative Procedure Code need to be taken into account, too. In Art. 7 they stipulate the principle of objective truth:</p> <p><b>Article 7 Principle of objective truth</b></p> <p>In the course of the procedure, the public administration bodies uphold the rule of law, take all necessary measures, ex officio or at the request of the parties, to thoroughly clarify the facts and settle the matter, taking into account the public interest and legitimate interest of citizens.</p> <p>Further rules on administrative evidence can be found in Art. 77 § 1, 80 Code of Administrative Procedure.<sup>414</sup> Zapadka has outlined that Art. 75 does not present a closed list of evidence (no <i>numerus clausus</i> or</p>

§ 1. Gdy w sprawie wymagane są wiadomości specjalne, organ administracji publicznej może zwrócić się do biegłego lub biegłych o wydanie opinii.

§ 2. Biegły podlega wyłączeniu na zasadach i w trybie określonym w art. 24 wyłączenie pracownika organu od udziału w postępowaniu. Poza tym do biegłych stosuje się przepisy dotyczące przesłuchania świadków.

<sup>413</sup> See in-depth Nowak 2013.

<sup>414</sup> Zapadka 2020, pp. 11–17.

only an exemplary enumeration) but all evidence, even the things unmentioned in Art. 75 must be considered as evidence for a certain case.<sup>415</sup>

The same principles can be found in the Tax Code, see e, Art. 122 op, in which the tax authorities were obliged to follow this principle.<sup>416</sup>

An Art. 180 of the Tax Code contain equal rules on evidence. Art. 194 contains rules on documents:

**Article 194 Tax Code<sup>417</sup>**

§ 1. Official documents drawn up in the form prescribed by law by public authorities appointed for this purpose constitute proof of what has been officially stated in them.

§ 2. The provision of § 1 shall apply accordingly to official documents prepared by other units, if they are authorised to issue them under separate regulations.

§ 3. The provisions of § 1 and 2 do not exclude the possibility of taking evidence against the documents listed in these provisions.

Often OLAF Reports are questioned and their evidence diminished by defence lawyers or other officers, but the Polish Courts have not recognized the argument that OLAF Reports only present a summary of sources where to find evidence. They have substantial value and contain many information, which often suffice to prove facts.<sup>418</sup>

*Zapadka* has thereofre from the point-of-view of academic analysis concluded that OLAF Reports must constitute evidence, even if not binding for the judges in all cases, but theoretically – if no doubts

<sup>415</sup> Ibid referring to Judgment of the Supreme Administrative Court of March 9, 1989, II SA 961/88.

<sup>416</sup> Ibid citing Judgment of the Supreme Administrative Court of 8 September 2016, I GSK 1878/14; Judgment of the Provincial Administrative Court of 23 January 2019, III SA/Gd 835/18; Judgment of the Supreme Administrative Court of 5 October 2017, I GSK 1428/15; Judgement of the Supreme Administrative Court of 4 July 2013, I GSK 983/12, outlining that the OLAF report referred to in para 1 of the cited provision (fomerly Art. 9 OLAF Regulation) constitutes admissible evidence in administrative proceedings in Poland. It has a probative value, e.g. for customs authorities and other authorities of the specialised administrative procedure area.

<sup>417</sup> **Art. 194. Ustawa z dnia 29 sierpnia 1997 r. Ordynacja podatkowa [Dz. U. 1997 Nr 137 poz. 926 ]**

§ 1. Dokumenty urzędowe sporządzone w formie określonej przepisami prawa przez powołane do tego organy władzy publicznej stanowią dowód tego, co zostało w nich urzędowo stwierdzone.

§ 2. Przepis § 1 stosuje się odpowiednio do dokumentów urzędowych sporządzonych przez inne jednostki, jeżeli na podstawie odrębnych przepisów uprawnione są do ich wydawania.

§ 3. Przepisy § 1 i 2 nie wyłączają możliwości przeprowadzenia dowodu przeciwko dokumentom wymienionym w tych przepisach.

<sup>418</sup> Judgment of the Supreme Administrative Court of 18.10.2017, I GSK 1761/15.

	remain <sup>419</sup> – in national administrative, specialised administrative (tax and customs) and criminal proceedings.
<b>Para 2 (c)</b>	The rules on the finalization of a national proceeding can be found in the Code of Criminal Procedure, the Act on Courts, the Administrative Court Procedure Code ( <i>Prawo o postępowaniu przed sądami administracyjnymi</i> ), Chapter 11, Artt. 132 et seq., 168 et seq.

Source: The authors.

### b) National authority, para 3

The competent authorities (see above → Competent authorities) will, according to its investigatvie scope (customs area, tax area, structural funds area) get a recommendation from OLAF investigators, which relates to national law and recommends to establish sanctions, refund claims and administrative bans e.g. from a tender procedure, from a procurement process in general, from a list of beneficiaries of funds to tackle an irregularity, which was investigated. The measure must or shall warrant the outcome of the on-the-spot checkss, the external investigation (see above → Art. 3 OLAF Regulation).

## 4. Article 12 Exchange of information between the Office and the competent authorities of the Member States

1. Without prejudice to Articles 10 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may transmit to the competent authorities of the Member States concerned information obtained in the course of external investigations in due time to enable them to take appropriate action ***in accordance with their national law***. It may also transmit such information to the institution, body, office or agency concerned.
2. Without prejudice to Articles 10 and 11, the Director-General shall transmit to the ***judicial authorities of the Member State concerned*** information obtained by the Office, in the course of internal investigations, concerning facts which fall within the ***jurisdiction of a national judicial authority***. [...]
3. The ***competent authorities of the Member State concerned*** shall, unless ***prevented by national law***, inform the Office without delay, and in any event within 12 months of receipt of the information transmitted to them in accordance with this Article, of the action taken on the basis of that information.

<sup>419</sup> Zapadka 2020: “The facts of classifying the reports of OLAF as official documents does not relieve the ‘hosts’ (e.g. judges etc.) of administrative or tax proceedings from their obligation to act in accordance with the principle of truth objectively within the allowed administrative discretion.”

4. The Office may *provide evidence* in proceedings before national courts and tribunals *in conformity with national law* and the Staff Regulations. [...]

**a) Art. 12 para 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law)**

- 1 The competent authorities are listed above (see → Art. 3 OLAF Regulation “**Competent authorities**”). The appropriate action depends on the evidence collected by OLAF. Art. 12 para 1 goes without prejudice to Articles 10 and 11 of this Regulation and hereby refers to the OLAF Report or any specific recommendations. Thus Art. 12 para 1 includes any unspecified action of a national competent authority. OLAF does not need to indicate any measure according to national law, like e.g. for an OLAF Report (see above → Art. 11 OLAF Regulation). As OLAF will indicate sanctions, refund claims and administrative bans e.g. from a tender procedure, from a procurement process in general, from a list of beneficiaries of funds etc. in an OLAF Report as a specific recommendation it will leave a leeway for an own decision of a national authority under Art. 12 para 1 OLAF Regulation.

**b) Art. 12 para 2 OLAF Regulation (judicial authorities of the Member State concerned)**

- 2 “Judicial authorities” is a very wide concept and the ECJ is competent to judge, who is a judicial authority in the EU meaning<sup>420</sup>, but the main judicial authorities in Poland are those, which are competent to judge or conclude a decision with a certain effect on the individual (effect on freedom, money, work, allowances etc.). Determining the authorities is possible by accessing the 3<sup>rd</sup> Chapter of the Act on the Courts (*Rozdział 3 – Organy sądów – Prawo o ustroju sądów powszechnych*). Thus first of all the courts are judicial authorities. This includes judges, assistant judges and court clerks of court departments, who are competent to receive information for or on behalf of a judge.
- 3 The Polish Institutions (see above → **Institutions**) can encompass more authorities, which are de fact judicial authorities. If the term

**c) Art. 12 para 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned)**

- 4 This information obligation applies to all authorities, which were e.g. part of an external investigation The rules does relate to investigations in the IBOAS, e.g. in the publicly known FRONTEX Investigation in Warsaw, which was an internal investigation as

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<sup>420</sup> OLAF Reports repeat that “Member States’ judicial authorities are independent and are under no obligation to follow OLAF’s recommendations.” This means that executive authorities, which often have to follow assignment from higher bodies are *de facto* not independent and can therefore not be called a judicial authority according to the meaning of the OLAF Regulation.

FRONTEX is an Agency, it would apply, as Art. 12 para 3 speaks of “the action taken on the basis of that information”, which relates to Art. 12 para 2 OLAF Regulation, where the Office is obliged to transmit information obtained during internal investigations to the relevant national authorities. In Poland this would have been e.g. any disciplinary office, if e.g. a civil servant is only seconded to an EU institution this authority would be competent to decide on matters e.g. remuneration, bans, special restrictions and further proceedings.

**d) Art. 12 para 4 OLAF Regulation (Providing evidence in court proceedings before national courts and tribunals in conformity with national law)**

If Art. 12 para 4 speaks of the Office it relates to single persons that represent the Office before a Polish Court (for the Polish Courts and Institutions see above → **Institutions**). Providing evidence in court proceedings before national courts and tribunals in conformity with national law means that the rules listed in table on Art. 11 OLAF Regulation apply. The Code on Administrative Procedure, the Code on Administrative Court Procedure, the Tax Code, the Customs Code and the rules on evidence in the Code of Criminal Procedure determine the providing of evidence. The Office “may” provide, thus it must not, but often OLAF has an interest to present details or information in order to present valuable facts to the judges. The Staff Regulation of the EU are binding for EU officials and restrict e.g. the right to give evidence and sometimes the relevant Investigator, SNE of OLAF or any other staff must obtain a (written) authorisation to speak about certain details and work-related aspects. **5**

**5. Article 12a Anti-fraud coordination services**

1. Each Member State shall, for the purposes of this Regulation, designate a service (the ‘anti-fraud coordination service’) to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, *in accordance with national law*, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation. [...]

**a) General remarks**

The term “Kontrola Państwowa” is translated with State Control. In terms of Union law it may be extended to Union control. The academic literature uses the term frequently to describe and explain the control in relation to the Union budget.<sup>421</sup> **1**

<sup>421</sup> See Marcin Krawczak 2021, pp. 24–40.

**aa. Definition and History**

- 2 Cooperation, Coordination and Facilitation are buzz words in anti-fraud literature.<sup>422</sup> Anti-fraud coordination services are known worldwide and exist in many international organisations and cooperate with nation states.<sup>423</sup> 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).<sup>424</sup> The obligation to designate these services runs and derives from primary Union law. Art. 325 TFEU (ex-Art. 280 TEC) requests the Union *and* the Member States to fight fraud (together). The history of these services, adapted to the financial and budgetary law sector and set-up in the Member States’ internal justice and financial systems dates back to the early 2000s.<sup>425</sup> Historically, the coordinating bodies emerged primarily in the new Member States that were awaiting accession. The European Parliament has already in 2010 called for the AFCOS to be set up as independent bodies in the MS. Today one could not be further from this idea than ever, since the AFCOS are mostly subordinated deep in the structure of a Financial or Treasury Department/Ministry, Financial Inspections Services of the Treasury Department / Ministry, the Department of Commerce or the Ministry / Department of the Interior. The simplicity of the coordination from within a ministry and the size of the administrative apparatus certainly speak in favour of this, but the interconnectedness is also problematic from the point of view of efficiency (states with political goodwill coordinate very easily and others are politically manoeuvrable):

***“Friday 24 April 2009 Protection of the Communities’ financial interests and the fight against fraud – Annual Report 2007 P6\_TA(2009)0315 European Parliament resolution of 24 April 2009 on the protection of the Communities’ financial interests and the fight against fraud - Annual***

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<sup>422</sup> Kuhl 2019, pp. 160 et seq.; Wells 2014; Spink 2019; Saporta/Maraney 2022; FCPA 2012; European Court of auditors 2022; 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 (2012) The Fight Against Fraud on the EU’s Finances 12th Report of Session 2012–13, 32 et seq.

<sup>423</sup> Bartsiotas/Achamkulangare 2016; World Customs Organisation, see [http://www.wcoomd.org/en/about-us/partners/international\\_organisations.aspx](http://www.wcoomd.org/en/about-us/partners/international_organisations.aspx) (Accessed 6 August 2024); UNDOC, Ninth session – Conference of the States Parties to the United Nations Convention against Corruption (Sharm el-Sheikh, Egypt, 13–17 December 2021), online: <https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html> (Accessed 6 August 2024), focusing on the designation of anti-corruption bodies. They exist even on national level and are especially common in federal state systems, see Austria, which was special “Betrugsbekämpfungskoordinator:innen” <https://www.bmf.gv.at/en/topics/combating-fraud/anti-fraud-units/anti-fraud-coordinators.html> (Accessed 6 August 2024): “In each office there is an Anti-Fraud Coordinator (AFC; in German: Betrugsbekämpfungskoordinator, BBKO) for the individual sectors and regional customs units. They are members of the management and communicate in their function at management level and with each other. The AFC is the point of contact for all anti-fraud matters at the local level, within the department for other organisational units, as well as externally for institutions and public authorities. They also act as an information hub to the outside world, for example when it comes to external information exchange or cooperation with external institutions and authorities.”

<sup>424</sup> Kuhl 2019, p. 164.

<sup>425</sup> Quirke 2015, pp. 236 et seq.



**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”<sup>426</sup>

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.<sup>427</sup> However, the existing Member States are also aware of weaknesses in the fight against fraud. Only since 2010 and in the last decade has more attention been paid to these coordination points. They have become a *sine qua non* in the EU’s fight against fraud and it seems that they are becoming more and more the “eyes and ears” of OLAF in the Member States. They only have their own investigative skills, which would make them an “extended arm” of OLAF in the member states, if at all, e.g. in Bulgaria or Italy. On the other hand, in Germany and France, they are more active in the background and do not appear too clearly. Activity reports may also have to be requested by the Commission, i.e. the responsible departments of OLAF. **3**

**bb. Legislative developments**

The Commission has evaluated the impact of the AFCOS in the past decade.<sup>428</sup> Recent changes at the beginning of the 2020s have enlarged the competences of the AFCOS. **4**

<sup>426</sup> 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. weist darauf hin, dass die Stellen zur Koordinierung der Betrugsbekämpfung (AFCOS), die für OLAF in den Mitgliedstaaten eingerichtet wurden, die der Europäischen Union nach 2004 beigetreten sind, für OLAF sehr wichtige Informationsquellen und Kontaktpunkte sind; verweist jedoch darauf, dass der funktionale Mehrwert dieser Büros (insbesondere hinsichtlich der Meldung von Unregelmäßigkeiten an die Kommission) minimal ist, solange sie nicht von den nationalen Verwaltungen unabhängig sind; fordert die Kommission daher auf, dem zuständigen Ausschuss des Parlaments einen Vorschlag dahingehend vorzulegen, wie die Arbeit dieser Büros nutzbringender gestaltet werden könnte, und hält es für notwendig, die Zusammenarbeit mit den Kandidatenländern zu verbessern; [...]“

<sup>427</sup> Byrne 2019, p. 13.

<sup>428</sup> 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

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.

5 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:

6 (23) The Office is able, under Regulation (EU, Euratom) No 883/2013, to enter into administrative arrangements with **competent authorities of Member States**, such as anti-fraud coordination services, and institutions, bodies, offices and agencies, in order to specify the arrangements for their cooperation under that Regulation, in particular **concerning the transmission of information, the conduct of investigations and any follow-up action**.

(30) Due to the large diversity of national institutional frameworks, Member States should, on the basis of the principle of sincere cooperation, **have the possibility to notify to the Office the authorities that are competent to take actions upon recommendations of the Office**, as well as the authorities that need to be informed, such as for financial, statistical or monitoring purposes, for the performance of their relevant duties. Such authorities **may include national anti-fraud coordination services**. In accordance with the settled case-law of the CJEU, the Office recommendations included in its reports have no binding legal effects on such authorities of Member States or on institutions, bodies, offices and agencies.

(37) The anti-fraud coordination services of Member States were introduced by Regulation (EU, Euratom) No 883/2013 to facilitate an effective cooperation and exchange of information, including information of an operational nature, between the Office and Member States. The Commission evaluation report concluded that they have contributed positively to the work of the Office. The Commission evaluation report also identified the **need to further clarify the role of those anti-fraud coordination services** in order to ensure that the Office is provided with the necessary assistance to ensure that its investigations are effective, while leaving the organisation and powers of the anti-fraud coordination services to each Member State. In that regard, the anti-fraud coordination services should be able to provide or coordinate the **necessary assistance to the Office to carry out its tasks effectively, before, during or at the end of an external or internal investigation**.

(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

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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 (OLAF) 2017a.

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**

7

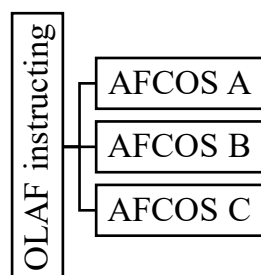


Figure 9: Visualisation of the old cooperation by virtue of Regulation No. 883/2013

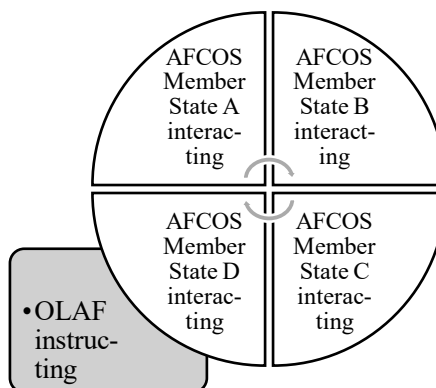


Figure 10: Visualisation of the new cooperation by virtue of Regulation No. 883/2013 (as amended 2020/2223)

**b) A closer look at the relevant AFCOS in the present Member State**

A study from the French Ministry of Finance (dating from 2012) reveals that the Polish AFCOS and its legal basis has interested many people already. At this time it was stated that:

8

“Polish AFCOS is also responsible for:

- co-ordination of legislative, administrative & operational obligations & activities related to the protection of EU finances
- co-operation with Member States and the Commission (OLAF) as required by art. 325 (5) of the TFEU
- informing the EC on the outcomes of activities in relation to the combating of fraud related to cigarettes basing on the agreement between the EC, together with participating Member States of the EU and Philip Morris International / Japan Tobacco International / British American Tobacco / Imperial Tobacco.”<sup>429</sup>

[Article 12b–12d omitted]

<sup>429</sup> See [https://www.economie.gouv.fr/files/olaf\\_afcos-poland\\_2012.pdf](https://www.economie.gouv.fr/files/olaf_afcos-poland_2012.pdf). Accessed 6 August 2024.

## 6. Article 12e The Office's support to the EPPO

1. In the course of an investigation by the EPPO, and at the request of the EPPO in accordance with Article 101(3) of Regulation (EU) 2017/1939, the Office shall, in accordance with its mandate, support or complement the EPPO's activity, in particular by:

- (a) providing information, analyses (including forensic analyses), expertise and operational support;
- (b) facilitating coordination of specific actions of *the competent national administrative authorities* and bodies of the Union; [...]

- 1 Even if Poland is not part of the EPPO, the national authorities may support the EPPO via OLAF either by contact to the EPPO or information in relation to certain EU frauds.
- 2 An exemplary provision from the Polish Tax Code is:

**Article 119zm<sup>430</sup> [Notification of reasonable suspicion of committing tax fraud]**

§ 1. The notification of a justified suspicion of committing a tax fraud made by the **Head of the National Revenue Administration** contains in particular:

- 1) name and surname, PESEL number or tax identification number and address of the place of residence of the person suspected of committing tax fraud,
- 2) identification data of the qualified entity, if the information held indicates the use of such data for tax fraud activities, in particular the company name, name or first name and surname of the natural person referred to in Art. 119zg point 4 lit. b, REGON

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<sup>430</sup> **Art. 119zm. [Zawiadomienie o uzasadnionym podejrzeniu popełnienia wyłudzenia skarbowego]**

§ 1. Zawiadomienie o uzasadnionym podejrzeniu popełnienia wyłudzenia skarbowego dokonywane przez Szefa Krajowej Administracji Skarbowej zawiera w szczególności:

- 1) imię i nazwisko, numer PESEL lub numer identyfikacji podatkowej oraz adres miejsca zamieszkania osoby podejrzewanej o popełnienie wyłudzenia skarbowego,
- 2) dane identyfikacyjne podmiotu kwalifikowanego, jeżeli posiadane informacje wskazują na wykorzystywanie tych danych do działalności w zakresie wyłudzeń skarbowych, w szczególności firmę, nazwę albo imię i nazwisko osoby fizycznej, o której mowa w art. 119zg pkt 4 lit. b, numer identyfikacyjny REGON, numer identyfikacji podatkowej oraz adres siedziby lub adres miejsca zamieszkania,
- 3) numer rachunku podmiotu kwalifikowanego objętego zawiadomieniem, ze wskazaniem waluty, w której rachunek podmiotu kwalifikowanego jest prowadzony, oraz formy i miejsca jego otwarcia,
- 4) imię i nazwisko, numer PESEL lub numer identyfikacji podatkowej oraz adres miejsca zamieszkania pełnomocnika do rachunku podmiotu kwalifikowanego objętego zawiadomieniem, jeżeli został ustanowiony,
- 5) strony i kwoty transakcji dokonanych lub zleconych z wykorzystaniem rachunku podmiotu kwalifikowanego objętego zawiadomieniem oraz informacje o saldach i obrotach na tym rachunku podmiotu kwalifikowanego,
- 6) informacje o blokadach rachunku podmiotu kwalifikowanego i zajęciach rachunku podmiotu kwalifikowanego objętego zawiadomieniem,
- 7) informacje podatkowe dotyczące podmiotu kwalifikowanego objętego zawiadomieniem, w szczególności dane o jego rejestracji jako podatnika podatku od towarów i usług, złożonych deklaracjach podatkowych i uzyskanych zwrotach podatku – jeżeli znajdują się w posiadaniu Szefa Krajowej Administracji Skarbowej.

§ 2. Prokurator, Policja albo inny właściwy organ uprawniony do prowadzenia postępowania przygotowawczego, który otrzymał zawiadomienie, o którym mowa w § 1, może żądać uzupełnienia informacji, także w toku czynności podejmowanych na podstawie art. 307 ustawy z dnia 6 czerwca 1997 r. - Kodeks postępowania karnego (Dz. U. z 2022 r. poz. 1375 i 1855).

identification number, tax identification number and address of the registered office or place of residence,

3) account number of the qualified entity covered by the notification, with an indication of the currency in which the account of the qualified entity is maintained, as well as the form and place of its opening,

4) name and surname, PESEL number or tax identification number and address of the place of residence of the proxy for the account of the qualified entity covered by the notification, if one has been established,

5) parties and amounts of transactions made or ordered using the account of the qualified entity covered by the notification, as well as information on balances and turnover on this account of the qualified entity,

6) information on blockades of the account of the qualified entity and seizure of the account of the qualified entity covered by the notification,

7) tax information on the qualified entity covered by the notification, in particular data on its registration as a VAT payer, submitted tax returns and obtained tax refunds – if they are held by the Head of the National Revenue Administration.

§ 2. The Prosecutor, the police or another competent authority authorised to conduct preparatory proceedings, which has received the notification referred to in § 1, may request supplementary information, also in the course of activities undertaken pursuant to art. 307 of the Act of June 6, 1997 - Code of Criminal Procedure (Journal of Laws of 2022, item 1375 and 1855).

If this aforementioned provision would be amended *de lege ferenda*, Poland could submit information to the EPPO and OLAF. The EPPO would need to be respected by Polish law as a judicial authority, which can receive such information and notifications. Poland is still deciding if it will cooperate with the EPPO via a Working Arrangement (06/2023). **3**

**[Article 12f–g omitted]**

## **7. Article 13 Cooperation of the Office with Eurojust and Europol**

1. [...] Where this may support and strengthen coordination and cooperation between *national investigating and prosecuting authorities*, or where the Office has forwarded to the competent authorities of the Member States information giving grounds for suspecting the existence of fraud, corruption or any other illegal activity affecting the financial interests of the Union in the form of serious crime, it shall transmit relevant information to Eurojust, within the mandate of Eurojust. [...]

Poland is part of Eurojust and Europol and can support OLAF via these two EU Agencies.

**[Article 14–17 omitted]**

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***Frequently Used Handbooks in Polish Anti-Fraud Administration.***

*Nota bene:* The Polish Government and its Ministries have drafted and installed various handbooks for its officials and public agents. These handbooks cover nearly all relevant sectors of PIF Acquis offences and propose actions and regulations in the area of fraud *prevention*. Brochures, Guidebooks or Guidances and Handbooks are useful companions and tools for a coherent anti-fraud-strategy. If the public agents act on the same basis and interpretation of the law, the enforcement is equal and ensures a high level of control. The problem nowadays is that a huge part of public officials do not even know that these kind of brochures exist or they do believe they know what to do because their skills and capacities tell them what to do. Sometimes it would be more useful to read these small companions in the everyday anti-fraud control live. A good example are customs agents, which are constantly checked to be registered on the Polish List of customs agents. In order to become a valuable team member of the customs control services, the applicants must fulfill a list of qualifications and skills.<sup>431</sup> These skills encompass a good understanding of the Polish and the EU Anti-Fraud Architecture, e.g. the skills to draft a criminal report or contact the supervisor if it is believed that the matter should be known to OLAF, the EU's Anti-Fraud Office.

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<sup>431</sup> See <https://www.podatki.gov.pl/clo/agenci-celni/>. Accessed 6 August 2024.

The following list is not exhaustive, but it presents a useful database:

- Fraud risk assessment and effective and proportionate anti-fraud measures ( [https://ec.europa.eu/regional\\_policy/sources/guidance/guidance\\_fraud\\_risk\\_assessment.pdf](https://ec.europa.eu/regional_policy/sources/guidance/guidance_fraud_risk_assessment.pdf) )
- OECD Guidelines on Combating Bid Rigging in Public Procurement ( <https://doi.org/10.1787/8cfeafbb-en> )
- Managing the Business Risk of Fraud: A Practical Guide ( <https://us.aicpa.org/content/dam/aicpa/forthepublic/auditcommitteeeffectiveness/guidanceandresources/downloadabledocuments/managing-the-business-risk-of-fraud.pdf> )
- Fraud and Corruption Awareness Handbook – Handbook for officials involved in public procurement, jointly developed by the Central Anti-Corruption Bureau and the World Bank
- Guidelines on the control of the implementation of operational programs for 2014–2020
- COCOF – Information Note on Fraud Indicators for ERDF, ESF and CF (18.02.2009, COCOF 09/0003/00-EN)
- Brochure of the Office of Competition and Consumer Protection: “Tender rigging”, Warsaw 2013
- Guidebook of the Ministry of Internal Affairs and the National Police Headquarters: “How to file a crime report?”, Warsaw 2012
- Anti-corruption handbook for officials, published at [www.antykorupcja.gov.pl](http://www.antykorupcja.gov.pl)
- Entrepreneurs’ anti-corruption handbook, published at [www.antykorupcja.gov.pl](http://www.antykorupcja.gov.pl)
- “Conflict of interest in the Polish government administration – law, practice, attitudes of officials” – publication published on the website [www.antykorupcja.gov.pl](http://www.antykorupcja.gov.pl).

### Important Websites

- Journal of Laws: <https://dziennikustaw.gov.pl/DU>.
- Polish Government Legislation Center: <https://rcl.gov.pl/>.
- Official Legislation Search Website: <https://dziennikustaw.gov.pl/szukaj>.
- Official Journals of the Prime Minister: <https://dziennikiurzedowe.gov.pl/dzienniki-ministerstw.html>.
- Official Journals of all Polish Ministries: <https://dziennikiurzedowe.gov.pl/dzienniki-ministerstw.html>.
- Central Anti-Corruption Bureau of Poland: <https://www.cba.gov.pl/en>.
- Polish Ministry of Finance: <https://www.gov.pl/web/finanse>.



- Archive Website of the polish Ministry of Finance (2010–2019): <https://bit.ly/3NXfq7J>.
- National Revenue Administration: <https://www.gov.pl/web/national-revenue-administration/kas-national-notification-hotline>.
- Ministry of Foreign Affairs Republic of Poland: <https://www.gov.pl/web/diplomacy>.
- Overview of all Government Offices: <https://www.gov.pl/>.
- All Polish Institutions in Poland, in the EU and in the rest of the world: <https://www.gov.pl/web/gov/katalog-jednostek>.
- Kúriai Döntések Bíróságihatározatok 2022/4 70. évfolyam 2022. Április [Mansions, Decisions Court Decisions 2022/4 Year 70 April 2022]. online: [https://kuria-birosag.hu/sites/default/files/kuriai\\_dontesek/kuriai\\_dontesek\\_-\\_birosagi\\_hatarozatok\\_-\\_2022\\_aprilis.pdf](https://kuria-birosag.hu/sites/default/files/kuriai_dontesek/kuriai_dontesek_-_birosagi_hatarozatok_-_2022_aprilis.pdf).

### **Journals**

Kwartalnik Policyjny (Police Quarterly) <https://kwartalnik.csp.edu.pl/>.



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Poland does not participate in the EPPO mechanism, but cooperates with OLAF. Therefore, this **Polish EPPO/OLAF volume**, introduced by Dominika Czerniak, discusses the specific attitude of Polish legislation towards the PIF acquis sector, Title V of the TFEU, the importance of Art. 587 (European Investigation Order) of the Polish Code of Criminal Procedure and the newly inserted Art. 615a. It also contains an analysis and compilation of the EU and Polish legislation on EU fraud offenses. These relevant laws are dealt with in the first chapter of this volume. The Anti-Fraud Office (OLAF) and its national partners carry out investigative missions, which are the subject of the second part of the book. Dr. Dominika Czerniak acted as the publication's national expert.

While written in English, the volume includes footnotes that reproduce the original Polish 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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