THE EPPO/OLAF III
Compendium of National Procedures

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

Pierre Hauck and Jan-Martin Schneider

Bulgaria
The EPPO/OLAF Compendium of National Procedures

Volume III – Bulgaria
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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 III – Bulgaria

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This volume has been reviewed and updated for accuracy of content with the kind assistance of Dobrinka Chankova. Nevertheless, the authors take full responsibility for the content.
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of National Procedures: Bulgaria
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# The EPPO/OLAF Compendium of National Procedures

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Preface and Acknowledgements

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

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

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

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

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

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

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

The project was also successful because the third-party funding administration of the Justus Liebig University in the shape of Dr Christian Maarten Veldman, Anja Daßler and Jochen Stein took a lot of work off our shoulders.

Last but not least, our thanks go to the wonderful supervision and support of the publisher Volkhard Buchholtz and the production coordinator Katharina Kruse from Logos Verlag in Berlin for everything it takes to bring a book to life.

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

Giessen/Germany, in November 2023

Pierre Hauck & Jan-Martin Schneider
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Executive Summary: This CNP volume provides legal information on Bulgaria, the EPPO and OLAF linking i.e. the areas between references in the EPPO and OLAF Regulations with national law. It explains how Bulgarian criminal investigations are initiated and conducted. The Union text (Articles 26–33 of the EPPO Regulation) is summarized and can be found prior relating to the national provisions on investigations. It becomes clear how Union law has prepared the national law for the EPPO and how Bulgaria has reacted to it legislatively.

An introduction by Prof Chankova also provides a foreword to the Bulgarian PIF Acquis system for lawyers and other interested parties in general whereby special issues are emphasised. The third and last part (C) is devoted to the OLAF investigations in Bulgaria and focuses on the connection of national law and the OLAF Regulation (Art. 3–17). The investigation possibilities of OLAF officials are analysed through a selected collection of the applicable provisions and compiled for reference and for determining the legal basis for action on a case.

National expert for Part A–B (EPPO (Bulgarian CPC): Prof. Dr. Dobrinka Chankova;
Further authors of the compilation Part A–B: Prof. Dr. P. Hauck LL.M. (Sussex) Jan-Martin Schneider (Dipl.-Jur. MR; RA, University of Gießen)/A. Laird (RA, University of Gießen)/Nur Sena Karakocaoğlu (Dipl.-Jur. FFM.; RA, University of Gießen) – using expert information.

Questionnaire experts/organisations for Part B (AFCOS, OAFCN members) consulted: Bulgarian AFCOS, Bulgarian Courts.

Guest contributor: Academic expert Assoc. Prof. Savina Mihaylova-Goleminova – who is a qualified expert in the field of management and control of EU Funds – has provided research material of her own as well as some remarks for part B which are highlighted accordingly.
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<td>AFCOS</td>
<td>Anti-fraud coordination service</td>
</tr>
<tr>
<td>AM</td>
<td>Customs Authority</td>
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<tr>
<td>AMIF</td>
<td>Asylum, Migration and Integration Fund</td>
</tr>
<tr>
<td>AML</td>
<td>Anti Money Laundering</td>
</tr>
<tr>
<td>APC</td>
<td>Administrative Procedure Code</td>
</tr>
<tr>
<td>BGN</td>
<td>Bulgarian lev</td>
</tr>
<tr>
<td>BMVI</td>
<td>Instrument for Financial Assistance in the Field of Border Management and Visa</td>
</tr>
<tr>
<td>BULSTAT</td>
<td>Bulgarian unified national administrative register</td>
</tr>
<tr>
<td>CC</td>
<td>Criminal Code</td>
</tr>
<tr>
<td>CF</td>
<td>Cohesion Fund</td>
</tr>
<tr>
<td>CJEU/ECJ</td>
<td>Court of Justice of the European Union/European Court of Justice</td>
</tr>
<tr>
<td>CMU</td>
<td>Central Customs Administration</td>
</tr>
<tr>
<td>COCOLAF</td>
<td>Advisory Committee for the Coordination of Fraud Prevention</td>
</tr>
<tr>
<td>CPC</td>
<td>Criminal Procedure Code</td>
</tr>
<tr>
<td>DFZ</td>
<td>Anti-Fraud Directorate</td>
</tr>
<tr>
<td>EAFRD</td>
<td>European agricultural fund for rural development</td>
</tr>
<tr>
<td>EAGF</td>
<td>European agricultural guarantee fund</td>
</tr>
<tr>
<td>EA SOSEZF</td>
<td>Executive Agency “Certification audit of European agricultural funds”</td>
</tr>
<tr>
<td>EAW</td>
<td>European Arrest Warrant</td>
</tr>
<tr>
<td>EC</td>
<td>European Commission</td>
</tr>
<tr>
<td>ECHA</td>
<td>European Chemicals Agency</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice (now CJEU)</td>
</tr>
<tr>
<td>ECJN</td>
<td>European Judicial Network against Cybercrime</td>
</tr>
<tr>
<td>ECON</td>
<td>European Parliament’s Committee on Economic and Monetary Affairs</td>
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<tr>
<td>ECP</td>
<td>European Chief Prosecutor</td>
</tr>
<tr>
<td>EDF</td>
<td>European Development Fund</td>
</tr>
<tr>
<td>EDMS</td>
<td>Electronic Document Management System</td>
</tr>
<tr>
<td>EDO</td>
<td>European Data Officer</td>
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<tr>
<td>eDP</td>
<td>ePrivacy Directive</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>EDP</td>
<td>European Delegated Prosecutor</td>
</tr>
<tr>
<td>EEAS</td>
<td>European External Action Service</td>
</tr>
<tr>
<td>EEC</td>
<td>European Economic Community</td>
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<tr>
<td>EIO</td>
<td>European Investigation Order</td>
</tr>
<tr>
<td>EJN</td>
<td>European Judicial Network</td>
</tr>
<tr>
<td>EMFAF</td>
<td>European Maritime, Fisheries and Aquaculture Fund</td>
</tr>
<tr>
<td>EP</td>
<td>European Prosecutor</td>
</tr>
<tr>
<td>EPPO</td>
<td>European Public Prosecutor’s Office</td>
</tr>
<tr>
<td>ERDF</td>
<td>European Regional Development Fund</td>
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<tr>
<td>ESF+</td>
<td>European Social Fund Plus</td>
</tr>
<tr>
<td>ESIF</td>
<td>European Structural and Investment Funds</td>
</tr>
<tr>
<td>ESMF</td>
<td>European Shared Management Funds</td>
</tr>
<tr>
<td>EUACR</td>
<td>EU Anti-Corruption Report</td>
</tr>
<tr>
<td>EUCFR</td>
<td>Charter of Fundamental Rights of the European Union</td>
</tr>
<tr>
<td>EuCLR</td>
<td>European Criminal Law Review</td>
</tr>
<tr>
<td>EUROJUST</td>
<td>European Union Agency for Criminal Justice Cooperation</td>
</tr>
<tr>
<td>EUROPOL</td>
<td>European Police Office</td>
</tr>
<tr>
<td>ExEA</td>
<td>Executive Environment Agency</td>
</tr>
<tr>
<td>GC (aka CFI ex-2009)</td>
<td>General Court of the EU / formerly Court of First Instance</td>
</tr>
<tr>
<td>GDBOP</td>
<td>General Directorate Fighting Organized Crime</td>
</tr>
<tr>
<td>IA OPNOIR</td>
<td>Operational Program “Science and Education for Smart Growth”</td>
</tr>
<tr>
<td>IARA</td>
<td>Fisheries and Aquaculture Executive Agency</td>
</tr>
<tr>
<td>IMS</td>
<td>Irregularity Management System</td>
</tr>
<tr>
<td>IRP</td>
<td>Internal Rules of Procedure of the EPPO</td>
</tr>
<tr>
<td>ISF</td>
<td>Internal Security Fund</td>
</tr>
<tr>
<td>ISUN</td>
<td>Information System for Management and Monitoring of Funds from ESMF</td>
</tr>
<tr>
<td>LLP</td>
<td>Limited Liability Partnership</td>
</tr>
<tr>
<td>LPFI</td>
<td>Act on Public Financial Inspection</td>
</tr>
<tr>
<td>MAs</td>
<td>Managing authorities</td>
</tr>
<tr>
<td>MI</td>
<td>Ministry of Economy</td>
</tr>
<tr>
<td>MoF</td>
<td>Ministry of Finance</td>
</tr>
<tr>
<td>MRRRB</td>
<td>Ministry of Regional Development and Public Works</td>
</tr>
<tr>
<td>MTITS</td>
<td>Ministry of Transport, Information Technologies and Communications</td>
</tr>
<tr>
<td>MTSP</td>
<td>Ministry of Labor and Social Policy</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>MZHHG</td>
<td>Ministry of Agriculture and Food and Forestry</td>
</tr>
<tr>
<td>NRA</td>
<td>National Revenue Agency</td>
</tr>
<tr>
<td>OAFCN (-Member)</td>
<td>OLAF Anti-Fraud Communicators’ Network</td>
</tr>
<tr>
<td>OLAF</td>
<td>European Anti-Fraud Office</td>
</tr>
<tr>
<td>PFIA</td>
<td>State Financial Inspection Agency</td>
</tr>
<tr>
<td>PHARE, ISPA, SAPARD</td>
<td>Pre-accession funding programmes</td>
</tr>
<tr>
<td>PIF</td>
<td>Protection of the EU’s Financial Interests</td>
</tr>
<tr>
<td>PRB</td>
<td>Prosecutor’s Office of the Republic of Bulgaria</td>
</tr>
<tr>
<td>RRF</td>
<td>Recovery and Resilience Facility</td>
</tr>
<tr>
<td>SAPARD</td>
<td>Special accession programme for agriculture and rural development</td>
</tr>
<tr>
<td>SFA</td>
<td>Agricultural State Fund</td>
</tr>
<tr>
<td>SG</td>
<td>State Gazette</td>
</tr>
<tr>
<td>SIGMA</td>
<td>Support for Improvement in Governance and Management</td>
</tr>
<tr>
<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
</tr>
<tr>
<td>THESEUS</td>
<td>Fund programme aimed at service and knowledge infrastructures for the Internet</td>
</tr>
<tr>
<td>VAT</td>
<td>Value Added Tax</td>
</tr>
<tr>
<td>ZANN</td>
<td>Administrative Offences and Penalties Act / Закон за административните нарушения и наказания</td>
</tr>
<tr>
<td>ZUSESIF</td>
<td>European Structural and Investment Funds Administration Regulation</td>
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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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- = Customs legislation/Cust- ums cases
- = Examples
- = Nota bene/General note
- = Case Law/Access to files
- = Tax police/tax-related matters
- = Excerpt
- = Arrest, pre-trial detention (e.g. Art. 33)
- = Problems resulting from national law
- = (Important) National Sections

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EPPO/OLAF Compendium 31

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

I. Collection of Cases for OLAF and EPPO concerning PIF Investigations (A. & B.)

Until July 27, 2022, the Specialised Criminal Court in Bulgaria had jurisdiction over EPPO offences. The jurisdiction changed so that the Sofia City Court is now the competent court for such offences. As the system was still in a transitional phase at the time this chapter was written, there have been some difficulties to find final judgements in EPPO cases.

Nota bene: Obtaining (first instance) judgements

For the future, the following procedure should be followed in order to obtain first instance judgements: The Bulgarian system is in the process of establishing an e-justice system. There is a Court Case Access Portal (Портал за достъп до съдебни дела), from which information on current cases can be obtained in Bulgarian language, provided that such information has been published. For this purpose, however, it is necessary to know the specific data on the case sought, such as the type of proceedings, the file number and the year.

For concluded cases, there is another system, namely the search portal of the Supreme Judicial Council (Висш съдебен съвет). Here, too, it is necessary to know and enter the specific data (court, type of proceedings, file number, year, ECLI number and keywords). A third possibility is the procedure under the Access to Public Information Act, e.g. when looking for statistics.

At the current stage, there are no published final judgements from EPPO criminal proceedings. At the time of writing, an agreement, a first instance judgement that is not final and an indictment by the competent Delegated European Prosecutor exist.

The agreement was reached between the Delegated European Public Prosecutor and the accused’s defence lawyer. The proceedings concerned the offence under Art. 248a para 3 in conjunction with para 2 of the Criminal Code and therefore dealt with the presenting of false information by a person who manages and represents a legal person to receive resources from funds belonging to the EU. The Specialised Criminal Court approved the deal (case No 20221050202014 / 2022). In accordance with this, the accused has a

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penal responsibility of one year imprisonment and a fine of 2000 BGN (approx. 1000 EUR). Probation is applied for a 3-year term.

6 The **first instance judgement** is delivered for a crime under Art. 304b para 1 of the Criminal Code – for requesting and accepting money which is not due in order to exert influence in taking a decision by an official. The punishment determined is 6 months imprisonment, and the probation period is 3 years. The judgement is a subject of an appeal.

7 An **indictment** has been issued by the European Delegated Prosecutor for a crime under Art. 248a para 2 sentence 1 in connection with para 1 as well as for a crime under Art. 248a para 3 sentence 1, in connection with para 2, in connection with para 1 of the Criminal Code for presenting false information to obtain crediting and to receive resources from funds belonging to the EU. The indictment was submitted to Sofia City Court in August 2022, and the first instance judgement is yet to be delivered.

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

8 The following collection of case law that is not directly related to EPPO criminal proceedings has been researched and selected because of its potential (binding) effect on EPPO proceedings. For example, the criteria developed on the need for judicial authorisation or intrusive investigative measures in the respective member state may apply to EPPO proceedings. Therefore, the aim was to collect those judgments that are examples of the established case law and to associate them with the respective articles of the Regulations.

<table>
<thead>
<tr>
<th>Court/Reporting authority</th>
<th>Relevance for</th>
<th>Judgement, ECLI etc.</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPPO Regional Office</td>
<td>Art. 22-26 EPPO Regulation</td>
<td>A first-instance judgement</td>
<td>Delivered by the Specialized Criminal Court, for a crime under Art. 304b para 1 of the Criminal Code, for requesting and accepting money which is not due</td>
</tr>
</tbody>
</table>

3 The EU offers special Websites, e.g. the Anti-Fraud Knowledge Center, the ERA offers courses and workshops, the Website EPPO-Lex enumerates relevant decisions and the ECJ and the ECtHR (HUDOC) present the most relevant case law via databases. By reading it, you can search even more specifically. EDPs need to follow nevertheless the EPPO’s Code of Ethics for the Members of the College and the European Delegated Prosecutors and the of the College with Rules on conditions of employment of the EDPs, as amended by Decision of 24 March 2021 of the College of the EPPO. The access to the Bulgarian Court Case Access Portal is explained above.
<table>
<thead>
<tr>
<th>CJEU</th>
<th>Art. 27 EPPO Regulation</th>
<th>An indictment by the European delegated prosecutor</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>in order to exert influence in taking a decision by an official. The punishment determined is 6 months imprisonment, and the probation period is 3 years. The judgement is a subject of an appeal. For a crime under Art. 248a para 2 sentence 1, in connection with para 1 and for a crime under Art. 248a para 3 sentence 1, in connection with para 2, in connection with para 1 of the Criminal Code, presenting false information to obtain crediting and to receive resources from funds belonging to the EU. The indictment was submitted to Sofia City Court in August 2002, and the first instance judgement is expected.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>CJEU, C-612/15, Criminal proceedings against Nikolay Kolev, Milko Hristov and Stefan Kostadinov, ECLI:EU:C:2018:392</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Specialised Criminal Court, Bulgaria, Reference for a preliminary ruling; Art. 325 TFEU; Fraud or other illegal activities affecting the European Union’s financial interests in customs matters; Effectiveness of the prosecution; Termination of criminal proceedings; Reasonable time; Directive 2012/13/EU; Right to information about the accusation; Right of access to the documents in the file; Directive 2013/48/EU; Right of access to a lawyer’.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Administrative court – Varna, Type of work: CAND, Case No: 488, dismissed due to</td>
</tr>
<tr>
<td><strong>Year:</strong> 2022, <strong>View of the act:</strong> Definition, Act number: 1325, 04/27/2022</td>
<td>incorrect and inadmissible representation in court. [For this case, which investigated a systematic undervaluation of Malaysian palm oil imported into Bulgaria by “Milky Group Bio” EAD and that the duties are subject to reimbursement according to Regulation (EU) No 952/2013 of the European Parliament and the Council of October 9, 2013 see below].</td>
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<tr>
<td><strong>ECtHR Art. 29</strong></td>
<td><strong>ECtHR, Case of Stefanov v. Bulgaria</strong> (Application No 73284/13)</td>
<td></td>
</tr>
<tr>
<td><strong>EPPO Regulation</strong></td>
<td>Search of a barrister, violation of Art. 8 ECHR; seizure of privileged digital data, complaint about absence of safeguards to ensure that the confidentiality of the applicant lawyer’s privileged data seized by the authorities, is respected;</td>
<td></td>
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<tr>
<td><strong>Art. 30</strong></td>
<td><strong>ECtHR, Case of Vasil Vasilev v. Bulgaria</strong> (Application No 7610/15)</td>
<td></td>
</tr>
<tr>
<td><strong>EPPO Regulation</strong></td>
<td>Art 8; Private life; Correspondence; Unlawful recording and subsequent transcription of conversation between a lawyer and his client resulting from covert monitoring of the client’s telephone line; Lack of sufficient clarity in the legal framework and absence of procedural guarantees relating concretely to the destruction of accidentally intercepted lawyer-client communications</td>
<td></td>
</tr>
<tr>
<td><strong>Art. 30</strong></td>
<td><strong>ECtHR, Case of Gutsanov v. Bulgaria</strong> (Application No 34529/10)</td>
<td></td>
</tr>
<tr>
<td><strong>EPPO Regulation</strong></td>
<td>Bulgarian Ministry of the Interior, police searches, alleged violations of Art. 3, 8 ECHR; misappropriation of public funds; use of force; inhuman and degrading treatment allegedly</td>
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<tr>
<td><strong>Art. 30 para 1 a EPPO Regulation</strong></td>
<td>ECtHR, <em>Case of Dermanski v. Bulgaria</em> (Application No 61322/10)</td>
<td>caused by police officer; Gutsanova and her two minor daughters were very severely affected by the events, crying, anxiety, psychological results following the events, violation of Art. 3 ECHR.</td>
</tr>
<tr>
<td><strong>Art. 31–33 EPPO Regulation</strong></td>
<td>ECtHR, <em>Case of IGD v. Bulgaria</em> (Application No 70139/14)</td>
<td>Art. 161 para 2 CPC; searches carried out urgently in the context of criminal proceedings; police searched the family’s two vehicles; seized a notebook and some documents; disorders of accused; shock in relation to how police acted; Art. 3 ECHR; use of force during arrest; human dignity, proportionality of measure; Art. 8 ECHR; court cites <em>Slavov and others v. Bulgaria</em>, No 58500/10, §§ 76–85, 10 November 2015, <em>Stoyanov and others v. Bulgaria</em>, no. 55388/10, §§ 69–73, 31 March 2016, and <em>Govedarski v. Bulgaria</em>, No 34957/12, §§ 57–66, February 16, 2016; domestic legislation required prior judicial authorization or ex post factum judicial control; violation of Art. 8 as there was no authorization for a search in vehicles.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Art. 5 § 4 Domestic authorities failing to carry out periodic checks at regular intervals in order to verify the need to keep an adolescent in socio-pedagogical boarding school; Absence in domestic law of periodic and automatic judicial checks</td>
</tr>
<tr>
<td>Art. 30 EPPO Regulation</td>
<td>ECtHR, <em>Case of Lebois v. Bulgaria</em> (Application No 67482/14)</td>
<td>Art. 41 ECHR, compensation, violation of Art. 8, pre-trial detention, private life and family; telephone call, detainee’s rights, ex officio lawyer, lawyer spoke not the language of the detainee.</td>
</tr>
<tr>
<td>Art. 33 EPPO Regulation</td>
<td>ECtHR, <em>Case of Stoyan Krastev v. Bulgaria</em> (Application No 1009/12)</td>
<td>No Right to liberty and security, Art. 5 § 3 Compensation for imprisonment</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Relates to following Art. of the Regulation</th>
<th>Judgement, ECLI, etc.</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>CJEU 1–4 OLAF Regulation</td>
<td>ECJ, C-615/19 P, 25.02.2021, John Dalli v. European Commission, ECLI:EU:C:2021:133.</td>
<td>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</td>
</tr>
<tr>
<td>Art. 3 OLAF Regulation</td>
<td>Administrative court Varna, Type of case: Administrative case, Case No: 1320, Year: 2014, Type of act: Answer Act number: 2419, 24.10.2014, ECLI:BG:AD705:2014:20140701320.001</td>
<td>Dismissed levying of anti-dumping duties; Glass fiber mesh fabrics under investigation were declared for import into the EU of Taiwanese origin. During the course of the investigation, it was established that glass fiber mesh fabrics were sent from the People’s Republic of China to Taiwan, from where, after being transshipped, they were sent to</td>
</tr>
<tr>
<td>Administrative court – Varna, Type of work: CAND Case No: 2246, Year: 2019, View of the act: Answer, Act No: 2220 ECLI:BG:AD705:2019:20190602246.001.</td>
<td>the European Union, thereby avoiding anti-dumping duties. Cassation Appeal of Northern Sea Territorial Directorate in the Customs Agency to prove the Underestimation of the import value by about 30%, resulted in a decision confirming the appealed criminal decree related to this addressed conduct; Bulgarian customs authorities; Malaysian authorities; Art. 208 et seq. APC.</td>
<td></td>
</tr>
<tr>
<td>Art. 3 OLAF Regulation</td>
<td>Administrative court Burgas, Type of case: Administrative case, Case No: 1506, Year: 2016, Type of act: Answer, Act No: 2178, 28.12.2016, ECLI:BG:AD704:2016:20160701506.001</td>
<td>Head of the Burgas Customs, Central Customs Administration (CMU), letter No THOR (2016) 3303/29.01.2016, with which the European Anti-Fraud Office (OLAF) notified the Bulgarian customs authorities of the period November 5–11, 2015. mission to Malaysia in the framework of an OLAF investigation due to suspicions of evasion of conventional and anti-dumping duties upon admission for free circulation and end use of goods, citric acid (CN code 2918 1400) and salts and esters of citric acid (CN code 2918 1500) declared as originating in Malaysia, suspected of originating in the People’s Republic of China (PRC)</td>
</tr>
<tr>
<td>Art. 3 OLAF Regulation</td>
<td>GC, Case T-413/13, 19.03.2015, City Cyle Industries v. Council of the European Union/EU Commission</td>
<td>Dumping, imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, Extension to such imports of the definitive anti-dumping duty imposed on imports of bicycles</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>Art. 7 OLAF Regulation</td>
<td>ECJ, C-650/19 P, Vialto Consulting Kft. v. European Commission, ECLI:EU:C:2021:879</td>
<td>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</td>
</tr>
<tr>
<td><strong>Art. 7, 10 et seq. OLAF Regulation</strong></td>
<td>ECJ, C-650/19 P, Vialto Consulting Kft. v. European Commission, ECLI:EU:C:2021:879</td>
<td>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</td>
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</tr>
<tr>
<td>Evidence, OLAF Report, OLAF concludes that in the case of Bulgaria, the payment of due anti-dumping duties on the import of seamless steel pipes of Chinese origin was avoided, as the Malaysian origin was incorrectly declared, appeal dismissed.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Table: Case-law

| **Art. 11 OLAF Regulation** | Administrative court – Plovdiv, Type of work: Administrative case, Case No: 2504, Year: 2014, View of the act: Answer, Act No: 1681, 17.09.2016 ECLI:BG:AD718:2016:20140702504.001. | Evidence, OLAF Report, OLAF concludes that in the case of Bulgaria, the payment of due anti-dumping duties on the import of seamless steel pipes of Chinese origin was avoided, as the Malaysian origin was incorrectly declared, appeal dismissed. |

Case-law is important for administrative staff, administrative inspectors, staff in the member states, investigators of the police and prosecution offices as well as the EDPs and seconded national experts and OLAF’s Operations and Investigations Selection Unit as well its investigators facing major concerns on the legality of a measure etc. This list is far from exhaustive and shall only hint the reader at the most prominent cases or show an exemplary case, which may equal other cases in daily practice. It is important to stay update if you are staff of a prosecution office or investigation team of one of the EU’s or national authorities as new decisions may interpret the law and provide new guidelines for practice by judicature (Terhechte 2020, pp. 569 et seq.).
II. Institutions

1. The EPPO in Bulgaria

Table 1 The EPPO regional offices in Bulgaria

Source: The authors, EPPO Website.

* 1st office term: Ventsislav Ferdinandov from the Specialised Prosecutor’s Office; Boyko Kalfin from the District Prosecutor’s Office – Kyustendil; Dimitar Belichev from the District Prosecutor’s Office – Plovdiv, seconded to OLAF; Bozhidara Ganeva-Dimova from the Sofia Regional Prosecutor’s Office; Veronika Trifonova from the Sofia Regional Prosecutor’s Office; Biserka Stoyanova from the National Investigation Service; Preslava Petkova from the Investigation Department of the Special Prosecutor’s Office; Maya Kovacheva from the Investigation Department of the SGP; Svetlana Shopova-Koleva from the Sofia Regional Prosecutor’s Office; Hristo Krachunov, judge at the Sofia district court.⁴

2. **Organisation of the criminal justice system in Bulgaria**

**Table 2 National authorities involved in PIF investigations**

<table>
<thead>
<tr>
<th>Prosecution authorities</th>
<th>Administrative authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutor’s Office of the Republic of Bulgaria [Sofia].(^5)</td>
<td>- National Revenue Agency/Националната агенция за приходите</td>
</tr>
<tr>
<td>- Chief Prosecutor</td>
<td>- Bulgarian Food Safety Agency/Българска агенция по безопасност на храните</td>
</tr>
<tr>
<td>- Supreme Cassation Prosecutor’s Office</td>
<td>- Bulgaria’s Agricultural State Fund (SFA)/Държавен фонд “Земеделие”</td>
</tr>
<tr>
<td>- Supreme Administrative Prosecutor’s Office</td>
<td>- National Customs Agency/Агенция “Митници”</td>
</tr>
<tr>
<td>- 27 District Prosecutor’s Offices</td>
<td>- State Financial Inspection Agency/Агенция за държавна финансова инспекция</td>
</tr>
<tr>
<td>District investigative departments attached in Gabrovo, Varna, Vratsa, Blagoevgrad, Vidin, Burgas, Veliko Tarnovo, Razgrad, Ruse, Lovech, Kardzhali, Kyustendil, Pazardzhik, Plovdiv, Pleven, Montana, Pernik, Sliven, Silistra, Smolyan, Sofia, Haskovo, Targovishte, Dobrich, Shumen, Yambol, Stara Zahora</td>
<td>- Public Procurement Agency/Агенция по обществени поръчки</td>
</tr>
<tr>
<td>Sofia City Prosecutor’s Office (with an Investigative Department)</td>
<td>- Ministry of Labor and Social Policy, Main Directorate “European funds, International Programs and Projects”</td>
</tr>
<tr>
<td>- 36 Regional Prosecutor’s Offices and 77 territorial departments attached to them</td>
<td>- General Labor Inspectorate Executive Agency/Изпълнителна агенция “Главна инспекция по труда”</td>
</tr>
<tr>
<td>- Abolished since 27.7.2022: 1 Specialised Prosecutor’s Office(^6)</td>
<td>- Directorate “Rural Development” (Ministry of Agriculture)</td>
</tr>
<tr>
<td></td>
<td>- Directorate “Maritime and Fisheries” (Ministry of Agriculture)</td>
</tr>
<tr>
<td></td>
<td>- Directorate “Structural Funds for Fisheries” (Ministry of Agriculture)</td>
</tr>
</tbody>
</table>

\(^5\) Information taken from the official webpage of the Prosecutor’s Office of the Republic of Bulgaria, see https://prb.bg/bg/prokuratura/struktura-na-prokuraturata, last accessed on 22.09.2022.

\(^6\) With the Law amending and supplementing the Judiciary Act- (published - SG, no 32 of 2022, in force from 27.07.2022, amended - SG, no 56 of 2022) the Specialized Criminal Court, Appellate Specialized Criminal Court, Specialized Prosecutor’s Office and the Appellate Specialized Prosecutor’s Office were closed. See Section 43 of this law: “Section 43. With the entry into force of this law, the Specialized Criminal Court, the Appellate Specialized Criminal Court, the Specialized Prosecutor's Office and the Appellate Specialized Prosecutor's Office shall be closed.” Bulgarian version:

“§ 43. С влизането в сила на този закон Специализираната наказателен съд, Апелативният специализиран наказателен съд, Специализираната прокуратура и Апелативната специализирана прокуратура се закриват.”
3 Military District Prosecutor’s Offices
- Abolished since 27.7.2022: 1 Appellate Specialised Prosecutor’s Office
- 5 Appellate Prosecutor’s Offices
- 1 Military Appellate Prosecutor’s Office

Investigative Bodies
- Investigators from the National Investigation Service
- employees of the Ministry of the Interior appointed to the position of “investigating police officer” → National Police General Directorate
- employees of the National Customs Agency appointed to the position of “investigating customs inspector”;
- General Directorate for Combatting Organised Crime within Bulgaria’s Ministry of Interior
- Border Police General Directorate
- Agriculture Funds Anti-Fraud Directorate
- National Office for Special Intelligence Operations
- State Intelligence Agency
- Directorate “Financial Intelligence” of the State Agency “National Security”/“Финансово разузнаване” на

- Fisheries and Aquaculture Executive Agency (IARA) (Ministry of Agriculture)
- Executive Forests Agency
- Directorate Ministry of Agriculture, Food and Forestry
- Executive Environment Agency (ExEA)
- Audit authority: Executive Agency “Audit of EU Funds” 13
- Executive Agency “Certification audit of European agricultural funds” (EA SOSEZF) 14
- Institute of Public Administration 15
- National Agricultural Advisory Service 16
- European Union and International Cooperation Directorate
- Directorate “Protection of the Financial Interests of the European Union” (AFCOS)
- Anti-Fraud Directorate DFZ
- Certifying Authority: Ministry of Finance, National Fund Directorate
- Ministry of Innovation and Growth, General Directorate “European Competitiveness Funds”
- Managing authorities (MAs) of the Operational Programmes, MA of the Rural Development Programme and

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7 Главна дирекция “Борба с организираната престъпност”.
8 Национално бюро за контрол на специалните разузнавателни средства.
9 Държавна агенция “Разузнаване” (ДАР).
10 ИЗПЛЪЛНИТЕЛНА АГЕНЦИЯ ПО РИБАРСТВО И АКВАКУЛТУРИ (ИАРА).
11 ИЗПЛЪЛНИТЕЛНА АГЕНЦИЯ ПО ГОРИТЕ (ИАГ).
12 ИЗПЛЪЛНИТЕЛНА АГЕНЦИЯ ПО ОКОЛНА СРЕДА (ИАОС).
13 ИЗПЛЪЛНИТЕЛНА АГЕНЦИЯ “ОДИТ НА СРЕДСТВАТА ОТ ЕВРОПЕЙСКИЯ СЪЮЗ”.
14 ИЗПЛЪЛНИТЕЛНА АГЕНЦИЯ “СЕРТИФИКАЦИОНЕН ОДИТ НА СРЕДСТВАТА ОТ ЕВРОПЕЙСКИТЕ ЗЕМЕДЕЛСКИ ФОНДОВЕ” (НА СОСЕЗФ).
15 Институт по публична администрация.
16 Национална служба за съвети в земеделието.
### Държавна агенция “Национална сигурност”

| Courts
district courts – 113 |
| City Court Sofia = legal successor of the Specialised Criminal Court |
| Courts of Appeal – 5 |
| Court of Appeal Sofia = legal successor of the Specialised Criminal Court of Appeal |
| Military courts – 3 |
| Military Court of Appeal – 1 |
| Supreme Court of Cassation – 1 |
| Supreme administrative court – 1 |

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

See → Article 12a (Anti-fraud coordination services) in Part C. II.

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18 With the Law amending and supplementing the Judiciary Act - (published - SG, no 32 of 2022, in force from 27.07.2022, amended - SG, no 56 of 2022) the Specialized Criminal Court, Appellate Specialized Criminal Court, Specialized Prosecutor’s Office and the Appellate Specialized Prosecutor’s Office were closed. See Section 59 of this law:

“Section 59 (1) The Sofia City Court is the legal successor of the assets, liabilities, rights and obligations of the Specialized Criminal Court.
(2) The Sofia Court of Appeal is the legal successor of the assets, liabilities, rights and obligations of the Specialized Criminal Court of Appeal.”

Bulgarian version:

“§ 59. (1) Софийският градски съд е правоприемник на активите, пасивите, правата и задълженията на специализирания наказателен съд.
(2) Софийският апелативен съд е правоприемник на активите, пасивите, правата и задълженията на апелативния специализиран наказателен съд.”
Figure 1: Visualization of the judicial and administrative order in Bulgaria

III. Sources of law

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

1. National laws – lex generalis: EPPO and OLAF

a) EPPO & PIF-Investigation related Laws and administrative Documents

- Criminal Procedure Code / Наказателно-процесуален кодекс
- Criminal Code of the Republic of Bulgaria / Наказателен кодекс
- Act on Measures Against Money Laundering / Закон за мерките срещу изпирането на пари
- Civil Servants Act/Закон за държавния служител
- Anti-Corruption and Asset Forfeiture Act / Закон за противодействие на корупцията и за отнемане на незаконно придобитото имущество
- Judiciary Act/Закон за съдебната власт
- Special Intelligence Means Act / Закон за специалните разузнавателни средства
- Constitution of the Republic of Bulgaria/Конституция На Република България
- Act on Credit Institutions / Закон за кредитните институции
- Act on Measures Against Money Laundering / Закон за мерките срещу изпирането на пари
- Civil Procedure Code / Граждански процесуален кодекс
- Telecommunications Act / Закон за далекосъобщенията
- Electronic Communications Act / Закон за електронните съобщения

b) Most relevant national Laws concerning OLAF investigations

- Administration Act / Закон за администрацията
- Administrative Procedure Code / Административнопроцесуален кодекс
- Administrative Offences and Penalties Act / Закон за административните нарушения и наказания
- National Revenue Agency Act / Закон за националната агенция за приходите
- Tax and Insurance Procedure Code / Данъчно-осигурителен процесуален кодекс
- Customs Act/Закон за митниците
- Decree of the Council of Ministers No 18 of 2003 Establishing the Council for Coordination in the Fight Against Offences Affecting the Financial Interests of the EU (AFCOS Council) / Постановление на МС № 18 от 2003 г за създаване на съвет
General Collection of Material for Part B and Part C

за координация в борбата срещу престъпленията, засягащи финансовите интереси на ЕС (Съвет AFCOS)19


- European Structural and Investment Funds Administration Regulation / Наредба за администриране на нередности по европейските структурни и инвестиционни фондове
- Act on Management of Funds from European Funds under Shared Management / Закон за управление на средствата от европейските фондове при споделено управление
- Value Added Tax Act / Закон за данък върху добавената стойност
- Act on Local Taxes and Fees / Закон за местните данъци и такси
- Act on Excise and Tax Warehouses / Закон за акцизите и данъчните складове
- Act on the Bulgarian Food Safety Agency / Закон за българската агенция по безопасност на храните

- Decree No 14 on Customs Clearance of Goods Imported and Exported by Diplomatic Missions, Consulates, Representative Offices of International Organisations and by their Staff Members / Наредба № 14 за митническо оформяне на стоки, внасяни и изнасяни от дипломатически представителства, консулства, представителства на международни организации и от членовете на техния персонал

- Act on Internal Audit in the Public Sector / Закон за вътрешния одит в публичния сектор
- Act on Public Sector Financial Management and Control / Закон за финансовото управление и контрол в публичния сектор
- Public Financial Inspection Act / Закон за държавната финансова инспекция
- Agricultural Producers Assistance Act / Закон за подпомагане на земеделските производители
- Public Procurement Act / Закон за обществените поръчки
- Act on the Audit Chamber / Закон за сметната палата
- Personal Data Protection Act / Закон за защита на личните данни
- Act on Administrative Service / Наредба за административното обслужване
- Act on Classified Information / Закон за защита на класифицираната информация
- Regulation Determining the Procedures for Administration of Irregularities Under Funds, Instruments and Programs Co-Financed by the European Union / Наредба за определяне на процедурите за администриране на нередности по фондове, инструменти и програми, съфинансирани от европейския съюз
- Trade Secrets Protection Act / Закон за защита на търговската тайна

2. National laws: Law amending and supplementing the Code of Criminal Procedure establishing the internal regulation for the functioning of the EPPO (SG, issue 86 of 2005) establishing the internal regulation for the functioning of the EPPO (SG, issue 103 of 2020)

Synopsis 1: Official Bulgarian Text and Unofficial English Translation

<table>
<thead>
<tr>
<th>Държавен вестник, брой 103 от 4.XII ЗАКОН ЗА ИЗМЕНЕНИЕ И ДОПЪЛНЕНИЕ НА НАКАЗА ТЕЛНО-ПРОЦЕСУАЛНИЯ КОДЕКС (ДВ, БР. 86 ОТ 2005 Г.)</th>
<th>State Gazette, issue 103 of 4.XII LAW AMENDING AND SUPPLEMENTING THE CODE OF CRIMINAL PROCEDURE (SG, issue 86 of 2005) establishing the internal regulation for the functioning of the EPPO (SG, issue 103 of 2020)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Обн. ДВ. бр.103 от 4 Декември 2020г.</td>
<td>Prom. SG. issue 103 of December 4, 2020</td>
</tr>
<tr>
<td>§ 1. В чл. 2, ал. 1 накрая се поставя запетая и се добавя “както и за образуваните от Европейската</td>
<td>§ 1. In Art. 2, para 1, a comma shall be placed at the end and the words “as for those created by the European Public</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>§ 2. В чл. 46 се правят следните изменения и допълнения:</td>
<td>§ 2. In Art. 46 the following amendments and additions shall be made:</td>
</tr>
<tr>
<td>1. Създава се нова ал. 3:</td>
<td>1. A new para is created. 3:</td>
</tr>
<tr>
<td>“(3) Функциите на прокурора, предвидени в този кодекс, се изпълняват и от европейския прокурор и европейските делегирани прокурори съобразно тяхната компетентност по Регламент (ЕС) 2017/1939.”</td>
<td>“(3) The functions of the prosecutor provided for in this Code shall also be performed by the European Prosecutor and the European Delegated Prosecutors in accordance with their competence under Regulation (EU) 2017/1939.”</td>
</tr>
<tr>
<td>2. Досегашната ал. 3 става ал. 4.</td>
<td>2. The current para 3 becomes para 4.</td>
</tr>
</tbody>
</table>
| 3. Досегашната ал. 4 става ал. 5 и в нея думите “ал. 3” се заменят с “ал. 4”. | 3. The current para 4 becomes para 5 and in it the words “para 3” shall be replaced by “para 4”.
| 4. Създава се ал. 6: | 4. Paragraph 1 is created. 6: |
| “(6) Разпоредбите на ал. 4 и 5 не се прилагат за постановленията и procesуалните действия на европейския прокурор и европейските делегирани прокурори, когато те изпълняват функции по Регламент (ЕС) 2017/1939.” | “(6) The provisions of paras 4 and 5 shall not apply to the decrees and procedural actions of the European Public Prosecutor and the European Delegated Prosecutors when they perform functions under Regulation (EU) 2017/1939.” |
| § 3. | In Art. 200 after the words “judicial review” shall be added “with the exception of the orders of the European Public Prosecutor and the European Delegated Prosecutors”. |
| § 4. | In Art. 213, para 1, sentence two after the word “Prosecutor’s office” shall be added “except for the decree of the European prosecutor and the European delegated prosecutor”.
| § 5. | Art. 217b: “Procedural actions taken by the European Public Prosecutor’s Office” Art. 217b. All procedural actions performed by a competent body of the European Public Prosecutor’s Office in accordance with Regulation (EU) 2017/1939 shall have in the Republic of Bulgaria the procedural value of actions performed by a Bulgarian authority.”

| § 5. Създава се чл. 217б: “Процесуални действия, извършени от Европейската прокуратура” Чл. 217б. Всички процесуални действия, извършени от компетентен орган на Европейската прокуратура в съответствие с Регламент (ЕС) 2017/1939, имат в Република България процедуралната стойност на действия, извършени от български орган.” |

| § 5. | The current para 5 becomes para 7 and finally adds “except for the activities of the European Public Prosecutor and the European Delegated Prosecutors when they perform functions under Regulation (EU) 2017/1939”.

| § 6. В чл. 243 се създава ал. 12: “(12) Алинея 10 не се прилага за постановленията на европейския прокурор и европейските делегирани прокурори.” |
§ 7. В чл. 411а, ал. 7 накрая се поставя запетая и се добавя “освен когато делото е от компетентност на Европейската прокуратура”.

§ 8. В чл. 411в, ал. 1 след думите “специализираната прокуратура” се поставя запетая и се добавя “европейският прокурор, европейският делегиран прокурор”.

§ 9. В чл. 420, ал. 1 се създава изречение второ: “Искане за възобновяване на наказателно дело от компетентност на Европейската прокуратура по чл. 422, ал. 1 може да направи европейският делегиран прокурор.”

§ 10. В чл. 483 се правят следните изменения и допълнения:
1. Създава се нова ал. 2:

“(2) При вземане на решението по ал. 1 компетентния орган взема предвид обстоятелствата, които са предмет на наказателното производство, включително:

1. територията на държавата членка, където е извършено престъпението;
2. гражданството или постоянното пребиваване на извършителя;
3. гражданството или постоянното пребиваване на пострадалите;
| 4. the territory of the Member State where the perpetrator is found.” |
| 2. The current para 2 becomes para 3. |

**Additional provisions**


**Transitional and Final Provisions**

| § 12. The European Prosecutor and the European Delegated Prosecutors may intervene in the pending criminal proceedings for crimes within the competence of the European Public Prosecutor’s Office committed after 20 November 2017, instituted by the authorities of the Republic of Bulgaria under Regulation (EU) 2017/1939. |

“5. by an obligated person under Article 4 of the Law on Measures against Money Laundering or his employee or

1. В чл. 30, ал. 5 се създава т. 19:

“19. прокурорската колегия извършва подбор на кандидатите за европейски делегирани прокурори и чрез министъра на правосъдието уведомява европейския главен прокурор за изълчените кандидатури.”

2. В чл. 136 се създават ал. 7, 8 и 9:

worker during or on the occasion of fulfilment of the obligations under the same law.”


1. In Art. 30 para 5 item 19 shall be created:

“19. The College of Prosecutors shall select candidates for European Delegated Prosecutors and, through the Minister of Justice, notify the European Attorney General of the nominations nominated.”

2. In Art. 136 are created para 7, 8 and 9:
“(7) The European delegated prosecutors shall be members of the prosecution of the Republic of Bulgaria and shall have the powers of prosecutors under this law.

(8) The European Public Prosecutor and the European Delegated Prosecutors shall participate in the proceedings in cases within the competence of the European Public Prosecutor’s Office.


3. In Art. 139 para 3:

“(3) Paragraph 2 shall not apply to acts of the European Public Prosecutor and European Delegated Prosecutors in the performance of their functions under Regulation (EU) 2017/1939.”

4. In Art. 143 para 8:

“(8) Paragraphs 1 to 7 shall not apply to the activities of the European Public Prosecutor and European Delegated
5. In Art. 195
a) in para 1, item 2 after the words “European Union” shall be added “except for a European delegated prosecutor”.

5. В чл. 195:
a) в ал. 1, т. 2 след думите “Европейски съюз” се добавя “с изключение на европейски делегиран прокурор”;

b) в ал. 2 се създава т. 4:
“4. изпълнение на функции на европейски делегиран прокурор по Регламент (ЕС) 2017/1939.”.

c) в ал. 4 след думите “Конституционния съд” се поставя запетая и се добавя “европейският прокурор”.

6. In Art. 198 is created para 5:
“(5) The period of attestation shall also include the time served by the judge, prosecutor and investigator as a European delegated prosecutor. The evaluation of the results of their work under Regulation (EU) 2017/1939 shall become part of their attestation.”

6. В чл. 198 се създава ал. 5:
“(5) В периода на атестиране се включва и времето, прослужено от съдията, прокурора и следователя като европейски делегиран прокурор. Оценката за резултатите от тяхната работа по Регламент (ЕС) 2017/1939 става част от атестацията им.”

7. In Art. 384 is created para 4:
“(4) Access to an excerpt from the data contained in the UISCP, which is public information, shall be granted in the order and manner determined by the order under Art. 378, para 4, unless a spe-
<table>
<thead>
<tr>
<th>Speciален ред за търсене, получаване и разпространяване на такава информация.”</th>
<th>cial search procedure is provided in another law, receiving and disseminating such information. “</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. В § 1 от допълнителната разпоредба се създава т. 11:</td>
<td>8. In § 1 of the additional provision, item 11 is created:</td>
</tr>
<tr>
<td>“11. “Обществена информация” е информацията по смисъла на чл. 2, ал. 1 от Закона за достъп до обществена информация.</td>
<td>“11. “Public information” shall be the information within the meaning of Article 2 para 1 of the Access to Public Information Act.”</td>
</tr>
</tbody>
</table>
B. EPPO-Regulation

I. Specific Introduction to the EPPO Mechanism in Bulgaria

Prof. Dr. Dobrinka Chankova

The establishment of the European Public Prosecutor’s Office as a body of the European Union, which is responsible for investigating, prosecuting and bringing to justice the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union, in accordance with Art. 86 of the Treaty on the Functioning of the European Union is undoubtedly an outstanding achievement of the European idea. The long journey from Corpus Juris – the harbinger of the modern concept of unified European criminal justice – to the current Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘The EPPO’) and Directive (EU) 2017/1371 of the European Parliament and of the Council from 5 July 2017, on the fight against fraud to the Union’s financial interests by means of criminal law, proves the necessity and the prevailing general desire for strengthening of cooperation between Member States in the field of criminal justice.

It can be argued that the smaller countries and newer members of the EU, including Bulgaria, embraced the idea from the beginning, palpably feeling the need for “more Europe”, especially when it comes to the economy and often directly related corruption and cross-border crime. Despite the contradictory signals emitted by the Member States of the United Europe, which led to the launching of different ideas for the development of the integration processes between them, the expressed concerns about limiting national sovereignty and the slow pace with which the establishment of the European Public Prosecutor’s Office moved, today it is already a fact and began its operation both at European and national levels.

A brief historical retrospective shows that Bulgaria has been one of the most convinced supporters of the idea of a European Public Prosecutor’s Office since 2013 when the discussion of the new European institution began within the Advisory Committee to the European Commission on criminal policy issues. Until its final legal framework was developed, the Bulgarian national authorities and experts invested enormous work and energy, of course, in cooperation with other European bodies and countries.
At the same time, preparations were being undertaken at the national level. The idea was widely promoted and received unreserved approval. The first significant publications appeared when the projects still were being discussed. The publishing activity continued even after the adoption of the legal framework and contributed to the further general understanding of the usefulness of this institution.

Efforts also continued with the development of an adequate national legal framework. Although the regulation, as an act of the Council of the EU, has a direct effect and is directly applied by the institutions of the Member States, this straightforward application requires complete adaptation of the national legal system with the rules laid down in it. Amendments were needed in the fundamental organisational law – the Judiciary Act, to incorporate the figures of the European Prosecutor (EP) and the European delegated prosecutors (EDPs) into the structure of the judicial system of Bulgaria. In terms of procedural law, to create a regulation for their functioning and rules for validating the procedural-investigative actions carried out by a competent body of the European Public Prosecutor’s Office, amendments were also made to the Criminal Procedure Code (CPC). Since the substantive competence of the European Public Prosecutor’s Office was regulated in a Directive, it had to be transposed by introducing several new corpus delicti in the Criminal Code.

In fact, the establishment of the national legal framework on the EPPO was supported by already existing decisions concerning the misuse of EU funds. In the pre-accession to the EU period, the need arose to criminalise some deeds affecting funds from the Union budget, as Bulgaria received grants under the pre-accession funds of the programs SAPARD, PHARE, “Leonardo da Vinci”, and ISPA. The first special legal norms providing for criminal liability for misappropriation of EU funds were adopted in the Bulgarian Criminal Code in 2002 when qualified constituents of misappropriation (Art. 202 paras 2 and 3 of the Criminal Code) and documental fraud (Art. 212 para 3) concerning these funds were introduced. Subsequently, by virtue of the 2005 Accession Treaty of the Republic of Bulgaria to the EU, our country was supposed to join a number of conventions and protocols, including the Convention on the Protection of the Financial Interests of the European Communities and its protocols aimed at unifying efforts of Member States in the fight against fraud with EU funds for the purposes of criminal prosecution.

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21 Toneva 2019. Numerous articles were also published in the Legal Barometer magazine, https://legalbarometer.bg/.
In connection with this, in 2005–2006, the provisions of Art. 254b of the Criminal Code, criminalising the improper use of funds belonging to the EU or granted by the EU to the Bulgarian state, as well as Art. 248a of the Criminal Code, defining as a crime the provision of false information or concealment of information in violation of an obligation to provide such information to obtain funds from the EU or provided by the EU to the Bulgarian state. Over the years and with regard to the development of the legal framework at the European level, the norms of the Criminal Code were significantly supplemented. Case law was also accumulated. Practical cooperation with the European Anti-Fraud Office (OLAF), Eurojust and Europol began, and it was institutionalised.

There was also a development in the procedural law aspect. In 2010, two articles of the Criminal Procedure Code were amended – Art. 127 (see below → 2, A.III.2, Mn. 12), which defines the reports on OLAF investigations and the documents attached to them as written evidence within the meaning of the procedural law, and Art. 159 CPC (see below → 2, A.III.2, Mn. 12), where the new paragraph 2 authorised the bodies of the pre-trial proceedings and the court to require the Director of OLAF to provide them with the reports and the documents attached to them regarding the ongoing investigations of the office. In this way, a normative basis was provided for a new impetus of the relations between the Bulgarian Public Prosecutor’s Office and OLAF.

Of course, the most significant changes in the legal framework occurred after adopting the EPPO Regulation mentioned above and Regulation (EU, Euratom) 883/2013 of the European Parliament and of the Council of 11 September 2013, concerning investigations conducted by the European Anti-Fraud Office (OLAF).

In this chapter, the acts and provisions forming the current national legal framework for EPPO and OLAF investigations are comprehensively and in detail presented. Both the more general acts – lex generalis, and the special ones – lex specialis, are pointed (see below → 2, A.III.2, Mn. 12).

Due to the compendium’s reference format accepted and because of the volume, the relevant provisions of the codes, laws and by-laws, in English and Bulgarian, are presented per se, without accompanying analysis. However, the structure of the Compendium allows for easy orientation, as the national provisions are examined in correlation with the relevant articles of the Regulations. Deservedly, the most significant attention is paid to Criminal Investigations according to the EPPO Regulation (EU) 2017/1939, based on national law and the investigations according to the OLAF Regulation (EU, EURATOM) No 883/2013 of 11 September 2013, as amended per draft version of 16 April 16 2019. Instrumental guidance and recommendations are given, as successfully combating fraud with EU funds can only happen if uniform standards are used in detecting, investigating and proving these crimes and in administrative investigations. The focus is on the speed these procedural actions should be carried out. In such a way, it is
possible to accomplish the basic EPPO idea – recovery of funds subject to fraud with EU funds in the Union budget. Cooperation with already existing structures with accumulated expertise is invaluable and encouraged in this regard.

12 It is worth noting that Bulgaria’s primary law introducing EPPO in the national legal order was the Law on Amendments and Supplements to the Criminal Procedure Code, promulgated in SG No 103 on 4 December 2020. With it, the effect by the subject of the Criminal Procedure Code was supplemented, as in Art. 2 para 1 was added that CPC also applies to criminal cases initiated by the European Public Prosecutor’s Office, to the extent not otherwise provided for in Regulation (EU) 2017/1939. Further, in Art. 46 (see below → 2, A.III.2, Mn. 12), a new paragraph 3 was created, postulating that the Prosecutor’s functions provided for in this code are also performed by the European prosecutor and the European delegated prosecutors following their competence under the Regulation (EU) 2017/1939. At the same time, explicitly and in accordance with the ideology of the EPPO Regulation, their independence from the Prosecutor General was reconfirmed by excluding in relation to them his supervision of lawfulness and methodical guidance, as well as the appeal and revocation of their decrees.

13 Further, a new article 217b of the Criminal Procedure Code was introduced with the title “Procedural actions carried out by the European Public Prosecutor’s Office”. According to it, all procedural actions carried out by a competent authority of the EPPO in accordance with Regulation (EU) 2017/1939 have in the Republic of Bulgaria the procedural value of actions carried out by a Bulgarian authority. Thus, their performance was validated.

14 In parallel, changes were introduced to the Judiciary Act, providing that the Prosecution College of the Supreme Judicial Council, the so-called executive body of the judiciary, selects the candidates for European delegated prosecutors and, through the Minister of Justice, notifies the European Chief Prosecutor for the nominated candidates. The European delegated prosecutors are members of the Public Prosecutor’s office of the Republic of Bulgaria and have the powers of prosecutors under this law. They, as well as the European Prosecutor, participate in the proceedings in cases under the competence of the European Public Prosecutor’s Office (Art. 136). At the same time, the avoidance of possible intervention of the national authorities by placing them under direct subordination to the European Chief Prosecutor is secured. And this is especially important for sensitive investigations, which seem to be numerous in small countries like Bulgaria.

15 This initial arrangement was laconic, which necessitated its addition. With the Law on Amendments and Supplements to the Judiciary Act promulgated in SG No 32 of 5 August 2022, a new article 194a of the Criminal Procedure Code was introduced – “Bodies
of pre-trial proceedings in cases under the competence of the European Public Prosecutor’s Office”. As such, the European Prosecutor, the European Delegated Prosecutors and the investigative bodies were logically foreseen.

Further, in paragraph 2, investigators from the National Investigative Service, investigating police officers, appointed by order of the Minister of Interior, and investigative customs inspectors, assigned by order of the Minister of Finance on the proposal of the Director of the “Customs” Agency, were designated as investigative bodies in cases under the competence of the European Public Prosecutor’s Office. This was the right decision due to the required high qualification and specialisation of the investigative bodies, as shown by practice so far.

With another Law amending and supplementing the Judiciary Act promulgated in SG No 62 of 5 August 2022, guarantees were additionally provided for the autonomy, independence and efficient work of the European delegated prosecutors, which are separated into an independent structure supported by their own administration. Its activities are managed and organised by a European delegated prosecutor authorised by the European Public Prosecutor’s Office, who appoints and dismisses its employees.

The Administration has its own registry and office, as well as a delegated budget (Art. 139a). Amendments to the Criminal Procedure Code and the Special Intelligence Means Act allowed the European Prosecutor and the EDPs to request the use of special intelligence means in cases under the competence of the EPPO and to use the data and material evidence collected by them in these cases. With amendments to the Ministry of the Interior Act, it was succinctly provided that the interaction of the investigating police officers with the European delegated prosecutors when carrying out the activity of investigating crimes under the competence of the European Public Prosecutor’s Office is regulated by an agreement between the Minister of the Interior and the European delegated prosecutor authorised by the European Public Prosecutor’s Office according to the Judiciary Act. A symmetric provision regarding investigating customs inspectors was provided for in the Customs Act.

Changes were also introduced in some other laws, to ensure the unhindered functioning of the EPPO, EP and EDPs, entirely in the spirit of their independence from national bodies. With this, the legislator considered that he had provided the required legal basis, given the direct application of Regulation (EU) 2017/1939.

The short period of operation of this institution has shown that there is still a legal vacuum concerning some details, which hopefully will be filled in the near future. The adoption of the Regulations for the administration of the European delegated prosecutors, a draft for which has been developed, is also expected.
In the Compendium, due attention is paid to the institutional element – the establishment of the EPPO office in Bulgaria, its integration into the structure of the criminal justice system and its interaction with other bodies functioning in the field. For this purpose, the organisational chart of the judicial system, national (indirect way of) and supranational (direct way of) obtaining information for the EPPO competence and exercise of jurisdiction, and the national authorities involved in the protection of the financial interest of the EU, are presented in suitable tables and figures communicatively. Relevant offences affecting the Union’s financial interests are scrutinised. Statistics on persons convicted in 2021 by chapters of the Criminal Code and certain types of crimes and by sentences imposed are given. Case law collection on the relevant and inextricably linked crimes concerning EPPO and OLAF Regulations has been compiled.

Moreover, some of the rulings are pronounced by the European Court of Human Rights and the European Court of Justice. Interesting and fundamental for future practice Case studies are presented. The indicated bibliography – general and on specific provisions of the Regulations – and the websites can be enriched because of the dynamic and continuous process of publishing and development. However, this can remain a task for subsequent editions. Since the work of EPPO is followed very closely by the media both in Bulgaria and abroad, examples were also taken from daily publications, which is justified at that stage, as it sheds additional light on this still new subject matter.

Concerning the functioning of the national structure of the EPPO, it should be pointed out that it is not yet completed. Currently, Bulgaria has its European Prosecutor, but only 9 of the planned 15 EDPs are functioning. Recently, 3 more EDPs have been approved by the Prosecution College of the Supreme Judicial Council, but the procedure for their appointment is not finalised. According to data from the Regional EPPO office, the European delegated prosecutors are extremely busy with a considerable amount of work. This naturally delays the conduct of pre-trial proceedings and the submission of cases to the court (after some legislative changes, it is the Sofia City Court). The high requirements that the EPPO Regulation sets for the specialisation of the prosecutors from the central unit and national structures make this process difficult, although enough institutional efforts have been invested, and there are interest and candidates. However, these requirements are justified as the specific nature of the crimes within the competence of EPPO, their transnational character, and the extensive knowledge of

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25 Be aware that the Regional Office and the EPPO in Bulgaria have An Agreement between the European Delegated Prosecutor and the Defender of the accused for a crime under Art. 248a, paragraph 3, in connection with paragraph 2 of the Criminal Code - presenting false information by a person who manages and represents a legal person to receive resources from funds belonging to the EU. The Specialized Criminal Court approved the Agreement when it was competent for these cases (case № 20221050202014 / 2022). The agreed penal responsibility is 1-year imprisonment, plus a fine of 2000 BGN (approximately 1000 EUR). Probation is applied for a 3-year term.
the perpetrators cause significant difficulties in their detection and proving. That is why only the highest level of professionalism and competence is justifiably sought after.

The first official data on the functioning of the Regional European Public Prosecutor’s Office in Bulgaria were published in the EPPO Annual Report\textsuperscript{26}. They concern the year 2021, for which the statistics were prepared. As known, this is the first incomplete year in which only 7 Bulgarian EDPs worked in the office. That is why the data are relatively modest but comparable to those in other European countries. Bulgaria is even among the leading countries (in second place after Italy) in relation to opened investigations. The most critical data from the report are as follows: As of 31 December 2021, one indictment has been filed, and no property has been confiscated.

The EPPO has investigated 98 cases of suspected misuse of European funds in Bulgaria. The probable damages from these cases to the budget of the European Union are estimated at 427 million euros and those from VAT fraud – at 3.4 million euros. The total number of signals received for Bulgaria is 273. Forty-nine investigations were initiated, and 56 were evoked. In general, the typology of investigated offences is: Non-procurement expenditure fraud (the majority – 77 cases), Procurement expenditure fraud-26, Corruption-14, Misappropriation-6, separate cases of Non-VAT and VAT revenue fraud, Money laundering, inextricably linked offence, Cross-border investigations etc.

The expectation for 2023 and beyond is that the data will be more impressive, which would prove the institution’s meaning. However, a survey conducted for the purposes of this compendium about the final acts pronounced so far shows rather modest results – in relation to their number, the scale of the investigated crimes and the penalties imposed. I wish to believe that this is associated with the early stage of the functioning of the EPPO, EP and the EDPs, who, due to technical and administrative reasons, have not used their full potential so far. It should be emphasised that an easy and widely accessible whistleblowing system has been created, and it is working.

The European Public Prosecutor’s Office, no doubt, is a professional challenge for modern lawyers. It is still too early for balance sheets and evaluations. It is time to study the possibilities, procedures and mechanisms available to the EPPO and its structures to deal with financial crimes against the EU funds. That is why this compendium is particularly useful. But it should also be used. This is in the interest of all of us.

The EPPO was received within the Bulgarian criminal justice system with an EPPO Adoption law (see above). This law and the national law, which is relevant for the interpretation of the EPPO Regulation (Sections on the start and the evocation of Investigation & Investigation measures) will be explained in the present country chapter. Bulgaria has notified the EPPO by virtue of Art. 117 EPPO Regulation quite extensively.\textsuperscript{27} 

Currently Bulgaria has nine EDPs, which are located in Sofia.\textsuperscript{28} This is claimed to be the highest number of EDPs per capita in the EU\textsuperscript{29} and possibly the only way to destroy the signals of “high-level corruption”, which the EPPO noticed in Bulgaria.\textsuperscript{30} It is therefore very important that the criminal law panorama and the various references to national law in the Regulation do not hinder the EDPs to act effectively.

The first statistics for Bulgaria are “quite” promising and show a high level of own investigations as well as a few more evocated cases. Still, they cannot overshadow the first inconveniences and problems that the EPPO faced in Bulgaria in its first year.\textsuperscript{31} 

Still the political will to do more is stronger than before.\textsuperscript{32} In the first operational year, which was in fact only nearly 7 months of actions the regional office carried out or participated in 105 investigations in total.\textsuperscript{33} 49 investigations were opened \textit{pro proprio motu}, Art. 26 EPPO Regulation.\textsuperscript{34}


\textsuperscript{28} Anna Alexova, Dimitar Belichev, Ilaylo Ilie, Boyko Kalfin, Elena Popova, Stanislav Stoykov, Victor Tarchev, Veronika Trifonova, Svetlana Shopova – Koleva.


\textsuperscript{31} Center for the Study of Democracy, 10.9.2021, https://csd.bg/blog/blogpost/2021/09/10/the-eppo-in-bulgaria-another-brick-in-the-wall/; “After the EPPO rejected some of the proposed candidates, the Prosecutors’ College of the Supreme Judicial Council in Bulgaria did not submit new names to fill the remaining positions. This was done in violation of the rules of the Prosecutors’ College for the election of Delegated Prosecutors, which state that in case of rejection of a candidate by the EPPO the next name on the list of candidates of the Prosecutors’ College shall be proposed.”


237 complaints came from national authorities, which is one of the highest numbers in the EPPO’s first Annual Report. 56 cases were evoked from national prosecution authorities and seemed to be more promising or mandatory to investigate at Union level. There was only one case in the trial phase. Later in 2022 the Sofia City Court heard a first bribery case. In march 2022 the EPPO reported to the general public that “Construction material worth 6€ million” were seized in Sofia and other cities in the districts of Sofia, Pernik and Montana. At the time of writing the situation will have evolved and the numbers will be even higher. The first year of operations might be already called past these days, but a lot of work lies ahead. In all of the cases, national law plays a particular important role.

The Bulgarian statistics on persons convicted of e.g. fraud (Art. 209–213 of Criminal Code) in 2021 is 381 out of 24 121 convicted persons in total sum. The following official table from the Bulgarian Statistics Office (National Statistical Institute/Национален статистически институт) displays the results from criminal investigations in general and the outcome of prosecution in the areas, which are relevant for the EPPO as well, as they constitute the PIF crime area:

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Table 3 Bulgarian Statistics 2021 on persons convicted in 2021 of chapters of the Criminal Code and certain types of crimes and of sentences imposed

<table>
<thead>
<tr>
<th>Chapters of the Criminal Code and certain types of crimes</th>
<th>Total</th>
<th>Total up to 6 months</th>
<th>from 6 months to 1 year</th>
<th>from 1 to 3 years</th>
<th>from 3 to 4 years</th>
<th>from 4 to 5 years</th>
<th>from 5 to 10 years</th>
<th>from 10 to 15 years</th>
<th>from 15 to 20 years</th>
<th>from 20 to 30 years</th>
</tr>
</thead>
</table>

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### EPPO-Regulation (EU) 2017/1939

<table>
<thead>
<tr>
<th>Crime Category</th>
<th>24, 121</th>
<th>19, 395</th>
<th>10,37</th>
<th>5,825</th>
<th>2,791</th>
<th>178</th>
<th>57</th>
<th>121</th>
<th>28</th>
<th>20</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fraud (Art. 209–213)</strong></td>
<td>381</td>
<td>358</td>
<td>65</td>
<td>119</td>
<td>152</td>
<td>13</td>
<td>3</td>
<td>6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Including document fraud (Art. 212 and 212a)</td>
<td>42</td>
<td>40</td>
<td>6</td>
<td>12</td>
<td>19</td>
<td>2</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Crimes against the economy including:</strong></td>
<td>1</td>
<td>922</td>
<td>359</td>
<td>345</td>
<td>197</td>
<td>8</td>
<td>6</td>
<td>7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>General economic crimes (Art. 219–227)</strong> including unemployment (Art. 219)</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Crimes against creditors (Art. 227b–227e)</td>
<td>50</td>
<td>7</td>
<td>5</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Crimes in separate economic branches (Art. 228–240a)</td>
<td>762</td>
<td>490</td>
<td>261</td>
<td>192</td>
<td>36</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Crimes against the customs regime (Art. 242 and 242a)</td>
<td>93</td>
<td>93</td>
<td>2</td>
<td>16</td>
<td>57</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Crimes against the monetary and</strong></td>
<td>339</td>
<td>328</td>
<td>90</td>
<td>133</td>
<td>103</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>credit system (Art. 243–252)</td>
<td>Crimes against the financial, tax and insurance systems</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>92</td>
<td>86</td>
<td>3</td>
<td>20</td>
<td>61</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
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<tr>
<td>Including crimes against the tax system (Art. 255–259 and 260)</td>
<td>85</td>
<td>79</td>
<td>1</td>
<td>19</td>
<td>57</td>
<td>1</td>
<td>1</td>
<td>-</td>
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</tbody>
</table>

Table 4 Bulgarian Statistics 2021 on persons convicted in 2021 of chapters of the Criminal Code and certain types of crimes and of sentences imposed (continued)

| Crimes against justice (Art. 286–299) | 177 | 97 | 60 | 31 | 4 | 1 | - | 1 | - | - | - |
| Bribery (Art. 301–307) | 83 | 67 | 32 | 19 | 14 | 1 | 1 | - | - | - | - |

Legal disputes, the concretization of laws - whether national adaptation laws or Union law – require the **interpretation of the applicable law**. Disputes can revolve around the Union requirements (e.g., affecting two states and damage of a certain amount in the area of VAT fraud) as well as national, substantive law (see below → PIF law, Art. 26 Mn. 37 et seq.).

It is important to (re)consider in each case that the **Permanent Chambers in the EPPO** maintain impartiality by overseeing activities during investigations and making critical decisions. Recommendations from European Delegated Prosecutors require evaluation and approval by three European Prosecutors from different Member States. EDPs must therefore be able to comprehend the threshold values for an investigation, even when they are not required to comprehend the circumstances in the relevant member state. This encompasses the initial report and the start of any investigation. If there are **adequate indicators of a criminal offense** based on the files, that is, the reports sent to the EPPO via the EPPO template or own cases in accordance with Art. 26 and 27 of the...
EPPO Regulation, then this should be consistently present in all member states. The next step is to determine if there is enough suspicion, which exists when the “likelihood of a conviction” is greater than the “likelihood of an acquittal”. This concept is taken up in Art. 26 EPPO Regulation, which we will now look at first, and differentiated at the Union level.
SECTION 1
Rules on investigations

1. Article 26 Initiation of investigations and allocation of competences

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   b) Relevant sources of the indications for a criminal offence falling within the competence of the EPPO ... 76
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1. Where, in accordance with the applicable national law, there are reasonable grounds to believe that an offence within the competence of the EPPO is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction over the offence shall, without prejudice to the rules set out in Article 25(2) and (3), initiate an investigation and note this in the case management system.
2. Where upon verification in accordance with Article 24(6), the EPPO decides to initiate an investigation, it shall without undue delay inform the authority that reported the criminal conduct in accordance with Article 24(1) or (2).

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

4. A case shall as a rule be initiated and handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competences of the EPPO have been committed, the Member State where the bulk of the offences has been committed. A European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation where a deviation from the rule set out in the previous sentence is duly justified, taking into account the following criteria, in order of priority:
   (a) the place of the suspect’s or accused person’s habitual residence;
   (b) the nationality of the suspect or accused person;
   (c) the place where the main financial damage has occurred.

5. Until a decision to prosecute under Article 36 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:
   (a) reallocate the case to a European Delegated Prosecutor in another Member State;
   (b) merge or split cases and, for each case choose the European Delegated Prosecutor handling it,
   if such decisions are in the general interest of justice and in accordance with the criteria for the choice of the handling European Delegated Prosecutor in accordance with paragraph 4 of this Article.

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

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

As a foreword, it can be said that Article 26 is analysed and organised based on national laws emphasised in the Union text, without disregarding Union law conditions – even if, in contrast to the national conditions, these are not in focus. In a nutshell, jurisdiction verification is necessary before investigating, followed by the assessment of offense

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40 For this purpose, see already the comprehensive analysis of all paragraphs of Art. 26 EPPO Regulation by Herrfeldt 2021, pp. 215 et seq., m. 1 et seq.
elements. The accused persons’ rights in the investigation procedure need to be re-
spected.

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

<table>
<thead>
<tr>
<th>Relevant national law</th>
<th>Sources:</th>
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<tbody>
<tr>
<td>“An offence within the competence of the EPPO”</td>
<td>Criminal Procedure Code of the Republic of Bulgaria</td>
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<tr>
<td></td>
<td>(Наказателно-процесуален кодекс);</td>
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<td>Criminal Code of the Republic of Bulgaria (Наказателен кодекс В сила от 01.05.1968 г.)</td>
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<td>For the text of the offences that are mentioned by Art. 26 EPPO Regulation “an offence within…”</td>
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<td></td>
<td>• Art. 3–10 and 24, 53 for Art. 5 PIF Directive</td>
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<td></td>
<td>• Art. 202 embezzlement by official</td>
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<td></td>
<td>• Art. 212 falsifying documents</td>
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<tr>
<td></td>
<td>• Art. 248 Submitting untrue information for obtaining a credit para 2: “(2) The same punishment shall be imposed on a person who submits any untrue information or who withholds any information in violation of an obligation to disclose such information in order to receive financial resources from funds belonging to the European Union or such provided by the European Union to the Bulgarian State, as well as financial resources belonging to the Bulgarian State and used for co-financing of projects funded with resources from said funds.”</td>
</tr>
<tr>
<td></td>
<td>• Art. 254 Unlawful use of Funds from the EU</td>
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<td>• Art. 255 Major tax infractions including tax fraud</td>
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<td>• Art. 301 bribery</td>
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<td>• Art. 302 Abuse of official position</td>
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<td>• Art. 302a</td>
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<td>• Art. 303</td>
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<td>• Art. 304a Giving promise to official</td>
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<td>• Art. 304c Consent of the official to give promise to third person</td>
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<td>• Art. 253 money laundering</td>
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<td>• <strong>Tax and Customs (Decree/Code) offences</strong></td>
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<tr>
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<td>• Art. 255 Major tax infractions including tax fraud</td>
</tr>
<tr>
<td></td>
<td><strong>Criminal Code</strong></td>
</tr>
</tbody>
</table>
Sanctions for legal persons

See → Chapter Four. Administrative Criminal Sanctions Against Legal Entities and Sole Traders (Title Amended – SG No 79 of 2005), Administrative Offences and Penalties Act, Art. 83 et seq.⁴¹

“[Competence of] a European Delegated Prosecutor in a Member State [Bulgaria]”

See the EPPO Adoption Act, Section 46 Para 3
“(3) The functions of the prosecutor provided for in this Code shall also be performed by the European Prosecutor and the European Delegated Prosecutors in accordance with their competence under Regulation (EU) 2017/1939.”
Cf. ss. from the Bulgarian Criminal Code and cf. → Art. 11 of the PIF Directive

[Excerpt Criminal Code of the Republic of Bulgaria]

Art. 3. (1) The Criminal Code applies to all crimes committed on the territory of the Republic of Bulgaria. (2) The question of the responsibility of foreigners who enjoy immunity in relation to the criminal jurisdiction of the Republic of Bulgaria shall be decided in accordance with the norms of international law adopted by the Republic of Bulgaria.

Art. 4. (1) The Criminal Code applies to Bulgarian citizens and to crimes committed by them abroad. (2) (Amended – SG No 75 of 2006, in force from 13.10.2006) A citizen of the Republic of Bulgaria may not be extradited to another country or to an international court for the purposes of criminal prosecution, unless this is stipulated in an international treaty, ratified, promulgated and entered into force for the Republic of Bulgaria.

Art. 5. The Criminal Code also applies to foreigners who have committed general crimes abroad that affect the interests of the Republic of Bulgaria or a Bulgarian citizen.

Art. 6. (1) The Criminal Code also applies to foreigners who have committed a crime against peace and humanity abroad, which affects the interests of another country or foreign citizens.

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

Art. 26 needs to be seen independent from Art. 27. Art. 26 stands on its own and describes a principle of legality at Union level, which has the effect of protecting the Union’s (own) fiscal interests. But what is the effect of the reference to national law?

How have the cases been exercised in practice and what is the situation after one year of operational work?

The national rules on conducting pre-trial proceedings are listed in Art. 192 of the Bulgarian CPC. Art. 193 describes that the bodies of the pre-trial proceedings are the prosecutor and the investigative bodies vested with the powers to investigate PIF crimes.

Art. 194a CPC speaks about the bodies involved in EPPO pre-trial proceedings:

Art. 194a CPC Bodies of pre-trial proceedings in cases under the competence of the European Public Prosecutor’s Office (new – SG No 32 of 2022, in force from 27.07.2022) (1) Bodies of pre-trial proceedings in cases under the jurisdiction of the European Public Prosecutor’s Office, subordinate to the Sofia City Court, are the European Prosecutor, the European Delegated Prosecutor and the investigative authorities.

(2) Investigative authorities in cases under the competence of the European Public Prosecutor’s Office are the investigators from the National Investigation Service, the investigating police officers appointed by order of the Minister of the Interior, and the investigative customs inspectors appointed by order of the Minister of Finance on the proposal of the Director of the Customs Agency.

The EPPO Annual Report 2021 provides information on the exercise of jurisdiction under Articles 26 and 27 EPPO Regulation (see above → Introduction).
b) Relevant sources of the indications for a criminal offence falling within the competence of the EPPO

National law already obliges citizens and officials to notify and register potential criminal conduct. The general public can obtain information from public databases such as the commercial register etc. as an example. The Bulgarian CPC prescribes the following duty of citizens and officials to notify in Art. 205 CPC:

**Art. 205. CPC**

1. When they become aware of a crime of a general nature, citizens are socially obliged to immediately notify a pre-trial proceeding authority or another state authority.
2. When they become aware of a crime of a general nature, officials must immediately notify the authority of the pre-trial proceedings and take the necessary measures to preserve the situation and the details of the crime.
3. In the cases of paras 1 and 2, the authority of the pre-trial proceedings shall immediately exercise its powers to initiate the criminal proceedings.

**Art. 209 CPC** [Follow-up on] Report of a crime committed

1. The notification of a committed crime must contain data about the person from whom it originates. Anonymous reports are not legitimate grounds for investigation.
2. Notifications may be oral or written. Written communications can only be a legal basis for an investigation if they are signed. They can also be sent electronically if they are signed with a qualified electronic signature in compliance with the requirements of the law. A protocol is drawn up for oral communications, which is signed by the applicant and the authority that accepts them.
A distinction can be made between the direct and the indirect path for the transfer of information related to the competence:

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

| reports from competent national (judicial) authorities | information send to the EPPO → Chamber contacts EDPs |

Art. 24 para 1: In general these can be any national authority which, in the course of their activities, has received information about any criminal conduct in respect of which EPPO could exercise its competence in accordance with Article 22, Article 25 para 2 and para 3 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (“the EPPO”), including:

Protection of the European Union Financial Interests Directorate in the Ministry of the Interior; Deputy Prime-Minister under Art. 5 para 1 point 2 of the Rules of procedure of the Council of Ministers and its Administration; Deputy Minister of Interior, designated by the Minister of Interior; Minister of Economy; Minister of Environment and Water; Minister of Transport, Information Technology and Communications; Deputy Minister of Finance, responsible for the management of the resources from EU funds and programmes; Deputy Minister of Agriculture, Food and Forestry, responsible for the management of resources from EU funds and programmes; Deputy Minister of Labour and Social Policy, responsible for the management of resources from EU funds and programmes; Deputy Minister of Regional Development and Public Works, responsible for the management of resources from EU funds and programmes; Executive Director of Executive Agency “Science and Education for Smart Growth Operational Programme”; Vice-President of the State Agency for National Security, designated by the President of the State Agency for National Security; Executive Director of State Fund “Agriculture”; Executive Director of Executive Agency “Audit of European Union Funds” Director of the Public Financial Inspection Agency; Executive Director of the Public Procurement Agency; Executive Director of the National Revenue Agency; Director of the Customs Agency; Executive Director of Executive Agency “Certification audit of European agriculture funds”; Secretary General of the Ministry of Interior;[...]

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Another, third source of information are the Union bodies, which are obliged to report either to OLAF or to the EPPO (e.g. 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 Bulgarian “Guidelines on how to report irregularities and fraud to the European Commission”.

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

\[\text{aa. Determination of the competence and verification of Crime Reports}\]

The first task of the EDPS in a Bulgarian regional office is to determine whether the EPPO has competence and jurisdiction or can obtain competence and exercise jurisdiction (see below, Art. 27 → p. 103). These are formal but essential questions. They are determined by means of Union secondary legislation, the so-called Internal Rules on Procedure [of the EPPO] adopted by and Supplemented by Decisions 085/2021 of 11/08/2021, 026/2022 of 29/06/2022 and 010/2024 of 7/02/2024 of the College of the EPPO of that College.\[46\]

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

\[\text{(1) The Union standards, Art. 24 para 6 et seq. EPPO Regulation}\]

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

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

\[46\] See Brodowski, in Herrnfeld 2021, Art. 21 EPPO Regulation, pp. 138–144 on the telos of IPR.
The IRP rules state the following:

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

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

2. The verification for the purpose of evocation shall additionally assess:
   a) the maturity of the investigation;
   b) the relevance of the investigation with regard to ensuring the coherence of the EPPO’s investigation and prosecution policy;
   c) the cross-border aspects of the investigation;
   d) the existence of any other specific reason, which suggests that the EPPO is better placed to continue the investigation.

3. The verification shall be carried out using all sources of information available to the EPPO as well as any sources available to the European Delegated Prosecutor, in accordance with applicable national law, including those otherwise available to him/her if acting in a national capacity. The European Delegated Prosecutor may make use of the staff of the EPPO for the purpose of the verification. Where appropriate, the EPPO may consult and exchange information with Union institutions, bodies, offices or agencies, as well as national authorities, subject to the protection of the integrity of a possible future criminal investigation.

4. The European Delegated Prosecutor shall finalise the verification related to the evocation of an investigation at least 2 days before the expiration of the deadline prescribed by Art. 27 para 1 of the Regulation. The verification related to initiating an investigation shall be finalised no later than 20 days following the assignment.

5. If the European Delegated Prosecutor does not finalise the verification on whether or not to initiate an investigation within the prescribed time limit, or he/she informs their inability to do so within the foreseen time limit, the European Prosecutor shall be informed and where deemed appropriate extend the time available or issue an appropriate instruction to the European Delegated Prosecutor.

6. Where it concerns a decision on evocation, the European Delegated Prosecutor may ask the European Chief Prosecutor to extend the time limit needed to adopt a decision on evocation by up to 5 days.
7. Where the European Delegated Prosecutor does not issue a decision within the time limit, it shall be treated as a consideration not to evoke a case, and Art. 42 applied accordingly.

23 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 paras 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.

24 Article 22 Material competence of the EPPO
- PIF Implementation (see below → p. 84).
- National databases and information according to Art. 40 para 3 IRP

25 Article 23 Territorial and personal competences of the EPPO

26 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.

27 SECTION 2 Exercise of the competence of the EPPO
Article 24 Communication, registration and verification of information
- The transfer of information to the relevant EDPs or the chamber of the EPPO is mainly regulated by Art. 24 EPPO Regulation. This provision has been made public to all authorities in Bulgaria by virtue of the EPPO Adoption Act, which indicates how the transfer of information should take place in order to comply with the supranational law. The transfer of information that could establish an initial suspicion for a PIF offence depends on the suspected concrete offence.

(2) Jurisdiction of the European Delegated Prosecutor in Bulgaria

28 Generally speaking, the jurisdiction is determined by the EPPO Regulation. Art. 23 and 26 of the EPPO Regulation prescribe special overall rules.

29 The jurisdiction of the regional office of the EPPO in Bulgaria is determined by the CPC and the Law amending and supplementing the Criminal Procedure Code establishing the internal regulation for the functioning of the EPPO. Art. 195 CPC describes the district in which the pre-trial proceedings take place.
Art. 195 CPC

(1) The pre-trial proceedings are carried out in the area that corresponds to the area of the court competent to consider the case.

(2) The pre-trial proceedings may be conducted in the area where the crime was discovered or where the place of residence of the accused is, or where the place of residence of most of the accused or most of the witnesses is when:
   1. the indictment is for several crimes committed in the area of different courts;
   2. this is necessary to ensure speed, objectivity, comprehensiveness and completeness of the investigation.

(3) The questions under para 2 are decided by the prosecutor in the district where the pre-trial proceedings have started. Until the Prosecutor’s ruling, only those actions in the investigation that cannot be delayed are carried out.

(4) (New – SG No 63 of 2017, in force from 05.11.2017) In the cases of Art. 43, item 2 or when all the prosecutors from the relevant Prosecutor’s office have been taken away, the chief prosecutor or a deputy authorized by him determines that the pre-trial proceedings shall be carried out in the area of another Prosecutor’s office of the same degree.

(5) (Previous para 4 – SG No 63 of 2017, in force from 05.11.2017) Apart from the cases under para 2, with the permission of the chief prosecutor, the pre-trial proceedings may be carried out in another area with a view to a more complete investigation of the crime.

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

The initial suspicion is only to determine the impetus, so to speak, “the ball that gets the criminal proceedings rolling.” The Bulgarian Criminal Procedure Code can help in this regard as it prescribes a similar concept in Art. 207 CPC:

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Footnote: 
47 Район, в който се извършва досъдебното производство
Чл. 195. Наказателно-процесуален кодекс
(1) Досъдебното производство се извършва в района, който съответства на района на съда, компетентен да разгледа делото.
(2) Досъдебното производство може да се извърши в района, където е разкрито престъпнинето или където е местоживеенето на обвиняемия, или където е местоживеенето на повечето обвиняеми или повечето свидетели, когато:
   1. привличането като обвиняем е за няколко престъпления, извършени в района на различни съдилища;
   2. това се налага, за да се осигури бързина, обективност, всестранност и пълнота на разследването.
(3) Въпреки по ал. 2 се решават от прокурора, в района на който е започнало досъдебното производство.
   До произнасянето на прокурора се извършват само онези действия по разследването, които не търпят отлагане.
(4) (Нова - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) В случаите на чл. 43, т. 2 или когато са отведени всички прокурори от съответната прокуратура, главният прокурор или оправомощен от него заместник определя досъдебното производство да се извърши в района на друга, еднаква по степен прокуратура.
(5) (Предишна ал. 4 - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Извън случаите по ал. 2, с разрешение на главния прокурор досъдебното производство може да бъде извършено и в друг район с оглед по-пълно разследване на престъплението.
32 Chapter Seventeen. Investigation
Section I. Formation of pre-trial proceedings and conduct of investigation

Art. 207 CPC

Conditions for initiation of pre-trial proceedings
(1) Pre-trial proceedings are initiated when there is a legal reason and sufficient data for a committed crime.
(2) In the cases provided for in the special part of the Criminal Code, proceedings of a general nature are initiated upon a complaint of the victim to the prosecutor and cannot be terminated on the basis of Art. 24 para 1 item 9.
(3) The lawsuit must contain information about the sender and be signed by him.
(4) No state fee is due when filing the complaint.

33 Art. 208 CPC describes the conditions in much more detail. The moment that the public prosecutor has to act becomes even more tangible.

34 Art. 208 CPC

Legal reasons to start pre-trial proceedings
Legal reasons for starting an investigation are:
1. notification to the authorities of the pre-trial proceedings about a committed crime;
2. information about a committed crime, disseminated through mass media;
3. personal appearance of the perpetrator before the authorities of the pre-trial proceedings with a confession of a crime committed;
4. immediate disclosure by the authorities of the pre-trial proceedings of signs of a committed crime.

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48 Глава седемнадесета. РАЗСЛЕДВАНЕ
Раздел I. Образуване на досъдебно производство и провеждане на разследване
Условия за образуване на досъдебно производство
Чл. 207. Наказателно-процесуален кодекс
(1) Досъдебно производство се образува, когато са налице законен повод и достатъчно данни за извършено престъпление.
(2) В предвидените в особената част на Наказателния кодекс случаи производство от общ характер се образува по тъжба на пострадалния до прокурора и не може да се прекрати на основание чл. 24, ал. 1, т. 9.
(3) Тъжбата трябва да съдържа данни за подателя и да е подписана от него.
(4) При подаването на тъжбата не се дължи държавна такса.
49 Законни поводи
Чл. 208. Наказателно-процесуален кодекс
Законни поводи за започване на разследване са:
1. съобщение до органиите на досъдебното производство за извършено престъпление;
2. информация за извършено престъпление, разпространена чрез средствата за масово осведомяване;
3. лично явяване на деца пред органите на досъдебното производство с признание за извършено престъпление;
4. непосредствено разкриване от органиите на досъдебното производство на признаци за извършено престъпление.
Sufficient data to initiate pre-trial proceedings

Art. 211 CPC\(^{50}\) (1) Sufficient data for the initiation of pre-trial proceedings are available when a reasonable assumption can be made that a crime has been committed.

(2) In order to initiate pre-trial proceedings, data from which conclusions can be drawn about the persons who committed the crime or about his legal qualification is not required.

Procedural actions carried out by the European Public Prosecutor’s Office

Art. 217b CPC\(^{51}\) (New – SG No 103 of 2020) All procedural actions carried out by a competent authority of the European Prosecutor’s Office in accordance with Regulation (EU) 2017/1939 have in the Republic of Bulgaria the procedural value of actions carried out by a Bulgarian authority.

In the area of detecting corruption offences, Art. 103 of the Anti-Corruption Act rules:

**Art. 103 Anti-Corruption and Asset Forfeiture Act**\(^{52}\)

Grounds for carrying out operational-search activities are:

1. received data on persons holding high public positions who are preparing, committing or have already committed acts of corruption that are not sufficient to initiate or initiate criminal proceedings;

2. received data on events or actions creating a threat of corruption, in which persons holding high public positions participated;

3. request of the authorities of the pre-trial proceedings and the court;

4. implementation of international agreements to which the Republic of Bulgaria is a party.

\(^{50}\) Достатъчни данни за образуване на досъдебно производство

**Чл. 211. Наказателно-процесуален кодекс**

(1) Достатъчни данни за образуване на досъдебно производство са налице, когато може да се направи основателно предположение, че е извършено престъпление.

(2) За образуване на досъдебно производство не са нужни данни, от които могат да се направят изводи относно лицата, извършили престъплението, или относно правната му квалификация.

\(^{51}\) Процесуални действия, извършени от Европейската прокуратура

**Чл. 217б. Наказателно-процесуален кодекс**

(Нов - ДВ, бр. 103 от 2020 г.) Всички процесуални действия, извършени от компетентен орган на Европейската прокуратура в съответствие с Регламент (EC) 2017/1939, имат в Република България процесуалната стойност на действия, извършени от български орган.

\(^{52}\) **Чл. 103. Закон за противодействие на корупцията и за отнемане на незаконно придобитото имущество**

Основания за извършване на оперативно-издирвателна дейност са:

1. получени данни за лица, заемащи висши публични длъжности, които подготвят, извършват или вече са извършили прояви на корупция, които не са достатъчни за образуване или започване на наказателно производство;

2. получени данни за събития или действия, създаващи заплаха за корупция, в които са участвали лица, заемащи висши публични длъжности;

3. искане на органите на досъдебното производство и на съда;

4. изпълнение на международни договори, по които Република България е страна.
The way in which the public Prosecutor’s office learns, for example, of the suspicion of subsidy fraud or an offence detrimental to the Union’s financial interests according to the *EPPO Adoption Act and PIF Implementation Decree Law*, is addressed by Union law and the communication with the national authorities and Art. 40 para 3 IRP [2020.003 EPPO].

(1) The PIF offences in the Bulgarian system

A general question is whether administrative and criminal proceedings may be instituted at the same time and which rules apply to this situation. The Bulgarian CPC provides for the following:

| Article 24 CPC | (1) Criminal proceedings shall not be instituted and, if instituted, they shall be terminated, where: […]
| 8a. The act committed constitutes an administrative violation for which the administrative penal proceedings have been completed; […]
| (4) Criminal proceedings shall be terminated on the grounds of para 1, Item 8a, if in the cases specified in Art. 25 Item 5 no proposal to reopen the administrative penal proceedings has been made or such proposal has not been upheld within one month of the suspension. |

First of all, the material competence must be determined, which is possible by analysing the criminal PIF Acquis in Bulgarian law:

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53 Чл. 24. (1) Не се образува наказателно производство, а образуваното се прекратява, когато: […]
8a. (нова - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) извършеното деяние съставлява административно нарушение, за което е приключило административнонаказателно производство; […]
(4) (Нова - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Наказателното производство се прекратява на основание ал. 1, т. 8а, ако в случаите по чл. 25, т. 5 в едномесечен срок от спирането не е направено предложение за възобновяване на административнонаказателното производство или предлагеното не е уважено.
**Sources and national sections 1: PIF offences in Bulgaria**

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The provisions, which are not cited below can be obtained in English here: https://shorturl.at/fgops. Accessed 31 October 2023.

Customs violations begin with Art. 233 Customs Act which prohibits customs smuggling and contains rules on the confiscation of smuggled goods.
Art. 233 Customs Act[^54]

(1) Whoever carries or transports goods across the state border or attempts to do so without the knowledge and permission of the customs authorities, insofar as what has been committed does not constitute a crime, shall be punished for customs smuggling with a fine of 100 to 200 percent of the customs value of the goods or, in case of export, the value of the goods.

(2) Whoever carries or transports goods across the external border of the European Union without the knowledge and permission of the customs authorities is also punished for customs smuggling organs and the goods were discovered as a result of an inspection on the territory of the Republic of Bulgaria.

(3) When for committing the violation under para 1 a vehicle or means of transport with a hidden compartment is used or when the subject of customs smuggling is excise goods or goods prohibited for import or export, the fine is from 200 to 250 percent of the customs value of the goods upon importation or the value of the goods upon exportation,

[^54]: Чл. 233.
and in cases of smuggling of tobacco products – from 200 to 250 percent of their selling price.
(4) In case of repeated violation under para 1 and 2, a fine is imposed in the maximum amount provided for the relevant violation.
(5) In case of repeated violation under para 3, a fine is imposed in the maximum amount provided for the corresponding violation, but not less than BGN 1,000, and when the subject of the violation is tobacco products – not less than BGN 2,000.
(6) Goods subject to customs contraband are confiscated for the benefit of the state, regardless of whose property they are, and if they are missing or alienated, their equivalent is awarded, representing their customs value or, in case of export, the value of the goods.
(7) Goods – subject to customs smuggling, are forfeited in favour of the state and in cases where the offender is unknown.
(8) Vehicles and means of transport that are served for the transportation or transfer of the goods - the subject of customs contraband, are confiscated for the benefit of the state regardless of whose property they are, unless their value clearly does not correspond to the value of the subject of customs contraband.

**Art. 234**

(1) Whoever avoids or makes an attempt to avoid:
1. full or partial payment or security of customs duties or other public state receivables collected by customs authorities, or

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55 Чл. 234. (Изм. - ДВ, бр. 32 от 2010 г., изм. - ДВ, бр. 45 от 2005 г.) (1) Който избегне или направи опит да избегне:
1. (изм. - ДВ, бр. 58 от 2016 г.) пълно или частично заплащане или обезпечаване на митата или на другите публични държавни вземания, събирани от митническите органи, или
2. забрана или ограничения за внос или износ на стоки, или прилагането на мерки на търговската политика, се наказва за митническа измама.
(2) За митническа измама наказанието е глоба – за физическите лица, или имуществена санкция - за юридическите лица и едноличните търговци, от 100 до 200 на сто от:
1. размера на избегнатите публични държавни вземания – за нарушение по ал. 1, т. 1;
2. (доп. - ДВ, бр. 58 от 2016 г.) митническата стойност на стоките или при износ - стойността на стоките, предмет на нарушението по ал. 1, т. 2.
(3) (Изм. - ДВ, бр. 58 от 2016 г.) Когато предмет на митническата измама са акцизни стоки, наказанието е глоба - за физическите лица, или имуществена санкция – за юридическите лица и едноличните търговци, от 150 до 250 на сто от:
1. размера на избегнатите публични държавни вземания - за нарушение по ал. 1, т. 1;
2. (доп. - ДВ, бр. 58 от 2016 г.) митническата стойност на стоките или при износ - стойността на стоките, предмет на нарушението по ал. 1, т. 2.
(4) (Изм. - ДВ, бр. 105 от 2006 г., в сила от 01.01.2007 г., изм. - ДВ, бр. 10 от 2013 г., в сила от 28.05.2010 г.) Обвинението и присъдата01.02.2013 г., изм. - ДВ, бр. 60 от 2015 г., изм. и доп. - ДВ, бр. 58 от 2016 г.) В случаите на митническа измама стоките – предмет на нарушението, се отнемат в полза на държавата независимо от това чия собственост са, а ако липсват или са отчуждени, се присъжда тяхната равностойност, представляваща митническата им стойност, или при износ - стойността на стоките, освен ако стойността на избегнатите митни и/или другите публични държавни вземания не могат да се основават само на показанията на свидетели, дадени по реда на чл. 141 или 141а...надхвърля 35 на сто от митническата стойност на стоките или при износ - стойността на стоките.
2. bans or restrictions on the import or export of goods, or the application of trade policy measures, shall be punished for customs fraud.

(2) For customs fraud, the penalty is a fine – for individuals, or a pecuniary penalty – for legal entities and sole traders, from 100 to 200 percent of:
1. the amount of avoided public state receivables – for a violation under para 1, item 1;
2. the customs value of the goods or in the case of export – the value of the goods subject to the violation under para 1, item 2.

(3) When the subject of customs fraud is excise goods, the penalty is a fine – for natural persons, or a pecuniary penalty – for legal entities and sole traders, from 150 to 250 per hundred of:
1. the amount of avoided public state receivables – for a violation under para 1, item 1;
2. the customs value of the goods or in the case of export – the value of the goods subject to the violation under para 1, item 2.

(4) In cases of customs fraud, the goods – the subject of the violation – are confiscated for the benefit of the state, regardless of whose property they are, and if they are missing or alienated, their equivalent is awarded, representing their customs value, or in the case of export – the value of the goods, unless the value of avoided duties and/or other public state claims does not exceed 35 percent of the customs value of the goods, or in case of export – the value of the goods.

Nota bene: See → further Articles 234a–238d of the Bulgarian Customs Act, which constitute further customs violations with a potential threat to the EU budget.

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

(a) Impetus of fraud knowledge patterns

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

- National level: Annual report on the activities of the PRB (Prosecutor’s Office of the Republic of Bulgaria), which contains information on PIF offences.56
- EU-level: PIF Reports, Rule of law Report, “Impact of Organised Crime on the EU’s Financial Interests”57

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

57 For further details see Malan and Bosch 2021.
(b) Special national databases for PIF offences/Digital investigations, Art. 40 para 3 IRP 2020.003

Potential suspects may emanate from statements, account inspections, database access (transparency register, whistle-blower systems, bank supervisory database, sales tax database of the central offices, Eurofisc inquiries, Thesus customs database of the EU etc.). The usefulness of these resources is substantiated by decisions of the administrative court of Varna. The court had to decide cases concerning OLAF reports and inspections. OLAF investigators often used the customs databases to verify their suspicions and recommended by virtue of Art. 11 OLAF Regulation to use this evidence even in criminal trials. On the level of the Union the transparency registers e.g. in the area of the expenditure budget modes (direct and indirect management) can help to research on beneficiaries etc. (Financial Transparency System)58

cc. Examples and precedents in national case-law

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

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

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

(1) Revenue frauds

Revenue frauds are manifold. First, the scheme should be identified. For this, it is worthwhile to compare the suspected behaviour with known behaviour patterns. A country that has ports and is heavily frequent by customs clearance and customs controls might discover more customs duties fraud cases. Customs violations that have an effect on the EU budget are partly investigated by OLAF (see below → Part C). Assessment can also be based on known cases and the professional groups suspected in these cases.

Case Study 1 Underestimated customs products and transfer via Malaysia? The appearance of false invoices (no customs violation as a result)

The defendant “Milky Group Bio” EAD with headquarters and address of management in the city of Sofia was investigated and accused of a discrepancy found between compared deliveries by about 30%, which the Prosecutor regarded as a violation under Art. 234 para 2 s.1 of the Customs Act.

In the end the appellate court ruled that “By Decision No 1740/30.09.2019, issued under NAHD No 2628/2019, according to the inventory of the regional court - Varna, the Criminal Decree was revoked. In order to reach this result, the appellate court assumed that no significant procedural violations were committed during the administrative criminal proceedings. He accepted that the value of the imported goods announced by the company was the actual price paid.”

On the factual side, OLAF was involved in the checks. The Milky Group imported palm oil from Malaysia into the Union territory. The investigative bodies – the Varna Customs Authority and OLAF – guessed that the defendant could have underestimated and/or under-declared the goods.

Documents that were used as potential evidence:
- Tax invoices
- Packing list
- Container list
- Digital programs as well as EU databases, such as European Thesus and GTA systems to verify customs transfers and fair prices
- OLAF letter
- Customs declarations
- Inspections

The original judgement states:
“To customs declaration MRN No 18BG002005H0016496/18.12.2017 the following documents are attached:

1. Tax Invoice No 37637077 dated 11/13/2017, on company letterhead, certified with signature and seal by FELDA IFFCO SDN BHD to “Milky Group Bio” EAD, EIK,

Bulgaria for the 2x20’FT container containing 45.32 metric tons of RBD palm oil IFFCO HQPO 36/39 packed in 2266 parcels.


3. Certificate of Analysis No COA/SI8482-8 dated 13/11/2017 on letterhead certified with signature and seal of FELDA IFFCO SDN BHD for the 2x20’FT container c No MRKU7021550; MRKU7181959 containing 45.32 metric tons of RBD palm oil IFFCO HQPO 36/39 packed in 2266 parcels;

4. Declaration of the data related to the customs value DV1. On 29/05/2018 by letter per. Index 32-151550/29.05.2018 the “Customs” Agency sent a request to the “Investigation II” Directorate of the European Anti-Fraud Office (OLAF), Brussels for assistance on the basis of Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation in the field of customs and agricultural matters concerning imports of palm oil from Malaysia through under-declaration. The performed inspection concerns 55 customs declarations with sender/exporter FELDA IFFCO SDN BHD/Felda IFFCO SDN BHD, Malaysia and recipient “Milky Group Bio” EAD. The total weight of the goods is 2,130 tons with a declared customs value between 0.49 - 0.58 EUR/kg.

Doubts about under-declaring the goods are heightened due to the information available in the European THESEUS and GTA systems. According to the data in THESEUS, in the period January 2017 – January 2018, the determined fair price for goods classified under CN code 1511 90 99 was between 0.74 - 0.82 EUR/kg. GTA export statistics for goods classified under CN code 1511 90 99. exported from Malaysia to Bulgaria show a unit value of EUR 777.74/tonne (ECU 0.77/kg).”

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Thus, the court concluded in the end, what prosecutors should be aware of:

“The presence of an invoice presented by the importer with a different value of the goods than the value declared by the exporter cannot justify the conclusion that the exporter’s statement documents the actually agreed and payable price, and the importer’s invoice has a false value. Invoices are private certifying documents and it is entirely the responsibility of the customs administration to prove that the value of the goods specified by the exporter is the actually agreed and payable value within the meaning of Art. 29, § 1 of the Regulation. Evidence for this has not been presented. There is also a lack of valid confirmation with a final OLAF report that the invoice has incorrect content.”\(^{61}\)

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Expenditure frauds need to be scrutinized closely. They may eventuate in the areas of structural funds, direct expenditure via grants etc.  

**Case Study 2 Funding of the construction of a greenhouse (EADF)**

In one case a suspect tried to apply for funding of the construction of a greenhouse under the European Agricultural and Development fund. This conduct is a crime under Art. 248a Criminal Code of the Republic of Bulgaria. The defendant appealed the remand order but the court found that:

“5. On 09.12.2016 in the town of Sofia in complicity with S. C. A. – as an instigator and facilitator, intentionally induced her to apply for financial assistance under the Rural Development Programme 2014–2020, co-financed by the European Agricultural Fund for Rural Development, measure 4 ‘Investments in tangible assets’, sub-measure 4.1 ‘Investments in agricultural holdings’ and to submit to State Fund ‘Z.’ false information about ET ‘S. A.’ - Sliven in the application for support filed with PIN ***, URN ***, ID No **** of 09.12.2016 and the attached Declaration / Annex No 2 / for irregularities - to conceal information in violation of the obligation to provide such - that there is a connection between ET ‘S. A.’ Sliven and ET ‘M.S. K.’ within the meaning of Article 43, paragraph H of Ordinance No 9/21.03.2015 of the Minister of Agriculture and Food, consisting in the fact that the activities to be supported and for which support and financial aid is applied for – ‘Construction of a greenhouse in the property PI ***PI *** on the land of the town of D. Ch. and the purchase of technological equipment for it’ will not be carried out by ET ‘S. A. A.’ Sliven, but by ET ‘M.S. - K.’, and deliberately facilitated it in another way - provided and representative and proxy to prepare the documents for registration and application for support, to submit applications to the State Fund ‘Z.’ and to receive the funds under the granted financial aid, by which he artificially created conditions to benefit himself, through the commercial activity carried out by his sole trader ET ‘M.S.K.’, in order to receive funds granted by the EU to the Bulgarian State, distributed by the State Fund ‘Z.’ in the...
amount of BGN 1 173 480.00. / One million one hundred and seventy-three thousand four hundred and eighty BGN. -offence under Art. 248a para 2, in conjunction with Article 20, paras 3 and 4, in conjunction with para 1, in conjunction with Article 26, para 1 of the Criminal Code, for which the penalty is “imprisonment” for up to three years and a fine of 1000 to 5000 BGN.

[...] The aforementioned accusations find a serious degree of justification for the assumption in the totality of evidence collected by the DP and at the moment in the course of the judicial investigation, from which a conclusion is made that there has been no change in the circumstances that determined the most severe procedural coercion. It is a systematic criminal activity in a continuous long period of time – 2015 - 2019, contact with receiving and creating conditions for receiving through false documentation/fraud/of funds from European funds, which funds have been granted to the Bulgarian state and are distributed by DF ‘Z.’.

It concerns a wide circle of colluding persons, who are personally dependent on the defendant M.S. The entire ‘palette’ of accusations, for which a conclusion of validity can be substantiated at the moment based on the entire body of evidence, is connected with serious preparation, because it meets the criteria for continuing criminality in secondary crimes and accomplice activity also with a wide range of subordinates of subs.S. persons who also participated in the negotiation under Art. 321 para 6 of the Criminal Code.

The secondary crimes in which S. is accused make an impression with the amount of fraudulently obtained funds as a result of reasonably suspected criminal activity, referred to the composition of the crime under Art. 248a para 5 of the Criminal Code and the preparation for receiving funds provided to the EU of the Bulgarian state, for which charges have been brought under Art. 248a para 2 of the Criminal Code and for which sums civil claims have been brought – objectively and subjectively combined on the basis of Art. 45 of the Civil Code, stated above in the reasons for my special opinion.

[...] I believe that what has been stated so far necessitates the conclusion that the defendant’s private complaint and his defence are unfounded due to the lack of new circumstances. The type of procedural coercion is appropriate to the goals and must be able to fully ensure the unimpeded completion of the criminal process.

[...] When assessing the merits of the request for modification of the remand order in the judicial phase of the process, it should be to find a place and assess the interests of society, which is always affected by any criminal activity and whoever it is. I believe,
that with its definition, the SNC has found the balance between the burden of procedural coercion and the public interest. In this case, this public interest extends to the finances of the EU. The case also received materials from the European Anti-Fraud Office – OLAF, representing a ‘Recommendation and Final Report’. From these materials it is clear that the EC was notified as for the financing of the Republic of Bulgaria, it is recommended to exclude from the financing an amount of 2,662,438.85 euros paid in connection with the activities of the defendant, for which charges have been brought against him according to the accuser, and it is recommended to stop the payment of 3,554,121.69 euros.

Given the above, my opinion is that the SSC correctly refused to change the remand order of the defendant M.S. and the decision, the subject of the private appeal, should be confirmed.63

In other case that the EPPO already conducted construction material was seized.64

Source: Case Portal.

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(4) Corruption offences


(5) Criminal organisation (PIF “Mafia clause”)

Cases of criminal organisations in the area of customs have already been dealt with by the Specialised Criminal Court of Bulgaria in the past. The Specialised Criminal Court has asked the CJEU for a preliminary ruling in a case, in which customs officers were suspected of participating in a criminal organisation. The facts presented seemed to present a criminal organisation that asked for bribes at the border between Turkey and Bulgaria from drivers of trucks and passenger cars in exchange for not carrying out customs checks and not reporting irregularities.65

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

If he/she decides to initiate an investigation he/she must note this in the case management system (Art. 45 para 1 EPPO Regulation, 38 IRP66). In addition, the numerous obligations to provide information from Art. 24 para 3 to 8.

If an investigation is opened by virtue of Art. 26 para 1 EPPO Regulation, he/she must insert the following information in the Case Management System according to Art. 38 para 3 IRP:

| a) | the possible legal qualification of the reported criminal conduct, including if it was committed by an organised group; |
| b) | a short description of the reported criminal conduct, including the date when it was committed; |
| c) | the amount and nature of the estimated damage; |
| d) | the Member State(s) where the focus of the criminal activity is, respectively where the bulk of the offences, if several, was committed; |
| e) | other Member States that may be involved; |
| f) | the names of the potential suspects and any other involved persons in line with Article 24(4) of the Regulation, their date and place of birth, identification numbers, habitual residence and / or nationality, their occupation, suspected membership of a criminal organisation; |
| g) | whether privileges or immunities may apply; |

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

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

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

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

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

   a) As regards suspected or accused persons in the criminal proceedings of the EPPO or persons convicted following the criminal proceedings of the EPPO,
      i. surname, maiden name, given names and any alias or assumed names;
      ii. date and place of birth;
      iii. nationality;
      iv. sex;
      v. place of residence, profession and whereabouts of the person concerned,
      vi. social security numbers, ID-codes, driving licences, identification documents, passport data, customs and tax identification numbers;
      vii. description of the alleged offences, including the date on which they were committed;
      viii. category of the offences, including the existence of inextricably linked offences;
      ix. the amount of the estimated damages;
      x. suspected membership of a criminal organisation;
      xi. details of accounts held with banks and other financial institutions;
      xii. telephone numbers, SIM-card numbers, email addresses, IP addresses, and account and user names used on line platforms;
      xiii. vehicle registration data;
      xiv. identifiable assets owned or utilised by the person, such as crypto-assets and real estate.
      xv. information whether potential privileges or immunities may apply.

   b) as regards natural persons who reported or are victims of offences that fall within the competence of the EPPO,
      i. surname, maiden name, given names and any alias or assumed names;
taking into account the operational interest and available resources. The reference in the Index shall be maintained up to date during the investigation of a case file. The Case Management System shall periodically notify the European Delegated Prosecutor if certain categories of information are not entered in the Index.

3. The Case Management System shall notify the supervising European Prosecutor and the European Chief Prosecutor and shall randomly assign the monitoring of the investigation to a Permanent Chamber, in accordance with Article 19.

4. Where the handling European Delegated Prosecutor considers that in order to preserve the integrity of the investigation it is necessary to temporarily defer the obligation to inform the authorities referred to in Articles 25(5), 26(2) and 26(7) of the Regulation, he/she shall inform the monitoring Permanent Chamber without delay. The latter may object to this decision and instruct the European Delegated Prosecutor to proceed with the relevant notification immediately.

d) Art. 26 para 7 Notification details

The Bulgarian Government has notified the following authorities: “All prosecutors of the Prosecutor’s Office of the Republic of Bulgaria; All investigators of the National Investigation Service, the regional investigation departments at the regional prosecution offices, and the investigation department at the Specialised prosecution office - until 27th of July 2022.

All investigators of the National Investigation Service and the regional investigation departments at the regional prosecution offices – with effect from 27th of July 2022.

e) Justiciability and appeals (Defence perspective)

In the investigation phase the suspect can possibly – whereby it makes sense to ask the Bulgarian Bar Association – appeal against investigative actions and the start of pre-trial proceedings:

**Art. 200 CPC** Appeal of the Decrees
Decisions of the investigative body are appealed to the prosecutor. Decisions of the prosecutor, which are not subject to judicial review, with the exception of the decisions of the European prosecutor and the European delegated prosecutors, as well as the decisions of the prosecutor in the investigation against the chief prosecutor or his deputy, are appealed to a prosecutor of the higher Prosecutor’s office, whose decision not subject to appeal.

**Art. 201 CPC** Appeal against the decrees
(1) The appeal against the decisions of the bodies of the pre-trial proceedings may be oral or written. The written complaint must be signed by the sender, and for the oral complaint a protocol is drawn up, which is signed by the sender and the person who accepts it.

(2) The appeal is submitted through the body that issued the decision, or directly to the prosecutor who is competent to examine it. In the first case, it is sent immediately to the relevant prosecutor with a written opinion.

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68 Обжалване на постановленията

**Чл. 200. Наказателно-процесуален кодекс**
(Доп. - ДВ, бр. 103 от 2020 г., доп. - ДВ, бр. 16 от 2021 г.) Постановленията на разследващия орган се обжалват пред прокурора. Постановленията на прокурора, които не подлежат на съдебен контрол, с изключение на постановленията на европейския прокурор и европейските делегирани прокурори, както и на постановленията на прокурора по разследването срещу главния прокурор или негов заместник, се обжалват пред прокурор от по-горестоящата прокуратура, чието постановление не подлежи на обжалване.

69 Жалба срещу постановленията

**Чл. 201. Наказателно-процесуален кодекс**
(1) Жалбата срещу постановленията на органите на досъдебното производство може да бъде устна или писмена. Писмената жалба трябва да бъде подписана от подателя, а за устната жалба се съставя протокол, който се подписва от подателя и от лицето, което я приема.

(2) Жалбата се подава чрез органа, който е издал постановлението, или направо до прокурора, който е компетентен да я разгледа. В първия случай тя се изпраща незабавно на съответния прокурор с писмено становище.
Art. 202 CPC Effect of the appeal and deadline for ruling on it
(1) The appeal does not stop the implementation of the appealed decision, unless the relevant prosecutor decides otherwise.
(2) The prosecutor is obliged to rule on the appeal within three days of receipt.

Art. 203 CPC Duty to ensure a lawful and timely investigation
(1) The investigative body shall take all measures to ensure the timely, lawful and successful conduct of the investigation.
(2) The investigative body is obliged to collect the necessary evidence to reveal the objective truth as soon as possible, being guided by the law, its inner conviction and the instructions of the prosecutor.
(3) Upon a change in competence and in other cases when an investigator authority under Art. 52, para 1 is replaced by another, the performed investigation and other procedural actions retain their procedural value.
(4) The investigative body systematically reports to the prosecutor on the progress of the investigation, discussing with him the possible versions and all other issues of importance for the lawful and successful conclusion of the investigation.
(5) The investigative body shall carry out investigation and other procedural actions also at the time when the case is sent to the court in connection with a procedural coercion measure.
Art. 213 CPC\textsuperscript{72} Refusal of the prosecutor to initiate pre-trial proceedings

(1) The prosecutor may refuse to initiate pre-trial proceedings, about which he notifies the victim or his heirs, the damaged legal entity and the person who made the announcement. \textit{The decree is subject to appeal before the higher Prosecutor's office, with the exception of the decree of the European Prosecutor and the European Delegated Prosecutor.}

(2) (New – SG No 48 of 2023, in force from 01.09.2023) When he does not possess Bulgarian language, the victim has the right to receive a written translation in a language understandable to him of the decree on refusal to initiate pre-trial proceedings.

(3) (New – SG No 48 of 2023) A copy of the decree of the prosecutor from the higher Prosecutor’s office confirming the refusal to initiate pre-trial proceedings shall be sent to the persons under para 1.

(4) (New – SG No 48 of 2023) The confirmed decree for refusal to institute pre-trial proceedings for a serious crime within the meaning of Art. 93, item 7 of the Criminal Code, as well as for crimes under Art. 119–122, Art. 124, para 1, 2 and 4, Art. 126, para 1, Art. 127, para 4, Art. 131, 132, 133, 134–141, Art. 151, para 3 and 4, Art. 153, Art.

\textsuperscript{72} Отказ на прокурора да образува досъдебно производство

Чл. 213. Наказателно-процесуален кодекс

(1) (Доп. - ДВ, бр. 62 от 2016 г. в сила от 09.08.2016 г., доп. - ДВ, бр. 103 от 2020 г.) Прокурорът може да откаже да образува досъдебно производство, за което уведомява пострадалия или неговите наследници, оцененото юридическо лице и лицето, направило съобщението. Постановлението подлежи на обжалване пред по-горестоящата прокуратура, с изключение на постановлението на европейския прокурор и европейския делегиран прокурор.

(2) (Отм. - ДВ, бр. 62 от 2016 г. в сила от 09.08.2016 г., нова - ДВ, бр. 48 от 2023 г., в сила от 01.09.2023 г.) Когато не владее български език, пострадалият има право да получи писмен превод на разбираем за него език на постановлението за отказ от образуване на досъдебно производство.

(3) (Нова - ДВ, бр. 48 от 2023 г.) Препис от постановлението на прокурора от по-горестоящата прокуратура, с което се потвърждава отказът за образуване на досъдебно производство, се изпраща на лицата по ал. 1.

(4) (Нова - ДВ, бр. 48 от 2023 г.) Потвържденото постановление за отказ да се образува досъдебно производство за тежко престъпление по смисъла на чл. 93, т. 7 от Наказателния кодекс, както и за престъпления по чл. 119–122, чл. 124, ал. 1, 2 и 4, чл. 126, ал. 1, чл. 127, ал. 4, чл. 131, 132, 133, 134–141, чл. 151, ал. 3 и 4, чл. 153, чл. 154а, чл. 155, ал. 1, чл. 159, ал. 3, 6 и 7, чл. 162–165, чл. 167, ал. 1, чл. 169, чл. 169а, чл. 184–187, чл. 188, ал. 1 и 2, чл. 225б, чл. 282, чл. 283, чл. 304б, ал. 2, чл. 305б, чл. 307, чл. 331, ал. 3, чл. 335, 343, 343а, 349а, чл. 352, ал. 1, 2 и 4, чл. 353б, ал. 4, чл. 353в, ал. 1, 4 и 5, чл. 353д, ал. 1, 2, 3, 5, чл. 379, чл. 387 и чл. 419а от Наказателния кодекс подлежи на обжалване от лицата по ал. 1 пред съответния първонстанционен съд в 7-дневен срок от получаване на преписа. Лицата по ал. 1 имат право на достъп до материалите от проверката по чл. 145, ал. 1, т. 2 и 3 от Закона за съдебната власт.

(5) (Нова - ДВ, бр. 48 от 2023 г.) Съдът разглежда делото еднолично в закрито заседание не по един месец от постъпването на материалите по преписката, като се произнася по обосноваността и законосъобразността на постановлението за отказ да се образува досъдебно производство с определение, което е окончателно.

(6) (Нова - ДВ, бр. 48 от 2023 г.) При отмяна на постановлението за отказ съдът връща преписката на прокурора със задължителни указания относно прилагането на закона.

(7) (Нова - ДВ, бр. 48 от 2023 г.) Жалбата срещу актовете, които водят до отказ за образуване на наказателно производство, може да бъде подадена по електронен път, подписана с квалифициран електронен подпис.

(8) (Нова - ДВ, бр. 48 от 2023 г., в сила от 01.09.2023 г.) Когато съобщението по чл. 208, т. 1 съдържа данни за престъпление, извършено в друга държава – членка на Европейския съюз, което не е поддържано на български съд, прокурорът уведомява компетентния орган на другата държава членка за извършеното престъпление и му препраща съобщението по реда на чл. 482, ал. 1.
154a, Art. 155, para 1, Art. 159, para 3, 6 and 7, Art. 162–165, Art. 167, para 1, Art. 169, Art. 169a, Art. 184–187, Art. 188, para 1 and 2, Art. 225c, Art. 282, Art. 283, Art. 304b, para 2, Art. 305a, Art. 307, Art. 331, para 3, Art. 335, Art. 343, 343a, Art. 349a, Art. 352, para 1, 2 and 4, Art. 353b, para 4, Art. 353c, para 1, 4 and 5, Art. 353e, para 1, 2, 3 and 5, Art. 379, Art. 387 and Art. 419a of the Criminal Code is subject to appeal by the persons under para 1 before the relevant court of first instance within 7 days of receiving the transcript. The persons under para 1 have the right of access to the materials from the inspection under Art. 145, para 1, items 2 and 3 of the Judiciary Act.

(5) (New – SG No 48 of 2023) The court examines the case alone in a closed session no later than one month from the receipt of the materials on the file, ruling on the justification and legality of the decree for refusal to institute pre-trial proceedings with a ruling that is final.

(6) (New – SG No 48 of 2023) Upon annulment of the refusal decree, the court returns the file to the prosecutor with mandatory instructions regarding the application of the law.

(7) (New – SG No 48 of 2023) The appeal against the acts that lead to the refusal to institute criminal proceedings may be filed electronically, signed with a qualified electronic signature.

(8) (New – SG No 48 of 2023, in force from 01.09.2023) When the announcement under Art. 208 item 1 contains data on a crime committed in another member state of the European Union, which is not under the jurisdiction of a Bulgarian court, the prosecutor shall notify the competent authority of the other member state of the committed crime and forward the notification to him in accordance with the procedure of Art. 482 para 1.
2. **Article 27 Right of evocation**

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

2. During the periods referred to in paragraph 1, the national authorities shall refrain from taking any decision under national law that may have the effect of precluding the EPPO from exercising its right of evocation. The national authorities shall take any urgent measures necessary, under national law, to ensure effective investigation and prosecution.

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

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

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

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

7. Where the EPPO has refrained from exercising its competence, it shall inform the competent national authorities without undue delay. At any time in the course of the proceedings, the competent national authorities shall inform the EPPO of any new facts which could give the EPPO reasons to reconsider its decision not to exercise competence. The EPPO may exercise its right of evocation after receiving such information, provided that the national investigation has not already been finalised and that an indictment has not been submitted to a court. The decision shall be taken within the time limit set out in paragraph 1.

8. Where, with regard to offences which caused or are likely to cause damage to the Union’s financial interests of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute at Union level, it shall in accordance with Article 9(2), issue general guidelines allowing the European Delegated Prosecutors to decide, independently and without undue delay, not to evoke the case. The guidelines shall specify, with all necessary details, the circumstances to which they apply, by establishing clear criteria, taking specifically into account the nature of the offence, the urgency of the situation and the commitment of the competent national authorities to take all necessary measures in order to fully recover the damage to the Union’s financial interests.

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

1 If the EDPs do not exercise the EPPO’s competence by virtue of the Union’s legality principle in due time on their own and hereby on behalf (proprio motu) of the Union and the Union’s interests by analysing the notitiae crimini europea, i.e. the obligatory European PIF offences notices, which are sent to the European Prosecution Office in order to inform that a PIF offence is alleged or has been committed, the EDPs and the Chambers must decide on the evocation of cases from the national authorities on to the level of the Union competence. If the national prosecutor or a national office vested with investigative powers have already started investigating or the relevant person has taken any steps applying national law afterwards, these actions may have a precluding effect on the Right of evocation of the EPPO (cf. → para 2 of Art. 27 EPPO Regulation).
The article is also aimed at national public prosecutors, Art. 27 para 1, 2, 4, 5, 7.

**Nota bene:** In addition to that, if reading the following provisions one can take into account that some of them will apply as well to the EDPs if they want to file an indictment by virtue of the EPPO Regulation, i.e. the area, which is not in the focus of this Compendium as the country chapters have the focal point on the start of investigations, the phase, in which, most likely a huge number of operations will cease already. But the same provisions that apply to the national authorities while standing still until the EPPO has decided to exercise its right of evocation or not (→ Art. 27) will apply in cases of EPPO indictments (→ Art. 34 et seq.) and preclude the filing of 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*

*Caption: Bulgarian Authorities*: “All prosecutors of the Prosecutor’s Office of the Republic of Bulgaria; All investigators of the National Investigation Service, the regional investigation departments at the regional prosecution offices, and the investigation department at the Specialised prosecution office - until 27th of July 2022. All investigators of the National Investigation Service and the regional investigation departments at the regional prosecution offices – with effect from 27th of July 2022. Ministry

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a) **Provisions with a precluding effect for the Right of evocation of the EPPO**, para 2

**aa. Statute of limitations**

**Article 80**

(1) Criminal prosecution shall be excluded by prescription where it has not been instigated in the course of: […]
2. fifteen years for acts punishable by imprisonment for more than ten years;
3. ten years for acts punishable by imprisonment for more than three years; […]

(3) Prescription of prosecution shall commence as from the completion of the crime, in the case of attempt and preparation - as from the day of completion of the last action, and for continuous crimes as well as for crimes in progress – as from the moment of their termination.

**Article 81**

(1) The period of limitation shall be suspended where the commencement or continuance of a prosecution depends on the determination of any preliminary question by a final judicial act.

(2) The limitation period shall be interrupted by any action taken by the proper authorities to prosecute, and only as to the person against whom the prosecution is directed.

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74 Чл. 80. Наказателен кодекс
(1) Наказателното преследване се изключва по давност, когато то не е възбудено в продължение на:
1. (изм. - ДВ, бр. 31 от 1990 г., изм. - ДВ, бр. 153 от 1998 г.) двадесет години за деяния, наказуеми с доживотен затвор без замяна, доживотен затвор, и 35 години за убийство на две или повече лица;
2. петнадесет години за деяния, наказуеми с лишаване от свобода повече от десет години;
3. десет години за деяния, наказуеми с лишаване от свобода повече от три години;
4. (изм. - ДВ, бр. 62 от 1997 г.) пет години за деяние, наказуемо с лишаване от свобода повече от една година, и
5. (изм. - ДВ, бр. 26 от 2010 г.) три години за всички останали случаи.

(2) Давностните срокове по предходната алинея за престъпления, извършени от непълнолетни, се определят, след като се съобрази заменяването на наказанията по чл. 63.

(3) Давността за преследване започва от довършването на престъплениято, при опит и приготовление - от дня, когато е извършено последното действие, а за престъпленията, които траят непрекъснато, както и за продължаваните престъпления - от прекратяването им.

75 Чл. 81. Наказателен кодекс
(1) Давността спира, когато започването или продължаването на наказателното преследване зависи от разрешаването на някой предварителен въпрос с влязъл в сила съдебен акт.

(2) Давността се прекъсва с всяко действие на надлежните органи, предприето за преследване, и то само спрямо лицето, срещу което е насочено преследването. След свършване на действието, с което е прекъсната давност, започва да тече нова давност.

(3) Независно от спирането или прекъсването на давността наказателното преследване се изключва, ако е изтекъл срок, който надвишава с една втора срока, предвиден в предходния член.
After the act by which the limitation period was interrupted has ended, a new limitation period shall begin to run.

(3) Notwithstanding the termination or interruption of prescription, penal proceedings shall be excluded provided a term has expired which exceeds by one half the term provided under the preceding Article.

Article 82

(1) Penalties imposed shall not be executed when they have expired:
1. twenty years, if the punishment is life imprisonment without commutation or life imprisonment;
2. fifteen years if the penalty is imprisonment for more than ten years;
3. ten years, if the punishment is imprisonment from three to ten years;
4. five years if the penalty is imprisonment for less than three years; and
5. two years for all other cases.

(2) Prescription for enforcing a punishment shall start commence as from the day the sentence has entered into force, and with regard to punishment with suspended enforcement pursuant to Article 66 – as from the entry into force of the sentence or the court ruling under Article 68.

(3) Prescription shall be interrupted by any act undertaken by the respective bodies with regard to the convict for enforcement of the sentence. After the termination of the act whereby the prescription has been interrupted, a new prescription shall commence.

(4) Irrespective of the interruption and termination of prescription, the punishment shall not be enforced where a term has elapsed which exceeds the term provided in para 1 by one half.

Чл. 82. Наказателен кодекс

(1) Наложеното наказание не се изпълнява, когато са изтекли:
1. (изм. - ДВ, бр. 153 от 1998 г.) двадесет години, ако наказанието е доживотен затвор без замяна или доживотен затвор;
2. петдесет години, ако наказанието е лишаване от свобода повече от десет години;
3. десет години, ако наказанието е лишаване от свобода от три до десет години;
4. пет години, ако наказанието е лишаване от свобода по-малко от три години, и
5. две години за всички останали случаи.

(2) Давността за изпълнение на наказанието започва да тече от деня, когато присъдата е влязла в сила, а по отношение на наказанието, чието изпълнение е било отложено съгласно чл. 66 – от влизане в сила на присъдата или определеното по чл. 68.

(3) Давността се прекъсва с всяко действие на надлежните органи, предприето спрямо осъдения за изпълнение на присъдата. След свършване на действието, с което се прекъсва давността, започва да тече нова давност.

(4) Независимо от спирането или прекъсването на давността наказанието не се изпълнява, ако е изтекъл срок, който надвишава с една втора срока, предвиден в алинея 1.

(5) (Нова - ДВ, бр. 28 от 1982 г., в сила от 01.07.1982 г.) Разпоредбата на предходната алинея не се прилага по отношение на глобата, когато за събирането е образувано изпълнително производство.
bb. Amnesty

5 Art. 83 CC\(^77\) Amnesty erases the criminal nature of certain types of committed acts or exempts from criminal liability and from the consequences of conviction for certain crimes.

cc. Criminal complaint

6 Art. 84 CC\(^78\) (1) For crimes that are prosecuted on the complaint of the victim, criminal prosecution shall not be instituted, even if the statute of limitations has not expired, if no complaint is filed within six months from the day when the victim learns that the crime has been committed.
(2) If the victim dies before this term has expired, the claim may be filed by his heirs until it expires.
(3) For these crimes, the punishment is not carried out, if the complainant has requested this before its execution begins.

dd. Prosecution before the trial court

7 Art. 246 CPC\(^79\) (Indictment) (1) The prosecutor shall draw up an indictment when he is convinced that the necessary evidence has been collected for revealing the objective

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\(^77\) Чл. 83. Наказателен кодекс
Амнистията залачава престъпния характер на определен вид извършени деяния или освобождава от наказателна отговорност и от последиците на осъждането за определени престъпления.

\(^78\) Чл. 84. Наказателен кодекс
(1) За престъпления, които се преследват по тъжба на пострадалия, наказателното преследване не се възбужда, макар давността да не е изтекла, ако не се подаде тъжба в шестмесечен срок от деня, когато пострадалият узнае, че престъплението е извършено.
(2) Ако пострадалият умре, преди да е изтекъл този срок, тъжбата може да се подаде от неговите наследници до изтичането му.
(3) За тези престъпления наказанието не се изпълнява, ако тъжителят е поискал това, преди да започне неговото изпълнение.

\(^79\) Обвинителен акт
Чл. 246. Наказателно-процесуален кодекс
(1) Прокурорът съставя обвинителен акт, когато е убеден, че са събрани необходимите доказателства за разкриване на обективната истина и за повдигане на обвинение пред съда, няма основание за прекратяване или спиране на наказателното производство и не е допуснато съществено нарушение на процесуалните правила, което е отстранимо.
(2) В обстоятелствената част на обвинителния акт се посочват: престъплениято, извършено от обвиняемия; времето, мястото и начинът на извършването му; пострадалото лице и размерът на вредите; пълни данни за личността на обвиняемия, налице ли са условията за прилагане на чл. 53 от Наказателния кодекс; обстоятелствата, които отглеждат или смекчават отговорността на обвиняемия; доказателствените материали, от които се установяват посочените обстоятелства.
(3) (Изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) В заключителната част на обвинителния акт се посочват: данни за самоличността на обвиняемия; правната квалификация на деянието; има ли основание за прилагане на чл. 53 от Наказателния кодекс; има ли основание за трансфер на наказателното производство; датата и мястото на съставянето на обвинителния акт и името и длъжността на съставителя.
(4) (Изм. - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г., изм. - ДВ, бр. 44 от 2018 г., изм. - ДВ, бр. 7 от 2019 г.) Към обвинителния акт се прилагат: списък на лицата, които трябва да бъдат призовани за съдебното заседание; справка за взетата мярка за неотклонение, в която се посочва датата на задължаването на
truth and for bringing charges before the court, there are no grounds for termination or suspension of the criminal proceedings and no substantial violation of procedural rules has been committed. which is removable.

(2) The circumstantial part of the indictment shall indicate: the crime committed by the accused; the time, place and manner of its performance; the injured person and the amount of damage; full data on the personality of the accused, are there any conditions for application of Art. 53 of the Criminal Code; the circumstances that aggravate or mitigate the responsibility of the accused; the evidence from which the specified circumstances are established.

(3) The final part of the indictment shall specify: data on the identity of the accused; the legal qualification of the act; whether there are grounds for application of Art. 53 of the Criminal Code; whether there are grounds for transfer of the criminal proceedings; the date and place of the indictment and the name and position of the compiler.

(4) The following shall be attached to the indictment: a list of the persons to be summoned to the court hearing; a reference to the measure of restraint taken, indicating the date of detention of the accused, if the measure is detention in custody or house arrest; reference for documents and material materials; reference for the incurred expenses; reference for the security measures taken; as well as a reference for the accommodation of the children in the cases of Art. 63 para 12.

Abatement of action (dispense with prosecution)

See → Art. 243 et seq. CPC:

### Termination of criminal proceedings by the prosecutor

**Art. 243 CPC**80 (1) The prosecutor terminates the criminal proceedings:

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обвинения, ако мярката е задържане под стража или домашен арест; справка за документите и веществените материали; справка за направените разноски; справка за взетите мерки за обезпечenie; както и справка за настаняването на децата в случаите на чл. 63, ал. 12.

80 Прекратяване на наказателното производство от прокурора

**Чл. 243. Наказателно-процесуален кодекс**

(1) Прокурорът прекратява наказателното производство:

1. (доп. - ДВ, бр. 7 от 2019 г.) в случаите на чл. 24, ал. 1 и 6;

2. (изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) когато намери, че обвинението не е доказано.

(2) С постановлението прокурорът се произнася и по въпроса за веществените доказателства и отменя наложените на обвинението мерки за процесуална принуда, както и мярката за обезпечаване на гражданския иск, ако основанието за нейното налагане е отпаднало.

(3) (Нова - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Когато прекратява наказателното производство на основание чл. 24, ал. 1, т. 1 поради това, че деянието съставя административно нарушение, прокурорът изпраща материалите заедно с веществените доказателства по компетентност на съответния административнонаказващ орган.

(4) (Предишна ал. 3 - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Препис от постановлението за прекратяване на наказателното производство се изпраща на обвинява, на пострадалия или неговите наследници, или на оцененото юридическо лице, които могат да обжалват постановлението пред съответния първинстанционен съд в седемдневен срок от получаването на преписа.
1. in the cases of Art. 24, para 1 and 6;
2. when he finds that the charge has not been proven.

(2) With the decree, the public prosecutor also rules on the issue of physical evidence and cancels the measures of procedural coercion imposed on the accused, as well as the measure to secure the civil claim, if the grounds for its imposition have ceased to exist.

(3) When terminating the criminal proceedings on the basis of Art. 24, para 1, item 1 due to the fact that the act constitutes an administrative offence, the prosecutor sends the materials together with the physical evidence under the competence of the relevant administrative penal authority.

(4) A copy of the decree terminating the criminal proceedings shall be sent to the accused, the victim or his heirs, or the injured party legal entity, who can appeal the decree before the relevant court of first instance within seven days of receiving the transcript.

(5) The court considers the case alone in a closed session no later than one month from the receipt of the case, ruling on the validity and legality of the decree to terminate the criminal proceedings.

(6) With the ruling, the court may:

(5) (Предишна ал. 4, изм. - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Съдът разглежда делото еднолично в закрито заседание не по-късно от един месец от постъпване на делото, като се произнася по обосноваността и законосъобразността на постановлението за прекратяване на наказателното производство.

(6) (Предишна ал. 5 - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) С определението съдът може да:
1. потвърди постановлението;
2. измени постановлението относно основанията за прекратяване на наказателното производство и разпореждането с веществените доказателства;
3. отмени постановлението и да върне делото на прокурора със задължителни указания относно прилагането на закона.

(7) (Предишна ал. 6, изм. - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Определението по ал. 6 може да се протестира от прокурора и да се обжалва от обвинения, от неговия защитник, от пострадалите или от ощетеното юридическо лице пред съответния въззивен съд в седемдневен срок от съобщаването му.

(8) (Предишна ал. 7 - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Въззвивият съд се произнася в състав от трима съди в закрито заседание с определение, което е окончателно.

(9) (Предишна ал. 8 - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Не се съставя постановление за частично прекратяване на наказателното производство в случай, че няма привличане на някоя от лицата, интересувани със съдържанието на постановлението.

(10) (Доп. - ДВ, бр. 71 от 2013 г., предишна ал. 9 - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Когато не са били налице основанията по ал. 1, постановлението за прекратяване на наказателното производство, което не е било обжалвано от обвинения, или от пострадалите или ощетените, може служебно да бъде отменено от прокурора от по-горестоящата прокуратура.

(11) (Хова - ДВ, бр. 109 от 2008 г., предишна ал. 10 - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) При отмяна на постановлението за прекратяване на наказателното производство започва да тече нов срок по чл. 234 за извършване на разследването.

(12) (Нова - ДВ, бр. 103 от 2020 г.) Алинея 10 не се прилага за постановленията на европейския прокурор и европейските делегирани прокурори.

(13) (Нова - ДВ, бр. 16 от 2021 г.) Алинея 10 не се прилага за постановленията на прокурора по разследването срещу главния прокурор или негов заместник.
1. confirm the decree;
2. amend the decree regarding the grounds for termination of the criminal proceedings and the disposition of the material evidence;
3. revoke the decree and return the case to the prosecutor with mandatory instructions regarding the application of the law.

(7) The definition under para 6 may be protested by the prosecutor and appealed by the accused, by his defence counsel, by the victim or by his heirs, or by the damaged legal entity before the relevant appeals court within seven days of its notification.

(8) The Court of Appeal shall rule in a panel of three judges in a closed session with a ruling that is final.

(9) A decree for the partial termination of criminal proceedings shall not be drawn up in cases of a new prosecution of the same person for the same act.

(10) When the grounds under para 1, the decree to terminate the criminal proceedings, which has not been appealed by the accused or by the victim or his heirs, or by the damaged legal entity, may be ex officio revoked by a prosecutor from the higher Prosecutor’s office. The cancellation can be carried out within two years, when the proceedings were initiated for a serious crime, and within one year – in other cases, from the issuance of the decree to terminate the criminal proceedings. In exceptional cases, the chief prosecutor may revoke the decree to terminate the criminal proceedings even after the expiration of this term.

(11) Upon annulment of the decree to terminate the criminal proceedings, the to run a new term under Art. 234 to conduct the investigation.

(12) (New – SG No 103 of 2020) Paragraph 10 does not apply to the rulings of the European prosecutor and the European delegated prosecutors.

(13) (New – SG No 16 of 2021) Paragraph 10 does not apply to the decisions of the prosecutor in the investigation against the chief prosecutor or his deputy.

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

Art. 46 CPC\textsuperscript{81} Functions of the Prosecutor in Criminal Proceedings

(1) The public prosecutor shall prosecute and maintain the prosecution for offences of a general nature.

(2) In the performance of the tasks under para 1 the public prosecutor shall:

\textsuperscript{81} Функции на прокурора в наказателното производство

Чл. 46. Наказателно-процесуален кодекс

(1) Прокурорът повдига и поддържа обвинението за престъпления от общ характер.

(2) В изпълнение на задачите по ал. 1 прокурорът:

1. ръководи разследването и осъществява постоянен надзор за законосъобразното му и своевременно провеждане като наблюдаващ прокурор;

2. може да извършва разследване или отделни действия по разследването и други процесуални действия; […].
1. shall direct the investigation and exercise constant supervision for its lawful and timely conduct as a supervising prosecutor;
2. may carry out an investigation or individual investigative actions and other procedural actions; […]

Art. 52 CPC Investigative bodies
Investigative bodies shall be:
1. investigators;
2. the employees of the Ministry of Interior, appointed to the position of “investigating police officer” and the employees of the Customs Agency, appointed to the position of “investigating customs inspector”;
3. the police authorities in the Ministry of the Interior and the customs authorities in the Customs Agency – in the cases provided for in this Code.

(2) When carrying out the investigation, the investigative bodies under para 1 item 1 have the rights under Art. 46 para 2 item 2.

(3) The investigative bodies shall act under the direction of and prosecutorial oversight.

Art. 107 CPC Collection and verification of evidence
(1) The bodies of the pre-trial proceedings shall collect the evidences ex officio or at the request of the interested persons.
The court shall collect the evidence on the requests made by the parties, and on its own initiative – when this is necessary for revealing the objective truth. The court and the bodies of the pre-trial proceedings shall collect and verify both the evidences, which expose the accused or aggravate his responsibility, and the evidences, which justify the accused or mitigate his responsibility. The collection of evidence may not be refused only because the request has not been made within a certain term. All collected evidence shall be subject to careful examination.

Art. 193 CPC
Bodies of pre-trial proceedings
The bodies of the pre-trial proceedings are the prosecutor and the investigative bodies.

Art. 196 CPC
Guidance and supervision of the prosecutor over the investigation
1. continuously control the course of the investigation, examining and checking all materials in the case;
2. give instructions on the investigation;
3. participate in the performance or perform actions of the investigation;
4. remove the investigative body, if it has committed a violation of the law or cannot ensure the proper conduct of the investigation;
5. seize the case from one investigative body and transfer it to another;
6. instructs the relevant bodies of the Ministry of Interior, the Commission for Combating Corruption and Confiscation of Illegally Acquired Property, the State Agency for National Security or the Customs Agency to perform certain actions related to the detection of the crime;
7. отменя по свой почин или по жалба на заинтересованите лица постановленията на разследващия орган. (2) Освен правомощията по ал. 1, наблюдаващият прокурор непосредствено следи за законосъобразното провеждане на разследването и приключването му в определения срок.
7. annul on its own initiative or upon appeal of the interested persons the decrees of the investigative body.

(2) In addition to the powers under para 1, the supervising prosecutor shall directly monitor the lawful conduct of the investigation and its completion within the determined term.

**Art. 212 CPC**

**Formation of pre-trial proceedings**

(1) Pre-trial proceedings are initiated by a decree of the prosecutor.

(2) The pre-trial proceedings are considered to have been initiated with the drawing up of the protocol for the first action of the investigation, when an inspection is carried out, including a certification, search, seizure and questioning of witnesses, if their immediate execution is the only possibility for collecting and preserving evidence, as well as when a search is carried out under the conditions and according to the procedure of Art. 164.

(3) The investigative body that carried out the action under para 2, notifies the prosecutor immediately, but not later than 24 hours.

**Art. 218 CPC**

**Assistance from other bodies**

(1) When necessary, the investigative body may request from another investigative body to perform separate actions on the investigation.

(2) When the investigative body requests, the bodies of the Ministry of Interior shall be obliged to render assistance to it in carrying out separate actions on the investigation.

**Urgent measures might be:**

Art. 56, 57, 58 et seq. (Detention)

Art. 72 (securing the fine, confiscation and forfeiture of property to the State)

Art. 109 et seq. (physical evidence)

Art. 115 et seq. (oral evidence)

Art. 155 et seq. (inspection)

Art. 159 et seq. (search and seizure procedures)

Art. 172 et seq. (physical evidence obtained using special intelligence tools)

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86 Образуване на досъдебното производство

Чл. 212. Наказателно-процесуален кодекс

(1) Досъдебното производство се образува с постановление на прокурора.

(2) (Изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) Досъдебното производство се счита за образувано със съставянето на протокола за първото действие по разследването, когато се извършва оглед, включително освидетелствуване, претърсване, изземване и разпит на свидетели, ако незабавното им извършване е единствената възможност за събиране и запазване на доказателства, както и когато се извършва обиск при условията и по реда на чл. 164.

(3) Разследващият орган, извършил действието по ал. 2, уведомява прокурора незабавно, но не по-късно от 24 часа.

87 Съдействие от други органи

Чл. 218. Наказателно-процесуален кодекс

(1) Когато е необходимо, разследващият орган може да поиска от друг разследващ орган да извърши отделни действия по разследването.

(2) Когато разследващият орган поиска, органите на Министерството на вътрешните работи са длъжни да му окажат съдействие при извършване на отделни действия по разследването.
Case Study 1 Pre-trial investigations by Sofia’s City Prosecutor’s Office

Case-Study (EPPO Case 2022)

“The manager of a wine company in Plovdiv (Bulgaria) has been convicted of attempted fraud relating to EU funds aimed at promoting the export of wine outside of the European Union. The manager submitted forged documents during the funding application and was sentenced to one year of imprisonment and a fine. Almost €400 000 worth of damages to the EU budget was prevented. This is the first conviction in an investigation by the European Public Prosecutor’s Office (EPPO) in Bulgaria.

In March 2020, the wine company applied for €390 452 in EU subsidies under the EU’s 2019–2023 National Support Programme in the Wine and Vineyard Sector, in order to promote the export of their wines to Russia, Belarus and Vietnam from 2021 until 2023.

In order to meet the requirements for receiving financial aid, each prospective beneficiary had to present three comparable, independent offers to the State Fund Agriculture (SFA). During their checks, the SFA discovered that two of the three companies presented had, in fact, not issued any offer at all. For both offers, the signatures had been copied illegally.

The SFA reported this irregularity to Bulgaria’s Supreme Cassation Prosecutor’s Office, and the Sofia City Prosecutor’s Office initiated pre-trial proceedings. After starting its operations in 2021, the EPPO took over the case.”

Summary: A Bulgarian wine company manager was sentenced to one year in prison and fined for attempted fraud involving EU funds meant for exporting wine outside the EU. The investigation by EPPO found that the company sought subsidies for promoting wine exports but presented false documents.

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

According to the notification from the Bulgarian Government, the authorities displayed below, can be contacted:

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“All prosecutors of the Prosecutor’s Office of the Republic of Bulgaria; All investigators of the National Investigation Service, the regional investigation departments at the regional prosecution offices, and the investigation department at the Specialised prosecution office – until 27th of July 2022.

All investigators of the National Investigation Service and the regional investigation departments at the regional prosecution offices – with effect from 27th of July 2022.

Ministry of Interior:
- National Police General Directorate;
- General Directorate for Combating Organised Crime;
- Border Police General Directorate;
- National Customs Agency – Central Customs Directorate.”
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e) Provisions regarding the finalization of the national investigation, para 7

Art. 235 CPC describes the time limits for investigation by national prosecution offices.

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Art. 235. CPC After the final completion of the investigation, the investigating body shall immediately send the case to the prosecutor with a written opinion and shall attach: list of persons to be summoned in court; a reference to the measure of restraint taken, indicating the date of detention of the accused, if the measure is detention in custody or house arrest; reference to the documents and physical evidence; reference for the incurred expenses and reference for the taken measures for security, as well as reference for the accommodation of the children in the cases of Art. 63 para 12.
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3. **Article 28 Conducting the investigation**

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

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

1 As part of the introduction to Art. 28 EPPO Regulation in this compendium part, which is relevant to all EDPs and also affects the academic and political debate about specialised investigative personnel, the following can be said: Conducting investigations is dependent on instruction relationships, whereby in contrast to the dependency in classically national systems, in the area of EU anti-fraud investigations the EPPO (i.e. the college level) has supervisory powers as it is a supranational, independent body.

2 In her speech for the first anniversary of the EPPO, given at the conference “EPPO one year in action – Towards Resolving Complexity and Bringing Added Value”⁹¹ in the Hémicycle in Luxembourg on 1st June 2022, Laura Kövesi outlined that in order to enhance the detection rates of EU fraud specialised customs units and specialised financial experts, groups of specialised EU investigators educated in the typologies of EU frauds would be needed to enhance the effectiveness of investigations. Secondly she underlined that these special units could be set up tomorrow and that doing so depended only on political will.⁹²

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⁹¹ Organized by the University of Luxembourg (Prof. Katalin Ligeti), ECLAN and the EPPO.
As long as there are no special units in all countries as the first Chief Prosecutor of the EPPO requested, the detection rates depend on the conduct of investigations and the cooperation with established national authorities\(^{93}\) – 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.

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.

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.

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.

a) The handling EDP carrying out the investigative measures, para 1

The Bulgarian EDPs can carry out the investigative measures on their own (see → Art. 26).

\(^{93}\) See Skinns 2019 focusing on the police as the common investigation authority with discretionary powers.
b) **Instructions and assignment of investigative measures for “those national authorities”**

**List 1 – “Those national authorities” instructed and assigned with investigative measures in Bulgaria: Art. 28 EPPO Regulation**

| Acc. to Art. 193 CPC the bodies of the pre-trial proceedings are: | the Public Prosecutor and investigative bodies |
| See above A.II. Institutions → Organisation of the criminal justice system in Bulgaria. | |

Bulgarian Notification pursuant to Art. 117 EPPO Regulation lists the following authorities:

For Art. 28 paras 1 and 4

- Investigators in the investigation department of the Specialised Prosecutor’s office; investigating officers appointed by an order of the Minister of Interior and investigating customs inspectors appointed by an order of the Minister of Finance, upon the proposal of the director of the Customs Agency – until 27th of July 2022.
- Investigators of the National Investigation Service; investigating officers appointed by an order of the Minister of Interior and investigating customs inspectors appointed by an order of the Minister of Finance, upon the proposal of the director of the Customs Agency – with effect from 27th of July 2022.

Individual actions related to the investigation of the crime can be assigned to the relevant bodies of the Ministry of Interior, of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission, the State Agency for National Security, or the Customs Agency. If needed, cooperation can also be sought by delegation from the public prosecutors, the investigators, the investigating police officers, the police authorities at the Ministry of Interior, the Customs authorities.”

It lists as well for Art. 28 para 2 EPPO Regulation the following authorities:

- Investigators in the investigation department of the Specialised Prosecutor’s Office; investigating officers appointed by an order of the Minister of Interior and investigating customs inspectors appointed by an order of the Minister of Finance, upon the proposal of the director of the Customs Agency – until 27th of July 2022.
- Investigators of the National Investigation Service; investigating officers appointed by an order of the Minister of Interior and investigating customs inspectors appointed by an order of the Minister of Finance, upon the proposal of the director of the Customs Agency - with effect from 27th of July 2022.”

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(1) Criminal and judicial police area

Police Investigation Authorities

### Investigative authorities

**Art. 52** [See above for the original language → Article 27, Urgent measures of national authorities for securing an investigation and prosecution]

(1) Investigative bodies shall be:

1. investigators;
2. employees of the Ministry of the Interior appointed to the position of “investigating police officer” and employees of the Customs Agency appointed to the position of “investigating customs inspector”;

referred to in para 1 item 1 shall have the rights referred to in Art. 46 para 2 item 2.

(3) The investigative bodies shall act under the guidance and supervision of a prosecutor.

### Allocation of cases in pre-trial proceedings between investigative bodies

**Art. 194**

(1) The investigation is conducted by investigators in the following cases:

Art. 342, para 3 v. with para 1, propositions one, two and four, Art. 343, para 3 in accordance with Art. 342, para 1, propositions one, two and four, Art. 349a, Art. 353c, Art. 356d–356k, Art. 357–360 and Art. 407–419a of the Criminal Code;
1a. for serious intentional crimes under Chapter Two, Sections I, IV, V and VIII of the special part of the Criminal Code, committed by minors;
2. for crimes committed by judges, prosecutors and investigators, by other persons with immunity, by members of the Council of Ministers or by civil servants under Art. 142, para 1, item 1 of the Act on the Ministry of Internal Affairs or under Art. 43, para 1, item 1 of the Act on the National Security State Agency, as well as by employees of the Customs Agency in their capacity as investigative bodies and by the bodies under Art. 16, para 2 of the Anti-Corruption and Asset Forfeiture Act;
3. for crimes committed abroad;
4. with factual and legal complexity, assigned to them by the administrative head of the relevant district Prosecutor’s office.

(2) The investigation of cases for crimes under Art. 334 para 2, Art. 335 para 2, Art. 341a, Art. 341b, Art. 342 para 3 v. with para 1, propositions one, two and four, Art. 343 para 3 in accordance with Art. 342 para 1, propositions one, two and four, Art. 349a, Art. 353c, Art. 356d–356j of the Criminal Code is carried out by an investigator at the National Investigation Service. The chief prosecutor or a deputy authorized by

3. за престъпления, извършени в чужбина;
4. (нова - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) с фактическа и правна сложност, възложени им от административния ръководител на съответната окръжна прокуратура.

(2) (Нова - ДВ, бр. 42 от 2015 г.) Разследването по дела за престъпления по чл. 334, ал. 2, чл. 335, ал. 2, чл. 341а, чл. 341б, чл. 342, ал. 3 вр. с ал. 1, предложения първо, второ и четвърто, чл. 343, ал. 3 вр. с чл. 342, ал. 1, предложения първо, второ и четвърто, чл. 349а, чл. 353в, чл. 356г–356к от Наказателния кодекс се извършва от следовател при Националната следствена служба. Главният прокурор или оправомощен от него заместник може да възложи разследването и по други дела по ал. 1 да бъде извършено от следовател при Националната следствена служба.
(3) (Изм. - ДВ, бр. 69 от 2008 г., доп. - ДВ, бр. 93 от 2011 г., в сила от 01.01.2012 г., предишна ал. 2 - ДВ, бр. 42 от 2015 г., доп. - ДВ, бр. 60 от 2015 г.) Извън случаите по ал. 1 разследването се извършва от разследващи полицаи, а за престъпления по чл. 234, 242, 242а и 251 от Наказателния кодекс и по чл. 255 от Наказателния кодекс по отношение на задължения за ДДС от внос и акциз – и от разследващи митнически инспектори, освен когато в извършване на престъплениято е участвал служител от Агенция “Митниците”.
(4) (Нова - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г., предишна ал. 3 - ДВ, бр. 42 от 2015 г.) Полицейските органи в Министерството на вътрешните работи могат да извършват действията по чл. 212, ал. 2, както и действия по разследването, възложени им от прокурор, следовател или от разследващи полицаи.
him may also assign the investigation in other cases under para 1 to be carried out by an investigator at the National Investigation Service.

(3) Apart from the cases under para 1, the investigation is carried out by investigating police officers, and for crimes under Art. 234, 242, 242a and 251 of the Criminal Code and under Art. 255 of the Criminal Code in relation to import VAT and excise duties – and by investigating customs inspectors, except when an employee of the Customs Agency was involved in the commission of the crime.

(4) Police bodies in the Ministry of Internal Affairs may carry out the actions under Art. 212 para 2, as well as investigative actions assigned to them by a prosecutor, an investigator or an investigating police officer.

(5) The customs authorities can carry out the actions under Art. 212 para 2 in cases of crimes under Art. 234, 242, 242a and 251 of the Criminal Code and under Art. 255 of the Criminal Code in relation to import VAT and excise duties, as well as investigative actions assigned to them by a prosecutor, an investigator or an investigative customs inspector.

(6) (New – SG No 16 of 2021, declared unconstitutional by RCS No 7 of 2021 – SG No 41 of 2021) The investigation into cases of crimes committed by the chief prosecutor or his deputy, is conducted by the prosecutor on the investigation against the chief prosecutor or his deputy.

(7) (repealed – SG No 32 of 2022).

Pre-trial bodies in cases under the competence of the European Public Prosecutor’s Office, Art. 194a.

[See above → Art. 26 Initiation of Investigations by virtue of Art. 26 para 1 EPPO Regulation].
(2) Tax area

The tax area is supervised by the Ministry of Finance and the national Revenue authority.  

Tax Investigation authorities I

| Cooperation | Art. 42. | (1) In the event that an audited or inspected person refuses the revenue authority or the public contractor to provide access to an object subject to control or refuses to present papers or other carriers of information, the revenue authorities may request assistance from the authorities of The Ministry of the Interior, including for carrying out a search or seizure according to the procedure provided for in the Criminal Procedure Code.  
(2) Seized items, papers or other information carriers are handed over by the authorities of the Ministry of Internal Affairs to the revenue authorities with a protocol and an inventory.  
(3) When, in accordance with the, evidence has been collected that is relevant for establishing tax obligations or mandatory insurance contributions, the authorities of the Ministry of the Interior, the prosecution or the investigation shall provide the revenue authorities with access to this evidence and certified copies of them. | Tax And Insurance Procedure Code/Данъчно-Осигурителен Процесуален Кодекс |

99 Съдействие  

Чл. 42.  
(1) В случай че ревизирано или проверявано лице откаже на органа по приходите или на публичния изпълнител да осигури достъп до подлежащ на контрол обект или откаже да представи книжа или други носители на информация, органите по приходите могат да поискат съдействие от органите на Министерството на вътрешните работи, включително за извършване на претърсване или изземване по предвидения за това в Наказателно-процесуалния кодекс ред.  
(2) Иззетите вещи, книжа или други носители на информация се предават от органите на Министерството на вътрешните работи на органите по приходите с протокол и опис.  
(3) Когато по реда на Наказателно-процесуалния кодекс са събрани доказателства, които имат значение за установяване на задължения за данъци или задължителни осигурителни вноски, органите на Министерството на вътрешните работи, прокуратурата или следствието осигуряват на органите по приходите достъп до тези доказателства и заверени копия от тях.
(3) Customs area

The customs area is supervised by the Customs Agency. According to Art. 10a Customs Code, the investigating customs officer conducts an investigation based on the CPC. The same Article governs the interaction between the investigative customs inspectors and the EDP’s “when carrying out the activity of investigating crimes under the competence of the European Public Prosecutor’s Office” (see below).

Customs Investigation Authorities

| Art. 10a. | (1) An investigating customs inspector is a customs officer with a higher legal education, who is not accused, tried or convicted of an intentional crime of a general nature. The circumstances regarding the presence or absence of an accusation, as well as the judicial status, are established ex officio by the appointing authority.
(2) The investigating customs inspector conducts an investigation in the cases, under the conditions and according to the procedure of the Criminal Procedure Code.
(3) Investigating customs inspectors may not be assigned other activities than the investigation of crimes.
(4) When exercising his powers, the investigative customs inspector makes decisions based on internal conviction, based on an objective, comprehensive and complete investigation of all the circumstances of the case, guided by the law.

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101 Чл. 10а. (Нов - ДВ, бр. 82 от 2011 г., в сила от 01.01.2012 г.)
(1) (Доп. - ДВ, бр. 24 от 2018 г.) Разследващ митнически инспектор е митнически служител с висше юридическо образование, който не е обвиняем, подсъдим или осъден за умилостивено престъпление от общ характер. Обстоятелствата относно наличието или липсата на обвинение, както и съдебният статус се установяват служебно от органа по назначаване.
(2) Разследващият митнически инспектор извършва разследване в случаите, при условията и по реда на Наказателно-процесуалния кодекс.
(3) На разследващите митнически инспектори не могат да се възлагат други дейности освен разследване на престъпления.
(4) При осъществяване на своите правомощия разследващият митнически инспектор взема решения по вътрешно убеждение, основано на обективно, всестранно и пълно изследване на всички обстоятелства по делото, като се ръководи от закона.
(5) Горестоящите ръководители нямат право да дават указания за извършването на действия по разследването и за съставянето на писменото мнение, както и по какъвто и да е друг начин да се намесват в разследването.
(6) (Нова - ДВ, бр. 62 от 2022 г.) Взаимодействието на разследващите митнически инспектори с европейските делегирани прокурори при осъществяване на дейността по разследване на престъпления от компетентност на Европейската прокуратура се урежда в със споразумение между министъра на финансовите и правомощията на Европейската прокуратура европейски делегирани прокурор по чл. 139а, ал. 1 от Закона за съдебната власт.
(5) Senior managers have no right to give instructions on the execution of actions on the investigation and on the preparation of the written opinion, as well as in any other way to interfere in the investigation.

(6) The interaction of the investigative customs inspectors with the European Delegated Prosecutors when carrying out the activity of investigating crimes under the competence of the European Public Prosecutor’s Office is regulated by an agreement between the Minister of Finance and authorisations from the European Prosecutor’s Office European Delegated Prosecutor under Art. 139a para 1 of the Judiciary Act.

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<tr>
<th>Criminal Procedure Code/Наказателно-Процесуален Кодекс</th>
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**Allocation of cases in pre-trial proceedings between investigative bodies**

Cf. **Art. 194 para 3, 5**

[See above → Art. 28

Criminal and judicial police area].
Visualization of Instructions and assignment of investigative measures for "those national authorities"

c) Ensuring compliance with national law

aa. Via the general investigation provisions

**Criminal Procedure Code**

**Chapter Five. Prosecutor**

**Art. 46.** Functions of the prosecutor in criminal proceedings

1. The prosecutor brings and maintains the charge for crimes of a general nature.
2. In fulfilment of the tasks under para 1 the prosecutor:
   1. leads the investigation and carries out permanent supervision for its lawful and timely conduct as a supervising prosecutor;
   2. may carry out an investigation or individual actions on the investigation and other procedural actions;
   3. participates in the court proceedings as a state prosecutor;
   4. takes measures to eliminate the committed violations of the law in accordance with the procedure established in this code and supervises the legality of the execution of coercive measures.

**102 Глава пета.**

**ПРОКУРОР**

**Функции на прокурора в наказателното производство**

**Чл. 46. Наказателно-Процесуален Кодекс**

1. Прокурорът повдига и поддържа обвинението за престъпления от общ характер.
2. В изпълнение на задачите по ал. 1 прокурорът:
   1. ръководи разследването и осъществява постоянен надзор за законосъобразното му и своевременно провеждане като наблюдаващ прокурор;
   2. може да извършва разследване или отделни действия по разследването и други процесуални действия;
   3. участва в съдебното производство като държавен обвинител;
   4. взема мерки за отстраняване на допуснатите закононарушения по реда, установен в този кодекс, и упражнява надзор за законност при изпълнение на принудителните мерки.
3. (Нова - ДВ, бр. 103 от 2020 г.) Функциите на прокурора, предвидени в този кодекс, се изпълняват и от европейския прокурор и европейските делегирани прокурори съобразно тяхната компетентност по Регламент (ЕС) 2017/1939.
4. (Доп. - ДВ, бр. 42 от 2015 г., изм. - ДВ, бр. 62 от 2016 г., в сила от 09.08.2016 г., предишна ал. 3 - ДВ, бр. 103 от 2020 г.) Прокурорът от по-горестоящата прокуратура може служебно писмено да отмени или измени постановление на прокурор от по-ниската по степен прокуратура, което не е било разгледано по съдебен ред. Неговите писменни и мотивирани указания са задължителни за тях. В тези случаи той може и сам да извърши необходимите действия по разследването и други процесуални действия.
5. (Нова - ДВ, бр. 42 от 2015 г., предишна ал. 4, изм. - ДВ, бр. 103 от 2020 г.) Прокурорът, получил указанията по ал. 4, може да направи възражение срещу тях пред прокурор от по-горестоящата прокуратура.
6. (Нова - ДВ, бр. 103 от 2020 г.) Разпоредбите на ал. 4 и 5 не се прилагат за постановленията и процесуалните действия на европейския прокурор и европейските делегирани прокурори, когато те изпълняват функции по Регламент (ЕС) 2017/1939.
7. (Предишна ал. 4 - ДВ, бр. 42 от 2015 г., предишна ал. 5, доп. - ДВ, бр. 103 от 2020 г.) Главният прокурор на Република България осъществява надзор за законност и методически ръководство върху дейността на всички прокурори, с изключение на дейността на европейския прокурор и европейските делегирани прокурори, когато те изпълняват функции по Регламент (ЕС) 2017/1939.
8. (Нова - ДВ, бр. 16 от 2021 г., обявена за противоконституционна с РКС № 7 от 2021 г. - ДВ, бр. 41 от 2021 г.) Разпоредбите на ал. 4, 5 и 7 не се прилагат, когато се извършва разследване или отделни действия по разследването и други процесуални действия от прокурора по разследването срещу главния прокурор или негов заместник.
(3) The functions of the prosecutor provided for in this code are also performed by the European prosecutor and the European delegated prosecutors in accordance with their competence under Regulation (EU) 2017/1939.

(4) A prosecutor from a higher Prosecutor’s office may ex officio cancel or amend a decree of a prosecutor from a lower Prosecutor’s office, which has not been considered in court. His written and reasoned instructions are binding on them. In these cases, he can perform the necessary investigation and other procedural actions himself.

(5) The prosecutor who received the instructions under para 4, may object to them before a prosecutor from the higher Prosecutor’s office.

(6) The provisions of para 4 and 5 do not apply to the rulings and procedural actions of the European prosecutor and the European delegated prosecutors when they perform functions under Regulation (EU) 2017/1939.

(7) The Chief Prosecutor of the Republic of Bulgaria supervises the legality and methodical management of the activities of all prosecutors, with the exception of the activities of the European Prosecutor and the European Delegated Prosecutors, when they perform functions under Regulation (EU) 2017/1939.

(8) (New – SG No 16 of 2021, declared unconstitutional by RKS No 7 of 2021 – SG No 41 of 2021) The provisions of para 4, 5 and 7 do not apply when an investigation or individual actions on the investigation and other procedural actions by the prosecutor on the investigation against the chief prosecutor or his deputy are carried out.

Investigating Bodies
Art. 52 [See above → Article 27, Urgent measures of national authorities for securing an investigation and prosecution]

Part three. Pre-Trial Proceedings
Chapter Sixteen. General
Cases in which pre-trial proceedings are conducted
Art. 191. Pre-trial proceedings are conducted in cases of a general nature.

103 Част трета.
ДОСЪДЕБНО ПРОИЗВОДСТВО
Глава шестнадесета.
ОБЩИ ПОЛОЖЕНИЯ
Дела, по които се провежда досъдебно производство
Чл. 191. Наказателно-Процесуален Кодекс
Досъдебно производство се провежда по дела от общ характер.
Stages of pre-trial proceedings
Art. 192. Pre-trial proceedings include investigation and actions of the prosecutor after the investigation is completed.

Bodies of pre-trial proceedings
Art. 193. Bodies of the pre-trial proceedings are the prosecutor and the investigative bodies.

Allocation of cases in pre-trial proceedings between investigative bodies
Art. 194 [See above → Art. 28]

Bodies of pre-trial proceedings in cases under the competence of the European Public Prosecutor's Office
Art. 194a [See above → Art. 26 Initiation of Investigations by virtue of Art. 26 para 1 EPPO Regulation.]

Prosecutor’s guidance and supervision of the investigation
Art. 196. (1) When exercising leadership and supervision, the prosecutor may:
1. continuously supervises the progress of the investigation by studying and checking all materials in the case;
2. gives instructions on the investigation;
3. participates in carrying out or performs actions on the investigation;

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104 Стадии на досъдебното производство
Чл. 192. Наказателно-Процесуален Кодекс
Досъдебното производство включва разследване и действия на прокурора след приключване на разследването.

105 Органи на досъдебното производство
Чл. 193. Органи на досъдебното производство са прокурорът и разследващите органи.

106 Ръководство и надзор на прокурора върху разследването
Чл. 196. Наказателно-Процесуален Кодекс
(1) При упражняване на ръководство и надзор прокурорът може да:
1. контролира непрекъснато хода на разследването, като проучва и проверява всички материали по делото;
2. дава указания по разследването;
3. участва при извършването или извършва действия по разследването;
4. отстранява разследващия орган, ако е допуснал нарушение на закона или не може да осигури правилното провеждане на разследването;
5. изземва делото от един разследващ орган и го предава на друг;
6. (доп. - ДВ, бр. 109 от 2008 г., доп. - ДВ, бр. 93 от 2011 г., в сила от 01.01.2012 г., доп. - ДВ, бр. 7 от 2018 г.) възлага на съответните органи на Министерството на вътрешните работи, на Комисията за противодействие на корупцията и за отнемане на незаконно придобитото имущество, на Държавна агенция “Национална сигурност” или на Агенция “Митниците” извършването на отделни действия, свързани с разкриване на престъпленията;
7. отменя по свой почин или по жалба на заинтересовани лица постановленията на разследващия орган.
(2) Освен правомощията по ал. 1, наблюдаващият прокурор непосредствено следи за законосообразното провеждане на разследването и приключването му в определения срок.
4. removes the investigative body if it has committed a violation of the law or cannot ensure the proper conduct of the investigation;
5. seizes the case from one investigative body and transfers it to another;
6. entrusts the relevant bodies of the Ministry of Internal Affairs, the Commission for Countering Corruption and the Confiscation of Illegally Acquired Property, the State Agency “National Security” or the “Customs Agency” to carry out separate actions related to the detection of the crime;
7. annuls the rulings of the investigative body on its own initiative or on the complaint of the interested parties1, the supervising prosecutor immediately monitors the lawful conduct of the investigation and its completion within the specified period.

**Mandatory instructions of the prosecutor**

**Art. 197** The written instructions of the prosecutor to the investigative body are mandatory and not subject to objection.

**Acts of the bodies of pre-trial proceedings**

**Art. 199** (1) In the pre-trial proceedings, the prosecutor and the investigating authorities issue rulings.
(2) Each decree contains: data on the time and place of its issuance, on the authority that issued it, on the case on which it was issued; motives; dispositive and signature of the authority that issues it.

**Duty to ensure a lawful and timely investigation**

**Art. 203** (1) The investigative body shall take all measures to ensure the timely, lawful and successful conduct of the investigation.

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107 Задължителни указания на прокурора

**Чл. 197. Наказателно-Процесуален Кодекс**

Писмените указания на прокурора до разследващия орган са задължителни и не подлежат на възражение.

108 Актове на органите на досъдебното производство

**Чл. 199. Наказателно-Процесуален Кодекс**

(1) В досъдебното производство прокурорът и разследващите органи се произнасят с постановления.
(2) Всяко постановление съдържа: данни за времето и мястото на издаването му, за органа, който го издава, за делото, по което се издава; мотиви; диспозитив и подпис на органа, който го издава.

109 Задължение за осигуряване на законосъобразно и своевременно разследване

**Чл. 203. Наказателно-Процесуален Кодекс**

(1) Разследващият орган взема всички мерки за осигуряване на своевременно, законосъобразно и успешно извършване на разследването.
(2) Разследващият орган е длъжен в най-кратък срок да събере необходимите доказателства за разкриване на обективната истина, като се ръководи от закона, вътрешното си убеждение и указанията на прокурора.
(3) (Нова - ДВ, бр. 109 от 2008 г., изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) При промяна в компетентността и в други случаи, когато един разследващ орган по чл. 52, ал. 1 бъде заменен с друг, извършените действия по разследването и други процесуални действия запазват процесуалната си стойност.
(2) The investigative body is obliged to collect the necessary evidence to reveal the objective truth as soon as possible, being guided by the law, its inner conviction and the instructions of the prosecutor.

(3) Upon a change in competence and in other cases when an investigator authority under Art. 52 para 1 is replaced by another, the performed actions of the investigation and other procedural actions retain their procedural value.

(4) The investigative body systematically reports to the prosecutor on the progress of the investigation, discussing with him the possible versions and all other issues of importance for the lawful and successful conclusion of the investigation.

(5) The investigative body shall carry out actions related to the investigation and other procedural actions also at the time when the case is sent to the court in connection with a measure of procedural coercion.

Art. 217b All procedural actions carried out by a competent authority of the European Prosecutor’s Office in accordance with Regulation (EU) 2017/1939 have in the Republic of Bulgaria the procedural value of actions carried out by a Bulgarian authority.

Actions before presenting the investigation

Art. 226 (1) When it finds that all investigative actions necessary to reveal the objective truth have been carried out, the investigative body reports the case to the prosecutor.

(2) The prosecutor checks whether the investigation was conducted in a lawful, objective, comprehensive and complete manner.

(3) When the prosecutor establishes that a substantial violation of the procedural rules was committed during the investigation, or that the evidence necessary to reveal the

(4) (Предишна ал. 3 - ДВ, бр. 109 от 2008 г.) Разследващият орган системно докладва на прокурора за хода на разследването, като обсъжда с него възможните версии и всички други въпроси от значение за законосъобразното и успешно приключване на разследването.

(5) (Предишна ал. 4 - ДВ, бр. 109 от 2008 г.) Разследващият орган извършва действия по разследването и други процесуални действия и по времето, когато делото е изпратено в съда във връзка с мярка за процесуална принуда.

110 Процесуални действия, извършени от Европейската прокуратура

Чл. 217б. Наказателно-Процесуален Кодекс
(Нов - ДВ, бр. 103 от 2020 г.) Всички процесуални действия, извършени от компетентен орган на Европейската прокуратура в съответствие с Регламент (ЕС) 2017/1939, имат в Република България процесуалната стойност на действия, извършени от български орган.

111 Действия преди предявяване на разследването

Чл. 226. Наказателно-Процесуален Кодекс
(1) Когато намери, че са извършени всички действия по разследването, необходими за разкриване на обективната истина, разследващият орган докладва делото на прокурора.

(2) Прокурорът проверява дали разследването е проведено законосъобразно, обективно, всестранно и пълно.

(3) Когато прокурорът установи, че при разследването е допуснато съществено нарушение на процесуалните правила или че не са събрани доказателствата, необходими за разкриване на обективната истина, или че се налага ново привличане, той сам извършва необходимите действия или указва на разследващия орган да ги извърши.
objective truth was not collected, or that a new investigation is required, he himself carries out the necessary actions or instructs the investigative body to do them performed.

### Tax and Insurance Procedure Code

**Art. 42** Cooperation [See above → Art. 28 b) (2).]

### Evidence collected by other control bodies

**Art. 47** When carrying out an audit or inspection, the revenue authority that carries it out may request in writing from other control authorities the performance of actions with a view to gathering evidence for establishing obligations or administrative criminal liability.

### Customs Act

**Art. 15** (1) Customs Agency:

1. participates in the development and implementation of the Union’s customs policy, including the preparation of the Union’s international treaties relating to customs matters;

2. carries out administrative customs cooperation and mutual customs assistance between the Member States in accordance with Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure correct implementation of the legislation in the field of customs and agricultural matters, 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, drawn up in Brussels on...
December 18, 1997 (ratified by law – SG No 84 of 2006), as well as on the basis of bilateral and multilateral agreements;
3. carries out administrative cooperation and mutual customs assistance with countries outside the Union on the basis of the Union’s free trade agreements and bilateral arrangements for mutual assistance in the customs area;
4. carries out international customs relations other than those under items 2 and 3;
5. ensures protection of economic and financial interests by maintaining an appropriate balance between the application of control criteria and the provision of facilities to legal commercial operators;
6. process, analyze, store and provide information regarding customs activity;
7. ensures the qualification and retraining of customs officials, using the training modules and tools created at the European and national level;
8. disposes of goods seized and abandoned for the benefit of the state in proceedings conducted by the customs authorities, including those concluded with a judicial act, as well as with seized goods in the cases provided for in this law;
9. carries out cooperation and interaction with other state bodies and organizations, and the conditions and procedure for interaction are regulated by joint instructions;
10. builds, maintains and operates secure, integrated, interoperable and accessible electronic data exchange systems within its competence.

(2) The customs authorities:

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114 3. осъществява административно сътрудничество и взаимна митническа помощ с държави извън Съюза на основание на споразуменията на Съюза за свободна търговия и на двустранни договорености за взаимна помощ в митническата област;
4. осъществява международните митнически връзки извън тези по т. 2 и 3;
5. осигурява защита на икономическите и финансовите интереси, като поддържа уместен баланс между прилагането на критерите за контрол и предоставяне на улеснения на легалните търговски оператори;
6. обработва, анализира, съхранява и предоставя информация относно митническата дейност;
7. осигурява квалификацията и преквалификацията на митническите служители, като използва създадените на европейско и национално ниво учебни модули и инструменти;
8. се разпорежда с отнети и изоставени в полза на държавата стоки по производства, водени от митническите органи, включително завършили със съдебен акт, както и със задържани стоки в случаите, предвидени в този закон;
9. осъществява сътрудничество и взаимодействие с други държавни органи и организации, като условията и редът за взаимодействие се уреждат със съвместни инструкции;
10. изгражда, поддържа и експлоатира сигурни, интегрирани, оперативно съвместими и достъпни електронни системи за обмен на данни в рамките на своята компетентност.

115 (2) Митническите органи:
1. (изм. - ДВ, бр. 58 от 2016 г.) осъществяват митнически надзор и извършват контрол върху стоките, превозвите средства и лицата на територията на Република България;
2. (изм. - ДВ, бр. 58 от 2016 г.) изискват обезпечаване на мита, такси и други публични държавни вземания;
3. (изм. - ДВ, бр. 60 от 2015 г., изм. - ДВ, бр. 58 от 2016 г.) прилагат, в рамките на своята компетентност, поръчва в законодателството на Съюза мерки за въвеждане на или извеждане от митническата територия на Съюза стоки, проитяващи от общата търговска политика и другите общи политики на Съюза, свързани с опазването на обществената морал, обществения ред или обществената сигурност, опазването на здравето на хората и на животните, защитата на растенията, опазването на околната среда, защитата на националното богатство, имаше художествена, историческа или археологическа стойност, изпълнение на
1. carry out customs supervision and carry out control over goods, vehicles and persons on the territory of the Republic of Bulgaria;
2. require security of customs duties, fees and other public state receivables;
3. apply, within their competence, measures adopted in the legislation of the Union for imports into or exports from the customs territory of the Union goods resulting from the common commercial policy and other common policies of the Union related to the protection of public morality, public order or public security, the protection of human and animal health, the protection of plants, the protection of the environment, the protection

merki за опазване и управление на рибните ресурси, включително мерки, свързани с контрол на прекурсори за производство на наркотици и на парични средства;
4. (отм. - ДВ, бр. 58 от 2016 г.)
5. (изм. и доп. - ДВ, бр. 63 от 2000 г., изм. - ДВ, бр. 37 от 2003 г., изм. - ДВ, бр. 82 от 2011 г., в сила от 01.01.2012 г., доп. - ДВ, бр. 60 от 2015 г.) осъществяват митническо разузнаване за противодействие на митническите и валутните нарушения, нарушеннята на акцизното законодателство и престъпленията в случаите, предвидени в чл. 194, ал. 3 от Наказателно-procsесуалния кодекс;
6. организират и осъществяват дейността за предотвратяване и разкриване на незаконния трафик на наркотични вещества и прекурсори;
7. осъществяват валутен контрол в рамките на предоставената им със закон компетентност;
8. издават решения за прилагането на митническите разпоредби;
10. (нова - ДВ, бр. 63 от 2000 г.) осъществяват дейност по усъвършенстване на управлението на нарушенията и налагането на административни наказания;
11. (нова - ДВ, бр. 63 от 2000 г., доп. - ДВ, бр. 28 от 2008 г.) участват при осъществяване на оперативно-издирвателна дейност съвместно с органите на Министерството на вътрешните работи при условията и по реда на Закона за Министерството на вътрешните работи и с органите на Държавна агенция “НАЦИОНАЛНА СИГУРНОСТ” при условията и по реда на Закона за Държавна агенция “Национална сигурност”;
12. (нова - ДВ, бр. 37 от 2003 г.) прилагат мерки за граничен контролн контрол за защита на права върху интелектуалната собственост;
13. (нова - ДВ, бр. 82 от 2011 г., в сила от 01.01.2012 г.) осъществяват разследване или отделни действия по разследването на престъпления в случаите, при условията и по реда на Наказателно-procsесуалния кодекс;
14. (нова - ДВ, бр. 60 от 2015 г.) осъществяват оперативно-издирвателна дейност за предотвратяване, разкриване и документиране на престъпления по чл. 234, 242, 242а и 251 от Наказателния кодекс и по чл. 255 от Наказателния кодекс по отношение на задължения за ДДС от внос и акцизи;
(3) (Нова - ДВ, бр. 63 от 2000 г., изм. - ДВ, бр. 28 от 2008 г., изм. - ДВ, бр. 82 от 2011 г., в сила от 01.01.2012 г.) Условията и редът за взаимодействие между митническите органи и органите на Министерството на вътрешните работи, както и с органите на Държавна агенция “НАЦИОНАЛНА СИГУРНОСТ” за предотвратяване, разкриване и документиране на престъпленията се уреждат със съвместни инструкции на министъра на финансовите, министъра на вътрешните работи и председателя на агенцията.
(3а) (Нова - ДВ, бр. 105 от 2018 г., в сила от 01.01.2019 г.) Условията и редът за взаимодействие между митническите органи и органите на Агенция „Пътна инфраструктура” за установяване, предотвратяване и санкциониране на престъпленията се уреждат със съвместна инструкция на директора на Агенция „Митничари” и управителния съвет на Агенция „Пътна инфраструктура”.
(4) (Предишна ал. 3 - ДВ, бр. 63 от 2000 г.) Митническата администрация изпълнява и други дейности, възложени и със закон.
of the national treasure having artistic, historical or archaeological value, implementa-
tion of measures for the protection and management of fish resources, including
measures related to the control of precursors for the production of drugs and cash;
4. (repealed)
5. carry out customs intelligence to counter customs and currency violations, violations
of excise legislation and crimes in the cases provided for in Art. 194 para 3 of the Crim-
inal Procedure Code;
6. organize and carry out activities for the prevention and detection of illegal trafficking
of narcotic substances and precursors;
7. carry out currency control within the competence granted to them by law;
8. issue decisions on the application of customs regulations;
9. detain goods and/or cash in all cases provided for by law, with a receipt according to
a model approved by the Minister of Finance;
10. carry out activities to establish administrative offences and impose administrative
penalties;
11. participate in the implementation of operative-search activity together with the bod-
ies of the Ministry of Internal Affairs under the conditions and in accordance with The
Act on the Ministry of Internal Affairs and with the bodies of the State Agency “National
Security” under the conditions and according to the procedure of the Act on the State
Agency “National Security”;
12. apply border control measures to protect intellectual property rights;
13. carry out an investigation or separate actions in the investigation of crimes in the
cases, under the conditions and according to the procedure of the Criminal Procedure
Code;
14. carry out operative-investigative activities for the prevention, detection and docu-
mentation of crimes under Art. 234, 242, 242a and 251 of the Criminal Code and under
Art. 255 of the Criminal Code regarding import VAT and excise duties;
15. carry out control at border checkpoints and at designated places on the republican
road network in the border zone on fulfilment of the obligation to pay the tolls under
Art. 10 of the Act on Roads, with the exception of fees under Art. 10, para 1 for the
relevant category of road vehicle that has arrived at a border checkpoint in the direction
of entering the territory of the Republic of Bulgaria and in compliance with the permit
regime for cargo and passenger transport.
(3) The conditions and procedure for interaction between the customs authorities and
the authorities of the Ministry of Internal Affairs, as well as with the authorities of the
State Agency "National Security" for the prevention, detection and investigation of vio-
lations and crimes are regulated by joint instructions of the Minister of Finance, the
Minister of internal affairs and the chairman of the agency.
(3a) The conditions and procedure for interaction between the customs authorities and the authorities of the Road Infrastructure Agency for establishing, preventing and sanctioning violations and collection of tolls is regulated by a joint instruction of the director of the Customs Agency and the management board of the Road Infrastructure Agency. (4) the customs administration also performs other activities assigned by law.

Art. 16e (1) The customs authorities shall carry out the operational and investigative activity in compliance with the statutory rights of the persons by:
1. collection, storage and processing of information;
2. taking samples for examination and examination of objects and documents;
3. identification and tracing of persons and objects;
4. carrying out cross-checks on documents.

(2) The collection of information shall be carried out by:
1. access to information holdings, archives or individual documents;
2. communication with persons;
3. investigation of establishments and persons suspected of preparing, committing or having committed offences under Articles 234, 242, 242a and 251 of the Criminal Code and under Article 255 of the Criminal Code in respect of import VAT and excise duties;
4. collection, storage and analysis of images.

Judiciary Act

Art. 3 When issuing their acts, judges, prosecutors and investigators are based on the law and the evidence collected in the case.
Art. 12.118

(1) The bodies of the judiciary are obliged to examine and resolve in accordance with the law any request submitted to them, the use of threats, insulting or obscene words being inadmissible or qualifications.

(2) The terms defined in the procedural laws, which refer to the exercise of powers of judges, prosecutors and investigators, are mandatory for them, but do not affect the rights of the parties in the process.

Administrative Offences and Penalties Act

Chapter Three. Proceedings for the Establishment of Administrative Offences, Imposition and Execution of Administrative Penalties

Section I. General Provisions

Art. 33119

(1) When a criminal prosecution is instituted for a given act by the Prosecutor’s office, administrative criminal proceedings shall not be instituted.

(2) If signs/signs of a crime have been established, the administrative criminal proceedings shall be terminated, and the materials shall be sent to the relevant prosecutor. Physical evidence and items under Art. 41 are kept by the administrative sanctioning authority until the Prosecutor’s decision.

The EDP’s should take into account that:

“[i]n Kolevi v. Bulgaria, the European Court of Human Rights emphasized that Bulgaria was the only country in the Council of Europe, which had endorsed a vertical model, without checks and balances. In other words, all decisions – whether to start or close an investigation, whether to indict someone, etc. – depend on the Prosecutor General who is traditionally faithful to the government.

118 Чл. 12. Закон За Съдебната Власт
(1) (Доп. - ДВ, бр. 11 от 2020 г.) Органите на съдебната власт са длъжни да разглеждат и разрешават в съответствие със закона всяко подадено до тях искане, като е недопустимо използването на заплаха, обидни или нецензурни думи или квалификации.

(2) Сроковете, определени в процесуалните законы, които се отнасят до осъществяване на правомощия на съди, прокурори и следователи, са задължителни за тях, но не засягат правата на страните в процеса.

119 Глава трета.
Производство по установяване на административните нарушения, налагане и изпълнение на административните наказания
Раздел I.
Общи положения
Чл. 33. Закон За Административните Нарушения И Наказания
(1) Когато за дадено деяние е възбудено наказателно преследване от органите на прокуратурата, административнонаказателно производство не се образува.
(2) (Изм. - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) При констатиране на признак/признания на извършено престъжение административнонаказателното производство се прекратява, а материалите се изпращат на съответния прокурор. Веществените доказателства и вещите по чл. 41 се пазят от административонаказващия орган до произнасянето на прокурора.
In communist times, the prosecution was considered more important than the court because it was the mouthpiece of the regime. Hence, Bulgaria’s criminal law is skewed in its favour – the prosecution has a monopoly and complete procedural control of the investigation process and the pre-trial phase, and disproportionate powers at the trial stage. Bulgaria has lost hundreds of cases for violations of Article 6 of the European Convention on Human Rights on similar facts. Instead of making amendments, which bring Bulgarian law in line with the European Convention on Human Rights and enforce the principle of the equality of arms in criminal proceedings, Bulgaria’s government carried out a number of reforms, which further limited the rights of accused people and made it almost impossible to challenge procedural violations in local courts.”

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

(1) Country specific law (justice administration)

Bulgaria has country specific legislation in this regard. It does apply if the Regulation refers to national law. The Bulgarian Prosecution Office lists a lot of documents, which are related to the internal organisation of the administration of (European) criminal justice in the country.121

(2) Specific Decrees

- Memorandum of cooperation between the Prosecutor’s Office of the Republic of Bulgaria and the Association of Banks in Bulgaria dated 13.11.2019122
- Instruction No 2 of 09/05/2018 on interaction between the Commission for Combating Corruption and for Confiscation of Illegally Acquired Property and the Prosecutor’s Office of the Republic of Bulgaria for the implementation of the activities under Chapter Nine of the bodies under Art. 16 para 2 of the Anti-Corruption and Asset Forfeiture Act123
- Rules for the organisation and forms of interaction between the Prosecutor’s Office of the Republic of Bulgaria and the NRA124

120 See in general Vassileva 2019.
122 Меморандум за сътрудничество между Прокуратурата на Република България и Асоциацията на банките в България от 13.11.2019 г.
123 Инструкция № 2 от 05.09.2018 г. за взаимодействие между Комисията за противодействие на корупцията и за отнемане на незаконно придобито имущество и Прокуратурата на Република България за изпълнение на дейностите по глава девета от органите по чл. 16, ал. 2 от Закона за противодействие на корупцията и за отнемане на незаконно придобито имущество.
124 Правила за организацията и формите на взаимодействие между прокуратурата Служба на Република България и НАП.
d) Urgent measures in accordance with national law necessary to ensure effective investigations, e.g. relating to gathering of evidence

Provisions relating to the quick gathering of evidence can be found in the Bulgarian CPC:

**Criminal Procedure Code**

**Art. 158 Certification**

(1) During the examination of a person, actions that humiliate his dignity or are dangerous to his health are not allowed.

(2) When the certified person needs to be undressed, the bearers must be of the same sex. If the official who should carry out the certification is of a different gender, the same is carried out by a doctor.

(3) An examination of a person in pre-trial proceedings is carried out with his written consent, and without such consent – with the permission of a judge of the relevant court of first instance or of the court of first instance in the area where the action is carried out, at the request of the prosecutor.

(4) In urgent cases, if this is the only possibility to collect and preserve the evidence, the authorities of the pre-trial proceedings may carry out an inspection without prior permission, and the protocol shall be submitted by the prosecutor for approval by the judge immediately, but no later than 24 o’clock.

**Authorities that decide on the search and seizure**

**Art. 161**

(1) In pre-trial proceedings, searches and seizures are carried out with the permission of a judge of the relevant court of first instance or of the court of first instance in the area where the action is taken, at the request of the prosecutor.
(2) **In urgent cases**, when this is the only possibility to collect and preserve the evidence, the authorities of the pre-trial proceedings may carry out a search and seizure even without the permission under para 1, and the report on the action taken on the investigation is submitted by the supervising prosecutor for approval by the judge immediately, but no later than 24 hours.

(3) In judicial proceedings, search and seizure are carried out by decision of the court hearing the case.

**Detention and seizure of correspondence**

**Art. 165**

(1) Detention and seizure of correspondence is allowed only when it is necessary to detect or prevent serious crimes.

(2) Detention and seizure of correspondence in pre-trial proceedings shall be carried out at the request of the prosecutor with the permission of a judge of the relevant court of first instance or of the court of first instance in the area where the action is taken.

(3) **In urgent cases, when this is the only possibility for collecting and preserving the evidence in the investigation of crimes under Art. 108a and Art. 354a of the Criminal Code, the authorities of pre-trial proceedings may detain undelivered correspondence without the permission under para 2. The supervising prosecutor immediately, but no
later than 24 hours, submits to a judge of the relevant court the protocol for the action taken together with a motivated written request for the seizure of the detained correspondence. Seizure is carried out after a written, motivated permission of the judge, who pronounces immediately, but not later than 24 hours. In the event of a refusal, the judge also rules on the retained correspondence.

(4) The detention and seizure of correspondence in court proceedings shall be carried out by decision of the court hearing the case.

(5) Detention and seizure of correspondence is carried out in accordance with the procedure of Art. 162, para 1 – 4.

(6) The provisions of para 1, 2, 4 and 5 also apply to the retention and seizure of e-mail.

**Request for use of special intelligence means**

**Art. 173**

(4) In urgent cases, when this is the only possibility for carrying out the investigation, an undercover officer may also use at the behest of the supervising prosecutor, the European prosecutor or the European delegated prosecutor. […]

See below for the entire provision → Art. 30 Para 5: National Procedures and national modalities for taking investigative measures.

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129 Искане за използване на специални разузнавателни средства

Чл. 173. Наказателно-процесуален кодекс

[…] (Изм. - ДВ, бр. 109 от 2008 г., доп. - ДВ, бр. 62 от 2022 г.) В неотложни случаи, когато това е единствената възможност за осъществяване на разследването, служител под прикритие може да се използва и по разпореждане на наблюдаващия прокурор, на европейския прокурор или европейския делегиран прокурор. Дейността на служителя под прикритие се прекратява, ако в срок до 24 часа не бъде дадено разрешение от съответния съд, който се произнася и по съхраняването или унищожаването на събранията информация. […]
4. Article 29 Lifting privileges or immunities

a) National privilege and immunity provisions, para 1

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

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

a) National privilege and immunity provisions, para 1

National privilege and immunity provisions in Art. 29 para 1 can only be seen as an obstacle from the point-of-view of EDPs. The EDPs cannot act on them on in this regard. They need to contact the Chambers, the Legal Service of the EPPO and the ECP to achieve results in this matter – if necessary. Exemplary cases have happened in 2022 in relation to Greece and Greek parliamentarians. Thus it can be concluded that the EPPO has some experience for now. Other Cases from Croatia – including mayors – have become public, too.
aa. Privilege Provisions

(1) Spousal privilege

(a) Provisions in Bulgarian law

2 Persons who may refuse to testify
Art. 119 CPC\textsuperscript{130} The spouse, ascendants, descendants, brothers and sisters of the accused and the person with whom he is de facto cohabiting may refuse to testify.

Circumstances on which the witness is not obliged to give evidence
Art. 121 CPC\textsuperscript{131} (1) A witness shall not be obliged to give evidence in respect of matters the answers to which would incriminate him, his ascendants, descendants, brothers, sisters or spouse or a person with whom he is in a de facto cohabitation.
(2) A witness shall not be questioned as to circumstances which have been entrusted to him as counsel or attorney or which have come to his knowledge as interpreter in the course of the accused’s meetings with counsel.

(b) Provisions on lifting a spousal privilege

No provision can be presented here, as there is a legislative vacuum in this area.

(2) Privilege against self-incrimination

3 The privilege against self-incrimination is particular important e.g. in customs proceed- ings (see Claes and Horseelee 2022). It is regulated in Art. 121 CPC.

4 Circumstances on which the witness is not obliged to give evidence
Art. 121 CPC [See above →Art. 29 a) aa. (1) (a) Provisions in Bulgarian law].

bb. Conclusion and Summary to the different Privileges and the lifting/waiving procedure in Bulgarian law

5 The regulation in the Constitution and in the CPC are quite equal and aim at the same telos: to give persons concerned a reason not to infringe the nemo tenetur se ipsum ac-
cusare principle. In some cases, as in the case of parliamentarians the telos is it to ensure the free, independent work for democracy and the policy, which the government pursues.

b) Immunity provisions

aa. Parliamentary privilege or immunity

**Art. 69 Bulgarian Constitution** 132 Members of the National Assembly shall not be held criminally liable for their opinions or votes in the National Assembly.

**Art. 70** 133 Bulgarian Constitution

(1) (prev. text of Art. 70 amend., SG 27/06) A Member of the National Assembly shall be immune from detention or criminal prosecution except for the perpetration of a criminal offence, and in such case the permission of the National Assembly or, in between its session, of the Chairperson of the National Assembly, shall be required. No permission shall be required when a Member is detained in flagrante delicto; the National Assembly or, in between its session, the Chairperson of the National Assembly, shall be notified forthwith.

(2) (new, SG 27/06) No permission for initiating criminal prosecution shall be required, where the Member of the National Assembly has given his consent thereto in writing.

bb. National Legislation

**Art. 69 Bulgarian Constitution** [See above → Parliamentary privilege or immunity.]

**Art. 70 Bulgarian Constitution** [See above → Parliamentary privilege or immunity.]

**Art. 147 Bulgarian Constitution** 134 (1) The Constitutional Court shall consist of 12 judges, one-third of whom shall be elected by the National Assembly, one-third shall be

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132 Чл. 69. Конституция На Република България

Народните представители не носят наказателна отговорност за изказаните от тях мнения и за гласуванията си в Народното събрание.

133 Чл. 70. Конституция На Република България

(1) (Предишен текст на чл. 70, изм. - ДВ, бр. 27 от 2006 г.) Народните представители не могат да бъдат задържани и срещу тях не може да бъде възбуждано наказателно преследване освен за престъпления от общи характер, и то с разрешение на Народното събрание, а когато то не заседава – на председателя на Народното събрание. Разрешение за задържане не се иска при заварено тежко престъпление, но в този случай незабавно се известява Народното събрание, а ако то не заседава – председателя на Народното събрание.

(2) (Нова - ДВ, бр. 27 от 2006 г.) Разрешение за възбуждане на наказателно преследване не се изисква при писмено съгласие на народния представител.

134 Чл. 147. Конституция На Република България
appointed by the President, and one-third shall be elected by a joint meeting of the judges of the Supreme Court of Cassation and the Supreme administrative court.

(2) The judges of the Constitutional Court shall be elected or appointed for a period of nine years and shall not be eligible for re-election or re-appointment. The make-up of the Constitutional Court shall be renewed every three years from each quota, in a rotation order established by law.

(3) The judges of the Constitutional Court shall be lawyers of high professional and moral integrity and with at least fifteen years of professional experience.

(4) The judges of the Constitutional Court shall elect by secret ballot a Chairman of the Court for a period of three years.

(5) The status of a judge of the Constitutional Court shall be incompatible with a representative mandate, or any state or public post, or membership in a political party or trade union, or with the practicing of a free, commercial, or any other paid occupation.

(6) A judge of the Constitutional Court shall enjoy the same immunity as a Member of the National Assembly.

cc. Provisions on the lifting of immunities

Art. 7 Bulgarian Constitution
[See above → Parliamentary privilege or immunity.]

Art. 148 Bulgarian Constitution\(^{135}\) (1) The mandate of a judge of the Constitutional Court shall expire upon any of the following occurrences:

(1) Конституционният съд се състои от 12 съдии, една трета от които се избират от Народното събрание, една трета се назначават от президента, а една трета се избират на общо събрание на съдие от Върховния касационен съд и Върховния административен съд.

(2) Мандатът на съдие от Конституционния съд е 9 години. Те не могат да се избират повторно на тази длъжност. Съставът на Конституционния съд се обновява през три години от всяка квота по ред, определен със закон.

(3) За съдии в Конституционния съд се избират юристи с висок професионален и нравствен кацания, най-малко с петнадесетгодишен юридически стаж.

(4) Съдие от Конституционния съд избират председател на съда с тайно гласуване за срок от три години.

(5) Положението на член на Конституционния съд е несъвместимо с представителен мандат, със заемане на държавна или обществена длъжност, с членство в политическа партия или синдикат и с упражняването на свободна, търговска или друга платена професионална дейност.

(6) Членовете на Конституционния съд се ползват с имунитета на народните представители.

Чл. 148. Конституция на Република България
(1) Мандатът на съдия в Конституционния съд се прекратява при:
1. изтичане на определения срок;
2. подаване на оставка пред Конституционния съд;
3. влизане в сила на присъда, с която е наложено наказание лишаване от свобода за умышлено престъпление;
4. фактическа невъзможност да изпълнява задълженията си повече от една година;
5. несъвместимост с длъжности и дейности по чл. 147, ал. 5;
6. смърт.

(2) Конституционният съд снема имунитета и установява фактическата невъзможност на съдие да изпълняват задълженията си с тайно гласуване и с мнозинство най-малко две трети от всички съдии.
1. the expiry of the term of office;
2. resignation submitted before the Constitutional Court;
3. entry into force of a final sentence imposing imprisonment for an intentional criminal offence;
4. permanent de facto inability to perform his duties for more than a year;
5. incompatibility with an office or activity referred to in Art. 147 para 5.
6. death.

(2) The Constitutional Court shall lift the immunity of a judge or establish his de facto inability to perform his duties by a secret ballot requiring a majority of at least two-thirds of the votes of all justices.

(3) Where the mandate of a Constitutional judge is terminated, a new judge from the same quota shall be appointed or elected within one month.

**Action against persons with immunity**

**Art. 5 CPC**

Regarding persons with immunity in relation to the criminal jurisdiction of the Republic of Bulgaria, the procedural actions provided for in this code shall be carried out in accordance with the norms of international law.

**c) Immunities and Privileges under union law, para 2**

Union law differs from national law and is not researched here in-depth. **Protocol No 7) on the privileges and immunities of the European Union** (OJ C 326, 26.10.2012, p. 266–272)**137** will apply if the immunity or a privilege of a Union official needs to be lifted.

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(3) При прекратяване на мандата на съдия от Конституционния съд в едномесечен срок на негово място се избира друг от съответната квота.

Действие спрямо лица с имунитет

Чл. 5. Наказателно-Процесуален Кодекс

Спрямо лица с имунитет по отношение на наказателната юрисдикция на Република България процесуалните действия, предвидени в този кодекс, се извършват в съответствие с нормите на международното право.

III. National Law applicable in EPPO Investigation with Special Focus on Investigation Measures

[...]  
SECTION 2  
Rules on investigation measures and other measures

1. Article 30 Investigation measures and other measures

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

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b) Investigation measures ...............................152

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Limitation for offences of Para 1(e) and (f) ............ 199

e) Para 4: Any other measure(s) in the EDP’s Member State ................................. 199

f) Para 5: National Procedures and national modalities for taking investigative measures .......................... 199

aa. In relation to searches, para 1(a) ................................. 200

bb. In relation to Para 1(e) .................................................. 202

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.

1 Art. 30 EPPO Regulation contains many possibilities to discover EU frauds and includes intrusive and effective means of investigative tools. Conducting the investigations, it is important to closely obey the law and follow the details. The following provisions from the Criminal Procedure Code of Bulgaria is not “law in the books” but rather the fundamental requisite to combat EU frauds in praxi.

Be aware that Bulgarian theory differentiates:
- evidence (factual data and material evidence)
- evidence means/proofs (voice proofs - explanations of the defendant and witnesses’ testimonies; material proofs – pictures, audio, video and cinematographic records, records on a computer information data carrier, plans, schemes etc.; written proofs- the records of the action of investigation, OLAF reports, other documents etc.)
- methods of evidencing - interrogation, search and seizure, expert examination, inspection, special intelligence means (observation, tapping, surveillance, marked items, etc.) etc.

2 A short analysis of the cases that the Regional Office dealt with show the following: The cited cases and their details have been given above in the Section on the Collection of Cases.

3 In the practice and procedural documentation, this differentiation is not strictly observed.
1. In the Court Record for approving the Agreement between the European Delegated Prosecutor and the Defender of the accused for a crime under Art. 248a, para 3, in connection with para 2 of the Criminal Code – presenting false information by a person who manages and represents a legal person to receive resources from funds belonging to the EU, the evidence, the evidence means, and methods of evidencing are not enlisted. However, it should be noted that a prerequisite of the Settlement of the case by agreement is the defendant’s confession. But the accusation and the verdict may not be grounded only on this confession (→ Art. 116 of the Criminal Procedure Code).

2. The indictment by the European delegated prosecutor for a crime under Art. 248a, para 2, sentence 1, in connection with para 1 and for a crime under Art. 248a, para 3, sentence 1, in connection with para 2, in connection with para 1 of the Criminal Code – presenting false information to obtain crediting and to receive resources from funds belonging to the EU, is based on the evidence, containing in the following evidence means and collected by the following methods of evidencing:

- the submitted application, the table of plots used and the prepared orthophoto maps
- numerous witness testimonies
- court-accounting expert examination
- interrogations of experts
- other written proofs – the records of the actions of investigation, other documents, etc.

3. The First instance judgement, delivered by the Specialized Criminal Court, for a crime under Art. 304b, para 1 of the Criminal Code – for requesting and accepting money which is not due in order to exert influence in taking a decision by an official is grounded on numerous pieces of evidence, and a large spectrum of methods of evidencing is used:

- Different ‘Operative Methods’ – a part of Special Intelligence Means – have been applied dully – observation, tapping, surveillance, and marking of banknotes. Relevant material and written proofs, e.g. audio and video recordings, have been prepared.
- The use of marked banknotes with chemicals logically led to chemical expert examination of the traces discovered by inspecting the accused on his hands; interrogations of the experts followed.
- A search of a person on the spot and further search and seizure actions have been conducted in the car, home and the office of the accused; mobile phones, a computer and a flash memory have been seized.
- This evidence has been further explored through forensic technical expert examination and interrogations of experts.
- Witness testimonies have been used widely.
- Records of various actions of investigation are attached.
7 With this knowledge in mind, the exploration and analysis of the investigative measures becomes more visible and it is clear why extensive powers are important. They are the only possible way to obtain evidence, which persuades a court in an EPPO case. Likewise, the lawyers have to pay attention to the heavy measures, which frequently infringe the fundamental rights of the suspect if they are not controlled in respect of their proportionality.

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

aa. Adaption Law of the Member State

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

bb. Provision in the CPC

8 The Bulgarian CPC offers a wide range of investigative measures in order to gather evidence for offences and crimes to the detriment of the Union’s financial interests.

b) Investigation measures

aa. Para 1(a)

(1) Search measures

(a) Search any premises or land

9 Purpose of inspection

Art. 155 CPC\textsuperscript{138} (1) The court and the bodies of the pre-trial proceedings carry out an inspection of localities, premises, objects and persons in order to reveal, immediately examine and preserve in accordance with the procedure established in this code, traces of the crime and other data necessary for clarification of the circumstances of the case.

\textsuperscript{138} Цел на огледа

Чл. 155. Наказателно-процесуален кодекс

(1) Съдът и органиите на досъдебното производство извършват оглед на места, собствености, предмети и лица с цел да разкрият, непосредствено да изследват и да запазят по реда, установен в този кодекс, следите от престъплението и други данни, необходими за изясняване на обстоятелствата по делото.

(2) До извършване на огледа се вземат мерки да не се заличат следите от престъплението.
(2) Until the inspection is carried out, measures shall be taken not to erase the traces of the crime.

(b) Search any means of transport

There is no special provision for the search of transport means.

(c) Search any private home

Section V. Search and Seizure
Grounds and purpose of the search
Art. 160 CPC 139 (1) When there is sufficient reason to suppose that objects, books or computer information systems containing information that may be relevant to the case are found in a room or person, a search shall be carried out to discover and seize them.
(2) A search may also be carried out in order to search for a person or a corpse.

(d) Search any clothes and any other personal property

Search
Art. 164 CPC 140 (1) A search of a person in the pre-trial proceedings without the permission of a judge of the relevant court of first instance or of the court of first instance in the area where the action is carried out is allowed:
1. in detention;
2. when there is sufficient reason to believe that the persons present during the search have hidden objects or documents relevant to the case.
(2) The search is carried out by a person of the same sex in the presence of other persons of the same sex.
(3) The protocol for the action taken on the investigation shall be submitted for approval by the judge immediately, but not later than 24 hours.

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139 Основание и цел на претърсването
Чл. 160. Наказателно-процесуален кодекс
(1) Когато има достатъчно основание да се предполага, че в някое помещение или лице се намират предмети, книжа или компютърни информационни системи, съдържащи информация, които могат да имат значение за делото, се извършва претърсване за откриването и изземването им.
(2) Претърсване може да се извърши и с цел да се издири лице или труп.

140 Обиск Чл. 164. Наказателно-процесуален кодекс
(1) Претърсване на лице в досъдебното производство без разрешение на съдия от съответния първокласен съд или от първокласния съд, в района на който се извършва действието, се допуска:
1. при задържане;
2. когато има достатъчно основание да се счита, че лицата, които присъстват при претърсването, са укрили предмети или книжа от значение за делото.
(2) Обискът се извършва от лице от същия пол в присъствието на поемни лица от същия пол.
(3) Протоколът за извършеното действие по разследването се представя за одобряване от съдиата незабавно, но не по-късно от 24 часа.
(e) Search any computer system

13 The right provision is Art. 160 CPC. Art. 159 CPC only relates to obtaining computer data and the potential actions of concerned persons.

**Grounds and purpose of the search**

Art. 160 CPC See above → Search any private home.

(2) Conservatory measures: necessary to preserve their integrity/ necessary to avoid the loss/ necessary to avoid the contamination of evidence

**Detention and seizure of correspondence**

Art. 165 CPC[141] (1) The detention and seizure of correspondence shall be permitted only where necessary for the detection or prevention of serious crimes.
(2) The detention and seizure of correspondence in pre-trial proceedings shall be carried out at the request of the public prosecutor with the permission of a judge of the relevant court of first instance or of the court of first instance in the area where the action takes place.
(3) In urgent cases, where this is the only possibility for the collection and preservation of evidence in the investigation of offences under Article 108a and Article 354a of the Criminal Code, the pre-trial proceedings authorities may carry out the retention of undelivered correspondence without the authorisation referred to in para 2. The supervising public prosecutor shall immediately, but not later than 24 hours, submit to the judge of the relevant court the report of the action taken together with a reasoned written request for the seizure of the seized correspondence. The seizure shall be carried out after the written reasoned authorisation of the judge, who shall rule without delay but not later

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[141] Задържане и изземване на кореспонденция

Чл. 165. Наказателно-процесуален кодекс

(1) Задържането и изземването на кореспонденция се допускат само когато това се налага за разкриване или предотвратяване на тежки престъпления.
(2) Задържането и изземването на кореспонденция в досъдебното производство се извършват по искане на прокурора с разрешение на съдия от съответния първоинстанционен съд или от първоинстанционния съд, в района на който се извършва действието.
(3) (Нова - ДВ, бр. 42 от 2015 г.) В неотложни случаи, когато това е единствена възможност за събиране и запазване на доказателствата при разследване на престъпления по чл. 108а и чл. 354а от Наказателния кодекс, органиите на досъдебното производство могат да извършат задържане на недоставена кореспонденция без разрешението по ал. 2. Наблюдаващият прокурор незабавно, но не по-късно от 24 часа, представя на съдия от съответния съд протокола за извършеното действие заедно с мотивирано писмено искане за изземване на задържаната кореспонденция. Изземването се извършва след писмено мотивирано разрешение на съдията, който се произнася незабавно, но не по-късно от 24 часа. При отказ съдията се произнася и относно задържаната кореспонденция.
(4) (Предишна ал. 3 - ДВ, бр. 42 от 2015 г.) Задържането и изземването на кореспонденция в съдебното производство се извършват по решение на съда, който разглежда делото.
(5) (Предишна ал. 4 - ДВ, бр. 42 от 2015 г.) Задържането и изземването на кореспонденция се извършва по реда на чл. 162, ал. 1–4.
(6) (Предишна ал. 5, изм. - ДВ, бр. 42 от 2015 г.) Разпоредбите на ал. 1, 2, 4 и 5 се прилагат и при задържането и изземването на електронна поща.
than 24 hours. In the event of refusal, the judge shall also rule on the seized correspond-
ence.
(4) The detention and seizure of correspondence in court proceedings shall be carried 
out by decision of the court hearing the case.
(5) The detention and seizure of correspondence shall be carried out in accordance with 
the procedure laid down in Art. 162, para 1–4.
(6) The provisions of para 1, 2, 4 and 5 shall also apply to the detention and seizure of 
electronic mail.

bb. Para 1(b) Obtainment of the production of any relevant object or document

**Obligation to hand over objects, papers, computer information data, data about 
the subscriber of a computer-information service and other data**

**Art. 159 CPC**

(1) At the request of the court or the bodies of the pre-trial proceedings, 
all institutions, legal entities, officials and citizens are obliged to preserve and hand over 
objects, papers, computer information data and other data that may be relevant in their 
possession for the case.

(2) The authorities of the pre-trial proceedings or the court may request the director of 
the European Anti-Fraud Office to provide them with the reports and the annexes to 
them documents regarding ongoing investigations of the office.

cc. Para 1(c)

(1) Obtainment of the production of stored computer data, encrypted or de-
crypted

(a) General Provisions in the CPC

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<th>Section III. Physical evidence</th>
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<tbody>
<tr>
<td>Preparation and application of physical evidence to the case</td>
</tr>
<tr>
<td><strong>Art. 125 CPC</strong></td>
</tr>
</tbody>
</table>

(1) When physical evidence cannot be separated from the place where it 
was found, as well as in other cases provided for in this code, photographs, slides, film

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142 Задължение за предаване на предмети, книжа, компютърни информационни данни, данни за 
абоната на компютърно-информационната услуга и други данни (Загл. изм. - ДВ, бр. 24 от 2015 г., в 
сила от 31.03.2015 г.)

Чл. 159. Наказателно-Процесуален Кодекс

(1) (Предишен текст на чл. 159 - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г., изм. - ДВ, бр. 24 от 2015 г., в 
сила от 31.03.2015 г.) По искане на съда или на органите на досъдебното производство всички учреждения, 
юридически лица, длъжностни лица и граждани са длъжни да запазят и предадат намиращите се у тях 
предмети, книжа, компютърни информационни данни и други данни, които могат да имат значение за 
делото.

(2) (Нова - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) Органите на досъдебното производство или съдът 
mогат да поискат от директора на Европейската служба за борба с измамите да им предостави докладите и
приложените към тях документи относно провеждани разследвания на службата.

143 Раздел III. 
Веществени доказателствени средства
recordings, video recordings, sound recordings, recordings on a computer data carrier are prepared, plans, diagrams, casts or prints.
(2) The court and the bodies of the pre-trial proceedings shall also collect and examine the material evidence prepared during the use of special intelligence means, in the cases provided for by this Code.
(3) The materials under para 1 and 2 shall apply to the case.

**Persons who prepare physical evidence**

**Art. 126 CPC**

(1) Physical evidence shall be prepared, if possible, by the persons who carry out the investigation and judicial investigative actions.
(2) When this requires special knowledge and training, a specialist – technical assistant is appointed.
(3) The persons referred to in Article 148 para 1 cannot be specialists – technical assistants.
(4) The specialist - technical assistant, performs the task assigned to him under the immediate supervision and direction of the authority that appointed him.
(5) For non-appearance or refusal to perform the task assigned to him without valid reasons, the technical assistant specialist is responsible under Art. 149 para 5 as an expert.

**Paper carrier of computer information data**

**Art. 135 CPC**

Computer data must also be recorded on paper in accordance with Art. 163 para 7.

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**Изготвяне и прилагане към делото на веществени доказателствени средства**

**Чл. 125. Наказателно-Процесуален Кодекс**

(1) Когато веществените доказателства не могат да се отделят от мястото, където са намерени, както и в други предвидени в този кодекс случаи, се изготвят fotosнимки, диапозитиви, кинозаписи, видеозаписи, звукозаписи, записи върху носител на компютърни информационни данни, планове, схеми, отливи или отпечатъци.
(2) Съдът и органите на досъдебното производство събират и проверяват и веществените доказателствени средства, изготвени при използването на специални разузнавателни средства, в предвидените от този кодекс случаи.
(3) Материалите по ал. 1 и 2 се прилагат към делото.

**Лица, които изготвят веществени доказателствени средства**

**Чл. 126 Наказателно-Процесуален Кодекс**

(1) Веществените доказателствени средства се изготвят по възможност от лицата, които извършват действията по разследване и съдебните следственни действия.
(2) Когато за това са необходими специални знания и подготовка, назначава се специалист – технически помощник.
(3) Не могат да бъдат специалисти - технически помощници, лицата, посочени в чл. 148, ал. 1.
(4) Специалистът – технически помощник, изпълнява възложената му задача под непосредствен надзор и ръководство на органа, който го е назначен.
(5) За неявяване или отказ да изпълни възложената му задача без уважителни причини специалистът - технически помощник, отговаря по чл. 149, ал. 5 като вещо лице.

**Хартиен носител на компютърни информационни данни**

**Чл. 135 Наказателно-Процесуален Кодекс**
Section V. Search and Seizure

Obligation to hand over objects, papers, computer information data, data on the subscriber of a computer information service and other data (amend. SG 24/2015, in force from 31.03.2015)

Art. 159 CPC [See above → Para 1(b) Obtainment of the production of any relevant object or document.]

Provision of data by enterprises providing public electronic communication networks and/or services

Art. 159a CPC¹⁴⁶ (1) At the request of the court in the judicial proceedings or on the basis of a reasoned order of a judge of the relevant court of first instance, issued at the request of the supervisor prosecutor in the pre-trial proceedings, the enterprises providing public electronic communication networks and/or services provide the data created during the implementation of their activity, which are necessary for:
1. trace and identify the source of the link;

¹⁴⁶ Предоставяне на данни от предприятия, предоставящи обществени електронни съобщителни мрежи и/или услуги

Чл. 159а. Наказателно-Процесуален Кодекс (Нов ДВ, бр. 24 от 2015 г., в сила от 31.03.2015 г.)
(1) По искане на съда в съдебното производство или въз основа на мотивирано разпореждане на съдия от съответния първоинстанционен съд, издадено по искане на наблюдаващия прокурор в досъдебното производство, предприятията, предоставящи обществени електронни съобщителни мрежи и/или услуги, предоставят създадените при осъществяване на тяхната дейност данни, които са необходими за:
1. проследяване и идентифициране на източника на връзката;
2. идентифициране на направлението на връзката;
3. идентифициране на датата, часа и продължителността на връзката;
4. идентифициране на типа на връзката;
5. (изм. - ДВ, бр. 20 от 2021 г.) идентифициране на крайното устройство на потребителя или на това, което се представлява за негово крайно устройство;
6. установяване на идентификатор на ползваните клетки.
(2) Данните по ал. 1 се събират, когато това се налага за разследването на тежки умишлени престъпления.
(3) Искането на наблюдаващия прокурор по ал. 1 се мотивира и задължително съдържа:
1. информация за престъплението, за разследването на което се налага използването на данни за трафика;
2. описание на обстоятелствата, на които се основава искането;
3. данни за лицата, за които се изискват данни за трафика;
4. (изм. - ДВ, бр. 20 от 2021 г.) разумен период от време, който да обхваща справката;
5. разследващия орган, на който да се предоставят данните.
(4) В разпореждането по ал. 1 съдът посочва:
1. данните, които следва да се отразят в справката;
2. (изм. - ДВ, бр. 20 от 2021 г.) разумен период от време, който да обхваща справката;
3. разследващия орган, на който да се предоставят данните.
(5) Периодът от време, за който се иска и разрешава предоставянето на данните по ал. 1, не може да бъде по-дълъг от 6 месеца.
(6) Когато справката съдържа данни, които не са свързани с обстоятелствата по делото и не допринасят за тяхното изясняване, по мотивирано писмено предложение на наблюдаващия прокурор, съдията, издад разрешението, разпорежда нейното унищожаване. Унищожаването се извършва по ред, определен от главния прокурор. В 7-дневен срок от получаване на разпореждането предприятията по ал. 1 и наблюдаващият прокурор предоставят на съдията, който го е издад, протоколите за унищожаване на данните.
2. identification of the direction of the connection;
3. identify the date, time and duration of the connection;
4. identification of the type of connection;
5. identification of the end device of the user or what is presented as his end device;
6. establishing the identifier of the used cells.

(2) The data under para 1 are collected when necessary for the investigation of serious intentional crimes.

(3) The request of the supervising prosecutor under para 1 is motivated and necessarily contains:
1. information about the crime, the investigation of which requires the use of traffic data;
2. description of the circumstances on which the request is based;
3. data on the persons for whom traffic data is requested;
4. a reasonable period of time to cover the reference;
5. the investigative body to which the data is to be provided.

(4) In the order under para 1 the court states:
1. the data that should be reflected in the reference;
2. a reasonable period of time to cover the reference;
3. the investigative body to which the data is to be provided.

(5) The period of time for which the provision of the data under para 1, cannot be longer than 6 months.

(6) When the report contains data that are not related to the circumstances of the case and do not contribute to their clarification, upon a motivated written proposal of the supervising prosecutor, the judge who issued the permit orders its destruction. The destruction is carried out according to the order determined by the Prosecutor General. Within 7 days of receiving the order, the enterprises under para 1 and the supervising prosecutor provide the judge who issued it with the data destruction protocols.

(b) Special Provisions in the Tax and Insurance Procedure Code and Customs Act

17 Tax and Insurance Procedure Code/Данъчно-Осигурителен Процесуален Кодекс

Access to information on a technical medium
Art. 39147 The audited or inspected persons are obliged to provide the revenue authorities with access to their automated information systems, products or archives, when the collection, storage and processing of the information under Art. 38 is carried out in this way.

147 Достъп до информация на технически носител (Загл. изм. - ДВ, бр. 94 от 2015 г., в сила от 01.01.2016 г.)
Чл. 39 Данъчно-Осигурителен Процесуален Кодекс
Ревизираните или проверяваните лица са длъжни да осигурят на органите по приходите достъп до автоматизираните си информационни системи, продукти или архиви, когато събирането, съхраняването и обработката на информацията по чл. 38 се извършва по този начин.
Cooperation
Art. 42 See above → Art. 28 b) (2)

Eligibility
Art. 43 Searches and seizures by the police authorities shall be admissible if, in the course of an audit or inspection, there is evidence that items, papers or other carriers of information are present in an object subject to inspection and if there is evidence of concealment of facts and circumstances relating to:
1. obligations and liabilities for taxes and compulsory social security contributions;
2. breaches of tax and social security legislation;
3. goods of unknown origin.

Disclosure of tax and social security information by the court
Art. 75 (1) The court, apart from the cases of Art. 74 para 2 item 2, may order the disclosure of tax and insurance information upon a justified and motivated request of:
1. the prosecutor, the investigating police officer or the investigator – in connection with an initiated preliminary investigation or criminal proceedings;
2. the Minister of Internal Affairs, the Chief Secretary of the Ministry of Internal Affairs, the directors of the Main Directorate “Combating Organized Crime” and the Main Directorate “National Police”, the directors of the regional directorates of the Ministry of
Internal Affairs – if necessary, in connection with the exercise of their powers defined by law.

(2) The administrative court according to the location of the authorities under para 1 items 1 and 2 shall rule on the request for disclosure of tax and social security information with a motivated decision in a closed session no later than 24 hours from its receipt, specifying the person in respect of whom the tax and social security information is disclosed, the scope of the specific individualizing data for him according to Art. 72 para 1 and the deadline for disclosure of the information. The decision is not subject to appeal.

Confidentiality and disclosure of information. Assessment
Art. 143о

(1) The information sent by the competent authority of another member state of the European Union and containing specific individualizing data for persons and

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150 Поверителност и разкриване на информацията. Оценка
Чл. 143о. Данъчно-Осигурителен Процесуален Кодекс (Нов - ДВ, бр. 82 от 2012 г., в сила от 01.01.2013 г.) (1) Информацията, изпратена от компетентния орган на друга държава - членка на Европейския съюз, и съдържаща конкретни индивидуализиращи данни за лица и субекти съгласно чл. 72, ал. 1, се смята за данъчна и осигурителна информация по смисъла на този кодекс.

(2) Информацията по ал. 1 може да бъде използвана:
1. (доп. - ДВ, бр. 63 от 2017 г., в сила от 04.08.2017 г.) за целите на установяване на задължения за данъци по чл. 143б и на прилагане на законодателството в областта на тези данъци;
2. за целите на установяването и събирането на задължителни осигурителни вноски, както и на други публични вземания по чл. 269а, ал. 1;
3. в хода на административни и съдебни производства във връзка с налагане на наказания за нарушаване на данъното законодателство;
4. за други цели, извън посочените в т. 1–3 – когато компетентният орган на държавата - членка на Европейския съюз, предоставил информацията, е разрешил това и при условие че в тази държава членка информацията може да се използва за подобни цели.

(3) С разрешение на компетентния орган, предоставил информацията, тя може да бъде препратена на компетентния орган на трета държава – членка на Европейския съюз, за целите, посочени в ал. 2. Смята се, че е наличе разрешение на компетентния орган на държавата – членка на Европейския съюз, предоставил информацията, ако в срок 10 работни дни от получаване на молбата той не се противопостави на препращането.

(4) Изпълнителният директор на Националната агенция за приходите може да разреши предоставената от него информация на компетентния орган на една държава – членка на Европейския съюз, да бъде препратена на компетентния орган на трета държава членка. Той може да се противопостави на предоставянето на информацията на третата държава членка в срок 10 работни дни от получаване на молбата от държавата – членка на Европейския съюз, която желае да препрати информацията.

(5) Информацията по ал. 1 може да бъде използвана като доказателство при условията и по реда на този кодекс.

(6) (Доп. - ДВ, бр. 63 от 2017 г., в сила от 04.08.2017 г.) Достъп до информацията по ал. 1 могат да имат лица, оправомощени от Органа за акредитиране по сигурността към Европейската комисия, само когато това е необходимо за наблюдението, поддръжката и развитието на мрежата CCN и на защитения централен регистър на държавите членки за предварителни трансгранични данъчни становища и предварителни соразумения за ценообразуване.

(7) Изпълнителният директор на Националната агенция за приходите предоставя на Европейската комисия информацията, необходима за оценка на ефективността на административното сътрудничество при борбата с укриването на данъци и избягването на данъчно облагане, годишна оценка на ефективността на автоматичния обмен на информация, както и информация за постигнатите практически резултати.
entities according to Art. 72 para 1, is considered tax and insurance information within the meaning of this code.

(2) The information under para 1 can be used:
1. for the purposes of establishing tax liabilities under Art. 143b and the implementation of the legislation in the field of these taxes;
2. for the purposes of establishing and collecting mandatory insurance contributions, as well as other public receivables under Art. 269a para 1;
3. in the course of administrative and judicial proceedings in connection with the imposition of penalties for violation of tax legislation;
4. for other purposes, beyond those specified in items 1–3 – when the competent authority of the member state of the European Union, which provided the information, has allowed this and provided that in this member state the information can be used for similar purposes.

(3) With the permission of the competent authority that provided the information, it may be forwarded to the competent authority of a third member state of the European Union, for the purposes specified in para 2. It is considered that there is permission from the competent authority of the member state of the European Union, which provided the information, if within 10 working days of receiving the request, it does not oppose the forwarding.

(4) The Executive Director of the National Revenue Agency may allow the information provided by him to the competent authority of one member state of the European Union to be forwarded to the competent authority of a third member state. He can oppose the provision of the information to the third member state within 10 working days of receiving the request from the member state of the European Union that wishes to forward the information.

(5) The information under para 1 may be used as evidence under the conditions and according to the procedure of this Code.

(6) Access to the information under para 1 may have persons authorized by the Security Accreditation Authority of the European Commission, only when this is necessary for the monitoring, maintenance and development of the CCN network and of the secure central registry of Member States for advance cross-border tax rulings and advance pricing agreements.

(7) The Executive Director of the National Revenue Agency shall provide the European Commission with the information necessary to evaluate the effectiveness of administrative cooperation in the fight against tax evasion and tax avoidance, an annual evaluation of the effectiveness of the automatic exchange of information, as well as information on
the practical results achieved. The annual evaluation of the effectiveness of the automatic exchange of information is provided under the conditions and in the format adopted by the European Commission.

(8) The exchange of information under this section is carried out in compliance with the requirements for the protection of personal data.

### Art. 10a

**Customs Act**

See above → Art. 28, Instructions and assignment of investigative measures for “those national authorities”.

### Art. 16f

(1) The customs authorities shall carry out the operational and investigative activity in compliance with the statutory rights of the persons by:

1. collection, storage and processing of information;
2. taking samples for examination and examination of objects and documents;
3. identification and tracking of persons and objects;
4. carrying out cross-checks on documents.

(2) The collection of information shall be carried out by:

1. access to information holdings, archives or individual documents;
2. communication with persons;
3. investigation of establishments and persons suspected of preparing, committing or having committed offences under Articles 234, 242, 242a and 251 of the Criminal Code and under Article 255 of the Criminal Code in respect of import VAT and excise duties;
4. collection, storage and analysis of images.

### Art. 17a

(1) In the performance of their official duties, customs officers may process personal data.
(2) Customs officials may also process personal data received from other authorities for the purposes for which they were provided. These data are only forwarded with the permission of the authority that provided them.

(3) When processing personal data related to intelligence activities, detection and investigation of violations or crimes under Art. 234, 242, 242a and 251 of the Criminal Code and under Art. 255 of the Criminal Code in relation to import VAT and excise duties, customs officials:
1. they may not ask for the individual’s consent;
2. they may not inform the individual before and during the processing of his personal data;
3. provide personal data only to the authorities for the protection of national security, countering crime and the protection of public order, as well as to the judicial authorities for the needs of specific criminal proceedings;
(4) The data storage terms under para 3 or for periodic verification of the need for their storage are determined by the director of the Customs Agency. These data are also deleted in compliance with a court act or a decision of the Commission for the Protection of Personal Data.

(5) The processing of personal data is carried out under the conditions and in accordance with this law, Regulation (EU) 2016/679 and the Personal Data Protection Act.

(6) The administrator of personal data is the director of the “Customs” Agency, who assigns the processing of personal data to officials authorized by him.

(7) The director of the Customs Agency shall appoint a data protection officer.

(2) Obtainment of banking account data and traffic data

Act on Measures Against Money Laundering

Art. 14 The persons under Art. 4 are obliged to implement the comprehensive inspection measures under Art. 10 in any case of suspicion of money laundering and/or the presence of funds of criminal origin regardless of the value of the operation or transaction, the client’s risk profile, the conditions for applying due diligence measures or other exceptions provided for in this law or in the regulations for its implementation.

Chapter two. Complex Check

Section I. General rules for the application of due diligence measures

Art. 10 Comprehensive customer due diligence includes:
1. identification of customers and verification of their identification based on documents, data or information obtained from reliable and independent sources;

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153 Чл. 14. Закон За Мерките Срещу Изпирането На Пари
Лицата по чл. 4 са длъжни да прилагат мерките за комплексна проверка по чл. 10 при всеки случай на съмнение за изпиране на пари и/или за наличие на средства с престъпен произход независимо от стойността на операцията или сделката, рисковия профил на клиента, условията за прилагане на мерките за комплексна проверка или други изключения, предвидени в този закон или в правилника за прилагането му.

154 Глава втора. Комплексна Проверка Раздел I. Общи правила за прилагане на мерките за комплексна проверка Чл. 10. Закон За Мерките Срещу Изпирането На Пари
Комплексната проверка на клиентите включва:
1. идентифициране на клиенти и проверка на тяхната идентификация въз основа на документи, данни или информация, получени от надеждни и независими източници;
2. идентифициране на действителния собственик и предприемане на подходящи действия за проверка на неговата идентификация по начин, който дава достатъчно основание на лицето по чл. 4 да приеме за установен действителния собственик, включително прилагане на подходящи мерки за изясняване на структурата на собственост и контрол на клиента;
3. събиране на информация и оценка на целта и характера на деловите взаимоотношения, които са установени или предстои да бъдат установени с клиента, в предвидените в закона случаи;
4. (изм. - ДВ, бр. 42 от 2019 г., в сила от 28.05.2019 г., доп. - ДВ, бр. 94 от 2019 г.) изясняване на произхода на средствата в предвидените в закона случаи;
5. текущо наблюдение върху установените делови взаимоотношения и проверка на сделките и операциите, извършвани през цялото времетраене на тези взаимоотношения, доколко те съответстват на рисковия профил на клиента и на събраната при прилагане на мерките по т. 1–4 информация за клиента и/или за неговата стопанска дейност, както и своевременно актуализиране на събраните документи, данни и информация.
2. identifying the actual owner and taking appropriate actions to verify his identification in a way that gives sufficient grounds to the person under Art. 4 to assume that the actual owner has been established, including the implementation of appropriate measures to clarify the client’s ownership and control structure;

3. collection of information and assessment of the purpose and nature of the business relationships that have been established or are to be established with the client, in the cases provided for by law;

4. clarification of the origin of the funds in the cases provided for in the law;

5. ongoing monitoring of the established business relationships and verification of the transactions and operations carried out throughout the duration of these relationships, as far as they correspond to the client’s risk profile and the information about the client collected during the application of the measures under items 1 - 4 and/or for his business activity, as well as timely updating of the collected documents, data and information.

Art. 46\(^{155}\) (1) Persons under Art. 4 apply the following enhanced due diligence measures regarding their business relationships, operations and transactions with persons from

\(^{155}\) Чл. 46. Закон За Мерките Срещу Изпирането На Пари
(1) (Доп. - ДВ, бр. 42 от 2019 г., в сила от 28.05.2019 г., изм. - ДВ, бр. 94 от 2019 г.) Лицата по чл. 4 прилагат следните мерки за разширина комплексна проверка по отношение на деловите си взаимоотношения, операциите и сделките с лица от държави, които не прилагат или не прилагат напълно международните стандарти в противодействието на изпирането на пари и финансирането на тероризма:
1. събират допълнителна информация относно клиентите и техните действителни собственици;
2. събират допълнителна информация относно планирания характер на деловите взаимоотношения;
3. събират информация за произхода на средствата, използвани в деловите взаимоотношения, сделките и операциите, както и за източника на имущественото състояние на клиентите и техните действителни собственици;
4. събират информация относно основанията за планираните или извършените операции и сделки;
5. изискват одобрение от служител на висша ръководна длъжност на лицето по чл. 4 за установяване или за продължаване на делови взаимоотношения с лица от държавите по ал. 3 и 5;
6. поставят под текущо и разширино наблюдение деловите си взаимоотношения, операциите и сделките с лица от тези държави, като повишават броя и честотата на извършваните проверки и идентифицират схеми на сделки и операции, които налагат допълнително проучване;
7. други мерки по преценка от лицето по чл. 4 съобразно установения риск.
(2) Когато операцията или сделката по ал. 1 няма ясна икономическа или законна цел, лицата по чл. 4 събират, доколкото е възможно, допълнителна информация за обстоятелствата, свързани с операцията или сделката, както и за нейната цел.
(3) (Доп. - ДВ, бр. 42 от 2019 г., в сила от 28.05.2019 г.) Държавите, които не прилагат или прилагат непълно международните стандарти в противодействието на изпирането на пари и финансирането на тероризма, са определените от Европейската комисия като високорискови трети държави. Списъкът с тези държави се публикува на интернет страниците на Държавна агенция “Национална сигурност”, Българската народна банка, Комисията за финансов надзор, Националната агенция за приходите и на Министерството на финансовите. Условията и редът за прилагане на мерки, съобразени с насоките по чл. 18, параграф 4 от Директива (ЕС) 2015/849, спрямо лица от тези държави се определят с правилника за прилагане на закона.
(4) Въз основа на оценката на риска по глава седма лицата по чл. 4 преценяват необходимостта от прилагане на мерките за разширина комплексна проверка от своите клонове или дъщерни предприятия, които се намират в държави от списъка по ал. 3, когато тези клонове или дъщерни предприятия спазват изцяло политиките и процедурите в рамките на групата в съответствие с този закон.
(5) Директорът на дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” може да издава указания до лицата по чл. 4 за прилагането на мерки за разширина комплексна проверка и спрямо лица от държави извън списъка по ал. 3.
countries that do not apply or do not fully apply international standards in combating money laundering and terrorist financing:
1. collect additional information about customers and their beneficial owners;
2. collect additional information regarding the planned nature of business relationships;
3. collect information on the origin of the funds used in business relationships, transactions and operations, as well as on the source of the assets of the clients and their actual owners;
4. collect information regarding the grounds for the planned or completed operations and transactions;
5. require approval from an employee in a senior management position of the person under Art. 4 to establish or continue business relationships with persons from the countries under para 3 and 5;
6. put their business relationships, operations and transactions with persons from these countries under ongoing and extended surveillance, increasing the number and frequency of inspections and identifying schemes of transactions and operations that require additional investigation;
7. other measures at the discretion of the person under Art. 4 according to the established risk.
(2) When the operation or transaction under para 1 has no clear economic or legal purpose, the persons under Art. 4 collect, as far as possible, additional information about the circumstances related to the operation or transaction, as well as about its purpose.
(3) The countries that do not apply or do not fully apply international standards in combating money laundering and the financing of terrorism are those determined by European Commission as high-risk third countries. The list of these countries is published on the websites of the National Security Agency, the Bulgarian National Bank, the Financial Supervision Commission, the National Revenue Agency and the Ministry of Finance. The conditions and procedure for implementing measures in accordance with the guidelines under Art. 18 para 4 of Directive (EU) 2015/849, in relation to persons from these countries are defined by the rules for implementing the law.
(4) Based on the risk assessment under Chapter Seven, the persons under Art. 4 assess the need to apply the measures for extended complex verification by their branches or subsidiaries located in countries from the list under para 3 where such branches or subsidiaries fully comply with intra-group policies and procedures in accordance with this Act.
(5) The Director of the Directorate “Financial Intelligence” of the State Agency “National Security” may issue instructions to the persons under Art. 4 for the application of measures for extended complex verification and against persons from countries outside the list under para 3.
Chapter Four. Disclosure of Information
Section I. Disclosure of Suspected Money Laundering

Art. 72^156 (1) In the event of suspicion and/or knowledge of money laundering and/or the presence of funds of criminal origin, the persons under Art. 4 are obliged to immediately notify the “Financial Intelligence” Directorate of the State Agency “National Security” before carrying out the operation or transaction, delaying its implementation within the permissible period according to the normative acts governing the relevant

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156 Глава четвърта.
РАЗКРИВАНЕ НА ИНФОРМАЦИЯ
Раздел I.
Разкриване на информация при съмнение за изпиране на пари
Чл. 72. Закон За Мерките Срещу Изпирането На Пари
(1) При съмнение и/или узнаване за изпиране на пари и/или за наличие на средства с престъпен произход лицата по чл. 4 са длъжни да уведомят незабавно дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” преди извършването на операцията или сделката, като забавят нейното осъществяване в рамките на допустимия срок съгласно нормативните актове, уреждащи съответния вид дейност. В уведомлението лицата по чл. 4 посочват максималния срок, в който операцията или сделката може да се отложи. При узнаване за изпиране на пари или за наличие на средства с престъпен произход лицата по чл. 4 уведомяват и компетентните органи съгласно Наказателно-процесуалния кодекс, Закона за Министерството на вътрешните работи и Закона за Държавна агенция “Национална сигурност”.

(2) Когато забавянето на операцията или сделката по ал. 1 е обективно невъзможно или има вероятност това да осути действията по преследване на бенефициерите на съмнителна сделка или операция, лицето по чл. 4 уведомява дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” незабавно след извършване и, като посочва причините, поради които забавянето е било невъзможно.

(3) Уведомяването на дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” може да се извърши и от служители на лицата по чл. 4, които не отговарят за прилагането на мерките срещу изпирането на пари. Дирекцията запазва анонимността на тези служители.

(4) Дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” предоставя на лицето по чл. 4 информация, свързана с извършеното от него уведомяване. Решението относно обема информация, която следва да се предостави обратно за всеки конкретен случай на уведомяване, се взема от директора на дирекцията.

(5) Задължението по ал. 1 възниква и в случая, когато операцията или сделката не са били довършени.

(6) (Изм. - ДВ, бр. 94 от 2019 г.) Информация относно уведомяването за съмнение по ал. 1 се обмени в рамките на групата, освен ако директорът на дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” не даде други указания в срок по ал. 1.

(7) (Изм. - ДВ, бр. 94 от 2019 г.) Информация относно уведомяването за съмнение по ал. 2 се обмени в рамките на групата, освен ако директорът на дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” не даде други указания.

(8) Формата и редът за подаване на уведомлението по ал. 1 и 2 се определят с правилника за прилагане на закона.

(9) (Изм. - ДВ, бр. 42 от 2019 г., в сила от 28.05.2019 г.) Алинеи 1 - 8 не се прилагат от лицата по чл. 4, т. 15, упражняващи регламентирана в Закона за адвокатурата дейност, само по отношение на информацията, която тези лица получават от или относно някой от своите клиенти в процеса на установяване на правното му положение, или при защита или представителство на този клиент във или по повод на производство, регламентирано в процесуален закон, което е висящо, предстои да бъде образувано или е приключило, включително при предоставяне на правна консултация за образуване или избягване на такова производство, независимо дали тази информация е получена преди, по време на или след приключване на производството. Това изключение не се прилага, когато лицето по чл. 4, т. 15, упражняващо регламентирана в Закона за адвокатурата дейност:
1. взема участие в дейностите по изпиране на пари или финансиране на тероризма;
2. дава правната консултация по искане, което има за цел изпиране на пари или финансиране на тероризма, или
3. знае, че клиентът търси юридически съвет за целите на изпиране на пари или финансиране на тероризма.
type of activity. In the notification, the persons under Art. 4 indicate the maximum period in which the operation or transaction may be postponed. Upon learning of money laundering or the presence of funds of criminal origin, the persons under Art. 4 also notify the competent authorities according to the Criminal Procedure Code, The Act on the Ministry of Internal Affairs and the Act on the State Agency “National Security”.

(2) When the delay of the operation or transaction under para 1 is objectively impossible or there is a possibility that this will frustrate actions to pursue the beneficiaries of a suspicious transaction or operation, the person under Art. 4 notifies the “Financial Intelligence” Directorate of the State Agency “National Security” immediately after the execution and, indicating the reasons why the delay was impossible.

(3) The notification to the Directorate “Financial Intelligence” of the State Agency “National Security” can also be carried out by employees of the persons under Art. 4, which are not responsible for the implementation of measures against money laundering. The Directorate maintains the anonymity of these employees.

(4) The Directorate “Financial Intelligence” of the State Agency “National Security” provides the person under Art. 4 information related to the notification made by him. The decision on the amount of information to be returned for each specific case of notification is made by the Director of the Directorate.

(5) The obligation under para 1 also occurs in cases where the operation or transaction has not been completed.

(6) Information regarding the notification of doubt under para 1 is exchanged within the group, unless the director of the “Financial Intelligence” Directorate of the State Agency “National Security” gives other instructions within the period under para 1.

(7) Information regarding the notification of doubt under para 2 is exchanged within the group, unless the director of the Financial Intelligence Directorate of the National Security State Agency gives other instructions.

(8) The form and procedure for submitting the notification under para 1 and 2 are determined by the regulations for the application of the law.

(9) Paragraphs 1–8 shall not be applied by the persons under Art. 4 item 15, exercising an activity regulated in the Act on Advocacy, only in relation to the information that these persons receive from or about one of their clients in the process of establishing his legal status, or in the defence or representation of this client in or on the occasion of a proceeding regulated by a procedural law that is pending, about to be instituted or has ended, including in the provision of legal advice on the initiation or avoidance of such proceedings, regardless of whether this information is received before, during or after completion of production. This exception does not apply when the person under Art. 4 item 15, exercising activity regulated in the Act on Advocacy:

1. takes part in money laundering or terrorist financing activities;
2. provides legal advice on a request that aims at money laundering or terrorist financing, or
3. knows that the customer is seeking legal advice for money laundering or terrorist financing purposes.

Art. 74157 (1) Upon receipt of notification under Art. 72, 88 and 89 and upon inquiry under Art. 90, the “Financial Intelligence” Directorate of the State Agency “National

157 Чл. 74. Закон за мерките срещу изпирането на пари
(1) При получаване на уведомление по чл. 72, 88 и 89 и при запитване по чл. 90 дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” може да поиска от лица по чл. 4, с изключение на Българската народна банка и кредитните институции, които извършват дейност на територията на Република България, информация относно съмнителни операции, сделки или клиенти.

(2) При писмено уведомяване по чл. 72, 88 и 89 и при запитване по чл. 90 дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” може да поиска от Българската народна банка и кредитните институции, които извършват дейност на територията на Република България, информация относно съмнителни операции, сделки или клиенти.

(3) Когато при анализа на получена по реда на чл. 76, 77 и 78 информация възникне съмнение за изпиране на пари, дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” може да поиска от лица по чл. 4 информация относно съмнителни операции, сделки или клиенти. Анализът на тази информация се извършва при условия и по ред, определени с правилника за прилагане на закона.

(4) В случаите по ал. 1–3 дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” може да поиска информация от държавните и общинските органи, която не може да бъде отказана.

(5) Информацията по ал. 1–4 се предоставя в срок три работни дни от получаване на искането. Директорът на дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” може да определи и друг срок за предоставяне на информацията, като взема предвид обема и съдържанието на исканата информация.

(6) Лицата по чл. 4, т. 1 - 3 и 7 - 10 предоставят изисканата по ал. 1–3 информация на електронен носител или чрез защитен канал за електронен обмен. Дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” определя формата, в която се предоставя информацията.

(7) В случаите по ал. 1 и 2 дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” може да даде указания на лицата по чл. 4 относно осъществяване на наблюдение на извършвани в рамките на деловото взаимоотношение сделки или операции за определен период и относно предоставяне на информация за същите на дирекцията. Решението относно срока, в който се осъществява наблюдението, и относно вида на сделките и операциите, за които се предоставя информация, за всеки конкретен случай се взема от директора на дирекцията.

(8) За нуждите на анализа дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” може да получава от Българската народна банка информация, събирана по реда на Валутния закон.

(9) За нуждите на анализа дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” получава достъп до поддържаната от Българската народна банка електронна информационна система по чл. 56а от Закона за кредитните институции.

(10) За нуждите на анализа дирекция “Финансово разузнаване” на Държавна агенция “Национална сигурност” получава безвъзмезден достъп до информационни масиви, изграждани и поддържани от държавни и общински органи.

(11) Предоставеното на информация по ал. 1–10 не може да бъде отказано или ограничено по съображения за служебна, банковска, търговска или професионална тайна или че същата представлява данъчна и осигурителна информация или защитена лична информация.

(12) (Изм. - ДВ, бр. 42 от 2019 г., в сила от 28.05.2019 г.) Алинеи 1 и 3 не се прилагат от лицата по чл. 4, т. 15, упражняващи регламентирана в Закона за адвокатурата дейност, само по отношение на информацията, която тези лица получават от или относно някой от своите клиенти в процеса на установяване на правното му положение или при защитата или представителството на този клиент във или по повод на производство, регламентирано в процесуален закон, което е висящо, предстои да бъде образувано или е приключило, включително при предоставяне на правна консултация за образуване или за избягване на такова производство, независимо дали тази информация е получена преди, по време на или след приключване на
Security” may request from the persons under Art. 4, with the exception of the Bulgarian National Bank and credit institutions that operate on the territory of the Republic of Bulgaria, information about suspicious operations, transactions or customers.

(2) Upon written notification under Art. 72, 88 and 89 and upon inquiry under Art. 90, the “Financial Intelligence” Directorate of the State Agency “National Security” may request from the Bulgarian National Bank and the credit institutions operating on the territory of the Republic of Bulgaria, information regarding suspicious operations, transactions or customers.

(3) When in the analysis of received pursuant to Art. 76, 77 and 78 information, suspicion of money laundering arises, the Directorate “Financial Intelligence” of the State Agency “National Security” may request from the persons under Art. 4 information about suspicious operations, transactions or customers. The analysis of this information is carried out under the conditions and according to the procedure determined by the regulations for the application of the law.

(4) In the cases under paras 1–3 the “Financial Intelligence” Directorate of the State Agency “National Security” may request information from the state and municipal authorities, which cannot be refused.

(5) The information under para 1–4 shall be provided within three working days of receipt of the request. The director of the “Financial Intelligence” Directorate of the State Agency “National Security” may determine another deadline for providing the information, taking into account the volume and content of the requested information.

(6) The persons under Art. 4, items 1–3 and 7–10 provide the requested under para 1–3 information on an electronic medium or through a secure channel for electronic exchange. The “Financial Intelligence” Directorate of the State Agency “National Security” determines the form in which the information is provided.

(7) In the cases under para 1 and 2, the Directorate “Financial Intelligence” of the State Agency “National Security” can give instructions to the persons under Art. 4 regarding the monitoring of transactions or operations carried out within the business relationship for a certain period and regarding the provision of information about the same to the directorate. The decision on the period in which the monitoring is carried out and on the type of transactions and operations for which information is provided, for each specific case, is taken by the director of the directorate.

(8) For the needs of the analysis, the “Financial Intelligence” Directorate of the State Agency “National Security” may receive from the Bulgarian National Bank information collected in accordance with the Currency Law.

производството. Това изключение не се прилага, когато лицето по чл. 4, т. 15, упражняващо регламентирана в Закона за адвокатурата дейност:
1. взема участие в дейностите по изпиране на пари или финансиране на тероризма;
2. дава правната консултация по искане, което има за цел изпиране на пари или финансиране на тероризма, или
3. знае, че клиентът търси юридически съвет за целите на изпиране на пари или финансиране на тероризма.
(9) For the needs of the analysis, the Directorate “Financial Intelligence” of the State Agency “National Security” receives access to the electronic information system maintained by the Bulgarian National Bank under Art. 56a of the Act on Credit Institutions.

(10) For the needs of the analysis, the Directorate “Financial Intelligence” of the State Agency “National Security” receives free access to information arrays, built and maintained by state and municipal bodies.

(11) The provision of information under paras 1–10 cannot be refused or limited on grounds of official, banking, commercial or professional secrecy or that the same constitutes tax and insurance information or protected personal information.

(12) Paragraphs 1 and 3 shall not be applied by the persons under Art. 4 item 15, exercising activities regulated in the Act on Advocacy, only in relation to the information that these persons receive from or about one of their clients in the process of establishing his legal status or in the defence or representation of this client in or on occasion of a proceeding regulated by procedural law that is pending, about to be instituted, or has ended, including when providing legal advice to institute or to avoid such proceedings, regardless of whether such information is received before, during or after completion of production. This exception does not apply when the person under Art. 4 item 15, exercising activity regulated in the Act on Advocacy:

1. takes part in money laundering or terrorist financing activities;
2. provides legal advice on a request that aims at money laundering or terrorist financing, or
3. knows that the customer is seeking legal advice for money laundering or terrorist financing purposes.

Credit Institutions Act

Art. 56158 (1) The Bulgarian National Bank creates and maintains an information system for customers’ monetary obligations to:

158 Чл. 56. Закон за кредитните институции (Изм. - ДВ, бр. 24 от 2009 г., в сила от 31.03.2009 г.) (1) (Доп. - ДВ, бр. 105 от 2011 г., изм. - ДВ, бр. 27 от 2014 г.)
Българската народна банка създава и поддържа информационна система за паричните задължения на клиентите към:
1. (изм. - ДВ, бр. 98 от 2016 г., в сила от 01.01.2017 г.) банките и клоновете на банки, извършващи дейност на територията на страната;
2. регистрираните лица по чл. 3а, извършващи дейности по чл. 2, ал. 2, т. 6, 7 или 12, или по чл. 3, ал. 1, т. 3, с изключение на чуждестранните финансови институции, които извършват директно дейност на територията на Република България;
3. (изм. - ДВ, бр. 20 от 2018 г., в сила от 06.03.2018 г.) платежните институции и дружествата за електронни пари, отпускащи кредити по реда на чл. 21 от Закона за платежните услуги и платежните системи;
4. (нова - ДВ, бр. 51 от 2022 г.) инвеститори, предоставили заем по проект чрез доставчик на услуги за колективно финансиране, с изключение на чуждестранните доставчици, които извършват директно дейност на територията на Република България.
(2) (Изм. - ДВ, бр. 27 от 2014 г., доп. - ДВ, бр. 12 от 2021 г., в сила от 12.02.2021 г., изм. - ДВ, бр. 51 от 2022 г.) Институциите по ал. 1, т. 1–3 и доставчиците на услуги за колективно финансиране по ал. 1, т. 4 са длъжни да предоставят и имат право да получават информация от системата. Българската народна банка
1. the banks and branches of banks operating on the territory of the country;
2. the registered persons under Art. 3a, performing activities under Art. 2, para 2, item 6, 7 or 12, or under Art. 3, para 1, item 3, with the exception of foreign financial institutions that operate directly on the territory of the Republic of Bulgaria;
3. payment institutions and electronic money companies granting loans pursuant to Art. 21 of the Act on Payment Services and Payment Systems;
4. investors who have provided a project loan through a crowdfunding service provider, with the exception of foreign providers who operate directly on the territory of the Republic of Bulgaria.

(2) The institutions under para 1, items 1 - 3 and the providers of collective financing services under para 1, item 4 are obliged to provide and have the right to receive information from the system. The Bulgarian National Bank is not responsible for damages in connection with the information stored in the system, provided by the institutions under para 1, items 1–3 and the providers of collective financing services under para 1 item 4.

(3) The following have access to information from the system:
1. the Prosecutor’s office and investigative bodies;
2. Main Directorate “National Police”, Main Directorate “Combating Organized Crime” and regional directorates of the Ministry of Internal Affairs;
3. National Security State Agency;
4. The Commission for Combating Corruption and for Confiscation of Illegally Acquired Property;
5. The Financial Supervision Commission;
6. The National Revenue Agency;
7. Customs Agency;
8. The inspectorate at the Supreme Judicial Council for the purposes of chapter nine, section Ia and Ib of the Judiciary Act in relation to the property of judges, prosecutors and investigators;
9. “Military Intelligence” Office under the Minister of Defence;
10. State Intelligence Agency.

(4) The conditions and procedure for creating and functioning of the information system and for providing and receiving information from it are determined by an ordinance of the BNB.
(5) Inclusion and exclusion from the information system is carried out by an act of the deputy manager in charge of the “Banking” department.

(6) Information from the system is obtained against payment of fees according to methodology, determined by the regulation under para 4.

(7) The costs related to the receipt of information from the system by state and judicial bodies, when there is a reason for this, are for the account of the state budget and can be paid from the central budget on the basis of a contract concluded between the Ministry of Finance and the Bulgarian National Bank.

(8) The system also stores information about persons who are co-debtors and guarantors of loans.

(9) Apart from the cases under para 3 access to information in the system is carried out in accordance with Art. 62 para 5.

(10) Information in the system is stored for a period of 5 years from the date of the last reporting period.

(11) Individuals and legal entities may, upon request, receive information from the BNB about the information contained about them in the system under the conditions and according to the order of the regulation under para 4.

(12) Access to the system of the institutions under para 2 and the authorities under para 3 is carried out in connection with the performance of their official duties on the occasion of specific inspections.

(13) The persons who manage and represent the institutions under para 2 and the authorities under para 3, or officials authorized by them in compliance with the obligation to protect the secrecy of the information received. The institutions under para 2 and the authorities under para 3 adopt and apply internal rules for effective control over the authorized persons with the right of access to the information under para 2 and to introduce an internal organisation for compliance with the requirements under para 12.

(14) The institutions under para 2 and the authorities under para 3 are responsible for the creation and maintenance of a special register, in which they register data on the inspections carried out, and the records in it are kept for 5 years from the date of the inspection.

Art. 56a The Bulgarian National Bank creates and maintains an electronic information system containing data on bank account numbers and payment accounts with an

159 Чл. 56а. Закон за кредитните институции (Нов - ДВ, бр. 94 от 2015 г., в сила от 01.01.2017 г.)
(1) (Доп. - ДВ, бр. 59 от 2016 г., доп. - ДВ, бр. 20 от 2018 г., в сила от 06.03.2018 г., изм. - ДВ, бр. 94 от 2019 г.) Българската народна банка създава и поддържа електронна информационна система, съдържаща данни за номерата на банковите сметки и на платежните сметки с международен номер на банкова сметка (IBAN), водени от банки, платежни институции и дружества за електронни пари, титулярите на сметки и упълномощените да се разпореждат със сметките лица, действителните собственици на титулярите на сметки, наличие на запори по сметки, както и за лицата, наематели на сейфове в банки, и техните упълномощници.
international bank account number account (IBAN) maintained by banks, payment institutions and electronic money companies, account holders and persons authorized to dispose of the accounts, the actual owners of the account holders, presence of liens on accounts, as well as for the persons renting safe deposit boxes in banks, and their proxies.

(2) Banks, payment institutions and electronic money companies provide the BNB with the information under para 1 at least once a week. The Bulgarian National Bank is not responsible for damages in connection with the information stored in the system, provided by the institutions under para 1.

(3) The following have access to information from the system:

1. bodies of judicial power (courts, Prosecutor’s office and investigative bodies);


(3) Достъп до информация от системата имат:

1. органите на съдебната власт (съдилища, прокуратура и следствени органи);
2. (изм. - ДВ, бр. 20 от 2018 г., в сила от 06.03.2018 г.) Главна дирекция "Национална полиция", Главна дирекция "Борба с организираната престъпност" и областните дирекции на Министерството на вътрешните работи;
2а. (нова - ДВ, бр. 25 от 2022 г., в сила от 08.07.2022 г.) Дирекция "Защита на финансовите интереси на Европейската съюз" (АФКОС) на Министерството на вътрешните работи като структура, на която е възложено изпълнението на функциите на компетентен орган за целите на член 7, параграф 3а, алинея 1, буква "а" от Регламент (ЕС, Евратом) № 883/2013;
3. Държавна агенция "Национална сигурност";
4. Националната агенция за приходите;
5. (изм. - ДВ, бр. 7 от 2018 г.) Комисията за противодействие на корупцията и за отнемане на незаконно придобитото имущество;
6. (нова - ДВ, бр. 62 от 2016 г., в сила от 09.08.2016 г., изм. - ДВ, бр. 20 от 2018 г., в сила от 06.03.2018 г., доп. - ДВ, бр. 11 от 2020 г.) Инспекторатът към Висия съдебен съвет за целите на глава девета, раздел Іа и Іб от Закона за съдебната власт по отношение на имуществото на съдии, прокурори и следователи;
7. (нова - ДВ, бр. 98 от 2016 г., в сила от 01.01.2017 г., доп. - ДВ, бр. 18 от 2020 г., в сила от 28.02.2020 г.) министърът на финансите по отношение на банковите и платежните сметки и сейфовете на бюджетните организации и лицата по чл. 156 от Закона за публичните финанси и информацията по ал. 10;
8. (нова - ДВ, бр. 98 от 2016 г., в сила от 01.01.2017 г.) министърът на правосъдието във връзка с изпълнението на задълженията, произтичащи от членството на страната в Организацията на ООН, Организацията на Североатлантическия договор и други международни организации, както и от участието на страната в международни договори и международни режими;
2. Main Directorate “National Police”, Main Directorate “Fighting Organized Crime” and regional directorates of the Ministry of Internal Affairs;
2a. Directorate “Protection of the Financial Interests of the European Union” (AFCOS) of the Ministry of Internal Affairs as a structure entrusted with the performance of the functions to a competent authority for the purposes of Article 7, para 3a, para 1, letter “a” of Regulation (EU, Euratom) No 883/2013;
3. National Security State Agency;
4. The National Revenue Agency;
5. Commission for countering corruption and confiscation of illegally acquired property;
6. The Inspectorate at the High Judicial Council for the purposes of Chapter Nine, Section Ia and Ib of the Judiciary Act in relation to the property of judges, prosecutors and investigators;
7. the Minister of Finance under regarding the bank and payment accounts and safes of budget organisations and persons under Art. 156 of the Act on Public Finances and Information under para 10;
8. the Minister of Justice in connection with the implementation of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 d. to create a procedure for a European order for the attachment of bank accounts in order to facilitate the cross-border collection of claims in civil and commercial cases (OJ L 189/59 of June 27, 2014);
9. “Customs” Agency;
10. the persons under Art. 56 para 1;
11. state and private bailiffs in the case of an enforcement case;
12. Financial Supervision Commission;
13. the Minister of Foreign Affairs in connection with the fulfilment of the obligations arising from the country’s membership in the United Nations, the North Atlantic Treaty Organisation and other international organisations, as well as from the country’s participation in international treaties and international regimes;
14. “Military Intelligence” Office under the Minister of Defence;
15. State Intelligence Agency.
(4) Individuals and legal entities may, upon request, receive information from the BNB about the information contained about them in the system under the conditions and in accordance with the order of para 8.

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160 (4) (Доп. - ДВ, бр. 94 от 2019 г.) Физически и юридически лица могат да получават при поискване информация от БНБ за съдържащата се за тях информация в системата при условията и по реда на наредбата по ал. 8.
(5) Access to the system of the bodies and institutions under para 3, items 1–6 and items 8–15 is carried out in connection with the performance of their official duties on the occasion of specific inspections, and of the Minister of Finance - in connection with the powers of ongoing monitoring of the consolidated fiscal program and banking services of the accounts of budgetary organisations and persons under Art. 156 of the Act on Public Finances. The bodies and institutions under para 3, items 1–6 and items 8–15 create and maintain a special register in which they register data on the performed inspections, and the records in it are stored for 5 years from the date of the relevant inspection.

(6) The persons who manage and represent the bodies and institutions under para 3, or officials authorized by them in compliance with the obligation to protect the secrecy of the information received. The bodies and institutions under para 3 adopt and apply internal rules for effective control over the authorized persons with the right of access to the information under para 1 and for the introduction of an internal organisation for compliance with the requirements under para 5.
(7) Information from the system is obtained against payment of fees according to the methodology determined by the regulation under para 8.

(8) The scope, order and terms of submission of information by banks, payment institutions and companies for electronic money in the system, as well as for receiving information from the system by the relevant authorized institutions and persons are determined by a BNB regulation.

(9) The information under para 1 is stored for 5 years from the date of closing the account under para 1, respectively 5 years from the date of termination of the bank safe rental agreement.

(10) In the electronic information a system specific to the accounts and safes of budget organisations and persons under Art. 156 of the Act on Public Finances, information provided by the banks and the Ministry of Finance, determined by the regulation under para 8, after prior agreement with the Minister of Finance. Changes in the information system related to the receipt of such specific information shall be paid in accordance with the procedure specified in the contract under para 11.

(11) The costs related to the receipt of information from the system by the bodies and institutions under para 3, items 1–9, 12 and 13, are at the expense of the state budget and can be paid from the central budget on the basis of a contract concluded between the Ministry of Finance and the Bulgarian National Bank.

(12) The Minister of Finance and the Bulgarian National Bank may agree in accordance with Art. 43, para 2, item 4 of the Act on the Bulgarian National Bank electronic exchange of information on the accounts and safes of budget organisations and persons under Art. 156 of the Act on Public Finances.

(13) The inclusion and exclusion of persons under para 3 in the information system is carried out by an act of the deputy manager in charge of the “Banking” department.

The next part deals with the situation of the professional secrecy:

Chapter Eight. Banking and Professional Secrecy

Art. 62

1(1) The employees of the bank, the members of the management and control bodies of the bank, BNB officials, employees and members of the management board

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161 Глава осма.
Банкова И Професионална Тайна
Чл. 62. Закон за кредитните институции

(1) (Доп. - ДВ, бр. 50 от 2015 г., изм. - ДВ, бр. 62 от 2015 г., в сила от 14.08.2015 г.) Служителите на банката, членовете на управителните и контролните органи на банката, длъжностните лица в БНБ, служителите и членовете на управителния съвет на Фонда за гарантиране на влоговете в банките, ликвидаторите, временните синдици и синдиците, както и всички други лица, работещи за банката, не могат да разгласяват, както и да ползват за лично или за членовете на семействата си облагодетелстване информация, представляваща банкова тайна.

(2) Банкова тайна са фактите и обстоятелствата, засягащи наличностите и операциите по сметките и влоговете на клиентите на банката.
of the Bank Deposit Guarantee Fund, liquidators, temporary receivers and receivers, as well as all other persons working for the bank, may not disclose or use for personal or family members’ benefit information constituting bank secrecy.

(2) Bank secrets are the facts and circumstances affecting the balances and operations on the accounts and deposits of the bank’s customers.

(3) The persons under para 1 sign a declaration of bank secrecy upon assuming office, respectively before starting to perform the assigned work.

(4) The provision of para 1 also applies to the cases when the relations of the mentioned persons with the bank have been terminated or their activities have been suspended.

(5) Apart from the BNB and for the purposes and the conditions of Art. 56 the bank may provide information under para 2 for individual customers only:
1. with their consent;
2. by a court decision, made in accordance with para 6 and 7;
3. with a court ruling, when this is necessary to clarify the circumstances of a case under consideration by it,
4. in the cases under para 12 with a bank in bankruptcy proceedings or
5. in the case of an international arbitration case, to which the Republic of Bulgaria is a party.

(6) The court may order the disclosure of the information under para 2 and at the request of:

(3) (Изм. - ДВ, бр. 50 от 2015 г.) Лицата по ал. 1 подписват декларация за пазене на банковата тайна при встъпване в длъжност, съответно преди пристъпване към изпълнение на възложената работа.

(4) Разпоредбата на ал. 1 се отнася и за случаите, когато отношенията на посочените лица с банката са прекратени или дейността им е преустановена.

(5) (Изм. и доп. - ДВ, бр. 50 от 2015 г., изм. - ДВ, бр. 62 от 2015 г., в сила от 14.08.2015 г.) Освен на БНБ и за целите и при условията на чл. 56 банката може да дава сведения по ал. 2 за отделни клиенти само:
1. с тяхно съгласие;
2. по решение на съда, взето по реда на ал. 6 и 7;
3. (изм. - ДВ, бр. 59 от 2016 г.) с определение на съда, когато това е необходимо за изясняване на обстоятелствата по разглеждано от него дело,
4. (доп. - ДВ, бр. 59 от 2016 г.) в случаите по ал. 12 при банка в производство по несъстоятелност или
5. (нова - ДВ, бр. 59 от 2016 г.) при образувано международно арбитражно дело, по което Република България е страна.

162 (6) Съдът може да постанови разкриване на сведенията по ал. 2 и по искане на:
1. (доп. - ДВ, бр. 16 от 2018 г.) прокурора – при наличие на данни за извършено престъпление или в случаите по чл. 31 от Закона за Европейската заповед за разследване;
2. министъра на финансите или упълномощено от него лице – в случаите на чл. 143, ал. 4 от Данъчноосигурителния процесуален кодекс;
3. директора на териториалната дирекция на Националната агенция за приходите, когато:
a) се представят доказателства, че проверяваното лице е осуетило извършването на проверка или ревизия или не води необходимата отчетност, както и че тя е непълна или недостоверна;
b) с акт на компетентен държавен орган е установено настъпването на събитие, довело до унищожаване на отчетна документация на проверяваното лице;
4. (изм. - ДВ, бр. 38 от 2012 г., в сила от 19.11.2012 г., изм. - ДВ, бр. 7 от 2018 г.) Комисията за противодействие на корупцията и за отнемане на незаконно придобитото имущество и директорите на териториалните и дирекции;
1. the prosecutor – in the presence of data on a committed crime or in the cases under Art. 31 of the European Investigation Warrant Act;

5. директора на Агенция за държавна финансова инспекция или упълномощени от него длъжници, когато с акт на орган на агенцията е установено, че:
а) ръководството на проверяваната организация или лице осуетява извършването на контролна дейност от органите на агенцията;
б) в проверяваната организация или лице не се води счетоводна отчетност или тя е непълна или недостоверна;
в) има данни за липси;
г) с акт на държавен орган е установено, че проверяваното лице е осуетило извършването на митническа проверка или не води необходимата отчетност, както и ако водената отчетност е непълна или недостоверна;
д) с акт на митническите органи са установени митнически нарушения;
е) е необходимо налагането на запори върху банкови сметки за обезпечаване на установените от митническите органи вземания, събирана от тях, както и за обезпечаване на гъвкави, законни лихви или други;
г) с акт на държавен орган е установено настъпването на случайно събитие, довело до унищожаване на отчетна документация на проверяваната организация от събитието;
7. (нова - ДВ, бр. 33 от 2016 г., в сила от 26.04.2016 г.) синдика на банка в производство по несъстоятелност - относно длъжници на банката, чиито кредити са в просрочка;
2. the Minister of Finance or a person authorized by him – in the cases of Art. 143 para 4 of the Tax and Insurance Procedural Code;

3. the director of the territorial directorate of the National Revenue Agency, when:
   a) evidence is presented that the inspected person has thwarted the inspection or audit or does not keep the necessary reporting, as well as that it is incomplete or unreliable;
   b) by an act of a competent state body, the occurrence of an event that led to the destruction of accounting documentation of the inspected person was established;

4. The Commission for Combating Corruption and Confiscation of Illegally Acquired Property and the directors of the territorial and directorates;

5. the director of the Agency for State Financial Inspection or officials authorized by him, when it is established by an act of a body of the agency that:
   a) the management of the inspected organisation or person thwarts the performance of control activities by the agency’s bodies;
   b) the audited organisation or person does not keep accounting records or it is incomplete or unreliable;
   c) there are data on shortages;
   d) an act of a state body has established the occurrence of an accidental event that led to the destruction of accounting documentation of the inspected organisation or person;

6. the director of the Agency “Customs” and the directors of the territorial directorates in the “Customs” Agency, when:
   a) by an act of the customs authorities, it is established that the inspected person has thwarted the customs inspection or does not keep the necessary records, as well as if the records kept are incomplete or unreliable;
   b) customs violations have been established by an act of the customs authorities;
   c) it is necessary to impose liens on bank accounts to secure receivables established by the customs authorities, collected by them, as well as to secure fines, legal interest or others;
   d) an act of a state body has established the occurrence of an accidental event that led to the destruction of reporting documentation of the object inspected by the customs authorities;

7. the directors of the Main Directorate “National Police” and the Main Directorate “Combating Organized Crime” of the Ministry of Internal Affairs – for the purposes of detecting and/or investigating crimes;

7a. the director of the Directorate “Protection of the Financial Interests of the European Union” (AFCOS) of the Ministry of the Interior for the purposes of Article 7, para 3a, para 1, letter “b” of Regulation (EU, Euratom) No 883/2013, based on a written request of the Director General of OLAF or a person designated by him, when it is strictly necessary for the purposes of the investigation of OLAF;

8. the chairman of the State Agency “National Security” – when this is necessary for the protection of national security;
9. the executive director of the National Revenue Agency or an official authorized by
him – in the cases under Art. 143f para 6 of the Tax and Insurance Procedural Code;
10. The guarantee fund for the deposits in the banks and of the receiver of a bank in
bankruptcy proceedings, in the cases under Art. 60a of the Act on Bank Insolvency and
in relation to third parties, when an annulment action is filed against them;
11. receiver of a bank in bankruptcy proceedings - regarding debtors of the bank whose
loans are in arrears;
12. the chief inspector or an inspector from the Inspectorate at the High Judicial Council.
[…]
(10) In the presence of data on organized criminal activity or money laundering, the
chief prosecutor or a deputy authorized by him may request from banks to provide the
information under para 2. The requests made to the banks and the information received
in response are filed in a register with the chief prosecutor.
(11) Banks provide the executive director of the National Agency for income inform-
ation under Art. 142b, para 1 of the Tax and Insurance Procedural Code, as well as
under Art. 25 para 3 of the Act on the National Revenue Agency. […]

(3) Exception of data specifically retained in accordance with national law (pursu-
ant to the second sentence of Article 15(1) of Directive 2002/58/EC of the Eu-
ropean Parliament and of the Council)

22 Telecommunications Act
Official publication: Държавен вестник; Number: 59; Publication date: 2006-07-21
The Electronic Communications Act
Official publication: Държавен вестник; Number: 41; Publication date: 2007-05-22;
Page: 00021-00085
Act amending the Electronic Communications Act
Official publication: Държавен вестник; Number: 17; Publication date: 2009-03-06;
Page: 00006-00015
The Electronic Communications Act
Official publication: Държавен вестник; Number: 45; Publication date: 2009-06-16
National Provision in relation to Art. 15(1) s. 2 of this Directive

23 Tax and Insurance Procedure Code
Storage of information
Art. 142v163 (1) The financial institution providing information shall store the infor-
mation referred to in Art. 1, information on the due diligence actions taken, as well as

163 Съхранение на информацията Данъчно-осигурителен процесуален кодекс
Чл. 142п. Данъчно-осигурителен процесуален кодекс (Нов - ДВ, бр. 94 от 2015 г., в сила от 01.01.2016 г.)
any declaration, documentary evidence or document establishing the status of the account holder.

(2) The financial institution providing the information shall keep the information referred to in para 1 for a period of not less than 5 years after the end of the calendar year in which the account is closed.

**Telecommunications Act**

**Art. 5**

(1) This law does not apply to:

1. implementation of telecommunications activities for the own needs of the Ministry of Defence, the Ministry of the Interior, the National Security Service and the National Intelligence Service, as well as with regard to the internal distribution of frequencies and the determination of call signs for their official radio communications;

2. telecommunications related to the security and defence of the country and for crisis management, provided by the State Agency for Information Technologies and Communications.

(2) The departments and services under para 1 use public telecommunications networks and services in accordance with this law.

**Art. 14a**

(1) The Chairman of the State Agency for Information Technologies and Communications:
| **1.** creates, operates, maintains and develops a telecommunications network and control points related to the security and defence of the country, which are served by personnel occupying specific positions; |
| 2. provides telecommunications for crisis management within the meaning of the Act on Crisis Management and upon introduction of “martial law”, “state of war” regime or state of emergency within the meaning of the Act on Defence and Armed Forces of the Republic of Bulgaria. |
| (2) The Chairman of the State Agency for Information Technologies and Communications ensures the reliable functioning, security, independence and protection of the communication and information systems for the transfer of classified information for the needs of the state government, related to the security and defence of the country, subject to compliance with the requirements of the Act to protect classified information. |

**Art. 229** (1) In the performance of their functions, those authorized under Art. 228 para 1 employees of the commission have the right:
1. to carry out inspections, ascertain violations and draw up acts in accordance with the Administrative Offences and Penalties Act;
2. of free access to the objects subject to control, in which telecommunications facilities are located;
3. to check the documents issued by the commission proving the legal capacity of the persons in the controlled objects;

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167 Чл. 229. Закон за далекосъобщенията
(1) В изпълнение на своите функции оправомощените по чл. 228, ал. 1 служители на комисията имат право:
1. да извършват проверки, да констатират нарушения и да съставят актове по реда на Закона за административните нарушения и наказания;
2. на свободен достъп в подлежащите на контрол обекти, в които се намират далекосъобщителни съоръжения;
3. да проверяват документите, издавани от комисията, доказващи правоспособността на лицата в контролираните обекти;
4. да изискват сведения и документи, свързани с осъществяване на контрола;
5. да изискват оригинали документи, данни, сведения, справки и други носители на информация от проверяваните лица, както и да изземват заверени копия от документи във връзка с извършване на далекосъобщителна дейност и/или с установяване на административни нарушения по този закон;
6. да проверяват счетоводни, търговски или други книги или документи и носители на информация, както и други документи, свързани с извършване на далекосъобщителна дейност, подлежаща на индивидуално лицензиране, и/или с установяване на административни нарушения по този закон;
7. да изискват от трети лица сведения, извлечения и други документи, необходими за извършване на насрещни проверки във връзка с осъществяване на контрол по този закон и/или с установяване на административни нарушения по този закон;
8. да контролират качествените параметри на далекосъобщителните услуги, като извършват документални и технически проверки;
9. да претърсват помещения, използвани от проверяваните лица за осъществяване на далекосъобщителна дейност, както и помещения, в които се намират доказателства за извършване на административни нарушения.

(2) В случаите, когато се касае за проверка на помещения по ал. 1, т. 9, служители за жилище, проверките се извършват от оправомощените по чл. 228, ал. 1 служители съвместно с органите на Министерството на вътрешните работи при спазване на разпоредбите на Наказателно-процесуалния кодекс.
4. to request information and documents related to the implementation of the control;
5. to demand original documents, data, reports, references and other carriers of information from the inspected persons, as well as to seize certified copies of documents in connection with the performance of telecommunications activities and/or the establishment of administrative offences under this law;
6. to check accounting, commercial or other books or documents and information carriers, as well as other documents related to the performance of telecommunications activities subject to individual licensing and/or to the establishment of administrative offences under this law;
7. to request from third parties’ information, extracts and other documents necessary for carrying out cross-checks in connection with carrying out controls under this law and/or establishing administrative offences under this law;
8. to control the quality parameters of telecommunications services by performing documentary and technical checks;
9. to search premises used by the inspected persons for carrying out telecommunications activities, as well as premises where evidence of administrative offences is found.

(2) In cases where it concerns the inspection of premises under para 1, item 9, used for housing, inspections are carried out by those authorized under Art. 228 para 1 employees together with the authorities of the Ministry of Internal Affairs in compliance with the provisions of the Criminal Procedure Code.
Art. 230 (1) When violations are established in accordance with the Act on Administrative Offences and Penalties, the drafters of acts may seize and retain material evidence related to the establishment of the violation, pursuant to the procedure of Art. 41 of the Administrative Offences and Penalties Act.

(2) Seized physical evidence is subject to confiscation in favour of the state by a criminal decree or by a resolution pursuant to Art. 20 and 21 of the Administrative Offences and Penalties Act, when the composition of violations under the relevant administrative penal provisions has been carried out.

(3) The things seized for the benefit of the state are stored in premises specially provided for this until the expiration of one year from the entry into force of the resolution, the criminal decree or the court decision by which it was confirmed.

(4) After the expiration of the term under para 3 the seized items are subject to destruction in accordance with the procedure provided for in an ordinance of the Council of Ministers, at the proposal of the commission. Items confiscated for the benefit of the state or part of them, which can be used without violating the laws and current standards in the country, can be provided to educational institutions for educational purposes, to hospitals or other organisations with a decision of the commission.

Art. 231 (1) When performing their official duties, those authorized under Art. 228 para 1 employees are obliged to:

168 Чл. 230. Закон за далекосъобщенията
(1) При установяване на нарущения по реда на Закона за административните нарущения и наказания съставителите на актове могат да изземват и да задържат веществени доказателства, свързани с установяване на нарушението, по реда на чл. 41 от Закона за административните нарущения и наказания.

(2) Иззетите веществени доказателства подлежат на отнемане в полза на държавата с наказателно постановление или с резолюция по реда на чл. 20 и 21 от Закона за административните нарущения и наказания, когато са осъществени съставите на нарушения по съответните административнонаказателни разпоредби.

(3) Отнетите в полза на държавата вещи се съхраняват в помещения, специално предвидени за това, до изтичането на една година от влизането в сила на резолюцията, наказателното постановление или на съдебното решение, с което то е потвърдено.

(4) След изтичането на срока по ал. 3 отнетите вещи подлежат на унищожаване по ред, предвиден в наредба на Министерския съвет, по предложение на комисията. Отнетите в полза на държавата вещи или част от тях, които могат да бъдат използвани, без да се нарусят законите и действащите стандарти в страната, могат да се предоставят на учебни заведения с учебна цел, на болници или други организации с решение на комисията.

169 Чл. 231. Закон за далекосъобщенията
(1) При изпълнение на служебните си задължения оправомощените по чл. 228, ал. 1 служители са длъжни:
1. да се легитимират чрез служебна карта;
2. да пазят в тайна обстоятелствата и фактите, които са им станали известни при или по повод изпълнение на служебните им задължения.

(2) Редът и начинът за използване и съхраняване на обстоятелствата и фактите по ал. 1, т. 2, както и организацията на работа при осъществяване на контрола върху далекосъобщителните дейности се определят с решение на комисията.

(3) Председателят на комисията определя служителите от администрацията, които са отговорни за съхраняването и използването на факти и обстоятелствата по ал. 1, т. 2.

(4) Служителите по ал. 1 и 3 подписват декларация по образец във връзка със задълженията си, в която изрично се отразява и отговорността им при неизпълнение на тези задължения.
1. to identify themselves with a service card;
2. to keep secret the circumstances and facts that became known to them during or on the occasion of the performance of their official duties.

(2) The order and manner of using and storing the circumstances and facts under para 1, item 2, as well as the organisation of work in the implementation of control over telecommunications activities are determined by a decision of the commission.

(3) The chairman of the commission designates the employees from the administration who are responsible for the storage and use of the facts and circumstances under para 1, item 2.

(4) The employees under para 1 and 3 sign a model declaration in relation to their obligations, which explicitly reflects their responsibility in the event of non-fulfilment of these obligations.

Electronic Communications Act\(^{170}\)

**Art. 250a**\(^{171}\) (1) Enterprises providing public electronic communication networks and/or services, store for a period of 12 months data created or processed in the process of their activity, which are necessary for:
1. trace and identify the source of the link;
2. identification of the direction of the connection;
3. identify the date, time and duration of the connection;
4. identification of the type of connection;
5. identification of the end electronic communication device of the user or what is presented as his end device;

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\(^{170}\) Закон за електронните съобщения.

\(^{171}\) Чл. 250а. Закон за електронните съобщения (Нов - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г., обявен за противоконституционен с РКС № 2 от 2015 г. - ДВ, бр. 23 от 2015 г.)

(1) Предприятията, предоставящи обществени електронни съобщителни мрежи и/или услуги, съхраняват за срок от 12 месеца данни, създадени или обработени в процеса на тяхната дейност, които са необходими за:
1. проследяване и идентифициране на източника на връзката;
2. идентифициране на направлението на връзката;
3. идентифициране на датата, часа и продължителността на връзката;
4. идентифициране на типа на връзката;
5. идентифициране на крайното електронно съобщително устройство на потребителя или на това, което се представя за негово крайно устройство;
6. установяване на идентификатор на ползваните клетки.

(2) Данните по ал. 1 се съхраняват за нуждите на разкриването и разследването на тежки престъпления и престъпления по чл. 319а–319е от Наказателния кодекс, както и за издирване на лица.

(3) Други данни, включително разкриващи съдържанието на съобщенията, не могат да бъдат съхранявани по този ред.

(4) Предприятията, предоставящи обществени електронни съобщителни мрежи и/или услуги, са длъжни да унищожат данните след изтичането на срока по ал. 1.

(5) За данни, до които е осъществен достъп и са били съхранени, ръководителят на органа, отправил искане за достъп, може да поисква предприятието, което ги е предоставило, да ги запази за срок не по-дълъг от 6 месеца, считано от датата на предоставяне.

(6) Данните по ал. 1 се обработват и съхраняват в съответствие с изискванията на Закона за защита на личните данни.
6. establishing the identifier of the used cells.

(2) The data under para 1 are stored for the purposes of the detection and investigation of serious crimes and crimes under Art. 319a–319f of the Criminal Code, as well as for searching for persons.

(3) Other data, including those revealing the content of messages, cannot be stored under this order.

(4) Enterprises providing public electronic communication networks and/or services are obliged to destroy the data after the expiration of the period under para 1.

(5) For data that has been accessed and stored, the head of the body that made a request for access may request that the enterprise that provided it keep it for a period not longer than 6 months, starting from the date of provision.

(6) The data under para 1 are processed and stored in accordance with the requirements of the Personal Data Protection Act.

Art. 250b

(1) Right to request making a reference for the data under Art. 250a para 1 according to their competence, the heads of:

1. the Specialised directorates, territorial directorates and independent territorial departments of the National Security State Agency;

2. Main Directorate “National Police”, Main Directorate “Fighting Organized Crime” and the territorial and units, Main Directorate “Border Police” and the territorial and units, Directorate “Internal Security”, the Metropolitan Directorate of Internal Affairs and regional directorates of the Ministry of Internal Affairs;

3. the “Military Information” and “Military Police” services under the Minister of Defence;

4. the National Intelligence Service.

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172 Чл. 250б. Закон за електронните съобщения (Нов - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г., обявен за противовконституционен с РКС № 2 от 2015 г. - ДВ, бр. 23 от 2015 г.) (1) Право да искат извършване на справка за данните по чл. 250а, ал. 1 съобразно тяхната компетентност имат ръководителите на:

1. специализираните дирекции, териториалните дирекции и самостоятелните териториални отдели на Държавна агенция "Национална сигурност";


3. службите "Военна информация" и "Военна полиция" към министъра на отбраната;

4. Националната разузнавателна служба.

(2) За достъп до данните по чл. 250а, ал. 1 се изготвя мотивирано писмено искане от съответния ръководител на органите по ал. 1, съдържащо:

1. правното основание и целта, за която е необходим достъпът;

2. регистрационния номер на преписката, за която е необходимо извършване на справката;

3. данните, които следва да се отразят в справката;

4. периода от време, който да обхваща справката;

5. определеното длъжностно лице, на което да се предоставят данните.

(3) За направените искания органите по ал. 1 водят специален регистър, който не е публичен.
(2) For access to the data under Art. 250a para 1, a motivated written request is drawn up by the relevant head of the bodies under para 1, containing:
1. the legal basis and purpose for which access is required;
2. the registration number of the file for which it is necessary to make the reference;
3. the data that should be reflected in the reference;
4. the period of time to cover the reference;
5. the designated official to whom the data is to be provided.
(3) For the requests made, the authorities under para 1 keep a special register that is not public.

Art. 250c
(1) Access to data according to Art. 250a para 1 is carried out after permission from the president of the district court or from a judge authorized by him at the headquarters of the body that requested access, for which an order to grant access to the data is issued.
(2) The order under para 1 must contain:
1. the data that should be reflected in the reference;
2. the period of time to cover the reference;
3. the designated official to whom the data is to be provided;
4. name, position and signature of the judge.
(3) A special register, which is not public, is kept for the given permissions or refusals in the respective regional courts.
(4) For the needs of criminal proceedings, the data under Art. 250a para 1 are provided to the court and to the bodies of the pre-trial proceedings under the conditions and according to the procedure of the Criminal Procedure Code.
(5) Access to data under Art. 250a para 1, which refer to the chairman of a district court, his ascendant, descendant, brother or sister, spouse or person with whom he is in de

173 Чл. 250в. Закон за електронните съобщения (Нов - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г., обявен за противоконституционен с РКС № 2 от 2015 г. - ДВ, бр. 23 от 2015 г.)
(1) Достъпът до данните по чл. 250а, ал. 1 се осъществява след разрешение от председателя на районния съд или от оправомощен от него съдия по седалището на органа, който е поискал достъп, за което се издава разпореждане за предоставяне на достъп до данните.
(2) Разпореждането по ал. 1 задължително съдържа:
1. данните, които следва да се отразят в справката;
2. периода от време, който да обхваща справката;
3. определеното длъжностно лице, на което да се предоставят данните;
4. име, длъжност и подпис на съдията.
(3) За дадените разрешения или откази в съответните районни съдилища се води специален регистър, който не е публичен.
(4) За нуждите на наказателното производство данните по чл. 250а, ал. 1 се предоставят на съда и на органите на досъдебното производство при условията и по реда на Наказателно-процесуалния кодекс.
(5) Достъпът до данни по чл. 250а, ал. 1, които се отнасят до председател на районен съд, негов възходящ, низходящ, брат или сестра, съпруг или лице, с което се намира във фактическо съпружеско съжителство, се осъществява след разрешение от председателя на съответния окръжен съд.
facto conjugal cohabitation, is carried out after permission from the chairman of the relevant district court.

**Art. 250d** (1) Undertakings providing public electronic communications networks and/or services shall be obliged to ensure the possibility 24 hours a day, 7 days a week for the receipt of the order under Art. 250c, 251 para 2.

(2) The heads of undertakings providing public electronic communications networks and/or services shall send to the Communications Regulation Commission a list specifying:
1. the current address for receipt of the order referred to in Article 250c para 1 and Article 251 para 2;
2. the name, surname, forename and title of the authorised officials to receive the orders referred to in Article 250c paras 1 and 2, and Article 251 para 2, as well as their contact telephone numbers; in the event of a change of the data, the Communications Regulation Commission shall be notified in writing within 24 hours and its chairman shall immediately provide the lists to the heads of the bodies referred to in Article 250b para 1 and Article 251 para 2.

**Article 250e** (1) Undertakings providing public electronic communications networks and/or services shall make a reference to the data referred to in Article 250a, para 1 after

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174 Чл. 250г. Закон за електронните съобщения (Нов - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г., обявен за противоконституционен с РКС № 2 от 2015 г. - ДВ, бр. 23 от 2015 г.)
(1) Предприятията, предоставящи обществени електронни съобщителни мрежи и/или услуги, са длъжни да осигурят възможност 24 часа в деннощие, 7 дни в седмица за постъпване на разпореждането по чл. 250в, ал. 1 и по чл. 251, ал. 2.
(2) Ръководителите на предприятията, предоставящи обществени електронни съобщителни мрежи и/или услуги, изпращат на Комисията за регулиране на съобщенията списък, в който се посочват:
1. актуален адрес за получаване на разпореждането по чл. 250в, ал. 1 и по чл. 251, ал. 2;
2. име, презиme, фамилия и длъжност на оправомощените длъжностни лица, които да получават разпорежданятията по чл. 250в, ал. 1 и по чл. 251, ал. 2, както и телефони за връзка с тях; при промяна на данните в срок до 24 часа се уведомява писмено Комисията за регулиране на съобщенията и нейният председател незабавно предоставя списъците на ръководителите на органите по чл. 250б, ал. 1.

175 Чл. 250д. Закон за електронните съобщения (Нов - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г., обявен за противоконституционен с РКС № 2 от 2015 г. - ДВ, бр. 23 от 2015 г.)
(1) Предприятията, предоставящи обществени електронни съобщителни мрежи и/или услуги, извършват справка за данните по чл. 250а, ал. 1 след постъпване на разпореждане за достъп. Постъпилото разпореждане за достъп се регистрира в специален регистър, който не е публичен.
(2) Предприятията, предоставящи обществени електронни съобщителни мрежи и/или услуги, във възможно най-кратък срок, но не повече от 72 часа от постъпването в предприятието на разпореждането за достъп по чл. 250в, ал. 1 и по чл. 251, ал. 2, изпращат данните на длъжностното лице по чл. 250в, ал. 2, т. 3. Министърът на вътрешните работи или писмено оправомощени от него длъжностни лица могат да определят конкретен срок, в който данните да бъдат изпратени.
(3) Справка за данните по чл. 250а, ал. 1 в предприятието, предоставящи обществени електронни съобщителни мрежи и/или услуги, могат да извършват единствено длъжностни лица, писмено оправомощени от съответния ръководител на предприятието.
(4) След изготвянето и справката се подписва от ръководителя на съответното предприятие, предоставяйки обществени електронни съобщителни мрежи и/или услуги, или от писмено оправомощено от него.
receipt of an access order. The received access order shall be registered in a special register which shall not be public.

(2) Undertakings providing public electronic communications networks and/or services shall, as soon as possible, but not more than 72 hours from the receipt by the undertaking of the access order referred to in Article 250c para 2, provide the following 1 and Article 251 para 2, send the data to the official referred to in Article 250c paras 2, 3. The Minister of the Interior or officials authorised by him in writing may set a specific time limit within which the data are to be sent.

(3) A reference to the data referred to in Art. 250a para 1 in undertakings providing public electronic communications networks and/or services may only be carried out by officials authorised in writing by the relevant head of the undertaking.

(4) After its preparation, the statement shall be signed by the head of the undertaking concerned providing public electronic communications networks and/or services or by an official authorised in writing by him. The report shall be registered in a special register and shall be sent to the official designated in the order to whom the data shall be provided.

(5) Where practicable, the judge’s order and the report referred to in subsection 4 shall be sent electronically, subject to the requirements of the Electronic Government Act and the Electronic Document and Electronic Signature Act.

Art. 250f 176 The report referred to in Article 250e para 4 which is not used in the initiation of pre-trial proceedings, regardless of whether it constitutes classified information, shall be destroyed within 6 months from the date of its receipt by a three-member committee in a composition determined by the respective head of the bodies referred to in Article 250b para 1, for which a report shall be drawn up.

Art. 251 177 (1) The data referred to in Art. 250a para 1 may also be provided to a competent authority of another State upon request, where this is provided for in an international treaty in force for the Republic of Bulgaria.

dължностно лице. Справката се регистрира в специален регистър и се изпраща на определеното в разпореждането длъжностно лице, на което да се предоставят данните.

(5) При наличие на възможност разпореждането на съдията и справката по ал. 4 се изпращат по електронен път при спазване изискванията на Закона за електронното управление и Закона за електронния документ и електронния подпис.

176 Чл. 250е. Закон за електронните съобщения (Нов - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г., обявен за противовконституционен с РКС № 2 от 2015 г. - ДВ, бр. 23 от 2015 г.)
Справката по чл. 250д, ал. 4, която не се използва при образуване на досъдебно производство, независимо дали представлява класифицирана информация, се унищожава в 6-месечен срок от датата на получаването и от тричленена комисия в състав, определен от съответния ръководител на органите по чл. 250б, ал. 1, за което се изготвя протокол.

(2) Access to the data referred to in Article 250a para 1 shall be made upon request by the head of a general or specialised directorate under Art. 250b paras 1 and 2, following a written permission from the President of the Sofia City Court or from a judge authorised by him, for which an order for granting access to the data shall be issued. A special non-public register shall be kept at the Sofia City Court of the authorisations or refusals granted.

(3) For the result of the report on the data under Art. 250a para 1 shall be notified to the competent authority of the other State in the manner provided for in the international treaty.

Art. 251a *(1)* The data referred to in Art. 250a para 1, item 1 shall be at:
1. public telephone service – the telephone number of the caller and data identifying the subscriber or user;
2. internet access, email over the internet and internet telephony – an identifier assigned to the user, a user identifier and a telephone number assigned to each message entering the public telephone network, data identifying the subscriber or user for whom an IP address, user identifier or telephone number is assigned at the time of connection.

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(1) Данните по чл. 250а, ал. 1 могат да се предоставят по молба и на компетентен орган на друга държава, когато това е предвидено в международен договор, който е в сила за Република България.

(2) Достъпът до данните по чл. 250а, ал. 1 се осъществява при постъпило искане от ръководител на главна или специализирана дирекция по чл. 250б, ал. 1, т. 1 и 2, след писмено разрешение от председателя на Софийския градски съд или от оправомощен от него съдия, за което се издава разпореждане за предоставяне на достъп до данните. За дадените разрешения или откази в Софийския градски съд се води специален регистър, който не е публичен.

(3) За резултата от изготвената справка за данните по чл. 250а, ал. 1 компетентният орган на другата държава се уведомява по предвидено в международния договор ред.

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(1) (Изм. - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г.) Данните по чл. 250а, ал. 1, т. 1 са при:
1. обществена телефонна услуга - телефонният номер на викация и данни за идентифициране на абоната или потребителя;
2. интернет достъп, електронна поща по интернет и интернет телефония - идентификатор, определен за потребителя, идентификатор на потребителя и телефонен номер, определени за всяко съобщение, влияющо в обществената телефонна мрежа, данни за идентифициране на абоната или потребителя, за когото са определени IP адрес, идентификатор на потребителя или телефонен номер в момента на връзката.

(2) (Изм. - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г.) Данните по чл. 250а, ал. 1, т. 2 са при:
1. обществена телефонна услуга - набран номер (викиран телефонен номер) и в случаите на допълнителни услуги, като пренасочване или прехвърляне на викацията, номер или номера, към които е маршрутизирано викаването, и данни за идентифициране на абоната или потребителя;
2. електронна поща по интернет и интернет телефония - идентификатор на потребителя или телефонен номер на получателя/ите на интернет телефонно повикване, данни за идентифициране на абоната или потребителя и получателя на получаваната викация, за когото е предвидено съобщението.

(3) (Изм. - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г.) Данните по чл. 250а, ал. 1, т. 3 са:
1. при обществена телефонна услуга - дата и час на началото и края на връзката;
2. за интернет достъп, електронна поща по интернет и интернет телефония - дата и час на влизане и излизане в/от услугата интернет достъп, основаващи се на определена часов зона, заедно с IP адреса, динамичен или статичен, определен за връзката от доставчика на услугата интернет достъп, и идентификатора на абоната или потребителя, дата и час на влизане и излизане в/от услугата електронна поща по интернет или интернет телефония, основаващи се на определена часов зона.
(2) The data referred to in Art. 250a, para 1(2) shall be at:
1. a public telephone service – a dialled number (called telephone number) and, in the case of additional services such as call forwarding or call transfer, the number or numbers to which the call is routed and data identifying the subscriber or user;
2. e-mail over the Internet and Internet telephony – the user identifier or telephone number of the recipient(s) of the Internet telephony call, the subscriber or user identification data and the identifier of the recipient to whom the message is addressed.
(3) The data referred to in Art. 250a para 1 item 3 shall be:
1. in the case of a public telephone service, the date and time of the beginning and end of the connection;
2. for Internet access, Internet e-mail and Internet telephony, the date and time of entry into and exit from the Internet access service based on a specific time zone, together with the IP address, dynamic or static, assigned to the connection by the provider of the Internet access service and the subscriber or user identifier, the date and time of entry into and exit from the Internet e-mail or Internet telephony service based on a specific time zone.
(4) The data referred to in Art. 250a para 1 item 4 shall be:
1. the type of public telephone service used;
2. the Internet service used in the case of Internet e-mail or Internet telephony.
(5) The data referred to in Art. 250a para 1 item 5 shall be at:
1. a fixed telephone service – for the caller and the called telephone number;
2. a public telephone service provided through a mobile terrestrial network – for the calling and called telephone number; international mobile subscriber identifier (IMSI); international mobile subscriber identifier (IMSI); international calling mobile electronic communications terminal identifier (IMEI); International Mobile End Electronic Communications Equipment Identifier (IMEI); in the case of pre-paid services, the date and

179 (4) (Изм. - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г.) Данните по чл. 250а, ал. 1, т. 4 са:
1. видът на използваната обществена телефонна услуга;
2. използваната интернет услуга при електронна поща по интернет или интернет телефония.
(5) (Изм. - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г.) Данните по чл. 250а, ал. 1, т. 5 са при:
1. фиксирания телефонна услуга - за викащия и викания телефонен номер;
2. обществена телефонна услуга, предоставяна чрез мобилна наземна мрежа - за викащ и викан телефонен номер; международен идентификатор на викащия мобилен абонат (IMSI); международен идентификатор на викания мобилен абонат (IMSI); международен идентификатор на викащото мобилно крайно електронно съобщително устройство (IMEI); международен идентификатор на виканото мобилно крайно електронно съобщително устройство (IMEI); в случай на предплатени услуги – дата и час на началното активиране на услугата и етикет за местоположение – идентификатор на клетката, от което е активирана услугата и за идентифициране на абоната или потребителя;
3. интернет достъп, електронна поща по интернет и интернет телефония - викащият телефонен номер за комутиращ достъп, цифрова абонатна линия (DSL) или друга крайна точка на инициатора на връзката.
(6) (Изм. - ДВ, бр. 17 от 2010 г., в сила от 10.05.2010 г.) Данни по чл. 250а, ал. 1, т. 6 са административни адреси на клетки на мобилна наземна електронна съобщителна мрежа, от които е генерирано или в които е терминирано повикване.
time of the initial activation of the service and a location tag – the identifier of the cell from which the service was activated and to identify the subscriber or user;

3. internet access, email over the internet and internet telephony – the calling telephone number for switched access, digital subscriber line (DSL) or other termination point of the originator of the connection.

(6) Data referred to in Art. 250a para 1(6) shall be administrative addresses of cells of a mobile terrestrial electronic communications network from which a call was originated or terminated.

Art. 251b180 (1) Enterprises providing public electronic communication networks and/or services shall store for a period of 6 months data created or processed in the process of their activity, which are necessary for:

1. trace and identify the source of the link;
2. identification of the direction of the connection;
3. identify the date, time and duration of the connection;
4. identification of the type of connection;
5. identification of the end device of the user or what is presented as his end device;
6. establishing the identifier of the used cells.

180 Чл. 251б. Закон за електронните съобщения (Нов - ДВ, бр. 24 от 2015 г., в сила от 31.03.2015 г.)
(1) Предприятията, предоставящи обществени електронни съобщителни мрежи и/или услуги, съхраняват за срок от 6 месеца данни, създадени или обработени в процеса на тяхната дейност, които са необходими за:
1. проследяване и идентифициране на източника на връзката;
2. идентифициране на направлението на връзката;
3. идентифициране на датата, часа и продължителността на връзката;
4. идентифициране на типа на връзката;
5. (изм. - ДВ, бр. 20 от 2021 г.) идентифициране на крайното устройство на потребителя или на това, което се представя за негово крайно устройство;
6. установяване на идентификатор на познаваните клетки.
- ДВ, бр. 10 от 2020 г., в сила от 24.03.2020 г. (*) изр. трето, обявено за противовконституционно с РКС № 15 от 2020 г. - ДВ, бр. 101 от 2020 г., доп. - ДВ, бр. 20 от 2021 г.) Данните по ал. 1 се съхраняват за нуждите на националната сигурност и за предотвратяване, разкриване и разследване на тежки престъпления, в това число за целите на предотвратяване на тежки престъпления в рамките на оперативно-издирателната дейност по реда на глава девета от Закона за противодействие на корупцията и за отнемане на незаконно придобитото имущество, както и за издиране на обявено за общодържавно издирание лице, което е осъдено за тежко престъпление на лишаване от свобода с възгла в сила присъда за вреден за обществен интерес. Данните по ал. 1, т. 5 се съхраняват и за осъществяване на операции по издиране и спасяване на лица, включително за криминални престъпления, в това число за целите на предотвратяване и разследване на тежки престъпления от вида на престъпления, които в същото време са и изложени за криминална опасност и за осъществяване на операции по издиране и спасяване на лица, включително за криминални престъпления, които в същото време са и изложени за криминална опасност.
(3) Други данни, включително разкриващи съдържанието на съобщенията, не могат да бъдат съхранявани по този ред.
(4) (Изм. - ДВ, бр. 17 от 2019 г.) Данните по ал. 1 се обработват и съхраняват в съответствие с изискванията за защита на личните данни.
(2) (Supp. – SG No 97 of 2016, in force from 06.12.2016, Supp. – SG No 7 of 2018, Supp. – SG No 28 of 2020, in force from 24.03.2020 (*), third clause, declared unconstitutional by RKS No 15 of 2020 – SG No 101 of 2020, supplement – SG No 20 of 2021 d.) The data under para 1 are stored for the needs of national security and for the prevention, detection and investigation of serious crimes, including for the purposes of preventing serious crimes within the framework of operational-investigative activities in accordance with Chapter Nine of the Anti-Corruption and Confiscation Act of the illegally acquired property, as well as for the search of a person who has been declared a state-wide wanted person, who has been convicted of a serious crime of deprivation of liberty with an effective sentence, whose execution of the sentence has not been postponed in accordance with the procedure of Art. 66 para 1 of the Criminal Code and the sentence has not been executed, or who has fallen or may fall into a situation putting his life or health at risk. The data under para 1 item 6 are also stored for carrying out search and rescue operations in the cases under Art. 38 para 3 of the Disaster Protection Act.

The data under para 1 item 6 are also stored for the needs of the forced execution of the mandatory isolation and hospital treatment of persons under Art. 61 of the Act on Health, who refused or did not perform mandatory isolation and treatment.

(3) Other data, including those revealing the content of messages, cannot be stored under this order.

(4) The data under para 1 are processed and stored in accordance with the requirements for the protection of personal data.

Moreover, the following code may be consulted on further provisions:

→ Personal Data Protection Act

dd. Para 1(d) Freezing instrumentalities or proceeds of crime, including assets

Criminal Procedure Code

Measures to secure the fine, confiscation and confiscation of property for the benefit of the state

Art. 72 (1) At the request of the prosecutor, the relevant court of first instance alone in a closed session takes measures to ensure the fine, confiscation and confiscation of property for the benefit of the state in accordance with the Civil Procedure Code.

(2) In the court proceedings, the court takes the measures under para 1 at the request of the prosecutor.

181 Закон за защита на личните данни.
182 Мерки за обезпечаване на глобата, конфискацията и отнемането на вещи в полза на държавата Чл. 72. Наказателно-процесуален кодекс (1) По искане на прокурора съответният първоинстанционен съд еднолично в закрито заседание взема мерки за обезпечаване на глобата, конфискацията и отнемането на вещи в полза на държавата по реда на Гражданския процесуален кодекс.

(2) В съдебното производство съдът взема мерките по ал. 1 по искане на прокурора.
Management of secured property

Art. 72а The property secured pursuant to Art. 72 for the purpose of confiscation or confiscation of property for the benefit of the state, is managed and guarded in accordance with the Anti-Corruption and Asset Forfeiture Act.

Measures to secure the civil claim

Art. 73 (1) The court and the authorities of the pre-trial proceedings are obliged to explain to the victim that he has the right to file a civil claim in the court proceedings for the damages caused by the crime.

(2) At the request of the victim or his heirs, or the damaged legal entity in the pre-trial proceedings, the relevant court of first instance alone in a closed session takes measures to secure a future claim in accordance with the Civil Procedure Code.

(3) In the cases under Art. 51 the measures under para 2 are taken at the request of the prosecutor.

(4) In the court proceedings on the requests under para 2 and 3 shall be pronounced by the court hearing the case.

Measures to secure costs in the case

Art. 73а (1) At the request of the prosecutor, the victim or his heirs, or the damaged legal entity in the pre-trial proceedings, the relevant court of first instance alone in a closed session takes measures according to the procedure of the Civil Procedure Code for securing costs incurred and awarded in the case.

183 Управление на обезпечено имущество

Чл. 72а. Наказателно-процесуален кодекс (Нов - ДВ, бр. 7 от 2019 г., в сила от 23.07.2019 г.)

Имуществото, обезпечено по реда на чл. 72 с цел конфискация или отнемане на връзки на държавата, се управлява и пази по реда на Закона за противодействие на корупцията и за отнемане на незаконно придобитото имущество.

184 Мерки за обезпечаване на гражданския иск

Чл. 73. Наказателно-процесуален кодекс

(1) Съдът и органите на досъдебното производство са длъжни да разяснят на пострадалия, че има право да предаде в съдебното производство гражданска иск за вредите, причинени от престъплението.

(2) По искане на пострадалия или на неговите наследници, или на ощетеното юридическо лице в досъдебното производство съответният първоинстанционен съд еднолично в закрито заседание взема мерки за обезпечаване на бъдещ иск по реда на Гражданския процесуален кодекс.

(3) В случаите по чл. 51 мерките по ал. 2 се вземат по искане на прокурора.

(4) В съдебното производство по исканията по ал. 2 и 3 се произнася съдът, който разглежда делото.

185 Мерки за обезпечаване на разноски по делото

Чл. 73а. Наказателно-процесуален кодекс (Нов - ДВ, бр. 42 от 2015 г.)

(1) По искане на прокурора, на пострадалия или на неговите наследници, или на ощетеното юридическо лице в досъдебното производство съответният първоинстанционен съд еднолично в закрито заседание взема мерки по реда на Гражданския процесуален кодекс за обезпечаване на направени и присъдени разноски по делото.

(2) (Изм. - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Съдът може да наложи обезпечителната мярка и върху парите и ценните книжа, представени като гаранция. Наложената обезпечителна мярка не възпрепятства отнемането в полза на държавата на основание чл. 66, ал. 2.

(3) В съдебното производство съдът взема мерки по ал. 1 и 2 по искане на прокурора, на граждansкия ищ или на неговите наследници, или на частния обвинител.
(2) The court may also impose the security measure on the money and securities presented as collateral. The imposed precautionary measure does not prevent confiscation in favor of the state on the basis of Art. 66 para 2.

(3) In the judicial proceedings, the court takes the measures under para 1 and 2 at the request of the public prosecutor, the civil plaintiff or his heirs, or the private prosecutor.

Further provisions may be found in the Anti-Corruption and Asset Forfeiture Act

**ee. Para 1(e) Interception of electronic communications to and from the suspect or accused person**

The interception of electronic communications to and from the suspect or the accused falls under special investigative intelligence means in Bulgaria. These laws are found in Section VIII (Special Intelligence Means) of the CPC.

(1) **Provisions in the CPC and other national laws**

**Physical evidence prepared using special intelligence means**

*Art. 172 CPC*

(1) The pre-trial investigation bodies may use special intelligence means: technical means – electronic and mechanical devices and substances, which serve to document the activities of the controlled persons and objects, and operational means – surveillance, eavesdropping, tracking, penetration, marking and verification of correspondence and computer information, controlled delivery, trust transaction and investigation by an undercover officer.

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186 Закон За Противодействие На Корупцията И За Отнемане На Незаконно Придобитото Имущество.

187 Веществени доказателствени средства, изготвени при използване на специални разузнавателни средства

**Чл. 172. Наказателно-процесуален кодекс**

(1) Органите на досъдебното производство могат да използват специални разузнавателни средства: технически средства - електронни и механични съоръжения и вещества, които служат за документиране на дейността на контролираните лица и обекти, и оперативни способи - наблюдение, подслушване, проследяване, проникване, белязване и проверка на кореспонденция и компютърна информация, контролирана доставка, доверителна сделка и разследване чрез служител под прикритие.


(3) Доставчиците на компютърно-информационнни услуги са длъжни да подпомагат съда и органите на досъдебното производство при събирането и записването на компютърни информационни данни чрез прилагане на специални технически средства само когато това се налага за разкриване на престъпления по ал. 2.

(4) Специалните разузнавателни средства - контролирана доставка и доверителна сделка, могат да служат за събиране на веществени доказателства, а служителят под прикритие се разпитва като свидетел.

(5) Материалите по ал. 1–4 се прилагат към делото.
(2) Special intelligence means shall be used when necessary in the investigation of serious intentional crimes under Chapter One, Chapter Two, Sections I, II, IV, V, VIII and IX, Chapter Three, Section III, Chapter Five, Sections I–VII, Chapter Six, Sections II–IV, Chapter Eight, Chapter Eight “a”, Chapter Nine “a”, Chapter Eleven, Sections I–IV, Chapter Twelve, Chapter Thirteen and Chapter Fourteen, as well as for crimes under Art. 219 para 4 sentence 2, Article 220 para 2, Article 253, Article 308 paras 2, 3 and 5 sentence 2, Article 321, Article 321a, Article 356j and Article 393 of the Special Part of the Criminal Code, if the relevant circumstances cannot be established in any other way or if their establishment involves extreme difficulties.

(3) Providers of computer information services shall be obliged to assist the court and the pre-trial proceedings authorities in the collection and recording of computer information data through the application of special technical means only when this is necessary for the detection of offences under para 2.

(4) Special intelligence means – controlled delivery and trust transaction may be used to collect physical evidence, and the undercover officer shall be questioned as a witness.

(5) The material referred to in para 1–4 shall be attached to the case file.

Art. 173 CPC contains the rules on how to carry out the request (see below → Art. 30 Para 5: National Procedures and national modalities for taking investigative measures).

ff. Para 1(f) Tracking & Tracing an Object

30 | **Criminal Procedure Code**
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**Section VIII. Special intelligence tools**
**Physical evidence prepared using special intelligence means**
Art. 172
See above → Para 1(e) Interception of electronic communications to and from the suspect or accused person.

c) **Para 2: Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation, Art. 29**

*Without prejudice to Article 29, the investigation measures set out in paragraph 1 of this Article may be subject to conditions in accordance with the applicable national law if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.*

31 The restrictions can be depicted from the LLP, which is cited in Art. 29 above as well as the right not to incriminate oneself. Parliamentarians are protected as well by the Constitution.
See above Art. 29 → Privilege against self-incrimination, for the right of the lawyer not to incriminate himself.

d) Para 3: Conditions/ Thresholds for investigation measures

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

aa. Conditions and Limitations for investigation measures of Para 1(c), (e) and (f)

Due to the notification by the Bulgarian Government Art. 172 CPC can be named and consulted to determine the condition and limitations regarding special intelligence tools used in criminal investigations of the EDP.

bb. Serious offences Limitation for offences of Para 1(e) and (f)

It applies the same that already applies for conditions and limitations.

cc. Notifications according to the last sentence of para 3

Yes, the notification was published. 188

e) Para 4: Any other measure(s) in the EDP’s Member State

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

See already → in the Bulgarian Notification to the EPPO.

f) Para 5: National Procedures and national modalities for taking investigative measures

The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 4 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective. The

188 Bulgarian Notification pursuant to Article 117 EPPO Regulation as published by the EPPO on the EPPO Website, https://www.eppo.europa.eu/sites/default/files/2022-06/BG%20Article%20117%20Notification%20UP DATED%20May%202022.pdf, last access on 16.05.2023.
In relation to searches, para 1(a)

Persons in whose presence the search and seizure are carried out

Art. 162 CPC

(1) The search and seizure shall be carried out in the presence of authorized persons and the person using the premises or an adult member of his family.
(2) When the person using the premises or a member of his family cannot be present, the search and seizure shall be carried out in the presence of the house manager or a representative of the municipality or the town hall.
(3) The search and seizure in premises used by state or municipal offices shall be carried out in the presence of a representative of the office.
(4) The search and seizure in premises used by a legal entity shall be carried out in the presence of its representative. When a representative of the legal entity cannot be present, the search and seizure are carried out in the presence of a representative of the municipality or the town hall.
(5) Search and seizure in the premises of foreign representations of international organisations and in residences of their employees, who enjoy immunity in relation to the criminal jurisdiction of the Republic of Bulgaria, is carried out with the consent of the head of the representation and in the presence of a prosecutor and a representative of the Ministry of Foreign Affairs.
(6) When the search and seizure are related to computer information systems and software products, the actions are carried out in the presence of a specialist – technical assistant.

189 Лица, в присъствието на които се извършват претърсването и изземването

Чл. 162. Наказателно-процесуален кодекс

(1) Претърсването и изземването се извършват в присъствието на поемни лица и на лицето, което използва помещението, или на пълнолетен член на семейството му.
(2) Когато лицето, което използва помещението, или член на семейството му не може да присъства, претърсването и изземването се извършват в присъствието на домоуправителя или на представител на общината или кметството.
(3) Претърсването и изземването в помещение, което се ползва от държавни или общински служби, се извършват в присъствието на представител на службата.
(4) Претърсването и изземването в помещение, което се ползва от юридическо лице, се извършват в присъствието на негов представител. Когато не може да присъства представител на юридическото лице, претърсването и изземването се извършват в присъствието на представител на общината или кметството.
(5) Претърсване и изземване в помещения на чужестранни представителства на международни организации и в жилища на техни служители, които се ползват с имунитет по отношение на наказателната юрисдикция на Република България, се извършва със съгласието на ръководителя на представителството и в присъствието на прокурор и представител на Министерството на външните работи.
(6) Когато претърсването и изземването са свързани с компютърни информационни системи и програмни продукти, действията се извършват в присъствието на специалист – технически помощник.
Execution of the search and seizure

Art. 163 CPC

(1) Search and seizure shall be carried out during the day, unless delayed.
(2) Before proceeding with a search and seizure, the relevant authority presents the authorization for this and offers to indicate to it the searched objects, books and computer information systems that contain computer information data.
(3) The body that carries out the search has the right to prohibit those present from entering into contact with other persons or with each other, as well as from leaving the premises until the search is completed.
(4) During the search and seizure, no actions may be performed that are not required by their purpose. Premises and storerooms are only forcibly opened upon refusal to be opened, avoiding unnecessary damage.
(5) When, during the search and seizure, circumstances from the intimate life of the citizens are revealed, the necessary measures are taken to ensure that they are not disclosed.
(6) Seized objects, books and computer information systems, which contain computer information data, shall be presented to the seized persons and others present. Where necessary, they are wrapped and sealed at the point of seizure.
(7) Seizure of computer information data is carried out by recording on paper and other media. When the medium is paper, each page is signed by the persons under Art. 132 para 1. In other cases, the bearer is sealed with a note stating: the case, the authority that

190 Извършване на претърсването и изземването

Чл. 163. Наказателно-процесуален кодекс

(1) Претърсването и изземването се извършват през деня, освен ако не търсят отлагане.
(2) Преди да пристъпят към претърсване и изземване, съответният орган предоставя разрешението за това и предлагат да му се посочат търсените предмети, книжа и компютърни информационни системи, в които се съдържат компютърни информационни данни.
(3) Органът, който извършва претърсването, има право да забрани на присъстващите да влизат във връзка с други лица или помежду си, както и да напуснат помещението, докато завърши претърсването.
(4) При претърсването и изземването не могат да се извършват действия, които не се налагат от тяхната цел. Помещения и хранилища се отварят принудително само при отказ да бъдат отворени, като се избягват ненужни повреди.
(5) Когато при претърсването и изземването се разкриват обстоятелства от интимния живот на гражданите, вземат се необходимите мерки те да не се разгласяват.
(6) Иззетите предмети, книжа и компютърни информационни системи, в които се съдържат компютърни информационни данни, се предявяват на поемните лица и другите присъстващи. Когато е необходимо, те се опаковат и запечатват на мястото на изземването им.
(7) Изземването на компютърни информационни данни се извършва чрез запис върху хартиен носител и друг носител. Когато носителят е хартиен, всяка страница се подписва от лицата по чл. 132, ал. 1. В останалите случаи носителят се запечатва с бележка, в която се посочват: делото, органът, извършил изземването, мястото, датата и имената на всички присъстващи съгласно чл. 132, ал. 1, които се подписват.
(8) Разпечатването на носителя, изготвен по реда на ал. 7, се допуска за нуждите на разследването само с разрешение на прокурора и се извършва в присъствието на поемни лица и специалист – технически помощник. В съдебното производство разпечатването се извършва по решение на съда от специалист – технически помощник.
carried out the seizure, the place, the date and the names of all those present according to Art. 132 para 1, which are signed.

(8) The printing of the carrier prepared in accordance with para 7, is allowed for the needs of the investigation only with the permission of the prosecutor and is carried out in the presence of the responsible persons and a specialist - technical assistant. In court proceedings, the printing is done by a court decision by a specialist - technical assistant.

**bb. In relation to para 1(e)**

| Art. 173 CPC¹⁹¹ (1) | (supplemented – SG No 62 of 2022) For the use of special intelligence tools in pre-trial proceedings, a written, motivated request is submitted to the court by the supervising prosecutor. **Before submitting the request, the supervising prosecutor shall notify the administrative head of the relevant Prosecutor’s office. In cases** |

¹⁹¹ Искане за използване на специални разузнавателни средства

**Чл. 173. Наказателно-процесуален кодекс**


(2) Искането трябва да съдържа:

1. информация за престъплението, за разследването на което се налага използването на специални разузнавателни средства;
2. описание на извършените до момента действия и резултатите от тях;
3. данни за лицата или обектите, спрямо които ще се прилагат специалните разузнавателни средства;
4. оперативните способи, които следва да се приложат;
5. (изм. - ДВ, бр. 70 от 2013 г., в сила от 09.08.2013 г.) според които се иска ползването, и мотиви, които да обосновават продължителността му;
6. (нова - ДВ, бр. 62 от 2022 г., в сила от 09.08.2013 г.) мотиви за невъзможността необходимите данни да бъдат събрани по друг начин или описание на изключителните трудности, с които е свързано събирането им.


(4) (Изм. - ДВ, бр. 109 от 2008 г., доп. - ДВ, бр. 62 от 2022 г.) В неотложни случаи, когато това е единствената възможност за осъществяване на разследването, служител под прикритие може да се използва и по разпореждане на наблюдаващия прокурор, на европейския прокурор или европейския делегиран прокурор. Дейността на служителя под прикритие се прекратява, ако в срок до 24 часа не бъде дадено разрешение от съответния съд, който се произнася и по съхраняването или унищожаването на събрахната информация.

(5) (Нова - ДВ, бр. 42 от 2015 г.) Специални разузнавателни средства могат да се използват и спрямо свидетел по наказателното производство, който е дал съгласието си за това, за установяване на престъпна дейност на други лица по чл. 108а, чл. 123, ал. 1 и 2, в нея вместо данни за самоличността на служителя се посочва личният му идентификационен номер, определен от структурата, която осигурява и прилага разследването чрез служителя под прикритие.

(6) (Предишна ал. 5, изм. - ДВ, бр. 42 от 2015 г.) В случаите по ал. 5, както и в случаите по чл. 123, ал. 7, към искането се прилага и писменото съгласие на лицето, спрямо което ще се използват специалните разузнавателни средства.
under the competence of the European Public Prosecutor’s Office, the written, motivated request to the court is submitted by the European Prosecutor or by a European Delegated Prosecutor.

(2) The request must contain:
1. information about the crime, the investigation of which requires the use of special intelligence means;
2. description of the actions carried out so far and their results;
3. data on the persons or objects to which the special intelligence means will be applied;
4. the operational methods to be applied;
5. the period for which the use is requested, and reasons justifying its duration;
6. reasons for the impossibility of collecting the necessary data in another way or a description of the exceptional difficulties associated with their collection.

(3) (amended – SG No 32 of 2022, in force from 27.07.2022) When the request is for an investigation by an undercover officer, the head of the structure that provides it and applies, or a person authorized by him submits to the authority under Art. 174, para 1 and 2 a written declaration by the employee that he is familiar with his duties and tasks in the specific investigation. The declaration is kept by the authority under Art. 174 para 1 and 2 and in it, instead of data on the identity of the employee, his personal identification number, determined by the structure that provides and implements the investigation through an undercover officer, is indicated.

(4) (supplemented – SG No 62 of 2022) In urgent cases, when this is the only possibility for carrying out the investigation, an undercover officer may also used at the behest of the supervising prosecutor, the European prosecutor or the European delegated prosecutor. The activity of the undercover officer is terminated if permission is not given within 24 hours by the relevant court, which also decides on the storage or destruction of the collected information.

(5) Special intelligence means may also be used against a witness in criminal proceedings who has given his consent to this, to establish criminal activity of other persons under Art. 108a, Art. 143–143a, Art. 159a–159d, Art. 301–305 and Art. 321 of the Criminal Code.

(6) In the cases under para 5, as well as in the cases under Art. 123 para 7 the request shall be accompanied by the written consent of the person against whom the special intelligence means will be used.
Authorization to use special intelligence means

Art. 174 CPC\(^2\) (1) The permission to use special intelligence means is given in advance by the president of the relevant district court or by someone expressly authorized by him Vice Chairman.

(2) The authorization for the use of special intelligence means in cases subject to a military court is given in advance by the chairman of the relevant military court or by a deputy chairman expressly authorized by him.

(3) (Repealed – SG No 32 of 2022)

(4) (amended – SG No 32 of 2022, in force from 27.07.2022) The authority under para 1 and 2 shall issue a written, reasoned ruling, and before the ruling, he may request to

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\(^2\) Разрешение за използване на специални разузнавателни средства

Чл. 174. Наказателно-процесуален кодекс (1) (Изм. - ДВ, бр. 70 от 2013 г., в сила от 09.08.2013 г.) Разрешението за използване на специални разузнавателни средства се дава предварително от председателя на съответния окръжен съд или от изрично оправомощен от него заместник-председател.

(2) (Изм. - ДВ, бр. 42 от 2015 г.) Разрешението за използване на специални разузнавателни средства по дела, подсъдни на военен съд се дава предварително от председателя на съответния военен съд или от изрично оправомощен от него заместник-председател.

(3) (Нова - ДВ, бр. 13 от 2011 г., в сила от 01.01.2012 г., изм. - ДВ, бр. 61 от 2011 г., отм. - ДВ, бр. 32 от 2022 г., в сила от 27.07.2022 г.)


(6) (Нова - ДВ, бр. 42 от 2015 г., изм. и доп. - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г., изм. - ДВ, бр. 32 от 2022 г., в сила от 27.07.2022 г.) Разрешението за използване на специални разузнавателни средства за престъпления, осъществени от председателя на Софийския апелативен съд, Военно-апелативния съд и негов заместник се дава предварително по отношение на всички участници, включително и лица и свидетели по чл. 12, ал. 2 и 3 от Закона за специалните разузнавателни средства от заместник-председателя на Върховния касационен съд, ръководещ Наказателната колегия, по искане на заместник на главния прокурор при Върховния касационен прокуратура.


(8) (Предишна ал. 6, изм. - ДВ, бр. 13 от 2011 г., в сила от 01.01.2012 г., изм. - ДВ, бр. 61 от 2011 г., предишна ал. 7 - ДВ, бр. 42 от 2015 г., изм. - ДВ, бр. 32 от 2022 г., в сила от 27.07.2022 г.) За направените искания и издадените разрешения по ал. 1 и 2 в съответния съд се води специален регистър, който не е публичен.
be provided with all investigation materials that are related to the information contained in the request.

(5) (amended – SG No 32 of 2022, in force from 27.07.2022) The permission to use special intelligence means for crimes committed by judges, prosecutors and investigators is given in advance in relation to all participants, including persons and witnesses under Art. 12 para 2 and 3 of the Special Intelligence Means Act by the chairman of the Sofia Court of Appeal or by a deputy chairman expressly authorized by him, if the case is under the jurisdiction of the Sofia City Court, at the request of the administrative head of the Sofia Court of Appeal or a deputy authorized by him. In other cases, the permission is given by the chairman of the Military Appellate Court or by his authorized deputy, at the request of the administrative head of the Military Appellate Prosecutor’s Office or by his authorized deputy.

(6) (amended – SG No 32 of 2022, in force from 27.07.2022) The permission to use special intelligence means for crimes committed by the President of the Sofia Court of Appeal, the Military Court of Appeal and his deputy is given in advance in relation to all participants, including persons and witnesses under Art. 12, para 2 and 3 of the Act on Special Intelligence Means by the Deputy President of the Supreme Court of Cassation, who heads the Criminal Board, at the request of the Deputy Prosecutor General at the Supreme Court of Cassation.

(7) (amended – SG No 32 of 2022, in force from 27.07.2022) The order for an investigation by an undercover officer contains the crime for which the investigation is authorized and the identification number of the officer determined by the authority under para 1 and 2.

(8) (amended – SG No 32 of 2022, in force from 27.07.2022) For the requests made and the permits issued under para 1 and 2, a special register is kept in the relevant court, which is not public.

Order and term for the application of special intelligence means for the needs of criminal proceedings

Art. 175 CPC

(1) Special intelligence means are applied by the relevant structures of the State Agency “Technical Operations”, the State Agency “National Security” or the Ministry of Internal Affairs in accordance with the Act on Special Intelligence Means.
(2) The chairman of the State Agency “Technical Operations” or a deputy chairman authorized in writing by him, the chairman of the State Agency “National Security” or a deputy chairman authorized in writing by him, or respectively the chief secretary of the Ministry of Internal Affairs gives a written order for the application of special intelligence means by the structures under para 1 based on the authorization under Art. 174.

(3) The deadline for the application of special intelligence means is:
1. up to twenty days in the cases of Art. 12 para 1 item 4 of the Act on Special Intelligence Means;
2. up to two months in other cases.

(4) In case of necessity, the term under para 1 may be extended in accordance with Art. 174:
1. up to twenty days, but for no more than sixty days in total in the cases under para 3, item 1;
2. for no more than six months in total in the cases under para 3 item 2.

(5) In the cases under para 4 the request for the extension of the term also contains a complete and exhaustive indication of the results obtained from the application of the special intelligence means.

(6) The application of special intelligence means shall be suspended when:
1. the intended goal has been achieved;
2. their application does not produce results;
3. the intended goal has not been achieved;
4. the threat has been eliminated;
5. the threat has been neutralized;
6. the threat has been neutralized and there is no need for further application of such means;
7. the application of such means is considered to be illegal.

(7) In case of necessity, the term under para 1 may be extended in accordance with Art. 174:
1. up to twenty days, but for no more than sixty days in total in the cases under para 3, item 1;
2. for no more than six months in total in the cases under para 3 item 2.

(8) In the cases under para 4 the request for the extension of the term also contains a complete and exhaustive indication of the results obtained from the application of the special intelligence means.

(9) The application of special intelligence means shall be suspended when:
1. the intended goal has been achieved;
2. their application does not produce results;
3. the threat has been eliminated;
4. the threat has been neutralized;
5. the threat has been neutralized and there is no need for further application of such means;
6. the threat has been neutralized and there is no need for further application of such means and there is no danger of further application of such means;
7. the application of such means is considered to be illegal.

(10) In case of necessity, the term under para 1 may be extended in accordance with Art. 174:
1. up to twenty days, but for no more than sixty days in total in the cases under para 3, item 1;
2. for no more than six months in total in the cases under para 3 item 2.

(11) In the cases under para 4 the request for the extension of the term also contains a complete and exhaustive indication of the results obtained from the application of the special intelligence means.

(12) The application of special intelligence means shall be suspended when:
1. the intended goal has been achieved;
2. their application does not produce results;
3. the threat has been eliminated;
4. the threat has been neutralized;
5. the threat has been neutralized and there is no need for further application of such means;
6. the threat has been neutralized and there is no need for further application of such means and there is no danger of further application of such means;
7. the application of such means is considered to be illegal.

(13) In case of necessity, the term under para 1 may be extended in accordance with Art. 174:
1. up to twenty days, but for no more than sixty days in total in the cases under para 3, item 1;
2. for no more than six months in total in the cases under para 3 item 2.

(14) In the cases under para 4 the request for the extension of the term also contains a complete and exhaustive indication of the results obtained from the application of the special intelligence means.

(15) The application of special intelligence means shall be suspended when:
1. the intended goal has been achieved;
2. their application does not produce results;
3. the threat has been eliminated;
4. the threat has been neutralized;
5. the threat has been neutralized and there is no need for further application of such means;
6. the threat has been neutralized and there is no need for further application of such means and there is no danger of further application of such means;
7. the application of such means is considered to be illegal.

(16) In case of necessity, the term under para 1 may be extended in accordance with Art. 174:
1. up to twenty days, but for no more than sixty days in total in the cases under para 3, item 1;
2. for no more than six months in total in the cases under para 3 item 2.

(17) In the cases under para 4 the request for the extension of the term also contains a complete and exhaustive indication of the results obtained from the application of the special intelligence means.

(18) The application of special intelligence means shall be suspended when:
1. the intended goal has been achieved;
2. their application does not produce results;
3. the threat has been eliminated;
4. the threat has been neutralized;
5. the threat has been neutralized and there is no need for further application of such means;
6. the threat has been neutralized and there is no need for further application of such means and there is no danger of further application of such means;
7. the application of such means is considered to be illegal.

(19) In case of necessity, the term under para 1 may be extended in accordance with Art. 174:
1. up to twenty days, but for no more than sixty days in total in the cases under para 3, item 1;
2. for no more than six months in total in the cases under para 3 item 2.

(20) In the cases under para 4 the request for the extension of the term also contains a complete and exhaustive indication of the results obtained from the application of the special intelligence means.
3. the term for the permit has expired;
4. there is a danger of disclosure of the operational methods;
5. their application becomes impossible;
6. there is a danger to the life or health of the undercover employee or his ascendants, descendants, brothers, sisters, spouse or persons with whom he is in particularly close relations, when the danger arises from the assigned tasks.

(7) When suspending the application of special intelligence means, the authority that granted the permission shall be immediately notified in writing and motivated. In cases where the collected information is not used to prepare physical evidence, he orders its destruction.

**Preparation of material evidence obtained using special intelligence means**

**Art. 176 CPC**

(1) When using of special intelligence means, the physical evidence is prepared in two copies, and within 24 hours of their preparation, they are sent sealed to the prosecutor, who requested the permission, and to the court, which granted the permission, respectively.

(2) In the cases under Art. 177 para 3, when this is necessary for the needs of the criminal proceedings, when using special intelligence means, the prosecutor, who requested the permission, may order that the material evidence be prepared in more than two copies. Within 24 hours of the preparation of the material evidence, a sealed copy is sent to the court that granted the permission, and the remaining copies are sent to the prosecutor for application to the relevant criminal proceedings.

**Probative value of the data obtained when using the special intelligence means**

**Art. 177 CPC**

(1) The accusation and the sentence cannot be based only on the data of the special intelligence means.

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194 Изготвяне на веществените доказателствени средства, получени при използване на специални разузнавателни средства

Чл. 176. Наказателно-процесуален кодекс


(2) (Нова - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) В случаите по чл. 177, ал. 3, когато това е необходимо за нуждите на наказателното производство, при използване на специални разузнавателни средства прокурорът, поискан разрешението, може да постави веществените доказателствени средства да се изготвят в повече от два екземпляра. В срок до 24 часа от изготвянето на веществените доказателствени средства запечатан екземпляр се изпраща на съда, дал разрешението, а останалите екземплиари се изпращат на прокурора за прилагане към съответните наказателни производства.

195 Доказателствена сила на данните, получени при използване на специалните разузнавателни средства

Чл. 177. Наказателно-процесуален кодекс

(1) (Изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) Обвинението и присъдата не могат да се основават само на данните от специалните разузнавателни средства.
(2) In criminal proceedings, results obtained outside of the request made under Art. 173, unless they contain data on another serious intentional crime under Art. 172 para 2.
(3) To prove a serious intentional crime under Art. 172 para 2 may also use the data obtained during the application of special intelligence means in other criminal proceedings or at the request of an authority under Art. 13 para 1 of the Act on Special Intelligence Means.
2. Article 31 Cross-border investigations

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1. The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the handling European Delegated Prosecutor, the latter European Delegated Prosecutor shall decide on the adoption of the necessary measure and assign it to a European Delegated Prosecutor located in the Member State where the measure needs to be carried out.

2. The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30. The justification and adoption of such measures shall be governed by the law of the Member States’ of the handling European Delegated Prosecutor. Where the handling European Delegated Prosecutor assigns an investigation measure to one or several European Delegated Prosecutors from another Member State, he/she shall at the same time inform his supervising European Prosecutor.

3. If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor shall obtain that authorisation in accordance with the law of that Member State. If judicial authorisation for the assigned measure is refused, the handling European Delegated Prosecutor shall withdraw the assignment. However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor requires it, the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment.

4. The assisting European Delegated Prosecutor shall undertake the assigned measure, or instruct the competent national authority to do so.
5. Where the assisting European Delegated Prosecutor considers that:
(a) the assignment is incomplete or contains a manifest relevant error;
(b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons;
(c) an alternative but less intrusive measure would achieve the same results as the measure assigned; or
(d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his/her Member State,
he/she shall inform his supervising European Prosecutor and consult with the handling European Delegated Prosecutor in order to resolve the matter bilaterally.

6. If the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation, the European Delegated Prosecutors concerned may, in agreement with the supervising European Prosecutors concerned, have recourse to such instruments.

7. If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.

8. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide without undue delay, in accordance with applicable national law as well as this Regulation, whether and by when the assigned measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision to the said European Delegated Prosecutors through the competent European Prosecutor.

a) Overview of general national codes and provisions

1 First of all, the handling EDP from Bulgaria will need to determine the Member State that relates to his/her investigations. Potentially this might be any Member State that is part of the EU and opted-in to the enhanced cooperation. The Bulgarian EDP will need to identify the investigation measure (pls. refer to the other country chapters above → Part A and pls. refer to → the next table for a comprehensive, comparative analysis of investigations measures including information on the obtainment of judicial authorizations in all participating and non-participating Member States).

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

b) Para 2: Assignment of measures by a handling EDP to an assisting EDP in another, foreign MS

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

aa. Availability of measures to the EDP in Bulgaria

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

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

bb. Justification and adoption of such measures governed by the law of the MS of the handling EDP

Sources & national sections 1 Art. 31 EPPO Regulation: Overview for Bulgaria

| “The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30 [EPPO Regulation]…” | The relevant provisions are printed in full length, see above → Art. 30: |
| Art. 30 para 1 (a) |  |
| Art. 30 para 1 (b) |  |
| Art. 30 para 1 (c) |  |
| Art. 30 para 1 (d) |  |
| Art. 30 para 1 (e) |  |
| Art. 30 para 1 (f) |  |

c) Para 3: Judicial authorisation for the measure required under the law of the Member State of the assisting European Delegated Prosecutor

In the case that judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor it must be obtained by the assisting i.e. not the EDP from the Member State that assigned the measure from his home Member State but the EDP that resides elsewhere and is not conducting or carrying out the investigation as his/her investigation.
7 If the handling EDP looks for information about the question if judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, he/she may refer to the other country chapters in this Compendium and consult → Art. 30 EPPO Regulation in the relevant chapter or take a closer look at → the next part of the whole book, where a comparative overview summarizes these situations.

d) Para 8: Decision by the Chamber concerning the execution of an assigned measure needed, or a substitute measure by the assisting EDP

8 The national law that is concerned in relation to the situation of Art. 31 para 8 EPPO Regulation is the national procedural law, which governs the investigation measures by virtue of Art. 30 EPPO Regulation of the law of the handling or of the law of the assisting EDP.
3. **Article 32 Enforcement of assigned measures**

a) Accordance-clause: Assigned measures according to Para 2 of Art. 31

b) National Formalities and procedures expressly indicated by the handling European Delegated Prosecutor

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

**a) Accordance-clause: Assigned measures according to Para 2 of Art. 31**

The accordance-clause requires the handling EDP to question the assisting EDP if he/she can conduct the assigned measures (see → Art. 31 para 2 EPPO Regulation) a) in accordance with this Regulation and b) in accordance with the law of the Member State of the assisting European Delegated Prosecutor. The following table indicates in an abstract style, where to locate the law of the assisting Member State.

**Sources & national sections 2 Art. 32 Overview for the EDPs in Bulgaria**

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**Footnote:** 197 Ω περί Προστασίας του Απόρρητου της Ιδιωτικής Επικοινωνίας (Παρακολούθηση Συνδιαλέξεων και Πρόσβαση σε Καταγεγραμμένο Περιεχόμενο Ιδιωτικής Επικοινωνίας) Νόμος του 1996 (92(I)/1996).
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**DK** see Art. 30 Retsplejeloven

**Art. 30 para 1 (a)**

*Opted out of AFSJ = Chapter 73 Retsplejeloven: s. 793 “Dwellings and other housing, documents, papers and the like, as well as the contents of locked objects and 2) other objects as well as locations outside housing spaces.”

**Art. 30 para 1 (b)**

Chapter 74 ss. 801, 802, 802 para 3 (all of the suspect’s property) 803, 803a (an association’s assets), 807 (formalities during a seize operation), 807a (seizure by everyone), 807b–807f (special rules on seizure e.g. in AML cases) Retsplejeloven.

**Art. 30 para 1 (c)**

See Tax Control Act/ Skattekontrollov; Money Laundering Act.

**Art. 30 para 1 (d)**

ss. 75–77a CC; s. 804 Retsplejeloven and see CIR no 94 of 13/05/1952, Ministry of Justice
More information, Circular on the police’s management of seized or deposited sums of money or securities/ CIR nr 94 af 13/05/1952, Cirkulære om politiets forvaltning af beslaglagte eller deponerede pengebeløb eller værdipapirer.

**Art. 30 para 1 (e)**

*Opted out of AFSJ= but see the Fourth Book of the Code of Judicial Procedure (Retspleje-loven) Chapter 67 and 68 provide for investigative rules and measures; Chapter 71 finally introduces special investigative measures such as telecommunications surveillance. (Kapitel 71: Indgreb i meddelelseshemmeligheden, observation, dataaflæsning, forstyrrelse eller afbrydelse af radio- eller telekommunikation, blokering af hjemmesider og overtagelse af tv-overvågning)

s. 780 et seq.

**Art. 30 para 1 (f)**

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**EPPO Regulation (EU) 2017/1939**

destruction of quickly perishable physical evidence”

**Art. 30 para 1 (e)**

ss. 126¹ et seq. CPC

**Art. 30 para 1 (f)**

s. 126⁵. Covert surveillance, covert collection of comparative samples and conduct of initial examinations, covert examination and replacement of things;

s. 126⁶. Covert examination of postal items

s. 126⁹. Use of police agents

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<sup>198</sup> See María Luisa Villamarín López, Spanish criminal procedure examined: successes, opportunities and failures in the adaptation to EU requirements, ERA Forum volume 23, 2022, 127–139.

and reproduction of the document, ss. 1, 5 (Seizure and reproduction of parcels, etc.), 6, Coercive Measures Act [Legislation monitored until SDK 178/2022 (published on March 17, 2022)]

Art. 30 para 1 (c)
Section 23 of Chapter 8 Coercive Measures Act

Art. 30 para 1 (d)
Chapter 10, ss. 2 et seq. CC

Art. 30 para 1 (e)
Chapter 5, s. 1 et seq., Chapter 6, s.s. 6 et seq. Police Act 7/22/2011 / 872; Chapter 3, s. 3, Subs.1 of the Preliminary Investigation Act, Act on the Prevention of Crime in Customs (623/2015), Chapter 10 ss. 1–4 of the Coercive Measures Act

Art. 30 para 1 (f)
Chapter 5, s. 1 et seq., Chapter 6, s.s. 6 et seq., ss. 30, 31, 32 et seq. Police Act; ss. 23, 24, 24, 36 39, 40, 42 (controlled delivery) Law on Crime Prevention in Customs 5/22/2015 / 623; Chapter 10, S. 3 of the Coercive Measures Act

Especially ss. 13 “Systematic monitoring and its conditions”, s. 15 “Covert access to information and its conditions” Police Act 7/22/2011 / 872

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<tr>
<td>IT see Art. 30 EPPO Regulation in the CNP Vol.</td>
<td>Codice di Procedura Penale</td>
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<tr>
<td><strong>Art. 30 para 1 (a)</strong></td>
<td>Art. 244 et seq. stipulates provisions for inspections but Art. 247 et seq. stipulate provisions for searches (Perquisizioni) CPC, Art. 247 – Cases and forms of searches Art. 248 – Request for delivery Art. 249 – Personal searches Art. 250 – Local searches Art. 251 – House searches. Time limits Art. 252 – Seizure following a search</td>
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<td><strong>Art. 30 para 1 (b)</strong></td>
<td>Art. 262, Art. 316–321 (Chapter 1 and 2) Art. 321 (sequestro preventivo), 368, 253, 252, 254; 671 CPC. En detail the following provisions should be consulted by an Austrian EDP in a case, which involves Italy. Art. 253 – Object and formality of the seizure Art. 254 – Seizure of correspondence Art. 254 bis – Seizure of IT data from IT, telematic and telecommunication service providers Art. 255 – Seizure from banks Art. 256 – Duty of exhibition and secrets Art. 256 bis – Acquisition of documents, deeds or other things by the judicial authority at the offices of the security information services Art. 256 ter – Acquisition of deeds, documents or other things for which state secrecy is raised Art. 257 – Review of the seizure decree Art. 258 – Copies of the documents seized</td>
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<td><strong>Art. 30 para 1 (d)</strong></td>
<td>s. 151 CPC in combination with ss. 72-74 CC of Hungary and see Act LII, of 1994 on judicial enforcement.</td>
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<td><strong>Art. 30 para 1 (f)</strong></td>
<td>IT see Art. 30 EPPO Regulation in the CNP Vol.</td>
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<td>LT see</td>
<td>Art. 30 EPPO</td>
<td>Lietuvos Respublikos baudžiamojo Art. 30 para 1 (a)</td>
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Art. 259 – Custody of seized things  
Art. 260 – Affixing of seals to seized things. Perishable things. Destruction of seized things  
Art. 261 – Removal and re-affixing of seals  
Art. 262 – Duration of the seizure and return of the seized things  
Art. 263 – Procedure for the restitution of seized things

**Art. 30 para 1 (c)**  
Art. 240 CC  
Limitation: Article 51, paras 3-bis and 3-quarter.  
Art. 30 para 1 (d) CPC  
EIO may be used, too.

**Art. 30 para 1 (e)**  
Art. 254bis seizure of IT data from IT, telematic and telecommunication service providers, Art. 266 – Eligibility limits, Art. 266 bis – Interception of computer or telematic communications, Art. 267 – Assumptions and forms of the provision, Art. 268 – Execution of operations, Art. 268 bis – Filing of minutes and registrations [repealed], Art. 268 ter – Acquisition of the investigation file [repealed], Art. 268 quater – Terms and methods of the judge’s decision [repealed], Art. 269 – Conservation of documentation  
Art. 270 – Use in other proceedings, Art. 270 bis – Service communications from members of the Department of Security Information and Security Information Services, Art. 271 – Prohibitions of use;

**Art. 30 para 1 (f)**  
Art. 354, 357 CPC; but cf. as well Art. 9 of Law No 146 2006 amended Law No 3 2019; Law 18 February 1992, n. 172, Art. 10 Art. 9
| Regulation in the CNP Vol. | proceso kodeks | CPC and see Art. 169 and 170 CPC in the pre-trial investigation phase, Art. 205, 206, 207 CPC  
**Art. 30 para 1 (b)**  
Art. 17-4 in connection with Art. 133 (security), 134 (seizure of documents), 149 (search and seizure) and in special cases of a pre-trial investigation see Art. 1701 (Powers of the prosecutor to secure the confiscation of property) Lietuvos Respublikos baudžiamojo proceso kodeksas, the Lithuanian and Art. 170 para 5 CPC in pre-trial investigations.  
**Art. 30 para 1 (c)**  
Art. 154, 158 CPC  
**Art. 30 para 1 (d)**  
Art. 151 CPC in combination with ss. 72–75 CC of Lithuania  
**Art. 30 para 1 (e)**  
Art. 154 CPC  
**Art. 30 para 1 (f)**  
Art. 159 (covert investigation officer) CPC, Art.160 Covert tracking |
| LU see  
Art. 30 EPPO Regulation in the CNP Vol. | Code de procédure pénale | **Art. 30 para 1 (a)**  
Art. 33, 65 CPC: “(1) Searches are carried out in all places where objects may be found, the discovery of which would be useful for establishing the truth.”  
**Art. 30 para 1 (b)**  
Art. 47, 31 para 2, 3, 33, 34, 35, 65, 66 para 1: “of all objects, documents, effects, data stored, processed or transmitted in an automated data processing or transmission system and other things referred to in Article 31 (3)”, 66 para 3 (entry into stored, processed and automated data) 67, 68, 67 (return/release of seized things), 194-1, 194-7 CPC  
**Art. 30 para 1 (c)**  
No special provision.  
**Art. 30 para 1 (d)** |
Loi du 22 juin 2022 sur la gestion et le recouvrement des avoirs saisis ou confisqués

**Art. 30 para 1 (e)**

Art. 65–67 (general information on interception of communications), especially 67-1, 88, 88-1, 88-2 (special provisions on the interception of communications and technical means of surveillance) CPC and Art. 7 of the law of July 5, 2016 (Nota bene: all of these provisions are under review as they become more and more outdated with the ongoing “cybercriminalité”) and see Art. 32, 33 Law of August 1, 2018 transposing Directive 2014/41/EU of the European Parliament and of the Council of April 3, 2014 on the European investigation order in criminal matters;

2° amendment of the Code of Criminal Procedure;

3° modification of the amended law of 8 August 2000 on international legal assistance in criminal matters.)

**Art. 30 para 1 (f)**

<table>
<thead>
<tr>
<th>LV see Art. 30 EPPO Regulation in the CNP Vol.</th>
<th>Kriminālprocesa likums</th>
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<tr>
<td><strong>Art. 30 para 1 (a)</strong></td>
<td>ss. 159, 160 (inspection, which may lead to an investigation), 163 (inspection of other places, vehicles etc.); but mainly ss. 179–188 CPC will apply.</td>
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<td><strong>Art. 30 para 1 (b)</strong></td>
<td>ss. 361, S. 361.1 Sending for Execution of the Decision on the Seizure of a Property, 363,</td>
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<td>MT see Art. 30 EPPO Regulation in the CNP Vol.</td>
<td>SUBSIDIARY LEGISLATION 9.09 CRIMINAL PROCEDURE (REGULATION OF REGISTRIES, ARCHIVES AND FUNCTIONS OF DIRECTOR GENERAL (COURTS) AND OTHER COURT EXECUTIVE OFFICERS) REGULATIONS</td>
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| 364 CPC (issuing of copies of the protocol on a seizure) CPC | **Art. 30 para 1 (c)**  
ss.  
**Art. 30 para 1 (d)**  
ss. 70 CC, ss. 124 CPC  
**Art. 30 para 1 (e)**  
Chapter 11 Special Investigative Actions, ss. 215 et seq. CPC but cf. especially ss. 218, 219  
**Art. 30 para 1 (f)**  
Chapter 11 Special Investigative Actions, ss. 217 et seq. CPC, S. 223. Surveillance and Tracking of a Person |
| Art. 30 para 1 (a)  
ss. 351, 354, 355K., 355L., 355P. (“when lawfully on a premise”)  
ss. 351 para 2 in a flagrante delicto situation:  
“(2) For the purposes of sub-article (1), the Police may stop a person or a vehicle until the search is performed and shall seize anything discovered during the search and the possession of which is prohibited or which may be connected with an offence”, s. 354 in a flagrante delicto situation: “354. Anything seized as a result of a search under the preceding articles of this title shall be preserved and the Police carrying out the search shall draw up a report stating all the particulars of the search and including a detailed list of the things so seized”.  
And see the following ss. 355E, G (search of premises, which may lead to seizure of things on the premises e.g. s. 355 E (3)(b): “discovering and seizing any property in respect of which an alert has been entered in the Schengen Information System.”) in the real investigative phase.  
Next see ss. 355AF (person) and 355AR. Criminal Code Cap. 9 Laws of Malta, Book 2 |
Laws Of Criminal Procedure Part I of the Authorities to which the Administration of Criminal Justice is entrusted, Title I Of the powers and duties of the Attorney General and the Executive Police in Respect of Criminal Prosecutions

Art. 30 para 1 (b)

s. 355P. (General rules of seizure.): “355P. The Police, when lawfully on any premises, may seize anything which is on the premises if they have reasonable grounds for believing that it has been obtained in consequence of the commission of an offence or that it is evidence in relation to an offence or it is the subject of an alert in the Schengen Information System and that it is necessary to seize it to prevent it being concealed, lost, damaged, altered or destroyed.”

And see s. 355Q. (Computer data), and see s. 628B. para 1 (f) in mutual assistance cases (criminal law).

Art. 30 para 1 (c)

No special provision in the CPC; Art. 3 See Art. 4 Law No 5/2002, of January 11

MEASURES TO FIGHT ORGANIZED CRIME.

Art. 30 para 1 (d)

See Art. 4 Law No 5/2002, of January 11

MEASURES TO FIGHT ORGANIZED CRIME; Portuguese Securities Market Code.

Art. 30 para 1 (e)

see. ss. 628 para 1 (d) and the newly introduced s. 628E. Criminal Code Cap. 9 Laws of Malta, Book 2 Laws Of Criminal Procedure Part I of the Authorities to which the Administration of Criminal Justice is entrusted, Title I Of the powers and duties of the Attorney General and the Executive Police in Respect of Criminal Prosecutions. And last but not
least see ss. 6, 7 Security Service Act, Chapter 391 of the Laws of Malta.
Art. 30 para 1 (f)

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<th>PT</th>
<th>Codigó de Procesal Penal</th>
<th>Pls. see Art. 30 EPPO Regulation in the CNP Vol.</th>
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</table>
| RO | Codul de procedură penală al României | **Art. 30 para 1 (a)**
Art. 156 CPC: “Common provisions
(1) The search may be house, body, computer or vehicle search.
(2) The search shall be carried out with respect for dignity, without constituting disproportionate interference with private life.”; 157 (home search), 159 (formalities), 161 (report), 165, 166 (body search related provisions) CPC, 167 CPC (vehicle search), 168 (computer search), 192 (on-the-spot search)
**Art. 30 para 1 (b)**
Art. 158 para 13 CPC, 168 para 10 CPC; 171 but cf. mainly s. 252, 252¹, 252² CPC
**Art. 30 para 1 (c)**
Article 138 §1 and §3 CPC (access to computer systems), Art. 152 paraa 1 CPC
**Art. 30 para 1 (d)**
Art. 270 CC; latest changes by Law No 228/2020.
And see LAW No 129 of July 11, 2019 for the prevention and combating of money laundering and the financing of terrorism, as well as for the amendment and completion of some normative acts
**Art. 30 para 1 (e)**
**Art. 30 para 1 (f)**
Art. 138 CPC
General dispositions
(1) The following are special methods of surveillance or research:

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a) interception of communications or any type of remote communication;
b) access to a computer system;
c) video, audio or photography surveillance;
d) location or tracking by technical means;
e) obtaining data on a person’s financial transactions;
f) detention, delivery or search of postal items;
g) the use of undercover investigators and collaborators;
h) authorized participation in certain activities;
i) supervised delivery;
j) obtaining the traffic and location data processed by the providers of public electronic communications networks or the providers of electronic communications services intended for the public.; […]

- Article 148
- Use of undercover or real-identity investigators and collaborators
- Article 151 Controlled delivery

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<tr>
<th>SI see</th>
<th>Zakon o državnem tožilstvu (ZDT-1)</th>
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<tr>
<td>Art. 30</td>
<td>Art. 30 para 1 (a)</td>
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<td>EPPO Regulation in the CNP Vol.</td>
<td>Art. 164 but see mainly Art. 214, 215, 216, 217, 218 CPC</td>
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<td>Art. 150, 150a, 150b, 151 Zakon o kazenskem postopku, the Slovenian CPC</td>
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<tr>
<td>Art. 30 para 1 (f) &amp; para 4</td>
<td>Art. 149a para 1 (controlled delivery) CPC</td>
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</table>
| **SK** see Art. 30 EPPO Regulation in the CNP Vol. | **Art. 30 para 1 (a)**  
| 301, ZÁKON z 24. mája 2005 TRESTNÝ PORIADO | ss. 99 et seq., 101, 102, 103, 104, 105 (Inspection and entry into the dwelling, other premises and land) CPC  

**Art. 30 para 1 (b)**  
ss. 89 et seq. (Securing things important for criminal proceedings), ss. 95 et seq. (Securing crime instruments and proceeds of crime)  

Part Four - Seizure of Matters Important for Criminal Proceedings (s. 89–98a), S. 1 – Case relevant to criminal proceedings (s. 89), s. 89 – Matter important for criminal proceedings, S. Two – Seizure of Evidence (s. 89a–94): s. 89a – Obligation to issue a thing, s. 90 – Withdrawal of the case, s. 91 – Preservation, release and withdrawal of computer data, s. 92  
Acceptance of the seized thing, s. 93 – Common provisions, s. 94 – Custody of issued, confiscated, taken over or otherwise seized items, S. 3 – Seizure of criminal instruments and proceeds of crime (s. 95–98a): s. 95 – Securing funds, s. 95a, s. 95b, s. 96 – Securing book-entry securities, s. 96a – Securing real estate, s. 96b – Real estate inspection, s. 96c – Ensuring ownership interest in a legal entity, s. 96d – Securing virtual currency, s. 96e – Securing other property value, s. 96f – Securing a movable thing, s. 96g – Ensuring substitute value, Return of case (s. 97–98a), s. 97, s. 98, s. 98a – Common provisions for securing property, things and other property values  

**Art. 30 para 1 (c)**  
ss. 90, 116 §6, 118 CPC  

**Art. 30 para 1 (d)**  
The Law 101/2010 Coll. of March 4, 2010 on proving the origin of property applies; Art. 56–60 CC  

**Art. 30 para 1 (e)**
b) National Formalities and procedures expressly indicated by the handling European Delegated Prosecutor

On Bulgarian territory the standards for formalities and procedures relating to investigative measures enshrined in the Bulgarian CPC are quite high.

The concrete formalities and procedures depend on the concerned investigation measures, which cannot be determined completely in abstracto. But the main principles can be listed:

- Reasonable suspicion element
- Warrant obtainment
- Right to privacy
- Right to liberty
- Right to a fair investigation

Taking the investigation criminal financial conduct as an example it becomes obvious that the Bulgarian CPC prescribes a lot of special formalities and procedures, which are obligatory in order not to endanger the criminal prosecution in general.
4. **Article 33 Pre-trial arrest and cross-border surrender**

   a) General relation to national law: applicable Codes ..........232
   b) Para 1: Provisions for arrest and pre-trial detention ..........232
   c) Para 2: Cross-border surrender ..........244

1. The handling European Delegated Prosecutor may order or request the arrest or pre-trial detention of the suspect or accused person in accordance with the national law applicable in similar domestic cases.

2. Where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA.

   a) General relation to national law: applicable Codes

   1. The Bulgarian Criminal Procedure Code applies.

   b) Para 1: Provisions for arrest and pre-trial detention

      aa. Arrest

      Home arrest

      **Art. 62 CPC**

      (1) House arrest consists in prohibiting the accused from leaving his home without the permission of the relevant authority.

      (2) The measure of mandatory house arrest in the pre-trial proceedings is taken and controlled by the court in accordance with the procedure of Art. 64 and 65.

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**Домашен арест**

**Чл. 62. Наказателно-процесуален кодекс**

(1) Домашният арест се състои в забрана обвиняемият да напуска жилището си без разрешение на съответния орган.

(2) Мярката за неотклонение домашен арест в досъдебното производство се взема и контролира от съда по реда на чл. 64 и 65.

(3) (Нова - ДВ, бр. 42 от 2015 г.) Съдът определя адреса, на който ще се изпълнява домашният арест. Последващата промяна на адреса на изпълнение на мярката се разрешава от прокурора в досъдебното производство или от съда, пред който делото е висящо.

(4) (Нова - ДВ, бр. 42 от 2015 г.) Съдът, съответно прокурорът уведомява структурите, които контролират изпълнението на мярката, за вземането и, както и за последваща промяна на адреса на изпълнението и.

(5) (Нова - ДВ, бр. 42 от 2015 г.) Спазването на забраната по ал. 1 се контролира от структурите на Министерството на вътрешните работи. За констатирани нарушения на забраната се уведомяват съответният съд и прокурор.

(6) (Нова - ДВ, бр. 42 от 2015 г.) Спазването на забраната по ал. 1 може да се контролира и чрез средства за електронно наблюдение по ред, предвиден в закон.

(7) (Нова - ДВ, бр. 42 от 2015 г.) За сроковете на мярката в досъдебното производство се прилага съответно чл. 63, ал. 4.
(3) The court determines the address where house arrest will be carried out. A subsequent change of the address of implementation of the measure is permitted by the prosecutor in the pre-trial proceedings or by the court before which the case is pending.
(4) The court, respectively the prosecutor, shall notify the structures that control the implementation of the measure, of the taking and, as well as of the subsequent change of the address of the implementation and.
(5) Compliance with the prohibition under para 1 is controlled by the structures of the Ministry of Internal Affairs. Violations of the ban are reported to the relevant court and prosecutor.
(6) Compliance with the prohibition under para 1 may also be controlled by means of electronic monitoring in accordance with the procedure provided for by law.
(7) For the terms of the measure in the pre-trial proceedings, Art. 63 para 4.

**bb. Pre-trial detention**

**Section II. Restraining order and other measures of procedural coercion**

**Detention**

**Art. 56 CPC**

(1) The accused in a case of a general nature may be taken into custody when, from the evidence in the case, it can be reasonably assumed that he committed the crime, and there is a basis under Art. 57.

(2) When the charge is brought under the terms of Art. 269 para 3 items 2–4, a remand measure is taken after the search for the accused.

(3) When determining the remand measures, the degree of public danger of the crime, the evidence against the accused, the state of health, marital status, profession, age and other personal data of the accused shall be taken into account.

**Purpose of detention measures**

**Art. 57 CPC**

Remand measures are taken with the aim of preventing the accused from absconding, committing a crime or thwarting the enforcement of the effective sentence.

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Types of restraint measures
Art. 58 CPC 208 The detention measures are:
1. subscription,
2. bail;
3. house arrest;
4. custody.

Deed of determination of the measure of remand
Art. 59 CPC 209 (1) In the act determining the measure of non-abortion, the following shall be indicated: the time and place of its issuance; the issuing authority; the case for which it is issued; the three names of the accused; the crime for which he is accused and the reasons for the measure determined.
(2) The act is presented to the accused, who undertakes not to change his place of residence without notifying the relevant authority in writing of his new address.

Subscription
Art. 60 CPC 210 (1) The subscription consists of the accused taking on an obligation that he will not leave his place of residence without the permission of the relevant authority.
(2) The authority that took the measure under para 1, notifies the structures of the Ministry of Internal Affairs.
(3) Compliance with the obligation under para 1 is controlled by the structures of the Ministry of Internal Affairs. The public prosecutor and the court are notified of detected violations of the obligation.

208 Видове мерки за неотклонение
Чл. 58. Наказателно-процесуален кодекс
Мерките за неотклонение са:
1. подписка;
2. гаранция;
3. домашен арест;
4. задържане под стража.
209 Акт за определяне на мярката за неотклонение
Чл. 59. Наказателно-процесуален кодекс
(1) В акта, с който се определя мярката за неотклонение, се посочват: времето и мястото на издаването му; органът, който го издава; делото, по което се издава; трите имена на обвиняемия; престъпението, за което е привлечен като обвиняем, и мотивите за определената мярка.
(2) Актът се предявява на обвиняемия, който се задължава да не променя местоживеенето си, без да уведоми писмено съответния орган за новия си адрес.
210 Подписка
Чл. 60. Наказателно-процесуален кодекс
(1) (Предишън текст на чл. 60 - ДВ, бр. 42 от 2015 г.) Подписката се състои в поемане на задължение от обвинявания, че няма да напуска местоживеенето си без разрешение на съответния орган.
(2) (Нова - ДВ, бр. 42 от 2015 г.) Органът, взел мярката по ал. 1, уведомява структурите на Министерството на вътрешните работи.
(3) (Нова - ДВ, бр. 42 от 2015 г.) Спазването на задължението по ал. 1 се контролира от структурите на Министерството на вътрешните работи. За конститuirани нарушения на задължението се уведомяват прокурорът и съдът.
**Warranty**

**Art. 61 CPC**

(1) The guarantee may be in money or securities.

(2) The financial situation of the accused shall be taken into account when determining the bail.

(3) The guarantee taken by the authorities of the pre-trial proceedings may be appealed by the accused or his defence counsel before the relevant court of first instance within three days term of presentation of the act for the determination of. The court considers the case immediately in a closed session and renders a decision, which is final.

(4) The surety may be presented by the accused or by another person. Upon initial adoption of a measure of non-departure guarantee or upon amendment of the measure of non-deviation from signature in a guarantee, the relevant authority shall determine a deadline for the presentation, which cannot be less than three days and more than fifteen days.

(5) When the guarantee is not presented within the specified period, the court may take the defendant a more serious measure of remand, and in the pre-trial proceedings the prosecutor may make a request under Art. 62, para 2 or Art. 64, para 1.

(6) If the measure of remand is changed from a more severe one to bail, the accused shall be released after submitting and.

(7) Withdrawal of the guarantee is not allowed.

(8) The bond shall be released when the accused is released from criminal liability or from serving the imposed punishment, acquitted, sentenced to a non-custodial sentence or detained to serve the sentence.

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**Гаранция**

**Чл. 61. Наказателно-процесуален кодекс**

(1) Гаранцията може да бъде в пари или ценни книжа.

(2) При определяне на гаранцията се взема предвид и имущественото положение на обвиняемия.

(3) (Изм. - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Гаранцията, взета от органи на досъдебното производство, може да се обжалва от обвиняемия или неговия защитник пред съответния първоинстанционен съд в тридневен срок от предявяване на акта за определянето и. Съдът разглежда незабавно делото в закрито заседание и се произнася с определение, което е окончателно.

(4) Гаранцията може да бъде представена от обвиняемия или от друго лице. При първоначално вземане на мярка за неотклонение гаранция или при изменение на мярката за неотклонение от подписка в гаранция съответният орган определя срок за представянето и, който не може да бъде по-малък от три дни и по-голям от петнадесет дни.

(5) Когато гаранцията не бъде представена в определяния срок, съдът може да вземе на подсъдимия по-тежка мярка за неотклонение, а в досъдебното производство прокурорът може да направи искане по чл. 62, ал. 2 или чл. 64, ал. 1.

(6) При изменение на мярката за неотклонение от по-тежка в гаранция обвиняемият се освобождава след внасянето и.

(7) Оттегляне на гаранцията не се допуска.

(8) Гаранцията се освобождава, когато обвиняемият бъде освободен от наказателна отговорност или от изпълнение на наложеното наказание, оправдан, осъден на наказание без лишаване от свобода или задържан за изпълнение на наказанието.
**Home arrest**

**Art. 62 CPC**

(1) House arrest consists in prohibiting the accused from leaving his home without the permission of the relevant authority.

(2) The measure of mandatory house arrest in the pre-trial proceedings is taken and controlled by the court in accordance with the procedure of Art. 64 and 65.

(3) The court determines the address where house arrest will be carried out. A subsequent change of the address of implementation of the measure is permitted by the prosecutor in the pre-trial proceedings or by the court before which the case is pending.

(4) The court, respectively the prosecutor, shall notify the structures that control the implementation of the measure, of the taking and, as well as of the subsequent change of the address of the implementation and.

(5) Compliance with the prohibition under para 1 is controlled by the structures of the Ministry of Internal Affairs. Violations of the ban are reported to the relevant court and prosecutor.

(6) Compliance with the prohibition under para 1 may also be controlled by means of electronic monitoring in accordance with the procedure provided for by law.

(7) For the terms of the measure in the pre-trial proceedings, Art. 63 para 4.

**Detention in custody**

**Art. 63 CPC**

(1) A measure of compulsory detention is taken when there is a reasonable suspicion that the accused has committed a crime punishable by imprisonment or...
other more severe punishment, and the evidence in the case indicates that there is a real danger the accused to abscond or commit a crime.

(2) If the evidence in the case does not establish the contrary, at the initial adoption of the measure of remand in custody, the real danger under para 1 is present when:

1. the person is accused of a crime committed repeatedly or under conditions of dangerous recidivism;

2. the person is accused of a crime committed repeatedly or under conditions of dangerous recidivism;
2. the person is accused of a serious premeditated crime and has been convicted of another serious premeditated crime of a general nature of imprisonment of not less than one year or other more serious punishment, the execution of which has not been postponed on the basis of Art. 66 of the Criminal Code;
3. the person is accused of a crime punishable by no less than ten years of imprisonment or other more severe punishment;
4. the person is charged as an accused under the terms of Art. 269 para 3.

(3) When the danger that the accused will abscond or commit a crime ceases, the measure of remand in custody shall be changed to a lighter one or cancelled.

(4) The measure of involuntary detention in pre-trial proceedings cannot last more than eight months if the person is accused of a serious intentional crime, and more than one year and six months, if the person is charged with a crime punishable by not less than fifteen years of imprisonment or other more severe punishment. In all other cases, pre-trial detention cannot last more than two months.

(5) After the expiration of the terms under para 4 the detainee shall be released immediately by order of the prosecutor.

(6) When it is established in the pre-trial proceedings that the grounds under para 3, the prosecutor, on his own initiative, changes the measure of remand in custody to a lighter one or cancels it.

(7) For the detention in custody, as well as for the detention based on Art. 64 para 2 shall be notified immediately:
1. the family of the accused or another person indicated by the accused;
2. the accused’s employer, unless the accused states that he does not wish to do so.
3. (repealed)

(8) When the detainee is a foreign citizen, upon his request, the consular authorities of the country of which the detainee is a citizen are immediately notified through the Ministry of Foreign Affairs. If the detainee is a citizen of two or more countries, he can choose the consular authorities of which country to be notified of his detention and with whom he wishes to make contact.

(9) The notification under para 7 in relation to a specific person may be postponed for a period of up to 48 hours, when there is an urgent need to prevent the occurrence of serious adverse consequences for the life, liberty or physical integrity of a person or when it is imperative to take action by the investigative bodies whose obstruction would seriously hamper the criminal proceedings. The postponement of this notification shall be applied in view of the particular circumstances of each particular case, shall not exceed what is necessary and shall not be based solely on the type or gravity of the offence committed.

(10) The decision under para 9 is taken by the prosecutor of the pre-trial proceedings, who issues a reasoned decree. The decree is subject to appeal by the accused or his counsel before the relevant court of first instance.
(11) The court immediately examines the appeal alone in a closed court session and renders a ruling. The decision of the court is final.
(12) Children of detainees, if they do not have relatives to take care of them, are placed immediately through the relevant municipality or town hall in a nursery, kindergarten or boarding school.

Taking a measure of remand in custody in pre-trial proceedings

Art. 64 CPC\(^{214}\) (1) A measure of compulsory detention in pre-trial proceedings is taken by the relevant court of first instance at the request of the prosecutor.
(2) (Suppl. – 110 of 2020, in force as of 30.06.2021, declared unconstitutional in the part concerning the second paragraph by RCC No 13 of 2021 – SG No 85 of 2021) The appearance of the accused before the court shall be ensured immediately by the prosecutor, who, if necessary, may order the detention of the accused for up to 72 hours for his appearance before the court. In the event of a declared state of emergency, martial law, disaster, epidemic, other force majeure circumstances, or upon written consent of

\(^{214}\) Вземане на мярка за неотклонение задържане под стража в досъдебното производство

Чл. 64. Наказателно-процесуален кодекс
(1) Мярка за неотклонение задържане под стража в досъдебното производство се взема от съответния първоинстанционен съд по искане на прокурора.
(2) (Доп. – ДВ, бр. 110 от 2020 г., в сила от 30.06.2021 г., обявена за противоконституционна в частта относно изр. второ с РКС № 13 от 2021 г. - ДВ, бр. 85 от 2021 г.) Явяването на обвиняемия пред съда се осигурява незабавно от прокурора, който при необходимост може да постанови задържане на обвиняемия до 72 часа за довеждането му пред съда. При обявено извънредно положение, военно положение, епидемия, други форсмажорни обстоятелства или при изрекено писмено съгласие на обвиняемия и неговия защитник, обвиняемият може да участва в делото и чрез видеоконференция, като в тези случаи самоличността му се удостоверява от началника на затвора или началника на ареста или от определен от тях служител.
(3) Съдът незабавно разглежда делото еднолично в открито заседание с участието на прокурора, обвиняемия и неговия защитник.
(4) Съдът взема мярка за неотклонение задържане под стража, когато са налице основанията по чл. 63, ал. 1, а ако не са налице тези основания, може да не вземе мярка за неотклонение или да вземе по-лека.
(5) Съдът се произнася с определение, което се обявява на страните в съдебното заседание и се изпълнява незабавно. С обявяване на определянето съдът наредява делото пред въззивния съд в срок до седем дни в случай на частна жалба или частен протест.
(6) Определянето подлежи на обжалване с частна жалба и частен протест пред въззивния съд в тридневен срок.
(7) (Доп. - ДВ, бр. 110 от 2020 г., в сила от 30.06.2021 г.) Въззивният съд разглежда делото в състав от трия съдии в открито заседание с участието на прокурора, обвиняемия и неговия защитник. Неявяването на обвиняемия без уважителна причина не е причина за разглеждане на делото. При обявено извънредно положение, военно положение, епидемия, други форсмажорни обстоятелства или при изрекено писмено съгласие на обвиняемия и неговия защитник, обвиняемият може да участва в делото и чрез видеоконференция, като в тези случаи самоличността му се удостоверява от началника на затвора или началника на ареста или от тях служител.
(8) Въззивният съд се произнася с определение, което обявява на страните в съдебното заседание. Определянето не подлежи на обжалване с частна жалба и частен протест.
(9) Когато с възложено в сила определение е взета мярка за неотклонение гаранция, задържаният под стража обвиняем се освобождава след внасянето на...
the accused and his counsel, the accused may also participate in the trial by videoconference, in which cases his identity shall be verified by the warden of the prison or the warden of the detention centre or by an officer designated by them.

(3) The court immediately examines the case alone in an open session with the participation of the prosecutor, the accused and his defence counsel.

(4) The court takes a measure of permanent detention in custody when the grounds under Art. 63 para 1, and if these grounds are not present, he may not take a measure of restraint or take a lighter one.

(5) The court renders a decision, which is announced to the parties at the court session and is executed immediately. By announcing the ruling, the court schedules the case before the appellate court within seven days in the case of a private complaint or private protest.

(6) The ruling is subject to appeal with a private appeal and a private protest before the appellate court within three days.

(7) The appellate court hears the case in a composition of three judges in an open session with the participation of the prosecutor, the accused and his defence counsel. The defendant’s failure to appear without a valid reason is not an obstacle to hearing the case. In the case of a declared state of emergency, martial law, disaster, epidemic, other force majeure circumstances, or with the express written consent of the accused and his defence counsel, the accused may also participate in the case via video conference, and in these cases his identity is certified by the head of the prison or the head of the detention center or by an officer designated by them.

(8) The appellate court renders a ruling, which it announces to the parties at the court hearing. The decision is not subject to appeal by private appeal and private protest.

(9) When a measure of remand bail has been taken with the decision that has entered into force, the accused detained in custody shall be released after the submission and.

Judicial review of pre-trial detention
Art. 65 CPC

(1) The accused or his/her defence counsel may at any time during the pre-trial proceedings request a modification of the remand in custody measure.
The request of the accused or his defence counsel shall be made through the public prosecutor, who shall immediately send the case to the court. The case shall be scheduled within three days of its receipt by the court and shall be heard in open court with the participation of the prosecutor, the accused and his/her defence counsel. The case shall be heard in the absence of the accused if he declares that he does not wish to appear or if it is impossible to bring him for health reasons. Where this will not prevent the exercise of the rights of the defence, the accused person in custody may, with his consent, participate in the proceedings by videoconference, in which case his identity shall be certified by the prison governor, the custody governor or an official designated by them.

The court shall consider all the circumstances relating to the lawfulness of the detention and shall make an order which it shall announce to the parties at the hearing. Upon announcement of the order, the court shall schedule the case before the appellate court within seven days in the event of a private appeal or private protest.

The order shall be enforced immediately upon the expiration of the time for appeal, unless a private protest is filed which is not in the best interest of the accused.

Where the application is made by the accused or his counsel and the order under subpara 4 confirms the detention order, the court may fix a period within which a further application by the same persons shall not be admissible. That period may not be longer than two months from the entry into force of the order and shall not apply where the request is based on a deterioration in the state of health of the accused.

The order shall be subject to appeal by private appeal and private protest before the Court of Appeal within three days.
(8) The appellate court shall hear the case in open court with the participation of the public prosecutor, the accused and his defence counsel in a panel of three judges. The case shall be heard in the absence of the accused where he states that he does not wish to appear or his appearance is impossible for health reasons.

(9) The appellate court shall make an order which it shall announce to the parties at the hearing. The order shall not be subject to appeal by way of private appeal or private protest.

(10) Where a detention order has entered into force, the accused person in custody shall be released after the order has been lodged.

(11) Paragraphs 1 to 10 shall apply accordingly in cases where the accused is detained for failure to post the bail set by the court.

Customs Act/Закон За Митниците

Art. 16a The customs authorities may detain a person for whom there is evidence that he has committed a crime under Art. 234, 242, 242a and 251 of the Criminal Code and

216 Чл. 16а. Закон за митниците (Нов - ДВ, бр. 82 от 2011 г., в сила от 01.01.2012 г.)

(1) (Изм. - ДВ, бр. 15 от 2013 г., в сила от 01.02.2013 г., доп. - ДВ, бр. 60 от 2015 г.) Митническите органи могат да задържат лице, за което има данни, че е извършило престъпление по чл. 234, 242, 242a и 251 от Наказателния кодекс и по чл. 255 от Наказателния кодекс по отношение на задължения за ДДС от внос и акцизи и съществува реална опасност да се укрие или да извърши престъпление.

(2) За всяко задържано лице се издава заповед за задържане от митническия орган, ограничил правото на свободно придвижване на лицето.

(3) На задържаното лице не могат да бъдат ограничавани други права освен правото на свободно придвижване. Срокът на задържането не може да бъде повече от 24 часа. Задържаните лица незабавно се освобождават след отпадане на основанието за задържане, но не по-късно от 24-часовия срок.

(4) Когато задържаното лице не владее български език, то незабавно се информира за основанията за задържането му на разбираем за него език.

(5) (Доп. - ДВ, бр. 7 от 2019 г.) От момента на задържането си лицето има право на защитник. Митническите органи са длъжни да разяснят на задържания правото на отказ от защитник и последиците от него, както и правото му да откаже да дава обяснения. За отказа от защитник и обстоятелствата, при които е направен, се съставя протокол.

(6) Задържаното лице има право да обжалва пред съда законността на задържането по реда на Административнопроцесуалния кодекс. Съдът се произнася по жалбата незабавно.

(7) За задържането съответният митнически орган е длъжен незабавно да уведоми лице, посочено от задържаното.

(8) (Нова - ДВ, бр. 7 от 2019 г.) Когато задържаното лице не е гражданин на България, по негово искане незабавно се уведомяват органите на външните работи в България за задържането му.

(9) (Доп. - ДВ, бр. 60 от 2015 г., предишна ал. 9, изм. - ДВ, бр. 7 от 2019 г.) Митническите органи могат да проверяват личните вещи на задържаното лице за което се съставя протокол. Обикновено въпросът се решава само от лице, което принадлежи към полицията на територията на задържаното лице.

(10) (Нова - ДВ, бр. 60 от 2015 г., предишна ал. 9, изм. - ДВ, бр. 7 от 2019 г.) Протоколът по ал. 7 се подписва от митническия орган, от един свидетел и от органите на външните работи в България за задържаното лице.

(11) (Нова - ДВ, бр. 60 от 2015 г., предишна ал. 10, изм. - ДВ, бр. 7 от 2019 г.) Проверката и обикъл по ал. 9 се извършва по начин, който не уврежда честта и достойнството на задържаното лице.

(12) (Предишна ал. 9 - ДВ, бр. 60 от 2015 г., предишна ал. 11 - ДВ, бр. 7 от 2019 г.) Когато е необходимо, задържаното лице се настанива в обособения за целта места в структурите на Министерството на външните работи, за което се издава писмена заповед.
under Art. 255 of the Criminal Code in relation to import VAT and excise duties and there is a real risk of absconding or committing a crime.

(2) For each detained person, a detention order is issued by the customs authority that restricted the person’s right to free movement.

(3) No rights other than the right to free movement may be restricted to the detained person. The detention period cannot be more than 24 hours. Detained persons shall be immediately released after the grounds for detention no longer exist, but no later than the 24-hour period.

(4) When the detained person does not speak Bulgarian, he is immediately informed about the reasons for his detention in a language he understands.

(5) From the moment of his detention, the person has the right to a defender. The customs authorities are obliged to explain to the detainee the right to refuse a lawyer and its consequences, as well as his right to refuse to give explanations. A protocol shall be drawn up for the refusal of a defence counsel and the circumstances under which it was made.

(6) The detained person has the right to appeal to the court the legality of the detention in accordance with the Administrative Procedure Code. The court shall rule on the appeal immediately.

(7) The relevant customs authority is obliged to immediately notify the person named by the detainee about the detention.

(8) When the detainee is a foreign citizen, upon his request, the consular authorities of the country of which the detainee is a citizen are immediately notified through the Ministry of Foreign Affairs. If the detainee is a citizen of two or more countries, he can choose the consular authorities of which country to be notified of his detention and with whom he wishes to make contact.

(9) The customs authorities may check the personal belongings and search the detained person for whom the protocol. A search can only be carried out by a person who belongs to the sex of the person being searched.

(10) The protocol under para 9 is signed by the customs authority, by one witness and by the inspected person, to whom a copy of the protocol is provided.

(11) The inspection and search under para 9 are carried out in a way that does not damage the honour and dignity of citizens.

(12) When necessary, the detained person is accommodated in the designated places in the structures of The Ministry of the Interior, for which a written order is issued.

Art. 16b217 (1) When detaining a person, the customs authorities shall take measures to ensure the personal your safety and the safety of those present.

217 Чл. 16б. Закон за митниците (Нов - ДВ, бр. 82 от 2011 г., в сила от 01.01.2012 г.)
(2) When detaining a person who does not obey or resists, the customs authorities may, after a warning, use physical force and aids – handcuffs, when it is not possible to fulfil their official duties in another way.

(3) When using physical force and auxiliary means, the customs authorities are obliged to protect the life and health of the persons against whom they are directed.

(4) The customs authorities may escort to the territory of the country the persons detained pursuant to Art. 16a, and the defendants, in respect of whom a detention of up to 72 hours has been ordered in accordance with the Criminal Procedure Code. The convoy activity on the territory of the country is carried out by the customs officials under the conditions and in accordance with the instructions of the Minister of Finance.

(5) The use of physical force and auxiliary means shall cease immediately after achieving the objective of the applied measure.

(6) The conditions and procedure for applying the provisions on the detention of a person by the customs authorities are regulated in the instruction under Art. 15 para 3.

c) Para 2: Cross-border surrender

5 Competent authorities of the Member States

For receiving an EAW:218

- District courts are competent if the detainee’s whereabouts are known.
- Prosecutors of the district offices are competent if the detainee’s whereabouts are unknown. He/she will approach the competent district court for the surrender.

For executing the EAW and surrender:219

- Supreme Cassation Prosecutor’s Office
- Ministry of Justice of the Republic of Bulgaria
- International Operational Cooperation Directorate at the Ministry of Interior of the Republic of Bulgaria

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For provisions relating to the extradition procedure, see Act on Extradition and the European Arrest Warrant, e.g. Art. 9:

Chapter Three. Extradition Procedure
Section I. Extradition at the Request of Another State
Request for extradition
Art. 9 (1) A request for extradition shall be submitted by a competent authority of the requesting state in writing to the Ministry of Justice of the Republic of Bulgaria; (2) The request for extradition may also be submitted through diplomatic channels, through the International Criminal Police Organisation (Interpol) or in another way that can be agreed between the requesting country and the Republic of Bulgaria. (3) The following shall be attached to the request for extradition:
1. an original or a certified copy of the sentence, the act of bringing to criminal responsibility or the detention order, or another document with the same force, issued in the order provided by the law of the requesting state;
2. description of the crime for which extradition is requested, time and place of its commission, legal qualification, amount of damages, if any, and a copy of the applicable legal provisions, including the statute of limitations;
3. data on the requested person, accompanied by other information allowing to establish his identity and citizenship;
4. information on the exhaustion of domestic remedies and the reasons for which the crime has not been punished in the requesting state;
5. information on the availability of a European arrest warrant or other international instruments;
4. information about the unserved part of the imposed sentence, if the extradition of a convicted person is requested;
5. documents certifying the guarantees under Art. 7, item 8 and Art. 8, item 4.
(4) The application and the documents attached to it shall be drawn up in the language of the requesting country, with a translation into Bulgarian, unless otherwise stipulated in an international treaty.

7 The Bulgarian notification holds the following:

- The Specialised Criminal Court shall be competent to issue a European Arrest Warrant during the trial phase – until 27th of July 2022.
- The Sofia City Court shall be competent to issue a European Arrest Warrant during the trial phase – with effect from 27th of July 2022.  

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222 Bulgarian Notification pursuant to Article 117 EPPO Regulation as published by the EPPO on the EPPO Website, see https://www.eppo.europa.eu/sites/default/files/2022-06/BG%20Article%20117%20Notification%20UP-DATED%20May%202022.pdf, p. 22.
5. Some provisions on Defence relating to EPPO actions concerning PIF Crime offences in Bulgaria

5. Some provisions on Defence relating to EPPO actions concerning PIF Crime offences in Bulgaria

a) Access to lawyers

The court system, the administration and the government provide lists and databases of lawyers and the Bar. Bulgarian lawyers are part of EU defence organisations.

b) Defence in the investigation phase

aa. Input from the Regulation 2017/1939

(1) Access to national case file
(2) Access to EPPO case file

bb. Defence while investigation is under-way,

Art. 28–33 EPPO Regulation

(1) In cases involving investigative measures of
Art. 30 EPPO-Regulation

(2) Defence in cross-border cases
(3) Defence in case of arrest and pre-trial detention, Art. 33 EPPO Regulation

Cc) Defence in Indictment phase

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223 Права на обвиняемия
Чл. 55. Наказателно-процесуален кодекс
(1) (Доп. - ДВ, бр. 110 от 2020 г., в сила от 30.06.2021 г.) Обвиняемият има следните права: да научи за какво престъпление е привлечен в това качество и въз основа на какви доказателства; да дава или да откаже да дава обяснения по обвинението; да се запознае с делото, включително и с информацията, получена чрез използване на специални разузнавателни средства, и да прави необходимите извлечения; да представя доказателства; да участва в наказателното производство; да прави искания, бележки, възражения; да се обжалва последен; да обжалва актовете, които накърняват неговите права и законни интереси, и да има защитник. Обвиняемият има право защитникът му да участва при извършване на действия по разследването и други процесуални действия с негово участие, освен когато изрично се откаже от това право. Искания, бележки, възражения, както и обжалване на актовете, които накърняват неговите права и законни интереси, могат да бъдат извършвани по електронен път, подписани с квалифицирани електронен подпис.

(2) (Нова - ДВ, бр. 7 от 2019 г.) Обвиняемият има право да му бъде предоставена общна информация, улесняваща неговия избор на защитник. Той има право свободно да осъществява връзка със защитника си,
explanations on the charge; to become familiar with the case, including the information obtained through the use of special intelligence means, and to make the necessary extracts; to present evidence; to participate in criminal proceedings; to make requests, comments and objections; to speak last; to appeal the acts that harm his rights and legitimate interests and to have a defender. The accused has the right to have his defence counsel participate in the performance of investigation and other procedural actions with his participation, except when he expressly waives this right. Requests, notes, objections,

(2) The accused has the right to be provided with general information facilitating his choice of counsel. He has the right to communicate freely with his defence counsel, to meet privately with him, to receive advice and other legal assistance, including before and during the interrogation and any other procedural action involving the accused.

(3) The defendant also has the right to the last word.

(4) An accused who does not speak Bulgarian has the right to an oral and written translation in the criminal proceedings in a language he understands. The accused shall be provided with a written translation of the decree to summon the accused, of the court’s determinations to take a measure of remand, of the indictment, of the sentence rendered, of the decision of the appellate instance and of the decision of the cassation instance. The accused has the right to refuse a written translation in accordance with this code, when he has a defence attorney and his procedural rights are not violated.

Rights of the defender
Art. 99 CPC

(1) The defender has the following rights: to meet privately with the accused; to familiarize himself with the case and make the necessary extracts; to present evidence; to participate in criminal proceedings; to make requests, notes and objections,
and to appeal the acts of the court and the bodies of the pre-trial proceedings, which harm the rights and legal interests of the accused. Requests, notes, objections, as well as appeals against the acts that harm the rights and legal interests of the accused, can be made electronically, signed with a qualified electronic signature. The defender has the right to participate in all actions of the investigation with the participation of the accused, and his absence does not prevent their performance.

(2) The participation of the defender is not an obstacle for the accused to personally exercise his rights under Art. 55.

(2) Access to EPPO case file

The access to the EPPO case file is determined by the EPPO Regulation (see → Art. 42 EPPO Regulation et seq.).

bb. Defence while investigation is under-way, Art. 28–33 EPPO Regulation

Right to defence

Art. 15 CPC

(1) The accused has the right to defence.

(2) The accused and the other persons participating in the criminal proceedings shall be provided with all the procedural means necessary to protect their rights and legitimate interests.

(3) The court, the prosecutor and the investigating authorities explain to the persons under para 2 their procedural rights and provide them with an opportunity to exercise them.

(4) The victim is provided with the necessary procedural means to protect his rights and legal interests.

Types of methods of proof

Art. 136 CPC

(1) Methods of proof in criminal proceedings are interrogation, expertise, inspection, search, seizure, and investigative experiment, recognition of persons and objects and special intelligence means.

225 Право на защита Чл. 15. Наказателно-процесуален кодекс

(1) Обвиняемият има право на защита.

(2) На обвиняемия и на другите лица, които участват в наказателното производство, се предоставят всички процесуални средства, необходими за защита на техните права и законни интереси.

(3) Съдът, прокурорът и разследващите органи разясняват на лицата по ал. 2 техните процесуални права и им осигуряват възможност да ги упражняват.

(4) На пострадалите се осигуряват необходимите процесуални средства за защита на неговите права и законни интереси.

226 Видове способы на доказване Чл. 136. Наказателно-процесуален кодекс

(1) Способы на доказывание в наказательном производстве са разпит, экспертиза, огляд, претърсване, изземване, следствен експеримент, разпознаване на лица и предмети и специални разузнавателни средства.

(2) При прилагане на способите по ал. 1 по отношение на адвокати и нотариуси се прилагат разпоредбите на Закона за адвокатурата и Закона за нотариусите и нотариалната дейност.
(2) When applying the methods under para 1 in relation to lawyers and notaries, the provisions of the Act on Advocacy and the Act on Notaries and Notarial Activities shall apply.

**Interrogation of the accused**

**Art. 138 CPC**

(1) The questioning of the accused shall be carried out during the day, except when there is no delay.

(2) Before the interrogation, the relevant authority establishes the identity of the accused.

(3) The questioning of the accused begins by asking if he understands the accusation, after which he is invited to state, if he wishes, in the form of a free narrative everything he knows about the case.

(4) The accused may be asked questions to supplement his explanations or to remove incompleteness, ambiguities or contradictions.

(5) Questions must be clear, specific and related to the circumstances of the case. They should not suggest answers or lead to a particular answer.

(6) When several defendants are brought in, the investigative body interrogates them separately.

(7) The accused may not be interrogated by delegation or by video conference, except in cases where he is outside the borders of the country and this will not prevent the disclosure of the objective truth.

(1) **In cases involving investigative measures of Art. 30 EPPO-Regulation**

The Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in proceedings under a European arrest warrant and on the right to notify a third party in the event of arrest and to communicate with third parties and consular authorities during the period of detention applies.

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227 Разпит на обвиняемия

**Чл. 138. Наказателно-процесуален кодекс**

(1) Разпитът на обвиняемия се извършва през деня, освен когато не търпи отлагане.

(2) Преди разпита съответният орган установява самоличността на обвиняемия.

(3) Разпитът на обвиняемия започва със запитване разбира ли обвинението, след което се поканва да изложи, ако желее, във форма на свободен разказ всичко, което знае по делото.

(4) На обвиняемия могат да се поставят въпроси за допълване на неговите обяснения или за отстраняване на непълноти, неясноти или противоречия.

(5) Въпросите трябва да бъдат ясни, конкретни и свързани с обстоятелствата по делото. Те не трябва да подсказват отговори или да подвеждат към определен отговор.

(6) Когато са привлечени няколко обвиняеми, разследващият орган ги разпитва поотделно.

(7) Обвиняемият не може да бъде разпитан по делегация или чрез видеоконференция, освен в случаите, когато се намира извън пределите на страната и това няма да попречи за разкриване на обективната истина.
(2) Defence in cross-border cases

The Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in proceedings under a European arrest warrant and on the right to notify a third party in the event of arrest and to communicate with third parties and consular authorities during the period of detention applies. The Directive can be consulted online.

(3) Defence in case of arrest and pre-trial detention, Art. 33 EPPO Regulation

Judicial review of pre-trial detention

Art. 65. CPC

(1) The accused or his defence counsel may, at any time during the pre-trial proceedings, request an amendment to the measure taken for compulsory detention.

(2) The request of the accused or his defence attorney is made through the prosecutor, who is obliged to immediately send the case to the court.

(3) The case shall be scheduled within three days of its entry into court and shall be considered in an open court session with the participation of the prosecutor, the accused and his defence counsel. The case is considered in the absence of the accused, if he...
declares that he does not wish to appear, or it is impossible to bring him due to health reasons. When this will not prevent the exercise of the right to defence, with his consent, the detained accused may also participate in the case via video conference, in which case his identity is certified by the head of the prison, the head of the detention center or an employee designated by them.

(4) The court assesses all the circumstances related to the legality of the detention and renders a decision, which it announces to the parties at the court session. By announcing the ruling, the court schedules the case before the appellate court within seven days in the case of a private complaint or private protest.

(5) The ruling is executed immediately after the expiry of the appeal period, unless a private protest is filed, which is not in the interest of the accused.

(6) When the request is made by the accused or his defence counsel and with the definition under para 4, the remand order is confirmed, the court may set a time limit in which a new request by the same persons is inadmissible. This period cannot be longer than two months from the entry into force of the ruling and does not apply when the request is based on the deterioration of the accused’s health.

(7) The ruling is subject to appeal with a private appeal and a private protest before the appellate court within three days.

(8) The Court of Appeal examines the case in a composition of three judges in an open session with the participation of the prosecutor, the accused and his defence counsel. The case is considered in the absence of the accused, when he declares that he does not wish to appear or it is impossible to bring him due to health reasons.

(9) The appellate court renders a ruling, which it announces to the parties at the court hearing. The decision is not subject to appeal by private appeal and private protest.

(10) When a measure of remand bail has been taken with the decision that has entered into force, the accused detained in custody shall be released after the submission and.

(11) Paragraphs 1 – 10 shall be applied accordingly in cases where the accused is detained due to non-payment of the bail set by the court.

c) Defence in indictment phase

Defence in the indictment phase requires actions against search measures, seizure actions, freezing of assets or the use of means to intercept telecommunications. The Bulgarian lawyer must therefore determine the relevant appeals, grounds for measures at the court of first instance.

8 Competitiveness. Equal rights of the parties

Art. 12 CPC\textsuperscript{229} (1) Judicial proceedings are adversarial.

\textsuperscript{229} Състезателност. Равни права на странит Чл. 12. Наказателно-процесуален кодекс
(1) Съдебното производство е състезателно.
(2) Страните в съдебното производство имат равни процесуални права, освен в случаите, предвидени в този кодекс.
(2) The parties in the judicial proceedings have equal procedural rights, except in the cases provided for in this Code.

**Function of the court in judicial proceedings**

**Art. 27 CPC**

(1) After the prosecutor files the indictment or the victim of the crime files a complaint, the court directs the proceedings and decides all issues in the case.
(2) In the pre-trial proceedings, the court exercises the powers provided for in the special part of this Code.

**Section III. Private complainant**

A person who can participate as a private complainant

**Art. 80 CPC**

The victim of a crime, which is prosecuted on the complaint of the victim, may raise and maintain an accusation before the court as a private complainant. After the death of the person, this right passes to his heirs.

**Lawsuit**

**Art. 81**

(1) The lawsuit must be in writing and contain information about the sender, about the person against whom it is filed, and about the circumstances of the crime. A document for the paid state fee is attached to the complaint.
(2) The claim must be signed by the submitter.
(3) The lawsuit must be filed within six months from the day, when the victim learned about the commission of the crime, or from the day on which the victim received a notice of suspension of the criminal proceedings on the basis of Art. 25 para 1 item 6.
**Document in a foreign language**

**Art. 134**

When it is drawn up in a foreign language, the document is accompanied by a translation into Bulgarian, duly certified, or a translator is appointed.

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233 Документ на чужд език

Чл. 134. Наказателно-процесуален кодекс

Когато е съставен на чужд език, документът се придружава с превод на български език, заверен по надлежния ред, или се назначава преводач.
C. OLAF-Regulation (EU, EURATOM) No 883/2013

I. General Introduction: Investigation Powers and National Law Related to OLAF in Bulgaria (Art. 3–8 OLAF Regulation)

The European Anti-fraud office is well accommodated in the Union anti-fraud architecture these days and the academic research is extensive and long lasting since the 2000s even in Bulgaria since its accession in 2007.234 Last decade’s landmark judgement “Sigma Orionis SA vs European Commission”, decided by the European General Court235, clarified the application of national law and Union law236 in relation to external investigations of OLAF.237 In the light of this jurisprudence the resistance to the actions of OLAF, in order to awaken national law, might be a defence strategy that Economic Operators use. If this is the case, OLAF has to rely on national homologue investigators and thus as well limitations, thresholds and conditions of national law i.e. investigative powers in various areas of budget spending and structural funds (direct management) and revenue-related obligations (indirect management).

Current debates evolve around the effectiveness of investigations with regard to digital evidence by virtue of the Regulation 2185/96, which stems in parts from a more analogue society.238 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 if highly important for OLAF investigators as well as their national homologues. The relationship to the EPPO, especially the regional centres of the EDPs in the present country should be close. In addition to that the external investigations require a good coordination,

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235 GC, Case T-48/16, 3.5.2018, Sigma Orionis SA v. Commission, paras. 70 et seq., pp 80–81 published in the electronic Reports of Cases (Court Reports — general) and in the OJ, 01/06/2018.
236 See De Bellis 2021, p 431 et seq.; Herrnfeld 2021, p 426 et seq.; recently Wouters 2020, p 132 et seq.
which shall be governed by the relevant AFCOS (see below → Art. 12a OLAF Regulation)\textsuperscript{239}, which has been part of the current study and answered a questionnaire or commented and reviewed (for some countries that are very prone to frauds or countries that have recently changed their anti-fraud prevention in order to fulfil the requests for a national anti-fraud prevention strategy) Part B of this chapter.

3 Another question and debate have ever since existed concerning the reports of OLAF (cf. below → Art. 11), which can and shall constitute evidence – even – in national criminal trials. They concern EPPO cases (see above → 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.\textsuperscript{240}

4 The compendium part C, alike to the first part on the EPPO and its investigative powers, contains a collection of the relevant Bulgarian laws. The collection is in relation to investigations and investigative powers as well as examples from case law and trials, which relied upon evidence gathered by OLAF.

5 The wording of Art. 1 OLAF Regulation is as follows:

\textbf{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

\textsuperscript{240}See Luchtman and Vervaele 2017.
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;

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. That relationship shall be based on mutual cooperation, information exchange, complementarity and the avoidance of duplication. It shall aim in particular to ensure that all available means are used to protect the financial interests of the Union through the complementarity of their respective mandates and the support provided by the Office to the EPPO.

5. For the application of this Regulation, competent authorities of the Member States and institutions, bodies, offices and agencies may establish administrative arrangements with the Office. Those administrative arrangements may concern, in particular, the transmission of information, the conduct of investigations and any follow-up action.

Art. 2 of the OLAF Regulation contains definitions, which apply for all assessments of Seconded National Experts, Investigators, AFCOS staff or national authorities managing structural funds or other EU programmes. It might be cited e.g. for an OLAF Report (see below → Art. 11) in order to subsume or assess a conduct, which was investigated.
Art. 2 Definitions
The definitions have legal value and force. They stem from the original legislator of the Regulation. They are open to interpretation by parties and courts:
For the purposes of this Regulation:
(1) ‘financial interests of the Union’ shall include revenues, expenditures and assets covered by the budget of the European Union and those covered by the budgets of the institutions, bodies, offices and agencies and the budgets managed and monitored by them;
(2) ‘irregularity’ shall mean ‘irregularity’ as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95;
(3) ‘fraud, corruption and any other illegal activity affecting the financial interests of the Union’ shall have the meaning applied to those words in the relevant Union acts and the notion of ‘any other illegal activity’ shall include irregularity as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95;
(4) ‘administrative investigations’ (‘investigations’) shall mean any inspection, check or other measure undertaken by the Office in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation; those investigations shall not affect the powers of the EPPO or of the competent authorities of Member States to initiate and conduct criminal proceedings;
(5) ‘person concerned’ shall mean any person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the Union and who is therefore subject to investigation by the Office;
(6) ‘economic operator’ shall have the meaning applied to that term by Regulation (EC, Euratom) No 2988/95 and Regulation (Euratom, EC) No 2185/96;
(7) ‘administrative arrangements’ shall mean arrangements of a technical and/or operational nature concluded by the Office, which may in particular aim at facilitating the cooperation and the exchange of information between the parties thereto, and which do not create additional legal obligations;
(8) ‘member of an institution’ means a member of the European Parliament, a member of the European Council, a representative of a Member State at ministerial level in the Council, a member of the Commission, a member of the Court of Justice of the European Union (CJEU), a member of the Governing Council of the European Central Bank or a member of the Court of Auditors, with respect to the obligations imposed by Union law in the context of the duties they perform in that capacity.
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1. In the areas referred to in Article 1, the Office shall carry out on-the-spot checks and inspections in Member States and, in accordance with cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.

2. The Office shall carry out on-the-spot checks and inspections in accordance with this Regulation and, to the extent not covered by this Regulation, in accordance with Regulation (Euratom, EC) No 2185/96.

3. Economic Operators shall cooperate with the Office in the course of its investigations. The Office may request written and oral information, including through interviews.

4. Where, in accordance with paragraph 3 of this Article, the Economic Operator concerned submits to an on-the-spot check and inspection authorised pursuant to this Regulation, Article 2(4) of Regulation (EC, Euratom) No 2988/95, the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96 and Article 7(1) of Regulation (Euratom, EC) No 2185/96 shall not apply insofar as those provisions require compliance with national law and are capable of restricting access to information and documentation by the Office to the same conditions as those that apply to national administrative inspectors.

5. At the request of the Office, the competent authority of the Member State concerned shall, without undue delay, provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2).

The Member State concerned shall ensure, in accordance with Regulation (Euratom, EC) No 2185/96, that the staff of the Office are allowed access to all information, documents and data relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that the staff are able to assume custody of documents or data to ensure that there is no danger of their disappearance. Where privately owned devices are used for work purposes, those devices may be subject to inspection by the Office. The Office shall subject such devices to inspection only under the same conditions and to the same extent that national control authorities are allowed to investigate privately owned devices and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

6. Where the staff of the Office find that an Economic Operator resists an on-the-spot check and inspection authorised pursuant to this Regulation, namely where the Economic Operator refuses to grant the Office the necessary access to its premises or any other areas used for business purposes, conceals information or prevents the conduct of any of the activities that the Office needs to perform in the course of an on-the-spot check and inspection, the competent authorities, including, where appropriate, law en-
Enforcement authorities of the Member State concerned shall afford the staff of the Office the necessary assistance so as to enable the Office to conduct its on-the-spot check and inspection effectively and without undue delay.

Article 2(4) of Regulation (EC, Euratom) No 2988/95
Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

The third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96
Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the Member State concerned.

Article 7(1) of Regulation (Euratom, EC) No 2185/96
Commission inspectors shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned which are required for the proper conduct of the on-the-spot checks and inspections. They may avail themselves of the same inspection facilities as national administrative inspectors and in particular copy relevant documents.

On-the-spot checks and inspections may concern, in particular:
- professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements held by Economic Operators,
- computer data,
- production, packaging and dispatching systems and methods,
- physical checks as to the nature and quantity of goods or completed operations,
- the taking and checking of samples,
- the progress of works and investments for which financing has been provided, and the use made of completed investments,
- budgetary and accounting documents,
- the financial and technical implementation of subsidized projects.

When providing assistance in accordance with this paragraph or with paragraph 5, the competent authorities of Member States shall act in accordance with national procedural rules applicable to the competent authority concerned. If such assistance requires authorisation from a judicial authority in accordance with national law, such authorisation shall be applied for.

7. The Office shall conduct on-the-spot checks and inspections upon production of written authorisation, as provided for in Article 7(2). It shall, at the latest at the start of the on-the-spot check and inspection, inform the Economic Operator concerned of the procedure applicable to the on-the-spot check and inspection, including the applicable procedural safeguards, and the Economic Operator’s duty to cooperate.
8. In the exercise of the powers assigned to it, the Office shall comply with the proce-
dural guarantees provided for in this Regulation and in Regulation (Euratom, EC) No 2185/96. In the conduct of an on-the-spot check and inspection, the Economic Operator concerned shall have the right not to make self-incriminating statements and to be assisted by a person of the Economic Operator’s choice. When making statements during an on-the-spot check and inspection, the Economic Operator shall be provided with the possibility to use any of the official languages of the Member State where that Economic Operator is located. The right to be assisted by a person of choice shall not prevent access by the Office to the premises of the Economic Operator and shall not unduly delay the start of the on-the-spot check and inspection.

9. Where a Member State does not cooperate with the Office in accordance with para-
graphs 5 and 6, the Commission may apply the relevant provisions of Union law in order to recover the funds related to the on-the-spot check and inspection in question.

10. As part of its investigative function, the Office shall carry out the checks and inspec-
tions provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9(2) of that Regulation in Member States and, in accordance with cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.

11. During an external investigation, the Office may have access to any relevant infor-
mation and data, irrespective of the medium on which it is stored, held by the institutions, bodies, offices and agencies, connected with the matter under investigation, where necessary in order to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. For that purpose Article 4(2) and (4) shall apply.

12. Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an external investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the competent authorities of the Member States concerned and, where necessary, the institutions, bodies, offices and agencies concerned.

Without prejudice to the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No 2988/95, the competent authorities of the Member States concerned shall ensure that appropriate action is taken, in which the Office may take part, in accordance with national law. Upon request, the competent authorities of the Member States concerned shall inform the Office of the action taken and of their findings on the basis of information referred to in the first subparagraph of this paragraph.
On-the-spot checks have been discussed in the last decade quite thoroughly. In the following, the applicable provisions for Bulgaria will be identified, presented, categorised and provided with further information. The reason is that: “OLAF's practical experience shows it is often difficult to identify the applicable national laws. Member States are not required either to notify them [i.e. national laws] or adapt them to the specificity of OLAF. At times, national authorities themselves are not sure which laws should apply to OLAF’s action. Most Member States do not have a body comparable to OLAF, and national laws are frequently specific to concrete areas of revenue and expenditure or refer to concrete national authorities. This is to the detriment also of investigated persons, who have difficulty identifying on rules they can rely.”

a) On the spot-checks and inspections – Renouncing the applicable national law, Para 2, 4

The national law is renounced if the Economic Operator, the beneficiary, the grant recipient etc. submits to the investigation of the Office. In this case Union law applies.

b) Assistance needed, competent authorities and access to information in the Member States, Para 5

Even in the case that Union law applies, OLAF may need the help and information from national authorities in the Member States (managing authorities, control bodies, customs and tax offices, etc.).

c) Resistance by the economic operator vs. law enforcement and effective investigations, Para 6 or the new model and the relevance of resistance or conformity of the economic operator

If the Economic Operator, the beneficiary, the grant recipient etc. resists this conduct has an effect on the applicability of law. The ECJ rules in Sigma Orionis that national law applies in the case of resistance, which means that the investigations need to be in conformity with the national law applicable in similar national investigations.

d) The basic principle of conformity to Regulations 2185/96 and 883/2013

aa. Submission: Compliance with Union law

In the case of compliance of a Bulgarian Economic Operator Union law applies, thus the Regulation allows OLAF officials to conduct on-the-spot checks without prior information of national authorities.

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bb. Resistance: Assistance in conformity with national procedural rules applicable

Does the participant, the personal or Economic Operator concerned resist, the Regulation indicates that OLAF has to follow national law and inform national authorities that can provide assistance in conformity with national procedural rules applicable.242

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. In this case the suspected irregularity determines the area of competence and following this decision-making process the national authority can be identified and potentially cross-checked with the information of the national AFCOS:

*Table 6 Competent authorities to conduct investigations with national investigators in case of resistance to Union law (Sigma Orionis decision and subsequent ECJ court law)*

<table>
<thead>
<tr>
<th>Authority</th>
<th>Competence area</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Financial Inspection Agency</td>
<td>Expenditure/Revenue-related</td>
</tr>
<tr>
<td></td>
<td>“financial inspections of recipients/beneficiaries/ of funds under EU funds”; violations of the Law on Financial Management and Control in the Public Sector, European Regional Funds”243</td>
</tr>
<tr>
<td>Customs Authority (AM)</td>
<td>Revenue-related</td>
</tr>
<tr>
<td></td>
<td>“administrative offences [...], customs violations [...], compliance with Anti-corruption law”, Roads Law, Law on Waste Management”, Law on Tobacco, Law on the Export</td>
</tr>
</tbody>
</table>

242 ECJ, Case T-48/16 *Sigma Orionis v. the Commission*, Margin Number 112: “Finally, it should be noted that, according to the rules applicable to the actions carried out by OLAF, the requirement to obtain a judicial authorization, 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.”

| **Executive Agency “Audit of European Union Funds”** | **Mainly Expenditure-related.** | Specialised body for all funds not investigated by other authorities primarily; European Agricultural Guarantee Fund (EAGF), EDF… |
| **Executive Agency & managing “Certification audit of funds from the European Agricultural Guarantee Fund”** | **Expenditure-related.** | |
| **Directorate “National Fund”, MoF** | **Mainly Expenditure-related.** | |
| **AFCOS-MIA Directorate** | **Expenditure/Revenue-related** | Directly receives reports of irregularities affecting the financial interests of the EU, f projects and programs co-financed by the EU. |
| **MRRB** | **Expenditure/Revenue-related** | Shall carry out on-site inspections, according to a preliminary schedule […]” |
| **MTSP** | **Expenditure/Revenue-related** | Area of Defence and Military |
| **MTITS** | **Expenditure/Revenue-related** | Shall carry out management checks to verify costs, […] |
| **MZHNG** | **Expenditure/Revenue-related** | Maritime Affairs and Fisheries Program |
| **Others: IA OPNOIR, Good Governance Directorate, AMC, DFZ, Directorate “International Projects” – Ministry of the Interior** | **Expenditure/Revenue-related** | |

Source: The authors.

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244 Ministry of Regional Development and Public Works.
245 Ministry of Labor and Social Policy.
246 Ministry of Economy.
247 Ministry of Transport, Information Technologies and Communications.
248 Ministry of Agriculture and Food and Forestry.
249 Operational Program “Science and Education for Smart Growth”.

266 Bulgaria
In the area of administrative offences and penalties the Administrative Offences and Penalties Act applies.

**Art. 47 Administrative Offences and Penalties Act**

(1) Administrative penalties may impose:

a) the heads of the departments and organisations, the regional governors and the mayors of the municipalities, who are assigned to apply the relevant normative acts or to control their implementation;

b) the officials and bodies empowered by the relevant law or decree;

c) the judicial and prosecutorial authorities in the cases provided for by law or decree.

(2) Managers under letter “a” may assign their rights to punishing bodies to officials designated by them, when this is provided for in the relevant law, decree or decree of The Council of Ministers.

The State Financial Inspection Agency has a very important task in the area of procurement irregularities.

Within the framework of the negotiation process and the monitoring under chapter 28 “Financial Control”, the European Commission has recommended consistent application of the principles of sound financial management, transparency and lawfulness in the spending of public funds. The Regular report of the European Commission for Bulgaria for 2004 drew attention to the need for further development of the legislation in the field of financial control.

The SIGMA report on the system of public internal financial control presented to the Minister of Finance on 26 April 2005 recommended development of the legislation in the direction of separation of the functions of internal audit and financial inspection, decentralization of internal audit and development of managerial responsibility, three
new laws being developed for this purpose. These were the laws on the state financial inspection, on the internal audit and on financial management and control, which replaced the then Act on the public internal financial control. All three laws regulate public relations related to the public sector and the management of the financial interests of the state, but while the Act on Internal Audit in the Public Sector\textsuperscript{253} and the Act on Public Sector Financial Management and Control\textsuperscript{254} regulate processes, activities and managerial responsibility \textit{inside the organisation}, the Act on Public Financial Inspection (LPFI)\textsuperscript{255} regulates the implementation of a \textit{specialized financial inspection function external to the organisation having sanctioning powers}.

18 The State Financial Inspection Agency is competent, under the administration of the Ministry of Finance to conduct on-the-spot checks. It is composed of several directorates. The Directorate “Inspection Activity”, part of the specialized administration of the whole Agency, is competent to work together with OLAF investigators. It has an outstanding competence in the area of digital forensic investigations (see below “A closer look at single measures within on-the-spot checks”). Art. 2 of the Public Financial Inspection Act describes the task of the Agency accurately:

| Art. 2 Public Financial Inspection Act\textsuperscript{256} (1) The main objective of the state financial inspection is to protect public financial interests. |
| 18 |

\textsuperscript{253} Promulgated State Gazette, issue 27 of 31 March 2006, amended and supplemented SG, issue 100 of 20 December 2019.
\textsuperscript{255} Promulgated State Gazette, issue 33 of 21 April 2006, amended and supplemented SG, issue 85 of 24 October 2017.
\textsuperscript{256} Чл.2. Закон за държавната финансова инспекция

(1) Основната цел на държавната финансова инспекция е да защитава публичните финансови интереси.

(2) Целта по ал. 1 се осъществява от агенцията чрез изпълнение на следните основни задачи:

1. (доп. - ДВ, бр. 60 от 2011 г.) извършване на последващи финансови инспекции за спазването на нормативните актове, които уреждат бюджетната, финансово-стопанската или отчетната дейност, както и дейността по възлагане и изпълнение на обществени поръчки на организацииите и лицата по чл. 4;

2. установяване на нарушения на нормативните актове, уреждащи бюджетната, финансово-стопанската или отчетната дейност, както и на индикатори за извършени измами;

3. разкриване на причинени вреди на имуществото на организациите и лицата по чл. 4;

4. привличане към административнонаказателна и имуществена отговорност на виновните лица при наличието на съответните законови основания;

5. (нова - ДВ, бр.86 от2007 г.) установяване на измами и нарушения, засягащи финансовите интереси на Европейските общности.

Чл. 3. Държавната финансова инспекция се ръководи от принципите на законност, обективност, служебно начало и конфиденциалност.

Чл. 4. (Доп. - ДВ, бр. 86 от 2007 г.; изм. и доп., бр. 15 от 2013 г., в сила от 01.01.2014 г.) Държавната финансова инспекция се осъществява във:

1. бюджетните организации;

2. (доп. - ДВ, бр. 15 от 2013 г., в сила от 01.01.2014 г.) държавните предприятия по чл. 62, ал. 3 от Търговския закон, както и в общинските предприятия;
(2) The purpose under para 1 is carried out by the agency by performing the following main tasks:
1. carrying out subsequent financial inspections for compliance with the normative acts that regulate budgetary, financial-economic or reporting activities, as well as the activity of awarding and execution of public contracts to the organisations and persons under Art. 4;
2. establishment of violations of the normative acts governing budgetary, financial-economic or reporting activities, as well as indicators of committed fraud;
3. disclosure of damages caused to the property of the organisations and persons under Art. 4;
4. bringing the guilty parties to administrative criminal and property liability if there are relevant legal grounds;
5. establishment of frauds and violations affecting the financial interests of the European Communities.

Art. 3. The State Financial Inspection is guided by the principles of legality, objectivity, official origin and confidentiality.

Art. 4. The state financial inspection is carried out in:
1. budgetary organisations;
3. търговските дружества с блокираща квота държавно или общинско участие в капитала;
4. търговските дружества, в чийто капитал участва с блокираща квота лице по т. 2 или 3;
6. юридическите лица, които имат задължения, гарантирани с държавно или общинско имущество;
7. (доп. - ДВ, бр. 86 от 2007 г.; изм., бр. 15 от 2013 г., в сила от 01.01.2014 г.) получателите на държавни помощи, лицата, финансиран със средства от държавния или от общинските бюджети, по международни договори или програми на Европейския съюз, както и лицата, финансиран със средства от бюджетите на държавите по чл. 62, ал. 3 от Търговския закон - по отношение разходването на тези средства.

257 Чл. 3. Закон за държавната финансова инспекция
Държавната финансова инспекция се ръководи от принципите на законност, обективност, служебно начало и конфиденциалност.

258 Чл. 4. Закон за държавната финансова инспекция
Държавната финансова инспекция се осъществява във:
1. бюджетните организации;
2. (доп. - ДВ, бр. 15 от 2013 г., в сила от 01.01.2014 г.) държавните предприятия по чл. 62, ал. 3 от Търговския закон, както и в общинските предприятия;
3. търговските дружества, в чийто капитал участва с блокираща квота лице по т. 2 или 3;
5. юридическите лица, които имат задължения, гарантирани с държавно или общинско имущество;
6. юридическите лица по Закона за юридическите лица с нестопанска цел и неперсонифицираните дружества по Закона за задълженията и договорите, в които държавата или общината участват пряко или косвено в имуществото им;
7. (доп. - ДВ, бр. 86 от 2007 г.; изм., бр. 15 от 2013 г., в сила от 01.01.2014 г.) администраторите на помощ, получателите на държавни или минимални помощи, лицата, финансиран със средства от държавния или от общинските бюджети, по международни договори или програми на Европейския съюз, както и лицата, финансиран със средства от държавните предприятия по чл. 62, ал. 3 от Търговския закон - по отношение разходването на тези средства.
2. the state-owned enterprises under Art. 62 para 3 of the Commercial Act, as well as in municipal enterprises;
3. commercial companies with a blocking quota of state or municipal participation in the capital;
4. the commercial companies in whose capital a person under item 2 or 3 participates with a blocking quota;
5. legal entities that have obligations guaranteed by state or municipal property;
6. legal entities under the Act on non-profit legal entities and unincorporated companies under the Act on Obligations and Contracts, in which the state or the municipality directly or indirectly participates in their property;
7. recipients of state aid, persons financed with funds from the state or from municipal budgets, according to international agreements or programs of the European Union, as well as the persons financed with funds from the state enterprises under Art. 62 para 3 of the Commercial Act – regarding the expenditure of these funds.

aa. General remarks

20 Who is responsible hence 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.

21 The cooperation of OLAF with national authorities or the national AFCOS (see below → Art. 12a) has increased in the last decade: The following figure 6 shows that the requests from OLAF have stayed on a constant level, while on-the-spot checks had a peak in 2015–2016. The requests from Bulgarian authorities to OLAF have raised as well.
bb. Revenue: VAT fraud irregularities

The National Revenue authority\textsuperscript{259} must be contacted most likely or it will be contacted via the Bulgarian AFCOS either way, if this contact point is consulted primarily.

cc. Expenditure: Structural funds area

The Act on Management of European Funds under Shared Management stipulates the national institutional framework for the management of funds from the European funds under shared management together with Agricultural Producers Assistance Act.

For example, one area of communication i.e. of shared management can be presented here:

\textsuperscript{259} национална агенция по приходите.
### Art. 2

Responsible for the implementation of the activities under Art. 1 para 2 are:

1. the heads of the Managing Authorities (MA) of the operational programs, the head of the MA of the Program for the Development of Rural Areas and the Program for Maritime Affairs and Fisheries;
2. the head of the programs for European territorial cooperation;
3. the executive director of the State Fund “Agriculture”;
4. the heads of intermediate units.

In addition, the new Act on Management of Funds from European Funds under Shared Management (Title Amended – SG No 51 of 2022, effective from 01.07.2022) applies and stipulates the competent authorities in Chapter 2, Art. 7 et seq.:
1. The Council of Ministers;
2. (Amended – SG No 51 of 2022, in force from 01.07.2022) the deputy prime minister or the minister responsible for the overall organisation, coordination and control of the system for managing funds from the ESMF;
3. The Minister of Finance.

(2) The Council of Ministers:
1. approves the draft of the Partnership Agreement before its submission to the European Commission;
2. approves the projects of the programs under Art. 3 para 2 before their submission to the European Commission;
3. (Amended – SG No 51 of 2022, in force from 01.07.2022) determines the structures responsible for the development of the programs under Art. 3 para 2 and for the management, control, coordination and audit of ESMF funds;
4. (Amended – SG No 51 of 2022, in force from 01.07.2022) adopts the by-laws for the management of ESMF funds provided for in this law.
(3) (Amended – SG No 51 of 2022, in force from 01.07.2022) The Deputy Prime Minister or the Minister responsible for the overall organisation, coordination and control of the system for managing funds from the ESMF:

1. (Amended – SG No 51 of 2022, in force from 01.07.2022) acts as the central representative of the Republic of Bulgaria before the European Commission and other European institutions in matters of ESMF funds management;

2. (Amended – SG No 51 of 2022, in force from 01.07.2022) carries out coordination in connection with the participation of the Republic of Bulgaria in the decision-making process of the European Union in the field of Cohesion Policy, the General agricultural policy and the Common Fisheries Policy in their part covered by the ESMF;

3. (Amended – SG No 51 of 2022, in force from 01.07.2022) leads the process of developing the institutional framework and regulations related to the management of ESMF funds;

4. coordinates and supervises the management of the programs under Art. 3 para 2; gives mandatory methodological instructions to the authorities under Art. 9 in connection with the management of the programs under Art. 3, para 2, without contradicting the requirement to ensure the independence of the audit body;

5. (Amended – SG No 51 of 2022, in force from 01.07.2022) coordinates the support provided by the international financial institutions and the JASPERS instrument for the preparation, implementation and management of projects financed with ESMF funds;

6. (Amended – SG No 51 of 2022, in force from 01.07.2022) is responsible for the existence and functioning of systems for management and control of the programs in accordance with the key requirements of Annex XI of the Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 establishing the provisions of general application to the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund, as well as the financial rules for them and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ, L 231/159 of 30 June 2021), hereinafter referred to as “Regulation (EU) 2021/1060”;

7. (Amended – SG No 51 of 2022, in force from 01.07.2022) coordinates the activities to improve the administrative capacity at the central, regional and local level in the management of ESMF funds;

8. (Amended – SG No 51 of 2022, in force from 01.07.2022) coordinates the effective implementation of the measures for visibility, transparency and communication in the management of funds from the ESMF.

(4) The Minister of Finance:

1. (Supplemented – SG No 51 of 2022, in force from 01.07.2022) determines, organizes and controls the processes of receiving and transferring funds from the financial assistance provided to the Republic of Bulgaria under the European Regional Development Fund.
Fund, the European Social Fund Plus, the Just Transition Fund and the Cohesion Fund, and the related national co-financing;
2. implements the national policy on the implementation of financial instruments;
3. (Repealed).
4. (Amended and supplemented – SG No 51 of 2022, in force from 01.07.2022) determines by a normative act the rules for making payments, for verification and accounting of expenses, for reimbursement and write-off of illegal expenses and for accounting, as well as the terms and rules for closing the accounting year in the sense of Art. 2, item 29 of Regulation (EU) 2021/1060 on the programs financed by the European Regional Development Fund, the European Social Fund Plus, the Just Transition Fund and the Cohesion Fund.

**Art. 8.**

(1) (Amended – SG No 51 of 2022, in force from 01.07.2022) Permanently acting consultative bodies for coordination in the executive power in the determination and implementation of state policy in the field of funds management from ESMF are:
1. (Amended – SG No 51 of 2022, in force from 01.07.2022) The Council for coordination in the management of funds from the European Union, which coordinates the measures for the implementation of the state policy for economic, social and territorial development of the country, financed with funds from ESMF;
2. (Amended – SG No 51 of 2022, in force from 01.07.2022) The Council for Coordination in the Fight against Offences Affecting the Financial Interests of the European Union, which ensures the coordination of the activities of state bodies in the prevention and the fight against offences in the management of ESMF funds.

(2) The councils under para 1 are established by the Council of Ministers pursuant to Art. 22a of the Administration Act. The composition, functions and organisation of the activities of the councils are determined by the acts of their creation.
Art. 9. (1) (Amended – SG No 51 of 2022, in force from 01.07.2022) Bodies under the programs under Art. 3 para 2, financed with funds from the ESMF, are the managing authorities, the accounting authorities and the audit authorities.

(2) (Amended – SG No 51 of 2022, in force from 01.07.2022) The same managing, accounting or auditing authority may be designated for several programs under Art. 3, para 2. To the extent applicable under European Union law and respecting the principle of separation of functions, the managing, accounting and auditing authority may be part of the same administration.

(3) (Amended – SG No 51 of 2022, in force from 01.07.2022) For the management of a part of a program or for the performance of certain tasks of the managing body, intermediate units may be designated.

(4) (Amended – SG No 51 of 2022, in force from 01.07.2022) The management, accounting and audit bodies and intermediate units are established as a unit in administration in accordance with the Law on Administration or the Law on local self-government and local administration, or as a separate administration. To the extent applicable under the law of the European Union, the functions of such a body may be provided for execution by another body or organisation.

264 Чл. 9. Закон за управление на средствата от европейските фондове при споделено управление
(1) (Изм. - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) Органи по програмите по чл. 3, ал. 2, финансиранi със средства от ЕФСУ, са управляващите органи, счетоводните органи и одитните органи.
(2) (Изм. - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) Един и същ управляващ, счетоводен или одитен орган може да бъде определен за няколко програми по чл. 3, ал. 2. Доколкото това е приложимо съгласно правото на Европейския съюз и при зачитане на принципа за разделение на функциите, управляващият, счетоводният и одитният орган могат да бъдат част от една и съща администрация.
(3) (Изм. - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) За управлението на част от програма или за изпълнението на определени задачи на управляващия орган може да бъдат определени междинни звена.
(4) (Изм. - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) Управляващите, счетоводните и одитните органи и междинните звена се създават като звено в администрация по реда на Закона за администрацията или Закона за местното самоуправление и местната администрация, или като отделна администрация. Доколкото това е приложимо съгласно правото на Европейския съюз, функциите на такъв орган може да се предоставят и от друг орган или организация.
(5) (Изм. и доп. - ДВ, бр. 85 от 2017 г.) Управляващите органи отговарят за цялостното програмиране, управление и изпълнение на програмата, както и за предотвратяването, откриването и коригирането на нередности, включително за извършването на финансови корекции. Ръководител на управляващия орган е ръководителят на администрацията или организацията, в чиято структура се намира управляващият орган, или определено от него лице. Правомощия на ръководителя на управляващия орган по този закон може да се упражняват и от овластено от него лице.
(6) (Изм. - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) Счетоводните органи извършват специфични контролни дейности с цел заявяване за възстановяване пред Европейската комисия на разходваните средства по програмите по чл. 3, ал. 2 и изготвяне и изпращане на Европейската комисия на годишни счетоводни отчети по всяка програма. Те предоставят информация на Европейската комисия и осъществяват комуникация с нея във връзка с изпълняваните от тях дейности.
(7) (Доп. - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) Одитните органи извършват специфични одитни дейности за предоставяне на независима и обективна оценка относно ефективността на системите за финансово управление и контрол и за придобиване на разумна увереност относно пълнотата, точността и достоверността на годишните счетоводни отчети и редовиността, правилността и законосъобразността на свързаните с тях разходи.
(5) (Amended and supplemented – SG No 85 of 2017) The governing bodies are responsible for the overall programming, management and implementation of the program, as well as for the prevention, detection and correction of irregularities, including the implementation of financial corrections. The head of the governing body is the head of the administration or organisation in whose structure the governing body is located, or a person designated by him. Powers of the head of the governing body under this law may also be exercised by a person authorized by him.

(6) (Amended – SG No 51 of 2022, in force from 01.07.2022) The accounting authorities carry out specific control activities in order to apply for reimbursement to the European Commission of the funds spent under the programs under Art. 3, para 2 and preparing and sending to the European Commission annual accounting reports for each program. They provide information to the European Commission and communicate with it in connection with the activities they perform.

(7) (Supplement – SG No 51 of 2022, in force from 01.07.2022) The audit authorities shall carry out specific audit activities to provide an independent and objective assessment of the effectiveness of financial management and control systems and to obtaining reasonable assurance about the completeness, accuracy and reliability of the annual accounts and the regularity, correctness and legality of the related expenditure.

f) National law and “checks and inspections” of OLAF

The national checks and inspections, alike to the Union law-based inspections (in case of non-resistance) aim at the discovery of irregularities (see EU Fraud Commentary, Part 3. Art. 1–3 OLAF Regulation). Irregularities are defined by the Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995:

Title I General principles
Article 1 Regulation 2988/95

1. For the purposes of protecting the European Communities’ financial interests, general rules are hereby adopted relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Community law.
2. “Irregularity” shall mean any infringement of a provision of Community law resulting from an act or omission by an Economic Operator, which has, or would have, the effect

266 ДЯЛ I Общи принципи Член 1
1. За целите на защитата на финансовите интереси на Европейските общности, с настоящото се приемат общи правила, отнасящи се до единните проверки и до административни мерки и санкции, касаещи нередностите по отношение на правото на Общността.
2. “Нередност” означава всяко нарушение на разпоредба на правото на Общността, в резултат на развитие или бездействие от икономически оператор, което е имало или би имало за резултат нарушаването на общи бюджет на Общностите или на бюджетите, управлявани от тях, или посредством намаляването или загубата на приходи, произтичащи от собствени ресурси, които се събират направо от името на Общностите или посредством извършването на неоправдан разход.
of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

29 The national law in this area is vast, so-to-speak. It encompasses laws in the administrative area, ordinances in the administration of the Bulgarian Ministries responsible for the allocation of Union funds and grants as well as the control of e.g. the structural funds (in the area of shared management).\(^\text{267}\) In addition the national AFCOS (see below Article 12a OLAF Regulation) does a great job and coordinates the actions on the national territory.\(^\text{268}\) Irregularities e.g. in the area of structural funds arrive nowadays at OLAF or the national authorities via databases or information systems e.g. the “Information System for Management and Monitoring of Funds from ESMF (ISUN)”.

30 The Bulgarian AFCOS Report from 2022 states in this regard that only 5 on-the-site inspections were realized in Bulgaria in 2021.\(^\text{269}\) They were mostly related to the distribution and allocation of structural funds (for the investigative measures in this area, see below, Art. 3 f) (2) (b)).

31 “In 2021, OLAF conducted 5 missions in Bulgaria, organized with the assistance and participation of employees from the AFCOS Directorate, as follows

4.3. Conducted missions and on-site inspections of OLAF in the Republic of Bulgaria

In the period 20-25.06.2021, a mission was conducted in connection with investigation OS/ 2019/0314 of OLAF, concerning a project financed under the Horizon 2020 Program. In the course of the mission, 1 on-site inspection was carried out in the city of Plovdiv of an Economic Operator;

\(^{267}\) See e.g. Ordinance on determining the procedures for the Administration of Irregularities in Funds, Instruments and programs co-financed by the European Union / Наредба за определяне на реда за администриране на нередности по фондове, инструменти и програми, съфинансираны от Европейския съюз.

\(^{268}\) See the newly introduced Art. 11 of the Law on Management of Funds from European Funds under Shared Management (Title Amended - SG No 51 Of 2022, Effective From 01.07.2022)/ Закон за управление на средствата от европейските фондове при споделено управление (ЗАГЛ. ИЗМ. - ДВ, БР. 51 ОТ 2022 Г., В СИЛА ОТ 01.07.2022 Г.)

Art. 11. (1) (Amended - SG No 51 of 2022, in force from 01.07.2022) Directorate “Protection of the Financial Interests of the European Union” (AFKOS) within the structure of the Ministry of Internal Affairs reports irregularities of the European Anti-Fraud Office and controls the implementation of the procedures for the administration of irregularities affecting ESMF funds.

(2) (Amended - SG No 51 of 2022, in force from 01.07.2022) By law or by a normative act of the Council of Ministers, other structures may be created that perform functions related to management and control of ESMF funds.

(3) (Amended - SG No 51 of 2022, in force from 01.07.2022) Insofar as it is not regulated in this law, a normative act of the Council of Ministers shall determine the rules regarding the relationships between the management, accounting and the audit authorities, their relationship with the European Commission, as well as with the other authorities and structures under this chapter.

In the period 19–23.07.2021, a mission was conducted in connection with an OLAF investigation regarding Promotional programs financed by the general EU budget within the framework of the European Agricultural Guarantee Fund, implemented in Bulgaria by a Greek Economic Operator. In connection with the investigation, 6 on-site inspections of 6 Economic Operators in Sofia, Plovdiv and Burgas were carried out. Within the framework of the same mission, in connection with another OLAF investigation, an operational meeting was held with representatives of the Specialised Prosecutor’s Office.

In the period 11–15.10.2021, a mission was conducted in connection with an OLAF investigation regarding Promotional programs financed by the general EU budget within the framework of the European Agricultural Guarantee Fund implemented in Bulgaria, and an investigation regarding integrated water project of Dushantsi village, Pirdop municipality. According to the first investigation, 2 on-site inspections were carried out in Sofia and Petrich, and on the second – 1 on-site inspection in the Municipality of Pirdop and in the village of Dushantsi. An operational meeting was held with the DFZ;

In the period 24–26.11.2021, a mission was carried out on the territory of the city of Sofia, during which OLAF employees with the assistance of AFCOS conducted an interview with an affected person – a citizen of France, regarding the illegal import and export of counterfeit Irish whiskey.

In the period 10–17.12.2021, a mission was carried out on the territory of the city of Sofia and the city of Plovdiv, carried out within the framework of an OLAF investigation, regarding irregularities and/or frauds related to European projects financed under the ‘HORIZON 2020’ programs” and FP7. In the course of the mission, 1 operational meeting and 6 interviews with persons were held, 3 of which in the capacity of

Compared to the missions and on-site inspections carried out by OLAF on the territory of the Republic of Bulgaria for the period from 2014 to 2018, when a stable trend of ten missions per year with 25–30 on-site inspections is observed, in 2019 and 2020, 2021, given the pandemic situation, a slight decline is observed. Such an exception was observed only in 2017, when, as a new practice, a total of thirteen operational meetings were held at the OLAF headquarters in Brussels, Belgium (in 2014, 10 missions with 20 on-site inspections were conducted, in 2015 – 11 missions with 35 spot checks, in 2016 – 9 missions with 30 spot checks, in 2017 – 4 missions with 3 spot checks […]”

aa. Administrative procedure in general

The Administrative procedure can best be researched by taking into account the index structure of the Administrative Procedure Code of the Republic of Bulgaria first:

Chapter Two. BASIC PRINCIPLES
Chapter Three. PARTIES, REPRESENTATIVES AND NOTICES (TITLE AMENDED – SG No 77 OF 2018, EFFECTIVE FROM 01.01.2019)
Chapter Three. PARTIES AND REPRESENTATION
Part Two. PROCEEDINGS BEFORE ADMINISTRATIVE AUTHORITIES
Chapter Four. GENERAL PROVISIONS
Chapter Five. ISSUING ADMINISTRATIVE ACTS
Chapter Six. CHALLENGING ADMINISTRATIVE ACTS UNDER ADMINISTRATIVE PROCEDURE
Chapter Seven. RENEWAL OF PROCEEDINGS ON THE ISSUANCE OF ADMINISTRATIVE ACTS
Chapter Eight. OFFERS AND SIGNALS
Part Three. COURT PROCEEDINGS (EFFECTIVE FROM 01.03.2007)
Chapter Nine. GENERAL PROVISIONS
Chapter Ten. CHALLENGING ADMINISTRATIVE ACTS BEFORE THE FIRST INSTANCE
Chapter Eleven. PROCEEDINGS FOR BENEFITS

Chapter Twelve. CASSATION PROCEEDINGS
Chapter Thirteen. APPEAL FROM RULINGS AND ORDERS, Art. 229 et seq.
Chapter Fourteen. REPEAL OF JUDICIAL ACTS ENTERED INTO FORCE
Chapter Fifteen. PROTECTION AGAINST UNFOUNDED ACTIONS AND OMISSIONS OF THE ADMINISTRATION
Chapter Sixteen. INTERPRETATIVE DECISIONS AND INTERPRETATIVE DECISIONS (REPEALED – SG No 64 OF 2007)
Part Five. ENFORCEMENT OF ADMINISTRATIVE ACTS AND JUDICIAL DECISIONS
Chapter Seventeen. ENFORCEMENT OF ADMINISTRATIVE ACTS AND COURT DECISIONS IN ADMINISTRATIVE CASES
Section I. General Provisions
Section II. Starting, stopping, terminating and ending performance
Section III. Enforcement against citizens and organisations
Section IV. Enforcement against the administrative authority
Section V. Claim Défense
Section VI. Appealing the actions of the enforcement body
Section VII. Reimbursement and Indemnification
Bulgarian Governments have been keen to develop a strategy of transparency in connection to the structure of administrative responsibilities.

As an investigator or the responsible OLAF official who directs the investigators, you can find out about the structure on site. Using a slider, one can view, as one example among many, the structure of the State Financial Inspection Agency over the years 2000–2022 and, by specifying the responsibilities, also call up the underlying legislation.271

**bb. Special administrative powers and provisions in certain areas of revenue and expenditure**

(1) **Administrative provisions**

Administrative Regulations in the area of the allocation of EU funds, the distribution, monitoring and control of expenditure as well as income is extremely important, since fraud scenarios can arise at the junction between granting and spending funds. In each area of income and expenditure there are different types of irregularities that develop their own life, but can be tied back to the Bulgarian provisions for granting by means of an administrative act, in the form of a contract or through resource allocations and other forms of administrative decision making.

Special attention should be paid to the administrative act and its issuing:

<table>
<thead>
<tr>
<th>Art. 21 APC</th>
<th>Чл. 21. Административнопроцесуален кодекс</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) An individual administrative act is the express declaration of will or the declaration of will expressed by action or inaction of an administrative body or</td>
<td></td>
</tr>
</tbody>
</table>

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271 See [https://shorturl.at/cgowz](https://shorturl.at/cgowz).

272 Чл. 21. Административнопроцесуален кодекс
(1) (Доп. - ДВ, бр. 77 от 2018 г., в сила от 01.01.2019 г.) Индивидуален административен акт е изричното волеизявление или изразеното с действие или бездействие волеизявление на административен орган или на друг областен със закон за това орган или организация, лица, осъществяващи публични функции, и организациите, предоставящи обществени услуги, с което се създават права или задължения или непосредствено се засягат права, свободи или законни интереси на отделни граждани или организации, както и отказът да се издаде такъв акт.
(2) (Доп. - ДВ, бр. 77 от 2018 г., в сила от 01.01.2019 г.) Индивидуален административен акт е и волеизявлениято, с което се декларират или констатират вече възникнали права или задължения, когато волеизявлениято е от значение за признаване, упражняване или погасяване на права или задължения.
(3) Индивидуален административен акт е и волеизявлениято за издаване на документ от значение за признаване, упражняване или погасяване на права или задължения, както и отказът да се издаде такъв документ.
(4) Индивидуален административен акт е и отказът на административен орган да извърши или да се въздържи от определено действие.
of another authorized by law for this, a body or organisation, persons performing public functions, and organisations providing public services, which creates rights or obligations or directly affects the rights, freedoms or legal interests of individual citizens or organisations, as well as the refusal to issue such an act.  
(2) An individual administrative act is also the declaration of will, which declares or ascertains rights or obligations that have already arisen, when the declaration of will is relevant for the recognition, exercise or repayment of rights or obligations.  
(3) An individual administrative act is also the declaration of intent to issue a document relevant to the recognition, exercise or repayment of rights or obligations, as well as the refusal to issue such a document.  
(4) The refusal of an administrative body to perform or refrain from a certain action is also an individual administrative act.  
(5) Declarations of will, actions and inactions when they are part of the proceedings for the issuance or execution of individual or general administrative acts or are part of the proceedings for issuing normative acts. Declarations of will, which declare the conditions for participation in competitive administrative proceedings for the issuance of individual administrative acts, are not individual administrative acts, unless a special law provides otherwise.

Furthermore, the Bulgarian authorities may conclude an administrative agreement with a beneficiary:

**Definition of administrative contract**

Art. 19a APC In proceedings before the administrative bodies, the parties may enter into an administrative contract on matters of significant public interest, only when provided for in a special law.

(2) The administrative contract is a written agreement between an administrative body and citizens or organisations.
(3) The administrative contract shall be concluded in writing and shall contain: parties, subject and content, date of conclusion and signatures of the parties, unless otherwise provided for in a special law.

Art. 20 APC Agreement

(1) In proceedings before the administrative authorities, the parties may enter into an agreement, if it does not contradict the law. The agreement is a written agreement that replaces the administrative act.

(2) The agreement may be concluded between the administrative authority and the parties to the proceedings or only between the parties to the proceedings. In the latter case, the administrative body approves the agreement in writing.

(3) The agreement may be concluded until the entry into force or until the administrative act is contested before a court.

(4) With the conclusion, respectively with the approval of the agreement under para 2 the administrative act is invalidated.

(5) The agreement shall be concluded in writing and shall contain: designation of the body before which it was concluded, date of conclusion, parties, subject and content of the agreement, note on its reading and acceptance and signatures of the parties, as well as name and signature of the official.

(6) If the agreement concerns issues, the resolution of which requires the opinion or consent of another authority, it is concluded after this opinion or consent is requested and in compliance with Art. 53.

274 Споразумение

Чл. 20. Административнопроцесуален кодекс

(1) (Доп. - ДВ, бр. 77 от 2018 г., в сила от 01.01.2019 г.) В производство пред административните органи страните могат да сключат споразумение, ако то не противоречи на закона. Споразумението е писмено съглашение, което замества административния акт.

(2) Споразумението може да бъде сключено между административния орган и страните в производството или само между страните в производството. В последния случай административният орган одобрява писмено споразумението.

(3) Споразумението може да бъде сключено до влизането в сила или до оспорването на административния акт пред съд.

(4) Със сключването, съответно с одобряването на споразумението по ал. 2 административният акт се обезсилва.

(5) Споразумението се сключва в писмена форма и съдържа: обозначаване на органа, пред който е сключено, дата на сключване, страна, предмет и съдържание на споразумението, бележка за изчитането и приемането му и подписи на страните, както и име и подпис на длъжностното лице.

(6) (Изм. - ДВ, бр. 77 от 2018 г., в сила от 01.01.2019 г.) Ако споразумението засяга въпроси, чието разрешаване изисква мнението или съгласието на друг орган, то се сключва, след като това мнение или съгласие бъде поискано и при спазване на чл. 53.

(7) Ако със споразумението се засягат права или законни интереси на лице, което не е участвало в сключването му, споразумението не произвежда действие, докато не бъде одобрено от него писмено. Писменото одобрение става неразделна част от споразумението.

(8) (Изм. - ДВ, бр. 77 от 2018 г., в сила от 01.01.2019 г.) За недействителността на споразумението се прилагат съответно чл. 146 и разпоредбите за недействителност на договорите по Закона за задълженията и договорите.
If the agreement affects the rights or legal interests of a person who did not participate in its conclusion, the agreement does not produce an effect until it is approved by him in writing. The written approval becomes an integral part of the agreement.

For the invalidity of the agreement, Art. 146 and the provisions on invalidity of contracts under the Act on Obligations and Contracts.

(a) Administrative provisions in the area of customs duties and value added tax (VAT) = revenue

(aa) Principle of investigation (General Tax Code, Customs Act)

The principle of investigation is determined by the general provisions of the General Tax Code and the special regulations in the Customs Act.

(bb) External audit (General Tax Code)

In principle, the national authorities competent for irregularities in the area of revenue are “the bodies of the revenue administration – the National Revenue Agency and the Customs Agency – which from a doctrinal point of view are part of the specialized financial administration, insofar as it is a matter of shared management in the field of taxation and measures are taken in the first place at the national level.”

Therefore, if audits concern the area of tax irregularities, the National Revenue authority is competent and acts by virtue of the General Tax Code:

Irregularities may occur in relation to the Bulgarian Budget, from which the sums allocated to the EU derive. In addition the NRA of Bulgaria is involved in checks for the allocation of funds, grants and other transfer of sums from the Union budget.

Control actions and audits were carried out in relation to electronic traders, i.e. against persons who did not declare income/income from commercial activities performed on the Internet as well as products and businesses with a “high fiscal risk (висок фискален риск)”.279

275 Михайлова-Големиева, С. (2019), Предизвикателства пред държавите членки и кандидатките за членство в Европейския съюз в областта на данъчното облагане и финансовото право. С.: Сиела, 364 с. с предговор от проф. д-р Жак Малерб (научен редактор), В.
276 национална агенция по приходите
The national audit offices have carried out audits in special areas (facilities, fuel sector) but as well related to the season of the year (e.g. they have initiated a “Winter campaign” for touristic resorts).  

In the area of ERDF and other funds the Executive Agency “Audit of European Union Funds” is competent, too and can carry out audits.  

(cc) Tax and customs investigation (Customs Code/General Tax Code)  

In the area of structural funds, the Bulgarian legislator has issued special laws, e.g. the European Structural and Investment Funds Administration Regulation. A national author has analysed the accomplishments of controls in this area in a decade of control and found that Bulgaria was prepared for the new annual framework from the last period (2014–2020) but legislation needs constantly to be updated. Especially for the Maritime and Fisheries Funds academics and practitioners alike have proposed changes to the audit structure in order to simplify the discovery of irregularities.  

(dd) Fiscal supervision  

The fiscal supervision of these areas is done by the Bulgarian Ministry of Finance and the national AFCOS.  

(b) Administrative provisions in the area of structural funds and internal policies (interne Politiken) = expenditure  

(aa) Structural funds  

Structural funds are highly important for the European Union, as benefiting from the many projects that aim year after year to implement the grand overall strategy and  

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280 Ibid, p. 56.  
282 Михайлова, Контрол За Законност На Управлението На Средствата От Европейските Структурни И Инвестиционни Фондове - 10 Години По-Късно, see http://ebox.nbu.bg/bgineu/pdf/26.pdf.  
284 See e.g., Art. 4 Law on Management of Funds from European Funds under Shared Management (Title Amended - SG No 51 Of 2022):  

Art. 4. (1) Grants are provided for projects that achieve the goals of the programs under Art. 3 para. 2 and under the conditions defined therein.  
(2) (Amended - SG No 51 of 2022, in force from 01.07.2022) The grant may be provided in combination with other forms of financial support – awards or financial instruments.  
(3) The grant may not have as its purpose or result the realization of a profit.  
(4) (Amended and supplemented - SG No 51 of 2022, in force from 01.07.2022) The grant-in-aid shall not be granted for the financing of expenses that have already been financed with funds from the ESMF or through other funds and instruments of the European Union, as well as with other public funds other than those of the beneficiary.  
(5) (New - SG No 51 of 2022, in force from 01.07.2022) The grant may be provided under the condition of full or partial reimbursement, the conditions being indicated in the documents under Art. 26, para. 1.
implement the goals and priorities of the TFEU set out by the Commission, Council and Parliament for the current period. The accounting authorities obtain the money tranches via an order to the EU Commission. The new Bulgarian law regulating the structural funds area prescribes the following for this order and timely information to the EU Commission:

**Art. 66 Act on Management of Funds from European Funds under Shared Management**

(1) The accounting authority prepares and sends to the European Commission an application for payment under each program up to 6 times a year, in which includes costs verified by the governing bodies. 

(2) The accounting authority shall not include in an application for payment expenses:

1. for which a financial correction has been imposed, determined in accordance with Art. 73, after the date of verification, but in the period to which the application for payment refers;

2. for which information has been received about proceedings or an investigation by the Prosecutor’s Office of the Republic of Bulgaria, the European Prosecutor’s Office, OLAF and the Commission for Combating Corruption and for Confiscation of Illegally Acquired Property.

(3) The accounting authority excludes from the application for payment expenses already declared to the European Commission, for which the managing authority has determined a financial correction or has determined that they were unduly paid or overpaid.

**Art. 3.** (1) (Amended - SG No 51 of 2022, in force from 01.07.2022) The management of ESMF funds is carried out in accordance with the applicable European Union law and partnership agreement for the program period of the Republic of Bulgaria, outlining the assistance from ESMF, hereinafter referred to as the “Partnership Agreement”, the requirements of the programs, the provisions of this law and the acts on its implementation.

(2) (Amended - SG No 51 of 2022, in force from 01.07.2022) Funds from ESMF are provided under the programs for the relevant program period after their approval by the European Commission.

**Чл. 66. Закон за управление на средствата от европейските фондове при споделено управление**

(1) Счетоводният орган изготвя и изпраща към Европейската комисия заявление за плащане по всяка програма до 6 пъти в годината, в което включва верифицирани от управляващите органи разходи.

(2) Счетоводният орган не включва в заявление за плащане разходи:

1. за които има наложена финансова корекция, определена по реда на чл. 73, след датата на верификация, но в периода, за който се отнася заявлениято за плащане;

2. за които е получена информация за образувано производство или проверка от Прокуратурата на Република България, Европейската прокуратура, ОЛАФ и Комисията за противодействие на корупцията и за отнемане на незаконно придобитото имущество.

(3) Счетоводният орган изключва от заявление за плащане в очи твърдо заявени към Европейската комисия разходи, за които управляващият орган е определил финансова корекция или е установил, че са недължимо платени или надплатени.

(4) Счетоводният орган не изпраща заявление за плащане по програма или по част от програма, когато е налице единична оценка, че системата за управление и контрол на управляващия орган като цяло не функционира или функционира частично и са необходими значителни подобрения.
(4) The accounting authority shall not send an application for payment under a program or part of a program when there is an audit assessment that the management and control system of the managing authority as a whole is not functioning or is partially functioning and significant improvements are needed.

Bulgaria has a special portal – the Uniform Information Portal of the European Structural and Investment Funds286 – which citizens and investigators alike may visit. It is possible to find the relevant acts via this website that is maintained by the Directorate “Information and Systems for the Management of EU Funds”.287 In addition, the EU Commission hosts various websites that display beneficiaries.

Structural funds are based on EU Regulations which have been amended in 2021 and 2022 for the new period. The conditions specified therein, which are supplemented by national regulations, apply primarily. In particular, the disclosure of information or doubts about irregularities are regulated within these regulations and Bulgarian by-laws or adoption laws. Compliance within and for audits into irregularities resulting from structural funds is not only a series of buzzwords but an essential tool to combat fraud effectively. Local investigators and administrative staff as well as citizens may contact the webpages, which summarize the allocation in Bulgaria.288

The awarding of funds on this area has been newly regulated in 2022 and is now primarily based on Art. 29 et seq. Act on Management of Funds from European Funds under Shared Management:

**Art. 29 Act on Management of Funds from European Funds under Shared Management**289

(1) The selection of project proposals, for which a grant is provided, is conducted in accordance with the following principles:

1. free and fair competition;

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286 See https://www.eufunds.bg/bg.
287 Михайлова-Големинова 2017, р. 46.
288 See https://www.fmfib.bg/bg/page/18-normativna-ur%D0%B5dba.
289 Чл. 29. Закон за управление на средствата от европейските фондове при споделено управление (1) Подборът на проектни предложения, за които се предоставя безвъзмездна финансова помощ, се провежда в съответствие със следните принципи:
1. свобода и лоялна конкуренция;
2. равнопоставеност и недопускане на дискриминация;
3. публичност и прозрачност;
4. (нова - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) спазване на основните права;
5. (нова - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) устойчиво развитие;
6. (нова - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) опазване на околната среда.
(2) При процедура чрез подбор се извършва:
1. оценяване на всеки проектно предложение, което включва:
   а) оценка на административното съответствие и допустимостта;
   б) техническа и финансова оценка;
2. класиране на одобрени проектни предложения в низходящ ред;
3. определяне на проектни предложения, за които се предоставя финансиране.
2. equality and non-discrimination;
3. publicity and transparency;
4. observance of fundamental rights;
5. (New – SG No 51 of 2022, in force from 01.07.2022) sustainable development;
6. (New – SG No 51 of 2022, in force from 01.07.2022) environmental protection.

(2) In a selection procedure, the following shall be carried out:
1. evaluation of each project proposal, which includes:
   a) assessment of administrative compliance and eligibility;
   b) technical and financial assessment;
2. ranking of the approved project proposals in descending order;
3. determination of project proposals for which funding is provided.

This law has long been anticipated\(^{290}\) and according to Art. 1\(^{291}\) it regulates the national institutional framework for the management of EU funds or contains detailed rules on how irregularities can be discovered and how these must be reported subsequently:

\(^{290}\) Михайлова-Големинова (2017), р. 47.
\(^{291}\) Чл. 1. Закон за управление на средствата от европейските фондove при споделено управление

Art. 34 Act on Management of Funds from European Funds under Shared Management\(^{292}\)

(1) (Based on the administrative compliance and admissibility check, the commission under Art. 33 prepares a list of project proposals that are not allowed for technical and financial evaluation. The list also indicates the reasons for non-admission. The list is

\(^{292}\) Чл. 34. Закон за управление на средствата от европейските фондove при споделено управление
published on the website of the relevant program and in ISUN, and the non-admission is notified to each of the candidates included in it, respectively, according to the order of Art. 22 para 3 or 4.

(2) When during the inspection under para 1, a lack of documents and/or other irregularity is detected, the commission sends the applicant a notification of the detected irregularities and sets a reasonable deadline for their removal, which cannot be shorter than one week. The notification also contains information that failure to correct the irregularities within the time limit may result in the termination of the proceedings in relation to the applicant. The removal of irregularities cannot lead to an improvement in the quality of the project proposal.

(3) A candidate whose project proposal is included in the list under para 1, may object in writing to the head of the managing body within one week of notification.

(4) The head of the managing body shall rule on the merits of the objection within one week of its receipt, as follows:

1. returns the project proposal for technical and financial assessment;
2. terminates the proceedings with respect to the applicant.

(5) The head of the managing body terminates the proceedings in relation to an applicant whose project proposal is included in the list under para 1 and he did not file an objection within the time limit and in accordance with para 3. The act of termination of the proceedings shall be issued within two weeks of notifying the applicant of his non-admission, respectively in accordance with the order of Art. 22 para 3 or 4.
 Audits and inspections and the powers of the controllers within these actions are presented below (→ A closer look at single Bulgarian measures). Irregularities are discovered via regularly conducted actions, Art. 69 et seq. Act on Management of Funds from European Funds under Shared Management.294

<table>
<thead>
<tr>
<th>Article</th>
<th>Act on Management of Funds from European Funds under Shared Management295</th>
</tr>
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<tbody>
<tr>
<td>69</td>
<td>(1) (Amended and supplemented – SG No 51 of 2022, in force from 01.07.2022) The governing bodies conduct procedures for the administration of irregularities.</td>
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<td>(2) The irregularity administration procedure begins at the initiative of the governing body of the relevant program or upon a signal.</td>
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<td>(3) When, in connection with the activity carried out, the authorities under this law establish sufficient data about an irregularity, they report this to the governing body of the relevant program.</td>
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<td>(4) The governing bodies may initiate a procedure for the administration of an irregularity also upon a report submitted by a natural or legal person, when it contains sufficient data on an irregularity.</td>
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<td>(5) (Amended – SG No 51 of 2022, in force from 01.07.2022) The managing bodies maintain a register in which they enter the received reports and the irregularities found by them, affecting ESMF funds.</td>
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<td>(6) The circumstances subject to entry in the register under para 5, the procedure for carrying out an inspection to establish an irregularity and the reporting of irregularities to AFCOS shall be determined by a normative act of the Council of Ministers.</td>
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295 Чл. 69. Закон за управление на средствата от европейските фондове при споделено управление
(1) (Изм. и доп. - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) Управляващите органи провеждат процедури по администриране на нередности.
(2) Процедурата по администриране на нередност започва по инициатива на управляващия орган на съответната програма или по сигнал.
(3) Когато във връзка с осъществяваната дейност органи по този закон установят достатъчно данни за извършена нередност, те подават сигнал за това до управляващия орган на съответната програма.
(4) Управляващите органи може да започнат процедура по администриране на нередност и по сигнал, подаден от физическо или юридическо лице, когато в него се съдържат достатъчно данни за извършена нередност.
(5) (Изм. - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) Управляващите органи поддържат регистър, в който вписват постъпилите сигнали и установените от тях нередности, засягаци средства от ЕФСУ.
(6) Обстоятелствата, подлежащи на вписване в регистъра по ал. 5, редът за извършване на проверка за установяване на нередност и докладването на нередностите пред АФКОС се определят с нормативен акт на Министерския съвет.
Art. 70 Act on Management of Funds from European Funds under Shared Management

(1) (Amended – SG No 51 of 2022, in force from 01.07.2022) Financial support with ESMF funds may be cancelled in whole or in part by conducting a financial correction on the following grounds:
1. (Amended – SG No 52 of 2020) when, in relation to the beneficiary, there is a conflict of interests within the meaning of Art. 61 of Regulation (EU) 2018/1046;
2. for violation of the rules on state aid within the meaning of Art. 107 of the Treaty on the Functioning of the European Union;
3. (Amended – SG No 51 of 2022, in force from 01.07.2022) for violation of the principles of good financial management in accordance with the requirements of Art. 33, Art. 36, paragraph 1 and Art. 61 of Regulation (EU) 2018/1046;
4. (Amended – SG No 51 of 2022, in force from 01.07.2022) for violation of the requirement for longevity of operations in the cases and within the terms under Art. 65 of Regulation (EU) 2021/1060;
5. for project or a part of it an audit trail and/or analytical reporting of the expenditures in the beneficiaries’ accounting system;
6. (Amended – SG No 51 of 2022, in force from 01.07.2022) for failure to implement measures of visibility, transparency and communication, mandatory for beneficiaries;
7. for violation of the obligations of beneficiaries;
8. for other breaches of the applicable Union and/or national law and/or the agreements, concluded, ratified and entered into force for Bulgaria in the framework of the European Territorial Cooperation Programme(s); (2) Cases of irregularities, for which financial corrections are provided for under Art. 1, t. 9, are placed in the normative act of the Ministry Council.
(3) (Novel – DG, br. 51 of 2022, in force from 01.07.2022) For the irregularities of Art. 1, t. 1, 3 and 7 of the financial corrections is determined by a proportional method, which may not be based on the established financial indicators, but for the subsequent analysis of the state of the financial corrections, which is based on the financial corrections.
5. no audit trail and/or analytical reporting of costs is available for the project or part of it in the accounting system maintained by the beneficiary;
6. (Amended – SG No 51 of 2022, in force from 01.07.2022) for non-implementation of the measures for visibility, transparency and communication, mandatory for the beneficiaries;
7. for non-fulfilment of approved indicators;
8. in case of incidental income received in connection with the implementation of the project;
9. (Amended – SG No 51 of 2022, in force from 01.07.2022) for an irregularity constituting a violation of the rules for appointing an executor by chapter fourth, committed by action or inaction on the part of the beneficiary, which has or would have the consequence of causing damage to ESMF funds;
10. (Amended – SG No 51 of 2022, in force from 01.07.2022) for another violation of the applicable law of the European Union and/or the Bulgarian legislation and/or the treaties concluded between the countries, ratified, promulgated and entered into force for the Republic of Bulgaria under the programs for European territorial cooperation, carried out through action or inaction on the part of the beneficiary, which has or would have the consequence of causing damage to funds from ESMF.
(2) Cases of irregularities for which financial corrections are made under para 1, item 9, are specified in a normative act of the Council of Ministers.
(3) For irregularities under para 1, items 1, 3–7 and 9, financial corrections are determined according to the proportional method, when the amount of the actual financial consequences of the violation cannot be established, and for irregularities under para 1, items 2, 8 and 10, the differential method is applied.

Furthermore, the regime of accounts for funds from the European Union as well as the financial relationship with the general budget of the European Union and with other international programs and contracts are regulated by the Act of Public Finances297 (Art. 1 para 1 no 5, 7298).299

The following case study shows that Bulgaria is affected by investigations in all areas, which are governed by the EU Regulations on structural funds:

297 Закон за публичните финанси.
298 Чл. 1. Закон За Публичните Финанси
(1) Този закон урежда бюджетната рамка, общото устройство и структурата на публичните финанси и включва: […]
5. режим на сметките за средствата от Европейския съюз; […]
7. финансовите взаимоотношения с обшия бюджет на Европейския съюз и с други международни програми и договори; […]
299 Михайлова-Големинова (2017), р. 47.
Case Study 2 Investigations in the area of Structural Funds in Bulgaria

Case and Statistics Study: Investigations in the area of Structural Funds in Bulgaria

Firstly, we take a look at the current statistics, which are not fully represented in the OLAF Report, which must be, due to the concentrated information factor for the Union level, focusing on different aspects. Therefore, it is worth consulting national documentation documents.

The National AFCOS Report 2022 summed up, what e.g. the National Revenue Authority, which is competent in this area, achieved in 2021:

“According to cases of irregularities or fraud, which affected the financial interests of the EU and the national budget, submitted to the National Revenue Agency, sums were collected for private state receivables amount of BGN 3,998,818.04 in total, of which: BGN 2,977,779.00 under the SAPARD Program and Program ‘Development of rural areas’; BGN 1,021,039.04 under other programs financed with EU funds. As a result of the actions taken by the NRA, additional sums in the total amount of BGN 5,072.58 were recovered from claimants. They are in 2021 closed 35 files from the administered receivables.

As of 31.12.2021, the documents submitted for compulsory collection for the establishment of unduly paid and overpaid sums, as well as for illegally received or illegally used funds under projects financed by European Union funds are a total of 3,841. The receivables belong to the State Fund for Agriculture, the Ministry of Economy, the Ministry of Regional Development and Public Works, the Ministry of Agriculture, Food and Forestry, the Ministry of Environment and Water and the Executive Agency for Fisheries and Aquaculture. The public receivables paid off as of 31.12.2021 under the presented acts are in the total amount of BGN 50,958,374, incl. the public receivables collected by the public contractors at the NRA are in the total amount of BGN 20,261,093. As of 31.12.2021, the public receivables under 1,334 acts for the establishment of public state receivables in the total amount subject to collection – BGN 49,057,616 have been fully repaid.”

Summarizing the situation, there seems to be some concentration of irregularities in the agricultural and fisheries sectors and regional development is also affected in Bulgaria.

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The results of the latest AFCOS report must be an incentive for future investigations and have a teaching effect for investigators in the fraud typology at the same time.

Aside from the fundamental normative act – Act on Management of Funds from European Funds under Shared Management – there are numerous national acts relevant in this area. They may be consulted for further provisions for irregularities in the area of EU funds: \(^{301}\)
- Act on Public Finances
- Act on Financial Management and Control in the Public Sector
- Act on the Audit Chamber
- Act on the State Budget of the Republic of Bulgaria
- Tax and Insurance Procedural Code
- Administrative Procedure Code
- Act on Internal Audit in the Public Sector
- Act on the National Revenue Agency
- Ordinance on the Administration of Irregularities under ESIF (based on Article 69 para 6 of the Act on the Management of the European Structural and Investment Funds)
- Decree of the Council Ministers No 134 of July 5, 2010 for the adoption of MOFC \(^{302}\)
- Decree of the Council of Ministers No 18 of 04.02.2003 for the establishment of a Council for coordination in the fight against offences affecting the financial interests of the EU
- Ordinance to determine the procedures for the administration of irregularities in funds and programs co-financed by the EU, adopted by Resolution of the Council of Ministers No 285 of 30.11.2009
- Act on the State Debt
- Municipal Debt Act
- the annual State Budget Act
- Public Procurement Act
- Act on the Court of Auditors
- Public Sector Internal Audit Act
- Independent Financial Audit Act
- State Aid Act

\(^{302}\) Михайлова-Големинова (2017), p. 10 explains MOFC as: “The methodology for determining financial corrections in connection with violations established in the awarding and execution of public procurement and contracts for projects co-financed by the Structural Funds, the EU Cohesion Fund, the European Agricultural Fund for Rural Development, the European Fund for fisheries and the funds from the General Program ‘Solidarity and Management of Migration Flows’, adopted by Decree of the Council of Ministers No. 134 of 07/05/2010.”
- Accountancy Act
- Regional Development Act
- Act on Local Self-Government and Local Administration
- Value Added Tax Act
- Act for the Ministry of Internal Affairs
- Regulations for the organisation and activities of the Ministry of Internal Affairs
- European Structural and Investment Funds Administration Regulation
- Regulation indicating Irregularities presenting grounds for implementing Financial Corrections and the Percentage Indicators for determining the amount of Financial Corrections pursuant to the Act on the Management of the European Structural and Investment Funds
- Act on the Independent Financial Audit

In particular, the following provisions on the State Financial Inspection Agency in the Public Financial Inspection Act may be consulted:

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<tr>
<th>Public Financial Inspection Act</th>
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<tr>
<td><strong>Chapter two. State Financial Inspection Agency</strong></td>
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<tr>
<td><strong>Section I. Structure and functions of the State Financial Inspection Agency</strong></td>
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<tr>
<td><strong>Art. 6</strong> (1) The State Financial Inspection Agency is an administration under the Minister of Finance and is a legal entity of budgetary support. (2) The structure, composition and organisation of work of the agency are determined by organisational regulations adopted by the Council of Ministers.</td>
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<td><strong>Art. 7</strong> Bodies of the agency are the director and the financial inspectors.</td>
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303 Наредба За Администриране На Нередности По Европейските Структурни И Инвестиционни Фондове.
304 Наредба За Посочване На Нередности, Представляващи Основания За Извършване На Финансови Корекции, И Процентните Показатели За Определяне Размера На Финансовите Корекции По Реда На Закона За Управление На Средствата От Европейските Структурни И Инвестиционни Фондове.
305 Закон За Независимия Финансов Одит.
306 Закон за държавната финансова инспекция.
307 Глава втора. Агенция За Държавна Финансова Инспекция Раздел I. Структура и функции на Агенцията за държавна финансова инспекция Чл. 6. Закон за държавната финансова инспекция (1) Агенцията за държавна финансова инспекция е администрация към министъра на финансовите и е юридическо лице на бюджетна издръжка. (2) Структурата, съставът и организацията на работа на агенцията се определят с устройствен правилник, приет от Министерския съвет.
308 Чл. 7. Закон за държавната финансова инспекция Органи на агенцията са директорът и финансовите инспектори.
Art. 8

(1) The Agency performs the following functions:
1. directs, conducts and controls the implementation of the inspection activity;
2. plans and implements subsequent control for the legality of the activity on the awarding and execution of public contracts;
3. collects and analyses information on the activities of the persons under Art. 4 on awarding and execution of public contracts;
4. analyses the reasons and conditions for violations of financial discipline and proposes measures for their elimination before the competent authorities;
5. gives methodological instructions to the financial inspectors for carrying out the activities under this law and carries out quality control of the inspection activity;
6. organizes training for the initial professional training of the newly appointed employees, for maintaining and improving the qualifications, as well as for the acquisition of new professional knowledge and skills of the agency’s employees;
7. interacts and exchanges information with other state bodies;

309 Чл. 8. Закон за държавната финансова инспекция
(1) Агенцията изпълнява следните функции:
1. ръководи, провежда и контролира осъществяването на инспекционната дейност;
2. (изм. - ДВ, бр. 60 от 2011 г.) планира и осъществява последващ контрол за законосъобразност на дейността по възлагането и изпълнението на обществените поръчки;
3. (нова - ДВ, бр. 60 от 2011 г.) събира и анализира информация за дейността на лицата по чл. 4 по възлагане и изпълнение на обществени поръчки;
4. (предишна т. 3 - ДВ, бр. 60 от 2011 г.) анализира причините и условията за нарушенията на финансовата дисциплина и предлага мерки за отстраняването им пред компетентните органи;
5. (доп. - ДВ, бр. 86 от 2007 г., предишна т. 4 - ДВ, бр. 60 от 2011 г.) дава методически указания на финансовите инспектори за осъществяване на дейностите по този закон и извършва контрол по качеството на инспекционната дейност;
6. (предишна т. 5 - ДВ, бр. 60 от 2011 г.) организира обучение за първоначална професионална подготовка на новоназначените служители, за поддържане и повишаване на квалификацията, както и за придобиване на нови професионални знания и умения на служителите на агенцията;
7. (предишна т. 6 - ДВ, бр. 60 от 2011 г.) осъществява взаимодействие и обмен на информация с други държавни органи;
8. (предишна т. 7 - ДВ, бр. 60 от 2011 г.) сътрудничи с финансово-контролните органи и организации на други държави и международни организации;
9. (нова - ДВ, бр. 98 от 2008 г., предишна т. 8 - ДВ, бр. 60 от 2011 г.) оказва съдействие на контролорите на Европейската комисия, наричана по-нататък “Комисията”, за предоставянето на достъп до помещения и/или документация и носители на компютърни информационни данни, за извършване на контрола и проверките на място - при отказ на проверяваната организация и на лице по чл. 4, т. 7, финансиран със средства по международни договорни или програми на Европейския съюз.
(2) Агенцията представя годишен отчет за резултатите от своето дейност на Министерския съвет чрез министъра на финансовите до 31 май на следващата година. Отчетът се изпраща за сведение на Народното събрание.
(3) Органите на прокуратурата, на Министерството на вътрешните работи и на агенцията си оказват съдействие при извършване на финансовите инспекции.
(4) (Доп. - ДВ, бр. 60 от 2011 г.) Агенцията и Сметната палата си сътрудничат с цел защита на публичните финансови интереси, включително чрез обмен на информация относно проверените и подлежащите на финансови инспекции или одит възложители на обществени поръчки.
(5) (Нова - ДВ, бр. 60 от 2011 г.) Агенцията и Сметната палата съгласуват дейностите си по контролн на възложителите на обществени поръчки по ред, определен със споразумение.
8. cooperates with the financial control authorities and organisations of other countries and international organisations;

9. provides assistance to the controllers of the European Commission, hereinafter referred to as “the Commission”, in providing access to premises and/or documentation and carriers of computer information data, to carry out on-site control and inspections - in the event of a refusal by the inspected organisation and a person under Art. 4 item 7, financed with funds under international agreements or programs of the European Union.

(2) The Agency submits an annual report on the results of its activities to the Council of Ministers through the Minister of Finance by May 31 of the following year. The report is sent to the National Assembly for information.

(3) The bodies of the Prosecutor’s office, the Ministry of Internal Affairs and the agency shall assist each other in carrying out the financial inspections.

(4) The Agency and the Audit Chamber shall cooperate with the aim of protecting public financial interests, including through the exchange of information regarding the inspected and those subject to financial inspections or audits of public procurement contractors.

(5) The Agency and the Audit Chamber coordinate their activities on the control of the awarders of public contracts according to a procedure determined by agreement.

Further by-laws have been established in application of the Act on Management of Funds from European Funds under Shared Management for the period of 2021–2027 that should be taken into consideration:310

- Decree of the Council of Ministers No 23 of 13.02.2023 for determining detailed rules for the provision of grants under the programs financed by the European funds under shared management for the program period 2021–2027, in force from 17.02.2023.

- Decree of the Council of Ministers No 302 of 29.09.2022 on the establishment of committees for monitoring the Partnership Agreement of the Republic of Bulgaria and the programs co-financed by ESMF for the program period 2021–2027, in force from 20.10.2022

- Decision of the Council of Ministers No 712 of October 6, 2020 on determining the structures responsible for the management, control, reporting, coordination and audit of the programs co-financed by the ERDF, ESF+, CF, EMFDRA, FSP, EFGZ, EAFRDSR, Internal Security Fund, the Asylum and Migration Fund and the Instrument for Financial Support of Border Management and Visas as part of the Fund for

310 Uniform Information Portal of The European Structural and Investment Funds, see collection of national legislation for the period 2021–2027 under www.eufunds.bg, latest access on 06.06.2023.
Integrated Border Management and the cooperation programs in which the Republic of Bulgaria participates for the 2021–2027 program period. (18.03.2021)

- Decision of the Council of Ministers No 368 of June 25, 2019 approving a list of actions, responsible institutions and deadlines for the implementation of the horizontal and thematic triggering conditions for the funds from the European Regional Development Fund, the European Social Fund+, the Cohesion Fund, the European Maritime Fund and Fisheries, the Asylum and Migration Fund, the Internal Security Fund and the Border and Visa Management Instrument for the 2021–2027 program period. (13/09/2019)

- RESOLUTION No 142 of the Council of Ministers of 2019 on the development of the strategic and program documents of the Republic of Bulgaria for the management of EU funds for the program period 2021–2027. (09/09/2019)

- Decision of the Council of Ministers No 335 of June 7, 2019 approving an indicative financial allocation of funds from the European Social Fund+, the European Regional Development Fund and the Cohesion Fund for the 2021–2027 program period according to policy objectives and programs (07/08/2019)

- Decision of the Council of Ministers No 196 of April 11, 2019 approving the Analysis of the social and economic development of Bulgaria 2007–2017 for determining the national priorities for the period 2021–2027. (19/04/2019)

- Ordinances for the administration of ESIF irregularities; and Ordinance for determining the procedures for the administration of irregularities in funds, instruments and programs co-financed by the European Union (NOPAN-FIPSES).

On the next page, the allocation of sums for structural funds to Bulgaria in the current distribution and tendering period are summarized within a table:

Table 7 Structural funds and national administrative authorities – Cohesion policy acc. to the CFR Regulation in Bulgaria (2021–2027)

<table>
<thead>
<tr>
<th>The European Regional Development Fund (ERDF) – includes European Territorial Cooperation (Interreg)</th>
<th>Total EU allocations for Bulgaria: 5 641 million euros</th>
<th>Administrative authority: Ministry of Regional Development and Public Works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Just Transition fund</td>
<td>Total EU allocations for Bulgaria:</td>
<td>Managing Authority: Ministry of Labour and Social Affairs</td>
</tr>
</tbody>
</table>
### European Social Fund Plus (ESF+)

<table>
<thead>
<tr>
<th>European Social Fund Plus (ESF+)</th>
<th>1,295.1 million euros[^311]</th>
<th><strong>Managing Authority:</strong> Director, Head of the Maritime and Fisheries Directorate Ministry of Agriculture, Food and Forestry in Sofia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total EU allocations for Bulgaria:</td>
<td>2,625 million euros[^312]</td>
<td><strong>Administrative authority:</strong> Ministry of Interior</td>
</tr>
</tbody>
</table>

### European Maritime, Fisheries and Aquaculture Fund (EMFAF)

<table>
<thead>
<tr>
<th>European Maritime, Fisheries and Aquaculture Fund (EMFAF)</th>
<th>Total EU allocations for Bulgaria: approx. 85 million euros</th>
<th><strong>Administrative authority:</strong> Ministry of Interior</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total EU allocations for Bulgaria: approx. 29 million euros</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Asylum, Migration and Integration Fund (AMIF)

<table>
<thead>
<tr>
<th>Asylum, Migration and Integration Fund (AMIF)</th>
<th>Total EU allocations for Bulgaria: approx. 45 million euros</th>
<th><strong>Administrative authority:</strong> Ministry of Interior</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total EU allocations for Bulgaria: approx. 29 million euros</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Internal Security Fund (ISF)

<table>
<thead>
<tr>
<th>Internal Security Fund (ISF)</th>
<th>Total EU allocations for Bulgaria: approx. 122 million euros</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total EU allocations for Bulgaria:</td>
<td>approx. 45 million euros</td>
</tr>
</tbody>
</table>

### Instrument for Financial Assistance in the Field of Border Management and Visa (BMVI)

<table>
<thead>
<tr>
<th>Instrument for Financial Assistance in the Field of Border Management and Visa (BMVI)</th>
<th>Total EU allocations for Bulgaria: approx.</th>
<th><strong>Managing Authority:</strong> Ministry of Agriculture, Food and Forestry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total EU allocations for Bulgaria: approx. 122 million euros</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### European Rural Development Fund (EAFRD) *

<table>
<thead>
<tr>
<th>European Rural Development Fund (EAFRD) *</th>
<th>EU funds for Bulgaria in 2021 and 2022: 201.9 million euros[^313]</th>
<th><strong>Managing Authority:</strong> Ministry of Agriculture, Food and Forestry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not part of the CFR Regulation anymore (as of 2023)</td>
<td>EU funds for Bulgaria in MFF 2021–2027 program: 2,037.6 million euros[^314]</td>
<td></td>
</tr>
</tbody>
</table>

### (bb) Internal policies

You may consult the Administrative Procedure Code, which provides for special rules on investigations and decisions about allocations of sums in this area, which is very vast due to the “1000s” of potential partners in the national sector and the overwhelming number of internal policies, which the Commission tries to implement simultaneously and quickly. The legislation referred for Structural funds can also be consulted.

[^312]: Breakdown of Cohesion Policy allocations per Member State, see [https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/cohesion_policy.pdf](https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/cohesion_policy.pdf), last accessed on 27.09.2022.
[^313]: Breakdown of European Agricultural Fund for Rural Development per Member State (NextGenerationEU), see [https://shorturl.at/aeowD](https://shorturl.at/aeowD), last access on 27.09.2022.
[^314]: Breakdown of European Agricultural Fund for Rural Development per Member State (MFF), see [https://shorturl.at/aeowD](https://shorturl.at/aeowD), last access on 27.09.2022.
(c) Administrative provisions in the area of the common organisation of the markets = expenditure

In the area of common organisation of markets, the Bulgarian law knows the Act on the Implementation of the Common Organisation of the European Union Agricultural Products Markets\(^{315}\)

Direct payments in the area of the Common Agricultural Policy are regulated by the Agricultural Producers Assistance Act and by-laws.\(^{316}\)

### Agricultural Producers Assistance Act\(^{317}\)

**Section V. Protection of the financial interests of the European Union (New – SG No 102 of 2022, effective from 01.01.2023)**

**Art. 69**\(^{318}\) (1) The State Fund “Agriculture” ensures effective protection of the financial interests of the European Union by complying with applicable management systems and taking the necessary measures to implement the conditions for support under the interventions aimed at:

1. verification of the legality and regularity of the operations financed by the European agricultural funds, including at the beneficiary level, as indicated in the Strategic Plan;
2. ensuring the effective prevention of fraud, which has a deterrent effect;
3. prevention, detection and correction of irregularities and fraud;
4. imposition of sanctions in accordance with the law of the European Union and Bulgarian legislation;
5. recovery of unlawful payments with interest.

---

\(^{315}\) Закон за прилагане на общата организация на пазарите на земеделски продукти на европейския съюз (загл. Изм. - от, бр. 99 от 2013 г.)

\(^{316}\) Михайлова-Големинова (2017), р. 48.

\(^{317}\) Закон За Подпомагане На Земеделските Производители.

\(^{318}\) Раздел V.

Защита на финансовите интереси на Европейския съюз (Нов – ДВ, бр. 102 от 2022 г., в сила от 01.01.2023 г.)

Препратки от статииПрепратки от практикиПрепратки от процедуриБележки

Чл. 69. (Нов - ДВ, бр. 102 от 2022 г., в сила от 01.01.2023 г.)

(1) Държавен фонд “Земеделие” осигурява ефективна защита на финансовите интереси на Европейския съюз, като спазва приложимите системи на управление и взема необходимите мерки за прилагане на условията за подпомагане по интервенциите, насочени към:

1. проверка на законосъобразността и редовността на операциите, финансиранi от европейските земеделски фондове, включително на ниво бенефициент, както е посочено в Стратегическия план;
2. гарантиране на ефективното предотвратяване на измами, което да има възпиращ ефект;
3. предлагане, установяване и коригиране на нередности и измами;
4. налагане на санкции в съответствие с право на Европейския съюз и българското законодателство;
5. възстановяване на неправомерни плащания с лихвите.

(2) Ползвателите на помощ, финансиранa от европейските земеделски фондове, предоставят на Държавен фонд “Земеделие” информацията, необходимa за тяхното идентифициране по чл. 59, параграф 4 от Регламент (ЕС) 2021/2116.
(2) The beneficiaries of aid financed by the European agricultural funds shall provide the State Fund “Agriculture” with the information necessary for their identification under Art. 59, paragraph 4 of Regulation (EU) 2021/2116.

(d) Administrative provisions in the area of direct expenditure

In the area of direct expenditure, the provisions of the Public Procurement Act (Закон за обществените поръчки) may apply:

Chapter Seven. Requirements for Candidates and Participants
Section II. Selection criteria
General requirements
Art. 59319 (1) The contracting authority may determine, in relation to candidates or participants, selection criteria that relate to:
1. the fitness (legal capacity) to exercise a professional activity;
2. the economic and financial situation;
3. technical and professional abilities.

(2) Contracting authorities may use only the selection criteria under this law against candidates or participants that are necessary to establish their ability to fulfil the contract. The set criteria must be consistent with the subject, value, volume and complexity of the contract.

319 Раздел II.
Критерии за подбор
Общи изисквания
Чл. 59. Закон за обществените поръчки
(1) Възложителя може да определи по отношение на кандидатите или участниците критерии за подбор, които се отнасят до:
1. годността (правоспособността) за упражняване на професионална дейност;
2. икономическото и финансовото състояние;
3. техническите и професионалните способности.

(2) Възложителите могат да използват спрямо кандидатите или участниците само критерии за подбор по този закон, които са необходими за установяване на възможността им да изпълнят поръчката. Поставените критерии трябва да са съобразени с предмета, стойността, обема и сложността на поръчката. Когато обществената поръчка има обособени позиции, критериите за подбор за всяка от обособените позиции трябва да съответстват на предмета, стойността, обема и сложността на съответната позиция.

(3) Възложителите нямат право да изискват от кандидатите или участниците други документи за доказване на съответствие с поставените критерии за подбор, освен посочените в този закон.

(4) (В сила от 01.07.2018 г.) При определянето на документите за доказаване на критерия за подбор възложителите изискват предимно такива, които са обхванати от електронната база данни за удостоверителни документи на Европейската комисия “е-Certis”.

(5) Възложителите посочват критерияте за подбор и документите, чрез които се доказва изпълнението им, в обявлениято, с което се оповестява откриването на процедурата, или в поканата за потвърждаване на интерес, а при процедурите по чл. 18, ал. 1, т. 8, 9 и 13 - в поканата за участие в преговори. С критерияте за подбор се определят минималните изисквания за допустимост.

(6) При участие на обединения, които не са юридически лица, съответствието с критерияте за подбор се доказва от обединението участник, а не от всяко от лицата, включени в него, с изключение на съответна регистрация, представяне на сертификат или друго условие, необходимо за изпълнение на поръчката, съгласно изискванията на нормативен или административен акт и съобразно разпределението на участието на лицата при изпълнение на дейностите, предвидено в договора за създаване на обединението.

(7) Когато в условията за изпълнение на обществената поръчка се налага да бъдат включени такива, които се отнасят до обединения и се различават от условията за индивидуалните участници или кандидати, те трябва да са обосновани от обективни причини и да са пропорционални.
of the order. Where the public procurement has separate items, the selection criteria for each of the separate items must correspond to the subject matter, value, volume and complexity of the respective item.

(3) Contracting authorities shall not have the right to require from the candidates or participants other documents to prove compliance with the set selection criteria, apart from those specified in this law.

(4) When determining the documents to prove the selection criteria, the contracting authorities primarily require those that are covered by the electronic database for certification documents of the European Commission “e-Sertis”.

(5) Contracting authorities indicate the selection criteria and the documents proving their fulfilment in the notice announcing the opening of the procedure or in the invitation to confirm interest, and in the procedures under Art. 18 para 1 items 8, 9 and 13 – in the invitation to participate in negotiations. The selection criteria define the minimum eligibility requirements.

(6) In case of participation of associations that are not legal entities, compliance with the selection criteria is proven by the participating association, and not by each of the persons included in it, with the exception of relevant registration, presentation of a certificate or other condition necessary for the execution of the order, according to the requirements of a normative or administrative act and according to the distribution of the participation of the persons in the execution of the activities, provided for in the contract for the creation of the association.

(7) When it is necessary to include in the conditions for the execution of the public contract those that refer to associations and differ from the conditions for individual participants or candidates, they must be justified by objective reasons and be proportionate.

Suitability (legal capacity) to exercise professional activity, Art. 60
Economic and financial condition, Art. 61
Documents to prove economic and financial status, Art. 62
Technical and professional abilities, Art. 63
Proof, Art. 64
Use of the capacity of third parties, Art. 65
Subcontractors, Art. 66

320 Годност (правоспособност) за упражняване на професионална дейност, Чл. 60.
321 Икономическо и финансов състояние, Чл. 61.
322 Документи за доказване на икономическо и финансов състояние, Чл. 62.
323 Технически и професионални способности, Чл. 63.
324 Доказване, Чл. 64.
325 Използване на капацитета на трети лица, Чл. 65.
Chapter Eight. Procurement Criteria
Types of award criteria
Art. 70 (1) Public contracts are awarded on the basis of the most economically advantageous offer.
(2) The most economically advantageous offer is determined based on one of the following award criteria:
1. lowest price;
2. cost level, taking into account cost effectiveness, including life cycle costs;
3. optimal quality-price ratio, which is assessed on the basis of the price or the level of costs, as well as indicators including quality, environmental and/or social aspects related to the subject of the public procurement.

(3) The selected criterion for award under para 2 shall be indicated in the announcement announcing the opening of the procedure or the invitation to confirm interest and in the public procurement documentation.

(4) The indicators included in the criterion under para 2 item 3, may contain:
1. quality measure, including technical parameters, aesthetic and functional characteristics, accessibility, purpose for all users, social, environmental and innovative characteristics and innovative commercial techniques and conditions;
2. organisation and professional competence of the personnel entrusted with the execution of the order, when the quality of the personnel involved in the execution of the order can have a significant impact on the execution of the order, or
3. service and maintenance, technical assistance and conditions, such as: date of execution, manner and term of execution or term of completion.

(5) The indicators included in the criteria under para 2 items 2 and 3, must be related to the subject of the order. They may contain factors that relate to any stage of the construction, supply or service life cycle, even though these factors do not relate to the characteristics specified in the technical specifications. They should not give unlimited freedom of choice and should guarantee real competition.

(6) When the criterion for award includes more than one indicator, the contracting authority determines in the announcement or invitation to confirm interest and in the public procurement documentation the relative weight of all indicators, and when this is objectively impossible, arranges them in descending order of importance. The contracting authority can determine the minimum and maximum permissible values of the quantitative indicators. When the evaluation indicator is related to a deadline, including for warranty maintenance, the contracting authority determines minimum and/or maximum limits, taking into account the time required to complete the order according to its complexity and the requirements of the applicable regulations.

(9) ВЪЗЛОЖИТЕЛЪТЕ ИМЯТ ПРАВО ДА ВКЛЮЧВАТ КРИТЕРИИ ЗА ПОДБОР КАТО ПОКАЗАТЕЛИ ЗА ОЦЕНКА НА ОФЕРТИТЕ.
(7) In the documentation, the contracting authority indicates the methodology for complex assessment and the way to determine the assessment for each indicator. The method should:

1. to make it possible to evaluate the level of performance proposed in each offer, in accordance with the subject of the public procurement and the technical specifications;
2. to make it possible to objectively compare and evaluate the technical proposals in the bids;
3. to provide applicants and participants with sufficient information about the rules that will be applied when determining the assessment for each indicator, such as for:
   a) quantifiable indicators, the values are determined in numbers or in percentages and the method of their calculation is indicated;
   b) qualitative indicators, which are quantitatively undeterminable, indicate the way of their evaluation by the commission with a specific value through expert evaluation.

(8) In duly justified cases, the price payable or the costs may be fixed. In these cases, the evaluation is based solely on the indicators related to measuring quality.

(9) In the case of a public procurement with the object of design and execution of construction, the evaluation indicators must include characteristics related to each of the two activities.

(10) It is not allowed to include evaluation indicators that take into account the time for making payments (delayed or rescheduled payment) or assessment of the amount or refusal of an advance payment, when provision of an advance is foreseen.

(11) When the prices of goods or services – the subject of public procurement – are subject to regulation, applicants or participants may offer different prices only when this does not violate the policy of regulation of these prices.

(12) Contracting authorities are not entitled to include selection criteria as indicators for the evaluation of bids.
(2) Investigative powers

(a) Investigative powers in the area of customs duties and VAT (General Tax Code)

(aa) Customs Area

In the customs area the Customs Act, Art. 16 et seq., applies, which aims to reach the telos of the law that is regulated in Art. 1:

Chapter One. General
Art. 1 Customs Act

(1) This law regulates the structure and organisation of the customs administration and the activities carried out by its bodies.

(2) This law also regulates:


327 Част първа.
Основни Разпоредби
Глава първа.
Общи Положения

Чл. 1. Закон за митниците

(1) (Предишн текст на чл. 1 - ДВ, бр. 58 от 2016 г.) Този закон урежда устройството и организацията на митническата администрация и извършваната от нейните органи дейност.

(2) (Нова - ДВ, бр. 58 от 2016 г.) Този закон урежда и:


2. прилагането на митническата администрация на законодателство в областта на общата търговска политика, общата селскостопанска политика и политиката в областта на рибарството, на други общи политики на Съюза, свързани с опазването на здравето на хората и животните, защитата на растенията, опазване на околната среда и на културното наследство, с отчитане на общи правила за вътрешния пазар и за конкуренцията, в защита на финансовите интереси на Съюза и на държавите членки и борба с незаконната търговия, защита на правата върху интелектуалната собственост, както и прилагането на аспекти от външната политика и политиката за сигурност, доколкото е свързано с въвеждане или извеждане на или от митническата територия на Съюза.

2. the implementation by the customs administration of legislation in the field of the common commercial policy, the common agricultural policy and the fisheries policy, of other common policies of the Union related to the protection of human and animal health, plant protection, environmental protection and cultural heritage, taking into account the common rules for the internal market and for competition, in the protection of the financial interests of the Union and of the Member States and the fight against illegal trade, the protection of intellectual property rights, as well as the implementation of aspects of foreign policy and the security policy in so far as it relates to entry into or exit from the customs territory of the Union.

The following information, taken from the AFCOS Report 2022, clearly indicate that OLAF investigators may, too, concentrate on special fraud patterns and typologies in Bulgaria.

The most recent fraud pattern(s) involve(s) waste management and companies that trade with waste from various Member States in the EU. The traders used Bulgarian territory as a “safe haven” and tried to evade customs controls in order not to be detected. VAT importation duties and anti-dumping duties fraud is another string fraud pattern, which is common to Bulgaria:

Case Study 3 A look at the Bulgarian AFCOS Report 2022

The Bulgarian AFCOS Report 2022 has presented interesting cases and cooperations between the national AFCOS and the customs authorities that shall be reproduced here as an example of effective investigations:

“12. ‘Customs’ Agency – participation in international operations and inspections [...]

EPPO/OLAF Compendium
In 2021, officers from the Customs Agency are working on 45 new OLAF investigations related to *suspicions of evasion of anti-dumping, countervailing and conventional duties, declaration of undervalues when admitting goods for free circulation, evasion of VAT on importation, illegal import or transit of goods, infringing intellectual property rights, counterfeit and health-hazardous goods, goods in violation of prohibitions and restrictions.*

Work continues on investigations from previous periods, including on the basis of new information received. Necessary actions and inspections have been undertaken, including with the assistance of the NRA. The results of the inspections were promptly communicated to OLAF.**328

[...]

“One of the main priorities of the customs administration remains the control over excise goods aimed at combating their illegal distribution, as well as the smuggling of tobacco products.”**329

### (bb) VAT irregularities

78 In the area of VAT irregularities, the following information is of relevance:

79 **Case Study 4 Report concerning On-Site-Inspections in Bulgaria in 2021**

<table>
<thead>
<tr>
<th>Case Studies: Bulgarian AFCOS Report 2022: On-the-spot checks</th>
</tr>
</thead>
</table>

The Bulgarian AFCOS Report 2022 has presented interesting cases and cooperations between the national AFCOS and the customs authorities that shall be reproduced here as an example of effective investigations:

“During the preparation and conduct of the specified missions and on-site inspections by 2021, an organisation was created by the AFCOS Directorate and the institutions represented in AFCOS Council and PRB, to provide full assistance to the investigative officers of OLAF in accordance with the requirements of Regulation 2185/1996, Regulation 2988/1995, Regulation 883/2013 and national legislation. In the course of the missions, a total of 8 were conducted operational meetings with the participation of AFCOS and OLAF employees, one of which with Specialised Prosecutor’s Office and one with DFZ. At the request of OLAF on October 22, 2021 organized and held operational working meeting between OLAF, NRA and the Agency ‘Customs’. It was carried out virtually with the technical means of AFCOS.”

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329 See Ibid, p. 60.
Compared to the missions and on-the-spot inspections carried out by OLAF in the territory of the Republic of Bulgaria for the period from 2014 to 2018, when a stable trend towards ten missions per year with 25–30 on-the-spot inspections in 2019 and 2020, 2021, given the pandemic situation, a slight decline is observed.

Similarly an exception was observed only in 2017, when, as a new practice, they were held together thirteen operational meetings at the OLAF headquarters in Brussels, Belgium (in 2014 there were carried out 10 missions with 20 on-site inspections, in 2015 – 11 missions with 35 on-site inspections, in 2016 – 9 missions with 30 spot checks, in 2017 – 4 missions with 3 spot checks, 2 persons M ov. Avg. (Requests from OLAF) 2 persons M ov. Avg. (Requests from Bulgarian institutions to OLAF) in 2018 – 10 missions with 22 on-site inspections, in 2019 – 7 missions with 3 on-site inspections, in 2020 – 6 missions with 6 spot checks)."

The cases show typical OLAF cases and gives an idea of how many on-the-spot inspections OLAF carried out in Bulgaria in the past.

(b) Investigative powers in the area of structural funds and internal policies

One of the main acts for the investigative powers in the area of structural funds and internal policies is the European Structural and Investment Funds Administration Regulation with the following provisions:

European Structural and Investment Funds Administration Regulation

Art. 3 Procedures for the administration of irregularities include:
1. registration of an irregularity signal;
2. inspection to establish irregularity or absence of irregularity;


331 Наредба за администриране на нередности по европейските структурни и инвестиционни фондове.

332 Глава втора.

Обстоятелства, Подлежащи На Вписване В Регистъра На Постъпилите Сигнали И Установен Нередности, Ред За Извършване На Проверка За Установяване На Нередности И Докладване На Нередности

Чл. 3. Наредба за администриране на нередности по европейските структурни и инвестиционни фондове

Процедурите за администриране на нередности включват:
1. регистриране на сигнал за нередност;
2. проверка за установяване на нередност или липса на нередност;
3. издаване на първа писмена оценка за установяване на нередност или липса на нередност;
4. регистриране на нередност;
5. докладване на нередност;
6. коректорни действия и последващото им проследяване;
7. приключване на процедурата по администриране на нередност;
8. други действия, изпълнението на които е от значение за правилното администриране на нередността.
3. issuance of a first written assessment to establish an irregularity or absence of an irregularity;
4. registering an irregularity;
5. reporting an irregularity;
6. corrective actions and their subsequent follow-up;
7. completion of the irregularity administration procedure;
8. other actions, the implementation of which is important for the correct administration of the irregularity.

The inspection is assigned to the competent officer according to Art. 8:

**Art. 8**

(1) After registration in the record keeping system of the relevant administration, the signals received are immediately provided to the head of the relevant authority under Art. 2 or to a person authorized by him.

(2) The head of the body under Art. 2 or the person authorized by him assigns the relevant competent officer to carry out an inspection based on the received report.

The checks for irregularity are conducted according to Articles 10 et seq.:

**Section II. Check for irregularity or absence of irregularity**

**Art. 10**

(1) After registering a report of an irregularity, the person entrusted with checking the report shall carry out all necessary actions to establish the circumstances set forth therein.

(2) The inspection of a report of irregularity shall be completed within 3 months from the date of receipt of the report with the first written assessment under Art. 14.

(3) In case of legal and factual complexity, the head of the body under Art. 2 may once extend the period of the inspection by up to 45 days. The extension of the term is made following a motivated written request of the person entrusted with checking the report, explaining the reasons for the fact that the legal and factual complexity of the case is such that it cannot be completed within the period of 3 months.

(4) The authorities of state power and the authorities of local self-government, as well as their administrations, have the obligation to cooperate during the conduct of inspections on signals of irregularities.

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**Чл. 8. Наредба за администриране на нередности по европейските структурни и инвестиционни фондове**

Наредба за администриране на нередности по европейските структурни и инвестиционни фондове

(1) След регистрирането в деловодната система на съответната администрация постъпилите сигнали се предоставят незабавно на ръководителя на съответния орган по чл. 2 или на упълномощено от него лице.

(2) Ръководителят на органа по чл. 2 или упълномощеното от него лице възлага на съответния компетентен служител да извърши проверка по постъпилия сигнал.

**Раздел II. Проверка за установяване на нередност или липса на нередност**

**Чл. 10. Наредба за администриране на нередности по европейските структурни и инвестиционни фондове**

(1) След регистрирането на сигнал за нередност личето, на което е възложена проверката по сигнала, извършва всички необходими действия за установяване на изложените в него обстоятелства.

(2) Проверката по сигнал за нередност приключа в срок до 3 месеца от датата на получаването на сигнала с първата писмена оценка по чл. 14.

(3) (Изм. - ДВ, бр. 90 от 2018 г., в сила от 30.10.2018 г.) При правна и фактическа сложност ръководителят на органа по чл. 2 може еднократно да удължи срока на проверката с до 45 дни. Удължаването на срока се прави след мотивирано писмено искане на лицето, на което е възложена проверката, в което се излагаат причините, обуславящи фактическата и правната сложност на случая.

(4) Организите на държавна власт и организите на местното самоуправление, както и техните администрации са длъжни да оказват съдействие при осъществяване на проверките по сигнали за нередности.
after a motivated written request of the person to whom the inspection is assigned, in which the reasons determining the factual and legal complexity of the case are stated.

(4) *The bodies of state power and the bodies of local self-government, as well as their administrations, are obliged to provide assistance in carrying out checks on reports of irregularities.*

**Art. 11** The bodies under Art. 2 form an electronic or paper file for each signal. Where the file is maintained on paper, the relevant documents shall be arranged in chronological order.

**Art. 12** (1) Any irregularity signal that does not relate to the activity of the administrative structure in which it was received is forwarded to the one whose activity it refers to, notifying the sender of the signal, if an address is specified.

(2) *In the cases in which reports of irregularities contain information about suspected fraud, in which authorities under Art. 2, the report is submitted to the relevant law enforcement authorities with a copy to the director of the “AFCOS” Directorate.*

**Art. 13** (1) Competent authorities for establishing the presence or absence of an irregularity are:

1. the heads of the bodies under Art. 2;
2. the court.

(2) The heads of the bodies under Art. 2 approve or propose for approval by the heads of the departments and administrations of which they are a part, internal rules for the administration of irregularities in the administrations they lead.

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335 Чл. 11. Наредба за администрариране на нередности по европейските структурни и инвестиционни фондове
Органите по чл. 2 образуват преписка на електронен или хартиен носител по всеки сигнал. Когато преписката се поддържа на хартиен носител, относимите документи се подреждат в хронологичен ред.

336 Чл. 12. Наредба за администрариране на нередности по европейските структурни и инвестиционни фондове
(1) Всеки сигнал за нередност, който не се отнася до дейността на административната структура, в която е получен, се препраща до тази, за чиято дейност се отнася, като се уведомява подателят на сигнала, ако е посочен адрес.

(2) В случаите, в които сигналите за нередност съдържат информация за съмнение за измама, в която участват органи по чл. 2, сигналът се подава на съответните правоохранителни органи с копие до директора на дирекция “АФКОС”.

337 Чл. 13. Наредба за администрариране на нередности по европейските структурни и инвестиционни фондове
(1) Компетентни органи по установяване на наличието или липсата на нередност са:

1. ръководителите на органите по чл. 2;
2. съдът.

(2) Ръководителите на органите по чл. 2 утвърждават или предлагат за утвърждаване от ръководителите на ведомствата в администрацията, част от които са, вътрешни правила за администрариране на нередности в ръководените от тях администрации.

(3) Вътрешните правила по ал. 2 се публикуват на интернешт страниците на програмите по § 2 от допълнителните разпоредби.
(3) The internal rules under para 2 are published on the websites of the programs under Art. 2 of the additional regulations.

Art. 14 (1) The establishment of the presence or absence of an irregularity is objectified in the first written assessment of the competent authority under Art. 13 para 1, item 1 or in a judicial act. The first written assessment shall contain a reasoned conclusion based on specific facts that an irregularity has or has not been committed, without prejudice to the possibility that this conclusion may subsequently be revised or overturned in the course of administrative or judicial proceedings.

(2) When the first written assessment is issued by the competent authority under Art. 13 para 1 item 1 it contains:
1. the name of the authority that issues it;
2. name of the document, noting the legal basis for its issuance;
3. description of the actions performed and indication of the violated legal norm;
4. the financial expression of the irregularity;
5. date of issue and signature of the person who issued the first written assessment, indicating his position.

(3) For the first written assessment under para 1 is also considered the decision to determine a financial correction under Art. 73 para 1 European Structural and Investment Funds Administration Regulation, when the same contains all the details specified in para 2.

(4) When the first written assessment is issued by a body under Art. 13 para 1 item 1, a copy of the same shall be provided to the affected persons within three days of its issuance and.

The control provisions can be found within the Art. 30 et seq. of the European Structural and Investment Funds Administration Regulation:

338 Чл. 14. Наредба за администриране на нередности по европейските структурни и инвестиционни фондове
(1) Установяването на наличие или липса на нередност се обективира в първа писмена оценка на компетентния орган по чл. 13, ал. 1, т. 1 или в съдебен акт. Първата писмена оценка съдържа мотивирано заключение въз основа на конкретни факти, че е извършена или не е извършена нередност, без да се засяга възможността това заключение впоследствие да бъде преразгледано или отменено в хода на административната или съдебната процедура.
(2) Когато първа писмена оценка се издава от компетентния орган по чл. 13, ал. 1, т. 1, тя съдържа:
1. наименованието на органа, който я издава;
2. наименование на документа с отбелязване на правното основание за издаването му;
3. описание на извършените действия и посочване на нарушената правна норма;
4. финансовото изражение на нередността;
5. дата на издаване и подпис на лицето, издадо първата писмена оценка, с посочване на длъжността му.
(3) За първа писмена оценка по ал. 1 се счита и решението за определяне на финансова корекция по чл. 73, ал. 1 ЗУСЕСИФ, когато същото съдържа всички реквизити, посочени в ал. 2.
(4) Когато първата писмена оценка е издадена от орган по чл. 13, ал. 1, т. 1, препис от същата се предоставя на засегнатите лица в тридневен срок от издаването на.
Chapter Three. Control

Art. 30\(^{339}\) In carrying out its activities, the “AFCOS” directorate:
1. performs *administrative inspections and control* regarding the implementation of the procedures for the administration of irregularities by the authorities under Art. 2, responsible for the management and/or control of ESIF funds, including the performance of the duties of the relevant responsible persons;
2. analyses the results of the administrative checks under item 1.

Art. 31\(^{340}\) (1) In carrying out its administrative and control functions, the Directorate “AFCOS” *carries out initial and subsequent inspections.*
(2) *Initial inspections are carried out in all bodies under Art. 2, responsible for the management and/or control of ESIF funds.* Inspections are carried out by employees of the “AFCOS” directorate after a written notification to the inspected administrative structure by the director of the directorate.
(3) If necessary, external experts may participate in the inspections.

Art. 32 [See → Art. 3, Investigation reports (European Structural and Investment Funds Administration Regulation/Public Financial Inspection Act)].

Art. 33\(^{341}\) Employees from the “AFCOS” directorate may carry out subsequent checks on compliance and implementation of the recommendations made in the report under Art. 32 para 1.

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339 Глава трета.
КОНТРОЛ
Чл. 30. Наредба за администриране на нередности по европейските структурни и инвестиционни фондове
При осъществяване на дейността си дирекция “АФКОС”:
1. извършва административни проверки и контрол относно прилагането на процедурите за администриране на нередности от органите по чл. 2, отговарящи за управлението и/или контрола на средствата от ЕСИФ, включително изпълнението на задълженията на съответните отговорни лица;
2. анализира резултатите от административните проверки по т. 1.

340 Чл. 31. Наредба за администриране на нередности по европейските структурни и инвестиционни фондове
(1) При осъществяване на административно- kontrolните си функции дирекция “АФКОС” извършва първоначални и последващи проверки.
(2) Първоначалните проверки се извършват във всички органи по чл. 2, отговарящи за управлението и/или контрола на средства от ЕСИФ. Проверките се извършват от служители на дирекция “АФКОС” след писмено уведомление до проверяваната административна структура от директора на дирекцията.
(3) При необходимост в проверките могат да участват външни експерти.

341 Чл. 33. Наредба за администриране на нередности по европейските структурни и инвестиционни фондове
Служители от дирекция “АФКОС” могат да извършват последващи проверки по спазване и изпълнение на препоръките, направени в доклада по чл. 32, ал. 1.
**Art. 34** When carrying out inspections under Art. 30 and 31 of the “AFCOS” Directorate, the employees in the inspected administrative structures are obliged according to their powers:
1. to assist the examiners;
2. to provide examiners with free access to the office premises and to all documentation, including that stored in electronic format;
3. to provide the required information, including references, information, copies of documents and others, which relate to the subject of the inspection, within the time limits set by the examiners.

The Public Financial Inspection Act may also play a role in the investigations within the area of structural funds and internal policies:

**Public Financial Inspection Act**

**Section II. Powers of the bodies of the Agency**

**Art. 13** When performing their official duties, the agency’s bodies have the right to:

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342 Чл. 34. Наредба за администриране на нередности по европейските структурни и инвестиционни фондове
При извършване на проверки по чл. 30 и 31 от дирекция “АФКОС” служителите в проверяваните административни структури са длъжни съобразно своите правомощия:
1. да оказват съдействие на проверяващите;
2. да осигуряват на проверяващите свободен достъп до служебните помещения и до цялата документация, включително до съхраняваната в електронен формат;
3. да предоставят в определените от проверяващите срокове изисканата информация, включително справки, сведения, копия на документи и други, които се отнасят до предмета на проверката.

343 Закон за държавната финансова инспекция.

344 Раздел II. Правомощия на органите на агенцията

Чл. 13. Закон за държавната финансова инспекция
При изпълнение на служебните си задължения органите на агенцията имат право:
1. на свободен достъп до цялата информация, включително класифицирана, според нивото им на достъп при спазване на принципа “необходимост да се знае”, както и до всички документи, включително на електронен носител, които се съхраняват в проверяваната организация или лице;
2. на свободен достъп до служебните помещения и до всички служители на проверяваната организация или лице;
3. да проверяват активите и пасивите, изградената счетоводна система и всички документи, включително на електронен носител;
4. да изискват в определени от тях срокове от длъжностни лица в проверяваните организации и лица документи, заверени копия на документи, сведения и справки и други документи, които имат значение за извършваните финансови инспекции;
5. да изискват в определени от тях срокове от длъжностни лица в проверяваните организации и лица декларации за всички банкови сметки в страната и в чужбина;
6. да изискват в определени от тях срокове от длъжностни лица в проверяваните организации и лица изяснения по въпроси, свързани с извършваните финансови инспекции;
7. да изискват в определени от тях срокове и да се запознаят с докладите на вътрешните одитори, Сметната палата и на други контролни органи, които се съхраняват в проверяваната организация или лице;
8. да изискват заверени копия на документи, сведения и справки от юридически лица и еднолични търговци извън проверяваната организация или лице, свързани с извършването на финансова инспекция;
9. да извършват насърчи проверки в юридически лица и еднолични търговци извън проверяваната организация или лице, когато това е необходимо при извършването на финансова инспекция;
1. of **free access to all information**, including classified information, according to their level of access in compliance with the "need to know" principle, as well as to all documents, including electronic media, that are stored in the inspected organisation or person;

2. of **free access to the office premises and to all employees** of the inspected organisation or person;

3. to **check the assets and liabilities**, the established accounting system and **all documents**, including **those on electronic media**;

4. to **demand documents, certified copies of documents, reports and references and other documents** relevant to the financial inspections being carried out from officials in the inspected organisations and persons within the terms determined by them;

5. to **demand declarations for all bank accounts** in the country and abroad from officials in the audited organisations and individuals within the terms determined by them;

6. to demand written explanations from officials in the inspected organisations and persons on matters related to the financial inspections carried out within the terms determined by them;

7. to request within the terms determined by them and to familiarize themselves with the reports of the internal auditors, the Audit Office and other control bodies, which are stored in the inspected organisation or person;

8. to **request certified copies of documents, information and references from legal entities and sole traders outside the inspected organisation or person**, related to the performance of a financial inspection;

9. to **carry out counter-inspections** in legal entities and sole traders outside the inspected organisation or person, when this is necessary when carrying out a financial inspection;

10. to familiarize themselves with materials collected in court proceedings, as well as with court decisions that are relevant to the inspection activity;

11. to terminate the access of materially responsible persons to the inspected cash registers, warehouses and others by sealing them in the presence of an official from the inspected object;

12. to **search premises, means of transport, as well as other places** where documents of the inspected organisation or of a person under Art. 4, and to **seize documents, rec-
ords of computer information data and carriers of computer information data to provide evidence – with the assistance of the authorities of the Ministry of Internal Affairs after obtaining permission from the court.

Art. 14\(^\text{345}\) (1) When performing their official duties, financial inspectors are obliged to:

1. to identify themselves with an official card and an order for the assignment of a financial inspection;
2. on the basis of the facts and circumstances verified by them ex officio, to reflect objectively and accurately the established results of the performed inspection activity, the established violations and damages, the reasons for their occurrence and the guilty persons;
3. not to divulge facts and circumstances that became known to them during or on the occasion of the performance of their official duties, except in the cases provided for by law.

(2) The financial inspectors and experts appointed by the director of the agency or by persons authorized by him are obliged to recuse themselves when during the last three years:

1. have worked in the inspected organisation or person;
2. have participated in the management or control bodies of the organisations and/or persons under item 1;
3. have a personal interest in the audited activity;
4. (dop. - ДВ, бр. 42 от 2009 г.) техен съпруг, лице, с което се намира във фактическо съжителство, родниня по права линия без ограничения, по съребрена линия до четвърта степен включително или по сватовство до четвърта степен включително са работили като отчетници или са били в ръководните или в контролните органи на проверяваната организация или лице.

(3) При възникване и констатиране на обстоятелствата по ал. 2 финансовият инспектор или вещото лице уведомява писмено директора на агенцията или упълномощеното от него длъжностно лице.

(4) Преценката за основателността на отвода в случаите по ал. 2, т. 3 се прави от директора на агенцията или от упълномощени от него длъжностни лица.
4. their spouse, a person with whom they are de facto cohabiting, a relative by direct line without restrictions, by collateral line up to the fourth degree inclusive or by matchmaking up to the fourth degree inclusive worked as accountants or were in the management or control bodies of the organisation or person being audited.

(3) When the circumstances under para 2 the financial inspector or expert notifies in writing the director of the agency or the official authorized by him.

(4) The assessment of the merits of the appeal in the cases under para 2 item 3 is made by the director of the agency or by officials authorized by him.

Art. 15  
(1) Any person from the inspected organisations or persons under Art. 4 is obliged to:
1. assist and not hinder the financial inspectors in the performance of their duties;
2. ensures free access of the financial inspectors to the office premises and to all the documentation;
3. provide documents, certified copies of documents, information, references, bank account statements and written explanations within the time limits set by the financial inspectors, as well as the reports under Art. 13, item 7;
4. submit accurate information, references, declarations, documents and certified copies of documents within the time limits determined by the financial inspectors;
5. submit documents in a foreign language together with a certified translation into Bulgarian within the time limits set by the financial inspectors.

(2) Person under para 1 does not have the right to deny access to information by referring to the financial inspectors of his or someone else’s commercial or banking secret, as well as information classified as a state or official secret, subject to compliance with the requirements of the Act on the Protection of Classified Information.

346 Чл. 15. Закон за държавната финансова инспекция
(1) Всяко лице от проверяваните организации или лица по чл. 4 е длъжно да:
1. оказва съдействие и да не възпрепятства финансовите инспектори при изпълнение на задълженията им;
2. осигурява свободен достъп на финансовите инспектори до служебните помещения и до цялата документация;
3. предоставя в определени от финансовите инспектори срокове документи, заверени копия от документи, сведения, справки, декларации за банковите сметки и писмени обяснения, както и докладите по чл. 13, т. 7;
4. предоставя в определени от финансовите инспектори срокове точни сведения, справки, декларации, документи и заверени копия от документи;
5. (нова - ДВ, бр. 60 от 2011 г.) предоставя в определени от финансовите инспектори срокове документи на чужд език заедно със заверен превод на български език.

(2) Лице по ал. 1 няма право да отказва достъп до информация, като се позовава пред финансовите инспектори на своя или чужда търговска или банков тайна, както и на информация, класифицирана като държавна или служебна тайна, при спазване изискванията на Закона за защита на класифицираната информация.

(3) Лицата по чл. 13, т. 8 са длъжни да представят в определените срокове на органите на агенцията заверени копия на документи, сведения и справки, когато им бъдат поискани.
(3) The persons under Art. 13 item 8 are obliged to submit certified copies of documents, information and references to the agency’s bodies within the specified time limits, when they are requested.

Section III. Carrying out a financial inspection

Art. 16

(1) Financial inspections are carried out by the financial inspectors of the agency based on an order of the director of the agency or officials authorized by him.
(2) The order under para 1 is not subject to appeal.

Art. 17

(1) Regarding the results of the financial inspection, the relevant financial inspector prepares a report that contains the findings supported by evidence.
(2) After the delivery of the report, the head of the inspected organisation or person may give a written opinion within 14 days of the delivery of the report.
(3) In accordance with the procedure and within the period under para 2 a copy of the relevant findings from the report and the evidence to them are provided for a written opinion to the persons whose activity was the subject of the financial inspection.
(4) The financial inspector, who has carried out the financial inspection, issues a motivated written conclusion within 14 days from the receipt of the written opinions under para 2 and 3. The reasoned written conclusion is submitted to the head of the inspected organisation or person, as well as to the persons under para 3, within 14 days.
(5) The report under para 1, the reasoned written conclusion under para 4 and the written opinions under para 2 and 3 shall be submitted within three working days to the authority that issued the order under Art. 16, paragraph 1 to take follow-up measures.

347 Раздел III.
Извършване на финансова инспекция

Чл. 16. Закон за държавната финансова инспекция

(1) Финансовите инспекции се извършват от финансовите инспектори на агенцията въз основа на заповед на директора на агенцията или упълномощени от него длъжностни лица.
(2) Заповедта по ал. 1 не подлежи на обжалване.

348 Чл. 17. Закон за държавната финансова инспекция

(1) За резултатите от финансовата инспекция съответният финансов инспектор изготвя доклад, който съдържа направените констатации, подкрепени с доказателства.
(2) След връчването на доклада ръководителят на проверяваната организация или лице може да даде писмено становище в 14-дневен срок от връчването на доклада.
(3) По реда и в срока по ал. 2 копие от съответните констатации от доклада и доказателствата към тях се предоставят за писмено становище на лицата, чиято дейност е била обект на финансовата инспекция.
(4) (Изм. - ДВ, бр. 86 от 2007 г.) Финансовият инспектор, извършил финансовата инспекция, се произнася с мотивирано писмено заключение в 14-дневен срок от постъпването на писмените становища по ал. 2 и 3. Мотивираното писмено заключение се предоставя на ръководителя на проверяваната организация или лице, както и на лицата по ал. 3, в 14-дневен срок.
(5) (Изм. - ДВ, бр. 60 от 2011 г.) Докладът по ал. 1, мотивираното писмено заключение по ал. 4 и писмените становища по ал. 2 и 3 се представят в срок три работни дни на органа, издал заповедта по чл. 16, ал. 1 за предприемане на последващи мерки.
Chapter three “a”

Providing Assistance to European Commission Controllers in Granting Access to Premises and/or Documentation for Carrying out on-site Controls and Inspections Under Council Regulation No 2185/96 (Euratom, EC) Of November 11, 1996 and the Years Since, Carried out by the Commission for the Protection of the Financial Interests of the European Communities Against Frauds and Other Irregularities

Art. 31a 349 According to the order of this chapter, the Commission’s controllers shall be assisted in carrying out on-site control and inspections in cases where:

1. denied access to premises, means of transport, as well as to other places where documents, records of computer information data, carriers of computer information data are stored of the inspected organisation or a person under Art. 4, item 7, financed with funds under international agreements or programs of the European Union;

2. denied the provision of documents, records of computer information data, carriers of computer information data necessary for the inspection, provided access is provided under item 1.

Art. 31b 350 Assistance is provided by order of the director of the agency based on a motivated written request from the director of the Directorate “Protection of the Financial Interests of the European Union (AFCOS)” of the Ministry of Internal Affairs.

(2) The request under para 1 contains data on the inspected organisation or person under Art. 4, item 7, financed with funds under international agreements or programs of

349 Глава трета “а”.

Оказване съдействие на контрольорите на европейската комисия за предоставянето на достъп до помещения и/или документация за изпълнение на контрола и проверките на място по регламент № 2185/96 на съвета (евратом, ео) от 11 ноември 1996 г. Относно контрола и проверките на място, извършвани от комисията за защита на финансовите интереси на европейските общности срещу измами и други нередности (НОВА - ДВ, БР. 98 ОТ 2008 Г.)

Чл. 31а. Закон за държавната финансова инспекция (Нов - ДВ, бр. 98 от 2008 г.) По реда на тази глава се оказва съдействие на контрольорите на Комисията при осъществяване на контрол и проверки на място в случаите, когато е:

1. отказан достъп до помещения, транспортни средства, както и до други места, в които се съхраняват документи, записи на компютърни информационни данни, носители на компютърни информационни данни на проверяваната организация или на лице по чл. 4, т. 7, финансирали със средства по международни договори или програми на Европейския съюз;

2. отказано предоставянето на документи, записи на компютърни информационни данни, носители на компютърни информационни данни, необходими за проверката, при осигурен достъп по т. 1.

350 Чл. 31б. Закон за държавната финансова инспекция (Нов - ДВ, бр. 98 от 2008 г.) (1) (Изм. - ДВ, бр. 60 от 2011 г., изм. - ДВ, бр. 14 от 2015 г.) Оказването на съдействие се извършва със заповед на директора на агенцията въз основа на мотивирано писмено искане от директора на дирекция "Защита на финансовите интереси на Европейския съюз (АФКОС)" на Министерството на вътрешните работи.

(2) Искането по ал. 1 съдържа данни за проверяваната организация или лице по чл. 4, т. 7, финансирали със средства по международни договори или програми на Европейския съюз, предмета и целта на контрола или проверката на място и основанието за търсението съдействие по чл. 31а.

(3) Към искането по ал. 1 се прилагат копия от пълномощието на контрольора на Комисията и от документа, в който са посочени предметът и целта на контрола или проверката на място.
the European Union, the subject and purpose of the control or on-site inspection and the basis for the requested assistance under Art. 31a.

(3) To the request under para 1, copies of the power of attorney of the Commission controller and of the document specifying the subject and purpose of the control or on-site inspection are attached.

**Art. 31c** (1) The order under Art. 31b para 1 contains: the name and headquarters of the inspected organisation or person; the names and position of the financial inspector who will provide assistance; the name and position of the controller of the Commission who will be assisted; the basis for providing assistance and the deadline for implementation.

(2) The order under para 1 is not subject to appeal.

**Art. 31d** The financial inspector establishes the existence of the grounds under Art. 31a through an on-site inspection of the inspected organisation or person under Art. 4 item 7, financed with funds under international agreements or programs of the European Union.

**Art. 31e** (1) When the financial inspector finds that the Commission’s controller has been denied access to premises, means of transport, as well as to other places where documents, computer records are stored information data carriers of computer information data of the inspected organisation or person, he draws up a finding protocol.

(2) In the event of an established refusal under para 1 the director of the agency makes a written request for assistance to the authorities of the Ministry of Internal Affairs to ensure access to the controller of the Commission.

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351 Чл. 31в. Закон за държавната финансова инспекция
(Нов - ДВ, бр. 98 от 2008 г.) (1) Заповедта по чл. 31б, ал. 1 съдържа: наименованието и седалището на проверяваните организации или лице; имената и длъжността на финансовия инспектор, който ще окаzia съдействие; името и длъжността на контролора на Комисията, на когото ще се окаzia съдействие; основанието за оказване на съдействието и срока за изпълнение.

(2) Заповедта по ал. 1 не подлежи на обжалване.

352 Чл. 31г. Закон за държавната финансова инспекция
(Нов - ДВ, бр. 98 от 2008 г.) Финансовият инспектор установява наличието на основанията по чл. 31а чрез проверка на място в проверяваните организации или лице по чл. 4, т. 7, финансиран със средства по международни договори или програми на Европейския съюз.

353 Чл. 31д. Закон за държавната финансова инспекция
(Нов - ДВ, бр. 98 от 2008 г.) (1) Когато финансовият инспектор установи, че на контролора на Комисията е отказан достъп до помещения, транспортни средства, както и до други места, в които се съхраняват документи, записи на компютърни информационни данни, носители на компютърни информационни данни на проверяваните организация или лице, той съставя констатативен протокол.

(2) При установен отказ по ал. 1 директорът на агенцията прави писмено искане за съдействие до органите на Министерството на вътрешните работи за осигуряване на достъп на контролора на Комисията.

(3) Органите на Министерството на вътрешните работи окаziaят съдействието по ал. 2 по предвидения в Закона за Министерството на вътрешните работи ред.
(3) The authorities of the Ministry of Internal Affairs provide assistance under para 2 according to the procedure provided for in the Act on the Ministry of Internal Affairs.

**Art. 31f** (3) The authorities of the Ministry of Internal Affairs provide assistance under para 2 according to the procedure provided for in the Act on the Ministry of Internal Affairs.

(1) When the financial inspector finds that the inspected organisation or person, financed with funds under international treaties or programs of the European Union, refuses to provide documents and/or computer information data or their bearer to the controller of the Commission, he draws up a finding protocol and can terminate access to the premises, means of transport, as well as to other places where documents of the organisation or the person are stored, by sealing. A separate protocol is drawn up for the sealing.

(2) In the event of an established refusal under para 1 the director of the agency or officials authorized by him make a motivated request to the district court at the registered office or address of the inspected organisation or person, or upon carrying out the action of searching the premises, means of transport, as well as in other places, when sufficient data is available, that they contain documents and/or computer information data, or their carrier, which are relevant for the inspection and for their seizure to secure evidence.

(3) The district judge rules on the request under para 2 immediately on the day of his entry into a closed session with a reasoned decision, which is not subject to appeal.

(4) After obtaining permission under para 3 the director of the agency or officials authorized by him make a request to the authorities of the Ministry of Internal Affairs for assistance in the search and/or seizure.

**Art. 31g** (3) The search and seizure shall be carried out by the financial inspector with the assistance of a representative of the Ministry of Internal Affairs in the presence of:
1. representative of the inspected organisation or person, financed with funds under international agreements or programs of the European Union;
2. the Controller of the Commission, and
3. two witnesses.

(2) The actions of the search and/or seizure shall be certified by a protocol containing an inventory of the seized documents. The protocol is signed by all persons under para 1. The refusal of the person under para 1, item 1 to sign the protocol is certified by the signature of one witness.

(3) The protocol under para 2, translated into English, is drawn up in 4 identical copies – one each for the controller of the Commission, for the financial inspector, for the representative of the Ministry of Internal Affairs and for the person under para 1, item 1.

(4) The rules of the Criminal Procedure Code shall be applied accordingly to unresolved issues.

Art. 31h Copies of seized documents and/or seized computer data records shall be provided by the financial inspector to the controller of the Commission with a protocol of acceptance and transmission, and the originals and seized computer data records data is stored in the agency until the on-site control and verification is completed.

Art. 31i The documentation and computer information data under Art. 31h are used by the Commission controller only for the purposes of on-the-spot control and verification.

1. представител на проверяваните организация или лице, финансирани със средства по международни договори или програми на Европейския съюз;
2. контрольора на Комисията, и
3. двама свидетели.

(2) Действията по претърсването и/или изземването се удостоверяват с протокол, който съдържа опис на иззетите документи. Протоколът се подписва от всички лица по ал. 1. Отказът на лицето по ал. 1, т. 1 да подпише протокола се удостоверява с подписа на един свидетел.

(3) Протоколът по ал. 2, преведен на английски език, се съставя в 4 еднообразни екземпляра – по един за контрольора на Комисията, за финансия инспектор, за представителя на Министерството на вътрешните работи и за лицето по ал. 1, т. 1.

(4) За неуредените въпроси се прилагат съответно правилата на Наказателно-процесуалния кодекс.

356 Чл. 31з. Закон за държавната финансова инспекция (Нов - ДВ, бр. 98 от 2008 г.) Копия от иззетите документи и/или иззетите записи на компютърни информационни данни се предоставят от финансия инспектор на контрольора на Комисията с протокол за приемане и предаване, а оригиналите и иззетите записи на компютърни информационни данни се съхраняват в агенцията до приключване на контрола и проверката на място.

357 Чл. 31и. Закон за държавната финансова инспекция (Нов - ДВ, бр. 98 от 2008 г.) Документацията и компютърните информационни данни по чл. 31з се ползват от контрольора на Комисията само за целите на контрола и проверката на място.
| Art. 31j | The financial inspector shall report in writing to the director of the agency within three days of completion of the assigned assistance activity. |
| Art. 31k | The provisions of Art. 31e–31h shall be applied respectively by the agency’s bodies when performing the inspection activity under this law. |

For rules on an administrative inspection the Administrative Procedure Code may be consulted:

**Administrative Procedure Code**

### Initiative to start production

**Art. 24** (1) Proceedings for the issuance of an individual administrative act begin at the initiative of the competent authority or at the request of a citizen or organisation, and in the cases provided for in the law – by the prosecutor, the ombudsman, the superior or other state authority.

Proceedings for the issuance of an individual administrative act begin at the request of a state body, when it is referred to another request for the issuance of an administrative act, but this administrative act cannot be issued without issuing the administrative act requested by the body act.

### Gathering evidence

**Art. 36** (1) The evidence is collected ex officio by the administrative body, except in the cases provided for in this code or in a special law.
(2) The parties shall assist the authority in gathering evidence. They are obliged to present evidence that is with them and is not with the administrative body. In all cases where a special law has comprehensively defined the evidence that the citizen or organisation must present, the administrative body has no right to require them to present other evidence.

(3) All collected evidence is checked and evaluated by the administrative body.

(4) The administrative bodies shall not may require the provision of information or documents that are available with them, and provide them ex officio for the needs of the relevant proceedings.

(5) When requirements related to the criminal record of an individual are introduced in a normative act, the necessary data for Bulgarian citizens shall be established ex officio by the relevant administrative body.

(6) The authority conducting the proceedings on its own initiative or at the request of a party shall request from the relevant administrative authorities, the bodies of the judicial power, the persons, performing public functions, and the organisations providing public services, within their competence to issue and send certificates, to send documents, other evidence or information relevant to the proceedings.

(7) The persons, organisations and bodies under para 1 are obliged within their competence to issue and send the certificates requested by them, to send the requested documents, other evidence or information immediately, but not later than 7 days from the request, under the conditions and according to the procedure for exchanging electronic documents under the order of Art. 18a.

(8) If a special law does not provide otherwise, in the event of a temporary objective impossibility or in the absence of a technical possibility for the exchange of electronic documents, the parties shall assist the authority in gathering evidence. They are obliged to present evidence that is with them and is not with the administrative body. In all cases where a special law has comprehensively defined the evidence that the citizen or organisation must present, the administrative body has no right to require them to present other evidence.

(3) All collected evidence is checked and evaluated by the administrative body.

(4) The administrative bodies shall not may require the provision of information or documents that are available with them, and provide them ex officio for the needs of the relevant proceedings.

(5) When requirements related to the criminal record of an individual are introduced in a normative act, the necessary data for Bulgarian citizens shall be established ex officio by the relevant administrative body.

(6) The authority conducting the proceedings on its own initiative or at the request of a party shall request from the relevant administrative authorities, the bodies of the judicial power, the persons, performing public functions, and the organisations providing public services, within their competence to issue and send certificates, to send documents, other evidence or information relevant to the proceedings.

(7) The persons, organisations and bodies under para 1 are obliged within their competence to issue and send the certificates requested by them, to send the requested documents, other evidence or information immediately, but not later than 7 days from the request, under the conditions and according to the procedure for exchanging electronic documents under the order of Art. 18a.
documents or sending other evidence in accordance with Art. 18a, the exchange under para 2 is made through a licensed postal operator or by any other customary or appropriate means.

(c) Investigative powers in the area of common market organisations

Within the

the following provisions relating to investigative powers in the area of common market organisations can be found:

Part three. Control and sanctions
Chapter six. Control of the implementation of market measures and state aid measures

Art. 59363 (1) The bodies and organisations that are competent to carry out market measures and measures for state support, carry out inspections according to Art. 37, para 3 and 4 of the Agricultural Producers Assistance Act [see below] of:
1. the persons participating in these measures;
2. third parties who do not directly participate in the measures, but have relationships with the persons under item 1 on the occasion of their participation in them.

(2) The persons under para 1 are obliged to assist the examiners and the representatives of the European Commission and the European Court of Auditors according to Art. 26b, para 1 of the Agricultural Producers Assistance Act.

(3) The state and municipal bodies and organisations are obliged to provide the examiners and the representatives of the European Commission with assistance and provide them with the information and documents related to the subject of the inspection.

363 Част трета.
Контрол И Санкции
Глава шеста.
Контрол При Провеждане На Пазарните Мерки И На Мерките За Държавно Подпомагане
Чл. 59. Закон за прилагане на общата организация на пазарите на земеделски продукти на европейския съюз
(1) Органите и организациите, които са компетентни за провеждане на пазарни мерки и на мерки за държавно подпомагане, извършват проверки съгласно чл. 37, ал. 3 и 4 от Закона за подпомагане на земеделските производители на:
1. лицата, които участват в тези мерки;
2. трети лица, които не участват директно в мерките, но имат взаимоотношения с лицата по т. 1 по повод участието им в тях.
(2) (Доп. - ДВ, бр. 99 от 2013 г.) Лицата по ал. 1 са длъжни да оказват съдействие на проверяващите и на представителите на Европейската комисия и Европейската сметна палата съгласно чл. 26б, ал. 1 от Закона за подпомагане на земеделските производители.
(3) Държавните и общинските органи и организации са длъжни да оказват на проверяващите и на представителите на Европейската комисия съдействие и да им предоставят информацията и документите, свързани с обекта на проверката.
Art. 60\(^3\)\(^64\) (1) The paying agency through the Specialised control unit under Regulation (EC) No 485/2008 of the Council of May 26, 2008 on inspections by the Member States of transactions forming part of the financing system of the European Agricultural Guarantee Fund (OJ, L 143/1 of June 3, 2008), hereinafter referred to as “Regulation (EC) No 485/2008”, exercises subsequent control and performs checks on commercial documents of:

1. the persons who received or made payments related directly or indirectly to the financing system of the European Agricultural Guarantee Fund;
2. third parties who have a direct or indirect relationship with the persons under item 1 in connection with the transactions carried out within the framework of the financing system through the European Agricultural Guarantee Fund.

(2) The persons under para 1 are obliged to provide the controlling persons with:
1. free access to the inspected objects;
2. commercial documents and extracts or copies thereof requested by them; electronically stored data is provided on an electronic medium;
3. the information requested by them.

(3) The Executive Director of the Payment Agency reports the results of the inspections under Regulation (EC) No 485/2008 to the Minister of Agriculture, Food and Forestry.

Art. 60a\(^3\)\(^65\) The control over the implementation of the classification of carcasses of cattle, pigs and sheep and the reporting of prices is exercised by officials authorized by the Minister of Agriculture, Food and Forestry.

\(^3\) 1. The paying agency through the Specialised control unit under Regulation (EC) No 485/2008 of the Council of May 26, 2008 on inspections by the Member States of transactions forming part of the financing system of the European Agricultural Guarantee Fund (OJ, L 143/1 of June 3, 2008), hereinafter referred to as “Regulation (EC) No 485/2008”, exercises subsequent control and performs checks on commercial documents of:

1. the persons who received or made payments related directly or indirectly to the financing system of the European Agricultural Guarantee Fund;
2. third parties who have a direct or indirect relationship with the persons under item 1 in connection with the transactions carried out within the framework of the financing system through the European Agricultural Guarantee Fund.

(2) The persons under para 1 are obliged to provide the controlling persons with:
1. free access to the inspected objects;
2. commercial documents and extracts or copies thereof requested by them; electronically stored data is provided on an electronic medium;
3. the information requested by them.

(3) The Executive Director of the Payment Agency reports the results of the inspections under Regulation (EC) No 485/2008 to the Minister of Agriculture, Food and Forestry.

\(^64\) Чл. 60. Закон за прилагане на общата организация на пазарите на земеделски продукти на европейския съюз

(1) (Изм. - ДВ, бр. 99 от 2013 г.) Разплащателната агенция чрез специализираното звено за контрол по Регламент (ЕО) № 485/2008 на Съвета от 26 май 2008 г. относно проверките от страна на държавите членки на трансакции, съставляващи част от системата за финансиране на Европейския фонд за гарантирание на земеделието (ОВ, L 143/1 от 3 юни 2008 г.), наречен по-нататък “Регламент (ЕО) № 485/2008”, упражнява последващ контрол и извършва проверки на търговските документи на:

1. лицата, които са получили или осъществили плащания, свързани пряко или косвено със системата за финансиране на Европейския фонд за гарантирание на земеделието;
2. трети лица, които имат пряка или косвена връзка с лицата по т. 1 във връзка с трансакциите, извършвани в рамките на системата за финансиране чрез Европейския фонд за гарантирание на земеделието.

(2) (Нова - ДВ, бр. 99 от 2013 г.) Лицата по ал. 1 са длъжни да осигурят на контролиращите лица:

1. свободен достъп до проверяваните обекти;
2. исканите от тях търговски документи и извлечения или копия от тях; електронно съхраняваните данни се предоставят на електронен носител;
3. исканите от тях сведения.


\(^65\) Чл. 60а. Закон за прилагане на общата организация на пазарите на земеделски продукти на европейския съюз

(2) On control under para 1 are subject to:
1. slaughterhouses under Art. 58a para 2;
2. the classifiers under Art. 58c para 1.

(3) The Bulgarian Food Safety Agency exercises control over:
1. the sorting, marking and packaging of eggs;
2. the quality and storage of meat, cuts, blanks and offal from poultry and poultry products.

**Art. 60b** The control under Art. 60a includes:
1. inspections for the application of the classification of carcasses of cattle, pigs and sheep and of the documentation for its implementation;
Art. 60d Control authorities have the right to:
1. of free access and inspections in the controlled objects;
2. to issue mandatory prescriptions for the elimination of committed violations;
3. to draw up acts for the detected administrative offences.

Art. 60e The persons subject to control are obliged to provide the authorities under Art. 60a access to the controlled objects, to assist them and to fulfil their orders.

The Act on the Implementation of the Common Organisation of the European Union Agricultural Products Markets refers to the
- Agricultural Producers Assistance Act/Закон за подпомагане на земеделските производители.

The following provisions from this Act seem important in this matter:

Art. 26b (1) (Amended – SG No 102 of 2022, in force from 01.01.2023) The persons who use the schemes, measures and support interventions under the Common Agricultural Policy are obliged to provide the examiners with:
1. access to the objects of inspection – offices, production premises, warehouses, lands and others;
2. complete information about the object of the inspection;
3. all documents related to the object of the inspection, as well as copies and extracts from them;
4. taking samples of agricultural and food products, soils and waters for control analysis.

(2) The state and local authorities and organizations are obliged to assist the examiners and to provide them with the information and documents, linked with the object of the inspection.

(3) The organizations under Art. 26a, al. 2 are obliged to keep the results of all inspections at the place, where they took place.

(4) The examiners present the project results to the inspected party, who is required to present his/her report to the inspectors.
3. access to all documents related to the object of the inspection, as well as copies and extracts from them;
4. sampling of agricultural and food products, soils and waters for control analysis.

(2) The state and municipal bodies and organisations are obliged to assist the examiners and provide them with the information and documents related to the object of the examination.

(3) The organisations under Art. 26a para 2 are obliged to issue an order for each on-site inspection, which specifies the inspectors, the place, the object and the scope of the inspection.

(4) The inspectors prepare a report on the on-site inspection, which is signed by them and by the inspected person or his representative. When the examinee refuses to sign the report, examiners note this circumstance in it.

**Art. 37**

(1) The integrated control system includes **administrative checks** of submitted applications for support and **on-site checks**.

(2) The paying agency performs administrative checks of the submitted applications through the integrated information system, comparing the data from the applications with the data in the registers. **Administrative checks are carried out automatically, and their results are reflected only in the administrative act**, with which a decision is made under Art. 11a, para 1, item 1 on applications for support.

(3) Each year, the paying agency checks on the spot a control sample of the submitted applications for support based on a risk analysis.

(4) On-site inspections are carried out by:

1. **inspection** of the agricultural holding;
2. **remote sensing methods**.
Art. 70\textsuperscript{372} (New – SG No 102 of 2022, in force from 01.01.2023)

(1) Administrative inspections, on-site inspections and inspections through the system under Art. 30 para 2 item 7 are carried out for the control of:

1. the accuracy and completeness of the information in the application for assistance and in the request for payment;
2. compliance with all eligibility criteria, commitments and other obligations regarding the intervention, as well as the conditions under which assistance and/or exemption from obligations is provided;
3. compliance with the standards for good agricultural and ecological condition and the statutory management requirements.

(2) The Minister of Agriculture regulates with the relevant regulations under Art. 64 para 1, Art. 66, 67 and 68 the conditions and procedure for carrying out:

1. administrative checks within the integrated control system;
2. spot checks within the integrated control system;
3. administrative checks and on-site checks on the interventions under Art. 65;
4. administrative checks and on-site checks on interventions for the development of rural areas that are not related to areas and animals;
5. follow-up checks after making a payment, including compliance with the obligation of durability of interventions under Art. 52, para 1, item 2 and on the technical assistance under Art. 52, para 1, item 3, for which a monitoring period is foreseen;
6. control for compliance with the requirements of the preconditions;
7. checks through the system under Art. 30, para 2, item 7;
8. cross-checks and on-site visits.

\textsuperscript{372} Чл. 70. Закон за подпомагане на земеделските производители
(Нов - ДВ, бр. 102 от 2022 г., в сила от 01.01.2023 г.) (1) Административни проверки, проверки на място и проверки чрез системата по чл. 30, ал. 2, т. 7 се извършват за контрол на:
1. точността и пълнотата на информацийта в заявлениято за подпомагане и в искането за плащане;
2. спазването на всички критерии за допустимост, ангажименти и други задължения по отношение на интервенцията, както и на условията, при които се предоставя подпомагане и/или освобождаване от задължения;
3. спазването на стандартите за добро земеделско и екологично състояние и законоустановените изисквания за управление.
(2) Министърът на земеделието урежда със съответните наредби по чл. 64, ал. 1, чл. 66, 67 и 68 условията и реда за извършване на:
1. административни проверки в рамките на интегрираната система за контрол;
2. проверки на място в рамките на интегрираната система за контрол;
3. административни проверки и проверки на място по интервенциите по чл. 65;
4. административни проверки и проверки на място по интервенции за развитие на селските райони, които не са свързани с площи и с животни;
5. последващи проверки след извършване на плащане, включително и за спазване на задължението за дълготрайност на операциите по интервенциите по чл. 52, ал. 1, т. 2 и по техническата помощ по чл. 52, ал. 1, т. 3, за които е предвиден период на мониторинг;
6. контрол за спазване на изискванията на предварителните условия;
7. проверки чрез системата по чл. 30, ал. 2, т. 7;
8. кръстосани проверки и посещения на място.
Chapter three. Integrated System for Administration and Control

Art. 30\(^{373}\) (1) An Integrated System for Administration and Control shall be created to perform the functions of the Paying Agency.

(2) The integrated administration and control system consists of:

1. system for registration of applicants, applications for assistance and requests for payment;
2. system for identification of agricultural plots;
3. system for identification and registration of animals;
4. (suppl. – SG No 102 of 2022, in force from 01.01.2023) integrated control and sanctions system;
5. electronic database;
6. system for electronic services;
7. (New – SG No 102 of 2022, effective from 01.01.2023) area monitoring system;
8. (New – SG No 102 of 2022, effective from 01.01.2023) system for geospatial applications and for applications based on the number of animals.

(3) The electronic database under para 2, item 5 includes the data from the systems under para 2, items 1, 2 and 3 and from external databases.

\(^{373}\) Глава трета.
Интегрирана Система За Администриране И Контрол (НОВА - ДВ, БР. 18 ОТ 2006 Г.)

Чл. 30. Закон за подпомагане на земеделските производители
(Нов - ДВ, бр. 18 от 2006 г.) (1) За изпълнение на функциите на Разплащателната агенция се създава Интегрирана система за администрариране и контрол.

(2) Интегрираната система за администрариране и контрол се състои от:
1. (изм. и доп. - ДВ, бр. 12 от 2015 г.) система за регистрация на кандидатите, на заявките за подпомагане и на заявките за плащане;
2. система за идентификация на земеделските парцели;
3. система за идентификация и регистрация на животните;
4. (доп. - ДВ, бр. 102 от 2022 г., в сила от 01.01.2023 г.) интегрирана система за контрол и санкции;
5. (нова - ДВ, бр. 12 от 2015 г.) електронна база данни;
6. (нова - ДВ, бр. 103 от 2020 г., в сила от 04.12.2020 г.) система за електронни услуги;
7. (нова - ДВ, бр. 102 от 2022 г., в сила от 01.01.2023 г.) система за мониторинг на площта;
8. (нова - ДВ, бр. 102 от 2022 г., в сила от 01.01.2023 г.) система за геопространствени заявления и за заявления въз основа на броя на животните.

(3) (Изм. - ДВ, бр. 12 от 2015 г.) Електронната база данни по ал. 2, т. 5 включва данните от системите по ал. 2, т. 1, 2 и 3 и от външни бази данни.

(4) Системите по ал. 2 се създават и поддържат:
1. (изм. - ДВ, бр. 12 от 2015 г., изм. - ДВ, бр. 103 от 2020 г., в сила от 04.12.2020 г., изм. - ДВ, бр. 102 от 2022 г., в сила от 01.01.2023 г.) по т. 1, 4, 5, 6, 7 и 8 - от Разплащателната агенция;
3. (изм. - ДВ, бр. 8 от 2011 г., в сила от 25.01.2011 г.) по т. 3 - от Българската агенция по безопасност на храните.

(5) (Изм. - ДВ, бр. 102 от 2022 г., в сила от 01.01.2023 г.) Разплащателната агенция обединява данните от системите по ал. 2, т. 1, 2, 3 и 6 в цифров вид в интегрирана информационна система и създава и поддържа системи връзки с външни регистри.

(4) The systems under para 2 are created and maintained:
1. (Amended – SG No 102 of 2022, in force from 01.01.2023) under items 1, 4, 5, 6, 7 and 8 – by the Payment Agency;
2. (Amended – SG No 102 of 2022, in force from 01.01.2023) under item 2 - by the Ministry of Agriculture;
3. under item 3 – by the Bulgarian Food Safety Agency.
(5) (Amended – SG No 102 of 2022, in force from 01.01.2023) The paying agency combines the data from the systems under para 2, items 1, 2, 3 and 6 in digital form in an integrated information system and creates and maintains system connections with external registers.
(6) (Amended – SG No 102 of 2022, in force from 01.01.2023) The Minister of Agriculture determines by ordinance the conditions and procedures for the creation, maintenance, access and use of the systems under para 2 and the information system under para 5.

Art. 71
(1) When, upon inspection, it is established that the beneficiary does not fulfill eligibility criteria, commitments or other obligations under interventions included in the Strategic Plan, the aid is not granted, is not paid in whole or in part, is withdrawn in whole or in part and, when applicable, the administrative sanctions provided for in Section VI and VII are imposed.

България
(2) Administrative sanctions are imposed through:

1. a reduction in the amount of aid payable in relation to the aid applications or payment requests affected by the non-compliance, or in relation to the aid applications that the beneficiary will submit during the calendar year in which the non-compliance is established, or during the next three calendar years;
2. withholding an amount calculated on the basis of the amount and/or period related to the non-compliance;
3. suspension or withdrawal of approval or recognition;
4. deprivation of the right to participate in the relevant interventions included in the Strategic Plan;
5. deprivation of the right to support for activities included in interventions under the Strategic Plan;
6. suspension of payments for interventions included in the Strategic Plan.

(3) Administrative sanctions are effective, proportionate and dissuasive within the meaning of Art. 59 of Regulation (EU) 2021/2116, when they comply with the following restrictions:

1. the amount of the administrative sanction does not exceed the amount of the requested support;
2. the suspension, withdrawal or deprivation of a right under para 2, items 3 and 4 may not be imposed for a period longer than three consecutive years, except in case of new non-compliance with obligations;
3. the suspension under para 2, item 6 is imposed until satisfactory corrective actions are taken by the beneficiary.

(4) Subsection 1 shall not apply when the inspection reveals non-compliance with eligibility criteria, which should not be maintained after the submission of the project proposal or after its approval in the cases specified in the guidelines under Art. 68 para 2.

(d) Investigative powers in the area of direct expenditure

The investigative powers within the area of direct expenditure may be found within the Bulgarian Public Procurement Act:

Chapter 31. Control

Section I. External control carried out by the Public Procurement Agency

Control by random selection

Art. 232 The control under Art. 229 para 1 item 2 letter “d” is carried out on the procedures whose announcements to publicize their opening are subject to publication
in the Official Gazette, with the exception of those conducted in accordance with Art. 84, 86, 141, 142 and 148–175.

(2) The procedures under para 1 are determined by random selection according to a methodology that takes into account the level of risk.

(3) The control under para 1 is carried out in two stages:
1. before publicizing the opening of the procedure – on the drafts of the decision, announcement and technical specification, and when applicable – also on the draft of the assessment methodology;
2. after announcing the opening of the procedure – on the approved documents under item 1.

(4) When the opening of the procedure is announced with a preliminary announcement, the control under para 1 also covers the invitation to confirm interest before and after it is sent to the persons who have expressed interest.

(5) The verification of the technical specifications covers compliance with the requirements of Art. 49 para 2 and when applicable – and compliance with specifications standardized according to Art. 231.
(6) The control under para 3 item 1 ends with the preparation of a preliminary opinion, which is sent to the contracting authority.

(7) In the event that the contracting authority does not comply with the recommendations in the opinion under para 6, he sends written reasons to the Public Procurement Agency at the latest on the next working day after the publication in the Official Gazette of the decision to open and the announcement announcing the opening of the procedure.

(8) The control under para 3, item 2 ends with a final opinion, and when preparing it, the reasons provided under para 7.

(9) The control ends after the stage under para 3, item 1 in the cases:
1. under Art. 74 para 2 or Art. 133 para 2;
3. of procedures under Art. 18, para 1, item 12.

(10) The contracting authority shall attach written reasons to the file under Art. 121, when it does not take into account the findings of the final opinion, and in the cases under para 9 – from the preliminary opinion.

(11) The conditions and procedure for carrying out the preliminary control under para 1 are determined by the regulations for the application of the law.

External expert assistance, Art. 232a

(Repealed – SG No 107 of 2020

Control over negotiation procedures

Art. 233

(1) The Public Procurement Agency carries out control under Art. 229 para 1 item 2 letter “e” on negotiation procedures, which are opened by public and sectoral contracting authorities on the basis of Art. 79 para 1 items 3, 4, 6, 9 and 10 and Art. 182 para 1 items 1 and 4.
(2) The control under para 1 does not apply to procedures for the supply of or services for access, transmission and distribution of natural gas, heat or electricity, or drinking water with companies that hold special or exclusive rights.

(3) The control under para 1 is carried out after the publication of the decision to open the procedure in the ROP and includes a check for compliance of the specified legal basis with the reasons in the decision to open and the evidence presented by the contracting authority.

(4) The public procurement agency prepares an opinion on the results of the control, which is sent to the contracting authority.

(5) The conditions and procedure for carrying out the control under para 1 are determined by the rules for implementing the law.

Control when amending a public procurement contract

Art. 235  The control under Art. 229 para 1 item 2 letter “f” covers verification of the existence of the conditions for applying the basis under Art. 116 para 1 item 2.

(2) In order to carry out the control, the contracting authority, before concluding the additional agreement, sends reasons supported by evidence regarding the reasons that necessitate the amendment of the contract.

(3) For the control carried out under para 1 the Public Procurement Agency prepares an opinion on legality, which it sends to the contracting authority.

(4) The conditions and procedure for carrying out the control under para 1 are determined by the rules for implementing the law.

Obligations of the contracting authorities related to the implementation of control by the Public Procurement Agency

Art. 236  To carry out the control under Art. 232, 233 and 235 the contracting authorities are obliged to send to the Public Procurement Agency:

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378 Контрол при изменение на договор за обществена поръчка

Чл. 235. Закон за обществените поръчки

(1) (Изм. - ДВ, бр. 86 от 2018 г., в сила от 01.03.2019 г.) Контролът по чл. 229, ал. 1, т. 2, буква “е” обхваща проверка за наличие на условията за прилагане на основанието по чл. 116, ал. 1, т. 2.

(2) (Изм. - ДВ, бр. 86 от 2018 г., в сила от 01.03.2019 г.) За осъществяване на контрола възложителят, преди да сключи допълнителното споразумение, изпраща мотиви, подкрепени с доказателства относно причините, които налагат изменението на договора.

(3) (Изм. - ДВ, бр. 102 от 2019 г., в сила от 01.01.2020 г.) За осъществяване и редът за осъществяване на контрола по ал. 1 се определят с правилника за прилагане на закона.

379 Задължения на възложителите, свързани с осъществяване на контрол от Агенцията по обществени поръчки

Чл. 236. Закон за обществените поръчки (Изм. - ДВ, бр. 86 от 2018 г., в сила от 01.03.2019 г.) За осъществяване на контрола по чл. 232, 233 и 235 възложителите са длъжни да изпращат до Агенцията по обществени поръчки:
1. draft documents under Art. 232 para 3 item 1;
2. the evidence for the reasons for the decision – in the cases under Art. 233;
3. reasons and evidence – in the cases under Art. 235.

Exchange of information

Art. 237 The exchange of information related to the implementation of control by the Public Procurement Agency is carried out entirely by electronic means in accordance with the procedure determined by the rules for the implementation of the law and rules approved by the executive director of the Public Procurement Agency.

Section II. Follow-up external control carried out by the Audit Chamber and the Agency for State Financial Inspection

Scope

Art. 238 (1) The subsequent external control of the implementation of this law, including the control of the implementation of public procurement contracts and framework agreements, is carried out by the Audit Chamber and the bodies of the State Financial Inspection Agency.
(2) Contractors who fall within the scope of the Act on the Audit Chamber are subject
to control by the Audit Chamber.

(3) Employers who fall under the scope of the Public Financial Inspection Act are
checked by the bodies of the State Financial Inspection Agency for compliance with this
law within the framework of a financial inspection.

(4) The bodies of the State Financial Inspection Agency carry out periodic follow-up
inspections regarding compliance with the public procurement regime of contracting
entities that do not fall within the scope of the Public Financial Inspection Act, based on
an approved annual plan.

(5) The orders for inspections by the bodies of the State Financial Inspection Agency
are issued by the director of the State Financial Inspection Agency or by officials au-
thorized by him.

(6) The orders under para 5 are not subject to appeal.

(7) The Executive Director of the Public Procurement Agency may request the bodies
of the State Financial Inspection Agency to exercise their powers in a specific case.

**Rules for conducting inspections by the State Financial Inspection Agency**

*Art. 239* (1) When carrying out inspections under Art. 238 the bodies of the State
Financial Inspection Agency have the right to:

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382 Правила за извършване на проверки от Агенцията за държавна финансова инспекция

Чл. 239. Закон за обществените поръчки

(1) (Изм. - ДВ, бр. 86 от 2018 г., в сила от 01.03.2019 г.) При извършване на проверки по чл. 238 органите
на Агенцията за държавна финансова инспекция имат право:

1. на свободен достъп до цялата информация, включително класифицирана, според нивото им на достъп
при спазване на принцип “необходимост да се знае”, както и до всички документи, включително на
електронен носител, която се съхраняват в проверяващия обект;

2. на свободен достъп до служебните помещения и до всички служители в проверяващия обект;

3. да проверяват активите и пасивите, изградената счетоводна система и всички документи, включително
на електронен носител;

4. да изискват в определени от тях срокове от длъжностни лица в проверяващия обект документи, заверени
копия на документите, сведения и справки и други документи, които имат значение за извършваните
проверки;

5. да изискват в определени от тях срокове от длъжностни лица в проверяващия обект декларации за всички
банкови сметки в страната и в чужбина;

6. да изискват в определени от тях срокове от длъжностните лица в проверяващия обект писмените обяснения
по въпроси, свързани с извършваните проверки;

7. да изискват в определени от тях срокове да се запознаят с докладите на вътрешните одитори и на
други контролни органи, които се съхраняват в проверяващата организация или лице;

8. да изискват заверени копия на документите, сведения и справки от юридически лица и еднолични
търговци извън проверяващия обект, съхранени с извършването на проверки;

9. да извършват насърчаващи проверки в юридически лица и еднолични търговци, извън проверяващия обект,
kогато това е необходимо при извършването на проверка;

10. да се запознаят с материали, събирани в съдебни производства, както и със съдебни решения, които
имат значение за проверяваната дейност;

11. да преглеждат помещения, транспортни средства, както и други места, в които се съхраняват документи
на проверяващия обект, и да изземват документи, записи на компютърни информационни данни и носители
1. of free access to all information, including classified information, according to their level of access in compliance with the "need to know" principle, as well as to all documents, including electronic media, that are stored in the inspected facility;
2. of free access to the office premises and to all employees in the inspected facility;
3. to check the assets and liabilities, the established accounting system and all documents, including those on electronic media;
4. to demand documents, certified copies of documents, information and references and other documents that are important for the inspections being carried out, within the terms set by them;
5. to demand declarations for all bank accounts in the country and abroad from officials in the inspected object within the terms determined by them;
6. to demand written explanations on issues related to the inspections being carried out from the officials in the inspected object within the terms determined by them;
7. to request within the terms determined by them and to familiarize themselves with the reports of the internal auditors and of other control bodies, which are stored in the inspected organisation or person;
8. to demand certified copies of documents, information and references from legal entities and sole traders outside the inspected site, related to the performance of inspections;
9. to carry out counter-inspections in legal entities and sole traders, outside the inspected object, when this is necessary during the inspection;
10. to familiarize themselves with materials collected in court proceedings, as well as with court decisions that are relevant to the audited activity;
11. to search premises, means of transport, as well as other places where documents are stored at the inspected site, and to seize documents, computer data records and computer data carriers to provide evidence with the assistance of the authorities of the Ministry of internal affairs after obtaining permission from the court.
(2) The persons in the inspected sites are obliged to provide assistance to the bodies of the State Financial Inspection Agency and to provide the necessary documents, information and references related to public procurement.

Obligations when carrying out inspections

Art. 240 When carrying out checks under Art. 238 the control authorities are obliged to:

на компютърни информационни данни за осигуряване на доказателства със съдействието на органите на Министерството на вътрешните работи след получено разрешение от съда.
(2) Лицата в проверяваните обекти са длъжни да окаzano съдействие на органите на Агенцията за държавна финансова инспекция и да предоставят необходимите документи, сведения и справки, свързани с обществените поръчки.

Задължения при извършване на проверки
1. to identify themselves with an official card and an order to carry out the inspection;
2. accurately reflect the results of the control activity;
3. not to divulge or distribute information that became known to them during the inspections.

Control results

Art. 241 (1) For the results of an inspection, the control bodies from the State Financial Inspection Agency shall draw up a report containing the findings supported by evidence.

(2) The report under para 1 is handed over to the contracting authority. After the delivery of the report, the head of the inspected object can give a written opinion within 14 days from the delivery of the report. The financial inspector who carried out the inspection issues a motivated written conclusion within 14 days of receipt of the written opinion.

(3) For the detected administrative offences, the control bodies draw up acts for administrative offences.

(4) In the case of data on committed crimes, the materials from the inspection are sent to the Prosecutor’s office.

(5) When violations of public procurement procedures are found, the relevant parts of the financial inspection report or of the report under para 1 for the established violations of the procedures are promptly sent to the director of the Public Procurement Agency.

(6) Information on the results of control exercised over compliance with this law may be provided only by the director of the State Financial Inspection Agency or by officials.
authorized by him, as well as by the executive director of the Public Procurement Agency in the cases under para 5.

**Interaction between appeal and control bodies**

*Art. 242* When, in exercising their powers under the law, the authorities under *Art. 238* para 1 establish non-implementation of decisions and/or determinations of the Commission for the Protection of Competition, they shall send their findings to the Commission for the Protection of Competition.

**Section III. Other bodies carrying out external control**

**Scope**

*Art. 243* Preliminary, current and subsequent control over the public procurements of the contracting authorities may be carried out by other bodies within the framework of their powers.

(3) **Protection of information**

(a) **Tax secrecy**

**Tax and Insurance Procedure Code**

**Disclosure of tax and insurance information**

*Art. 74* (1) Data representing tax and insurance information shall be provided only by:

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385 Взаимодействие между органите за обжалване и контрол

Чл. 242. Закон за обществените поръчки

Когато при осъществяване на правомощията си по закона органите по чл. 238, ал. 1 установят неизпълнение на влезли в сила решения и/или определения на Комисията за защита на конкуренцията, те изпращат констатациите си до Комисията за защита на конкуренцията.

386 Раздел III.

Други органи, осъществяващи външен контрол

Обхват

Чл. 243. Закон за обществените поръчки

Предварителен, текущ и последващ контрол върху обществените поръчки на възложителите могат да осъществяват и други органи в рамките на своите правомощия.

387 Данъчно-осигурителен процедурал кодекс

388 Разкриване на данъчна и осигурителна информация

Чл. 74. Данъчно-осигурителен процедурал кодекс

(1) Дати, представящи данъчна и осигурителна информация, се предоставят само по:

1. писмено искане на Президента на Република България във връзка с правомощията му по чл. 98, т. 12 от Конституцията на Република България;

2. искане на орган на Националната агенция за приходите във връзка с осъществяване на правомощията му при условия и по ред, определени от изпълнителяния директор;

1. written request of the President of the Republic of Bulgaria in connection with his powers under Art. 98 item 12 of the Constitution of the Republic of Bulgaria;
2. request of a body of the National Revenue Agency in connection with the exercise of its powers under the conditions and according to the order determined by the executive director;
3. (supplemented – SG No 25 of 2022, in force from 07.08.2022) written request of the Prosecutor General, the manager of the National Social Security Institute or the director of the relevant territorial division of the National Social Security Institute, the director of the Customs Agency or the director of the relevant territorial directorate, the chairman

(2) Извън случаите по ал. 1 данъчна и осигурителна информация може да се предоставя само:
1. с писмено съгласие на лицето, или
2. въз основа на акт на съда, или
3. по инициатива на орган на Националната агенция за приходите – в случаите, когато това е предвидено в закон.

(3) (Нова - ДВ, бр. 105 от 2006 г., изм. - ДВ, бр. 60 от 2015 г.) Държавенето лица от инспекторатите на Националната агенция за приходите и Агенция "Митници" имат право на достъп до всички сведения и документи в приходната администрация във връзка с извършваните от тях проверки. Те съдържат данни, представляващи данъчна и осигурителна информация, станали им известни във връзка с изпълнение на служебните им задължения, включително и след прекратяване на правоотношенията им съответната агенция.
of the State Agency “National Security”, the director of the Directorate “Financial Intelligence” of the State Agency “National Security” or other officials authorized by the chairman of the State Agency “National Security”, the director of the State Financial Inspection Agency, the chairman of the Commission for the Protection of Competition or officials authorized by him, the chairman of the Commission for Combating Corruption and for Confiscation of Illegally Acquired Property or officials authorized by him or the directors of the territorial directorates of the Commission for Combating Corruption and for Confiscation of Illegally Acquired Property, the executive director of the Executive Agency “Main Labor Inspectorate” or the director of the relevant Directorate “Labor Inspection”, the executive director of the Employment Agency or officials from the Employment Agency authorized by him, the executive director of the Social Assistance Agency or the directors of the relevant territorial divisions of the Social Assistance Agency, the chairman of the Audit the Chamber, the Financial Supervision Commission and its bodies, the Deputy Governor of the Bulgarian National Bank, the head of the “Banking” department, the chairman of the National Statistical Institute, the chief inspector or an inspector from the Inspectorate of the Supreme Judicial Council – if necessary in connection with the exercise of their powers defined by law;

4. at the written request of bailiffs – in connection with a case opened before them;

5. written request of the general the director of the European Anti-Fraud Office or a person designated by him, as well as the director of the Directorate “Protection of the Financial Interests of the European Union” of the Ministry of the Interior in connection with an ongoing administrative investigation;

6. written request of a customs authority in connection with the exercise of its powers, under conditions and according to the order determined by the executive director of the National Agency for revenue;

7. request of the Minister of Finance or another body defined by law in connection with their powers under Art. 31 of the Civil Procedure Code and Art. 3 of the Act on International Commercial Arbitration;

8. request of the Minister of Finance for the number of public obligations of budgetary organisations in the sense of Art. 1, item 5 of the additional provisions of the Public Finance Act in relation to its powers under the same Act.

(2) Apart from the cases under para 1 tax and insurance information can only be provided:

1. with the written consent of the person, or

2. based on an act of the court, or

3. at the initiative of a body of the National Revenue Agency – in cases where this is provided for by law.

(3) Officials from the inspectorates of the National Revenue Agency and the Customs Agency have the right of access to all information and documents in the revenue administration in connection with the inspections carried out by them. They are obliged to
keep confidential the data representing tax and insurance information, which became known to them in connection with the performance of their official duties, including after the termination of their legal relations with the relevant agency.

Subsection VII. Confidentiality of information and protection of personal data

Confidentiality of information

Art. 142⁴⁸⁹ (1) The information exchanged with the competent authorities of the participating jurisdictions pursuant to Art. 142c para 5, is considered tax and insurance information within the meaning of Art. 72.

(2) The information received from the competent authorities of the participating jurisdictions pursuant to Art. 142c para 5, can only be used:

1. for the purposes of establishing tax obligations and implementing the legislation in the field of these taxes;
2. for the purposes of establishing and collecting mandatory insurance contributions, as well as other public receivables under Art. 269a para 1;
3. in the course of administrative and judicial proceedings in connection with the imposition of penalties for violation of tax legislation;
4. for other purposes, beyond those specified in items 1–3 – when the competent authority of the participating jurisdiction that provided the information has allowed this and provided that in this participating jurisdiction the information can be used for similar purposes.

(3) Apart from the cases under para 2, items 3 and 4, the information cannot be disclosed to third parties.

⁴⁸⁹ Подраздел VII.
Поверителност на информацията и защита на личните данни (Нов - ДВ, бр. 94 от 2015 г., в сила от 01.01.2016 г.)

Поверителност на информацията

Чл. 142у. Данъчно-осигурителен процесуален кодекс (Нов - ДВ, бр. 94 от 2015 г., в сила от 01.01.2016 г.) (1) Информацията, обмянена с компетентните органи на участващите юрисдикции по реда на чл. 142в, ал. 5, се смята за данъчна и осигурителна информация по смисъла на чл. 72.

(2) Информацията, получена от компетентните органи на участващите юрисдикции по реда на чл. 142в, ал. 5, може да бъде използвана единствено:

1. (доп. - ДВ, бр. 63 от 2017 г., в сила от 04.08.2017 г.) за целите на установяване на задължения за данъци и на прилагане на законодателството в областта на тези данъци;
2. за целите на установяването и събирането на задължителни осигурителни вноски, както и на други публични вземания по чл. 269а, ал. 1;
3. в хода на административни и съдебни производства във връзка с налагане на наказания за нарушаване на данъчното законодателство;
4. за други цели, извън посочените в т. 1–3 – когато компетентният орган на участващата юрисдикция, предоставила информацията, е разрешил това и при условие, че в тази участващата юрисдикция информацията може да се използва за подобни цели.

(3) Извън случаите по ал. 2, т. 3 и 4 информацията не може да бъде разкривана на трети лица.

(4) Изпълнителният директор на Националната агенция за приходите определя реда и условията за достъп и използването на информацията от органите и служителите на агенцията.
(4) The executive director of the National Revenue Agency determines the terms and conditions for access and use of information by the agency’s bodies and employees.

**Protection of personal data**

**Art. 142**

(1) For the purposes of the automatic exchange of financial information, as administrators of personal data registers within the meaning of Art. 4, item 6 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016
on the protection of natural persons in connection with the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46/EC (General Data Protection Regulation) (OJ, L 119/1 of 4 May 2016), hereinafter referred to as “Regulation (EU) 2016/679” support:

1. the executive director of the National Revenue Agency;
2. financial institutions providing information.

(2) The processing of personal data for the purposes of the automatic exchange of financial information is carried out by automatic means in compliance with the requirements for the protection of personal data and the international treaties under which The Republic of Bulgaria is a country.

(3) The executive director of the National Revenue Agency and the financial institutions providing information shall take the necessary technical and organisational measures to protect the data, as well as set deadlines for conducting periodic reviews about the accuracy, adequacy and relevance of the data in relation to the purposes for which they were collected.

(4) The processing of personal data in the automatic exchange of financial information is carried out by the executive director of the National Revenue Agency and the financial institutions providing the information in compliance with the requirements for the protection of personal data.

(5) Before providing the information under Art. 142b para 1 of the Executive Director of the National Revenue Agency, financial institutions providing information inform the affected natural persons about the automated data processing and provide them with the information under Art. 13 of Regulation (EU) 2016/679.

(6) In accordance with the requirements for the protection of personal data, any natural person for whom information is processed under Art. 142b para 1, has the right to access, delete, correct or limit the processing of the personal data concerning him, as well as to request from the executive director of the National Revenue Agency that the participating jurisdictions to which his personal data have been disclosed be notified, for any deletion, correction or restriction of processing carried out, except in cases where this is impossible or involves excessive efforts.

(7) The administrators of personal data under para 1 refuse access to personal data processed for the purposes of the automatic exchange of financial information, in the cases under Art. 37a para 1 item 5 of the Personal Data Protection Act.

(8) The executive director of the National Revenue Agency provides the data under Art. 142b para 1 of participating jurisdictions subject to compliance with the requirements for the transfer of personal data to third countries or international organisations.

(10) Изпълнителният директор на Националната агенция за приходите и предоставящите информация финансови институции уведомяват всяко физическо лице, за което се обменя информацията по чл. 142б, ал. 1, за всяко нарушение на сигурността във връзка с неговите данни, когато нарушението може да повлияе неблагоприятно на защитата на личните му данни или на личния му живот.
(9) The Personal Data Protection Commission ensures the protection of individuals when processing their personal data for the purposes of the automatic exchange of financial information when accessing such data, as and the control of compliance with the requirements for the protection of personal data. When exercising the control powers, the administrators of personal data under para 1 are obliged to provide assistance to the Commission for the protection of personal data when exercising the powers and.

(10) The Executive Director of the National Revenue Agency and financial institutions providing information shall notify each individual for whom the information is exchanged under Art. 142b para 1, for any breach of security in relation to his data, when the breach may adversely affect the protection of his personal data or his private life.

Section IV. Procedure for exchanging information with other countries
Competent authority and conditions for the exchange of information

Art. 143391 (1) The Minister of Finance or a person authorized by him may exchange information with other countries, necessary for the implementation of the legislation in
relation to taxation, according to the concluded international treaties to which the Republic of Bulgaria is a party.

(2) Apart from the cases under para 1, the Minister of Finance or a person authorized by him may exchange information necessary for the application of legislation in relation to taxation, and when the following conditions are met:

1. under the conditions of reciprocity;
2. the requesting country guarantees that the information received will be treated as confidential in the same way as information received under the domestic law of that country, and that the information and documents provided will be used only for taxation purposes or in criminal proceedings for tax crimes (including administrative and judicial proceedings), and that the information and documents will be provided only to persons, authorities and courts that are competent to consider matters related to taxation or the prosecution of tax crimes;
3. the state requesting information guarantees readiness to eliminate any possible double taxation in taxes on income, profits and property, and in case of necessity this can be done by mutual agreement.

(3) The provisions of para 2 shall not be considered as imposing an obligation to:

1. undertake administrative measures deviating from legislation or administrative practice;
2. provides information that cannot be obtained in accordance with the legislation and according to the usual administrative procedure;
3. provides information that would reveal a commercial, economic, industrial, professional secret or commercial process, or information the disclosure of which would be contrary to public order.

(4) In case of a request received from another country for the exchange of information under para 1 and under the conditions of reciprocity, the Minister of Finance or a person authorized by him may request the insurer to disclose an insurance secret within the meaning of Art. 149 para 1 of the Insurance Code and the court to disclose bank secrecy within the meaning of Art. 62 of the Act on Credit Institutions, secret within the meaning of Art. 90 para 2 of the Act on Financial Instruments Markets and Art. 133 of the Act on the Public Offering of Securities or in the sense of another provision of the Bulgarian legislation for the protection of the confidentiality of cash funds, financial assets and other property, when it is clear from the facts presented in the request for the exchange of information.
of information that it was made in compliance with the requirements for exchange of information in the relevant international agreement.

(b) Administrative secrecy (Administrative laws)

The officials of the administrative service of the Republic of Bulgaria are obliged to follow the rules of the Act on Administrative Service.

Section II. Principles of administrative service

Art. 2 (1) Administrative services are carried out in compliance with the following principles:
1. equal treatment of all users;
2. provision of complete information about the acts, administrative services and actions issued and/or carried out during the implementation of the administrative service;
3. creation and popularization of standards for the quality of administrative services;
4. coordination and interaction with all parties interested in improving administrative services;
5. periodic research, measurement and management of user satisfaction;
6. (suppl. – SG No 90 of 2021, in force from 01.04.2022) provision of various forms and methods for applying for administrative services and for providing administrative services;
7. Official collection of information and evidence;
8. providing different ways of paying the due fees or service prices by bank and/or electronic means, by payment card and/or in cash.

392 Чл. 2. Наредба За Административното Обслужване (ЗАГЛ. ИЗМ. - ДВ, БР. 47 ОТ 2008 Г., В СИЛА ОТ 01.06.2008 Г.) [ДВ. бр.47 от 24 Юни 2022г.]
(1) (Изм. - ДВ, бр. 9 от 2020 г.) Административното обслужване се осъществява при спазване на следните принципи:
1. равнопоставено отношение към всички потребители;
2. осигуряване на пълна информация за актовете, административните услуги и действията, издавани и/или извършвани при осъществяване на административното обслужване;
3. създаване и популяризиране на стандарти за качество на административното обслужване;
4. координираност и взаимодействие с всички страни, заинтересовани от подобряване на административното обслужване;
5. периодично проучване, измерване и управление на удовлетвореността на потребителите;
6. (доп. - ДВ, бр. 90 от 2021 г., в сила от 01.04.2022 г.) осигуряване на различни форми и начини за заявяване на административни услуги и за осъществяване на административно обслужване;
7. служебно събиране на информация и доказателствени средства;
8. осигуряване на различни начини на плащане на дължимите такси или цени на услугите по банков и/или електронен път, с платежна карта и/или в брой.
(2) (Нова - ДВ, бр. 9 от 2020 г.) В производствата по приемане и разглеждане на жалби, предложения и сигнали се прилагат принципите по ал. 1, освен ако в закон е предвидено друго.
(3) (Предишна ал. 2 - ДВ, бр. 9 от 2020 г.) Администрациите периодично изследват и оповестяват удовлетвореността на потребителите от административното обслужване.
(4) (Изм. - ДВ, бр. 58 от 2010 г., в сила от 30.07.2010 г., предишна ал. 3, доп. - ДВ, бр. 9 от 2020 г.) При осъществяване на административното обслужване администрациите се ръководят и използват посочените в доклада по чл. 62, ал. 2 от Закона за администрацията добри практики, както и идентифицираните и популяризираните добри практики от конкурсите за добри практики, които се организират от Института по публична администрация съгласно устройства му правилник.
(2) The principles under para 1, unless otherwise provided by law.

(3) The administrations periodically examine and publicize the satisfaction of users with the administrative service.

(4) When providing administrative services, the administrations are guided and used specified in the report under Art. 62 para 2 of the Act on the Administration of Good Practices, as well as the identified and promoted good practices from the competitions for good practices, which are organized by the Institute of Public Administration in accordance with its regulations.

Further, Art. 38 of the Administrative Procedure Code plays an important role:

Respect for the confidentiality of the parties and other participants in the proceedings

Art. 38\(^{393}\) The parties and other participants in the proceedings have the right to their secrets, including those affecting their private lives, their production and professional secrets, not to be distributed, except in cases provided by law.

In special cases the Criminal Code might be applicable as it punishes certain actions, which would disclose secrets that shall legally not be disclosed.

Art. 284\(^{394}\) An official who, to the detriment of the state, an enterprise, organisation or a private person to another or publishes information that is entrusted to him or available to him in his official capacity and which he knows to be an official secret, shall be punished by imprisonment for up to two years or by probation.

(2) The punishment for an act under para 1 is also imposed on a non-official person working in a state institution, enterprise or public organisation, to whom information representing an official secret became known in connection with his work.

(3) If the act under para 1 was committed by an expert, translator or interpreter in relation to information that became known to him in connection with the task assigned to him,
which is obliged to keep secret, the penalty is imprisonment for up to two years or probation.

(c) Data secrecy (Data protection laws, Customs Act, General Tax Code)

The General Data Protection Regulation applies in connection with rules of the Personal Data Protection Act, the Customs Code and the General Tax (Procedures) Code. The Customs Act holds the following to the processing of data:

**Art. 17a Customs Act**

1. In the performance of their official duties, customs officers may process personal data.
2. Customs officials may also process personal data received from other authorities for the purposes for which they were provided. These data are only forwarded with the permission of the authority that provided them.
3. When processing personal data related to intelligence activities, detection and investigation of violations or crimes under Art. 234, 242, 242a and 251 of the Criminal Code and under Art. 255 of the Criminal Code in relation to import VAT and excise duties, customs officials:
   1. they may not ask for the individual’s consent;
   2. they may not inform the individual before and during the processing of his personal data;

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395 Закон за защита на личните данни.
396 Чл. 17а. (Нов - ДВ, бр. 45 от 2005 г., изм. - ДВ, бр. 17 от 2019 г.)

(1) При изпълнение на служебните си задължения митническите служители може да обработват лични данни.

(2) Митническите служители може да обработват и лични данни, получени от други органи, за целите, за които са предоставени. Тези данни се препредават само с разрешение на органа, който ги е предоставил.

(3) При обработване на лични данни, свързано с дейностите по разузнаване, разкриване и разследване на нарушения или престъпления по чл. 234, 242, 242a и 251 от Наказателния кодекс и по чл. 255 от Наказателния кодекс по отношение на задължения за ДДС от внос и акцизи, митническите служители:
   1. може да не искат съгласието на физическото лице;
   2. може да не информират физическото лице преди и по време на обработването на личните му данни;
   3. предоставят личните данни само на органите за защита на националната сигурност, противодействие на престъпността и опазване на обществения ред, както и на органите на съдебната власт за нуждите на конкретно наказателно производство;
   4. обменят лични данни с компетентни органи и получатели от държави – членки на Европейския съюз, трети държави или международни организации в съответствие с Регламент (ЕС) 2016/679 на Европейския парламент и на Съвета от 27 април 2016 г. относно защитата на физическите лица във връзка с обработването на лични данни и относно свободното движение на такива данни и за отмяна на Директива 95/46/ЕО (Общ регламент относно защитата на даниите) (ОВ, L 119/1 от 4 май 2016 г.), наричан по-нататък “Регламент (ЕС) 2016/679”, и със Закона за защита на личните данни.
   5. Сроковете за съхранение на данните по ал. 3 или за периодична проверка на необходимостта от съхранението им се определят от директора на Агенция “Митници”. Тези данни се изтриват и в изпълнение на съдебен акт или решение на Комисията за защита на личните данни.

(7) Директорът на Агенция “Митници” определя длъжностно лице по защита на данните.
3. provide personal data only to the authorities for the protection of national security, countering crime and the protection of public order, as well as to the judicial authorities for the needs of specific criminal proceedings;


(4) The data storage terms under para 3 or for periodic verification of the need for their storage are determined by the director of the Customs Agency. These data are also deleted in compliance with a court act or a decision of the Commission for the Protection of Personal Data.

(5) The processing of personal data is carried out under the conditions and in accordance with this law, Regulation (EU) 2016/679 and the Personal Data Protection Act.

(6) The administrator of personal data is the director of the “Customs” Agency, who assigns the processing of personal data to officials authorized by him.

(7) The director of the Customs Agency shall appoint a data protection officer.

(d) Official secrecy (Customs Code, General Tax Code)

The keeping of secrecy (company related ones, state relates ones) is ensured by penal law. In addition, the Law on Classified Information might apply.

Art. 1 Act on Classified Information (1) This law regulates public relations related to the creation, processing and storage of classified information, as well as the terms and conditions for providing access to it.

(2) The purpose of the law is the protection of classified information from unregulated access.

(3) Classified information within the meaning of this law is information representing a state or official secret, as well as foreign classified information.

Further, the Customs Act area provides for Art. 17 Customs Act:

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397 Закон за защита на класифицираната информация.
398 Глава първа.
Общи Положения
Чл. 1. Закон за защита на класифицираната информация
(1) Този закон урежда обществените отношения, свързани със създаването, обработването и съхраняването на класифицирана информация, както и условията и реда за предоставяне на достъп до нея.
(2) Цел на закона е защитата на класифицираната информация от нерегламентиран достъп.
(3) Класифицирана информация по смисъла на този закон е информацията, представляваща държавна или служебна тайна, както и чуждестранната класифицирана информация.
Art. 17 Customs Act\textsuperscript{399}

(1) When \textit{performing their official duties, customs officials are obliged} to:
1. to comply with the organisation of work at the customs office;
2. to protect the property, rights and freedoms of individuals;
3. to present a customs mark and official card;
4. to wear uniform clothing, when this is provided for the relevant positions in the Organisational Rules of the Customs Agency;
5. to observe the ethical norms of behaviour of the customs officer approved by order of the Minister of Finance;
6. \textit{not to disclose circumstances and facts that became known to them during or on the occasion of the performance of official duties their duties, defined by this law as an official secret, except at the written request of a state body, when this is provided for by law, or of another customs body, or of a body of the National Revenue Agency in connection with the exercise of its powers}. The conditions and procedure for providing information on circumstances and facts constituting an official secret to another customs authority are determined by the director of the Customs Agency.

(2) The list of categories of information subject to classification as an official secret shall be determined by order of the director of the Customs Agency.

(3) The conditions and order for the issuance and use of the customs mark and service card shall be determined by order of the director of the Customs Agency.

(4) For non-fulfilment of the obligations under para 1 customs officials bear disciplinary responsibility.

\textsuperscript{399} Чл. 17. Закон за митниците

(1) При изпълнение на служебните си задължения митническите служители са длъжни:
1. да спазват организационата на работа в митническото учреждение;
2. да опазват имуществото, правата и свободите на лицата;
3. да представят митнически знак и служебна карта;
4. (доп. - ДВ, бр. 63 от 2000 г.) да носят униформено облекло, когато това е предвидено за съответните длъжности в Устройствения правилник на Агенция “Митници”;
5. (нова - ДВ, бр. 37 от 2003 г.) да спазват утвърдените със заповед на министъра на финансовите етнични норми на поведение на митнически служител;
6. (изм. и доп. - ДВ, бр. 63 от 2000 г., предишна ал. 5 - ДВ, бр. 37 от 2003 г., доп. - ДВ, бр. 91 от 2005 г., в сила от 01.01.2006 г., изм. - ДВ, бр. 44 от 2009 г., изм. - ДВ, бр. 58 от 2016 г.) да не разгласяват обстоятелства и факти, станали им известни при или по повод на изпълнение на служебните им задължения, определени от този закон като служебна тайна, освен по писмено искане на държавен орган, когато това е предвидено със закон, или на друг митнически орган, или на орган на Националната агенция за приходите във връзка с осъществяване на правомощията му. Условията и редът за предоставяне на сведения за обстоятелства и факти, съставляващи служебна тайна, на друг митнически орган се определят от директора на Агенция “Митници”.

(2) (Нова - ДВ, бр. 15 от 2013 г., в сила от 01.02.2013 г.) Списъкът на категориите информация, подлежаща на класификация като служебна тайна, се определя със заповед на директора на Агенция “Митници”.

(3) (Нова - ДВ, бр. 60 от 2015 г.) Условията и редът за издаването и ползването на митническия знак и служебната карта се определят със заповед на директора на Агенция “Митници”.

(4) (Предишна ал. 2 - ДВ, бр. 15 от 2013 г., в сила от 01.02.2013 г., предишна ал. 3 - ДВ, бр. 60 от 2015 г.) За неизпълнение на задълженията по ал. 1 митническите служители носят дисциплинарна отговорност.
Investigation reports (European Structural and Investment Funds Administration Regulation/Public Financial Inspection Act)

Art. 32
(1) A report with findings, recommendations and deadlines for implementation shall be prepared for the results of the inspections. The report is sent to the head of the inspected administrative structure, who can give a written opinion within 15 days.
(2) In the event that the head of the audited administrative structure does not send a written opinion within the period under para 1, the report is considered final.
(3) A final report shall be prepared within one month from receipt of the written opinion. If necessary, the director of the “AFCOS” directorate can appoint an additional inspection to clarify the opinion of the head of the relevant structure, after which a final report is prepared within one month.
(4) Depending on the findings in the final report, the director of the “AFCOS” Directorate:
1. makes recommendations to the head of the inspected administrative structure and relevant deadlines for their implementation;
2. in the presence of data on a committed violation, sends a signal to the competent authorities for seeking administrative criminal and/or disciplinary liability according to the relevant order;
3. in the presence of data on a committed crime, sends a signal to the relevant law enforcement authorities;
4. presents information on the findings of the inspection and the recommendations made at a meeting of the Council for coordination in the fight against offences affecting the financial interests of the European Union.

(5) In the event that the report under para 1 contains findings regarding irregularity and/or suspected fraud in which the head of the inspected structure is involved, the report is provided only to the authorities under Art. 7 ZUSESIF and/or the relevant law enforcement authorities.

(6) The head of the audited administrative structure, within two months of giving the recommendations, is obliged to notify the director of the “AFCOS” Directorate in writing about the actions taken in connection with their implementation.

Public Financial Inspection Act

Section III. Carrying out a financial inspection

Art. 16 (1) Financial inspections are carried out by the financial inspectors of the agency based on an order of the director of the agency or officials authorized by him.
(2) The order under para 1 is not subject to appeal.

Art. 17 (1) Regarding the results of the financial inspection, the relevant financial inspector prepares a report that contains the findings supported by evidence.
(2) After the delivery of the report, the head of the inspected organisation or person may give a written opinion within 14 days of the delivery of the report.

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402 Закон за държавната финансова инспекция.
403 Раздел III.
Извършване на финансова инспекция
Чл. 16. Закон за държавната финансова инспекция
(1) Финансовите инспекции се извършват от финансовите инспектори на агенцията въз основа на заповед на директора на агенцията или упълномощени от него дължностни лица.
(2) Заповедта по ал. 1 не подлежи на обжалване.

404 Чл. 17. Закон за държавната финансова инспекция
(1) За резултатите от финансовата инспекция съответният финансов инспектор изготвя доклад, който съдържа направените констатации, подкрепени с доказателства.
(2) След връчването на доклада ръководителят на проверяваната организация или лицето може да даде писмено становище в 14-дневен срок от връчването на доклада.
(3) По реда и в срока по ал. 2 копие от съответните констатации от доклада и доказателствата към тях се предоставят за писмено становище на лицата, чиято дейност е била обект на финансовата инспекция.
(4) (Изм. - ДВ, бр. 86 от 2007 г.) Финансовият инспектор, извършил финансовата инспекция, се произнася с мотивирано писмено заключение в 14-дневен срок от постъпването на писмените становища по ал. 2 и 3. Мотивираното писмено заключение се представя на ръководителя на проверяваната организация или лице, както и на лицата по ал. 3, в 14-дневен срок.
(5) (Изм. - ДВ, бр. 60 от 2011 г.) Докладът по ал. 1, мотивираното писмено заключение по ал. 4 и писмените становища по ал. 2 и 3 се представляват в срок три работни дни на органа, издал заповедта по чл. 16, ал. 1 за предприемане на последващи мерки.
(3) In accordance with the procedure and within the period under para 2 a copy of the relevant findings from the report and the evidence to them are provided for a written opinion to the persons whose activity was the subject of the financial inspection.

(4) The financial inspector, who has carried out the financial inspection, issues a motivated written conclusion within 14 days from the receipt of the written opinions under para 2 and 3. The reasoned written conclusion is submitted to the head of the inspected organisation or person, as well as to the persons under para 3, within 14 days.

(5) The report under para 1, the reasoned written conclusion under para 4 and the written opinions under para 2 and 3 shall be submitted within three working days to the authority that issued the order under Art. 16 para 1 to take follow-up measures.

(5) **Support to the inspectors (Customs Code, General Tax Code, Public Financial Inspection Act)**

112 Especially the tax procedure requires the Economic Operators to cooperate and support the inspectors by providing the relevant material to clear and solve an irregularity issue.

113 In the area of structural funds invoices and documents may be requested and must be submitted to inspectors timely:

**Section II. Check for irregularity or absence of irregularity**

**Art. 10** […] (4) The bodies of state power and the bodies of local self-government, as well as their administrations, are obliged to provide assistance in carrying out checks on reports of irregularities.

[See above for original law text → Investigative powers in the area of structural funds and internal policies ]

**Art. 63**

405 **Act on Management of Funds from European Funds under Shared Management**

(1) The managing body may require additional submission of documents in connection with requests for interim and final payments, as well as explanations from the beneficiary, when:

1. an amount included in the payment request is not due;

405 Чл. 63. редба за администриране на нередности по европейските структурни и инвестиционни фондове

(1) Управляващият орган може да изисква допълнително представяне на документи във връзка с искания за междинни и окончателни плащания, както и на разяснения от бенефициента, когато:

1. сума, включена в искането за плащане, не е дължима;
2. не са предоставени заверени фактури и/или счетоводни документи с еквивалентна доказателствена стойност, или други изисквания документи, доказващи извършване на дейностите в съответствие с условията за допустимост по раздел I;
3. има съмнение за нередност, отнасяща се до съответните разходи;
4. представените документи за физическия и финансов напредък на проекта са некоректно попълнени или не съдържат цялата задължителна информация.

(2) За представяне на документите и разясненията по ал. 1 управляващият орган определя разумен срок, който не може да бъде по-дълъг от едни месец. Срокът по чл. 62, ал. 1 спира да тече до представянето на документите и разясненията, но общо за не повече от едни месец.
2. certified invoices and/or accounting documents with equivalent probative value, or other required documents proving the performance of the activities in accordance with the eligibility conditions under Section I, have not been provided;
3. there is a suspicion of irregularity relating to the relevant expenses;
4. the submitted documents for the physical and financial progress of the project are incorrectly completed or do not contain all the mandatory information.

(2) For presentation of the documents and explanations under para 1 the managing body shall determine a reasonable period, which cannot be longer than one month. The term under Art. 62, para 1 stop running until the documents and explanations are presented, but in total for no more than one month.

Art. 64⁴⁰⁶ (1) In the event that a beneficiary does not submit a document or explanations under Art. 63 or an irregularity administration procedure has been initiated, the relevant expense is not verified and may be included in a subsequent payment request.
(2) In the event that a beneficiary does not make a request for final payment within one month of the completion of all activities under the project, the managing body may carry out ex officio closure of the project based on an on-the-spot inspection carried out by him.
(3) Apart from the cases under para 1 the head of the managing body issues a refusal to verify the costs included in a request for payment for which eligibility has not been confirmed. Refusal of verification is also issued for establishing unduly paid and over-paid sums for the project as a result of verification.
(4) The refusal under para 3 may be contested before a court in accordance with the Administrative Procedure Code, and the provisions of Art. 27 para 2, 3, 5 and 6.

(6) Preservation of Evidence (Customs Code, General Tax Code, Public Financial Inspection Act)

Special rules of the Public Financial Inspection Act govern the preservation of evidence (see below Digital financial/forensic inspections/operations). The Tax Code and the Tax

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⁴⁰⁶ Чл. 64. редба за администриране на нередности по европейските структурни и инвестиционни фондове
(1) (Доп. - ДВ, бр. 85 от 2017 г.) В случай че бенефициент не представи в срок документ или разяснения по чл. 63 или е започнала процедура по администриране на нередност, съответният разход не се верифицира, като може да бъде включен в следващо искане за плащане.
(2) (Изм. - ДВ, бр. 43 от 2016 г.) В случай че бенефициент не направи искане за окончателно плащане в едномесечен срок от приключването на всички дейности по проекта, управляващият орган може да извърши служебно приключване на проекта въз основа на извършена от него проверка на място.
(3) (Нова - ДВ, бр. 52 от 2020 г., доп. - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) Извън случаите по ал. 1 ръководителят на управляващия орган издава отказ за верификация на разходите, включени в искане за плащане, за конто не е потвърдена допустимост. Отказ за верификация се издава и за установяване на недължимо платени и надплатени суми по проект вследствие на извършено верифициране.
(4) (Нова - ДВ, бр. 52 от 2020 г.) Отказът по ал. 3 може да се оспорва пред съд по реда на Административнопроцесуалния кодекс, като при съдебното оспорване се прилагат съответно разпоредбите на чл. 27, ал. 2, 3, 5 и 6.
Procedure contain various rules on the preservation through seizure. The Customs Code enables the controllers to seize important documents and products.

g) A closer look at single Bulgarian measures

aa. Interviewing/Questioning of “persons concerned” in administrative proceedings

The interviewing and questioning of “persons concerned” is possible by virtue of the tax administration laws as well as the Customs Act (Art. 16 et seq. Customs Act) and mostly it is attached to minutes or summons.

bb. Interviewing/Questioning of witnesses

Art. 16 of the Customs Act presents various possibilities to require information from the Economic Operator, but it does not explicitly relate to interviewing or questioning of witnesses.

c. Inspections

(1) Anti-Corruption and Asset Forfeiture Act

In relation to irregularities that result from corruption the Anti-corruption Act rules the following:

Anti-Corruption and Asset Forfeiture Act

Art. 107 (1) The Commission initiates proceedings for confiscation of illegally acquired property when it can be reasonably assumed that a given property was illegally acquired.

(2) A reasonable assumption is present when, after an inspection, a significant discrepancy is found in the property of the inspected person.

Art. 108 (1) The inspection under Art. 107, para. 2 begins with an act of the director of the relevant territorial directorate, when a person is accused of a crime under:

407 Чл. 107. Закон за противодействие на корупцията и за отнемане на незаконно придобитото имущество
(1) Комисията образува производство за отнемане на незаконно придобито имущество, когато може да се направи обосновано предположение, че дадено имущество е незаконно придобито.
(2) Обосновано предположение е налице, когато след проверка се установи значително несъответствие в имуществото на проверяваното лице.

408 Чл. 108. Закон за противодействие на корупцията и за отнемане на незаконно придобитото имущество
(1) Проверката по чл. 107, ал. 2 започва с акт на директора на съответната териториална дирекция, когато лице е обвинено като обвиняем за престъпление по:
1. член 108а, ал. 1 - 3 и чл. 109, ал. 3;
2. член 116, ал. 1, т. 7 и 10;
3. член 142;
4. членове 155, 156, чл. 158а, ал. 2 и чл. 159, ал. 5;
1. Article 108a paras 1–3 and Article 109 para 3;
2. Article 116 para 1 items 7 and 10;
3. Article 142;
4. Articles 155, 156, 158a para 2 and Art. 159 para 5;
5. Articles 159a–159d;
6. Article 196a;
7. Article 199;
8. Articles 201–203;
9. Article 208 paras 3, 4 and 5;
10. Articles 209 para 1 and 2, 210, 211, 212 paras 3, 4 and 5 and Article 212a;

5. членове 159а - 159г;
6. член 196а;
7. член 199;
8. членове 201–203;
9. член 208, ал. 3, 4 и 5;
10. член 209, ал. 1 и 2, чл. 210, 211, чл. 212, ал. 3, 4 и 5 и чл. 212а;
11. членове 213а–214;
12. член 215, ал. 2, т. 1 и 3;
13. член 219, ал. 3 и 4, чл. 220, ал. 2 и чл. 225в, ал. 1 и 2;
14. член 227в, ал. 2;
15. член 233, ал. 1 и 2, чл. 234, ал. 2, чл. 234а, 234б и чл. 235, ал. 3–5;
16. членове 242 и 242а;
17. членове 243–246, ал. 5 и чл. 249–252;
18. член 253, чл. 254а, ал. 1 и 2, чл. 253б, ал. 2, чл. 255–256, чл. 259 и чл. 260, ал. 1;
19. член 280;
20. членове 282, 283 и 283а;
21. членове 301–305а, чл. 307в и 307г;
22. член 308, ал. 2 и 3 и чл. 310, ал. 1;
23. член 321, ал. 1–3 и 6, чл. 321а, ал. 1 и 2 и чл. 327, ал. 1–3;
24. член 337, ал. 1–4, чл. 339, ал. 2 и чл. 346, ал. 2, т. 4, ал. 3 и 6;
25. член 354а, ал. 1, 2 и 4, чл. 354б, ал. 4–6 и чл. 354в, ал. 1–3 от Наказателния кодекс.

(2) Проверката започва и когато лице не е било привлечено като обвиняем за престъпление по ал. 1 поради това, че е отказано образуване на наказателно производство или образуваното наказателно производство е било прекратено, тъй като:
1. е последвала амнистия;
2. е изтекла предвидената в закона давност;
3. след извършване на престъплението децът е изпаднал в продължително разстройство на съзнанието, което изключва вменяемостта;
4. децът е починал;
5. по отношение на лицето е допуснат трансфер на наказателно производство в друга държава.
(3) Проверката започва и когато наказателното производство за престъпление по ал. 1 е спряно и лицето не може да бъде привлечено като обвиняем, тъй като:
1. след извършване на престъплението е изпадало в краткотрайно разстройство на съзнанието, което изключва вменяемостта, или има друго тежко заболяване;
2. притежава имунитет;
3. е с неизвестен адрес и не може да бъде намерено.
(4) Проверката по тази глава започва и продължава независимо от спирането или прекратяването на наказателното производство.
(5) Проверката започва и при установено несъответствие в размер на не по-малко от 20 000 лв. в случаите на чл. 46, ал. 4 и 5 и чл. 106, ал. 2, т. 2, както и при установен с влязъл в сила акт конфликт на интереси.
(6) Проверката започва и при неподаване в срок на декларация по чл. 35, ал. 1, т. 2 или 4, освен ако неподаването се дължи на причини, за които лицето не отговаря.
11. Articles 213a–214;
12. Article 215 para 2 items 1 and 3;
13. Articles 219 paras 3 and 4, 220 para 2, 225c paras 1 and 2;
14. Article 227c para 2;
15. Articles 233 paras 1 and 2, 234 para 2, 234a, 234b and Article 235 paras 3–5;
16. Articles 242 and 242a;
17. Articles 243–246, 248a para 5 and Articles 249–252;
18. Articles 253, 253a paras 1 and 2, 253b, 254b para 2, 255–256, 259 and Article 260 para 1;
19. Article 280;
20. Articles 282, 283 and 283a;
21. Articles 301–305a, 307c and 307d;
22. Article 308 paras 2 and 3 and Article 310 para 1;
23. Article 321 paras 1–3 and 6, Article 321a paras 1 and 2 and Article 327 paras 1–3;
24. Articles 337 paras 1–4, 339 para 2 and Article 346 para 2 item 4, paras 3 and 6;
25. Articles 354a paras 1, 2 and 4, 354b paras 4–6 and Article 354c paras 1–3 of the Criminal Code.

(2) The inspection also begins when a person has not been charged with a crime under para. 1 due to the fact that the initiation of criminal proceedings was refused or the initiated criminal proceedings were terminated, because:
1. an amnesty followed;
2. the statutory statute of limitations has expired;
3. after committing the crime, the perpetrator fell into a prolonged disorder of consciousness, which excludes sanity;
4. the perpetrator has died;
5. in relation to the person, the transfer of criminal proceedings to another country has been allowed.

(3) The inspection also begins when the criminal proceedings for a crime under para. 1 is suspended and the person cannot be brought as an accused because:
1. after committing the crime, fell into a short-term disorder of consciousness, which excludes sanity, or has another serious illness;
2. has immunity;
3. is of unknown address and cannot be found.

(4) The inspection under this chapter begins and continues regardless of the suspension or termination of the criminal proceedings.

(5) The inspection also begins in the event of an established non-compliance in the amount of not less than BGN 20,000 in the cases of Art. 46 para 4 and 5 and Art. 106 para 2 item 2, as well as in the event of a conflict of interest established by an effective act.
(6) The inspection also begins if a declaration under Art. 35, para. 1, item 2 or 4, unless the non-submission is due to reasons for which the person is not responsible.

Regulation Determining the Procedures for Administration of Irregularities Under Funds, Instruments and Programs Co-Financed by the European Union

Chapter Four. Control

Art. 31 In carrying out its activities, the AFCOS Directorate:
1. performs administrative checks and controls regarding the implementation of the procedure for administering the received signals and established irregularities in the administrative structures responsible for the management and/or control of EU funds, including the fulfilment of the duties of the relevant responsible persons;
2. carries out inspections regarding compliance with other additional requirements according to the provisions of Decree No 18 of the Council of Ministers of 2003;
3. initiates inspections according to the competence of the bodies administering European funds, instruments and programs, and if necessary, employees of the directorate are present during the inspections;
4. analyses the results of the administrative checks under items 1–3.

Art. 32 (1) In carrying out its administrative control functions, the Directorate shall carry out initial and follow-up documentary checks.

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409 Наредба за определение на процедурите за администриране на нередности по фондове, инструменти и програми, съфинансираны от европейския съюз (ЗАГЛ. ДОП. - ДВ, БР. 6 ОТ 2012 Г.)
410 Глава четвърта.

Контрол

Чл. 31. (Изм. - ДВ, бр. 5 от 2010 г., изм. - ДВ, бр. 90 от 2010 г., в сила от 16.11.2010 г., изм. - ДВ, бр. 7 от 2011 г., изм. - ДВ, бр. 6 от 2012 г.) При осъществяване на дейността си Дирекция АФКОС:
1. извършва административни проверки и контрол относно прилагането на процедурата за администриране на получените сигнали и установени нередности в административните структури, отговарящи за управлението н/или контрола на средствата от ЕС, включително изпълнението на задълженията на съответните отговорни лица;
2. извършва проверки относно спазването на други допълнителни изисквания съгласно разпоредбите на Постановление № 18 на Министерския съвет от 2003 г.;
3. (нова - ДВ, бр. 6 от 2012 г.) инициира проверки съгласно компетентността на органите, администриращи европейски фондове, инструменти и програми, като при необходимост служители на дирекцията присъстват при извършване на проверките;
4. (предишна т. 3, изм. - ДВ, бр. 6 от 2012 г.) анализира резултатите от административните проверки по т. 1–3.

(2) (Изм. - ДВ, бр. 5 от 2010 г., изм. - ДВ, бр. 90 от 2010 г., в сила от 16.11.2010 г., изм. - ДВ, бр. 7 от 2011 г., изм. - ДВ, бр. 6 от 2012 г.) Първоначалните проверки се извършват във всички структури, администриращи европейски фондове, инструменти и програми. Проверките се извършват от служители на дирекция АФКОС след писмено уведомление до проверяваната административна структура от директора на дирекцията. В писменото уведомление се посочват целите, срокът, обхватът, мястото на проверката, името и длъжността на лицата, които следва да извършват проверката.
(3) При необходимост в проверките могат да участват външни експерти.
Initial checks shall be carried out in all structures administering European funds, instruments and programmes. Checks shall be carried out by staff of the AFCOS Directorate following written notification to the administrative structure being checked by the Director of the Directorate. The written notification shall specify the objectives, the time limit, the scope, the place of the inspection, the name and the title of the persons to be inspected.

Where necessary, external experts may participate in the inspections.
1. to carry out inspections related to customs supervision and control of goods, vehicles and persons in the areas of border checkpoints and throughout the country;
2. to take the necessary measures permitted by law to carry out customs control;
3. to require the presentation or delivery of goods, documents, information and other information carriers related to customs supervision and control;
3a. to issue certificates of preferential origin of the goods, as well as control the issuance of certificates of non-preferential origin of the goods by the persons who received permission from the director of the “Customs” Agency;
4. to require presentation of an identity document;
5. to require written or oral explanations;
6. to carry out subsequent customs control of goods and documents related to placing under customs regime with a customs declaration, with a declaration for temporary storage, with a summary declaration for entry, with a summary exit declaration, with re-export declaration or re-export notification;
7. to collect sums: for customs duties and fees, for unfulfilled obligations and sureties, for payment of the equivalent value of goods seized for the benefit of the state, when they are missing or alienated, and for other state receivables that are collected by the customs authorities;
8. to impose, in accordance with the procedure established by law, garnishments and foreclosures to secure duties due and other state receivables collected from them;
9. to carry out a personal examination of persons crossing the state border;

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(5) (Nova - ДВ, бр. 37 от 2003 г., изм. - ДВ, бр. 105 от 2005 г., в сила от 01.01.2006 г., изм. - ДВ, бр. 95 от 2009 г., в сила от 01.12.2009 г., изм. - ДВ, бр. 82 от 2011 г., в сила от 01.01.2012 г., изм. - ДВ, бр. 98 от 2018 г., в сила от 07.01.2019 г.) По писмено искане на директора на Агенция “Митници” и на директорите на териториални дирекции органите на Националната агенция за приходите предоставят данни за последващи сделки относно количеството, вида, стойността и произхода на стоки, обект на вноса-износа операции, за суми, подлежащи на внасяне или възстановяване по Закона за данък върху добавената стойност и Закона за акцизите и определени от органите на Националната агенция за приходите нарушения, извършени от лица, осъществяващи дейности по вноса и износа.
(6) (Nova - ДВ, бр. 37 от 2003 г., изм. - ДВ, бр. 105 от 2005 г., в сила от 01.01.2006 г.) Редът и начинът за електронен обмен на информация между митническата администрация и Националната агенция за приходите се определят със съвместна инструкция на директора на Агенция “Митници” и изпълнителния директор на Националната агенция за приходите.
(7) (Nova - ДВ, бр. 45 от 2005 г., изм. - ДВ, бр. 82 от 2011 г., в сила от 01.01.2012 г.) При извършване на проверки в рамките на последващия контрол или в хода на митническото разузнаване, когато се възпрепятства тяхното провеждане или когато са налице данни за откриване на факти и обстоятелства, които са от значение за случая, митническите органи могат да извършват претърсване и изземване по реда на Наказателно-процесуалния кодекс.
(8) (Nova - ДВ, бр. 45 от 2005 г.) Разпоредбите на Наказателно-процесуалния кодекс се прилагат и за правомощията и процесуалните действия на митническите органи по ал. 1, т. 10 при извършване на проверките по ал. 7, както и за правата и задълженията на проверяваните лица относно основанието и целите на претърсването и изземването, органиите, които го осъществяват, и лицата, които присъстват, както и относно правото на защита на проверяваните лица.
10. to carry out searches and seizures of goods that were or should have been subject to customs supervision and control and related documentation in offices, official and other premises, as well as personal search of the persons in them, subject to the provisions of the Criminal Procedure Code;
11. to carry out controlled deliveries together with the competent authorities of the Ministry of Internal Affairs and the State Agency “National Security” and with the permission of the relevant Prosecutor’s office.
(2) (Repealed).
(3) Customs officers have the right to carry service weapons and use them in unavoidable defence and in cases of extreme necessity.
(4) When exercising their powers, the customs authorities have the right to stop road vehicles in the interior of the country.
(5) At the written request of the director of the Customs Agency and the directors of territorial directorates, the bodies of the National Revenue Agency provide data on subsequent transactions regarding the quantity, type, value and origin of goods subject to import-export operations, for amounts subject to payment or refund under the Value Added Tax Act and the Excise and Tax Warehouse Act, as well as for violations established by the authorities of the National Revenue Agency, committed by persons carrying out import and export activities.
(6) The procedure and method for electronic exchange of information between the customs administration and The National Revenue Agency is determined by a joint instruction of the director of the Customs Agency and the executive director of the National Revenue Agency.
(7) When carrying out checks within the framework of the subsequent control or in the course of customs intelligence, when their conduct is hindered or when there is evidence of the concealment of facts and circumstances that are relevant to the case, the customs authorities may carry out search and seizure in accordance with the Criminal Procedure Code.
(8) The provisions of the Criminal Procedure Code also apply to the powers and procedural actions of the customs authorities under para 1 item 10 when carrying out the checks under para 7, as well as on the rights and obligations of the inspected persons regarding the basis and objectives of the search and seizure, the authorities that carry it out, and the persons who are present, as well as on the right of defence of the inspected persons.

(3) European Structural and Investment Funds Administration Regulation

In the area of structural funds and internal policies the European Structural and Investment Funds Administration Regulation plays the decisive role:
**Art. 30** In carrying out its activities, the “AFCOS” Directorate:
1. performs administrative inspections and control regarding the implementation of the procedures for the administration of irregularities by the authorities under Art. 2, responsible for the management and/or control of ESIF funds, including the performance of the duties of the relevant responsible persons;
2. analyses the results of the administrative checks under item 1.

**Art. 31** (1) In carrying out its administrative and control functions, the Directorate “AFCOS” carries out initial and subsequent inspections.

(2) Initial inspections are carried out in all bodies under Art. 2, responsible for the management and/or control of ESIF funds. Inspections are carried out by employees of the “AFCOS” directorate after a written notification to the inspected administrative structure by the director of the directorate.

(3) If necessary, external experts may participate in the inspections.

(4) **Agricultural Producers Assistance Act**

**Art. 37** (1) The integrated control system includes *administrative checks* of submitted applications for support and *on-site checks*.

(2) The paying agency performs administrative checks of the submitted applications through the integrated information system, comparing the data from the applications with the data in the registers. *Administrative checks are carried out automatically, and their results are reflected only in the administrative act*, with which a decision is made under Art. 11a para 1 item 1 on applications for support.

(3) Each year, the paying agency checks on the spot a control sample of the submitted applications for support based on a risk analysis.

(4) On-site inspections are carried out by:
1. *inspection* of the agricultural holding;
2. *remote sensing methods*.

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**413 Глава трета. Контрол**

**Чл. 30.** При осъществяване на дейността си дирекция “АФКОС”:
1. извършва административни проверки и контрол относно прилагането на процедурите за администриране на нередности от органи по чл. 2, отговарящи за управлението и/или контрола на средствата от ЕСИФ, включително изпълнението на задълженията на съответните отговорни лица;
2. анализира резултатите от административните проверки по т. 1.

**414 Чл. 31.**

(1) При осъществяване на административно-контролните си функции дирекция “АФКОС” извършва първоначални и последващи проверки.

(2) Първоначалните проверки се извършват във всички органи по чл. 2, отговарящи за управлението и/или контрола на средства от ЕСИФ. Проверките се извършват от служители на дирекция “АФКОС” след писмено уведомление до проверяваната административна структура от директора на дирекцията.

(3) При необходимост в проверките могат да участват външни експерти.

**415 See above → Investigative powers in the area of common market organisations.**
(5) Public Procurement Code

<table>
<thead>
<tr>
<th>Rule</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Of free access to all information, including classified information, according to their level of access in compliance with the “need to know” principle, as well as to all documents, including electronic media, that are stored in the inspected facility;</td>
</tr>
<tr>
<td>2.</td>
<td>Of free access to the office premises and to all employees in the inspected facility;</td>
</tr>
<tr>
<td>3.</td>
<td>To check the assets and liabilities, the established accounting system and all documents, including those on electronic media;</td>
</tr>
<tr>
<td>4.</td>
<td>To demand documents, certified copies of documents, information and references and other documents that are important for the inspections being carried out, within the terms set by them;</td>
</tr>
<tr>
<td>5.</td>
<td>To demand declarations for all bank accounts in the country and abroad from officials in the inspected object within the terms determined by them;</td>
</tr>
<tr>
<td>6.</td>
<td>To demand written explanations on issues related to the inspections being carried out from the officials in the inspected object within the terms determined by them;</td>
</tr>
<tr>
<td>7.</td>
<td>To request within the terms determined by them and to familiarize themselves with the reports of the internal auditors and of other control bodies, which are stored in the inspected organisation or person;</td>
</tr>
<tr>
<td>8.</td>
<td>To demand certified copies of documents, information and references from legal entities and sole traders outside the inspected site, related to the performance of inspections;</td>
</tr>
<tr>
<td>9.</td>
<td>To carry out counter-inspections in legal entities and sole traders, outside the inspected object, when this is necessary during the inspection;</td>
</tr>
<tr>
<td>10.</td>
<td>To familiarize themselves with materials collected in court proceedings, as well as with court decisions that are relevant to the audited activity;</td>
</tr>
<tr>
<td>11.</td>
<td>To search premises, means of transport, as well as other places where documents are stored at the inspected site, and to seize documents, computer data records and computer data carriers to provide evidence with the assistance of the authorities of the Ministry of internal affairs after obtaining permission from the court.</td>
</tr>
</tbody>
</table>

(2) The persons in the inspected sites are obliged to provide assistance to the bodies of the State Financial Inspection Agency and to provide the necessary documents, information and references related to public procurement.

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416 See above → Investigative powers in the area of direct expenditure.
**dd. Searches and Seizures**

The following laws and provisions relate to the conduct of search measures in the area of funds, which is very prone to frauds and therefore worth to take a closer look:

<table>
<thead>
<tr>
<th>Regulation Determining the Procedures for Administration of Irregularities Under Funds, Instruments and Programs Co-Financed by the European Union</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Chapter Four. Control</strong></td>
</tr>
<tr>
<td><strong>Art. 35</strong> When carrying out checks under Art. 31 and 32 of the AFCOS Directorate, the employees in the inspected administrative structures are obliged according to their powers:</td>
</tr>
<tr>
<td>1. to assist the examiners;</td>
</tr>
<tr>
<td>2. to provide examiners with free access to the office premises and to all documentation, including that stored on electronic media;</td>
</tr>
<tr>
<td>3. to provide the required information, including references, reports, copies of documents and others, which relate to the subject of the inspection, within the time limits set by the examiners.</td>
</tr>
</tbody>
</table>

| Art. 16 Customs Act (1) The operative-search activity is carried out by customs authorities, designated by order of the Minister of Finance on the proposal of the director of the Customs Agency. |

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417 Наредба за определяне на процедурите за администриране на нередности по фондове, инструменти и програми, съфинансирани от европейския съюз (ЗАГЛ. ДОП. - ДВ, БР. 6 ОТ 2012 Г.)
418 Чл. 35. (Изм. - ДВ, бр. 5 от 2010 г., изм. - ДВ, бр. 90 от 2010 г., в сила от 16.11.2010 г., изм. - ДВ, бр. 7 от 2011 г., изм. - ДВ, бр. 6 от 2012 г.) При извършване на проверки по чл. 31 и 32 от директория АФКОС служителите в проверваните административни структури са длъжни съобразно своите правомощия: |
| 1. да оказал съдействие на проверяващите; |
| 2. да осигуряват на проверяващите свободен достъп до служебните помещения и до цялата документация, включително до съхраняваната на електронен носител; |
| 3. да предоставят в определените от проверяващите срокове изисканата информация, включително справки, сведения, копия на документи и други, които се отнасят до предмета на проверката. |
419 Чл. 16д. (Нов - ДВ, бр. 60 от 2015 г.) (1) Оперативно-издирвателната дейност се осъществява от митнически органи, определени със заповед на министъра на финансите по предложение на директора на Агенция "Митниците". |
(2) Оперативно-издирвателната дейност на митническите органи има за цел: |
| 1. разкриване, предотвратяване и пресичане на престъпления по чл. 234, 242, 242а и 251 от Наказателния кодекс по отношение на задължения за ДДС от внос и акцизи; |
| 2. установяване самоличността на лица, подготвящи, извършващи или извършили престъпления по чл. 234, 242, 242а и 251 от Наказателния кодекс по отношение на задължения за ДДС от внос и акцизи; |
| 3. издирване на вещи, които са предмет или средство за извършване на престъпление по чл. 234, 242, 242а и 251 от Наказателния кодекс по отношение на задължения за ДДС от внос и акцизи; |
(3) Основанията за извършване на оперативно-издирвателна дейност от митническите органи са: |
| 1. получени данни за събития или за лица, които подготвят, извършват или вече са извършили престъпни деяния, когато не са достатъчни за образуване или започване на наказателно производство по чл. 234, 242,
(2) The operational and search activity of the customs authorities aims to:
1. detection, prevention and suppression of crimes under Art. 234, 242, 242a and 251 of the Criminal Code and under Art. 255 of the Criminal Code regarding import VAT and excise duties;
2. establishing the identity of persons preparing, committing or having committed crimes under Art. 234, 242, 242a and 251 of the Criminal Code and under Art. 255 of the Criminal Code regarding import VAT and excise duties;
3. search for items that are the object or means of committing a crime under Art. 234, 242, 242a and 251 of the Criminal Code and Art. 255 of the Criminal Code in relation to import VAT and excise duties or may serve as evidence.
(3) The grounds for carrying out operative-search activity by the customs authorities are:
1. received data on events or persons who are preparing, committing or have already committed criminal acts, when they are not sufficient to initiate or initiate criminal proceedings under Art. 234, 242, 242a and 251 of the Criminal Code and under Art. 255 of the Criminal Code regarding import VAT and excise duties;
2. request of the authorities of the pre-trial proceedings and the court.

The Public Financial Inspection Act stipulates the following powers:

Section II. Powers of the bodies of the Agency
Art. 13 When performing their official duties, the agency’s bodies have the right to:
1. of free access to all information, including classified information, according to their level of access in compliance with the "need to know" principle, as well as to all documents, including electronic media, that are stored in the inspected organisation or person;
2. of free access to the office premises and to all employees of the inspected organisation or person;
3. to check the assets and liabilities, the established accounting system and all documents, including those on electronic media;
4. to demand documents, certified copies of documents, reports and references and other documents relevant to the financial inspections being carried out from officials in the inspected organisations and persons within the terms determined by them;
5. to demand declarations for all bank accounts in the country and abroad from officials in the audited organisations and individuals within the terms determined by them;

242а и 251 от Наказателния кодекс и по чл. 255 от Наказателния кодекс по отношение на задължения за ДДС от внос и акцизи;
2. искане на органите на досъдебното производство и съда.
420 See above → Investigative powers in the area of structural funds and internal policies.
6. to demand written explanations from officials in the inspected organisations and persons on matters related to the financial inspections carried out within the terms determined by them;

7. to request within the terms determined by them and to familiarize themselves with the reports of the internal auditors, the Audit Office and other control bodies, which are stored in the inspected organisation or person;

8. to request certified copies of documents, information and references from legal entities and sole traders outside the inspected organisation or person, related to the performance of a financial inspection;

9. to carry out counter-inspections in legal entities and sole traders outside the inspected organisation or person, when this is necessary when carrying out a financial inspection;

10. to familiarize themselves with materials collected in court proceedings, as well as with court decisions that are relevant to the inspection activity;

11. to terminate the access of materially responsible persons to the inspected cash registers, warehouses and others by sealing them in the presence of an official from the inspected object;

12. to search premises, means of transport, as well as other places where documents of the inspected organisation or of a person under Art. 4, and to seize documents, records of computer information data and carriers of computer information data to provide evidence – with the assistance of the authorities of the Ministry of Internal Affairs after obtaining permission from the court.

The Public Procurement Code stipulates the following powers:

**Rules for conducting inspections by the State Financial Inspection Agency**

**Art. 239**

(1) When carrying out inspections under Art. 238 the bodies of the State Financial Inspection Agency have the right to:

1. of free access to all information, including classified information, according to their level of access in compliance with the “need to know” principle, as well as to all documents, including electronic media, that are stored in the inspected facility;

2. of free access to the office premises and to all employees in the inspected facility;

3. to check the assets and liabilities, the established accounting system and all documents, including those on electronic media;

4. to demand documents, certified copies of documents, information and references and other documents that are important for the inspections being carried out, within the terms set by them;

5. to demand declarations for all bank accounts in the country and abroad from officials in the inspected object within the terms determined by them;

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421 See above → Investigative powers in the area of direct expenditure.
6. to **demand written explanations** on issues related to the inspections being carried out from the officials in the inspected object within the terms determined by them;

7. to **request** within the terms determined by them and to familiarize themselves with the reports of the internal auditors and of other control bodies, which are stored in the inspected organisation or person;

8. to **demand certified copies of documents**, information and references from legal entities and sole traders outside the inspected site, related to the performance of inspections;

9. to **carry out counter-inspections in legal entities and sole traders, outside the inspected object**, when this is necessary during the inspection;

10. to familiarize themselves with materials collected in court proceedings, as well as with court decisions that are relevant to the audited activity;

11. to **search premises, means of transport, as well as other places** where documents are stored at the inspected site, and to **seize documents, computer data records and computer data carriers** to provide evidence with the assistance of the authorities of the Ministry of internal affairs after obtaining permission from the court.

(2) The persons in the inspected sites are **obliged to provide assistance** to the bodies of the State Financial Inspection Agency and to provide the necessary documents, information and references related to public procurement.

(1) **In national case-law**

Special examples from national case-law are missing but the case studies above present that all investigation measures are used in Bulgaria and they might be very intrusive in some cases.

(2) **In the case-law of the ECtHR**

The **main case** in this area of **searches** by eg customs officials that customs authority throughout Europe should obey is *Funke v. France (Funke v. France – A-256-B) appeal 10828/84 Decision of 25.02.1993*. A German national, that lived in France was visited by three customs officials that wanted to find out information about the family assets abroad and suspected Mr. Funke of tax evasion. The officials searched the house and found and seized foreign bank statements and check books, as well as a bill for car repairs in Germany, and two cameras. Mr. Funke was subsequently asked to provide information about his bank information and he was sentenced to pay fines. The ECHR found later several infringements and stated that:

> “Above all, in the absence of a requirement for judicial authorization, the limitations and conditions imposed by law and imposed by the government, are revealed to be too vague and full of loopholes to hold that the interference with the applicant’s rights was strictly proportionate to the legitimate aim pursued. To these general considerations may be added the specific note that the customs authorities have never filed a complaint

Bulgaria

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against Mr. Funke for violating the regulations governing financial relations abroad. In short, there is a violation of Art. 8.”

**ee. The seizure of digital forensic evidence including bank account information**

Since the OLAF Regulation was amended the access to bank account information has become more and more important, which is highlighted in the Bulgarian AFCOS Report 2022:

“5. MF – coordination at the national level In 2021, the AFCOS Directorate also initiated, in cooperation with the Ministry of Finance has prepared an amendment to the Act on Credit Institutions for providing access to the AFCOS Directorate to information contained in the Register of bank accounts and safes and in the Central Credit Register, as well as for disclosure of information constituting ‘bank secrecy’ at the written request of the European Antitrust Office with the frauds. The change is in connection with the fulfilment of the commitment under Article 7(3a) of Regulation No 883/2013, amended by Regulation No 2020/2223. During the period, the work of the interdepartmental working group for the introduction into national legislation of Directive (EU) 2019/1937 on the protection of whistle-blowers Union law (Whistleblowers Directive) in connection with which a draft law has been prepared. Po request of the AFCOS Directorate, the Certification Body presented within its competences and opinion on matters related to the different implementation by the MA of the procedures for administering irregularities in the same cases and ascertained contradictory practice in the different MAs of the different programs.”

**ff. Acquisition of digital evidence**

The national AFCOS can gather digital evidence for OLAF actions on national territory.

The Public Financial Inspection Act stipulates the following under Art. 13:

<table>
<thead>
<tr>
<th>Section II. Powers of the bodies of the Agency</th>
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<tbody>
<tr>
<td><strong>Art. 13</strong> When performing their official duties, the agency’s bodies have the right to:</td>
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<tr>
<td>1. of <em>free access to all information</em>, including classified information, according to their level of access in compliance with the “need to know” principle, as well as to all documents, including electronic media, that are stored in the inspected organisation or person;</td>
</tr>
<tr>
<td>2. of <em>free access to the office premises and to all employees</em> of the inspected organisation or person;</td>
</tr>
</tbody>
</table>

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424 See above → Investigative powers in the area of structural funds and internal policies.
3. to **check the assets and liabilities**, the established accounting system and **all documents, including those on electronic media**;

4. to **demand documents, certified copies of documents, reports and references and other documents** relevant to the financial inspections being carried out from officials in the inspected organisations and persons within the terms determined by them;

5. to **demand declarations for all bank accounts** in the country and abroad from officials in the audited organisations and individuals within the terms determined by them;

6. to demand written explanations from officials in the inspected organisations and persons on matters related to the financial inspections carried out within the terms determined by them;

7. to request within the terms determined by them and to familiarize themselves with the reports of the internal auditors, the Audit Office and other control bodies, which are stored in the inspected organisation or person;

8. to **request certified copies of documents, information and references from legal entities and sole traders outside the inspected organisation or person**, related to the performance of a financial inspection;

9. to **carry out counter-inspections** in legal entities and sole traders outside the inspected organisation or person, when this is necessary when carrying out a financial inspection;

10. to familiarize themselves with materials collected in court proceedings, as well as with court decisions that are relevant to the inspection activity;

11. to terminate the access of materially responsible persons to the inspected cash registers, warehouses and others by sealing them in the presence of an official from the inspected object;

12. **to search premises, means of transport, as well as other places** where documents of the inspected organisation or of a person under Art. 4, and **to seize documents, records of computer information data and carriers of computer information data** to provide evidence – with the assistance of the authorities of the Ministry of Internal Affairs after obtaining permission from the court.

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135 The Public Procurement Code stipulates the following powers:

136 **Rules for conducting inspections by the State Financial Inspection Agency**

**Art. 239**

(1) When carrying out inspections under Art. 238 the bodies of the State Financial Inspection Agency have the right to:

1. of **free access to all information**, including classified information, according to their level of access in compliance with the “need to know” principle, as well as to all documents, including electronic media, that are stored in the inspected facility;

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425 See above → Investigative powers in the area of direct expenditure.
2. of free access to the office premises and to all employees in the inspected facility;
3. to check the assets and liabilities, the established accounting system and all documents, including those on electronic media;
4. to demand documents, certified copies of documents, information and references and other documents that are important for the inspections being carried out, within the terms set by them;
5. to demand declarations for all bank accounts in the country and abroad from officials in the inspected object within the terms determined by them;
6. to demand written explanations on issues related to the inspections being carried out from the officials in the inspected object within the terms determined by them;
7. to request within the terms determined by them and to familiarize themselves with the reports of the internal auditors and of other control bodies, which are stored in the inspected organisation or person;
8. to demand certified copies of documents, information and references from legal entities and sole traders outside the inspected site, related to the performance of inspections;
9. to carry out counter-inspections in legal entities and sole traders, outside the inspected object, when this is necessary during the inspection;
10. to familiarize themselves with materials collected in court proceedings, as well as with court decisions that are relevant to the audited activity;
11. to search premises, means of transport, as well as other places where documents are stored at the inspected site, and to seize documents, computer data records and computer data carriers to provide evidence with the assistance of the authorities of the Ministry of internal affairs after obtaining permission from the court.

(2) The persons in the inspected sites are obliged to provide assistance to the bodies of the State Financial Inspection Agency and to provide the necessary documents, information and references related to public procurement.

gg. Digital forensic operations within inspections or on-the-spot checks

(1) General remarks

Bulgaria has enables investigators to carry out digital forensic operations with an amendment to the Public Finance Inspection Act. The relevant legislation, which enables the financial controllers shall be printed off on the following pages. The State Financial Inspection Agency which exists since 2006, and AFCOS, might be contacted in order to carry out certain measures to discover EU frauds in Bulgaria:

Contact data
E-mail: adfi@adfi.minfin.bg

Formal requirements

Public Financial Inspection Act
Chapter three “a”

Assisting European Commission Controllers in Providing Access to Premises and/or Documentation for Carrying out on-the-spot Checks and Inspections under Council Regulation (EURATOM, EC) No 2185/96 of 11 November 1996 Concerning on-the-spot Checks and Inspections Carried out by the Commission in Order to Protect the European Communities’ Financial Interests Against Fraud and Other Irregularities.

Art. 31a\(^{427}\) In accordance with this Chapter, Commission controllers shall be assisted in carrying out on-the-spot checks and inspections where it is:

1. denied access to premises, means of transport, as well as other places where documents, records of computer information data, computer information data carriers of the inspected organisation or of a person under Article 4, item 7, financed by funds under international treaties or programmes of the European Union are stored;
2. refused the provision of documents, records of computer information data, computer data carriers necessary for the verification, provided access under item 1.

\(^{427}\) Чл. 31а. Закон за държавната финансова инспекция
(Нов - ДВ, бр. 98 от 2008 г.) По реда на тази глава се оказва съдействие на контролорите на Комисията при осъществяване на контрол и проверки на място в случаите, когато е:
1. отказан достъп до помещения, транспортни средства, както и до други места, в които се съхраняват документи, записи на компютърни информационни данни, носители на компютърни информационни данни на проверяваната организация или на лице по чл. 4, т. 7, финансиранi със средства по международни договори или програми на Европейския съюз;
2. отказано предоставянето на документи, записи на компютърни информационни данни, носители на компютърни информационни данни, необходими за проверката, при осигурен достъп по т. 1.
Art. 31b\(^{428}\) (1) The assistance shall be carried out by order of the Director of the Agency on the basis of a reasoned written request from the Director of the Directorate “Protection of the Financial Interests of the European Union (AFCOS)” of the Ministry of Interior.

(2) The request under para 1 contains data about the organisation or person under Art. 4 item 7, financed by funds under international treaties or programs of the European Union, the subject matter and purpose of the control or verification on the spot and the basis for the requested assistance under Art. 31a.

(3) To the request under para 1, copies of the power of attorney of the Commission controller and of the document in which the subject matter and purpose of the on-the-spot check or verification are given shall apply.

Art. 31g\(^{429}\) (1) The search and seizure shall be carried out by the Financial Inspector with the assistance of a representative of the Ministry of Interior in the presence of:

1. a representative of the inspected organisation or person financed by funds under international treaties or programmes of the European Union;
2. the Commission controller, and
3. two witnesses.

(2) The search and/or seizure operations shall be certified by a protocol containing an inventory of the documents seized. The protocol shall be signed by all persons under para 1. The refusal of the person under para 1, item 1 to sign the protocol shall be certified by the signature of one witness.


(2) Искането по ал. 1 съдържа данни за проверяваната организация или лице по чл. 4, т. 7, финансираны със средства по международни договори или програми на Европейския съюз, предмета и целта на контрола или проверката на място и основанието за търсеното съдействие по чл. 31a.

(3) Към искането по ал. 1 се прилагат копия от пълномощието на контрольора на Комуниятата и от документа, в който са посочени предметът и целта на контрола или проверката на място.

429 Чл. 31ж. (Нов - ДВ, бр. 98 от 2008 г.) (1) Претърсването и изземването се извършват от финансовия инспектор със съдействието на представителя на Министерството на вътрешните работи в присъствието на:

1. представителя на проверяваните организация или лице, финансираны със средства по международни договори или програми на Европейския съюз;
2. контрольора на Комисията, и
3. двама свидетели.

(2) Действията по претърсването и/или изземването се удостоверяват с протокол, който съдържа опис на иззетите документи. Протоколът се подписва от всички лица по ал. 1. Отказът на лицето по ал. 1, т. 1 да подписе протокола се удостоверява с подпис на един свидетел.

(3) Протоколът по ал. 2, преведен на английски език, се съставя в 4 еднообразни екземпляра - по един за контрольора на Комисията, за финансовия инспектор, за представителя на Министерството на вътрешните работи и за лицето по ал. 1, т. 1.

(4) За неуредените въпроси се прилагат съответно правила на Наказателно-процесуалния кодекс.
(3) The protocol under para 2, translated into English, shall be drawn up in 4 uniform copies, one each for the Controller of the Commission, for the Financial Inspector, for the Representative of the Ministry of Interior and for the person under para 1, item 1.

(4) The rules of the Criminal Procedure Code shall apply accordingly to outstanding matters.

Important is it to take into account para 4 of Art. 31g as this paragraph established a connection to the rules of the Bulgarian CPC.

(3) **Substantive requirements**

| Art. 31c<sup>430</sup> | (1) The order under Art. 31b para 1 contain: the name and registered office of the inspected organisation or person; the names and position of the financial inspector to assist; the name and position of the Commission controller to whom assistance will be provided; the basis for the assistance and the time limit for implementation.  
(2) The order under para 1 is not subject to appeal.

| Art. 31d<sup>431</sup> | The financial inspector shall establish the existence of the grounds under Art. 31a by an on-the-spot check in the inspected organisation or person under Art. 4, item 7, financed by funds under international treaties or programs of the European Union.

| Art. 31e<sup>432</sup> | (1) Where the financial inspector finds that the Commission controller has been denied access to premises, means of transport and other places where documents are stored, records of computer information data, computer data carriers of computer data of the inspected organisation or person, he shall draw up a statement of findings.  
(2) In case of established refusal under para 1. The Director of the Agency shall make a written request for assistance to the authorities of the Ministry of Interior to ensure access to the Commission controller.

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<sup>430</sup> Чл. 31в. (Нов - ДВ, бр. 98 от 2008 г.) (1) Заповедта по чл. 31б, ал. 1 съдържа: наименованието и седалището на проверяваните организация или лице; имената и длъжността на финансовия инспектор, който ще оказва съдействие; името и длъжността на контрольора на Комисията, на когото ще се оказва съдействие; основанието за оказване на съдействието и срока за изпълнение.  
(2) Заповедта по ал. 1 не подлежи на обжалване.

<sup>431</sup> Чл. 31г. (Нов - ДВ, бр. 98 от 2008 г.) Финансовият инспектор установява наличието на основанията по чл. 31а чрез проверка на място в проверяваните организация или лице по чл. 4, т. 7, финансиран със средства по международни договори или програми на Европейския съюз.

<sup>432</sup> Чл. 31д. (Нов - ДВ, бр. 98 от 2008 г.) (1) Когато финансовият инспектор установи, че на контрольора на Комисията е отказан достъп до помещения, транспортни средства, както и до други места, в които се съхраняват документи, записи на компютърни информационни данни, носители на компютърни информационни данни на проверяваните организации или лице, той съставя констативен протокол.  
(2) При установлен отказ по ал. 1 директорът на агенцията прави писмено искане за съдействие до органи на Министерството на вътрешните работи за осигуряване на достъп на контрольора на Комисията.  
(3) Органите на Министерството на вътрешните работи оказват съдействието по ал. 2 по предвидения в Закона за Министерството на вътрешните работи ред.
(3) The authorities of the Ministry of Interior shall cooperate under para 2 under the procedure laid down in the Act on the Ministry of Interior.

Art. 31f\(^{433}\) (1) Where the financial inspector finds that the inspected organisation or person financed by means under international treaties or programmes of the European Union refuses to provide documents and/or computer information data or their holder to the Commission controller, he shall draw up a statement of findings and may terminate access to the premises, means of transport and other places where documents of the organisation or person are kept, by sealing. A separate protocol shall be drawn up for sealing.

(2) In case of established refusal under para 1 the Director of the Agency or officials authorised by him shall make a reasoned request to the regional court of the registered office or address of the inspected organisation or person, or to carry out the search operation of the premises, means of transport and other places where there is sufficient evidence that they have documents and/or computer information, or their medium, which are relevant for the verification and for their seizure for the provision of evidence.

(3) The Regional Judge shall decide on the request under para 2 immediately on the day of its receipt in a closed session by a reasoned order which is not subject to appeal.

(4) After obtaining an authorisation under para 3 the Director of the Agency or officials authorised by him shall request the authorities of the Ministry of The Interior for assistance in the search and/or seizure. […]

Art. 31h\(^{434}\) Copies of the documents seized and/or computer information data records seized shall be provided by the Financial Inspector to the Commission controller with a

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433 Чл. 31е. (Нов - ДВ, бр. 98 от 2008 г.) (1) Когато финансовият инспектор установи, че проверяваните организация или лице, финансирани със средства по международни договори или програми на Европейския съюз, отказват да предоставят документи и/или компютърни информационни данни или техния носител на контрольора на Комисията, той съставя констативен протокол и може да прекрати достъпа до помещенията, транспортните средства, както и до други места, в които се съхраняват документи на организацията или лицето, чрез запечатване. За запечатването се съставя отделен протокол.

434 Чл. 31з. (Нов - ДВ, бр. 98 от 2008 г.) Копия от иззетите документи и/или иззетите записи на компютърни информационни данни се предоставят от финансовия инспектор на контрольора на Комисията за приемане и предаване, а оригиналите и иззетите записи на компютърни информационни данни се съхраняват в агенцията до приключване на контрола и проверката на място.
protocol of acceptance and transmission and the originals and seized records of computer information data shall be kept at the Agency until the control and on-the-spot check have been completed.

**Art. 31i**\(^{435}\) The documentation and computer information referred to in Article 31z shall be used by the Commission controller only for the purposes of on-the-spot checks and verifications.

**Art. 31j**\(^{436}\) Within three days of the completion of the assistance, the financial inspector shall report in writing to the Director of the Agency.

**Art. 31k**\(^{437}\) The provisions of Art. 31e–31h shall be applied respectively by the bodies of the Agency in carrying out the inspection activities under this Act.

hh. Investigative missions in third countries

In a Bulgarian court judgement this typical action of national anti-fraud bodies is described. Herewith the cooperation and actions within mutual agreements on assistance can be presented here:

“On 29/05/2018 by letter per. index 32-151550/29.05.2018, the ‘Customs’ Agency sent a request to the “Investigation II” Directorate of the European Anti-Fraud Office (OLAF), Brussels for assistance on the basis of Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation in the field of customs and agricultural matters concerning imports of palm oil from Malaysia through under-declaration. The performed inspection concerned 55 customs declarations with the sender/exporter FELDA IFFCO SDN BHD / Felda Ifco SDNBHDDee, Malaysia and recipient ‘M.G.B.’ EAD. The total weight of the goods was 2,130 tons with a declared customs value between 0.49–0.58 EUR/kg. Doubts about under-declaring the goods were reinforced due to the information available in the European THESEUS and GTA systems. According to the data in THESEUS, in the period January 2017–January 2018, the determined fair price for goods classified under CN code 1511 90 99 was between 0.74–0.82 EUR/kg. GTA export statistics for goods classified under CN code 1511 90 99 exported from Malaysia to Bulgaria show a unit value of EUR 777.74/tonne (ECU 0.77/kg).

As a result, a request was made to the European Anti-Fraud Office (OLAF) in Brussels to seek assistance from the customs authorities of Malaysia to obtain information on the value at which the goods were exported from Malaysia to Bulgaria.

\(^{435}\) Чл. 31и. (Нов - ДВ, бр. 98 от 2008 г.) Документацията и компютърните информационни данни по чл. 31з се ползват от контрольора на Комисията само за целите на контрола и проверката на място.

\(^{436}\) Чл. 31к. (Нов - ДВ, бр. 98 от 2008 г.) В тридневен срок от приключване на дейността по възложеното съдействие финансовият инспектор докладва писмено на директора на агенцията.

\(^{437}\) Чл. 31л. (Нов - ДВ, бр. 98 от 2008 г.) Разпоредбите на чл. 31д–31з се прилагат съответно от органите на агенцията при извършване на инспекционната дейност по този закон.
On 17.09.2018 in Customs Varna under entrance No 32–267756/17.09.2018, a letter was received from the ‘Customs’ Agency, with which Varna Customs was notified that in connection with the verification of customs declarations for admission to free circulation and end use of palm oil with consignor FELDA IFFCO SDN BHD, Malaysia and recipient ‘MGB’ EAD with declared origin Malaysia, a response was received with letter No OCM(2018)18661/03.09.2018, sent on 04.09.2018 via AFIS-mail by OLAF The letter stated that as a result of an operational meeting held in Kuala Lumpur on 30/07/2018, the Malaysian authorities provided OLAF with copies of 23 export declarations for the supply of palm oil to Bulgaria, which corresponded directly to the import operations in Bulgaria, subject of the inspection.

The declared value for the export of the goods showed a systematic underestimation of the value by about 30% when the same goods were declared for import into Bulgaria. The invoice numbers entered in the export declarations in Malaysia differed from the invoice numbers presented by ‘MGB’ EAD, relating to the relevant import operations in Bulgaria. The letter stated that OLAF considers the invoices presented in Bulgaria to be fake. In this regard, OLAF attached an email received from the Malaysian authorities with a list of the consignments and their corresponding export declarations. The Malaysian authorities were asked to provide either a data statement or export declarations for all other affected supplies. OLAF informed the Bulgarian customs that it will promptly send the information after receiving it. In an attachment to the letter, OLAF sent a list of consignments concerned with comparison of the values (List of consignments concerned with comparison of the values); email received from the Malaysian authorities providing the export declarations concerned (Email received from the Malaysian authorities providing the export declarations concerned) and copies of 23 export declarations (23 export declarations concerned). In the mentioned message no AFIS-mail dated 04.09.2018, OLAF also sent letter No OCM(2018)18175/24.08.2018 with an attachment - Minutes of the meeting, held in Kuala Lampur on 30/07/2018 with the participation of representatives of OLAF, Ministry of International Trade and Industry of Malaysia, Department of Royal Malaysian Customs, Palm Oil Board of Malaysia and the exporting company FELDA IFFCO SDN BHD, Malaysia.

As a result of the investigation, with letter No OCM(2018)18175/24.08.2018, OLAF presented 23 Malaysian customs declarations, referring to exports from FELDA IFFCO SDN BHD to ‘M.G.B.’ EAD, which were compared with the documents presented at the time of import into Bulgaria for the relevant supplies of palm oil.”

Other investigations in third countries, involving Bulgarian authorities and OLAF officials will be alike to the situation in the judgement, which is mentioned above.

h) National procedural rules for “checks and inspections” by the assisting national authority

The national procedural rules derive from the various Acts and Laws that apply if national law is predominant (Sigma Orionis case law, see above). This encompasses mainly

438 See → Collection of Cases.
the Customs Act, the Act on Credit Institutions, the Administrative Procedure Code and the Tax as well as the Tax Procedure Code.

i) Cooperation and mutual assistance agreements

Bulgaria cooperates like all other Member States by virtue of various EU Regulations determining the level of mutual assistance in all areas of the fraud typologies (see above). See e.g. Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation in the field of customs and agricultural matters.

j) EPPO/OLAF – Comparison

If OLAFs and the EPPO’s competences in Bulgaria are compared one may state that the EPPO’s competence is much larger and more intrusive – this is not only an advantage in the fight against fraud, but also a very high responsibility in the light of the EU’s Charter of Fundamental Rights (CFR). Both “authorities” viewed in comparison, OLAF investigators have however more cooperation(s) yet and Bulgaria has established a very strong AFCOS, which cooperates strongly with the relevant national authorities. The EDPs might learn from this structure and involve AFCOS via OLAF if legally possible and if results from administrative investigations lead to a criminal suspicion.

The European Public Prosecutor's Office has been operating for three years in 2024 and yet it still has problems that arise in institutional “infancy” – in this respect, the difficulties, for example, of establishing connections with other authorities that have been operating in the EU institutional setting for a long time can be compared with those of OLAF in 1999 and afterwards, as they have been described extensively in the literature.

The strategic plan from times before OLAF became effectively can be compared with the plans of the EPPO today. Above all, both – and this is a common feature – are concerned with modernising administrative processes. Although the situation is not as bad as in some member states (in Germany, some authorities still work with fax systems, e.g. tax and revenue offices, and the links between them are rather poor due to different software systems and in-house developments), as the EPPO, as a new authority, was at the cutting edge of technology at the start of its operational activities, it is also evident here that the links and communication with other authorities cause a great deal of work, e.g. e-file systems rarely exist in full in the member states, so that complete files often have to be scanned and entered into the EPPO or OLAF system in order to be

439 See https://anti-fraud.ec.europa.eu/system/files/2021-09/olaf_sp_2020_202. The main objective today is to increase efficiency and improve structures in the process.
available as digital documents. On-the-spot checks also require evidence to be properly secured and data protection regulations to be observed.

The self-image is as follows: “The European Anti-Fraud Office (OLAF) conducts administrative investigations, while the European Public Prosecutor's Office (EPPO) conducts criminal investigations and prosecutes cases falling under its competence in front of national courts.”

Strictly speaking, this is not incorrect, but it still obscures the problems of demarcating the two bodies. The new buzzword in this context is “joint efforts.” Many ideas have been expressed about the future of OLAF - it probably does not lie in a European FBI, but rather in a constant persecution of administrative injustice. But what sounds simple in the citation is often not that simple in practice. Nevertheless, the theoretical foundations of the two Union bodies also have their basis in the overall orientation: action against fraud through the administrative (sanctions) route and the use of harmonized criminal law by a European public prosecutor's office with an extended arm (double head system) for a coherent prosecution policy, which is, however, made more difficult by sometimes still inconsistent national criminal procedure codes.

An alignment of the powers of intervention was established for the EPPO via Art. 30 EPPO. The OLAF regulation comes from a different way of thinking from the beginning of the 21st century; Article 3 being a good example of this thinking. The Commission’s increased competencies in the area of OLAF had led to a lack of harmonization of national law in inspections. Recent adaptation efforts came with the 2022 amendment.

Both Regulations differ in legal aspects and will, if only viewed from a detailed perspective continue to pursue different successes. Completion achievements are crucial for OLAF and EPPO, and authorities face pressure to “perform” due to public accountability for annual PIF reports and separate reports from OLAF and EPPO. However, this pressure should not compromise the rights of those affected in administrative proceedings or accused persons in criminal proceedings. Both authorities can learn from each other, share information, and new cooperation guidelines are constantly reviewed for improvement and even stronger “joint improvements” (below → Art. 12 et seq.).


\[442\] Braun, As drug kingpins shift to stealing EU cash, Europe’s top prosecutor wants to fight back, politico 8.2.2024, https://shorturl.at/vCR17.

\[443\] See above → Art. 30–32.
2. 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’).

2. In the course of internal investigations:

(a) the Office shall have the right of immediate and unannounced access to any relevant information and data, relating to the matter under investigation, irrespective of the type of medium on which it is stored, held by the institutions, bodies, offices and agencies, and to their premises. 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 to the extent that the devices are used for work purposes, under the conditions set in the decisions adopted by the relevant institution, body, office or agency and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

The Office shall be empowered to inspect the accounts of the institutions, bodies, offices and agencies. The Office may take a copy of, and obtain extracts from, any document or the contents of any data medium held by the institutions, bodies, offices and agencies and, if necessary, assume custody of such documents or data to ensure that there is no danger of their disappearance;

(b) the Office may request oral information, including through interviews, and written information from officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members, thoroughly documented in accordance with the applicable Union confidentiality and data protection rules.

3. Under the same rules and conditions as provided for in Article 3, the Office may carry out on-the-spot checks and inspections at the premises of Economic Operators in order to obtain access to information relevant to the matter under investigation within the institutions, bodies, offices and agencies.

4. The institutions, bodies, offices and agencies shall be informed whenever the staff of the Office conduct an internal investigation on their premises, consult documents or data, or request information held by them. Without prejudice to Articles 10 and 11, the Office may at any time forward to the institution, body, office or agency concerned the information obtained in the course of internal investigations.

5. The institutions, bodies, offices and agencies shall put in place appropriate procedures and take necessary measures to ensure at all stages the confidentiality of internal investigations.

6. Where internal investigations reveal that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, the institution, body, office or agency to which that person belongs shall be informed.
In cases where the confidentiality of the internal investigation cannot be ensured using the usual channels of communication, the Office shall use appropriate alternative channels for transmitting information.

In exceptional cases, the provision of such information may be deferred on the basis of a reasoned decision by the Director-General, which shall be transmitted to the Supervisory Committee after the closure of the investigation.

7. The decision to be adopted by each institution, body, office or agency as provided for in paragraph 1 shall include, in particular, a rule concerning a duty on the part of officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members to cooperate with and supply information to the Office, while ensuring the confidentiality of the internal investigation.

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.

What OLAF may do within the scope of Article 4 is determined by the requirements of Union law. In addition, there are also references to national law in this area.

**a) References to national law, para 8**

The punitive administrative bodies in Bulgaria might take actions, which they implement by virtue of Section IX. Enforcement of criminal decrees and court decisions of the administrative offences and penalties Act. These decisions need to be notified to OLAF eventually.

**b) Competent authorities/any action**

The administrative authorities may e.g. establish administrative coercive measures by virtue of Section 3 of the ZANN.
Section III. Coercive administrative measures

Art. 22
Coercive administrative measures may be applied to prevent and stop administrative offences, as well as to prevent and remove their harmful consequences.

In addition to these measures the relevant authority might be allowed to issue administrative penalties. The authority needs to obey the ne bis in idem principle hereby and it might as well need to inform the EPPO if the thresholds are met and if any criminal suspicion exists. OLAF investigators will need to work closely together with the EPPO (see Art. 12e OLAF Regulation below).

Section II. Administrative penalties

Art. 12 ZANN
Administrative penalties are imposed in order to warn and re-educate the violator to observe the established legal order and have an educational and warning effect on other citizens.

Art. 13 ZANN
(1) The following administrative penalties may be stipulated and imposed for administrative offences:
   a) public censure;
   b) fine;
   c) temporary deprivation of the right to exercise a certain profession or activity.
(2) For an administrative violation committed repeatedly or systematically, a penalty of unpaid work for the benefit of society may be provided for is imposed independently or simultaneously with another punishment under para 1.

Art. 14 ZANN
Public reprimand for the committed violation is expressed in public reprimand of the offender before the labour collective where he works, or before the organisation of which he is a member.
Art. 15 ZANN 448 (1) A fine is a punishment that is expressed in the payment of a certain sum of money.  
(2) In relation to minors, the administrative penalty of a fine is replaced by a public reprimand.

Art. 16 ZANN 449 Deprivation of the right to exercise a certain profession or activity is expressed in a temporary ban for the offender to exercise a profession or activity in connection with which he committed the offence. The duration of this punishment cannot be less than one month and more than two years, and for violations related to traffic safety for all types of transport, committed after the use of alcohol, narcotic substances or their analogues – up to five years. It does not affect the acquired legal capacity except in the cases provided for in the relevant law or decree.

Art. 16a ZANN 450 (1) Unremunerated work is work that is performed for the benefit of society without limiting other rights of punishment.  
(2) The duration of the penalty of unpaid work for the benefit of society cannot be less than 40 hours and more than 200 hours per year for no more than two consecutive years.

Art. 17 ZANN 451 No one can be punished again for an administrative offence for which he was already punished by an effective criminal decree or court decision.

Art. 18 ZANN 452 When several administrative offences have been committed with one act or the same person has committed several separate violations, the penalties imposed shall be served separately for each of them.

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(2) По отношение на непълнолетните административното наказание глоба се заменя с обществено порицание.


450 Чл. 16а. ZANN (Нов - ДВ, бр. 109 от 2020 г., в сила от 23.12.2021 г.) (1) Безвъзмездният труд е труд, който се полага в полза на обществото без ограничаване на други права на наказания.  
(2) Продължителността на наказанието безвъзмезден труд в полза на обществото не може да бъде по-малко от 40 часа и повече от 200 часа годишно за не повече от две последователни години.

451 Чл. 17. ZANN Никой не може да бъде наказан повторно за административно нарушение, за което е бил вече наказан с възложен в сила наказателно постановление или решение на съда.

452 Чл. 18. ZANN Когато е едно деяние са извършени няколко административни нарушения или едно и също лице е извършило няколко отделни нарушения, наложените наказания се изтършват поотделно за всеки едно от тях.
**Art. 19 ZANN** For the administrative offences punishable under this law, conditional punishment is not allowed.

**Art. 20 ZANN**

(1) Along with the provisions in Art. 13 administrative punishments, the punishing authority decrees confiscation in favour of the state of the things belonging to the offender, which served to commit an intentional administrative violation, if this is provided for in the relevant law or decree.

(2) The objects subject to the violation, the possession of which is prohibited, regardless of their quantity and value, wherever they are, are confiscated in favour of the state.

(3) In addition to the items under the preceding paragraph, in the cases provided for in the relevant law or decree, the items belonging to the offender, which were the subject of the violation, shall be confiscated in favour of the state.

(4) Confiscation pursuant to paras 1 and 3 shall not be allowed when the value of the items clearly does not correspond to the nature and severity of the administrative violation, unless the relevant law or decree provides otherwise.

**Art. 21 ZANN** The property acquired by the offender as a result of the offence shall be confiscated in favour of the state regardless of their quantity and value.

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3. **Article 5 Opening of investigations**

1. The Director-General may open an investigation when there is a sufficient suspicion, which may also be based on information provided by any third party or anonymous information, that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The decision by the Director-General whether or not to open an investigation shall take into account the investigation policy priorities and the annual management plan of the Office established in accordance with Article 17(5).

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453 Чл. 19. ЗАНН За административните нарушения, наказаеми по реда на този закон, не се допуска условно наказание.

454 Чл. 20. ЗАНН (1) Наред с предвидените в чл. 13 административни наказания наказващият орган постановява отнемане в полза на държавата на вещите, принадлежащи на нарушителя, които са послужили за извършване на умилшено административно нарушение, ако това е предвидено в съответния закон или указ.

(2) Отнемат се в полза на държавата и вещите, предмет на нарушението, притежаването на които е забранено, независимо от тяхното количество и стойност, където и да се намират.

(3) Освен вещите по предходната алинея в предвидените в съответния закон или указ случаи се отнемат в полза на държавата и вещите, принадлежащи на нарушителя, които са били предмет на нарушението.

(4) Отнемане по алинеи 1 и 3 не се допуска, когато стойността на вещите явно не съответствува на характера и тежестта на административното нарушение, освен ако в съответния закон или указ е предвидено друго.

455 Чл. 21. ЗАНН Придобитите от нарушителя вещи в резултат на нарушението се отнемат в полза на държавата независимо от тяхното количество и стойност.
That decision shall also take into account the need for efficient use of the Office’s resources and for proportionality of the means employed. With regard to internal investigations, specific account shall be taken of the institution, body, office or agency best placed to conduct them, based, in particular, on the nature of the facts, the actual or potential financial impact of the case, and the likelihood of any judicial follow-up.

2. The decision to open an external investigation shall be taken by the Director-General, acting on his own initiative or following a request from a Member State concerned or any institution, body, office or agency of the Union.

The decision to open an internal investigation shall be taken by the Director-General, acting on his own initiative or following a request from the institution, body, office or agency within which the investigation is to be conducted or from a Member State.

3. While the Director-General is considering whether or not to open an internal investigation following a request as referred to in paragraph 2, and/or while the Office is conducting an internal investigation, the institutions, bodies, offices or agencies concerned shall not open a parallel investigation into the same facts, unless agreed otherwise with the Office.

4. Within two months of receipt by the Office of a request as referred to in paragraph 2, a decision whether or not to open an investigation shall be taken. It shall be communicated without delay to the Member State, institution, body, office or agency which made the request. Reasons shall be given for a decision not to open an investigation. If, on the expiry of that period of two months, the Office has not taken any decision, the Office shall be deemed to have decided not to open an investigation.

Where an official, other servant, member of an institution or body, head of office or agency, or staff member, acting in accordance with Article 22a of the Staff Regulations, provides information to the Office relating to a suspected fraud or irregularity, the Office shall inform that person of the decision whether or not to open an investigation in relation to the facts in question.

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.

6. If the Director-General decides not to open an external investigation, he may without delay send any relevant information to the competent authorities of the Member State concerned for action to be taken where appropriate, in accordance with its national rules. Where necessary, the Office shall also inform the institution, body, office or agency concerned.
a) Competent authorities

1 See above → Organisation of the criminal justice system in Bulgaria.

2 View, further, the following authorities:
- Executive Director of the National Revenue Agency
- Executive Director of Bulgaria’s Agricultural State Fund
- Financial inspectors of the State Financial Inspection Agency (PFIA)
- Heads of the Managing Authorities (MAs) of the Operational Programmes, the Head of the MA of the Rural Development Programme and of the Maritime and Fisheries Programme, cf. Art. 2 European Structural and Investment Funds Administration Regulation
- head of the European territorial cooperation programmes, cf. Art. 2 European Structural and Investment Funds Administration Regulation
- heads of the intermediate bodies, cf. Art. 2 European Structural and Investment Funds Administration Regulation

b) National rules

3 Administrative Procedure Code\textsuperscript{456}

\textbf{Initiative to start production}

\textbf{Art. 24\textsuperscript{457}} (1) Proceedings for the issuance of an individual administrative act begin at the initiative of the competent authority or at the request of a citizen or organisation, and in the cases provided for in the law – by the prosecutor, the ombudsman, the superior or other state authority.

(2) Proceedings for the issuance of an individual administrative act begin at the request of a state body, when it is referred to another request for the issuance of an administrative act, but this administrative act cannot be issued without issuing the administrative act requested by the body act.

\textbf{Gathering evidence}

\textbf{Art. 36 [See above → Article 3 External investigations, Investigative powers in the area of structural funds and internal policies.]}

\textsuperscript{456} Административнопроцесуален Кодекс.

\textsuperscript{457} Инициатива за започване на производството

\textbf{Чл. 24.} (1) Производството по издаване на индивидуален административен акт започва по инициатива на компетентния орган или по искане на гражданин или организация, а в предвидените в закона случаи - на прокурора, омбудсмана, по-горестоящия или друг държавен орган.

(2) Производството по издаване на индивидуален административен акт започва по искане на държавен орган, когато той е сеян с друго искане за издаване на административен акт, но този административен акт не може да бъде издаван, без да се издаде поисканото от страна на органа административен акт.
If the Director decides to send any relevant information, as appropriate, to the competent authorities of the Member State concerned for appropriate action these actions need to be taken in accordance with national law. Possible actions could be concluded from the following sections:

**Administrative Offences and Penalties Act**

Section II. Establishment of administrative criminal proceedings

Art. 36  (1) Administrative criminal proceedings are initiated by drawing up an act to establish the committed administrative violation.

(2) Without an attached act, an administrative criminal file shall not be opened except in cases where the proceedings have been terminated by the court or the prosecutor or the prosecutor has refused to institute criminal proceedings and has been forwarded to the punishing authority.

Section IV. Proceedings on the imposition of administrative penalties

Art. 52  (1) The punishing authority is obliged to rule on the administrative criminal file within a month of receipt and. In the cases under Art. 44 para 4 the punishing authority pronounces on the day of receipt of the administrative penalty file.

(2) If it is established that the act was not presented to the offender, the punishing authority shall immediately return it to the author of the act.

(3) After receiving the file, the punishing authority shall notify the victims of the violation, if there are any and their addresses are known, of the drawn-up act.

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458 Закон За Административните Нарушения И Наказания.
459 Раздел II.
Образуване на административнонаказателно производство
Чл. 36. Закон За Административните Нарушения И Наказания
(1) Административнонаказателно производство се образува със съставяне на акт за установяване на извършеното административно нарушение.
(2) (Доп. - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Без приложен акт административнонаказателна преписка не се образува освен в случаите, когато производството е прекратено от съда или прокурора или прокурорът е отказал да образува наказателно производство и е препратено на наказващия орган.

460 Раздел IV.
Производство по налагане на административните наказания
Чл. 52. Закон За Административните Нарушения И Наказания
(1) (Доп. - ДВ, бр. 51 от 2007 г.) Наказващият орган е длъжен да се произнесе по административнонаказателната преписка в месечен срок от получаването и. В случаите по чл. 44, ал. 4 наказващият орган се произнася в деня на получаване на административнонаказателната преписка.
(2) Ако се установи, че актът не е бил предявен на нарушителя, наказващият орган го връща веднага на актосъставителя.
(3) След получаване на преписката наказващият орган уведомява за съставянето акт пострадалите от нарушението, ако има такива и адресите им са известни.
(4) Преди да се произнесе по преписката, наказващият орган проверява акта е оглед на неговата законосъобразност и обоснованост и преченията възраженията и събранныте доказателства, а когато е необходимо, извършва и разследване на спорните обстоятелства. Разследването може да бъде възложено и на други длъжностни лица от същото ведомство.
(4) Before ruling on the file, the punishing authority examines the act in view of its legality and justification and assesses the objections and the collected evidence, and when necessary, also conducts an investigation of the disputed circumstances. The investigation may be assigned to other officials from the same department.

**Tax and Insurance Procedure Code**

**Powers of the Revenue Authority and the Public Executor**

Art. 12

(1) The revenue authority, subject to the provisions of this Code:

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461 Данъчно-Осигурителен Процесуален Кодекс.

462 Правомощия на органа по приходите и публичния изпълнител

Чл. 12. Данъчно-Осигурителен Процесуален Кодекс

(1) Органът по приходите при спазване на разпоредбите на този кодекс:

1. извършва проверки и ревизии;
2. установява административни нарушения;
3. налагя административни наказания;
4. има право на достъп в подлежащите на контрол обекти;
5. проверява отчетността на контролираните обекти;
6. проверява счетоводни, търговски или други книжа, документи и носители на информация с оглед установяване на задължения и отговорности за данъци и задължителни осигурителни вноски, както и нарушения на данъчното и осигурителното законодателство;
7. изисква и събира оригинали документи, данни, сведения, книжа, вещи, извлечения по сметки, справки и други носители на информация с цел установяването на задължения и отговорности за данъци и задължителни осигурителни вноски, както и нарушения на данъчното и осигурителното законодателство; изисква заверили копия на писмените документи и заверили разпечатки на данни от технически носители;
8. (доп. - ДВ, бр. 105 от 2020 г., в сила от 01.01.2021 г.) изисква от контролираните лица да декларират банковите си сметки, както и сметките от други доставчици на платежни услуги в страната и в чужбина;
9. установява притежаваните имущества, парични средства и материали за ценностни, вземания и книжа;
10. извършва предвидените от този кодекс действия за обезпечаване на доказателства, включително запечатва каси, складове, работилници, офиси, магазини и други подлежащи на контрол обекти;
11. изисква от всички лица, държавни и общински органи данни, сведения, книжа, материали, вещи, извлечения по сметки, справки и други носители на информация, необходими за осъществяване на контролната дейност;
12. иска разкриване на служебна, банкова или застрахователна тайна по ред, предвиден в закон;
13. получава безплатен достъп до публичните регистри и безплатно издаване на официално заверили извлечения от вписванията в тях или на копия на документите, въз основа на които са извършени;
14. изисква писмени обяснения;
15. възлага експертизи и ползва специалисти;
16. изисква деклариране на определени факти и обстоятелства, когато това е предвидено със закон.

(2) (Нова - ДВ, бр. 109 от 2013 г., в сила от 01.01.2014 г.) Орган по приходите, оправомощен да извършва фискален контрол върху движението на стоки с висок фискален риск, при спазване на разпоредбите на този кодекс освен правомощията по ал. 1 има и следните правомощия:

1. да спира транспортните средства на фискали контролни пунктове;
2. (доп. - ДВ, бр. 105 от 2020 г., в сила от 01.01.2021 г.) да изисква и извършва проверка на документите, придружаващи стоката, включително за наличието на уникален номер за превоза;
3. (доп. - ДВ, бр. 105 от 2020 г., в сила от 01.01.2021 г.) да извършва проверка и оглед на превозваната стока в транспортното средство и на мястото на получаване/разтоварване, взе основа на които са извършени;
4. да изисква представянето на документ за самоличност на водача на транспортното средство;
5. (изм. - ДВ, бр. 94 от 2015 г., в сила от 01.01.2016 г., в сила от 01.01.2015 г., изм. и доп. - ДВ, бр. 105 от 2020 г., в сила от 01.01.2021 г.) да изисква от водача на транспортното средство декларация данни за вида и количеството на стоката, за изпращача и получателя, за датата и мястото на получаване/разтоварване и, включително за съответствие с предварителните декларирания данни;
6. да поставя и отстранява технически средства за контрол на транспортното средство, с което се превозва стоката;
7. да получи достъп до мястото на получаване/разтоварване на стоката (обект, склад, помещение, съоръжение, резервоар и други места за съхранение) и да присъства по време на разтоварването на стоката;
8. да изисква присъствието на купувача/получателя или на упълномощен от него представител при извършването на проверката и огледа на стоката на мястото на получаването/разтоварването и
9. да изисква обезпечение на условията на този кодекс.

(3) (Нова - ДВ, бр. 109 от 2013 г., в сила от 01.01.2014 г.) Транспортни средства могат да бъдат спирани само от органи по приходите, снабдени с ясно различими и видими, включително през тъмната част на денотонощето, обозначителни знаци и облекло по форма, утвърдена със заповед на изпълнителния директор на Националната агенция за приходите, която се обнародва в “Държавен вестник”.

(4) (Предишна ал. 2 - ДВ, бр. 109 от 2013 г., в сила от 01.01.2014 г.) Публичният изпълнител при спазване на разпоредбите на този кодекс:
1. налага мерки за обезпечаване на публични вземания и извършва действия по събирането им;
2. има право на достъп в подлежащите на контрол обекти;
3. (доп. - ДВ, бр. 105 от 2020 г., в сила от 01.01.2021 г.) изисква от контролираните лица да декларират банковите си сметки, както и сметките от други доставчици на платежни услуги в страната и в чужбина;
4. установява притежаване имущества, парични средства и материалици ценностни и вземания;
5. изисква от всички лица, държавни и общесински органи данни, сведения, документи, книжа, материали, вещи, извлечения по сметки, справки и други носители на информация, необходими за обезпечао или събиране на публичните вземания;
6. иска разкриване на служебна, банкова или застрахователна тайна по ред, предвиден в закон;
7. получава безплатен достъп до публичните регистри и безплатно издаване на официално заверени извлечения в тях или на копия на документите, въз основа на които са извършени;
8. изисква писмени обяснения;
9. възлага експертизи и ползва специалисти;
10. изисква деклариране на определени факти и обстоятелства, когато това е предвидено в закон;
11. установява административни нарушения;
12. налага административни наказания.

(5) (Предишна ал. 3, юм. - ДВ, бр. 109 от 2013 г., в сила от 01.01.2014 г.) Контролът по ал. 1 - 4 се извършва само в обекти, в които се осъществява стопанска дейност или управление на стопанска дейност – производствени помещения, магазини, складове, транспортни средства, офиси, кантори, канцеларии и други подобни, както и в помещения и места, където се съхраняват материалици ценностни, парични средства и счетоводни, търговски и други документи или носители на информация, свързани с дейността на контролираните лица.

(6) (Нова - ДВ, бр. 109 от 2013 г., в сила от 01.01.2014 г., юм. и доп. - ДВ, бр. 105 от 2020 г., в сила от 01.01.2021 г.) Правилата на чл. 7, ал. 1 и чл. 8 не се прилагат за органи по приходите или публични изпълнители, определени от изпълнителния директор на Националната агенция за приходите или от оправомощен от него заместник изпълнителен директор. Правомощията на органите по приходите по ал. 2 се осъществяват на територията на цялата страна независимо от компетентността по чл. 8.

(7) Нова - ДВ, бр. 109 от 2013 г., в сила от 01.01.2014 г.) Местоположението на фискалните контролни пунктове се определя със заповед на изпълнителния директор на Националната агенция за приходите след съгласуване с Агенция “Пътна инфраструктура”, която се публикува на интернет страницата на Националната агенция за приходите.

(8) (Предишна ал. 4, юм. - ДВ, бр. 109 от 2013 г., в сила от 01.01.2014 г.) При осъществяването на правомощията по ал. 1 - 4 по отношение на адвокати и нотариуси се прилагат разпоредбите на Закона за адвокатурата и Закона за нотариусите и нотариалната дейност.

(9) (Нова - ДВ, бр. 27 от 2018 г.) За целите на административното сътрудничество и обмена на информация по глава шестнадесета, раздели IIIа, IV, V и VI органът по приходите освен правомощията по ал. 1 има право на достъп до:
1. информацията, документите и данните, събирани по реда на глава втора от Закона за мерките срещу изпирането на пари и съхранявани по реда на глава трета, раздели I от същия закон, включително информацията, документите и данните за отделните сделки и операции;
2. информацията, механизимите и процедурите за прилаганите мерки за комплексна проверка по реда на глава втора от Закона за мерките срещу изпирането на пари, както и до вътрешните правила, политики и процедури за контрол и предотвратяване изпирането на пари на глава осма, раздели I от същия закон;
1. performs checks and revisions;
2. establishes administrative offences;
3. imposes administrative penalties;
4. has the right of access to objects subject to control;
5. checks the accountability of the controlled objects;
6. inspects accounting, commercial or other papers, documents and information carriers with a view to establishing obligations and responsibilities for taxes and mandatory insurance contributions, as well as violations of tax and insurance legislation;
7. requires and collects original documents, data, information, papers, belongings, account statements, references and other information carriers for the purpose of establishing obligations and responsibilities for taxes and mandatory insurance contributions, as well as violations of tax and insurance legislation; requires certified copies of written documents and certified printouts of data from technical media;
8. requires the controlled persons to declare their bank accounts, as well as the accounts of other payment service providers in the country and abroad;
9. establishes the owned property, cash and tangible assets, receivables and papers;
10. performs the actions provided for by this Code to secure evidence, including sealing cash registers, warehouses, workshops, offices, shops and other objects subject to control;
11. requires from all persons, state and municipal bodies data, information, documents, papers, materials, things, statements of accounts, references and other carriers of information necessary for the implementation of the control activity;
12. requests the disclosure of an official, banking or insurance secret in accordance with the procedure provided for by law;
13. receives free access to the public registers and free issuance of officially certified extracts of the entries in them or of copies of the documents based on which they were made;
14. requires written explanations;
15. assigns expertise and uses specialists;
16. requires the declaration of certain facts and circumstances when this is provided for by law.

(2) Revenue authority authorized to carry out fiscal control over the movement of goods with a high fiscal risk, subject to compliance with the provisions of this Code in addition to the powers under para 1 also has the following powers:
1. to stop means of transport at fiscal checkpoints;

3. информацията и данните за действителните собственици, с които разполагат лицата по чл. 61, ал. 1 и чл. 62, ал. 1 от Закона за мерките срещу изпирането на пари, както и до информацията и данните по чл. 63, ал. 4 от същия закон, вписани в търговския регистър и регистъра на юридическите лица с нестопанска цел и в регистър БУЛСТАТ.
2. to require and carry out a check of the documents accompanying the goods, including the presence of a unique transport number;
3. to carry out an inspection and inspection of the transported goods in the means of transport and at the place of receipt/unloading and, including for compliance with previously the declared data;
4. to require the presentation of an identity document by the driver of the means of transport;
5. to require the driver of the means of transport to declare data on the type and quantity of the goods, on the sender and the recipient, on the date and place of receipt of the goods, as well as to state the expected time of unloading/receipt, in case of missing documents, the documents are not containing these data or lack data for preliminary declaration of the carriage of the goods;
6. to install and remove technical means to control the means of transport used to transport the goods;
7. to gain access to the place of receipt/unloading of the goods (facility, warehouse, room, facility, tank and other storage places) and to be present during the unloading of the goods;
8. to require the presence of the buyer/recipient or a representative authorized by him during the inspection and inspection of the goods at the place of receipt/unloading and;
9. to require security under the terms of this Code.

(3) Vehicles may be stopped only by revenue authorities equipped with clearly distinguishable and visible, including during the dark part of the day, identification signs and clothing in a form approved by order of the executive director of the National Revenue Agency, which is promulgated in the “State Gazette”.

(4) The public contractor, subject to compliance with the provisions of this Code:
1. imposes measures to secure public receivables and performs actions to collect them;
2. has the right of access to objects subject to control;
3. requires the controlled persons to declare their bank accounts, as well as the accounts of other payment service providers in the country and abroad;
4. establishes the owned property, cash and tangible assets and receivables;
5. requires from all persons, state and municipal bodies data, information, documents, papers, materials, things, statements of accounts, references and other carriers of information necessary for securing or collecting public receivables;
6. requests the disclosure of an official, banking or insurance secret in accordance with the procedure provided for by law;
7. receives free access to the public registers and free issuance of officially certified extracts of the entries in them or of copies of the documents based on which they were made;
8. requires written explanations;
9. assigns expertise and uses specialists;
10. requires the declaration of certain facts and circumstances, when this is provided by law;
11. establishes administrative offences;
12. imposes administrative penalties.

(5) The control under para 1–4 is carried out only in objects where economic activity is carried out or economic activity is managed – production premises, shops, warehouses, means of transport, offices, offices, offices and the like, as well as in premises and places where they are stored tangible assets, cash and accounting, commercial and other documents or information carriers related to the activities of the controlled persons.

(6) The rules of Art. 7 para 1 and Art. 8 do not apply to revenue authorities or public contractors designated by the executive director of the National Revenue Agency or a deputy executive director authorized by him. The powers of the revenue authorities under para 2 are carried out on the territory of the entire country regardless of the competence under Art. 8.

(7) The location of fiscal checkpoints is determined by order of the executive director of the National Revenue Agency after coordination with the Road Infrastructure Agency, which is published on the website of the National Revenue Agency.

(8) When exercising the powers under para 1–4 in relation to lawyers and notaries, the provisions of the Act on Advocacy and the Act on Notaries and Notary Activities shall apply.

(9) For the purposes of administrative cooperation and the exchange of information under chapter sixteen, sections IIIa, IV, V and VI, the revenue authority, in addition to the powers under para 1 has the right of access to:
1. the information, documents and data collected in accordance with Chapter Two of the Act on Measures Against Money Laundering and stored in accordance with Chapter Three, Section I of the same law, including the information, documents and data for individual transactions and operations;
2. the information, mechanisms and procedures for the applied comprehensive verification measures in accordance with Chapter Two of the Act on Measures Against Money Laundering, as well as the internal rules, policies and procedures for control and prevention of money laundering under Chapter Eight, Section I of same law;
3. the information and data on the actual owners available to the persons under Art. 61, para 1 and Art. 62 para 1 of the Act on Measures Against Money Laundering, as well as to the information and data under Art. 63 para 4 of the same law, entered in the commercial register and the register of non-profit legal entities and in the BULSTAT register.

Further rules can be found in the next part of the same Code:
Chapter Eight. Evidence and Evidence Means
Section I. General Provisions
Gathering and evaluating evidence

Art. 37 (1) Evidence in administrative proceedings is collected ex officio by the revenue authority or at the initiative of the subject. All evidence collected is subject to objective assessment and analysis.

(2) The person is obliged to present all data, information, documents, papers, information carriers and other evidence relating to his rights and obligations, to the facts and circumstances subject to establishment in the relevant proceedings, and to indicate all persons, state or municipal authorities where they are located.

(3) The revenue authority has the right to demand in writing from the person the presentation of evidence under para 2 within a period determined by him.

(4) In the event that the entity does not submit the requested in accordance with para 3 evidence, the revenue authority may assume that they do not exist and assess only the evidence collected in the proceedings. If the requested evidence is presented before the
act or document is issued, and in the revision proceedings – until the expiration of the period under Art. 117, para 5, the revenue authority is obliged to discuss them.

(5) All persons, state or municipal bodies are obliged within 14 days of receiving a request from the revenue authority on the basis of Art. 12 para 1 item 11 to provide the data, information, documents, papers, information carriers and other evidence regarding the facts and circumstances specified in the request.

(6) At the request of the revenue authority on the basis of Art. 12 para 1 item 12, the persons under para 5 are obliged to disclose the relevant official, banking or insurance secret. For the disclosure of banking or insurance secrets, the procedure established for this shall apply.

(7) At the written request of the director of the territorial directorate of the National Revenue Agency, banks provide the revenue authorities specified in the request with access to the presented to the bank by a revised or verified person documents on the basis of which credit was granted to the person, with the exception of documents containing bank secrecy. The bank provides certified copies of the documents specified by the revenue authorities, with the exception of documents containing bank secrecy, documents contained in public registers, as well as those issued or certified by an authority of the National Revenue Agency.

(8) The revenue authority may ex officio or at the request of the person carry out an inspection of movable or immovable property. Examination is admissible not only for verification of other evidence, but also for independent evidence.

Assignment of expertise
Art. 63

(1) The expertise shall be commissioned in writing by the revenue authority that commissioned the proceedings, in connection with which the need to carry out and, and in case of appeal – by the decision-making authority. The expertise assigned in the

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Възлагане на експертиза
Чл. 63. Данъчно-Оsigurителен Процесуален Кодекс
(1) (Доп. - ДВ, бр. 105 от 2020 г., в сила от 01.01.2021 г.) Експертизата се възлага писмено от органа по приходите, възложил производството, във връзка с което е възникнала необходимостта от извършването и, а при обжалване – от решаващия орган. Експертизата, възложена в ход на едно административно производство, може да бъде използвана за целите и на друго производство, ако се изследва същият обект при пълна идентичност на предмета и задачата на изследването. В другото производство експертизата следва да е приобщена по реда на този кодекс.
(2) При възлагането на експертизата се посочват: предметът и задачата на експертизата, материалите, които се предоставят на експерта, името, единният граждански номер, адресът, специалността, местоработата и длъжността на експерта, срокът за извършване на експертизата. Когато експертизата се извършва по искане на субекта, посочват се размерът и срокът за внасяне на определения от органа по приходите депозит за възнаграждение на експерта.
(3) Екземпляр от акта за възлагане на експертизата се връчва на експерта и на субекта, по чието искане е възложена експертизата.
(4) Експертът подписва декларация, че ще даде безпристрастно заключение, ще пази в тайна данъчната и осигурителната информация и че не са налице основанията за отвод.
(5) След подписане на декларацията по ал. 4 експертът получава от органа, възложил експертизата, определените за извършването и материали.
course of one administrative proceeding can be used for the purposes of another proceeding as well, if the same object is investigated with complete identity of the subject and task of the investigation. In the other proceedings, the expertise should be included according to the procedure of this code.

(2) When assigning the expertise, the subject and task of the expertise, the materials that are provided to the expert, the name, uniform civil number, address, specialty, place of work and position of the expert, the term for carrying out the expertise shall be indicated. When the expertise is carried out at the request of the entity, the amount and term for depositing the deposit determined by the revenue authority for the expert’s remuneration shall be indicated.

(3) A copy of the act for the assignment of the expertise shall be handed over to the expert and to the entity at whose request the expertise was assigned.

(4) The expert signs a declaration that he will give an impartial conclusion, will keep the tax and insurance information confidential and that there are no grounds for recusal.

(5) After signing the declaration under para 4 the expert receives from the body that commissioned the expertise, the materials specified for the performance.

Chapter Fifteen. Tax and Insurance Control
Revisions and inspections
Art. 110

(1) The revenue authorities carry out tax and insurance control by carrying out audits and inspections.

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465 Глава петнадесета. 
Данъчно-осигурителен контрол
Ревизии и проверки
Чл. 110. Данъчно-Осиguрителен Процесуален Кодекс
(1) Органите по приходите осъществяват данъчно-осигурителния контрол чрез извършване на ревизии и проверки.
(2) Ревизията е съвкупност от действия на органите по приходите, насочени към установяване на задължения за данъци и задължители осигурителни вноски.
(3) Проверката е съвкупност от действия на органите по приходите относно спазването на данъчното и осигурителното законодателство. С проверка могат да се установяват определени факти и обстоятелства от значение за задълженията за данъци и задължители осигурителни вноски. С проверка не се устанавяват задължения за данъци и задължители осигурителни вноски на проверяваното лице.
(4) Проверката се извършва от органите по приходите, без да е необходимо изрично писмено възлагане. Правилата по чл. 8 не се прилагат, когато е налице възлагане от изпълнителя, лице или упълномощено от него лице. За резултата от проверката се съставя протокол, когато в закон не е предвиден актът, с който проверката трябва да завърши.
(5) (Нова - ДВ, бр. 94 от 2015 г., в сила от 01.01.2016 г.) Когато в закон не е предвидено друго, срокът за извършване на проверките не може да бъде по-дълъг от 6 месеца от датата на първото процесуално действие, което се удостоверява с протокол или връчено искане по чл. 37, ал. 3. Ако 6-месечният срок се окаже недостатъчен, той може да бъде продължен до 6 месеца с резолюция на органа, възложил проверката. Когато за резултатите от проверката се съставя протокол, същият се предоставя на лицето в 7-дневен срок от извършването и.
(2) The audit is a set of actions of the revenue authorities, aimed at establishing obligations for taxes and mandatory insurance contributions.

(3) The inspection is a set of actions of the revenue authorities regarding compliance with tax and social security legislation. With an inspection, certain facts and circumstances relevant to tax obligations and mandatory social security contributions can be established. An inspection does not establish tax obligations and mandatory insurance contributions of the inspected person.

(4) The inspection is carried out by the revenue authorities without the need for an explicit written assignment. The rules under Art. 8 do not apply when there is an assignment by the executive director or a person authorized by him. A protocol is drawn up for the result of the inspection, when the law does not provide for the act with which the inspection must end.

(5) When the law does not provide otherwise, the term for carrying out the inspections cannot be longer than 6 months from the date of the first procedural action, which is certified by a protocol or a delivered request under Art. 37 para 3. If the 6-month period turns out to be insufficient, it can be extended up to 6 months with a resolution of the authority that commissioned the inspection. When a protocol is drawn up for the results of the inspection, the same is provided to the person within 7 days of its completion and.


Chapter Fifteen “а” Fiscal Control Over the Movement of Goods with High Fiscal Risk

Fiscal control on the movement of goods

Art. 127a

(1) Revenue authorities authorised by an order of the Executive Director of the National Revenue Agency may carry out fiscal control over the movement of goods with high fiscal risk on the territory of Bulgaria, without an explicit written assignment.

(2) Fiscal control over the movement of goods with high fiscal risk is a set of actions of the revenue authorities, aimed at establishing tax obligations and mandatory insurance contributions, as well as establishing tax obligations and mandatory social security contributions.

(3) Fiscal control over the movement of goods with high fiscal risk is carried out by the revenue authorities without the need for an explicit written assignment. The rules under Art. 8 do not apply when there is an assignment by the executive director or a person authorized by him. A protocol is drawn up for the result of the inspection, when the law does not provide for the act with which the inspection must end.

(4) When the law does not provide otherwise, the term for carrying out the inspections cannot be longer than 6 months from the date of the first procedural action, which is certified by a protocol or a delivered request under Art. 37 para 3. If the 6-month period turns out to be insufficient, it can be extended up to 6 months with a resolution of the authority that commissioned the inspection. When a protocol is drawn up for the results of the inspection, the same is provided to the person within 7 days of its completion and.


goods with high fiscal risk on the territory of the Republic of Bulgaria without the need for an explicit written assignment.

(2) The movement of all goods with high fiscal risk shall be subject to fiscal control, regardless of the place of receipt/unloading of the goods – the territory of the country, the territory of another Member State of the European Union or the territory of a third country.

(3) Paragraph 2 shall not apply to the goods under the customs procedure within the meaning of the applicable customs legislation.

(4) Fiscal control over the movement of goods with high fiscal risk shall be a set of actions of revenue authorities with the aim of preventing tax evasion and tax fraud which are carried out in connection with the movement of goods with high fiscal risk on the territory of the Republic of Bulgaria.

(5) Fiscal control over the movement of goods with a high fiscal risk shall not establish tax obligations, but may establish certain facts and circumstances relevant to tax obligations.

(6) A report shall be drawn up for each act in the course of the fiscal control on the movement of goods.

(7) The list of goods with high fiscal risk shall be approved by an order of the Minister of Finance upon a reasoned proposal of the Executive Director of the National Revenue Agency. The order and the list of high fiscal risk goods shall be published on the websites of the Ministry of Finance and the National Revenue Agency.

(8) The data referred to in Art. 13 para 2 item 3 the information on the movement of goods with high fiscal risk and the fiscal control actions of the revenue authorities shall be entered in the electronic register “Fiscal Control”.

(5) С фискалния контрол върху движението на стоки с висок фискален риск не се установяват задължения за данъци, но могат да се установяват определени факти и обстоятелства от значение за задълженията за данъци.

(6) За всяко действие при извършването на фискалния контрол върху движението на стоки се съставя протокол.

(7) Списъкът на стоки с висок фискален риск се утвърждава със заповед на министъра на финансовите по мотивирано предложение на изпълнителния директор на Националната агенция за приходите. Заповедта и списъкът на стоките с висок фискален риск се публикуват на интернет страниците на Министерството на финансовите и на Националната агенция за приходите.

(8) Данните по чл. 13, ал. 2, т. 3, информацията за движението на стоките с висок фискален риск и действията по фискален контрол на органите по приходите се вписват в електронен регистър “Фискален контрол”.

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### Customs Act

**Chapter Twenty-Nine. General Provisions**

**Art. 223** The customs authorities shall investigate, establish and punish any violation or attempt to violate the provisions of the customs legislation, insofar as the act does not constitute a crime.

<table>
<thead>
<tr>
<th>European Structural and Investment Funds Administration Regulation</th>
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<tr>
<td><strong>Art. 3</strong> [See above → Art. 3, Investigative powers in the area of structural funds and internal policies].</td>
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<td><strong>Art. 10</strong> [See above → Art. 3].</td>
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<td><strong>Art. 30 and 31</strong> [See above → Art. 3].</td>
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<th>Public Financial Inspection Act</th>
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<td><strong>Art. 16.</strong> [See above → Art. 3, Investigative powers in the area of structural funds and internal policies]</td>
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<td><strong>Art. 31a</strong> [See above → Art. 3, Investigative powers in the area of structural funds and internal policies]</td>
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<td><strong>Art. 31d</strong> [See above → Art. 3, Investigative powers in the area of structural funds and internal policies]</td>
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All of the previously mentioned provisions are not exhaustive or exclusively applicable, but examples of the national measures that the Union legislator was looking for and may have had in mind when drafters enacted the OLAF Regulation, which must be examined and implemented on a case-by-case basis and, if necessary, supplemented by further measures in other, non-mentioned laws.

[Article 6 Access to information in databases prior to the opening of an investigation]
4. Article 7 Investigations procedure

1. The Director-General shall direct the conduct of investigations on the basis, where appropriate, of written instructions. Investigations shall be conducted under his or her direction by the staff of the Office designated by him or her. The Director-General shall not personally carry out concrete investigative acts.

2. The staff of the Office shall carry out their tasks on production of a written authorisation showing their identity and their capacity. The Director-General shall issue such authorisation indicating the subject matter and the purpose of the investigation, the legal bases for conducting the investigation and the investigative powers stemming from those bases.

3. The competent authorities of Member States shall give the necessary assistance to enable the staff of the Office to fulfil their tasks in accordance with this Regulation effectively and without undue delay. When providing such assistance, the competent authorities of Member States shall act in accordance with any national procedural rules applicable to them.

3a. At the request of the Office, which shall be explained in writing, in relation to matters under investigation, the relevant competent authorities of the Member States shall, under the same conditions as those that apply to the national competent authorities, provide the Office with the following:

(a) information available in the centralised automated mechanisms referred to in Article 32a (3) of Directive (EU) 2015/849 of the European Parliament and of the Council (4);
(b) where strictly necessary for the purposes of the investigation, the record of transactions.

The request of the Office shall include a justification of the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation. Such request shall refer only to information referred to in points (a) and (b) of the first subparagraph.

Member States shall notify to the Commission the relevant competent authorities for the purposes of points (a) and (b) of the first subparagraph.

4. Where an investigation combines external and internal elements, Articles 3 and 4 shall apply respectively.

5. Investigations shall be conducted continuously over a period which must be proportionate to the circumstances and complexity of the case.

6. Where investigations show that it might be appropriate to take precautionary administrative measures to protect the financial interests of the Union, the Office shall without delay inform the institution, body, office or agency concerned of the investigation in progress. The information supplied shall include the following:

(a) the identity of the official, other servant, member of an institution or body, head of office or agency, or staff member concerned and a summary of the facts in question;
(b) any information that could assist the institution, body, office or agency concerned in deciding on the appropriate precautionary administrative measures to be taken in order to protect the financial interests of the Union;
(c) any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or, in the case of an external investigation, within the competence of a national authority, in accordance with the national rules applicable to investigations.

The institution, body, office or agency concerned may at any time consult the Office with a view to taking, in close cooperation with the Office, any appropriate precautionary measures, including measures for the safeguarding of evidence. The institution, body, office or agency concerned shall inform the Office without delay about any precautionary measures taken.

7. Where necessary, it shall be for the competent authorities of the Member States, at the Office’s request, to take the appropriate precautionary measures under their national law, in particular measures for the safeguarding of evidence.

8. If an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating the reasons and, where appropriate, the remedial measures envisaged with a view to speeding up the investigation.

**a) References to national law**

1. **Sources & national sections** 3 Art. 7 OLAF Regulation

| Para 3 | See: Administrative Procedure Code  
|        | Customs Act  
|        | Public Financial Inspection Act  
|        | European Structural and Investment Funds Administration Regulation  
|        | Tax and Insurance Procedure Code  
|        | Public Procurement Code  

| Para 3  | **Administrative Procedure Code:** Art. 39 Access to information on a technical medium  
| (a) (b) | **Tax and Insurance Procedure Code:** Section IV Procedure for exchanging information with other countries Art. 143 Competent authority and conditions for the exchange of information Art. 143e Exchange of information at the request of a local inquiring authority  

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402 Bulgaria
Art. 143f Exchange of information at the request of an inquiring authority of another member state of the European Union
Art. 143g Deadlines
Art. 143h Automatic exchange of information
Art. 143i Spontaneous exchange of information
Section VII Special rules for the automatic exchange of information on cross-border tax schemes
Art. 143z et seq.

**Customs Act:**
Section III Powers of customs authorities
Art. 16d
Section IV. Subsequent control of the declaration
Art. 84d
Art. 84i para 2 no 8

**Public Financial Inspection Act:**
Section II Powers of agency bodies
Art. 13 no 5

**European Structural and Investment Funds Administration Regulation:**
Section III Registration and reporting of irregularities. Use of information systems for reporting irregularities
Articles 15 et seq., esp. Art. 19, 20, 21

<table>
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<tr>
<th>Para 6 (c)</th>
<th><strong>Administrative Procedure Code:</strong></th>
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<td>Art. 38 respect for confidentiality of the parties</td>
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<td>Art. 39 evidence (“… that are not prohibited by law…”)</td>
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**Public Financial Inspection Act:**
Art. 15 (no right of the inspected person to deny access to information by referring to the financial inspectors of his or someone else’s commercial or banking secret, as well as information classified as a state or official secret, para 2)

**Tax and Insurance Procedure Code:**
Art. 37 para 6, 7
Art. 58 Refusal of explanations
Art. 73 Tax secrecy
Art. 74 Disclosure of tax and insurance information

Section IV Procedure for administrative cooperation with the Member States of the EU
Art. 143o Confidentiality and disclosure of information. Assessment
Art. 143p Restrictions on providing information

Para 7

**Tax and Insurance Procedure Code:**
e.g. Art. 40 Actions to secure evidence et seq.

**Customs Code**
Art. 84h – precautionary measures in conjunction with

**Chapter 26 Payment of the Customs Duty**

**Section I “a” – Imposition of precautionary measures by the customs authorities**
Art. 206a
→ seizure of movable property and receivables of the debtor, including bank accounts
→ Lien on goods in circulation
→ foreclosure on real estate
Art. 206b
Art. 206c

**Administrative Offences and Penalties Act:**
Art. 41

**Public Financial Inspection Act:**
Chapter 3a Providing assistance to European Commission controllers in granting access to premises and/or documentation for carrying out on-site controls and inspections under council regulation No 2185/96 (EURATOM, EC) of November 11, 1996 and the years since, carried out by the commission for the protection of the financial interests of the European Communities against frauds and other irregularities
Art. 31a et seq.

b) **References to national authorities**

2 See above → Article 5 Opening of investigations, Competent authorities.
5. Article 8 (Duty to inform the Office)

Art. 8 (Duty to inform the Office)

[...] 2. The institutions, bodies, offices and agencies and, unless prevented by national law, the competent authorities of the Member States shall, at the request of the Office or on their own initiative, transmit without delay to the Office any document or information they hold which relates to an ongoing investigation by the Office. [...] 3. The institutions, bodies, offices and agencies and, unless prevented by national law, the competent authorities of Member States shall transmit without delay to the Office, at the request of the Office or on their own initiative, any other information, documents or data considered pertinent which they hold, relating to the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

a) Trade Secrets Protection Act

National authorities and AFCOS might be prevented by the Trade Secrets Protection Act to provide any information they hold to OLAF.

**Trade Secrets Protection Act**

**Subject**

**Art. 1** This law regulates the terms and conditions for protection against illegal acquisition, use and disclosure of a trade secret carried out by court in civil proceedings.

**Limits**

**Art. 2** (1) This law does not apply to:

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470 Закон за защита на търговската тайна.
471 Предмет
Чл. 1. Този закон урежда условията и реда за защита от неправомерно придобиване, използване и разкриване на търговска тайна, осъществявана по съдебен път в производство по граждански дела.
472 Ограничения
Чл. 2. Закон за защита на търговската тайна (1) Този закон не се прилага по отношение на:
1. правото на свободно изразяване на мнение и правото на информация съгласно Хартата на основните права на Европейския съюз (ОВ, С 326/391 от 26 октомври 2012 г.), включително зачитайки свободата и плурализма на медите;
2. разкриването на търговска тайна от нейния притежател, когато съгласно правото на Европейския съюз или българското законодателство такова разкриване е от обществен интерес и е необходимо за упражняване правомощията на държавни органи;
3. разкриването на търговска тайна от институциите и от органите на Европейския съюз или от органите на държавите членки, когато им е била предоставена от предприятие съгласно правото на Европейския съюз или националното законодателство за упражняване на техните правомощия и разкриването е задължително или допустимо съгласно правото на Европейския съюз или националното законодателство; независимостта на синдикалните организации и организациите на работодателите и правото им да сключват колективни трудови договори съгласно правото на Европейския съюз или българското законодателство.
2. Този закон не може да се прилага като основание за ограничаване движението на работниките или служителите, като не следва:
1. the right to free expression of opinion and the right to information according to the Charter of Fundamental Rights of the European Union (OJ, C 326/391 of October 26, 2012), including respecting the freedom and pluralism of the media;
2. the disclosure of a trade secret by its owner, when according to the law of the European Union or the Bulgarian legislation, such disclosure is of public interest and is necessary for the exercise of the powers of state authorities;
3. the disclosure of a trade secret by the institutions and authorities of the European Union or by the authorities of the Member States, when it has been provided to them by an enterprise under the law of the European Union or national legislation for the exercise of their powers and the disclosure is mandatory or permissible under the law of European Union or national law;
4. the independence of trade union organisations and employers’ organisations and their right to conclude collective labour agreements according to the law of the European Union or Bulgarian legislation.

(2) This law cannot be applied as a basis for restricting the movement of workers or employees, unless it follows:
1. to restrict workers or employees from using information that is not a trade secret within the meaning of this law;
2. to restrict workers or employees from using the experience and skills acquired in good faith in the work process;
3. to impose additional restrictions on workers or employees through their employment contracts, beyond those that are in accordance with the law of the European Union or Bulgarian legislation.

(3) The establishment of violations, the imposition of sanctions and coercive administrative measures for the knowledge, use or disclosure of the trade secret in the implementation of economic activity contrary to bona fide commercial practice shall be carried out under the conditions and in accordance with the Act on the Protection of Competition. Decisions of the Commission for the Protection of Competition are not an obstacle to providing protection against illegal acquisition, use and disclosure of a trade secret under the conditions and according to the procedure of this law.
Chapter two. Acquisition, Use and Disclosure of Trade Secrets

Section I. Definitions

Art. 3 A trade secret is any commercial information, know-how and technological information that simultaneously meets the following requirements:
1. constitutes a secret in such a way that, as a whole or in its exact configuration and set of elements, it is not generally known or readily available to persons of the circles who habitually use such kind of information;
2. has commercial value due to its secret nature;
3. in relation to it, measures have been taken to keep it secret by the person who has control over the information.

Lawful Acquisition, Use, and Disclosure of Trade Secrets

Art. 7 (1) The acquisition of a trade secret is lawful when it is carried out:
1. through independent discovery or creation;
2. by observing, studying, disassembling or testing a product or object that has been made available to the public or is in the legal possession of the person who acquired the information, who is not legally obliged to restrict the acquisition of the trade secret;
3. by exercising the right to information and consultation by workers or employees or their representatives in accordance with the law of the European Union and Bulgarian legislation;
4. by virtue of a contract or in any other way that does not contradict the bona fide commercial practice within the meaning of the Act on the Protection of Competition.

473 Чл. 3. Закон за защита на търговската тайна Търговска тайна е всяка търговска информация, ноу-хау и технологична информация, която отговаря едновременно на следните изисквания:
1. представлява тайна по такъв начин, че като цяло или в точната си конфигурация и съвкупност от елементи не е общиизвестна или леснодостъпна за лица от средите, които обичайно използват такъв вид информация;
2. има търговска стойност, поради тайния си характер;
3. по отношение на нея са предприети мерки за запазването в тайна, от лицето, което има контрол върху информацията.

474 Правомерно придобиване, използване и разкриване на търговска тайна

Чл. 7. Закон за защита на търговската тайна (1) Придобиването на търговска тайна е правомерно, когато е извършено:
1. чрез независимо откритие или създаване;
2. чрез наблюдение, изучаване, разглобяване или изпитване на продукт или обект, който е бил предоставен на разположение на обществеността или е законно притежавано на придобилото информацията лице, което не е правно задължено да ограничи придобиването на търговската тайна;
3. чрез упражняване на правото на информация и консултация от страна на работници или служители или техните представители в съответствие с правото на Европейския съюз и българското законодателство;
4. по сила на договор или по друг начин, който не противоречи на добросъвестната търговска практика по смисъла на Закона за защита на конкурентната.

(2) Придобиването, използването или разкриването на търговска тайна е правомерно, доколкото такова придобиване, използване или разкриване се изисква или разрешава от правото на Европейския съюз или от българското законодателство.
(2) The acquisition, use or disclosure of a trade secret is lawful, insofar as such acquisition, use or disclosure is required or permitted by the law of the European Union or by Bulgarian legislation.

Unlawful acquisition, use and disclosure of a trade secret

Art. 8

(1) The acquisition of a trade secret without the consent of its owner is considered unlawful when it is carried out through:
1. unregulated access, appropriation or copying of documents, things, materials, substances or electronic documents over which lawful control is exercised by the holder of the trade secret and which contain a trade secret or information from which the secret can be derived;
2. other behaviour that contradicts fair commercial practice within the meaning of the Competition Protection Act.

(2) The use or disclosure of a trade secret without the consent of its holder is considered unlawful when it is carried out by a person who is:
1. unlawfully acquired the trade secret, or
2. breached a confidentiality agreement or other duty not to disclose the trade secret, or
3. breached an obligation to limit the use of trade secrets.

(3) The acquisition, use or disclosure of a trade secret is considered unlawful when at the time of acquisition, use or disclosure and the person, given the circumstances, knew or should have known that the trade secret was obtained directly or indirectly from another a person who has used or disclosed it unlawfully.

(4) The production, offering or placing on the market of goods – the subject of an infringement, as well as their import, export or storage for such purposes, is considered an...
unlawful use of a trade secret, when the perpetrator knew or, given the circumstances, should have known that the trade secret has been used unlawfully within the meaning of para 2.

**Exceptions**

**Art. 9** The acquisition, use or disclosure of a trade secret is not considered unlawful in the following cases:

1. when exercising the right to free expression of opinion and the right of access to information in the sense of the Charter of Fundamental Rights of the European Union, including respect for the freedom and pluralism of the media;
2. to reveal crimes, violations or other illegal acts, when this is done for the purpose of protecting the public interest;
3. when workers or employees disclose a trade secret to their representatives within the legal exercise of the representation’s functions in accordance with the law of the European Union or Bulgarian legislation, if the disclosure was necessary for the exercise of these functions;
4. to protect an interest recognized by European Union law or Bulgarian legislation.

In addition, the Code on Court Rules, Art. 136 et seq. might apply if it describes and requests secrecy to court proceedings.

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476 Извключения

Чл. 9. Закон за защита на търговската тайна
Придобиването, използването или разкриването на търговска тайна не се смята за неправомерно в следните случаи:
1. при упражняване на правото на свободно изразяване на мнение и правото на достъп до информация по смисъла на Хартата на основните права на Европейския съюз, включително зачитането на свободата и плурализма на медите;
2. за разкриване на престъпления, нарушения или други противоправни деяния, когато това се извършва с цел защита на обществения интерес;
3. когато работници или служители разкриват търговска тайна на техни представители в рамките на законовото упражняване на функциите на представителството в съответствие с правото на Европейския съюз или българското законодателство, ако разкриването е било необходимо за упражняването на тези функции;
4. за защита на интерес, признат от правото на Европейския съюз или от българското законодателство.
b) Act on Classified Information

4 Next the Act on Classified Information\(^{477}\) might apply.

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\textbf{Art. 1 Act on Classified Information}\(^{478}\)  \\
(1) This law regulates public relations related to the creation, processing and storage of classified information, as well as the terms and conditions for providing access to it.  \\
(2) The purpose of the law is the protection of classified information from unregulated access.  \\
(3) Classified information within the meaning of this law is information representing a state or official secret, as well as foreign classified information.  \\
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c) Customs Act

5 Next the Customs Act area provides for Art. 17 Customs Act\(^{479}\), which might prevent national officials, which are staff of a national authority from providing information:

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\textbf{Art. 16d Customs Act}\(^{480}\) (1) In order to fulfil the powers assigned to them by law, the bodies of the Ministry of Internal Affairs and the Customs Agency shall exchange information, including through access to automated information systems.  \\
(2) Access to the information under para 1 is carried out in a way that does not allow disclosure, and in compliance with the “need to know” principle within the meaning of Art. 3 of the Act on Protection of Classified Information.  \\
(3) The conditions and procedure for exchanging information shall be determined by a joint instruction of the Minister of Finance and the Minister of the Interior.  \\
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\hline
\textbf{Art. 17 Customs Act}\(^{481}\) (1) When performing their official duties, customs officials are obliged to:  \\
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\(^{477}\) Закон за защита на класифицираната информация.  
\(^{478}\) Чл. 1. Закон За Защита На Класифицираната Информация  
(1) Този закон урежда обществените отношения, свързани със създаването, обработването и съхраняването на класифицирана информация, както и условията и реда за предоставяне на достъп до нея.  
(2) Цел на закона е защитата на класифицираната информация от нерегламентиран достъп.  
(3) Класифицирана информация по смисъла на този закон е информацията, представляваща държавна или служебна тайна, както и чуждестранната класифицирана информация.  
\(^{479}\) Закон За Митниците.  
\(^{480}\) Чл. 16г. Закон За Митниците  
(Нов - ДВ, бр. 60 от 2015 г.) (1) За изпълнение на възложените им със закон правомощия органите на Министерството на вътрешните работи и на Агенция “Митници” обменят информация, включително чрез достъп до автоматизирани информационни системи.  
(2) Достъпът до информацията по ал. 1 се осъществява по начин, непозволяващ разкриването и, и при спазване на принципа “необходимост да се знае” по смисъла на чл. 3 от Закона за защита на класифицираната информация.  
(3) Условията и редът за обмен на информация се определят със съвместна инструкция на министъра на финансите и на министъра на вътрешните работи.  
\(^{481}\) Чл. 17. Закон За Митниците  
(1) При изпълнение на служебните си задължения митническите служители са длъжни:
1. to comply with the organisation of work at the customs office;
2. to protect the property, rights and freedoms of individuals;
3. to present a customs mark and official card;
4. to wear uniform clothing, when this is provided for the relevant positions in the Organisational Rules of the Customs Agency;
5. to observe the ethical norms of behaviour of the customs officer approved by order of the Minister of Finance;
6. not to disclose circumstances and facts that became known to them during or on the occasion of the performance of official duties their duties, defined by this law as an official secret, except at the written request of a state body, when this is provided for by law, or of another customs body, or of a body of the National Revenue Agency in connection with the exercise of its powers. The conditions and procedure for providing information on circumstances and facts constituting an official secret to another customs authority are determined by the director of the Customs Agency.

(2) The list of categories of information subject to classification as an official secret shall be determined by order of the director of the Customs Agency.

(3) The conditions and order for the issuance and use of the customs mark and service card shall be determined by order of the director of the Customs Agency.

(4) For non-fulfilment of the obligations under para 1 customs officials bear disciplinary responsibility.
d) Administrative Procedure Code

The Duty to notify, which is regulated in the Administrative Procedure Code has a different telos as it addresses primarily the duty to notify the parties about the initiation of a process:

Duty to Notify

Art. 26

(1) In addition to the applicant, the known interested citizens and organisations are notified of the initiation of the proceedings. If the deadline for the completion of the proceedings is longer than 7 days, the notification shall also include information on the date by which the act must be issued.

(2) Notification of the initiation of proceedings shall be carried out in accordance with Art. 18a.

Задължение за уведомяване

Чл. 26. Административнопроцесуален Кодекс

(1) За започване на производството се уведомяват известните заинтересовани граждани и организации освен заявителя. Ако срокът за приключване на производството е по-дълъг от 7 дни, в уведомлението се включва и информация за датата, до която трябва да бъде издаден актът.

(2) (Изм. ДВ, бр. 77 от 2018 г., в сила от 10.10.2019 г.) Съобщаването за започване на производството се извършва по реда на чл. 18а.
II. References to National law in the OLAF Regulation (Art. 9–17 OLAF Regulation)

1. Article 9 (Procedural guarantees)

[...]
3. As soon as an investigation reveals that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, that official, other servant, member of an institution or body, head of office or agency, or staff member shall be informed to that effect, provided that this does not prejudice the conduct of the investigation or of any investigative proceedings falling within the remit of a national judicial authority.

4. [...] In duly justified cases where necessary to preserve the confidentiality of the investigation or an ongoing or future criminal investigation by the EPPO or a national judicial authority, the Director-General may, where appropriate after consulting the EPPO or the national judicial authority concerned, decide to defer the fulfilment of the obligation to invite the person concerned to comment. [...]

a) Art. 9 para 3 – remit of a national judicial authority

Covert investigations against a person might be the standard example for investigation measures that require secrecy on the part of the state and its officials, but these are limited mainly to the Bulgarian CPC and therefore the criminal justice area and not the administrative justice area, which OLAF operates for. The remit is defined by the provisions that describe the investigation and the actions of the judicial authority in this special area.

b) Art. 9 para 4 – national judicial authorities

The national judicial authorities by virtue of para 4 of Art. 9 OLAF Regulation will include the Bulgarian prosecution offices, disciplinary chambers or administrative authorities occupied with administrative penalty procedures if they have brought the case to court and the decisions lie within the hands of administrative judges.
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 National rules encompass the General Tax, the Tax Procedures, the Customs and the Public Finance Inspection Act, which provide all for special rules applicable to such proceedings.

b) Specifications

2 National rules that relate to data protection in administrative judicial proceedings have been partly presented above in Art. 3 OLAF Regulation (external investigations).

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 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 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.

In relation to Art. 11 OLAF Regulation following passage from a Bulgarian judgement can introduce the reader into the factual matter:

“Regarding the letter from OLAF No OCM (2018) 18661/03.09.2018, the court rightly accepted that it does not constitute a final report, since it does not contain the information specified in Art. 11 of Regulation (EU, Euratom) No 883/2013 requisites and not signed by the general director. For this reason, the letter is only of a notification nature and is inapplicable to Art. 11 para 2 of Regulation (EU, Euratom) No 883/2013, recognizing OLAF reports as suitable evidence in administrative and judicial proceedings.”

This has been repeated in other court decisions:

“The letter of the European Anti-Fraud Office, which states that the importer systematically understates the goods by 30% when declaring the import in B. cannot serve to determine the actual customs value of the process goods either. As can be seen from the letter No OS/2018/0052 LC/2018/0247 dated 28.02.2019 of the Director General of the European Anti-Fraud Office to MGB EAD, the check has not been completed and no final decision has been issued in a report. The Court finds that the letter from the European Anti-Fraud Office does not constitute a final report within the meaning of Article 11 of the Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council regarding investigations conducted by the European Anti-Fraud Office, as it does not contain the details specified in the cited provision and is not signed by the Director General as required by the same. Therefore, the same does not have the characteristics of a document that would have binding evidentiary force in accordance with Article 127, para 1 of the Code of Criminal Procedure, applicable by reference from the provision of Article 84 of the ZANN, as the final report under Article 11 of the Regulation would have (EU, Euratom) No 883/2013 of the European Parliament and of the

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Council regarding the investigations conducted by the European Anti-Fraud Office, and is only correspondence of an informative nature. It is irrelevant to the case and information on the price at which the goods are sold on the domestic market, insofar as it is not the price on subsequent sales – after the realization of the import, but the sales price of the goods when they are sold for export with the destination of the customs territory of the Union that is important for determining the customs value.”

Therefore it can be concluded that OLAF SNEs, investigators and AFCOS need to pay attention to the drawing of such reports. It is recommended to follow the internal rules, which OLAF set up to harmonize these reports and follow the requisites of Art. 11 of the Regulation as well as the established jurisprudence. A report without a signature is merely a draft and has not yet been deliberately released into legal correspondence.

**a) References to national law**

Exemplarily, national provisions for references made in para 2 a and b are found in the following table:

<table>
<thead>
<tr>
<th>Para 2 (a)</th>
<th>The Administrative Procedure Code holds the following in this regard: Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>**Art. 171.**485 (1) The evidence collected regularly in the proceedings before the administrative body shall also be valid before the court. The court may question as witnesses the persons who have reported to the administrative body and the experts only if it deems it necessary to hear them immediately. (2) At the request of the parties, the court may also collect new evidence admissible under the Civil Procedure Code. He can also appoint experts, inspection or certification ex officio.</td>
<td></td>
</tr>
</tbody>
</table>


485 Доказателства

Чл. 171. (1) Доказателствата, събрани редовно в производството пред административния орган, имат сила и пред съда. Съдът може да разпита като свидетели лицата, дали сведения пред административния орган, и веществи лица само ако намери за необходимо да ги изслуша непосредствено.

(2) По искане на страните съдът може да събира и нови доказателства, допустими по Граждански процесуален кодекс. Вещи лица, оглед или освидетелствване той може да назначава и служебно.

(3) (Нова - ДВ, бр. 98 от 2020 г.) Съдът може да изслуша страна и да извърши разпит на свидетели и веществи лица чрез видеоконференция.

(4) (Предишна ал. 3 - ДВ, бр. 98 от 2020 г.) Страните са длъжни да съдействат за установяване на истина.

(5) (Предишна ал. 4 - ДВ, бр. 98 от 2020 г.) Съдът е длъжен да съдейства на страните за отстраняване на формални грешки и неясности в изявленията им и да им укажа, че за някои обстоятелства от значение за делото не се съчат доказателства.

(6) (Предишна ал. 5 - ДВ, бр. 98 от 2020 г.) По исканията за доказателства съдът се произнася в закрито заседание. Разрешаването им може да стане и в първото заседание по делото, ако съдът намери, че е необходимо да изслуша и устните обяснения на страните по посочените от тях доказателства.
(3) The court may hear a party and interrogate witnesses and experts via video conference.
(4) The parties are obliged to cooperate in establishing the truth.
(5) The court is obliged to assist the parties in removing formal errors and ambiguities in their statements and to indicate to them that for certain circumstances relevant to the case no evidence points.
(6) The court shall rule on requests for evidence in closed session. They can be resolved in the first session of the case, if the court deems it necessary to listen to the oral explanations of the parties based on the evidence provided by them.

In addition, Art. 36 of the Administrative Procedure Code can be cited here as well:

**Gathering evidence**

**Art. 36** [See above for original law text → Article 3 External investigations,

Investigative powers in the area of structural funds and internal policies .]

(1) The evidence is collected ex officio by the administrative body, except in the cases provided for in this code or in a special law.
(2) The parties shall assist the authority in gathering evidence. They are obliged to present evidence that is with them and is not with the administrative body. In all cases where a special law has comprehensively defined the evidence that the citizen or organisation must present, the administrative body has no right to require them to present other evidence.
(3) All collected evidence is checked and evaluated by the administrative body.
(4) The administrative bodies shall not may require the provision of information or documents that are available with them, and provide them ex officio for the needs of the relevant proceedings.
(5) When requirements related to the criminal record of an individual are introduced in a normative act, the necessary data for Bulgarian citizens shall be established ex officio by the relevant administrative body.
(6) The authority conducting the proceedings on its own initiative or at the request of a party shall request from the relevant administrative authorities, the bodies of the judicial power, the persons, performing public functions, and the organisations providing public services, within their competence to issue and send certificates, to send documents, other evidence or information relevant to the proceedings.
(7) The persons, organisations and bodies under para 1 are obliged within their competence to issue and send the certificates requested by them, to send the requested documents, other evidence or information immediately, but not later than 7 days from the request, under the conditions and according to the procedure for exchanging electronic documents under the order of Art. 18a.

(8) If a special law does not provide otherwise, in the event of a temporary objective impossibility or in the absence of a technical possibility for the exchange of electronic documents or sending other evidence in accordance with Art. 18a, the exchange under para 2 is made through a licensed postal operator or by any other customary or appropriate means.

<table>
<thead>
<tr>
<th>Para 2 (b)</th>
<th>Administrative Offences and Sanctions Act:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Art. 36</strong> [See above for original law text → Article 5 Opening of investigations, National rules.]</td>
</tr>
<tr>
<td></td>
<td>(1) Administrative criminal proceedings are initiated by drawing up an act to establish the committed administrative violation.</td>
</tr>
<tr>
<td></td>
<td>(2) Without an attached act, an administrative criminal file shall not be opened except in cases where the proceedings have been terminated by the court or the prosecutor or the prosecutor has refused to institute criminal proceedings and has been forwarded to the punishing authority.</td>
</tr>
<tr>
<td></td>
<td><strong>Art. 70, 83a, Art. 234 of the Criminal Code</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Art. 242, Art. 242a, Art. 251 and Art. 255, Art. 248a of the Criminal Code</strong></td>
</tr>
</tbody>
</table>

Source: The authors.

b) National authority, para 3

7 A potential national authority that acts on recommendations and reports by OLAF might be the Bulgarian Customs Authority or the Managing authority for the allocation and distribution of sums from the structural funds’ programs. Recent cases have shown that the State Fund Agriculture authority (Държавен фонд „Земеделие) might receive cases dismissed by the EPPO but potentially open to administrative fines.⁴⁸⁶

8 In addition to that the administrative criminal bodies might be competent to act upon the basis of OLAF information e.g. according to Section IX. Enforcement of criminal decrees and court decisions in the Administrative Offences and Penalties Act. Chapter four

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⁴⁸⁶ The EPPO in Sofia has proposed an administrative penalty for a farmer suspected of subsidy fraud and document forgery. The farmer received funds to modernize his sheep farm but submitted false documents, preventing the release of the funds. If convicted, he may face a fine of up to BGN 5000.
of the same Act (entitled: “Chapter Four. Administrative Criminal Sanctions Against Legal Entities and Sole Traders” applies to legal entities and is of particular interest in cases, in which a company obtains construction aid, grants or structural funds.

In the area of structural funds the actions following an investigation report may be deduced from the collection of judgements in relation to OLAF investigations (see → A. I.). One example is the reimbursement of sums allocated:

**Act on Management of Funds from European Funds under Shared Management**

**Art. 64a**

(1) Unduly paid and overpaid amounts established shall be reimbursed from project payments. When a refusal of verification is issued after the corresponding payment, the established unduly paid and overpaid amounts are reimbursed through voluntary performance by the beneficiary within 14 days. After the expiration of the period for voluntary payment, the unduly paid and overpaid amounts are deducted from the next payment under the project together with the interest due for late payment, and when this is inapplicable – by exercising rights under the guarantees provided by the beneficiary under Art. 61 para 2, according to the order and manner specified in the normative act under Art. 7 para 4 item 4.

(2) After the final payment under the project, the established and unreimbursed unduly paid and overpaid amounts are a public claim according to Art. 162 para 2 item 8 of the Tax and Insurance Procedural Code.

**Art. 78**

(1) An official in a management or control body who, in the performance of his official duties, culpably allows a violation of a term provided for in this law, shall be punished with a fine of BGN 50 to BGN 1,000, and in case of repeated violation, with a fine of BGN 100 to BGN 2,000.

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487 Чл. 64а. (Нов - ДВ, бр. 51 от 2022 г., в сила от 01.07.2022 г.) (1) Установените недължимо платени и надплатени суми се възстановяват от плащания по проекта. Когато отказ от верификация е издаден след съответното плащане, установените недължимо платени и надплатени суми се възстановяват чрез доброволно изпълнение от страна на бенефициента в 14-дневен срок. След изтичането на срока за доброволно плащане недължимо платените и надплатените суми се прихващат от следващо плащане по проекта заедно с дължимите лихви за просрочке, а когато това е неприложимо - чрез упражняване на права по дадените от бенефициента обезпечения по чл. 61, ал. 2, по ред и начин, определени в нормативния акт по чл. 7, ал. 4, т. 4.

(2) След окончателното плащане по проект установените и невъзстановени недължимо платени и надплатени суми са публично вземане съгласно чл. 162, ал. 2, т. 8 от Данъчно-осигурителния процесуален кодекс.

488 Чл. 78. (1) Длъжностно лице в орган за управление или контрол, което при изпълнение на служебните си задължения виновно допусне нарушаване на предвиден в този закон срок, се наказва с глоба от 50 до 1000 лв., а при повторно нарушение – с глоба от 100 до 2000 лв.

(2) Нарушенията по ал. 1 се установяват с актове, съставени от инспектори в инспекторатите по Закона за администрацията.

(3) Наказателните постановления се издават от ръководителя на администрацията или организацията, в чиято структура е органът за управление или контрол, или от определено от него лице.
(2) Violations under para 1 are established by acts drawn up by inspectors in the inspectorates under the Administration Act.

(3) Penal decrees are issued by the head of the administration or the organisation in whose structure the management or control body is located, or by a person designated by him.

Art. 79489 The establishment of violations, the issuance, appeal and execution of criminal decrees are carried out in accordance with the Administrative Offences and Penalties Act.

4. Article 12 (Exchange of information between the Office and the competent authorities of the Member States)

1. Without prejudice to Articles 10 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may transmit to the competent authorities of the Member States concerned information obtained in the course of external investigations in due time to enable them to take appropriate action in accordance with their national law. It may also transmit such information to the institution, body, office or agency concerned.

2. Without prejudice to Articles 10 and 11, the Director-General shall transmit to the judicial authorities of the Member State concerned information obtained by the Office, in the course of internal investigations, concerning facts which fall within the jurisdiction of a national judicial authority. […]

3. The competent authorities of the Member State concerned shall, unless prevented by national law, inform the Office without delay, and in any event within 12 months of receipt of the information transmitted to them in accordance with this Article, of the action taken on the basis of that information.

4. The Office may provide evidence in proceedings before national courts and tribunals in conformity with national law and the Staff Regulations. […]

a) Art. 12 para 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law)

1 Competent authorities

- For the Prosecutor’s offices, see → Institutions, Organisation of the criminal justice system in Bulgaria.
- Especially the Directorate “Protection of the Financial Interests of the European Union” (AFCOS).
- See below → Art. 12a, Contact with OLAF and cooperation with other authorities.

489 Чл. 79. Установяването на нарушенията, издаването, обжалването и изпълнението на наказателните постановления се извършват по реда на Закона за административните нарушения и наказания.

Bulgaria
Appropriate action acc. to national law
- National follow-up acc. to the Administration Procedure Act
- National follow-up acc. to the special administrative laws e.g., Customs Act and Tax and Insurance Procedure Code

b) Art. 12 para 2 OLAF Regulation (judicial authorities of the Member State concerned)

Which are these national authorities?
For all offences:
For the Prosecutor’s offices and investigative bodies, see → Institutions, Organisation of the criminal justice system in Bulgaria as well as the authorities mentioned under Art. 12 para 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law).

For corruption offences:
General Directorate for Combatting Organised Crime (Главна дирекция “Борба с организираната престъпност”) within Bulgaria’s Ministry of Interior.

c) Art. 12 para 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned)

These are the authorities, which were presented under a) and b) above. They are obliged to fulfil the time-limit by virtue of Art. 12 para 3 OLAF Regulation.

Prevention by national law
The right to withhold information (for a certain time) may result from provisions, which ensure the secrecy of an action under national law.

d) Art. 12 para 4 OLAF Regulation (Providing evidence in court proceedings before national courts and tribunals in conformity with national law)

The evidence provisions in the Administrative Procedure Code apply before the national administrative courts. Increasingly, decisions of courts at first instance have been challenged once OLAF evidence was involved. Art. 208 et seq. of the administrative court Procedure Code applies for cassation proceedings before national administrative courts and tribunals.
Evidence
Art. 37 APC\(^{490}\) (1) Evidence in the proceedings for the issuance of an individual administrative act may be data that are related to facts and circumstances relevant to the rights or obligations or legal interests of the interested citizens or organisations and are established in accordance with the procedure provided for in this Code. (2) Commonly known facts, facts for which the law formulates a presumption, as well as facts that are known to the body ex officio, are not subject to proof.

Respect for the confidentiality of the parties and other participants in the proceedings
Art. 38 APC\(^{491}\) The parties and other participants in the proceedings have the right to their secrets, including those affecting their private lives, their production and professional secrets, not to be distributed, except in cases provided by law.

Evidence
Art. 39 APC\(^{492}\) (1) The facts and circumstances are established through explanations, declarations of the parties or their representatives, reports, written and material evidence, expert opinions and other means that are not prohibited by law, unless a special law prescribes the proof of certain facts and circumstances to be carried out by other means. (2) Evidence that was not collected or prepared under the conditions and according to the procedure provided for in this code or according to the procedure provided for in special laws is not allowed.
**Written evidence**

**Art. 40 APC** 493  
(1) Written evidence is allowed to establish all facts and circumstances relevant to the proceedings.

(2) The strength of the written evidence is determined according to the normative acts in force at the time and place where they were drawn up, unless this is incompatible with the provisions of Bulgarian law. When a foreign law is applicable to the document, it is proved by the party providing it.

(3) The administrative body assesses the probative value of the document, in which there are cross-outs, erasures, additions between the lines and other external deficiencies, in view of all the circumstances and facts gathered during the proceedings.

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**Collection of documents from the parties and from persons not participating in the proceedings**

**Art. 41 APC** 494  
(1) During and on the occasion of pending proceedings, each of the parties may request, through the administrative body, from the other party in the proceedings to submit within three days of the request certified copies of its own or foreign documents located in that country, relevant to the case.

(2) During and on the occasion of pending proceedings, any party may request, through the administrative body, citizens and organisations not participating in the proceedings to submit, within three days of the request, copies certified by them of their own or foreign documents that are relevant to those citizens and organisations for the occasion.

(3) The non-participating citizen or organisation that unreasonably does not present the requested document shall be liable to the party for the damages caused.

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493 Писмени доказателства  
**Чл. 40.** (1) Писмени доказателства се допускат за установяване на всички факти и обстоятелства от значение за производството.

(2) Силата на писмените доказателства се определя съобразно нормативните актове, действали по времето и мястото, където те са съставени, освен ако това е несъвместимо с разпоредби на българското право. Когато към документа е приложено чуждо право, то се доказа от страната, която го предоставя.  

(3) Административният орган преценява доказателствената сила на документа, в който има зачерквания, изтривания, добавки между редовете и други външни недостатъци, с оглед на всички обстоятелства и факти, събрани в хода на производството.

494 Събиране на документи от страните и от неучастващи в производството лица  
**Чл. 41.** (1) При и по повод висящо производство всяка от страните може да иска чрез административния орган от друга страна в производството да представи в тридневен срок от поискането заверени от нея копия на намиращи се в тази страна собствени или чужди документи, имащи значение за случая.

(2) При и по повод висящо производство всяка страна може да иска чрез административния орган от неучастващи в производството граждани и организации да представят в тридневен срок от поискането заверени от тях копия на намиращи се в тези граждани и организации собствени или чужди документи, имащи значение за случая.

(3) Неучастващият гражданин или организация, който неоснователно не представят искания документ, отговарят пред страната за причинените вреди.
Written declarations
Art. 43 APC\textsuperscript{495} The administrative body cannot refuse to accept a written declaration establishing facts and circumstances for which a special law does not provide for proof in a certain way or by certain means. He can also accept a written declaration establishing facts and circumstances for which a special law provides for proof with an official document, when one has not been issued to the party within the time limit set for this, unless a regulatory act provides otherwise for certain types of documents.

Information from persons not involved in the proceedings
Art. 44 APC\textsuperscript{496} (1) The administrative body may request information from persons not participating in the proceedings, when this is necessary to clarify essential facts and circumstances relevant to the proceedings and they cannot be established in any other way.

(2) Information shall be provided in writing. They are signed by the persons who gave them and countersigned by the administrative body or by an official designated by it.

(3) When the person cannot provide information in writing, he is called upon to provide it orally before the administrative body or an official designated by it. The information shall be recorded and signed by the authority or the official indicating his name and position and countersigned by the person.

(4) The administrative body explains to the persons under para 1, that when the administrative act is disputed before the court, they can be questioned as witnesses.

(5) The parties to the proceedings have the right of access to the documents given in accordance with para 2 and 3 information.

The next pages contain further provisions from the administrative area:

\textsuperscript{495} Писмени декларации

Чл. 43. Административният орган не може да откаже приемане на писмена декларация, с която се установяват факти и обстоятелства, за които специален закон не предвижда доказване по определен начин или с определени средства. Той може да приеме и писмена декларация, с която се установяват факти и обстоятелства, за които специален закон предвижда доказване с официален документ, когато такъв не е издаден на страната в определения за това срок, освен ако нормативен акт предвижда друго за определени видове документи.

\textsuperscript{496} Сведения от неучастващи в производството лица

Чл. 44. (1) Административният орган може да изисква сведения от неучастващи в производството лица, когато това е нужно за изясняване на съществени факти и обстоятелства от значение за производството и те не могат да бъдат установени по друг начин.

(2) Сведенията се дават писмено. Те се подписват от лицата, които са ги дали, и се приподписват от административния орган или от определен от него служител.

(3) Когато лицето не може да даде сведения писмено, то се призовава да ги даде устно пред административния орган или определен от него служител. Сведенията се записват и подписват от органа или служителя с означаване на името и длъжността му и се приподписват от лицето.

(4) Административният орган разяснява на лицата по ал. 1, че при оспорване на административния акт пред съда могат да бъдат разпитани като свидетели.

(5) Страните в производството имат право на достъп до дадените по реда на ал. 2 и 3 сведения.
Art. 45 APC\(^{497}\)

(1) The administrative body may call on a party to the proceedings to provide explanations if this is necessary to clarify the case or to implement the actions taken, as well as when a special law provides for this.

(2) In the cases under para 1, a hearing session is scheduled, at which all parties to the proceedings are invited to attend. The parties to the proceedings may ask questions of the explainer through the authority leading the proceedings.

Special order for performing certain procedural actions

Art. 46 APC\(^{498}\)

(1) The administrative body may request the relevant territorial administrative body to summon a person who has an address, corresponding seat or address of management in another municipality, to provide information, explanations, clarifications or perform other actions related to the current proceedings. The body in front of which the proceedings are taking place determines the circumstances that are the subject of the reports, explanations, clarifications or actions that must be carried out. In case there is no territorial administrative body with the same competence in the relevant municipality, the administrative body can turn to the relevant municipality or town hall.

(2) At the oral hearing under para 1, a protocol is drawn up, which contains the name of the person who gave information, explanations or clarifications, the relevant information, signature, name and position of the official who drew it up and date of drawing up.

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\(^{497}\) Пояснения на страна

Чл. 45. (1) Административният орган може да призове страна в производството да даде пояснения, ако това е необходимо за изясняване на случая или за изпълнение на предприетите действия, както и когато специален закон предвижда това.

(2) В случаите по ал. 1 се насрочва заседание за изслушване, на което се поканват да присъстват всички страни в производството. Страните в производството могат да задават въпроси на даващия пояснения чрез органа, водещ производството.

\(^{498}\) Особен ред за извършване на някои процесуални действия

Чл. 46. (1) Административният орган може да поисква от съответния териториален административен орган да призове лице, което има адрес, съответно седалище или адрес на управление в друга община, да даде сведения, обяснения, пояснения или да извърши други действия, свързани с текущото производство. Органът, пред който се развива производството, определя обстоятелствата, които са предмет на сведенията, обясненията, поясненията или действията, които трябва да бъдат извършени. В случай че в съответната община няма териториален административен орган със същата компетентност, административният орган може да се обярне към съответната община или кметство.

(2) При устното изслушване по ал. 1 се съставя протокол, който съдържа името на лицето, дало сведения, обяснения или пояснения, съществената за случая информация, подпис, име и длъжност на съставилото го дължностно лице и дата на съставяне.

(3) Административният орган може да получи сведения, обяснения или пояснения и по телефона, ако няма основания да се съмнява в самоличността на лицето, което ги дава.

(4) (Нова - ДВ, бр. 98 от 2020 г.) Устното изслушване по ал. 1 може да бъде извършено и чрез видеоконференция.

(5) (Нова - ДВ, бр. 98 от 2020 г.) За всяко процесуално действие, извършено чрез видеоконференция, водещият производството административен орган съставя протокол, в който се посочват данните по ал. 2 и се вписват данните на всички участници във видеоконференцията и на лицето, което ги е удостоверило.

(6) (Нова - ДВ, бр. 98 от 2020 г.) За извършената видеоконференция, след уведомяване на участниците в нея, се изготвя видеозапис върху електронен носител. Видеозаписът се прилага към административната преписка.
(3) The administrative body may receive information, explanations or clarifications also by telephone, if there are no grounds to doubt the identity of the person giving them.

(4) The oral hearing under para 1 can also be carried out by video conference.

(5) For each procedural action carried out via video conference, the administrative body leading the proceedings shall draw up a protocol, in which the data under para 2 and enter the data of all participants in the video conference and of the person who authenticated them.

(6) A video recording on an electronic medium shall be prepared for the conducted video conference, after notifying the participants thereof. The video is attached to the administrative file.

**Summoning Contents and Summoning Costs**

**Art. 47 APC**

(1) The summons contains:

1. name and address of the administrative body;

2. name, address, respectively headquarters or address of management, of the summoned person;

3. in which proceedings, in what capacity the person is summoned and for the performance of which procedural actions;

4. whether the person must appear in person or can be represented by an attorney, or give information, explanations or clarifications in writing;

5. the time limit in which the person should appear, or the day, time and place of the person’s or his proxy’s appearance;

6. the legal consequences of non-appearance.

(2) A person under Art. 44 para 3, who has an address in another municipality and appeared in person on a summons outside the cases under Art. 46, para 1, travel and other expenses are recognized. The same costs are also recognized for the personal appearance of a party, when the proceedings are opened at the request of another party or by official means. The request for the recognition of costs is addressed to the authority.
leading the proceedings before the act is issued. Expenses are recognized according to regulations determined by the Minister of Finance.

Right to refuse to provide information, explanations and clarifications

Art. 48 APC (1) Only: have the right to refuse to provide information, explanations and explanations.
1. the direct relatives of an interested citizen participating in the proceedings, his spouses, brothers and sisters, as well as first-degree matchmaking relatives;
2. the persons who, with their answers, would cause themselves or their relatives, specified in item 1, immediate harm, disgrace or criminal prosecution.
(2) Lawyers, clergy and persons who are legally obliged to maintain professional secrecy for a party to the proceedings may refuse to provide information received in this capacity.
(3) Information protected by law may be provided only under the conditions and according to the procedure provided for in the relevant law.

Expertise

Art. 49 APC (1) Expertise is assigned when special knowledge in the field of science, art, crafts and others, which the body does not have, is needed to clarify some issues that have arisen.
(2) In case of complexity or complexity of the subject of the research, the authority may appoint more than one expert.
(3) The administrative body that assigned the expertise shall verify the identity of the expert, his relations with the parties, as well as the existence of grounds for recusal.

500 Право да се откаже даването на сведения, обяснения и пояснения
Чл. 48. (1) Право да отказват да дават сведения, обяснения и пояснения имат само:
1. роднините по права линия на заинтересован гражданин, участващ в производството, съпрузите, братята и сестрите му, както и роднините по сватовство от първа степен;
2. лицата, които със своите отговори биха причинили на себе си или на свои роднини, посочени в т. 1, непосредствена вреда, опозоряване или наказателно преследване.
(2) Адвокатите, свещенослужителите и лицата, които по закон са длъжни да пазят професионална тайна за страна в производството, могат да отказват да дадат сведения, получени в това им качество.
(3) Защитената със закон информация може да бъде предоставяна само при условията и по реда, предвидени в съответния закон.

501 Експертиза
Чл. 49. (1) Експертиза се възлага, когато за изясняване на някои въпроси са необходими специални знания в областта на науката, изкуството, занаятите и други, каквито органът няма.
(2) При сложност или комплексност на предмета на изследването органът може да назначи и повече от едно вещо лице.
(3) Административният орган, възложил експертизата, проверява самоличността на вещото лице, отношенията му със страните, както и наличието на основание за отвод. Основанията за отвод на вещото лице са същите като при отвод на административен орган.
(4) Всички органи, граждани или организации, у които се намират материали, необходими за експертизата, осигуряват достъп на вещото лице до тях съобразно нивото на достъп до класифицирана информация, което то притежава.
(5) Вещото лице се легитимира с удостоверение, издано от органа, възложил експертизата.
grounds for impeachment of the expert are the same as for impeachment of an adminis-
trative body.
(4) All bodies, citizens or organisations that have materials necessary for the expertise
shall provide the expert with access to them according to the level of access to classified
information that he possesses.
(5) The expert is identified with a certificate issued by the body that commissioned the
expertise.

Release of the expert
Art. 50 APC\(^{502}\)  The expert is released from the task assigned to him when he cannot
perform it due to illness or lack of qualification in the relevant field or other valid rea-
sons. It can also be refused in all cases where it is allowed to refuse to provide inform-
ation from a third party.

Expert opinion
Art. 51 APC\(^{503}\)  (1) The expert shall carry out the expertise within the specified period.
(2) After carrying out the necessary inspections and tests, the expert draws up a written
conclusion.
(3) The expert may not amend, supplement or expand the task assigned to him without
the consent of the body that appointed the expertise.
(4) The expert submits to the relevant body his written conclusion with transcripts for
the parties and it is attached to the case file.
(5) The administrative body assesses the expert’s conclusion together with the other
evidence gathered during the proceedings.
(6) When it does not agree with the expert’s conclusion, the authority shall state its
reasons in the act.

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\(^{502}\) Освобождаване на вещото лице
Чл. 50. Вещото лице се освобождава от възложената му задача, когато не може да я изпълни поради болест
или липса на квалификация в съответната област или други основателни причини. То може да се откаже и
във всички случаи, когато се допуска отказ от даване на сведения от трето лице.

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\(^{503}\) Заключение на вещо лице
Чл. 51. (1) Вещото лице извършва експертизата в определения срок.
(2) След извършване на необходимите проверки и изследвания вещото лице съставя писмено заключение.
(3) Вещото лице не може да изменя, допълва или разширява възложената му задача без съгласието на
органа, назначен експертизата.
(4) Вещото лице представя на съответния орган писменото си заключение с препис за страните и то се
прилага към преписката по производството.
(5) Административният орган прецени заключението на вещото лице заедно с другите доказателства,
събрани в хода на производството.
(6) Когато не е съгласен със заключението на вещото лице, органът се мотивира в акта.
Art. 52 APC (1) The administrative body shall conduct an inspection only if the case cannot be clarified by the use of other means of gathering evidence.
(2) At the request of the authority, third parties with whom the object of inspection is located shall provide it to the authority or provide it with access to it.

Chapter Twelve. Cassation Proceedings
Subject of cassation challenge
Art. 208 APC The first-instance court decision is subject to cassation challenge in whole or in separate parts thereof.

Grounds of appeal
Art. 209 APC A cassation appeal or cassation protest is filed when the decision is:
1. void;
2. inadmissible;
3. incorrect due to a violation of the substantive law, a substantial violation of the rules of judicial procedure or unreasonableness.

Right of cassation challenge
Art. 210 APC (1) The parties to the case, for whom it is unfavorable, have the right to appeal the decision.

504 Оглед
Чл. 52. (1) Административният орган извършва оглед само ако случайт не може да се изясни чрез използването на други способи за събиране на доказателства.
(2) По искане на органа трети лица, при които се намира предметът на огледа, го предоставят на органа или му осигуряват достъп до него.

505 Глава дванадесета.
Касационно производство
Предмет на касационно опораване
Чл. 208. Административнопроцесуален Кодекс
На касационно опораване изцяло или в отделни негови части подлежи първоинстанционното съдебно решение.

506 Касационни основания
Чл. 209. Административнопроцесуален Кодекс
Касационна жалба или касационен протест се подава, когато решението е:
1. нищожно;
2. недопустимо;
3. неправильно поради нарушение на материалния закон, съществено нарушение на съдопроизводствените правила или необоснованост.

507 Право на касационно опораване
Чл. 210. Административнопроцесуален Кодекс
(1) Право да обжалват решението имат страните по делото, за които то е неблагоприятно.
(2) Лицата, спрямо които решението има сила, имат право да го обжалват, когато то е неблагоприятно за тях, макар и да не са участвали в делото.
(3) Главният прокурор или неговият заместник при Върховната административна прокуратура може да подава касационен протест.
(2) The persons against whom the decision is valid have the right to appeal it when it is unfavorable to them, even though they did not participate in the case.

(3) The chief prosecutor or his deputy at the Supreme Administrative Prosecutor’s Office may file a cassational protest.

Evidence

Art. 219 APC 508
(1) Written evidence is allowed to establish the grounds of cassation.
(2) Evidence to establish circumstances unrelated to the grounds of cassation is not admissible.

Prohibition on factual findings

Art. 22 APC 509 - The Supreme administrative court assesses the application of the substantive law based on the facts established by the court of first instance in the appealed decision.

9 The Criminal Procedure Code (Нацазателно-Процесуален Кодекс) applies in national court proceedings before criminal courts and tribunals. The collection of evidence is fundamental, e.g. in order to be able to start subsequent proceedings:


Subject of proof

Art. 102 CPC 510 - In criminal proceedings, the following are subject to proof:
1. the committed crime and the accused’s participation in it;
2. the nature and amount of damage caused by the act;
3. the other circumstances that are important for the responsibility of the accused, including regarding his family and property situation.

508 Доказателства

Чл. 219. Административнопроцесуален Кодекс
(1) За установяване на касационните основания се допускат писмени доказателства.
(2) Не се допускат доказателства за установяване на обстоятелства, несвързани с касационните основания.

509 Забрана за фактически установявания

Чл. 220. Административнопроцесуален Кодекс
Върховният административен съд преценява прилагането на материалния закон въз основа на фактите, установени от първоинстанционния съд в обжалваното решение.

510 Част втора.

ДОКАЗВАНЕ

Глава еднаадесета.
Общи положения
Предмет на доказване

Чл. 102. В наказателното производство подлежат на доказване:
1. извършеното престъпление и участието на обвиняемия в него;
2. характерът и размерът на вредите, причинени с деянието;
3. другите обстоятелства, които имат значение за отговорността на обвиняемия, включително и относно семейното и имущественото му положение.
Burden of proof
Art. 103 CPC 511 (1) The burden of proving the accusation in cases of a general nature rests on the prosecutor and the investigating authorities, and in cases initiated on the complaint of the victim – on the private complainant.
(2) The accused is not obliged to prove that he is innocent.
(3) No inferences may be made to the detriment of the accused because he did not give or refused to give explanations or did not prove his objections.

Evidence
Art. 104 CPC 512 Evidence in criminal proceedings may be the factual data that are related to the circumstances of the case, contribute to their clarification and are established in accordance with the procedure provided for in this Code.

Evidence means
Art. 105 CPC 513 (1) The means of evidence serve to reproduce evidence or other means of evidence in criminal proceedings.
(2) Evidence that has not been collected or prepared under the conditions and according to the procedure provided for in this Code shall not be admitted.

Methods of proof
Art. 106 CPC 514 Evidence in criminal proceedings is carried out using the methods provided for in this code.
Collection and verification of evidence

Art. 107 CPC \(^{515}\) (1) The authorities of the pre-trial proceedings collect the evidence ex officio or at the request of the interested parties.
(2) The court collects the evidence according to the requests made by the parties, and in its own way – when it is necessary to reveal the objective truth.
(3) The court and the bodies of the pre-trial proceedings shall collect and verify both the evidence that exposes the accused or reduces his responsibility, and the evidence that acquits the accused or mitigates his responsibility.
(4) The collection of evidence cannot be refused just because the request was not made within a certain period.
(5) All collected evidence is subject to careful examination.

Evidence needs to be obtained in accordance with national law. This includes the avoidance of bans on the use of evidence, e.g. by involving the judge, if this is provided for:

Investigative actions and judicial investigative actions by delegation or in another area

Art. 108 CPC \(^{516}\)
(1) Actions on the investigation and judicial investigative actions by delegation are allowed when they have to be carried out outside the area of the body that examines the case, and their performance by this body is associated with special difficulties.
(2) When it is decreed by a court, the delegation is executed by the relevant district judge, and when it is decreed by a body of pre-trial proceedings – by the relevant body of pre-trial proceedings.
(3) When it deems it necessary, the body examining the case may carry out separate actions under para 1 and in the area of another authority.
Chapter Twelve. Physical Evidence

Types of physical evidence

Art. 109 CPC\footnote{517} Objects that were intended or served to commit the crime, on which there are traces of the crime or were the subject of the crime, as well as all other objects that can serve to clarify the circumstances, are collected and checked as material evidence on the case.

Describing, photographing and applying physical evidence to the case

Art. 110 CPC\footnote{518} (1) Physical evidence must be carefully examined, described in detail in a relevant protocol and, if possible, photographed.

(2) Physical evidence is attached to the case, taking measures to prevent it from being damaged or altered.

(3) When the case is transferred from one authority to another, the material evidence is transferred together with it.

(4) Physical evidence, which due to its size or for other reasons cannot be attached to the case, must be sealed and left for safekeeping in the places specified by the relevant authority.

(5) The money and other valuables are handed over for safekeeping in a commercial bank serving the state budget or in the Bulgarian National Bank.

Preservation of physical evidence

Art. 111 CPC\footnote{519} (1) Material evidence shall be preserved until the criminal proceedings are completed.

\footnote{517} Веществени доказателства

Видове веществени доказателства

Чл. 109. Като веществени доказателства се събират и проверяват предметите, които са били предназначени или са послужили за извършване на престъплението, върху които има следи от престъплението или са били предмет на престъплението, както и всички други предмети, които могат да послужат за изясняване на обстоятелствата по делото.

\footnote{518} Описване, фотографиране и прилагане на веществени доказателства към делото

Чл. 110. (1) Веществените доказателства трябва да бъдат внимателно огледани, подробно описани в съответен протокол и по възможност фотографирани.

(2) Веществените доказателства се прилагат към делото, като се вземат мерки да не се повредят или изменят.

(3) Когато делото се предава от един орган на друг, веществените доказателства се предават заедно с него.

(4) Веществени доказателства, които поради размерите си или по други причини не могат да бъдат приложени към делото, трябва да бъдат по възможност запечатани и оставени на съхранение в местата, посочени от съответния орган.

(5) Парите и другите ценности се предлагат за пазене в търговска банка, обслужваща държавния бюджет, или в Българската народна банка.

\footnote{519} Пазене на веществените доказателства

Чл. 111. (1) Веществените доказателства се пазят, докато завърши наказателното производство.

(2) Предметите, иззети като веществени доказателства, с разрешение на прокурора могат да бъдат върнати на правоимащите, от които са отнети, преди да завърши наказателното производство, само когато това няма да затрудни разкриването на обективната истина и не са предмет на административно нарушение.
(2) Items seized as material evidence, with the permission of the prosecutor, may be returned to the right holders from whom they were taken before the end of the criminal proceedings, only when this will not hinder the disclosure of the objective truth and are not subject to an administrative violation.

(3) The prosecutor shall rule on a request for return within three days. The Prosecutor’s refusal under para 2 may be appealed by the entitled person to the relevant court of first instance. The court rules on the appeal within three days of its receipt and alone in a closed session with a ruling that is final.

(4) The items seized as material evidence, which are subject to rapid destruction and cannot be returned to the right holders from whom they were taken, with the permission of the prosecutor, are handed over to the relevant institutions and legal entities for use according to their purpose or sold and the amount received is deposited in a commercial bank serving the state budget.

(5) Narcotic substances, precursors and plants containing narcotic substances, as well as excise goods, may be destroyed before the conclusion of the criminal proceedings under conditions and in order, provided by law. In this case, only the seized representative samples are kept until the end of the proceedings.

Disposal of material evidence

Art. 112 CPC

(1) Except in the cases provided for in Art. 53 of the Criminal Code, the objects seized as material evidence are confiscated in favour of the state, when it is not possible to return them to the right holders.

(2) Subject to rapid destruction items, which are not returned to the right holders, are handed over to the relevant institutions and legal entities for use according to their purpose or sold and the amount received is deposited in a commercial bank serving the state budget.

(5) Narcotic substances, precursors and plants containing narcotic substances, as well as excise goods, may be destroyed before the conclusion of the criminal proceedings under conditions and in order, provided by law. In this case, only the seized representative samples are kept until the end of the proceedings.
not established to whom they belong and they have not been searched for within one year from the end of the criminal proceedings.

(2) Items seized as material evidence, the possession of which is prohibited, shall be handed over to the relevant institutions or destroyed.

(3) Apart from the cases provided for in Art. 53 of the Criminal Code, motor vehicles seized as material evidence are confiscated for the benefit of the state, when it is not established to whom they belong and they have not been searched within five years of their seizure. In pre-trial proceedings, confiscation is carried out by a decree of the prosecutor, and in judicial proceedings – by a decision of the court.

(4) The letters, papers or other written documents seized as physical evidence shall be left with the case or handed over to the interested institutions, legal entities and individuals.

Dispute of right to items seized as physical evidence

Art. 113 CPC\textsuperscript{521} When a dispute arises as to the right to objects seized as material evidence, which is subject to consideration in accordance with the Civil Procedure Code, they are kept until the decision of the civil court enters into force.

Chapter Thirteen. Evidence Means

Section I. General Provisions

Types of evidence means

Art. 114 CPC\textsuperscript{522} The evidence is established through oral, material and written means of evidence.

Explanations of the accused

Art. 115 CPC\textsuperscript{523} (1) The accused shall give his explanations orally and immediately before the relevant authority.

\textsuperscript{521} Спор за право върху предмети, иззети като веществени доказателства

Чл. 113. Когато възникне спор за право върху предмети, иззети като веществени доказателства, който подлежи на разглеждане по реда на Гражданския процесуален кодекс, те се пазят, докато решението на гражданския съд влезе в сила.

\textsuperscript{522} Глава тринадесета.

Доказателствени средства

Раздел I.

Общи положения

Видове доказателствени средства

Чл. 114. Доказателствата се установяват чрез гласни, веществени и писмени доказателствени средства.

\textsuperscript{523} Раздел II.

Гласни доказателствени средства

Обяснения на обвиняемия

Чл. 115. (1) Обвиняемият дава обясненията си устно и непосредствено пред съответния орган.

(2) Обвиняемият не може да бъде разпитван по делегация или чрез видеоконференция, освен в случаите, когато се намира извън пределите на страната и това няма да попречи за разкриване на обективната истина.
(2) The accused may not be interrogated by delegation or by video conference, except in cases where he is outside the borders of the country and this will not prevent the disclosure of the objective truth.
(3) The accused may give explanations at any moment of the investigation and the judicial investigation.
(4) The accused has the right to refuse to give explanations.

Probative value of the accused’s confession
Art. 116 CPC\(^{524}\) (1) The accusation and sentence cannot be based only on the confession of the accused.
(2) The confession of the accused does not release the relevant authorities from their obligation to collect other evidence in the case.

Testimony of the witness
Art. 117 CPC\(^{525}\) All facts that the witness perceived and which contribute to revealing the objective truth can be established with witness statements.

Probative value of testimony given by undercover witness and undercover officer
Art. 124 CPC\(^{526}\) The accusation and the sentence cannot be based only on the testimony of witnesses given in accordance with Art. 141 or 141a.

Physical evidence needs more attention to preserve it correctly:

Section III. Preparation and application of physical evidence to the case
Art. 125 CPC\(^{527}\) (1) When physical evidence cannot be separated from the place where it was found, as well as in other cases provided for in this code, photographs, slides, film

(3) Обвиняемият може да дава обяснения във всеки момент на разследването и на съдебното следствие.
(4) Обвиняемият има право да откаже да дава обяснения.

\(^{524}\) Доказателствена сила на самопризнанието на обвиняемия
Чл. 116. (1) Обвинението и присъдата не могат да се основават само на самопризнането на обвиняемия.
(2) Самопризнането на обвиняемия не освобождава съответните органи от задължението им да събират и други доказателства по делото.

\(^{525}\) Показания на свидетеля
Чл. 117. Със свидетелски показания могат да се установят всички факти, които свидетелят е възприел и които допринасят за разкриване на обективната истина.

\(^{526}\) Доказателствена сила на показанията, дадени от свидетеля с тайна самоличност и от служител под прикритие
Чл. 124. (Изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) Обвинението и присъдата не могат да се основават само на показанията на свидетеля, дадени по реда на чл. 141 или 141а.

\(^{527}\) Раздел III.
Веществени доказателствени средства
Изготвяне и прилагане към делото на веществени доказателствени средства
Чл. 125. (1) Когато веществените доказателства не могат да се отделят от мястото, където са намерени, както и в други предвидени в този кодекс случаи, се изготвят fotosнимки, диагпозитиви, кинозаписи,
recordings, video recordings, sound recordings, recordings on a computer data carrier are prepared, plans, diagrams, casts or prints.

(2) The court and the bodies of the pre-trial proceedings shall also collect and examine the material evidence prepared during the use of special intelligence means, in the cases provided for by this Code.

(3) The materials under paras 1 and 2 shall apply to the case.

Section IV. Written evidence
Types of written evidence
Art. 127 CPC

(1) Written means of evidence are the protocols for investigation actions, court investigative and other procedural actions, protocols for the preparation of material evidence and other documents, including reports and the documents attached to them regarding the investigations of the European Anti-Fraud Office, the audit acts establishing tax obligations and obligations for mandatory insurance contributions and the audit reports attached to them, as well as the reports under Art. 19 of the Public Financial Inspection Act from performed financial inspections and the audit reports under Art. 58 of the Law on the Audit Chamber and the documents attached to them.

(2) The charge and sentence cannot be based only on the data from audit acts, reports under Art. 19 of the Law on State Financial Inspection, the audit reports under Art. 58 of the Law on the Audit Chamber, the reports on the investigations of the European Anti-Fraud Office and the documents attached to them.

Drawing up a protocol Art. 128. CPC
Contents of the protocol Art. 129. CPC
Corrections, amendments and additions to the minutes Art. 130. CPC
Protocols as a means of evidence Art. 131. CPC
Protocol for the preparation of physical evidence Art. 132. CPC
Supply of documents Art. 133. CPC
Document in a foreign language Art. 134. CPC
Paper carrier of computer information data Art. 135. CPC

Chapter Fourteen. Methods Of Evidencing
Section I. General Provisions
Types of methods of proof

Art. 136 CPC529 (1) Methods of proof in criminal proceedings are interrogation, expertise, inspection, search, seizure, investigative experiment, recognition of persons and objects and special intelligence means.
(2) When applying the methods under para 1 in relation to lawyers and notaries, the provisions of the Law on Advocacy and the Law on Notaries and Notarial Activities shall apply.

Witnesses of procedural actions
Art. 137 CPC530 (1) In pre-trial proceedings, the inspection, search, seizure, investigative experiment and identification of persons and objects shall be carried out in the presence of witnesses.
(2) The responsible persons are chosen by the body performing the relevant action on the investigation, from among persons who have no other procedural capacity and are not interested in the outcome of the case.

529 Глава четиринадесета.
Способи на доказване
Раздел I.
Общи положения
Видове способы на доказване
Чл. 136. (1) Способи на доказване в наказателното производство са разпит, експертиза, оглед, претърсване, изземване, следствен експеримент, разпознаване на лица и предмети и специални разузнавателни средства.
(2) При прилагане на способите по ал. 1 по отношение на адвокати и нотариуси се прилагат разпоредбите на Закона за адвокатурата и Закона за нотариусите и нотариалната дейност.

530 Поемни лица
Чл. 137. (1) В досъдебното производство огледът, претърсването, изземването, следственият експеримент и разпознаването на лица и предмети се извършват в присъствието на поемни лица.
(2) Поемните лица се избират от органа, извършващ съответното действие по разследването, между лица, които нямат друго процедурно качество и не са заинтересовани от изхода на делото.
(3) Поемните лица са длъжни да се явят, след като бъдат поканени, и да останат на разположение, докато са необходими. За неизпълнение на тези задължения поемните лица отговарят като свидетели.
(4) Поемните лица имат следните права: да правят бележки и възражения по допуснатите непълноти и закононарушения; да искат поправки, изменения и допълнения на протокола; да подписват протокола при особено мнение, като писмено изложат съображенията си за това; да искат отмяна на актовете, които накърняват техните права и законни интереси; да получат съответно възнаграждение и да им се заплатят разноските, които са направили.
(5) Органът, който извършва съответното действие по разследването, запознава поемните лица с правата им по ал. 4.
(3) Undertakings are obliged to appear after being invited and to remain available as long as they are needed. For non-fulfilment of these obligations, the persons taking responsibility are responsible as witnesses.

(4) Undertakings have the following rights: to make notes and objections regarding admitted deficiencies and violations of the law; to request corrections, amendments and additions to the protocol; to sign the protocol in the event of a dissenting opinion, stating their reasons for this in writing; to request the cancellation of the acts that harm their rights and legitimate interests; to receive appropriate remuneration and to be paid the expenses they have incurred.

(5) The authority that carries out the relevant action on the investigation shall familiarize the persons taking charge with their rights under para 4.

Section II. Interrogation
Interrogation of the accused

Art. 138 CPC531 (1) The questioning of the accused shall be carried out during the day, except when there is no delay.

(2) Before the interrogation, the relevant authority establishes the identity of the accused.

(3) The questioning of the accused begins by asking if he understands the accusation, after which he is invited to state, if he wishes, in the form of a free narrative everything he knows about the case.

(4) The accused may be asked questions to supplement his explanations or to remove incompleteness, ambiguities or contradictions.

(5) Questions must be clear, specific and related to the circumstances of the case. They should not suggest answers or lead to a particular answer.

(6) When several defendants are brought in, the investigative body interrogates them separately.

531 Раздел II.
Разпит
Разпит на обвиняемия
Чл. 138. (1) Разпитът на обвиняемия се извършва през деня, освен когато не търпи отлагане.
(2) Преди разпита съответният орган установява самоличността на обвиняемия.
(3) Разпитът на обвиняемия започва със запитване разбира ли обвинението, след което се поканва да изложи, ако желае, във форма на свободен разказ всичко, което знае по делото.
(4) На обвиняемия могат да се поставят въпроси за допълване на неговите обяснения или за отстраняване на непълноти, неясноти или противоречия.
(5) Въпросите трябва да бъдат ясни, конкретни и свързани с обстоятелствата по делото. Те не трябва да подсказват отговори или да подвеждат към определен отговор.
(6) Когато са привлечени няколко обвиняеми, разследващият орган ги разпитва поотделно.
(7) Обвиняемият не може да бъде разпитан по делегация или чрез видеоконференция, освен в случаите, когато се намира извън пределите на страната и това няма да попречи за разкриване на обективната истина.
(7) The accused may not be interrogated by delegation or by video conference, except in cases where he is outside the borders of the country and this will not prevent the disclosure of the objective truth.

Interrogation of a witness

Art. 139 CPC\(^{532}\) (1) Before the questioning, the identity of the witness and what kind of relationship he has with the accused and with the other participants in the proceedings shall be established. In the cases under Art. 141 and 141a, the identification number of the witness is entered in the protocol instead of the identity data.

(2) The authority conducting the interrogation invites the witness to testify in good faith and warns him of the responsibility he bears before the law if he refuses to do so, gives false testimony or keeps silent about certain circumstances, explaining to him the right under Art. 121.

(3) The witness gives a promise that he will honestly and accurately state everything he knows about the case.

(4) The persons specified in Art. 119, their right to refuse to testify is clarified.

(5) The witness presents in the form of a free narrative everything he knows about the case.

(6) The provisions of Art. 115 para 1 and Art. 138 para 4 and 5 shall be applied respectively to the questioning of the witness.

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\(^{532}\) Разпит на свидетел

Чл. 139. (1) (Изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) Преди разпита се установява самоличността на свидетеля и в какви отношения се намира с обвиняемия и с другите участници в производството. В случаите по чл. 141 и 141а в протокола се вписва идентификационният номер на свидетеля вместо данните за самоличността.

(2) Органът, който извършва разпита, поканва свидетеля да даде добросъвестно показания и го предупреждава за отговорността, която носи пред закона, ако откаже да направи това, даде неистински показания или премълчи някои обстоятелства, като му разяснява правото по чл. 121.

(3) Свидетелят дава обещание, че добросъвестно и точно ще изложи всичко, което знае по делото.

(4) На лицата, посочени в чл. 119, се разяснява правото им да се откажат да свидетелстват.

(5) Свидетелят излага във форма на свободен разказ всичко, което му е известно по делото.

(6) Разпоредбите на чл. 115, ал. 1 и чл. 138, ал. 4 и 5 се прилагат съответно и при разпита на свидетеля.

(7) (Изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) Разпит на свидетел извън страната може да се извърши и чрез видеоконференция или телефонна конференция в съответствие с разпоредбите на този кодекс.

(8) (Нова - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) Разпит на свидетел, намиращ се в страната, чрез видеоконференция или телефонна конференция може да се извърши в съдебното производство, а в досъдебното производство - при условия и по реда на чл. 223.

(9) (Нова - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) В случаите по ал. 8 разпитът се извършва в съответствие с разпоредбите на този кодекс, като самоличността на свидетеля се проверява от съдия от първостепенния съд по местонахождението на свидетеля.

(10) (Нова - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Разпит на свидетел със специфични нужди от защита се провежда при вземане на мерки за избягване на контакт с обвиняемия, включително чрез видеоконференция или телефонна конференция, в съответствие с разпоредбите на този кодекс.

(11) (Нова - ДВ, бр. 98 от 2020 г.) Разпит на защитен свидетел може да се извърши и чрез видеоконференция.
(7) Questioning of a witness outside the country may also be carried out by video conference or telephone conference in accordance with the provisions of this Code.
(8) Questioning of a witness located in the country by means of a video conference or telephone conference may be carried out in the judicial proceedings, and in the pre-trial production - under the conditions and according to the procedure of Art. 223.
(9) In the cases under para 8 the questioning shall be carried out in accordance with the provisions of this Code, and the identity of the witness shall be verified by a judge of the court of first instance at the location of the witness.
(10) Questioning of a witness with specific protection needs is conducted when measures are taken to avoid contact with the accused, including via video conference or telephone conference, in accordance with the provisions of this code.
(11) Interrogation of a protected witness may also be carried out by video conference.

**Examination of a minor and juvenile witness**

**Art. 140 CPC**

(1) The minor witness is questioned in the presence of a pedagogue or psychologist, and when necessary, also in the presence of the parent or guardian.
(2) The juvenile witness is questioned in the presence of the persons under para 1, if the relevant authority deems it necessary.
(3) With the permission of the authority that conducts the interrogation, the persons under para 1 may ask questions of the witness.
(4) The body conducting the interrogation shall explain to the minor witness the need to give truthful testimony without warning him of responsibility.
(5) Examination of a minor and a juvenile witness in the country may be carried out when taking measures to avoid contact with the accused, including in specially equipped premises or via video conference.

The minor witness is under the age of 14 years, while the juvenile witness is above the age of 14.
Examination of a witness with a secret identity

Art. 141 CPC\(^{534}\) (1) The authorities of the pre-trial proceedings and the court question the witness with a secret identity and take all possible measures to keep his identity secret identity, including when a witness is being questioned by video conference or telephone conference.

(2) Copies of the protocols for questioning the witness without his signature are presented immediately to the accused and his defence attorney, and in court proceedings – to the parties who can put questions to the witness in writing.

(3) Interrogation pursuant to Art. 139, para 8 of a witness with a secret identity is carried out with a changed voice, and through a video conference – with a changed image of the witness. Before the beginning of the questioning, the judge of the court of first instance at the location of the witness certifies that the person being questioned is the same person who was given the identification number under Art. 123 para 4 item 6.

(4) Paragraphs 1–3 shall be applied accordingly also when questioning persons, in respect of which a protection measure was taken under Art. 6 para 1 and 2 of the Act on the Protection of Persons at Risk in Criminal Proceedings.

The use of an undercover officer is a method that exploits the trust of the opponent in a person known to him from the same milieu. The questioning of this witness is therefore sensitive, as he/she could be exposed:

Questioning an undercover officer as a witness

Art. 141a CPC\(^{535}\) (1) Interrogation of an undercover employee as a witness shall be carried out in accordance with Art. 139, para 8, changing the voice, and in the case of a video conference, the image, of the undercover officer being interrogated.

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534 Разпит на свидетел с тайна самоличност
Чл. 141. (1) (Изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) Органите на досъдебното производство и съдът разпитват свидетеля с тайна самоличност и вземат всички възможни мерки за запазване в тайна на неговата самоличност, включително когато се провежда разпит на свидетел чрез видеоконференция или телефонна конференция.

(2) Преписи от протоколите за разпит на свидетеля без неговия подпис се предявяват незабавно на обвиняемия и на неговия защитник, а в съдебното производство – на страните, които писмено могат да поставят въпроси на свидетеля.

(3) (Изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) Разпит по реда на чл. 139, ал. 8 на свидетел с тайна самоличност се извършва при променен глас, а чрез видеоконференция – и при променен образ на свидетеля. Преди началото на разпита съдия от първостепенния съд по местонахождението на свидетеля удостоверява, че разпитваното лице е същото, на което е даден идентификационният номер по чл. 123, ал. 4, т. 6.

(4) (Нова - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г., изм. - ДВ, бр. 44 от 2018 г.) Алинеи 1 - 3 се прилагат съответно и при разпит на лица, по отношение на които е взета мярка за защита по чл. 6, ал. 1 и 2 от Закона за защита на лица, застрашени във връзка с наказателно производство.

535 Разпит на служител под прикритие като свидетел
Чл. 141а. (Нов - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) (1) Разпит на служител под прикритие като свидетел се извършва по реда на чл. 139, ал. 8, като се променя гласът, а при видеоконференция - и образът, на разпитвания служител под прикритие.
(2) Before the start of the interrogation, the head of the structure that provides and implements the investigation through an undercover officer or a person authorized by him testifies that the person being questioned is the same person who was given the identification number under Art. 174 para 7.

(3) The request for the use of the undercover officer and the orders under Art. 174 para 7 and Art. 175 para 2.

Interrogation with an interpreter and a Bulgarian sign language interpreter, **Art. 142.**

### Section III. Expertise

**Cases in which expertise is appointed**

**Art. 144 CPC**

(1) When special knowledge in the field of science, art or technology is needed to clarify certain circumstances of the case, the court or the body of the pretrial proceedings appoints an expertise.

(2) Expertise is mandatory when there is doubt regarding:

1. the cause of death;
2. the nature of the bodily injury;
3. the sanity of the accused;
4. the ability of the accused, in view of his physical and mental condition, to correctly perceive the facts that are relevant to the case, and to give credible explanations for them;
5. the ability of the witness, in view of his physical and mental state, to correctly perceive the facts that are relevant to the case, and to give credible testimony about them.

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(3) (Изм. - ДВ, бр. 13 от 2011 г., в сила от 01.01.2012 г., изм. - ДВ, бр. 61 от 2011 г., изм. - ДВ, бр. 42 от 2015 г.) Към протокола за разпит се прилагат искането за използване на служителя под прикритие и разпоредбите по чл. 174, ал. 7 и чл. 175, ал. 2.

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536 Раздел III.

**Експертиза**

**Случая, в които се назначава експертиза**

**Чл. 144.** (1) Когато за изясняване на някои обстоятелства по делото са необходими специални знания из областта на науката, изкуството или техниката, съдът или органът на досъдебното производство назначава експертиза.

(2) Експертизата е задължителна, когато съществува съмнение относно:

1. причината на смъртта;
2. характера на телесната повреда;
3. вменяемостта на обвиняемия;
4. способността на обвиняемия с оглед на неговото физическо и психическо състояние правилно да възприема факти, които имат значение за делото, и да дава достоверни обяснения за тях;
5. способността на свидетеля с оглед на неговото физическо и психическо състояние правилно да възприема факти, които имат значение за делото, и да дава достоверни показания за тях.

(3) (Нова - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Експертиза може да се назначи и за установяване на специфични нужди от защита на свидетеля във връзка с участието му в наказателното производство.
(3) Expertise may also be appointed to establish specific needs for the protection of a witness in connection with his participation in the criminal proceedings.

**Obligations of the expert**

**Art. 149 CPC**

(1) The expert is obliged to appear before the relevant body when summoned and to give a conclusion on the issues of the expertise.

(2) The expert may refuse to give a conclusion only when the questions asked go beyond the scope of his specialty or the materials at his disposal are not sufficient to form a reasoned opinion.

(3) The expert presents his conclusion in the pre-trial proceedings within a period determined by the body of the pre-trial proceedings, and in the judicial proceedings – no later than seven days before the date of the court session. The conclusion can be presented in electronic form, signed with a qualified electronic signature.

(4) The expert submits his conclusion to the court with transcripts for the parties.

(5) For non-appearance or refusal to give a conclusion without valid reasons, the expert shall be fined up to five hundred BGN. If the expert gives good reasons for not appearing, the fine is cancelled.

(6) When the fine under para 5 is imposed by a body of pre-trial proceedings, the decree is appealed to the relevant court of first instance within three days of the notification of the imposition and. The court immediately pronounces in a closed session with a ruling that is final.

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537 Задължения на вещото лице

**Чл. 149** (1) Вещото лице е длъжно да се яви пред съответния орган, когато бъде призовано, и да даде заключение по въпросите на експертизата.

(2) Вещото лице може да откаже да даде заключение само когато поставените въпроси излизат извън рамките на неговата специалност или материалите, с които разполага, не са достатъчни, за да си състави обосновано мнение.

(3) (Изм. ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г., доп. - ДВ, бр. 110 от 2020 г., в сила от 30.06.2021 г.) Вещото лице представя заключението си в досъдебното производство в срок, определен от органа на досъдебното производство, а в съдебното производство – не по-късно от седем дни преди датата на съдебното заседание. Заключението може да бъде представено в електронна форма, подписвано с квалифициран електронен подпис.

(4) Вещото лице представя заключението си в съда с преписи за страните.

(5) (Изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) За неявяване или отказ да даде заключение без уважителни причини вещото лице се наказва с глоба до петстотин лева. Ако вещото лице посочи уважителни причини за неявяването си, глобата се отменя.

(6) (Нова Гл. - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Когато глобата по ал. 5 е наложена от орган на досъдебното производство, постановлението се обжалва пред съответния първинстанционен съд в тридневен срок от събирането на налагането и. Съдът се произнася незабавно в закрито заседание с определение, което е окончателно.

(7) (Нова Гл. - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Определението на съда, с което той отказва да отмени глоба по ал. 5, подлежи на обжалване по реда на глава двадесет и втора.

(8) (Предишна ал. 6, изм. - ДВ, бр. 63 от 2017 г., в сила от 05.11.2017 г.) Разпит на вещо лице може да се извърши и чрез видеоконференция или телефонна конференция, когато това се налага от обстоятелствата по делото.
(7) The ruling of the court by which it refuses to cancel a fine under para 5, is subject to appeal under the order of chapter twenty-two.

(8) Questioning of an expert may also be carried out by video conference or telephone conference, when necessary from the circumstances of the case.

**Expert opinion**

**Art. 15 CPC**

(1) After carrying out the necessary research, the expert draws up a written conclusion, in which he states: his name and on what basis the expertise was carried out; where it was carried out; the task at hand; the materials that were used; the research that was carried out and with what scientific and technical means; the results obtained and the conclusions of the examination.

(2) The conclusion is signed by the expert.

(3) If, during the performance of the expertise, new materials are discovered that are relevant to the case, but for which he was not assigned a task, the expert is obliged to indicate them in his conclusion.

**Additional and re-examination**

**Art. 153 CPC**

Additional expertise is appointed when the expert’s conclusion is not sufficiently complete and clear, and repeated – when it is not substantiated and doubts arise about its correctness.

**Evidentiary force of expert opinion**

**Art. 154 CPC**

(1) The expert opinion is not mandatory for the court and for the bodies of the pre-trial proceedings.

(2) When it does not agree with the expert’s conclusion, the relevant authority is obliged to give reasons.

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538 Експертно заключение

Чл. 152. (1) След като извърши необходимите изследвания, вещото лице съставя писмено заключение, в което посочва: името си и на какво основание е извършена експертизата; къде е извършена; задачата, която е поставена; материалите, които са били използвани; изследванията, които са извършени и с какви научни и технически средства; резултатите, които са получени, и изводите от експертизата.

(2) Заключението се подписва от вещото лице.

(3) Ако при извършването на експертизата се открит нови материали, които имат значение по делото, но по които не му е била поставена задача, вещото лице е длъжно да ги посочи в заключението си.

539 Допълнителна и повторна експертиза

Чл. 153. Допълнителна експертиза се назначава, когато експертното заключението не е достатъчно пълно и ясно, а повторна - когато не е обосновано и възниква съмнение за неговата правилност.

540 Доказателствена сила на експертното заключение

Чл. 154. (1) Експертното заключение не е задължително за съда и за органите на досъдебното производство.

(2) Когато не е съгласен със заключението на вещото лице, съответният орган е длъжен да се мотивира.
Duty to ensure a lawful and timely investigation

Art. 203 CPC\textsuperscript{541} (1) The investigative body shall take all measures to ensure the timely, lawful and successful conduct of the investigation.

(2) The investigative body is obliged to collect the necessary evidence to reveal the objective truth as soon as possible, being guided by the law, its inner conviction and the instructions of the prosecutor.

(3) Upon a change in competence and in other cases when an investigator authority under Art. 52 para 1 is replaced by another, the performed investigation and other procedural actions retain their procedural value.

(4) The investigative body systematically reports to the prosecutor on the progress of the investigation, discussing with him the possible versions and all other issues of importance for the lawful and successful conclusion of the investigation.

(5) The investigative body shall carry out investigation and other procedural actions also at the time when the case is sent to the court in connection with a procedural coercion measure.

Chapter Twenty. Court Session

Section III Judicial Investigation

Art. 276 CPC et seq.

Interrogation, examination of witnesses, reading witness statements, examination of an expert.

Presentation of material evidence

Art. 284 CPC\textsuperscript{542} Physical evidence is presented to the parties, and when necessary - to the expert or the witnesses.

\textsuperscript{541} Задължение за осигуряване на законосъобразно и своевременно разследване

Чл. 203. (1) Разследващият орган взема всички мерки за осигуряване на своевременно, законосъобразно и успешно извършване на разследването.

(2) Разследващият орган е длъжен в най-кратък срок да събере необходимите доказателства за разкриване на обективната истина, като се ръководи от закона, вътрешното си убеждение и указанията на прокурора.

(3) (Нова - ДВ, бр. 109 от 2008 г., изм. - ДВ, бр. 32 от 2010 г., в сила от 28.05.2010 г.) При промяна в компетентността и в други случаи, когато един разследващ орган по чл. 52, ал. 1 бъде заменен с друг, извършените действия по разследването и други процесуални действия запазват процесуалната си стойност.

(4) (Предишна ал. 3 - ДВ, бр. 109 от 2008 г.) Разследващият орган системно докладва на прокурора за хода на разследването, като обсъжда с него възможните версии и всички други въпроси от значение за законосъобразното и успешно приключване на разследването.

(5) (Предишна ал. 4 - ДВ, бр. 109 от 2008 г.) Разследващият орган извършва действия по разследването и други процесуални действия и по времето, когато делото е изправено в съда във връзка с мярка за процесуална принуда

\textsuperscript{542} Предявяване на веществените доказателства

Чл. 284. Веществените доказателства се предявяват на страните, а когато е необходимо – и на веществото лице или на свидетелите.
**Inspection**

**Art. 285 CPC** The examination is carried out by the entire composition of the court in the presence of the parties, and when necessary - in the presence of the expert and witnesses.

→ For further provisions on the juvenile accused, see *Act amending the Criminal Procedure Code* – SG 48 / 2023.

See for examples from Bulgarian case law these decisions:

**Administrative court – Varna**

5. **Article 12a (Anti-fraud coordination services)**

**Article 12a**

1. Each Member State shall, for the purposes of this Regulation, designate a service (the ‘anti-fraud coordination service’) to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, *in accordance with national law*, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation. […

a) **General Remarks**

aa. **Definition and History**

Cooperation, coordination and facilitation are buzz words in anti-fraud literature. Anti-fraud coordination services are known worldwide and exist in many international organisations and cooperate with nation states. In the EU the term “AFCOS” has a very special meaning as it means the Anti-fraud coordination services created on be-

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543 Оглед

Чл. 285. Огледът се извършва от целия състав на съда в присъствието на страните, а когато е необходимо - и в присъствието на вещото лице и свидетели.


half of the European Anti-fraud Office for the facilitation of interactions with the national Member States of the EU (see recitals below). 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.

Historically, the coordinating bodies emerged primarily in the new Member States that were awaiting accession. The European Parliament has already in 2010 called for AFCOS to be set up as independent bodies in the MS. Today one could not be further from this idea than ever, since 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):


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*.

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546 Kuhl 2019, p 164.
547 Quirke 2015, pp 236 et seq.
At least there is legal and technical oversight of the areas of administration in most states and nowadays AFCOS are implemented at the highest level.\textsuperscript{549} 

However, the existing Member States are also aware of weaknesses in the fight against fraud. Only since 2010 and in the last decade more attention has been paid to these coordination points. They have become a \textit{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.

\textbf{bb. Legislative developments}

The Commission has evaluated the impact of AFCOS in the past decade.\textsuperscript{550} Recent changes at the beginning of the 2020s have enlarged the competences of AFCOS. These are now even allowed to cooperate with each other and not only with OLAF in Luxembourg alone, which was the case prior to the amendments of the Regulation (EU) 2020/2223.

The recent changes describe the role of AFCOS in the recitals. Thus, by reading them the task and role of these bodies becomes vivid:

“(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 contrib-

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uted positively to the work of the Office. The Commission evaluation report also identified the need to further clarify the role of those anti-fraud coordination services in order to ensure that the Office is provided with the necessary assistance to ensure that its investigations are effective, while leaving the organisation and powers of the anti-fraud coordination services to each Member State. In that regard, the anti-fraud coordination services should be able to provide or coordinate the necessary assistance to the Office to carry out its tasks effectively, before, during or at the end of an external or internal investigation.

(40) It should be possible for the anti-fraud coordination services in the context of coordination activities to provide assistance to the Office, as well as for the anti-fraud coordination services to cooperate among themselves, in order to further reinforce the available mechanisms for cooperation in the fight against fraud.”

cc. Visualization of old (prior to 2020) vs. new (since 2020) cooperation and role of AFCOS

7 Figure 7 Visualization of the old cooperation by virtue of Regulation No 883/2013
b) A closer look at the relevant AFCOS in the present Member State

The Bulgarian AFCOS is the National anti-fraud coordination service within the Ministry of Interior Affairs, Direction “Protection of the Financial Interests of the European Union (AFCOS)”.

The AFCOS Directorate carries out control, information and coordination activities for the protection of the financial interests of the European Union and performs the function of an anti-fraud coordination service, which supports the effective cooperation and exchange of information with OLAF.

With regard to its assigned functions of ensuring the protection of the financial interests of the EU, the Directorate is committed to all programs, means and instruments, including coordination at the national and European level in the field of combating offences affecting the revenue and expenditure part of the EU budget, including the national budget.

The directorate assists the Minister of the Interior in implementing the state policy on the protection of the financial interests of the European Union and performs the functions of the secretariat of the AFCOS Council.

The Directorate is the national contact point with OLAF and with the relevant competent authorities in the Member States and in other countries and carries out the exchange of information with OLAF, including such of an operational nature.

It has the authority to carry out operational cooperation with OLAF in the course of ongoing investigations on the territory of Bulgaria.

One of the main tasks of AFCOS is the creation of the necessary organisation for the preparation by the Bulgarian side of the Annual Reports on the Protection of the EU’s...
Financial Interest (so called PIF Reports under Art. 325 of Treaty on the Functioning of the EU).

14 As of 2014, the directorate has functions to receive alerts for irregularities affecting the financial interests of the European Union and to carry out analysis, evaluation and inspections on them; AFCOS carries out administrative checks to identify irregularities (so-called administrative investigations) affecting the financial interests of the European Union, on its own initiative or at the request of OLAF.

15 In this context, it is important to clarify that carrying out administrative checks does not give AFCOS the right to conduct investigations of fraud with EU funds under criminal prosecution procedures. The checks are aimed only at irregularities affecting these funds, but not at those, which are or could be crimes. The crimes with European funds are investigated only by the law enforcement authorities of the Republic of Bulgaria – the Prosecutor’s office and the police, and frauds are established only by an act of the national courts. The division of competence is similar at the European level along the lines of OLAF (administrative investigations) and European Public Prosecutor’s Office (criminal investigations). Having said that, finding strong indicators for fraudulent behavior during the checks that the AFCOS Directorate carries out is fairly common.

16 Another part of the functional competence of the directorate is the responsibility of AFCOS at the national level for reporting to the European Commission irregularities affecting the budget of the European Union and it should be emphasized. In accordance to this function, AFCOS ensures, monitors, controls and coordinates the reporting of irregularities by national institutions to the European Commission and organises and maintains a database of information on irregularities.

17 The structures administering European funds, instruments and programs report to the AFCOS Directorate every quarter all new irregularities and subsequent actions, as well as the changes to irregularities already reported in previous periods. The Directorate, for its part, reports to OLAF every quarter, all irregularities that are subject to reporting to OLAF. The AFCOS Directorate prepares summary information on the irregularities reported to OLAF on an annual basis for the previous year. The summary information is presented by the number and financial effect of irregularities reported to OLAF. The Directorate coordinates at the national level the use of OLAF’s electronic system for management of irregularities (IMS) in accordance with OLAF’s guidelines, exercising control over the correct entry of information on established irregularities. For example, the AFCOS Directorate has taken measures to unify the approach in the qualification of irregularities for suspicion of fraud, namely such definition can be made when criminal proceedings are initiated by the prosecutor.
A special lever for control over the execution of tasks by the managing bodies is the control over the procedures for administration of irregularities by performing administrative-control checks in the structures administering European funds.

With regards to the expenditure-related fraud, the tasks that we have to follow align with the functional responsibilities of the directorate as set in the national legislation. On the one hand, the Bulgarian AFCOS directorate follows the competencies of OLAF in its responsibilities to protect the EU financial interests as well as the national ones. On the other hand, the Bulgarian AFCOS system has further established additional processes related to the expenditure-related fraud. The directorate can conduct administrative investigations that can be initiated by the receiving of a signal directly to the national institution. For the purposes of these administrative investigations a designated unit within the directorate was established – “Administrative investigations” Unit.

Also AFCOS has the responsibilities to report to the European commission information related to all irregularities (including such connected to expenditure-related issues) and to oversee the reporting activities of the respective national authorities with connection to all irregularities including (those related to EU expenditure-issues).

Furthermore, as part of the coordination functions of the directorate we are responsible for the dissemination of information related to all issues connected with the protection of the EU financial interest including in the area of expenditure-related irregularities.

The Bulgarian Anti-fraud coordination service has a long history dating back to the beginnings of the 2000s. From the begin on in 2003 and later in 2006 the first contact point was within the Ministry of Interior. From 2014–2018 a Specialised AFCOS Directorate offered information to national authorities and helped OLAF to plan the conduction of external investigations (see → Art. 3 above in this Chapter).

The Office can easily be contacted via a Web-document: http://www.afcos.bg/bg/contact.

The 2021 Report of the Bulgarian AFCOS stated that:

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552 Decree of the Council of Ministers No 18 of 2003 establishing the Council for Coordination in the Fight against Offences Affecting the Financial Interests of the EU (AFCOS Council)/ за създаване на Съвет за координация в борбата срещу престъпленията, засягащи финансовите интереси на ЕС (Съвет AFCOS) създаден с Постановление на МС № 18 от 2003 г

553 Ibid, p. 3.
“In 2021, OLAF received 97 requests related to investigations in the following programs, instruments, schemes and areas from OLAF to the AFCOS Directorate: Rural Development Program 2007–2013 – 13 requests; ‘Erasmus+’ and ‘Horizon 2020’ program, directly financed by the EC – 10 requests and 1 on-site inspection conducted by OLAF inspectors together with AFCOS; Operational program ‘Environment’ 2014–2020 – 7 requests; Cross-border cooperation programs (Bulgaria-Serbia, Romania-Bulgaria and Greece-Bulgaria) – 6 requests; Rural Development Program 2014–2020 – 5 requests; – initial administrative control check regarding compliance with Operational Program ‘Innovations and Competitiveness’ – 5 requests; Operational program ‘Development of human resources’ – 4 requests; Operational Program ‘Regional Development’ 2007–2013 – 4 requests; Operational program ‘Environment’ 2007–2013 – 3 requests; Reports have been drawn up for the administrative control checks carried out, Operational program ‘Good governance’ 2014–2020 – 3 requests; Operational program ‘Regions in growth’ 2014–2020 – 3 requests.

In addition to the above, the AFCOS Directorate has also assisted in OLAF’s investigations related to customs issues, the fight against smuggling, the illegal production and distribution of cigarettes and cigarette products, which for 2021 are a total of 15.”

c) Contact with OLAF and cooperation with other authorities

According to the authority’s own information, the average number of contacts with OLAF is about 120 per year, about 10 per month. About 100 of these requests are initiated by OLAF. Compared to the data of AFCOS offices in other Member States, this is a relatively high frequency. Regardless of this, the Office is contacted on average about 55 times a year to report irregularities affecting the financial interests of the Union.

The cooperation partners of the AFCOS Directorate are manifold. In the revenue-related area of irregularities, the AFCOS Directorate most often works with the Customs Agency and sometimes with the National Revenue Agency. The latter is consulted especially in the area of VAT fraud. There is also interaction with the competent national law enforcement authorities such as the General Directorate Combating Organised

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d) Staff and structure of the Directorate

The AFCOS Directorate consists of 29 officials that are divided into four units: “Operational cooperation”, “Reporting of irregularities”, “Administrative investigations” and “Information-analytical activity, legal and administrative services”.

e) Relationship with the EPPO

The European Public Prosecutor’s Office is notified that the Protection of the European Union Financial Interests Directorate (AFCOS) in the Ministry of the Interior together with other bodies is included in the non-exhaustive list of the national authorities under Art. 24 para 1 of the EPPO Regulation (Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office).

Also, with regards to the RRF additional coordination and communication functions were designated to the AFCOS Directorate.

f) Training on EU-fraud

The AFCOS Directorate provides training for the Managing authorities on the reporting of the irregularities affecting the financial interests of the EU as well as the preventing and combating of fraud with EU funds regularly on a yearly basis. The participants stem from the State administration with competences related to the management and control of the EU funds, police structures and Prosecution of the Republic of Bulgaria.

AFCOS officials themselves are trained according to an approved program, “with compliance to the needs identified. In addition, employees regularly use the opportunities provided by European training organisations to increase their administrative capacity in the field of prevention and combating irregularities affecting the EU’s financial interests.”

Furthermore, “the staff of the AFCOS Directorate is using the opportunities of the CEPOL-trainings in order to exchange experience with the competent authorities from different countries. These kinds of trainings are very fruitful for the Bulgarian representatives to learn about the organisation of work and the types of activities carried out by the foreign authorities. It is always useful to discuss and compare different practices.”

[Article 12b–12d omitted]
6. Article 12e (The Office’s support to the EPPO)

**Article 12e (The Office’s support to the EPPO)**

1. In the course of an investigation by the EPPO, and at the request of the EPPO in accordance with Article 101(3) of Regulation (EU) 2017/1939, the Office shall, in accordance with its mandate, support or complement the EPPO’s activity, in particular by:
   (a) providing information, analyses (including forensic analyses), expertise and operational support;
   (b) facilitating coordination of specific actions of the competent national administrative authorities and bodies of the Union; […]

1. The national authorities are listed above in Art. 3 OLAF Regulation (→ Competent authorities) and they can be detected with the help of the national AFCOS, which is competent to perform national coordination activities.

2. The GDBOP has filed complaints to the EPPO and subsequently pre-trial proceedings were initiated.

[Article 12f–g omitted]

7. Article 13 (Cooperation of the Office with Eurojust and Europol)

**Article 13 (Cooperation of the Office with Eurojust and Europol)**

1. […] Where this may support and strengthen coordination and cooperation between national investigating and prosecuting authorities, or where the Office has forwarded to the competent authorities of the Member States information giving grounds for suspecting the existence of fraud, corruption or any other illegal activity affecting the financial interests of the Union in the form of serious crime, it shall transmit relevant information to Eurojust, within the mandate of Eurojust. […]

1. The cooperation of the office with other European actors in the area of (criminal) justice is highly important and Bulgaria has created competences:

2. For the prosecution and investigative bodies see → Institutions, Organisation of the criminal justice system in Bulgaria.

[Article 14–16 omitted]
8. Article 17 (Director-General)

4. The Director-General shall report regularly, and at least annually, to the European Parliament, to the Council, to the Commission and to the Court of Auditors on the findings of investigations carried out by the Office, the action taken and the problems encountered, whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and of informants, and, where appropriate, national law applicable to judicial proceedings. Those reports shall also include an assessment of the actions taken by the competent authorities of Member States and the institutions, bodies, offices and agencies, following reports and recommendations drawn up by the Office.

7. The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating, inter alia, to the respect of procedural guarantees and fundamental rights of the persons concerned and of the national law of the Member States concerned, with particular reference to Article 11(2). The legality check shall be carried out by Office staff who are experts in law and investigative procedures. Their opinion shall be annexed to the final investigation report.

a) National law applicable to judicial proceedings

The supervisory committee found that OLAF’s country mini-profiles provided already some information on criminal and administrative law in each Member State but were not enough to fully compensate for some of the unit’s occasional problems with the expertise in national laws.\(^{555}\) The committee also reviewed OLAF’s legality check procedures, emphasizing the importance of expertise in all EU Member States' legal systems. They recognized the positive impact of good relations between investigators and reviewers on the quality of checks and reviews.\(^{556}\)

The legality check in OLAF’s procedures ensures compliance with legal rules and addresses any breaches swiftly. It provides information for management to address rule violations and maintain investigative integrity. A legal analysis is not possible without listing the breached provisions, and a legal assessment paper concludes each case.

- National law applicable to judicial proceedings: Administrative Procedure Code (Административнопроцесуален Кодекс) and Criminal Procedure Code (Наказателно-Процесуален Кодекс)

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\(^{555}\) Supervisory Committee, Opinion No 2/2015, Legality check and review in OLAF, p. 6 et seq.

\(^{556}\) Ibid.
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Chapter thirty-four.
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Chapter thirty-five.
PROCEEDINGS IN CONNECTION WITH THE EXECUTION OF SENTENCES

Chapter thirty-six.
PROCEEDINGS RELATING TO INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

Chapter thirty-seven.
PRELIMINARY REQUESTS ON CRIMINAL MATTERS (NEW – SG No 63 OF 2017, EFFECTIVE FROM 05.11.2017)
b) **Internal advisory and control procedure: Legality check involving national law**

The following table highlights some important exemplary chapters and provisions that may be of importance for an internal advisory and control procedure.

*Sources and national sections 2: Art. 17 OLAF Regulation – Overview for Bulgaria*

| **Criminal Procedure Code** / Наказателно-процесулен кодекс | Chapter two.  
Basic Principles  
Chapter Three.  
Initiation, Termination and Suspension of Criminal Proceedings  
Part four.  
Legal Proceedings  
Chapter Nineteen.  
Preparatory Actions for Considering the Case in Court  
Chapter Twenty.  
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Chapter thirty-six.  
Proceedings Relating to International Cooperation in Criminal Matters |
|---|---|
| **Administrative Procedure Code** / Административнопроцесулен кодекс | Chapter One. Subject, Scope and Effect  
Chapter two. Basic Principles  
Part three. Court Proceedings (Effective From 01.03.2007)  
Chapter Nine. General Provisions  
Chapter Ten. Challenging Administrative Acts Before the First Instance |
| **Rules For Administration in The Courts** / Правилник за администрацията в съдилищата | Chapter Eight Court Proceedings  
Chapter Thirteen Access to information |
| **Customs Act** / Закон за митниците | Chapter 2 Customs Administration  
Section III Powers of customs authorities  
Chapter 3 Rights and Obligations of persons  
Chapter 14 Placing the Goods under Customs Regime  
Chapter 26 Payment of the Customs Duty |
OLAF’s legality check focuses on procedural aspects, not case merits. If it passes, the investigation proceeds; if it fails, actions may be modified or abandoned. A limitation of the check is, that it is de facto only an internal self-control procedure. But that doesn't diminish its importance. The OLAF Supervisory Committee has emphasized several times that compliance with the rights of those affected is promoted by complying with the procedural rules, e.g. data protection and protection of information (see above → Article 3), and by monitoring this compliance by the investigators within OLAF itself.

[Article 18–21 omitted]
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This **Bulgarian EPPO/OLAF volume** starts with an introduction by Prof Dr Dobrinka Chankova providing a categorisation of the fight against EU frauds in Bulgaria. The book offers a comprehensive guide to EPPO/OLAF investigations, including case law, sources of law, and relevant institutions. In addition, the volume names relevant authorities, lists the PIF offences under Bulgarian law and provides instructions for the Court Case Access Portal.

This volume is written in English and contains footnotes that reproduce the original Bulgarian legislation in Bulgarian. It also contains symbols for further information and quick reference for academics, students, practitioners and other interested readers. Prof Dr Dobrinka Chankova acted as national expert.