

THE EPPO/OLAF

VII

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

Denmark



λογος

λογος

The EPPO/OLAF Compendium of National Procedures
Volume VII – Denmark

The EPPO/OLAF Compendium of National Procedures

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

Volume VII – Denmark

Prof. Dr. Pierre Hauck LL.M. (Sussex)

University of Giessen

Dr. Jan-Martin Schneider

University of Giessen

Assisted by

Nur Sena Karakocaoğlu,

Sophie Meyer

and Alastair Alexander Laird

Pierre Hauck
Jan-Martin Schneider

The EPPO/OLAF Compendium of National Procedures: Denmark

Logos Verlag Berlin



Bibliographic information published by the Deutsche Nationalbibliothek

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data is available on the Internet at <http://dnb.d-nb.de>.



This work is licensed under the Creative Commons Attribution 4.0 license CC BY (<https://creativecommons.org/licenses/by/4.0/>). Creative Commons license terms for re-use do not apply to any content (such as graphs, figures, photos, excerpts, etc.) not original to the Open Access publication and further permission may be required from the rights holder. The obligation to research and clear permission lies solely with the party re-using the material.

Cover image by Tom Fisk, pexels.com

Logos Verlag Berlin GmbH 2025
ISBN 978-3-8325-6013-3

Logos Verlag Berlin GmbH
Georg-Knorr-Str. 4, Geb. 10,
12681 Berlin
Tel.: +49 (0)30 / 42 85 10 90
Fax: +49 (0)30 / 42 85 10 92
<https://www.logos-verlag.de>



Funded by the European Union

The research underlying this publication was funded by the European Union's HERCULE III programme (grant agreement No. 101015173).

The content of this publication represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

Dr Pierre Hauck LL.M (Sussex) is Professor of Criminal Law at the Justus Liebig University of Giessen, Dr Jan-Martin Schneider, Nur Sena Karakocaoğlu and Alastair Alexander Laird are research assistants there.

This publication was supported by the Open Access Publication Fund of the Justus Liebig University of Giessen.



The EPPO/OLAF Compendium of National Procedures

Volumes

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

With national expert contributions by

Trainee Attorney Dr Thomas Flörl Mag iur rer oec Mag iur (Austria)
Prof Dr Frank Verbruggen & Pieter van Rooij (Belgium)
Prof Dr Dobrinka Chankova (Bulgaria)
Prof Dr Lucija Sokanović (Croatia)
Attorney at law Dr Marilena Katsogiannou LLM LLM (Cyprus)
Prof JUDr Jiří Jelínek CSc. & Tereza Ottová (Czech Republic)
Prof Dr Jaan Ginter (Estonia)
Prof Dr Raimo Lahti (Finland)
Maître de conférences Dr Hélène Christodoulou (France)
European Delegated Prosecutor Dr Anna-Elisabeth Krause-Ablaß (Germany)
Ombudsman Dr Eftichis Fitrakis (Greece)
Prof Dr Krisztina Karsai (Hungary)
Noelle Kenny & Claire O'Regan (Ireland)
Prof Dr Rosanna Belfiore & Dr Luca Pressacco (Italy)
Prof Dr Kristīne Strada-Rozenberga (Latvia)
Anonymous* (Lithuania)
Avocate Sandra Birtel (Luxembourg)
Advocate Dr Veronica-Anne Spiteri LLD (Malta)
Associate Prof Sjarai Lestrade (Netherlands)
Dr Dominika Czerniak (Poland)
Prof Dr Sandra Oliveira e Silva (Portugal)
Attorney Adrian Şandru & Mag Alexandra Aldea LLM (Romania)
doc JUDr et PhDr mult Libor Klimek PhD Dr h c (Slovakia)
Assoc Prof Dr Benjamin Flander (Slovenia)
Prof Dr Christoffer Wong (Sweden)

* The Lithuanian chapter was also revised by a national expert. However, due to his or her prominent professional position, this person does not wish to be named so as not to give the impression that the chapter reflects the official position of the Lithuanian state authorities. Nevertheless, we thank this person very much for this valuable contribution.

Preface and Acknowledgments

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 Karakocaoğlu and Alastair Laird, who have borne the main burden. Julian Doerk, Felina Frkic Wegener, Maike Kappes, Ahmet Can Bas, Aleksandra Joachimiak 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

Suggested citation:

The suggested citation for the entire work is always “Hauck/Schneider, EPPO/OLAF CNP, Vol. [I–XXVII] [Member State], p., margin number”, but for the introductory chapters contributed by national experts with individual author references in the title it is “[Name of the national expert], in: Hauck/Schneider, EPPO/OLAF CNP, Vol. [I–XXVII] [Member State], p., margin number”.



Executive Summary: As Denmark and Ireland have an opt-out from the area of freedom, security and justice, the volume concentrates on the relationship of the other EPPO countries and Regional Offices to the EPPO, as well as the Danish Prosecution, which investigates EU fraud and financial crime offences independently. The volume reflects the situation as of March 2023. The situation in Denmark is similar to that in Hungary, Poland, and Sweden, with the exception that Denmark is not part of the area of freedom, security and justice at all. The EPPO stated in its Report 2022: “Denmark, Hungary, Ireland, Poland and Sweden are not participating in the EPPO. In 2021, these five Member States were involved in 48 EPPO cases. The cooperation with Sweden runs without difficulties because of the relevant EU acts on judicial cooperation in criminal matters. A working arrangement with the Office of the Prosecutor General of Hungary was signed in April 2021. However, both Danish and Irish authorities still need time for internal consultations, and the negotiations regarding a working arrangement with the National Prosecutor’s Office of Poland were unsuccessful.”¹

The Acts of the Member States on the Execution of the European Public Prosecutor’s Office normally contain provisions that may affect Articles 26–33 of the EPPO Regulation but as Denmark is not part of the enhanced cooperation and not even part of the area of freedom, security and justice, it has not adopted any legislation in relation to the EPPO.

The following analysis of provisions related to criminal procedure and the investigation of PIF offences in Denmark is therefore either hypothetical or presents how Danish authorities investigate EU fraud cases on their own, i.e., through their national prosecution offices. In Part E the Chapter follows the impact of OLAF investigations in Denmark and how they are conducted. What relevance do OLAF reports have in Danish criminal justice, and has the Regulation been acknowledged in national territory?

¹ EPPO News, <https://www.eppo.europa.eu/en/news/eppo-investigates-eu54-billion-worth-loss-eu-budget-its-first-7-months-activity>. Accessed 31 December 2024.

In addition, Part E offers a gateway to national law by introducing provisions and offering translations of the most important ones for both OLAF investigators and defence counsel.

Experts and authors: Compilation and research of the EPPO and OLAF Parts by Prof. Dr. *Pierre Hauck* LL.M. (Sussex), Dr. *Jan-Martin Schneider* (Dipl.-Jur. MR; R.A., University of Gießen)/*Alastair A. Laird* (R.A., University of Gießen)/*Nur Sena Karakoçlu* (Dipl.-Jur. FFM.; R.A., University of Gießen). Compilation and research of the OLAF-Part C arranged with the special help of Questionnaire experts/organisations (AFCOS Denmark, OAFCN).

Table of Contents

Preface and Acknowledgments.....	9
Table of Contents.....	15
Abbreviations.....	23
Tables & Figures.....	27
Explanation of Symbols & Highlighting.....	29
A. Material for Part D and Part E.....	31
I. Case-Law Access in Denmark, OLAF-Related Case Law.....	31
1. Criminal Area.....	32
2. OLAF Regulation.....	35
II. Institutions.....	38
1. The Prosecution in Denmark.....	38
2. Organisation of the criminal justice system in Denmark.....	38
III. Contact to the Danish Prosecution Service.....	39
1. Request for Extradition.....	39
2. General Contact to the Prosecution Services in a Particular Police District..	39
IV. Sources of law.....	41
1. Main Danish Laws in the PIF Acquis Area.....	41
2. Criminal Investigation related Laws.....	42
3. Relevant national Laws concerning OLAF investigations.....	42
B. General Introduction.....	45
I. The Special Position of Denmark.....	45
II. The “Title V” of the TFEU: A <i>terra incognita</i> for Denmark?.....	46
III. Necessary Cooperation: But how?.....	47
IV. New Changes and Position of the Danish Parliament (<i>Folketinget</i>) as of 2022: Extended cooperation or traditional international legal aid (<i>International retshjælp</i>) with the EPPO (<i>Den Europæiske Anklagemyndighed</i>)?.....	47
1. Extended Cooperation as the new buzzword?.....	48
2. The Introduction of Section 107 in the Danish Administration of Justice Act 2022.....	48
a) Interpretation of Section 107a (Sentence 1) Danish Administration of Justice Act.....	49
b) Interpretation of Section 107a (Sentence 2) Danish Administration of Justice Act.....	49
c) The Special Role of the Attorney General.....	49
3. Projects of the European Council and the EU for better communication of non-participating countries with the EPPO (2023–2025).....	54
C. Cooperation with Danish Justice Authorities.....	55

I.	Hypothetical considerations on the impact of the EPPO investigations under Art. 105 EPPO Regulation for Danish justice authorities.....	55
II.	Danish Participation in Eurojust.....	55
III.	Danish Cooperation with Europol	56
1.	Danish Agreement on Operational and Strategic Cooperation between Denmark and Europol.....	56
2.	Danish Europol Act (<i>Europol-loven Lov om Den Europæiske Politienhed (Europol)</i>)	56
IV.	Cooperation in Administrative Tax matters (<i>Administrativ bistandsloven</i>).....	57
D.	Danish Authorities Investigating PIF Acquis Offences	59
I.	Criminal investigations according to the Danish Criminal Procedural Rule (<i>Retsplejoven</i>) based on national law (measures)	61
1.	Initiation of investigations into budget, customs and VAT fraud in Denmark and allocation of competences.....	62
a)	Initiation of Investigations by Danish Police and Prosecutors.....	63
b)	Other Relevant sources of the indications for a criminal PIF offence falling within the competence of Danish Authorities	64
aa.	Jurisdiction of Danish Prosecutors.....	64
(1)	Danish Main Territory	64
(2)	Greenland and Faroe Islands.....	64
bb.	Criminal Complaint and Notification Obligations of Danish Authorities to Report Fraud, Corruption and Embezzlement	65
(1)	Determination of the competence and verification of Crime Reports	74
(2)	The Union standards, Art. 24 para 6 et seq. EPPO Regulation	74
cc.	How to assess and verify the suspicion level according to the CPC for a criminal offence falling within the competence.....	76
(1)	Focusing the investigation on one person, a group of persons or legal person	76
(a)	Investigations against natural persons	77
(b)	Investigations against legal persons and their criminal liability (<i>Strafansvar for juridiske personer</i>) according to Sections 25, 26, 27 (5th chapter) of the Danish Criminal Code	78
(2)	Conditions of Criminality	80
(3)	The PIF offences in Denmark	80
(a)	Danish Criminal Code	81
(aa)	Advantage or Gift Promising.....	81
(bb)	Forgery Offences (Sections 171 et seq.)	81
(cc)	Property Crimes (Embezzlement, Fraud – Sections 276 et seq.)	83

(dd) VAT Act Offences	94
(ee) Tax Control Act.....	95
(ff) Penal Provisions of the Tobacco Tax Act	96
(gg) Further PIF Acquis Offences.....	97
dd. Examples and precedents	98
(1) Fraud	99
(a) Revenue frauds	99
(b) Expenditure frauds.....	99
(2) Corruption offences.....	100
(3) Money laundering with PIF crimes.....	100
2. Waiver of the Charges, Prevention of Prosecution, Urgent Measures in the Investigation Stage and the Finalisation of the National Investigation.....	101
a) Provisions with a precluding effect for the Prosecution Offices.....	101
aa. Statute of limitations for offences and custodial consequences (imprisonment, etc.)	101
bb. Amnesty and Pardon	105
cc. Opposing legal validity	105
dd. Abatement of action (Dispense with prosecution, Waiver of Charges)	105
b) Urgent measures of national authorities for securing an investigation and prosecution.....	109
II. Involvement of Danish authorities in the fight against EU-fraud: Police, Tax and Customs investigating on behalf of the Danish prosecution offices	110
1. The Danish Police and Prosecutor conducting investigative measures	112
a) Instructions and assignment of investigative measures for national authorities.....	117
b) Ensuring compliance with national law	119
c) Urgent measures in accordance with national law necessary to ensure effective investigations	121
2. Hindrances to effective EU fraud and corruption investigations in Danish national law.....	125
a) National privilege and immunity provisions, para 1	125
aa. Legal (professional) privilege	125
bb. Privilege against self-incrimination	127
b) Immunity provisions.....	128
aa. Parliamentary privilege or immunity	128
bb. National Legislation.....	129
cc. Provisions on the lifting of immunities?	129
c) Immunities and Privileges under union law, para 2	130

III. Collection of Danish Investigation Measures Equivalent to Art. 30 EPPO Measures.....	131
1. The core investigation measures for financial fraud and corruption in Denmark (Equivalence to Article 30 EPPO Regulation)	131
a) Investigation measures	132
aa. Search Measures	132
(1) Search any premises or land	132
(2) Search any means of transport	133
(3) Search any private home	133
(4) Search any clothes and any other personal property	133
(5) Search any computer system.....	133
bb. Obtainment of the production of any relevant object or document either in its original form or in some other specified form	134
cc. Obtainment of the production of stored computer data, encrypted or decrypted	136
dd. Obtainment of banking account data and traffic data	139
ee. Freezing instrumentalities or proceeds of crime, including assets	143
ff. Interception of electronic communications to and from the suspect or accused person	145
gg. Tracking & Tracing an Object	146
hh. Other investigative Steps	146
b) Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation.....	149
2. Summary	149
IV. On Cross-Border Investigations and the Enforcement of Assigned Measures in relation to Art. 31 and 32 EPPO Regulation	150
V. Securing the Investigation and Trial: From the Perspective of the Prosecution and from the Perspective of the Defence	152
1. Arrest and Pre-trial Detention in Denmark or how Article 33 EPPO Regulation would be interpreted in Denmark	152
a) General relation to national law: applicable Codes.....	153
b) Provisions for arrest and pre-trial detention	153
aa. Provisions on Arrest.....	153
bb. Rules on Pre-trial detention.....	156
cc. Cross-border surrender and Extradition (to Denmark/ <i>Udlevering til Danmark</i>): Conditions for extradition from Denmark to Member States of the European Union except Finland and Sweden	168
2. Filing an Indictment in case of fraud or corruption or other Actions by Danish Customs and Tax Administration in case of Tax and VAT offences.....	172

3.	Some provisions on Defence laws relating to national prosecutorial actions concerning PIF Crime offences	175
a)	General Rules on the Defence	175
b)	Defence in the investigation phase	186
aa.	At the police Station (Police Interviews etc.)	186
bb.	Access to national case file	188
(1)	Danish Administration of Justice Act	188
(2)	Danish Administrative Act.....	192
cc.	Defence in case of arrest and pre-trial detention	193
c)	Defence in Indictment phase and the trial phase	193
d)	What rules apply in the main hearing at first instance?	197
e)	Rules on the Judgment: Conviction, Dismissal or Acquittal?.....	197
f)	What may happen in case of Acquittal?	198
E.	OLAF-Regulation.....	199
I.	Provisions on External Investigations and On-the-Spot Checks in Denmark	199
1.	Articles 1 and 2 Objectives, tasks and definitions	201
2.	Article 3 External investigations.....	204
a)	On the spot-checks and inspections – Renouncing the applicable national law – Para 2, 4.....	209
b)	Assistance needed, competent authorities and access to information in the Member States, para 5	209
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	209
d)	The basic principle of conformity to Regulations 2185/96 and 883/2013210	
aa.	Submission: Compliance with Union law.....	210
bb.	Resistance: Assistance in conformity with national procedural rules applicable	210
e)	Competent authorities.....	210
f)	National law and “checks and inspections” of OLAF.....	211
aa.	Administrative procedure in general.....	212
bb.	Special administrative powers and provisions in certain areas of revenue and expenditure	212
(1)	Administrative provisions	212
(a)	Administrative provisions in the area of customs duties and value added tax (VAT) = revenue	212
(aa)	Principle of investigation.....	219
(bb)	External audit (General Tax Code)	219

(cc) Tax and customs investigation (Customs Code/General Tax Code).....	220
(dd) Fiscal supervision.....	220
(b) Administrative provisions in the area of structural funds and internal policies (interne Politiken) = expenditure	220
(aa) Structural funds	220
(bb) Internal policies.....	222
(c) Administrative provisions in the area of the common organisation of the markets = expenditure.....	222
(2) Investigative powers	225
(a) Investigative powers in the area of customs duties and VAT (General Tax Code)	226
(b) Investigative powers around structural funds and internal policies	231
(c) Investigative powers in the area of common market organisations	236
(d) Investigative powers in the area of direct expenditure.....	242
(e) Provisions in the area of external aid = expenditure	243
(3) Protection of information.....	244
(a) Administrative secrecy or professional secrecy (Administrative laws).....	244
(b) Official secrecy.....	250
(4) Investigation reports (Customs Code, General Tax Code).....	251
(5) Support to the inspectors (Customs Code, General Tax Code).....	252
(6) Preservation of Evidence (Customs Code, General Tax Code).....	254
g) Single measures in Denmark.....	254
aa. The taking of statements from Economic Operators	254
bb. Inspections.....	254
(1) Controls of the Regional and Social Fund	254
(2) Controls and Inspections in the area of the European Regional Fund	255
(3) Control and Audits in the area of Grants of the ERF and ESF	255
(4) Controls in the General Tax Area	255
(5) Inspections in the VAT Area	258
(6) Controls in the Customs Area	258
cc. The seizure of digital forensic evidence including bank account information.....	258
dd. Acquisition of digital evidence and Digital forensic operations within inspections or on-the-spot checks	259
ee. Investigative missions in third countries.....	259

h) Cooperation and mutual assistance agreements	259
3. Article 4 Internal investigations	260
a) References to national law, para 8.....	261
b) Competent authorities.....	261
4. Article 5 Opening of investigations	262
a) Competent authorities.....	262
b) National rules.....	262
5. Article 7 Investigations procedure	266
a) References to national law	267
b) References to national authorities	276
6. Article 8 Duty to inform the Office	277
II. Procedural Rules on Investigations of OLAF and the References to National Law.....	278
1. Article 9 Procedural guarantees	278
2. Article 10 Confidentiality and data protection.....	279
3. Article 11 Investigation report	281
4. Article 12 Exchange of information between the Office and the competent authorities	285
a) Art. 12 para 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law).....	285
b) Art. 12 para 2 OLAF Regulation (judicial authorities of the Member State concerned).....	286
c) Art. 12 para 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned).....	286
5. Article 12a Anti-fraud coordination services.....	287
a) General remarks.....	287
aa. Definition and History	287
bb. Legislative developments.....	289
cc. Visualisation of old (prior to 2020) vs. new (since 2020) cooperation and role of the AFCOS	290
b) A closer look at the relevant AFCOS in the present Member State.....	291
6. Article 12e The Office's support to the EPPO.....	292
7. Article 13 Cooperation of the Office with Eurojust and Europol.....	293
8. Article 17 Director-General	294
Bibliography and Further Reading.....	297
Further Research Suggestions.....	308
Important Websites	308
Index.....	309

Abbreviations

ACAs	Administrative Cooperation Agreements
AFCOS	Anti-fraud coordination service
AFSJ	Area of Freedom, Security and Justice
AMIF	Asylum, Migration and Integration Fund
AML	Anti Money Laundering
BEK	<i>Bekendtgørelse</i> (meaning statutory regulation or ministerial/executive order)
BMVI	Instrument for Financial Assistance in
CC	Criminal Code
CDPC	European Committee On Crime Problems
CF	Cohesion Fund
COCOLAF	Advisory Committee for the Coordination of Fraud Prevention
CPC	Criminal Procedure Code
DAJ Act	Danish Administration of Justice Act
DKK	Danish Krone
EAFRD	European agricultural fund for rural development
EAGF	European agricultural guarantee fund
EAW	European Arrest Warrant
EC	European Commission
ECA	European Court of Auditors
ECHA	European Chemicals Agency
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice (now CJEU)
ECJN	European Judicial Network against Cybercrime
ECON	European Parliament's Committee on Economic and Monetary Affairs
ECP	European Chief Prosecutor
EDF	European Development Fund
EDMS	Electronic Document Management System
EDO	European Data Officer
eDP	ePrivacy Directive
EDP	European Delegated Prosecutor
EEAS	European External Action Service
EEC	European Economic Community
EIO	European Investigation Order

Abbreviations

EJN	European Judicial Network
EMFAF	European Maritime, Fisheries and Aquaculture Fund
EP	European Prosecutor
EPP	European Public Prosecutor
EPPO	European Public Prosecutor's Office
ERDF	European Regional Development Fund
ESF+	European Social Fund Plus
ESIF	European Structural and Investment Funds
ESMF	European Shared Management Funds
EUACR	EU Anti-Corruption Report
EUCFR	Charter of Fundamental Rights of the European Union
EuCLR	European Criminal Law Review
EUROJUST	European Union Agency for Criminal Justice Co-operation
EUROPOL	European Police Office
GC (aka CFI ex-2009)	General Court of the EU / formerly Court of First Instance
IBOAs	Institutions, Bodies, Offices, and Agencies
IMS	Irregularity Management System
IRP	Internal Rules of Procedure
ISF	Internal Security Fund
JITs	Joint investigation teams
LBK	<i>Lovbekendtgørelse</i> (meaning Consolidated Act)
MEP	Member of European Parliament
NSK	National Unit for Special Crimes / <i>National enhed for Særlig kriminalitet</i>
OAFCN (-Member)	OLAF Anti-Fraud Communicators' Network
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-fraud office
PC-OC	Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters
PCS	Paragraph
PIF	Protection of the EU's Financial Interests
SEDIA	Funding and Tenders Portal

SEIC (“SØIK”)	State Prosecutor for Serious Economic and International Crime
SKAT	Danish Tax and Customs Authorities
SNE	Seconded National Expert
TFEU	Treaty on the Functioning of the European Union
UCLAF	Anti-Fraud Coordination Unit [<i>unité de coordination de la lutte antifraude</i>]
VAT	Value Added Tax

Tables & Figures

Table 1: Danish Courts and ECtHR Jurisprudence	32
Table 2: OLAF-related Case-law	35
Table 3: The regional Prosecution offices in Denmark	38
Table 4: National authorities involved in PIF investigations	38
Table 5: Competent authorities in the area of revenue and expenditure	210
Figure 1: Danish Prosecution Statistics 2016	61
Figure 2: National (indirect way of) Obtaining information for the EPPO competence and the exercise of jurisdiction	73
Figure 3: Supranational (direct way of) Obtaining information for the EPPO competence and the exercise of jurisdiction	73
Figure 4: EU external aid/expenditure (indirect management) – Art. 3 OLAF Regulation on-the-spot inspections to discover EU external aid expenditure-related frauds.....	244
Figure 5: Visualisation of the old cooperation by virtue of Regulation No. 883/2013	290
Figure 6: Visualisation of the new cooperation by virtue of Regulation No. 883/2013 (as amended 2020/2223)	290
Sources and national sections 1: PIF Offences in Denmark.....	80
Case Study 1: Defrauding the EU with cinema tickets?	99
List 1: Instructed and assigned National authorities (list)	117

Explanation of Symbols & Highlighting

Text passages highlighted in grey show European Union law.

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



















Plain Tables display either a synopsis of a foreign law text. Or they display 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.

Copyright Statements & (Free) Licences

Pictures/Figures/Symbols Used:

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

Vector Graphics (Country Maps)



All vector graphics stem from *openclipArt.org* and are, if used licenced under *CC0 1.0 Universal (CC0 1.0) Public Domain Dedication* aka “Creative Commons Zero 1.0 Public Domain License”. They are a freely licensed work, as explained in the Definition of Free Cultural Works. Credit goes to librarians of [@openclipArt.org](https://openclipart.org).

All Eur-lex material used in this work is © European Union. Denmark Flag <https://openclipart.org/download/263458/Denmark-Map-Flag-With-Stroke.svg> is licensed under CC BY-SA 4.0. To view a copy of this license, visit <https://creativecommons.org/licenses/by-sa/4.0?ref=openverse>. Expert Icon 6. Flaticon Free License (With Attribution). <https://www.flaticon.com/free-icons/student> title="student icons". Student icons created by Freepik – Flaticon; Checkmarks/ticks on circles. Credit goes to Andrea S/librarian @openclipart.org. 2008.Money bag by security_man/librarian <https://openclipart.org/detail/245511/money-bag>. Arrest Icon by j4p4n/librarian <https://openclipart.org/detail/280072/arrest-icon>. Academic cap by pnx_/librarian. <https://openclipart.org/detail/202668/academic-cap>. Books – Lineart – No Shading. by amcolley. <https://openclipart.org/detail/274110/books-lineart-no-shading>; *Scales of justice* by laobc. <https://openclipart.org/detail/62989/scales-of-justice>; *Fountain pen over paper sheet* by ousia. <https://openclipart.org/detail/184618/fountain-pen-over-paper-sheet>; Pencil icon by Anonymous. <https://openclipart.org/detail/24821/pencil-icon> Dog by dear_theophilus. <https://openclipart.org/detail/122197/dog> Dog Leashed Silhouette by GangandInfographie. <https://openclipart.org/detail/276050/dog-leashed-silhouette> Telephone by Anonymous. <https://openclipart.org/download/24943/Anonymous-aiga-telephone.svg>; Port by Shinnoske. <https://openclipart.org/detail/218695/port>; Water transportation by jean_victor_balin. <https://openclipart.org/detail/25368/aiga-water-transportation>; Airplane silhouette by rones. <https://openclipart.org/detail/219836/airplane-silhouette>; Idee / idea by Improulx. <https://openclipart.org/detail/125719/idee-idea>; Town-hall-15 by PublicDomainSymbols. <https://openclipart.org/detail/260851/townhall15>; Open book by ShannonW. <https://openclipart.org/detail/296507/open-book>; Police Car by j4p4n. <https://openclipart.org/detail/298872/police-car>; Train Pictogram by libberry. <https://openclipart.org/detail/173654/train-pictogram>; Search Ideogram by libberry. <https://openclipart.org/detail/188650/search-ideogram>; Sketched police car by Firkin. <https://openclipart.org/detail/303507/sketched-police-car>. All Eur-lex material used in this work is © European Union. and/or Official Gazette 4.0 OpenGovernmentLicence. Only European Union legislation published in paper editions of the Official Journal of the European Union prior to 1 July 2013, and its electronic versions published after 1 July 2013 have legal value. Further information from the Official Gazette is used under Open Licence. Data from GeoNames and all other source is used on the basis of a CC BY 4.0 licence and Open Government Licence or academic work. National transposition measures communicated by the Member States concerning: Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law OJ L 198, 28/07/2017, p. 29–41 (B G, ES, CS, DA, DE, ET, EL, EN, FR, GA, HR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV). The Member States bear sole responsibility for all information on this site provided by them on the transposition of EU law into national law. This does not, however, prejudice the results of the verification by the Commission of the completeness and correctness of the transposition of EU law into national law as formally notified to it by the Member States. The collection National transposition measures is updated weekly. Errata: In Volumes III, V, X, XXII, the word ‘Legal Trainee’ was missing prior to Attorney for Austria. This volume is intended to provide a general overview and discussion of the issues dealt with in relation to EPPO/OLAF. It is not intended as a substitute for legal advice in a specific situation and should not be used as such. The laws cited are presented as of 31/12/2023. They may have changed in the meantime. Some commonly used PIF laws and investigative measures have been cross-checked again for publication in January 2025.

A. Material for Part D and Part E

I. Case-Law Access in Denmark, OLAF-Related Case Law

Any European Delegated Prosecutor (EDP) and legal practitioners in the EU seeking access to Danish court decisions for defence decisions involving OLAF and criminal charges related to EU fraud or offences under the PIF Directive can primarily use the Danish digital court judgments platform, known as *Domsdatabasen*. This is the official repository for selected judgments from the Danish court system, including district courts, high courts, and the Supreme Court. Although not all decisions are made publicly available, the database contains a wide range of anonymised rulings of general legal or societal interest. Judgments concerning financial crime, fraud involving EU funds, or cooperation with OLAF may be included, particularly where the case has broader implications or establishes legal precedent.² 1

Users can search the *Domsdatabasen* using a range of filters and keywords, such as “*EU-støtte*” (EU support), “OLAF”, “*svig*” (fraud), “*økonomisk kriminalitet*” (economic crime), or specific references to subsidy fraud or structural funds. Legal professionals may also search by relevant provisions of the Danish Penal Code, including fraud (Section 279), forgery (Section 171), and bookkeeping offences, or by identifying the prosecuting authority, which in most EU-related financial crime cases is the Special Crime Unit (*Statsadvokaten for Særlig Kriminalitet*, also known as SØIK or SØK). In cases where OLAF has been involved, the court may explicitly refer to OLAF reports, findings, or documentation submitted during the investigation or trial. Such references are typically included in the factual background or evidentiary reasoning of the judgment. 2

Where a relevant decision is not available through the *Domsdatabasen*, lawyers and EDPs may request access directly from the court registry where the case was heard. These requests are assessed under Danish procedural law and data protection rules and often require a demonstration of legal interest or standing. In the context of cross-border cooperation or coordinated EU investigations, EDPs may also liaise with the Danish national European Delegated Prosecutor or the Special Crime Unit to facilitate lawful access to documents and case information. 3

The *Domsdatabasen* website also includes a frequently asked questions section (“*Spørgsmål og Svar*”), which provides guidance on how to conduct searches, what types of cases are included in the database, the anonymisation standards applied, and the procedure for requesting unpublished judgments. This framework ensures that access to 4

² See <https://www.thedanishparliament.dk/en/democracy/the-courts-of-justice> and <https://www.cbs.dk/en/library/databases/domsdatabasen-rulings-database>; <https://domsdatabasen.dk/>. Accessed 31 December 2024.

Danish case law involving OLAF and PIF-related offences is both transparent and structured, while also balancing privacy and judicial independence.

1. Criminal Area

5 Table 1: Danish Courts and ECtHR Jurisprudence

ECtHR	Content/Relevance
Decisions concerning pre-trial detention and extradition related questions:	
ECHR <i>V. and A. v. Denmark</i> [GC], no. 35553/12, 36678/12 and 36711/12, Judgment of 22 October 2018.	The case involved three Danish nationals (S., V., and A.) who were detained by Danish police in Copenhagen during the 2009 Denmark-Sweden football match to prevent anticipated hooligan violence. They were detained under Section 5(3) of the Danish Police Act, which allows preventive detention to avert public disorder, but not within the context of a criminal investigation. Herewith it was clarified that Article 5 para 1(c) can encompass short-term preventive detentions in exceptional public order situations.
ECHR <i>Vasileva v. Denmark</i> , no. 52792/99, Judgment of 25 September 2003.	Mrs. Sofiika Vasileva, a 67-year-old Bulgarian national, was arrested in Århus, Denmark on 11 August 1995 for refusing to disclose her identity after a dispute with a bus ticket inspector. She was detained by police from 9:30 p.m. until 11:00 a.m. the next day, a total of 13.5 hours, and later collapsed, requiring hospitalization. She was detained under Section 755 para 1 of the Danish Administration of Justice Act for breaching Section 750, which requires individuals to identify themselves to police upon request. The arrest was lawful in principle and aimed at fulfilling a legitimate obligation. However, the length of the detention (13.5 hours), especially with no attempt to identify her from 11:00 p.m. to 6:30 a.m., was disproportionate. Authorities failed to strike a fair

	balance between enforcing the law and respecting individual liberty. A violation of Article 5 para 1 was found due to unjustified length of detention for a minor offence.
Decisions concerning PIF offences	
Court in Lyngby, SS-181/2022-LYN, Judgment of 21 December 2022 ECLI:DK:LYN: 2022:SS0000002044.	Charges for EU fraud in accordance with section 289 (a), paragraphs 1 and 2, cf. Regulation (EC) No 2004 of the European Parliament and of the Council of 4 November 2003 on the statute and financing of political parties and foundations at European level and forgery of documents in accordance with section 171(1) of the Criminal Code, see. 1. The defendants were involved in systematic financial fraud over several years. The fraud included manipulating company accounts, creating false invoices, and hiding debt or overstating assets to obtain loans or avoid taxes. The damage caused ran into millions of Danish kroner. They used shell companies and exploited legal structures to hide illegal activities. The court found both defendants guilty on most counts. It emphasized the systematic and deliberate nature of the fraud and the significant damage caused. The court also considered the length of the criminal conduct, the defendants' roles, and their intent. Defendant 1 received a prison sentence. Defendant 2 also received a custodial sentence. In addition, the court-imposed bans on company management and financial compensation orders. The European Anti-Fraud Office (OLAF) played an important role in the investigation: "The investigation was initiated in collaboration with OLAF, which had identified irregularities in the use of

	<p>EU funds allocated to agricultural development projects in Denmark and other EU countries. OLAF passed on relevant findings and documents to the Danish Special Crime Unit (SØK), which continued the investigation nationally.”</p> <p>The court noted that: The fraud involved manipulation of applications and supporting documents for EU funding. The defendants overstated project progress, submitted false documentation, and channelled funds through front companies. OLAF’s investigative material was integrated into the evidence base used by SØK to build the Danish criminal case.</p>
<p>Copenhagen City Court, SS-27430/2018-KBH, Judgment of 18 August 2022, ECLI:DK:KBH:2022:SS0000001510.</p>	<p>The case concerns the involvement of large-scale VAT and tax fraud and money laundering.</p>
<p>Court of Glostrup, SS-2664/2022-GLO, Judgment of 2 February 2024, ECLI:DK:DK:GLO:2024:SS000000092.</p>	<p>A 54-year-old English financier is punished with imprisonment for 6 years for fraud against SKAT by in the period 2012–2015 unjustified to have recovered and received reimbursement of dividend tax for a total of DKK 320 million. (Dividend tax case II). Charges for fraud of particularly serious nature in accordance with section 279 of the Penal Code, see. section 286, paragraph 2, by unlawfully having prompted unduly recovery of dividend tax. The case also contains the decision on pre-trial detention during any appeal, or until enforcement of the penalty can be initiated, see. 1, 2. paragraph, see. section 762, paragraph 1, no. 1, and paragraph 2, no. 1. Claim for expulsion, confiscation and disqualification of rights</p>

Source: The authors.

Criminal cases of the Danish prosecutor and the prosecution offices can thus be primarily be obtained via this Database³. If necessary, it contains orders of the Supreme Court, the prosecutorial focus of the Danish prosecution offices, guidelines on prosecution, Guidelines, instructions and notes from the Attorney General, material from the Minister of Justice etc. 6

It e.g. contains the Attorney General’s Announcements relating to International Cooperation of Denmark.⁴ 7

Danish courts must, if they have a material question of EU law within their process, ask the ECJ as the Union’s Court within a preliminary question for a preliminary ruling, see the Special Guideline of the Attorney General/Minister of Justice (Preliminary reference to the European Court of Justice RM 10/2008 – revised 25 November 2014⁵). 8

2. OLAF Regulation

Table 2: OLAF-related Case-law 9

Relates to Art.	Judgment, ECLI, etc.	Content
Deciding Court: ECJ		
Art. 1–4	ECJ, C-615/19 P, 25 February 2021, <i>John Dalli v. European Commission</i> , ECLI:EU:C:2021:133.	Allegedly illegal conduct of the European Commission and the European Anti-Fraud Office (OLAF), Procedural rules governing the OLAF investigation, Opening of an investigation, Right to be heard
Art. 3 (right to be heard, digital forensic evidence)	ECJ, C-153/94, 14 May 1996, <i>Faroe Seafood Co. Ltd, Føroya Fiskasøla L/F</i> , ECLI:EU:C:1996:198.	“Faroe Seafood, which was an English company, imported prawns into the United Kingdom with EUR 1 certificates issued by the authorities of the Faroe Islands. In 1991, an investigative commission (OLAF) visited the Faroe Islands and it was concluded that the rules surrounding

³ See <https://vidensbasen.anklagemyndigheden.dk/>. Accessed 31 December 2024.

⁴ See the Attorney General’s announcement.

⁵ See <https://vidensbasen.anklagemyndigheden.dk/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/894754fa-ae4a-41ac-a9ad-f1d3471f24ea?showExact=true>. Accessed 31 December 2024.

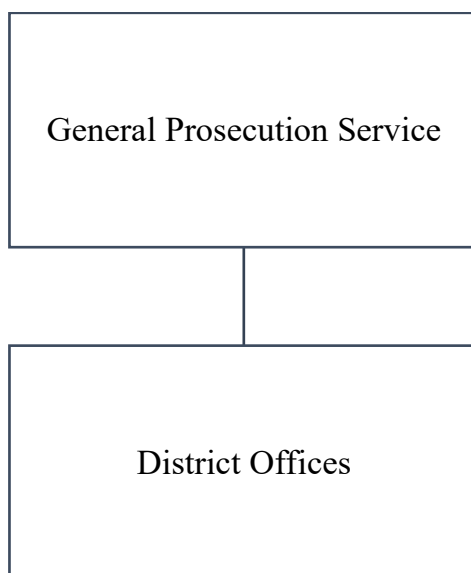
		the issuance of EUR 1 certificates by the Faroese authorities were not respected. OLAF found that the companies had processed shrimp originating in the Faroe Islands without physically keeping them separate from shrimp from countries outside the EU. Therefore, the EUR 1 certificates should be considered fully or partially cancelled.”
Art. 4 Internal Investigations	Judgment of the Court (First Chamber) of 10 June 2021, C-591/19 P, <i>European Commission v. Fernando De Esteban Alonso</i> , ECLI:EU:C:2021:468.	Appeal, Civil service, Internal investigation by the European Anti-fraud Office (OLAF), Forwarding of information by OLAF to the national judicial authorities, Filing of a complaint by the European Commission, Concepts of an official who is “referred to by name” and “implicated”, Failure to inform the interested party, Commission’s right to file a complaint with the national judicial authorities before the conclusion of OLAF’s investigation, Action for damages.
Art. 7	ECJ, C-650/19 P, 28 October 2021, <i>Vialto Consulting Kft. v. European Commission</i> , ECLI:EU:C:2021:879.	Appeal, Investigation by the European Anti-Fraud Office (OLAF), On-the-spot checks, Regulation (Euratom, EC) No 2185/96, Article 7, Access to computer data, Digital forensic operation, Principle of legitimate expectations, Right to be heard, non-material damage
	First Instance: GC, Case T-617/17, 7 September 2017, <i>Vialto Consulting v. Commission</i> , ECLI:EU:T:2019:446.	Article 7(1) of Regulation (EC) No 2185/96; Principle of sound administration; Legitimate expectations; Proportionality; Right to

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

II. Institutions

1. The Prosecution in Denmark

Table 3: The regional Prosecution offices in Denmark



2. Organisation of the criminal justice system in Denmark

Table 4: National authorities involved in PIF investigations

Translated Term	Original Term
Danish Prosecution Authority	Anklagemyndigheden
State Prosecutor for Serious Economic and International Crime (“SEIC”)	Statsadvokaten for Særlig Økonomisk og International Kriminalitet (SØIK)
The Danish Financial Supervisory Authority	Finanstilsynet Strandgade 29 1401 København K
Housing and Planning Agency	Bolig- og Planstyrelsen
Danish Fisheries Agency	Fiskeristyrelsen
Customs and Tax administration/ Customs agency/	Skatte- og Toldforvaltningen Toldstyrelsen ⁶

⁶ See <https://www.toldst.dk/>. Accessed 31 December 2024.

Tax Agency	Skattestyrelsen ⁷
Danish Agency for Agriculture, National Board of Agriculture	Landbrugsstyrelsen
Danish Business Authority	Erhvervsstyrelsen
Danish Ministries	
Development and Simplification Agency	Udviklings- og Forenklingsstyrelsen ⁸

III. Contact to the Danish Prosecution Service

1. Request for Extradition

If an extradition of a citizen shall be requested from Denmark the following contact is listed by the Council of Europe: **10**

The Director of Public Prosecutions

Frederiksholms Kanal 16

1220 København K

Denmark

Telephone: + 45 72 68 90 00

Fax: + 45 72 68 90 04

E-mail: rigsadvokaten@ankl.dk⁹

2. General Contact to the Prosecution Services in a Particular Police District

The following information can be important if an EDP in e.g. Germany, the Netherlands, Latvia or France needs to contact the Danish Prosecution for information. **11**

The Prosecution Service in the police districts

Enquiries and requests addressed to the Prosecution Service in the police districts must be made directly to the offices and police districts concerned. **12**

Jutland

North Jutland Police, tel.: +45 96 30 14 48, email: njyl@politi.dk

East Jutland Police, tel.: +45 87 31 14 48, email: ojyl@politi.dk

Central and West Jutland Police, tel.: +45 96 14 14 48, email: mvjyl-ank@politi.dk

South East Jutland Police, tel.: +45 76 28 14 48, email: sojyl@politi.dk

South Jutland Police, tel.: +45 76 11 14 48, email: sjyl@politi.dk

⁷ See <https://www.sktst.dk/>. Accessed 31 December 2024.

⁸ See <https://www.ufst.dk/>. Accessed 31 December 2024.

⁹ See <https://rm.coe.int/16806b9363>. Accessed 31 December 2024.

Funen

Funen Police, tel.: +45 66 14 14 48, email: fyn@politi.dk

Zealand

North Zealand Police, tel.: +45 49 27 14 48, email: nsj@politi.dk

Copenhagen Police, tel.: +45 33 14 14 48, email: kbh@politi.dk

Western Copenhagen Police, tel.: +45 43 86 14 48, email: kbhv@politi.dk

Central and West Zealand Police, tel.: +45 46 35 14 48, email: mvsj-anklagemyndighed@politi.dk

South Zealand and Lolland-Falster Police, tel.: +45 55 31 14 48, email: ssj@politi.dk

Bornholm

Bornholm Police, tel.: +45 56 90 14 48, email: BORNH@politi.dk

Greenland and the Faroe Islands

Greenland Police, tel.: (+299) 70 14 48, email: MNI018@politi.dk

Politimesteren på Færøerne, Tlf.: (+298) 35 14 48, mail: politi@politi.fo

Special Crime Unit

Special Crime Unit, tel.: +45 45 15 59 99, email: nsk@politi.dk

State Prosecutors' Offices

Enquiries and requests addressed to the state prosecutors' offices must be made directly to the offices concerned.

State Prosecutor of Viborg, tel.: +45 72 68 90 00, email: sav@ankl.dk

State Prosecutor of Copenhagen, tel.: +45 72 68 90 00, email: sak@ankl.dk

State Prosecutor for Special Crime, tel.: +45 72 68 90 00, email: ssk@ankl.dk

Secure communication with the state prosecutors' offices

If you need to communicate securely with the state prosecutors' offices, you can either use Digital Post or send us a signed and encrypted email (secure email).

Write securely to us using Digital Post

As a citizen, you can write to us using Digital Post at borger.dk or e-Boks.

Send secure email

If you need to send an email containing sensitive or confidential information, we recommend that you encrypt your email and send it by secure email.

Director of Public Prosecutions

Director of Public Prosecutions, tel.: +45 72 68 90 00, email: rigsadvokaten@ankl.dk

General enquiries

General enquiries and requests addressed to the Director of Public Prosecutions may be sent to rigsadvokaten@ankl.dk.

Press contact

For press material, news from the Prosecution Service, and press contact information, see our press area.

Website

Enquiries and comments related to the content and functions of anklagemyndigheden.dk may be sent to the Prosecution Service's communications consultant.

Electronic invoices

EAN-number: 5798000081826

CVR-number: 17 14 36 11

SE-number: 32 53 91 30

Secure communication with the Director of Public Prosecutions

If you need to communicate securely with the state prosecutors' offices, you can either use Digital Post or send us a signed and encrypted email (secure email).

Write securely to us using Digital Post

As a citizen, you can write to us using Digital Post at borger.dk or e-Boks.

Send secure email

If you need to send an email containing sensitive or confidential information, we recommend that you encrypt your email and send it by secure email.

IV. Sources of law

The following pages present a list of the applicable sources of law in relation to investigation-related acts (either national authorities or OLAF's partners in Denmark): **13**

1. Main Danish Laws in the PIF Acquis Area

- The Basic Law – The Constitution of the Danish Kingdom [*Grundloven Danmarks Riges Grundlov*] **14**
- Act of Accession Act on Denmark's accession to the European Communities [*Tiltrædelsesloven Lov om Danmarks tiltrædelse af De europæiske Fællesskaber*]
- Danish Criminal Code [*Danske Straffeloven*]
- Data Protection Act [*Databeskyttelsesloven (Lov om supplerende bestemmelser til forordning om beskyttelse af fysiske personer i forbindelse med behandling af personoplysninger og om fri udveksling af sådanne oplysninger)*]
- The VAT Act Value Added Tax Act [*Momsloven Lov om merværdiafgift*]
- The Withholding Tax Act [*Kildeskatteloven*]

2. Criminal Investigation related Laws

- 15
- Danish Administration of Justice Act (equal to Criminal Procedure Acts in other Member States of the European Union) [*Retsplejeloven Lov om rettens pleje*¹⁰].
 - The Extradition Act – Act on extradition to and from Denmark [*Udleveringsloven Lov om udlevering til og fra Danmark*]
 - The Police Act – Act on police activities [*Politoloven Lov om politiets virksomhed*]
 - Act on Preventive Measures Against Money Laundering and the Financing of Terrorism (Money Laundering Act) [*Lov om forebyggende foranstaltninger mod hvidvask og finansiering af terrorisme (hvidvaskloven)*]
 - Act on the Processing of Personal Data by Law Enforcement Agencies (Implementation of the Law Enforcement Data Protection Directive) [*Lov om retshåndhævende myndigheders behandling af personoplysninger (Gennemførelse af direktiv om databeskyttelse på retshåndhævelsesområdet)*]
 - Victim Compensation Act Law on compensation from the state to victims of crimes [*Offererstatningsloven Lov om erstatning fra staten til ofre for forbrydelser*]
 - The Criminal Enforcement Act – Act on execution of punishment [*Straffuldbyrdsloven Lov om fuldbyrdelse af straf m.v.*]

3. Relevant national Laws concerning OLAF investigations

- 16
- The Administrative Act [*Forvaltningsloven*]
 - The Act on legal certainty in the administration's use of coercive measures and disclosure requirements [*Lov om retssikkerhed ved forvaltningens anvendelse af tvangsindgreb og oplysningspligter*]
 - The Tax Administration Act [*Skatteforvaltningsloven*]
 - The Tax Control Act [*Skattekontrolloven*]
 - Customs Act [*Toldloven*]
 - The Procurement Act [*Udbudsloven*]
 - The Tender Act – Act on solicitation of tenders for certain public and publicly supported contracts [*Tilbudsloven Lov om indhentning af tilbud på visse offentlige og offentligt støttede kontrakter*]
 - The Auditors Act – Act on approved auditors and audit firms [*Revisorloven Lov om godkendte revisorer og revisionsvirksomheder*]
 - The Auditor General's Act – Act on the audit of the state's accounts, etc [*Rigsrevisorloven Lov om revisionen af statens regnskaber m.m*]

¹⁰ The Promulgation contains the relevant changes to the law, *Bekendtgørelse af lov om rettens pleje*.

- The Agricultural Act Agricultural Property Act [*Landbrugsloven Lov om landbrugsejendomme*]
- Act on State Guarantees for Loans to Young Farmers [*lov om statsgaranti for lån til yngre jordbrugere*]
- Co2 Taxation Act [*CO2-afgiftsloven Lov om kuldioxidafgift af visse energiprodukter*]¹¹
- The Property Value Tax Act [*Ejendomsværdiskatteloven*]
- Fiskeriloven
- Danish Fisheries Act [*Lov om fiskeri og fiskeopdræt*]
- Act on structural measures relating to the fisheries sector [*Lov om strukturforanstaltninger vedrørende fiskerisektoren*]

¹¹ See → the German volume of the Compendium, which refers to the co-called CO2-Tax Fraud Cases, which diminished the Union's tax revenue in the last decade. In Germany several companies were accused of having formed a criminal organisation aiming at the false taxation of their CO2 quota (hereby evading duties).

B. General Introduction

I. The Special Position of Denmark

Denmark, according to the constitution a “limited-monarchy” (Section 2 *Grundloven*), has been a **special EU Member** since its very beginning. The following citations from the Corpus Juris study project from 1997–1999 show what kind of scepticism existed in the past and still prevails today if it comes to supranational bodies in the area of criminal justice in Denmark: 1

Denmark is **not part of the EPPO as of 2023**, which was **pre-guessed already by P. Garde**, National Report of Denmark more than 20 years ago, when the discussions for an EPPO started and were interpreted in the light of the Corpus Juris Study. Back then he wrote: “Without being an expert on political science, I envisage considerable, **very possible prevalent political opposition in Denmark to the creation of the propose E.P.P. [EPPO today]**, not because of the limited practical challenges described supra – the powers according to Art. 20 Corpus Juris are probably much more serious – but because of the **general sceptical Danish opinion on enlarging the powers of EU authorities**. For example, when limited cross-border co-operation between Danish and German police was established some time ago, the German police were given powers of pursuit and arrest only up to 15 kilometres north of the Danish-German border, whereas the Danish police was given corresponding powers in the whole of Germany. The four Danish provisos to the Treaty of Maastricht as agreed by the Convention of Edinburgh in 1992, covering inter alia juridical co-operation, are still shibboleths in the minds of a considerable segment of Danish voters.¹² 2

What has changed in the past 20 years? Nothing?¹³ Observing this prophecy of that time: Has it come true? Yes, to a large extent. Denmark is not part of the EPPO and Denmark is not part of the AFSJ area. A reason for this special position of Denmark lays within the political parties. Only five years ago, in 2018 the Danish People’s Party voted against stronger laws to fight EU fraud in the country and this was at the time when the EPPO Regulation was already decided. The EPPO Regulation was discussed from 2013 to 2016 and entered into force in 2017. Interestingly the Danish People’s Party was once for a stronger fight in order to stop frauds with EU money – especially EU funds.¹⁴ Still it came true what Garde said 20 years ago the Danish People’s Party is still opposed to 3

¹² See Garde 2001, p. 240.

¹³ See The European Committee: “The minister is asked to explain why the government has not entered into a cooperation agreement with the European Public Prosecutor’s Office (EPPO)”, see Hansen 2022, Consultation of the Committee on Legal Affairs on 11 May 2022, online: <https://www.ft.dk/samling/20211/almdel/EUU/sam-spm/O/index.htm>. Accessed 31 December 2024.

¹⁴ See Hansen 2018.

the EU's prosecution authority. The greatest fear that they saw is that "power", "executive power" would be transferred to the EU. This position resembles the position of Hungary and Karsai has analysed in a detailed manner, which reasons exist for this position. If taking a look at the details, it is *de facto* not much executive power, which is transferred to the EU because this money is declared European money in the moment the state owes this sum to the EU budget anyway. The opposition, the Danish Socialists did not understand the position of the People's Party and voted against it in 2018. Denmark has seen alleged misuse of EU funds nearly ten years ago, when "it emerged that the Danish People's Party had used money from the funds in violation of the rules. Among other things, EU funds were used in connection with a much-publicized sailing trip with the schooner Halmø to 16 Danish cities in connection with the municipal elections in 2013."¹⁵

- 4 But be it as it may, nevertheless, **Denmark must also recognize the signs of the times** and some voters may see the light when it comes to the enforcement of **Europe-wide sanctions** in the area of the customs union and the terrible war of the Russian Federation in Ukraine. Transnational crimes affect all EU citizens, including Danish voters and taxpayers. So they may be thinking about how a **changed world situation may also change national directions** in small steps and ways of thinking and who knows what may change in terms of participation in the future – especially if the Balkan states, Ukraine and Moldova want to join the Union and would be immediately willing to participate in the EPPO. Today, Ukraine already has a working arrangement with the EPPO compared to Denmark, and Denmark certainly does not want to move to a confrontational position like Hungary and Poland in this regard, too. Denmark will need a new political strategy for the 2020s and 2030s regarding it's still not open-minded thinking in terms of fighting organised crime in the UE and worldwide. **External work with the EPPO will be** very important and *de facto necessary*, especially in criminal matters (customs fraud, VAT fraud), etc.¹⁶

II. The "Title V" of the TFEU: A *terra incognita* for Denmark?

- 5 The European Parliament outlines with regard to the AFSJ that "Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU (Protocol 22 – 'opt-out' – exempts Denmark from participating in the policy). It has nonetheless been implementing the Schengen acquis since 2001 on an intergovernmental basis. Concerning judicial cooperation in civil matters and the rules

¹⁵ Ibid.

¹⁶ Axelsson 2022.

regulating which courts have jurisdiction in legal disputes of a civil or commercial nature between individuals residing in different Member States ('Brussels I' Regulation), on 19 October 2005 the Kingdom of Denmark and the EU concluded an agreement on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. According to Article 3(2) of the agreement, whenever amendments are adopted, Denmark must notify the Commission of its decision whether or not to implement the content of such amendments."¹⁷.

This position has not changed fundamentally in the youngest past. It remains to be seen whether the further opening of the Schengen Area, the big fraud carousels or the customs offences change the position of Danish voters and political parties. **6**

III. Necessary Cooperation: But how?

Speaking of the possible cooperation, we should address Art. 104 and 105 of the EPPO Regulation and state that nevertheless **Denmark is an important country in cross-border (fraud, customs and tax) investigations anyway.** **7**

So what does cooperation based on Union law look like? What does it look like from a Danish point of view? Which national laws apply to cooperation and how does Denmark actually curb EU fraud with its own judicial bodies, e.g. when OLAF provides evidence for the opening of national criminal proceedings. **8**

Interestingly, Denmark participates in cooperation with OLAF (up to 1998 UCLAF) on the basis of the old PIF decisions from 1995 and also has its own AFCOS office, which coordinates cooperation in the area of administrative combating of EU fraud. **9**

In Part B the volume follows the impact of OLAF investigations in Denmark and how they are conducted. What kind of relevance do OLAF reports play in Danish criminal justice and is the Regulation really but to the forefront i.e. has the relevance it should have on national territory. In addition this Part C offers a gateway to national law by introducing provisions, providing a translation of the most important provisions (for OLAF investigators) and defence attorneys. **10**

IV. New Changes and Position of the Danish Parliament (*Folketinget*) as of 2022: Extended cooperation or traditional international legal aid (*International retshjælp*) with the EPPO (*Den Europæiske Anklagemyndighed*)?

The Danish Parliament has thought about some changes of its position towards the EPPO in June 2022. In the past, as lawyers have pointed out rightly the only way of **11**

¹⁷ See <https://www.europarl.europa.eu/factsheets/en/sheet/150/an-area-of-freedom-security-and-justice-general-aspects>. Accessed 31 December 2024.

cooperation between the EU Member State Denmark and the EPPO was the traditional legal aid and mutual recognition frameworks.¹⁸

1. Extended Cooperation as the new buzzword?

- 12 Under the government of 2022, Minister of Justice Nick Hækkerup followed a new doctrine and Denmark decided to present a new mechanism to the public, which goes beyond the traditional legal aid and mutual recognition systems – which were restricted to cooperation with states. The Danish Parliament was confronted with a *de facto* possibility that would establish an extended cooperation with the EPPO and Organisations alike. The process leaves the traditional thinking to remain neutral to the changes in the area of freedom, security and justice of the EU. It is *not*, lets clearly stress this again, an-opt-in to the EPPO mechanism but it comes *close* to a cooperation that is equal to a Working Arrangement, which other countries like e.g. Hungary or Ukraine concluded with the EPPO.

2. The Introduction of Section 107 in the Danish Administration of Justice Act 2022

- 13 The concrete steps for this extended cooperation, which must in reality prove that is not just a buzzword, is the introduction of section 107a in the Danish Administration of Justice Act, which was first proposed by L 182 Proposal for an Act amending the Penal Code, the Administration of Justice Act and various other laws in June 2022 (see *L 182 Forslag til lov om ændring af straffeloven, retsplejeloven og forskellige andre love*).
- 14 The *travaux préparatoires* for this Danish bill and the reasoning stated that: “The [Draft] tently contains a proposal that it be clarified by law that Danish authorities and courts can process requests for legal aid from and forward requests for legal aid to the European Public Prosecutor’s Office (EPPO) in accordance with general rules on states’ mutual legal aid in criminal cases.”¹⁹
- 15 The tabled bill read like follows:

Section 2

In the Administration of Justice Act, cf. Executive Order No. 1835 of 15 September 2021, as last amended by Section 1 of Act No. 697 of 24 May 2022, the following changes are made:

1. In Section 41 f, subsection 2, 2nd point, inserted after “Section 41 e,”: “para. 1, 2. pt., and”.
2. After section 107, the following is inserted in chapter 10:

¹⁸ Folker and Sejbak 2022: “Legally, this means that Danish authorities can only cooperate with the EPPO on the basis of general principles for cooperation in cross-border criminal cases (‘Legal Aid’).”

¹⁹ See <https://www.ft.dk/samling/20211/lovforslag/L182/index.htm>. Accessed 31 December 2024.

“Section 107a

Danish authorities and courts can process requests for legal aid from and forward requests for legal aid to the European Public Prosecutor’s Office (EPPO) in accordance with general rules on states’ mutual legal aid in criminal cases. The Minister of Justice can lay down detailed rules in this regard.”²⁰

Section 107a entered into force in 2022 and is already applied by the EPPO and Danish authorities – at the time of writing since nearly 6 months. **16**

a) Interpretation of Section 107a (Sentence 1) Danish Administration of Justice Act

Interpreting this new provision, one can first take a look at the first sentence: “Danish authorities and courts can process requests for legal aid from and forward requests for legal aid to the European Public Prosecutor’s Office (EPPO) in accordance with general rules on states’ mutual legal aid in criminal cases.” Speaking of legal aid, the provision relates to the legal aid between Danish authorities, like e.g. the Danish Financial Supervisory Authority, Customs and Tax administration/Customs and Tax Agency as well as the *Anklagemyndighen* **17**

b) Interpretation of Section 107a (Sentence 2) Danish Administration of Justice Act

At the moment of writing no document of the Ministry of Justice has been published, which lays down detailed rules on how the Danish authorities can process requests for legal aid from and forward requests for legal aid to the European Public Prosecutor’s Office (EPPO). **18**

c) The Special Role of the Attorney General

Even if the Attorney General is not mentioned by section 107a of the DAJ Act, he/she can issue special regulations and guidelines, which concern the area of international cooperation and must be followed by the prosecution offices, e.g. a document on International legal aid (Version 24 October 2022) has been published recently. These rules are **19**

²⁰ § 2

I retsplejeloven, jf. lovbekendtgørelse nr. 1835 af 15. september 2021, som ændret senest ved § 1 i lov nr. 697 af 24. maj 2022, foretages følgende ændringer:

1. I § 41 f, stk. 2, 2. pkt., indsættes efter “§ 41 e,”: “stk. 1, 2. pkt., og”.

2. Efter § 107 indsættes i kapitel 10:

“§ 107 a. Danske myndigheder og domstole kan behandle anmodninger om retshjælp fra og fremsende anmodninger om retshjælp til Den Europæiske Anklagemyndighed (EPPO) efter almindelige regler om staters gensidige retshjælp i straffesager. Justitsministeren kan fastsætte nærmere regler herom.”

special soft-law for the implementation of the International Law, e.g. the European Convention on Mutual Assistance in Criminal Matters (ETS No. 030), which Denmark accepts.

- 20 The relevant headings from this document, present an insight into the actual process of legal aid, if requests come in (legal aid coming in to Danish Authorities, e.g. by the EPPO or EDPs²¹):

“2. Police investigation and case management

2.1. Incoming legal aid requests (legal requests to Denmark)

2.1.1. The police are doing their normal work

This means that the work that would normally be carried out by the police in a corresponding Danish case must also be carried out by the police in the foreign case.

For details on the actual response to the foreign request, see

3.1.4.

2.1.2. Prioritization as corresponding Danish case

When Denmark receives a request for legal aid from another country, the processing of the request must be treated with the same speed and priority as a similar national case.

2.1.3. Request for special procedure when carrying out investigative steps, presence of foreign representatives, etc.

You must be aware of whether the requesting country has made demands for form and procedure, such as e.g. internal court hearing. This should be respected as far as possible, unless it would conflict with basic Danish legal principles, cf. the EU Legal Aid Convention, art. 4 pcs. 1.

For example, it is regularly seen that some countries request that an interrogation be carried out in court. Even if, in a national case, one might not consider that an internal judicial inquiry was necessary, one should comply with the request of the requesting country.

Another example is the presence of foreign authorities during the execution of the investigative step, e.g. search, questioning or the like, which is often appropriate because it is the foreign authority that often knows the case best, and therefore knows what they are looking for. In this connection, it is emphasized that foreign authorities are not authorised to exercise their authority in Denmark, which is why they can only participate as observers.

²¹ A possible scenario would be that a German EDP from the EPPO Regional Office of Hamburg wants to assess information in a VAT fraud case, which involves a Danish Economic Operator. He/She would need to contact the EPPO chamber and inform them that he/she intends to obtain information from Danish authorities (because he/she suspects information to be found at a Danish premise...). Then next, the EPPO would need to send a formalized, incoming legal aid request, mentioning § 107a of the Danish Administration of Justice Act, to the Danish Authorities (in an accepted language) and by stating the common information described in the Guidelines.

3. Preparation

3.1. Incoming legal aid requests (legal requests to Denmark)

3.1.1. Can you provide legal aid in the given case?

When a request for legal aid is received from abroad, the prosecution must assess whether the Danish authorities can provide the legal aid requested by the foreign authority. The starting point is – following an analogous application of the Judicial Administration Act – that if Danish police could carry out the investigation step in question in a similar Danish case, then it is also possible to carry out the investigation step on the basis of a foreign legal request. This also applies even if there is no agreement between Denmark and the country requesting legal aid.

If a country requests investigative steps that would be contrary to the rules of the Administration of Justice Act, e.g. if wiretapping is requested in a theft case where the crime requirement in the Administration of Justice Act is not met, the request cannot be granted.

Instead, you can contact the requested country and inform them of which investigative step comes closest to the request, and then agree on how the request should be answered. If legal aid is to be refused, the Attorney General must be informed of this, cf. below i

3.1.2.1.

3.1.1.2. Languages accepted by Denmark

The incoming legal requests must be sent in a language that is accepted by Denmark. You can see them at the link below:

<https://www.coe.int/en/web/conventions/full-list> (Accessed 31 December 2024).

3.1.2. Refusal

3.1.2.1. Refusal to provide legal aid is announced by the Attorney General.

If the prosecution considers that a request for legal aid cannot be granted, the case must be sent to the Attorney General with detailed reasons for the refusal. The Attorney General will then notify the foreign authority of the refusal and the reason for this.

In the next sections, you can read about different situations in which a refusal may come into question

3.1.2.2. Double criminality

Since we apply the Administration of Justice Act analogously in the field of legal aid, this also means that in the event of an intrusive investigative step – e.g. seizure, search or edition – a requirement is made that the foreign criminal matter that Denmark has been asked for legal assistance to investigate is also punishable under Danish law and that the general conditions of criminality in the Criminal Code are met. In this connection, the question of limitation under Danish law can also be included.

3.1.2.3. Is there a death penalty for the crime in question?

Danish authorities cannot comply with a foreign authority's request for legal aid if the foreign penal provision for the crime sought to be solved authorises the death penalty,

unless the requesting country makes a statement that the death penalty will not be requested in the specific case, or that a possible death penalty will not be carried out.

3.1.2.4. Political/military crimes

The Danish authorities can also refuse to provide legal aid in connection with the investigation of crimes under military criminal law and crimes that are considered to be political crimes.

3.1.2.5. See you in the same way

Several countries, including Denmark, have reserved the right to refuse to grant a court request with reference to the prohibition against double prosecution (*ne bis in idem*), i.e. if the person in question has already been convicted or acquitted of the matter currently being investigated, as such prosecution is considered to be contrary to general legal principles.

3.1.2.6. Resources

Particularly extensive/expensive investigative steps should be discussed with the requesting foreign authority. An agreement can perhaps be found in relation to the distribution of costs, as the starting point for ordinary forms of legal aid is that it is the executing country that pays expenses associated with the provision of legal aid. See more about costs in general below

3.2.4.2.

3.1.2.7. The crime requirement is not met

If a country requests investigative steps that would be contrary to the rules of the Administration of Justice Act, e.g. if wiretapping is requested in a simple theft case where the crime requirement in the Administration of Justice Act is not met, the request cannot be granted. It can be considered whether we can instead help with other interventions that can be permitted under Danish law.

3.1.3. Interventions that require a court order in Denmark

3.1.3.1. Danish rules apply

When legal aid is provided to a foreign authority in the form of an investigation in Denmark, it is important that this is done in accordance with the rules of the Administration of Justice Act.

This means that even if, according to the foreign rules, e.g. may be the public prosecutor who can decide that wiretapping or other interventions must take place, it will still require a warrant issued by the Danish courts to carry out the wiretapping in Denmark, as the intervention must be legal according to Danish rules.

Certain rules in the Administration of Justice Act have been inserted only for application in cases of requests for legal aid from abroad. This concerns Section 190 and Section 191 on the questioning of witnesses and Section 783, subsection 5, and Section 806, subsection 7 as regards interference with the confidentiality of communications and edition.

Of relevant practice, reference can be made to U 1972.600 H and U 1988.203 V, concerning seizure in Germany and the USA, respectively, based on an analogous application of the rules of the Administration of Justice Act, U.2006.3094 “the prosecution’s request for the edition of documents for use in a criminal case in Russia granted” and U.2005.3108 “Danish prosecution’s interrogation in England carried out in violation of section 750 of the Administration of Justice Act”.

3.1.3.2. Assistance lawyers, defender

In relation to interrogations etc. of suspects, accused persons and witnesses/victims, the Danish rules on the appointment of a defence counsel or legal aid apply. If a corresponding Danish case would thus have given rise to the appointment of a lawyer for the person to be questioned, this will also be the starting point when the questioning is carried out at the behest of a foreign authority requesting legal aid.

You can read more about the legal position of victims in foreign criminal cases in the Attorney General’s announcement, the section on Guidance of aggrieved parties etc.

3.1.4. The answer itself

3.1.4.1. That is the lawyer’s responsibility

The response to a legal request must be made by a judicial authority. The police circles are a judicial authority. In practice, it should be the public prosecutor’s office, so that the request is signed by a lawyer. There is nothing to prevent report material drawn up by the police being attached, which sheds light on the information the foreign authority wants, and the attached material can be widely referred to in the letter to be sent to the foreign authority.

3.1.4.2. The form of the answer, translation and appendix

It is important to note that not all countries have the same direct approach to communication as we have here at home. Also remember that it must be easy to translate. The answer should therefore be written in polite, simple and easily translatable language.

The response itself should be sent in a language that is accepted by the requesting country, while any attachments such as police reports and court records do not need to be translated. See more about translation below

3.2.4.2.

3.1.4.3. Answered directly or via the Attorney General

The starting point within the Nordic countries, the EU and Schengen is that a response to a foreign legal aid request must be sent directly to the requesting authority. The address will often appear in the material sent. If the legal request from the foreign authority is sent through this, the Attorney General will write in the acknowledgment letter to the foreign authority that the answer will be sent directly from the police department.

Requests from other countries must be answered via the Attorney General.

3.1.4.4. Dialogue with the foreign country/authority/prosecutor

If you are in doubt about what the foreign authority wants to achieve with the legal request, it is a good idea to contact the relevant authority directly. In this way, it is ensured that questions of doubt are clarified in advance, so that it is not necessary to respond to a follow-up legal request on the same matter.

3.1.4.5. Forms of communication

The starting point is that correspondence about legal aid takes place by letter or fax in cases where secure communication via e-mail is not possible. However, correspondence can – in particularly urgent cases – also be forwarded via NEC’s communication centre or Eurojust. [...]”²²

3. Projects of the European Council and the EU for better communication of non-participating countries with the EPPO (2023–2025)

- 21 The current status of cooperation possibilities between the Danish authorities and the EPPO might evolve to a more EU centralized system in the next years till 2026. The country might be involved additionally in an initiative of the European Council from 2022 and 2023:
- 22 In the future it is possible, as said by the European Committee On Crime Problems (CDPC) and the Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters (PC-OC) that Denmark will be invited with other states to a new legal instrument, which ensures the cooperation of EPPO with non-participating Member States (09/2022).²³ The PC-OC will deliver till 31 December 2023 a “Draft Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 30) on the relations with the European Public Prosecutor’s Office”²⁴.

²² The Danish Version can be obtained and read by clicking on the link below (it is primarily addressed at Danish authorities and experts but it at the same time presents a valuable insight to e.g. the EPPO Legal Secretariat, the EPPO SNEs, OLAF staff or the Commission Services concerned with implementing new instruments or designing new laws for the European Council or EU Drafts intended to be submitted to the EU Parliament in the near future) <https://vidensbasen.anklagemyndigheden.dk/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/7e5177c6-fdbd-4631-b28c-401abb152d29?showExact=true>. Accessed 31 December 2024. If e.g. an EU Parliamentarian could convince the Danish Government, he could point at the fact how complicated the legal aid system of Denmark with the EPPO is nowadays and how much more efficient it would become if Denmark just joins the EPPO.

²³ See <https://rm.coe.int/list-of-decisions-of-the-32nd-pc-ocmod-meeting/1680a84a92>. Accessed 31 December 2024.

²⁴ See <https://rm.coe.int/pc-oc-en/1680a64f4a>. Accessed 31 December 2024.

C. Cooperation with Danish Justice Authorities

The cooperation with Danish Justice authorities is important in cross-border sales fraud scenarios, in customs fraud related cases as well as in huge infrastructure projects e.g. in the Baltic sea Region (either close to the border or e.g. in off-shore wind parks). The EU has a lot of fishing zones around the borders of Denmark and Germany and the Baltic Sea is de facto a major transport route for items shipped from or to the internal market of the EU. The risk of high damaging frauds is real and the past has shown that Eurojust had to deal with cases that involved either Danish authorities for the investigation or Danish nationals, which were involved in conduct that was investigated. It might as well happen that European citizens residing in Denmark “try to hide” from the jurisdiction of the EPPO, like criminals could try to do as well in Poland, Hungary (but here the EPPO has a Working Arrangement), Sweden or Ireland. It is therefore important to assess whether the EPPO may request on the grounds of mutual recognition or other Danish laws e.g. the extradition of natural persons. 1

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

The Regulation addresses the communication of the EPPO with non-participating countries. It is therefore realistic and accepts that these countries were sceptical about the new EU institution and reluctant in the political debate but it in the same vein enforces the EU’s power in the area of criminal justice and realizes the idea that an internal market shall not be an internal market for criminals. Therefore Art. 104 and 105 EPPO Regulation enable the EPPO to connect with these countries on a formal basis. 2

II. Danish Participation in Eurojust

Denmark can be contacted via Eurojust²⁵ according to the “Agreement on criminal justice cooperation between Eurojust and Denmark”²⁶. But be aware that Denmark is not part of it anymore since 2019. 3

For the establishment of JITs, the EJM and Eurojust have issued a practical Guide in 2021, which we refer to. 4

²⁵ Be aware of the current information displayed on its website, <https://www.eurojust.europa.eu/states-and-partners/member-states/denmark>: “The Danish team is headed by Jesper Hjortenber, who is the Representative for Denmark since December 2019. Before, he served as National Member for Denmark since September 2010. In 2021, the Danish team was involved in 98 new cases, 7 coordination meetings, and 8 joint investigation teams.”

²⁶ See https://www.eurojust.europa.eu/sites/default/files/InternationalAgreements/Eurojust-Denmark-2019-10-07_EN.pdf. Accessed 31 December 2024.

III. Danish Cooperation with Europol

1. Danish Agreement on Operational and Strategic Cooperation between Denmark and Europol

- 5 The cooperation via Europol is regulated by the Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and Europol²⁷.

2. Danish Europol Act (*Europol-loven Lov om Den Europæiske Politienhed (Europol)*)

6 The Europol Act

Act on the European Police Unit (Europol)

Annex 1

§ 1 The Council decision on the establishment of the European Police Unit (Europol), cf. Annex 1 to this Act, applies in this country.

§ 2 The National Police is the national unit according to Article 8 of the Council Decision.

2. Any administrative authority can pass on information to the National Police for use in carrying out tasks according to the council's decision. If the National Police requests this, the relevant information must be passed on.

§ 3 The Danish Data Protection Authority is the national control body according to Article 33 of the Council Decision.

§ 4 For those who have a duty of confidentiality according to the council decision's article 41, subsection 2, the rules in Sections 152–152e of the Criminal Code apply accordingly.

§ 5 The Minister of Justice can lay down detailed rules for the implementation of the agreements etc. that are entered into pursuant to Article 51 of the Council Decision.

§ 6 The provisions in Chapter 14 of the Criminal Code on crimes against the public authority and Chapter 16 on crimes in public service or office also apply when the offence is committed against or by Europol employees while performing tasks in Denmark pursuant to Article 6 of the Council Decision.

2. If Europol employees cause damage during the performance of tasks in Denmark pursuant to Article 6 of the Council Decision, which under Danish law entails an obligation to compensate, the compensation is paid by the Minister of Justice.

3. Complaints about the behaviour of Europol employees during the performance of tasks in Denmark according to Article 6 of the Council's decision are dealt with in accordance with the rules in Chapters 93 b and 93 d of the Administrative Procedure Act.

²⁷ See <https://www.europol.europa.eu/partners-collaboration/member-states/denmark>. Accessed 31 December 2024.

§ 7 The law enters into force on 1 January 2010.

2. Act No. 415 of 10 June 1997 on the implementation of the Europol Convention is repealed.

§ 8 The law does not apply to the Faroe Islands and Greenland, but can be fully or partially enforced by royal decree for the Faroe Islands or Greenland with the deviations that the special Faroese or Greenlandic conditions require.

*Given at Christiansborg Castle, 16 December 2009 Under Our Royal Hand and Seal
MARGRETHE R./ Brian Mikkelsen*

IV. Cooperation in Administrative Tax matters (*Administrativ bistandsloven*)

Cooperation in tax matters can be achieved by the administrative assistance Act:

7

The Administrative Assistance Act

Act on mutual administrative assistance in matters of direct and indirect taxes between states that are members of the Council of Europe or the OECD

Section 1 According to the rules in the Council of Europe's and OECD's convention on Assistance the following rules shall apply.

Section 2 The Minister of Taxation appoints the authority or authorities who can make or receive requests for assistance under the convention (competent authorities). Cases concerning assistance with foreign direct and indirect taxes and duties are otherwise dealt with by the Danish authorities, which deal with corresponding or similar cases concerning Danish taxes and duties.

Section 3 The competent authorities are entitled to provide or receive assistance with the exchange of information that may be of importance for the imposition, collection, recovery, prosecution or handling of complaints regarding direct and indirect taxes and duties, cf. the rules in Chapter III, Section I of the Convention. For use by the competent authorities in another state, the competent authorities can obtain information from persons and companies, etc. in this country. The collection of information takes place in accordance with the rules in the Tax Control Act. The competent authorities can participate in simultaneous investigations, where competent authorities in several states, each in its own territory, investigate tax matters etc. for individuals and companies etc. Representatives of the competent authorities may participate in investigations of tax matters etc.

Section 4 The competent authorities are entitled to provide and receive assistance with the collection and recovery of direct and indirect taxes and charges, cf. the rules in Chapter III, Section II of the Convention. The competent authorities can collect foreign direct and indirect taxes and charges in this country on behalf of the competent authorities in

another state. The recovery takes place according to the rules applicable to the recovery of corresponding or similar Danish taxes and duties. The competent authorities can request competent authorities in another state to recover Danish direct and indirect taxes and duties. Matters of time limits beyond which a tax claim cannot be recovered must be determined according to the laws of the state requesting assistance with recovery.

Section 5 The competent authorities are entitled to provide and receive assistance with the service of documents, cf. the rules in Chapter III, Section III of the Convention.

Section 6 The competent authorities must not provide administrative assistance to competent authorities in another state if this entails measures that conflict with the rights and protection that are guaranteed to individuals and companies etc. in accordance with Danish legislation or practice, cf. Article 21 of the Convention.

Section 7 The Minister of Taxation can lay down further rules on the implementation of the convention.

Section 8 (* 1) The Act enters into force the day after the announcement in the *Lovtidende*.

Section 9 The law does not apply to the Faroe Islands and Greenland.

D. Danish Authorities Investigating PIF Acquis Offences

Economic and financial crime are not uncommon on Danish territory, which is European territory. But how does the Danish Justice System cope with them? The Danish legislator at least punishes economic crime and has established penalties and sanctions for financial offences (see below → PIF offences in Denmark). At first it is worth taking a look at the criminal investigations and how they are initiated in Denmark. This question deals with the Rules of the Danish Criminal Procedure, which are anchored in the *Retsplejoven*, the Danish Judicial Code. The fourth book of the Danish Judicial Code contains rules on Criminal Justice (*Strafferetsplejen*). Chapter 60 to Chapter 93d contain rules on the area of criminal justice. The table of contents for all of these Chapters in the Danish Judicial Code looks like follows:

Fourth book.	Arrest	2
Criminal justice	Chapter 70	
First part.	Pre-trial detention	
General provisions	Chapter 71	
Chapter 61	Encroachment on the secrecy of communications, observation, data reading, disruption or interruption of radio or telecommunications, blocking of web-sites and taking over television surveillance	
The area of criminal justice	Chapter 72	
Chapter 62	Body intervention	
Subject matter competence	Chapter 73	
Chapter 63	Search	
Jurisdiction and consolidation of criminal cases	Chapter 74	
Chapter 64	Seizure and edition	
Reproduction of explanations	Chapter 75	
Chapter 65	Personal surveys	
The prosecution	Chapter 75 a	
Chapter 66	Other investigative steps	
Accused and his defence	Chapter 75 b	
Chapter 66 a	Intervention against persons under 15 years of age	
Aggrieved	Third section.	
Second section.	Indictment and main hearing in the 1st instance	
Investigation, coercive intervention, etc	Chapter 76	
Chapter 67	Confession cases	
General provisions on investigation		
Chapter 68		
Interrogations and special investigative steps		
Chapter 69		

Chapter 77	Rules on the processing of private criminal cases
Indictment and preparation of the main hearing in the 1st instance	Chapter 89
Chapter 78	Prosecution of civil claims during criminal proceedings
Main hearing in the 1st instance	Seventh section.
Chapter 79	The enforcement of judgments in criminal cases
Jury cases	Chapter 90
Chapter 80	Eighth section.
Criminal cases in which lay judges do not participate	Legal costs etc. in criminal cases
Chapter 81	Chapter 91
(Repealed)	Legal costs
Fourth section.	Chapter 92
(Repealed)	Public publicity etc. of criminal cases
Fifth section.	Ninth section.
Remedies against decisions made	Chapter 93
Chapter 82	Special provisions on some interrogations, etc
Appeal to the High Court	Tenth section.
Chapter 83	Chapter 93 a
Appeal to the Supreme Court	Compensation in connection with criminal prosecution
Chapter 84	Chapter 93 b
(Repealed)	Handling complaints about staff in the police and the public prosecutor's office
Chapter 85	Chapter 93 c
Dear High Court	Criminal proceedings against personnel in the police and the public prosecutor's office
Chapter 86	Chapter 93 d
Resumption	(Repealed)
Sixth section.	
Rules on the processing of private criminal cases and on the prosecution of civil claims during criminal cases	
Chapter 87	
(Repealed)	
Chapter 88	

- 3** The relevant chapters from the Danish Judicial Code will be explored within this Manual Chapter. The focus will be on the rules for the phase of arrest and pre-trial detention (→ Chapters 71 and 72), the rules that present an obstacle to prosecution (immunities and privileges, see → e.g. Chapter 62 CPC but as well the laws on Danish Parliament etc.), the decisions of prosecution to initiate an investigation (→ Chapters 61, 63, 65, 67–68)

and the rules on investigative measures, which will be the main focus (→ Chapter 71–75) and last but not least some provisions on the defence in the so-called PIF Acquis area (→ Chapters 66, 77, 87–89, 93a).

I. Criminal investigations according to the Danish Criminal Procedural Rule (*Retsplejoven*) based on national law (measures)

The Danish Prosecution Service (*Anklagemyndigheden*) includes special offices. The Sub-offices of the General Prosecution Service operate as highly specialized investigators. In 2016 the prosecution brought about 36.800 charges concerning economic crime. This term includes offences to the detriment of the Danish State and the financial budget of the European Union. 4

Figure 1: Danish Prosecution Statistics 2016

NUMBER OF FORMAL CHARGES BROUGHT BY THE PROSECUTION SERVICES IN THE POLICE DISTRICTS	
Formal charges	2016
Manslaughter, etc.	550
Burglary	5,555
Controlled drugs and smuggling	14,497
Robbery	1,077
Sexual offences	1,834
Theft	20,909
Violence	9,346
Economic crime	36,800
Other criminal offences, including the offence of taking without owner’s consent (TWOC)	16,698
Other non-criminal law offences	35,956
Total	143,222

Source: Danish Prosecution Office, <https://anklagemyndigheden.dk/en/statistics>.²⁸

During the pandemic and after the pandemic Denmark receives “big sums” of the Resilience facility and it had to ensure that its internal structure is ready to fight the new fraud scenarios. The Statistics from 2016 in Fig. 1 show that economic crime is quite high in Denmark and might involve PIF Aquic offences. 5

²⁸ “Note: The Prosecution Service calculates its case productivity, number of formal charges, etc. on the basis of the number of criminal offences in which the question of bringing formal charges has been considered, or in which formal charges have actually been brought. Criminal proceedings against one person may comprise multiple criminal offences, and in a few cases, hundreds or even more than a thousand (often very similar) criminal offences. This means some individual cases can affect the calculations considerably.”

1. Initiation of investigations into budget, customs and VAT fraud in Denmark and allocation of competences

<p>a) Initiation of Investigations by Danish Police and Prosecutors63</p> <p>b) Other Relevant sources of the indications for a criminal PIF offence falling within the competence of Danish Authorities.....64</p> <p> aa. Jurisdiction of Danish Prosecutors 64</p> <p> (1) Danish Main Territory 64</p> <p> (2) Greenland and Faroe Islands 64</p> <p> bb. Criminal Complaint and Notification Obligations of Danish Authorities to Report Fraud, Corruption and Embezzlement..... 65</p> <p> (1) Determination of the competence and verification of Crime Reports 74</p> <p> (2) The Union standards, Art. 24 para 6 et seq. EPPO Regulation..... 74</p> <p> cc. How to assess and verify the suspicion level according to the CPC for a criminal offence falling within the competence..... 76</p> <p> (1) Focusing the investigation on one person, a group of persons or legal person 76</p> <p> (a) Investigations against natural persons 77</p>	<p>(b) Investigations against legal persons and their criminal liability (<i>Strafansvar for juridiske personer</i>) according to Sections 25, 26, 27 (5th chapter) of the Danish Criminal Code 78</p> <p>(2) Conditions of Criminality 80</p> <p>(3) The PIF offences in Denmark..... 80</p> <p> (a) Danish Criminal Code 81</p> <p> (aa) Advantage or Gift Promising..... 81</p> <p> (bb) Forgery Offences (Sections 171 et seq.)81</p> <p> (cc) Property Crimes (Embezzlement, Fraud – Sections 276 et seq.) 83</p> <p> (dd) VAT Act Offences..... 94</p> <p> (ee) Tax Control Act 95</p> <p> (ff) Penal Provisions of the Tobacco Tax Act 96</p> <p> (gg) Further PIF Acquis Offences 97</p> <p> dd. Examples and precedents 98</p> <p> (1) Fraud..... 99</p> <p> (a) Revenue frauds..... 99</p> <p> (b) Expenditure frauds 99</p>
---	--

(2) Corruption offences 100	(3) Money laundering with PIF crimes 100
--------------------------------------	---

a) Initiation of Investigations by Danish Police and Prosecutors

Regularly, the police is the main investigator in Denmark. It is an investigation authority and can act on its own (*proprio motu*) or due to reports of criminal offences. The Danish Code on the Administration of Justice rules on this situation *expressis verbis*: 6

Chapter 67 Investigation, coercive measures, etc.

General provisions on Investigation

Section 742²⁹

Reports of criminal offences are submitted **to the police**.

Paragraph 2. The police **can initiate investigations on their own initiative** or on their own **initiative when there is reasonable suspicion** that a criminal offence pursued by the public authorities has been committed.

Section 742a³⁰

Complaints under section 742(1) that only concern theft of bicycles and theft of bicycles must be submitted to the police using the digital solution provided by the police (digital self-service).

Section 743³¹

The purpose of the investigation is to establish whether the conditions for imposing criminal liability or other criminal proceedings are met, to provide information for the decision of the case and to prepare the case before the court.

²⁹ § 742

Anmeldelser om strafbare forhold indgives til politiet.

Stk. 2. Politiet iværksætter efter anmeldelse eller af egen drift efterforskning, når der er rimelig formodning om, at et strafbart forhold, som forfølges af det offentlige, er begået.

³⁰ § 742 a

Anmeldelse efter § 742, stk. 1, der alene vedrører tyveri af cykler og brugstyveri af cykler, skal indgives til politiet ved anvendelse af den digitale løsning, som politiet stiller til rådighed (digital selvbetjening).

³¹ § 743

Efterforskningen har til formål at klarlægge, om betingelserne for at pålægge strafansvar eller anden strafferetlig retsfølge er til stede, og at tilvejebringe oplysninger til brug for sagens afgørelse samt forberede sagens behandling ved retten.

Section 744³²

The police shall report as soon as possible on the interviews carried out and on other investigative steps, unless otherwise provided

- 7 At this primary stage the suspect and later the accused have rights for their defence. See below → Some provisions of defence laws.
- 8 The Danish Prosecution prosecutes financial crime with its specialized State Prosecutor for Serious Economic and International Crime. Still normal prosecution offices may become aware of offences such as bribery, money laundering or fraud and embezzlement relating to EU money and will then proceed with actions based on the rules of the Danish Judicial Code, *Retsplejeloven*.

b) Other Relevant sources of the indications for a criminal PIF offence falling within the competence of Danish Authorities

- 9 The other relevant sources include reporting obligations to other authorities than the police and other sources to discover EU frauds and EU related PIF crimes in Denmark.

aa. Jurisdiction of Danish Prosecutors

(1) Danish Main Territory

- 10 The jurisdiction for offences on the Danish territory is partly determined by the Danish Criminal Code but as well by s. 742 *Retsplejeloven* et seq. The rules of the Code of Judicial Procedure relate to jurisdiction matters.
- 11 The classical jurisdiction over PIF-related offences is prescribed by Chapter 2 of the *Straffeloven*, which contains Section 6 with rules on territory, and section 7 with rules on the wide-known nationality principle, which is common in the international legal area.

(2) Greenland and Faroe Islands

- 12 Most Danish Acts contain a sentence to the applicability in Greenland and the Faroe Islands: “The law does not apply to the Faroe Islands and Greenland.” Thus the jurisdiction is not extended to these vast land areas. Or like in the Tobacco Tax Act the places in these land areas are equated with places outside the EU: “Section 36 a The Faroe Islands and Greenland as well as Copenhagen’s Free Harbor are equated in the law with places outside the EU.” The VAT Act contains the same clarification: “The VAT Act

³² § 744

Politiet udfærdiger snarest rapport om de afhøringer, der foretages, og om andre efterforskningskridt, medmindre oplysning herom foreligger på anden måde.

does not apply to the Faroe Islands and Greenland. The Faroe Islands and Greenland are not members of the EU.”

bb. Criminal Complaint and Notification Obligations of Danish Authorities to Report Fraud, Corruption and Embezzlement

Financial crime e.g. the offence of money laundering with money that is derived of EU fraud cases in another EU country might involve Denmark. The Danish Prosecution Office will only act if it gets informed about suspicious conduct. The legislator has issued a Special Guidance on the Reporting Obligations for suspicious activities in the Online Transfer of Money and Assets.

13

Order on submission of notifications etc. to the State Attorney for Special Economic and International Crime

Pursuant to Section 7, subsection 6, and Section 37, subsection 3, in the Act on Preventive Measures Against Money Laundering and Financing of Terrorism, cf. Executive Order No. 1022 of 13 August 2013, stipulates:

Field of application

Section 1³³

This executive order applies to the companies, persons and authorities covered by the Act on preventive measures against money laundering and the financing of terrorism.

PCS. 2. The executive order applies to notifications of transactions or inquiries where it is suspected that the transaction or inquiry is or has been connected to money laundering or the financing of terrorism, to the State Attorney for Special Economic and International Crime, cf. Section 7 of the Act on preventive measures against money laundering and terrorist financing.

³³ Bekendtgørelse om indsendelse af underretninger m.v. til Statsadvokaten for Særlig Økonomisk og International Kriminalitet.

I medfør af § 7, stk. 6, og § 37, stk. 3, i lov om forebyggende foranstaltninger mod hvidvask af udbytte og finansiering af terrorisme, jf. lovbekendtgørelse nr. 1022 af 13. august 2013, fastsættes:

Anvendelsesområde

§ 1 Denne bekendtgørelse finder anvendelse på de virksomheder, personer og myndigheder som er omfattet af lov om forebyggende foranstaltninger mod hvidvask af udbytte og finansiering af terrorisme.

Stk. 2. Bekendtgørelsen finder anvendelse på underretninger om transaktioner eller henvendelser, hvor der er mistanke om, at transaktionen eller henvendelsen har eller har haft tilknytning til hvidvask eller finansiering af terrorisme, til Statsadvokaten for Særlig Økonomisk og International Kriminalitet, jf. § 7 i lov om forebyggende foranstaltninger mod hvidvask af udbytte og finansiering af terrorisme.

Digital submission

Section 2³⁴

Notifications in accordance with Section 1, subsection 2, must be submitted digitally to the State Attorney for Special Economic and International Crime.

PCS. 2. Notifications must be made via www.hvidvask.dk, unless otherwise agreed with the State Attorney for Special Economic and International Crime.

PCS. 3. The notification must contain the information described in appendix 1 to this executive order.

PCS. 4. Notifications must be submitted in the XML format reproduced on www.hvidvask.dk

Section 3³⁵

Companies, persons and authorities covered by Section 1, subsection 1, must, after digital submission of a notification etc., cf. Section 2, before the end of the following banking day, check whether the notification has been accepted or rejected.

Language requirements

Section 4³⁶

The notifications, cf. Section 1, subsection 2, must be written in Danish or English.

³⁴ Digital indsendelse

§ 2 Underretninger i henhold til § 1, stk. 2, skal indsendes digitalt til Statsadvokaten for Særlig Økonomisk og International Kriminalitet.

Stk. 2. Underretninger skal ske via www.hvidvask.dk, medmindre det sker på en anden måde efter aftale med Statsadvokaten for Særlig Økonomisk og International Kriminalitet.

Stk. 3. Underretningen skal indeholde de oplysninger, som er beskrevet i bilag 1 til denne bekendtgørelse.

Stk. 4. Underretningerne skal indgives i det XML-format, som er gengivet på www.hvidvask.dk.

³⁵ § 3 Virksomheder, personer og myndigheder omfattet af § 1, stk. 1, skal, efter digital indsendelse af en underretning mv., jf. § 2, inden udløbet af den efterfølgende bankdag kontrollere, om underretningen er accepteret eller afvist.

³⁶ Sprogkrav

§ 4 Underretningerne, jf. § 1, stk. 2, skal være affattet på dansk eller engelsk.

Breakdown in the digital notification solutions

Section 5³⁷

In the event of long-term IT problems on the website www.hvidvask.dk, notification in XML format must be made using e-mail or other electronic media in agreement with the State Attorney for Special Economic and International Crime.

PCS. 2. With long-term IT problems, cf. subsection 1, means breakdown or temporary capacity reduction etc., which means that the website www.hvidvask.dk is unavailable for 8 hours in a row in the period between 8 and 16 on a weekday. However, this does not include planned shutdowns for the purpose of updating, which have been previously announced on the website.

Punishment

Section 6³⁸

Intentional or grossly negligent violation of Sections 2, 3, 4 and 5, subsection 1, in this executive order is punishable by a fine.

PCS. 2. Companies etc. can be imposed. (legal entities) criminal liability according to the rules in Chapter 5 of the Criminal Code.

Entry into force

Section 7³⁹

The executive order enters into force on 15 June 2014.

The Danish Financial Supervisory Authority, 10 February 2014

Ulrik Nødgaard/Mark Andrew Rønnenfelt

³⁷ Nedbrud i de digitale underretningsløsninger

§ 5 Ved længerevarende IT-problemer på hjemmesiden www.hvidvask.dk skal underretning i XML-format ske under anvendelse af e-mail eller andet elektronisk medie efter aftale med Statsadvokaten for Særlig Økonomisk og International Kriminalitet.

Stk. 2. Med længerevarende IT-problemer, jf. stk. 1, menes nedbrud eller midlertidig kapacitetsnedgang mv., som indebærer, at hjemmesiden www.hvidvask.dk er utilgængelig 8 timer i træk i tidsrummet mellem kl. 8 og 16 på en hverdag. Heri medregnes dog ikke planlagte nedlukninger med henblik på opdatering, som har været annonceret forinden på hjemmesiden.

Straf

³⁸ Straf

§ 6 Forsætlig eller groft uagtsom overtrædelse af §§ 2, 3, 4 og 5, stk. 1, i denne bekendtgørelse straffes med bøde.

Stk. 2. Der kan pålægges selskaber mv. (juridiske personer) strafansvar efter reglerne i straffelovens 5. kapitel.

³⁹ Ikrafttræden

§ 7 Bekendtgørelsen træder i kraft den 15. juni 2014.

Finanstilsynet, den 10. februar 2014

Ulrik Nødgaard

/ Mark Andrew Rønnenfelt

Annex 1

Description of the structure of the XML file⁴⁰

The structure of the XML file depends on the suspicion that is the basis for the notification.

Notifications relating to concrete suspicious financial transactions consist of the following elements and are structured as follows:

- *Front page*
- *Transaction(s)*
- *Sender*
- *Party*
- *Recipient*
- *Party*

Notifications, which relate to concrete suspicious events and not grounds for suspicious financial transactions, consist of the following elements and are structured as follows:

- *Front page*
- *Event*
- *Party(s)*

⁴⁰ Bilag 1

Beskrivelse af XML filens struktur

XML filens opbygning afhænger af mistanken, der er grundlaget for underretningen.

Underretninger, der vedrører konkrete mistænkelige finansielle transaktioner, består af følgende elementer og er struktureret som følger:

- Forside
 - Transaktion(er)
 - Afsender
 - Part
 - Modtager
 - Part

Underretninger, som vedrører konkrete mistænkelige hændelser og ikke grunder i mistænkelige finansielle transaktioner, består af følgende elementer og er struktureret som følger:

- Forside
 - Hændelse
 - Part(er)

Description of the XML file's elements and definitions⁴¹

The front page must contain basic information about the notification, including information about the notified court, date of notification, whether the suspicion relates to money laundering (STR) or terrorist financing (TFR), as well as a description of the suspicion or indication of indicators.

Transaction(s)

The transaction must contain information about the individual transaction(s), including information about transaction number, transaction date, transaction type, amount converted to DKK, as well as sender and recipient.

Sender

The sender must contain information relating to the sender/source of the transaction, including information about the source country, type of funds and the party that is the sender.

Recipient

Recipient must contain information relating to the recipient/destination of the transaction, including information on destination country, type of funds and the receiving party.

Party

By party is meant information about an account, as well as a person or company.

Account

By account is meant a bank account, custody account, credit card, gambling account or similar. A distinction is made between accounts, and a distinction is made between accounts belonging to regular customers and other accounts.

⁴¹ Beskrivelse af XML filens elementer og definitioner

Forside

Forsiden skal indeholde grundinformation om underretningen, herunder oplysninger om underretter, dato for underretning, om mistanken vedrører hvidvask (STR) eller terrorfinansiering (TFR) samt beskrivelse af mistanken eller angivelse af indikatorer.

Transaktion(er)

Transaktionen skal indeholde information om den eller de enkelte transaktion(er), herunder oplysninger om transaktionsnummer, transaktionsdato, transaktionstype, beløb omregnet til DKK, samt afsender og modtager.

Afsender

Afsender skal indeholde information, der vedrører transaktionens afsender/kilde, herunder oplysninger om kilde-land, type af midler og den part, som er afsender.

Modtager

Modtager skal indeholde information, der vedrører transaktionens modtager/destination, herunder oplysninger om destinationsland, type af midler og den modtagende part.

Part

Med part menes der oplysninger om konto, samt person eller virksomhed.

Konto

Med konto menes der bankkonto, depot, kreditkort, spillekonto eller tilsvarende. Der skelnes mellem konti, og der skelnes mellem konti tilhørende faste kunder og øvrige konti.

Person

Med person menes der fysisk person. Der skelnes mellem personer, der er faste kunder, og øvrige personer.

Virksomhed

Med virksomheder menes alle juridiske personer inklusiv foreninger, fonde og lignende. Der skelnes mellem virksomheder der er faste kunder, og øvrige virksomheder.

Person

By person is meant a natural person. A distinction is made between persons who are regular customers and other persons.

Corporation

By companies is meant all legal persons including associations, foundations and the like. A distinction is made between companies that are regular customers and other companies.

Description of minimum requirements for the XML file's content⁴²

If the above-mentioned elements are missing from the notification based on the description of the structure, the individual elements must contain at least the following information:

Home

- *Notifies*
- *Date of notification*
- *Manual or electronic filling*
- *Notification type (STR) or (TFR)*
- *Local currency (DKK)*
- *Suspicion or indicator*

Transaction

- *Unique transaction number*

⁴² Beskrivelse af minimumskrav til XML-filens indhold

Indgår de ovennævnte elementer i underretningen ud fra beskrivelsen af strukturen, skal de enkelte elementer som minimum indeholde nedennævnte oplysninger:

Forside

- Underretter
- Dato for underretning
- Manuel eller elektronisk udfyldelse
- Underretningstype (STR) eller (TFR)
- Lokal valuta (DKK)
- Mistanke eller indikator

Transaktion

- Unikt transaktionsnummer
- Transaktionsdato
- Transaktionstype
- Beløb i DKK

Afsender

- Fondstype (type af midler)
- Kildeland
- Afsenderpart (se parter)

Modtager

- Fondstype (type af midler)
- Destinationsland
- Modtagerpart (se parter)

Hændelse

- Part(er)

- *Transaction date*
- *Transaction type*
- *Amount in DKK*

Shipment

- *Fund type (type of funds)*
- *Country of origin*
- *Sending party (see parties)*

Recipient

- *Fund type (type of funds)*
- *Country of destination*
- *Recipient party (see parties)*

Incident

- *Party(s)*

Parties⁴³

⁴³ Parter

Person (Fast kunde)

- Fornavn(e)
- Efternavn
- Fødselsdato
- CPR-nr. eller andet ID (se ID oplysninger)
- Adresse (se adresse)

Person

- Fornavn(e)
- Efternavn

Konto (fast kunde)

- Pengeinstitut
- SWIFT eller andet PI ID (eksempelvis registreringsnummer)
- Kontonummer
- Konto-/fuldmagtshaver (se person og virksomhed)
- Rolle (eksempelvis konto eller fuldmagtshaver)

Konto

- SWIFT eller andet PI ID (eksempelvis registreringsnummer)
- Kontonummer

Virksomhed (fast kunde)

- Navn
- CVR-nr. (hvis dansk virksomhed)
- Registreringsland
- Adresse (se adresse)

Virksomhed

- Navn

Øvrige elementer

Adresse

- Adresstype
- Adresse
- Postnummer (hvis dansk adresse)
- By
- Land

ID Oplysning

- ID type

Person (Regular customer)

- *First name(s)*
- *Surname*
- *Date of birth*
- *CPR no. or other ID (see ID information)*
- *Address (see address)*

Person

- *First name(s)*
- *Surname*

Account (regular customer)

- *Bank*
- *SWIFT or other PI ID (e.g. registration number)*
- *Account number*
- *Account/authorised holder (see person and company)*
- *Role (e.g. account or authorised representative)*

Account

- *SWIFT or other PI ID (e.g. registration number)*
- *Account number*

Company (regular customer)

- *Name*
- *CVR no. (if Danish company)*
- *Country of registration*
- *Address (see address)*

Corporation

- *Name*

Other elements⁴⁴

Address

- *Address type*
- *Address*

-
- ID nummer
 - Udstedende land.

⁴⁴ Øvrige elementer

Adresse

- Adresstype
- Adresse
- Postnummer (hvis dansk adresse)
- By
- Land

ID Oplysning

- ID type
- ID nummer
- Udstedende land.

- Postcode (if Danish address)
- City
- Country

ID Information

- ID type
- ID number
- Issuing country”.

Nota bene (Hypothetical considerations) If Denmark decided to opt-in one day and change political positions, which object the idea of the enhanced cooperation (e.g. if it sees how effective EPPO investigations across borders are with the help of EDPs and how low performing national prosecution offices can be in a comparison – they have no Art. 31 and 32 procedure and they can only rely on Mutual Recognition or International Cooperation Mechanisms, which can take months and might lead to a “crash” of the investigations –, it might need to take into account how the EPPO operates:

A distinction can be made between the direct and the indirect path for the transfer of information related to the competence: **14**

Figure 2: National (indirect way of) Obtaining information for the EPPO competence and the exercise of jurisdiction **15**

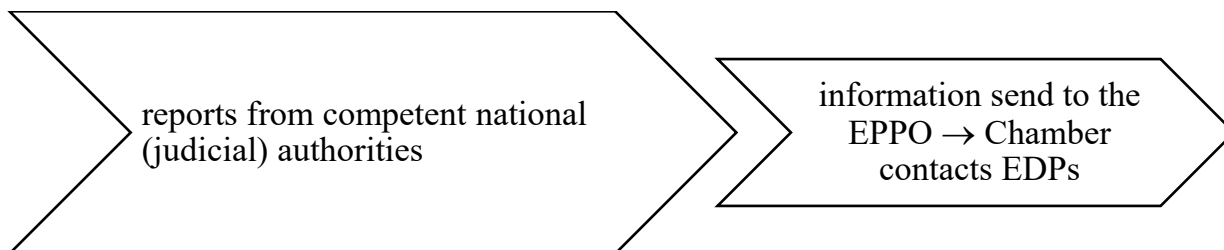
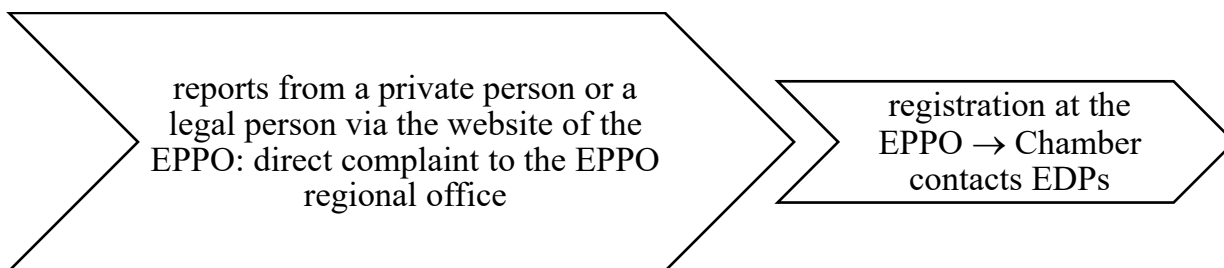


Figure 3: Supranational (direct way of) Obtaining information for the EPPO competence and the exercise of jurisdiction **16**



Another, third source of information are the Union bodies, which are obliged to report either to OLAF or to the EPPO (e.g., by obliged by Working Agreements) – depending on the seriousness of the suspected conduct: irregularities only or clear foundations for **17**

potential criminal offences. National authorities, who report to OLAF need to obey the Italian “Guidelines on how to report irregularities and fraud to the European Commission”. OLAF will either way report conduct that falls in the EPPO’s competence by virtue of Art. 12c OLAF Reg.

(1) Determination of the competence and verification of Crime Reports

- 18 Denmark would need a regional office for the EDPs. The first task of the EDPS in a Danish regional office would be to determine whether the EPPO has competence and jurisdiction or can obtain competence and exercise jurisdiction (see below → Art. 27).
- 19 These are formal but essential questions. They are determined by means of Union secondary legislation and special delegated guidelines required by secondary legislation, the so-called **Internal Rules on Procedure [of the EPPO]**.
- 20 This depends on the criteria of the Regulation (see Art. 22, 23).

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

(2) The Union standards, Art. 24 para 6 et seq. EPPO Regulation

- 21 For the EPPO to be competent, the requirements of the Regulation must be met.
- 22 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.
- 23 The IRP rules state the following:

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

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

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

The requirements of Art. 25 para. 2 and 3 must be observed but he/she can still initiate an investigation “without prejudice to the rules set out in Article 25(2) and (3)”. 24

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. 25

Article 22 Material competence of the EPPO 26

- PIF Implementation (see below → p. 80).
- National databases and information according to Art. 40 para 3 IRP

27 Article 23 Territorial and personal competences of the EPPO

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

28 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 Denmark 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.
- Two sources can **help to understand the transfer of information**:

cc. How to assess and verify the suspicion level according to the CPC for a criminal offence falling within the competence

29 The initial suspicion is only to determine the impetus, the starting point of the criminal proceedings.

(1) Focusing the investigation on one person, a group of persons or legal person

30 From the point of view of the investigation process, it seems to make the most sense to concentrate the data from the investigative bodies or the own research, e.g. in databases or files, on a natural or legal person. This means that the suspicion is linked to a real person and is therefore more tangible and concrete. Finally, the (criminal) action or conduct is associated with the person or the legal entity, which raises the question of criminal liability. Subsequently, the fundamental criminal liability or the criminal capacity would have to result from the Danish Criminal Code. The natural persons and legal persons should be able to receive punishment as a sanction (capacity).

31 They would then have to have committed the elements of a criminal offence which is understood to be a financial crime against the EU and its funds. The difficulty at this level is that Denmark has not implemented the latest PIF Directive from 2017 due to its political opt-out position. In terms of *realpolitik*, Denmark does not have an appropriate

level of harmonization with the other European Member States in this regard, yet. However, Denmark has either implemented or acceded to the so-called PIF protocols and the JHA Council Agreement from the beginning of the millennium.

Nota bene: Unfortunately, the position on the European Convention on Human Rights has already been viewed critically in Denmark. This criticism is related to the political and ideological orientation. A look at law enforcement and its impact on the suspect is provided later in the volume.⁴⁵

(a) Investigations against natural persons

The so-called participation criminal liability rules are found in the fourth chapter and thus at the very beginning of the Danish Criminal Code.

32

Chapter 4 Attempt and participation

Section 21⁴⁶

Actions which aim to promote or effect the execution of a crime are punished, when this is not carried out, as an attempt.

PCS. 2. The penalty prescribed for the offence may be reduced by an attempt, especially when the attempt shows little strength or firmness in the criminal intent.

PCS. 3. Unless otherwise determined, attempts are only punishable when a penalty exceeding 4 months' imprisonment can be imposed for the offence.

Section 22⁴⁷

Attempts are not punished when the perpetrator voluntarily and not due to accidental obstacles to the execution of the deed or to the achievement of the intended purpose refrains from the initiation or obstructs the execution or takes actions which would have hindered the execution if this did not, him unknowingly, had failed or had otherwise been averted.

⁴⁵ See a proposal by Nick Zimmermann, which is from the point-of-view of human rights law more than questionable – especially for a European State, <https://www.retsinformation.dk/eli/ft/20222BB00109>. Accessed 31 December 2024.

⁴⁶ § 21.

Handlinger, som sigter til at fremme eller bevirke udførelsen af en forbrydelse, straffes, når denne ikke fuldbyrdes, som forsøg.

Stk. 2. Den for lovovertrædelsen foreskrevne straf kan ved forsøg nedsættes, navnlig når forsøget vidner om ringe styrke eller fasthed i det forbryderiske forsæt.

Stk. 3. For så vidt ikke andet er bestemt, straffes forsøg kun, når der for lovovertrædelsen kan idømmes en straf, der overstiger fængsel i 4 måneder.

⁴⁷ § 22.

Forsøg straffes ikke, når gerningsmanden frivilligt og ikke på grund af tilfældige hindringer for gerningens udførelse eller for opnåelsen af det ved denne tilsigtede øjemed afstår fra iværksættelsen eller hindrer fuldbyrdelsen eller foretager handlinger, som ville have hindret fuldbyrdelsen, hvis denne ikke, ham uafvidende, var mislykkedes eller ad anden vej var afværget.

Section 23⁴⁸

The penalty provided for an offence includes everyone who, by incitement, advice or deed, has contributed to the crime. The penalty can be reduced for those who only wanted to provide less significant assistance or strengthen an already formed intention, as well as when the crime has not been completed or an intended contribution has failed. PCS. 2. The penalty can also be reduced for those who contribute to the violation of a special obligation, but are themselves outside of this.

PCS. 3. Unless otherwise determined, punishment for complicity in offences that are not punishable by a higher penalty than imprisonment for 4 months may be waived when the complicit only wanted to provide less significant assistance or strengthen an already formed intention, and when his complicity is due to negligence.

Section 24⁴⁹

The accomplice is not punished if, under the conditions specified in Section 22, he obstructs the execution or takes actions which would have obstructed the execution, if this had not, unbeknownst to him, failed or been averted in some other way.

(b) Investigations against legal persons and their criminal liability (*Strafansvar for juridiske personer*) according to Sections 25, 26, 27 (5th chapter) of the Danish Criminal Code

Chapter 5 of the Criminal Code

Criminal liability for legal persons

Section 25⁵⁰

A legal person can be punished with a fine when it is determined by or pursuant to law.

⁴⁸ § 23.

Den for en lovovertrædelse givne straffebestemmelse omfatter alle, der ved tilskyndelse, råd eller dåd har medvirket til gerningen. Straffen kan nedsættes for den, der kun har villet yde en mindre væsentlig bistand eller styrke et allerede fattet forsæt, samt når forbrydelsen ikke er fuldbyrdet eller en tilsigtet medvirken er mislykkedes.

Stk. 2. Straffen kan ligeledes nedsættes for den, der medvirker til krænkelse af et særligt pligtforhold, men selv står uden for dette.

Stk. 3. For så vidt ikke andet er bestemt, kan straf for medvirken ved lovovertrædelser, der ikke straffes med højere strafend fængsel i 4 måneder, bortfalde, når den medvirkende kun har villet yde en mindre væsentlig bistand eller styrke et allerede fattet forsæt, samt når hans medvirken skyldes uagtsomhed.

⁴⁹ § 24.

Den medvirkende straffes ikke, hvis han under de i § 22 angivne betingelser hindrer fuldbyrdelsen eller foretager handlinger, som ville have hindret fuldbyrdelsen, hvis denne ikke, ham uafvidende, var mislykkedes eller ad anden vej var afværget.

⁵⁰ 5. kapitel

Strafansvar for juridiske personer

§ 25.

En juridisk person kan straffes med bøde, når det er bestemt ved eller i medfør af lov.

Section 26⁵¹

Provisions on criminal liability for companies etc. includes, unless otherwise specified, any legal person, including joint-stock, limited liability and cooperative companies, partnerships, associations, foundations, estates, municipalities and state authorities.

PCS. 2. Furthermore, such provisions cover sole proprietorships, insofar as these, in particular with regard to their size and organisation, can be equated with those in subsection 1 mentioned companies.

Section 27⁵²

Criminal liability for a legal person requires that an offence has been committed within its business that can be attributed to one or more persons linked to the legal person or the legal person as such. As far as punishment for attempts is concerned, section 21, subsection 3, corresponding use.

PCS. 2. State authorities and municipalities can only be punished in connection with violations committed when carrying out activities that correspond to or can be equated with activities carried out by private individuals.

A very important provision on legal persons can be found at the very end of the Danish Criminal Code: **33**

Chapter 29 Special provisions concerning legal persons**Section 306⁵³**

Criminal liability may be imposed on companies etc. (legal persons) in accordance with the rules of Chapter 5 for violation of this Act.

⁵¹ § 26.

Bestemmelser om strafansvar for selskaber m.v. omfatter, medmindre andet er bestemt, enhver juridisk person, herunder aktie-, anparts- og andelsselskaber, interessentskaber, foreninger, fonde, boer, kommuner og statslige myndigheder.

Stk. 2. Endvidere omfatter sådanne bestemmelser enkeltmandsvirksomheder, for så vidt disse navnlig under hensyn til deres størrelse og organisation kan sidestilles med de i stk. 1 nævnte selskaber.

⁵² § 27.

Strafansvar for en juridisk person forudsætter, at der inden for dens virksomhed er begået en overtrædelse, der kan tilregnes en eller flere til den juridiske person knyttede personer eller den juridiske person som sådan. For så vidt angår straf for forsøg, finder § 21, stk. 3, tilsvarende anvendelse.

Stk. 2. Statslige myndigheder og kommuner kan alene straffes i anledning af overtrædelser, der begås ved udøvelse af virksomhed, der svarer til eller kan sidestilles med virksomhed udøvet af private.

⁵³ 29. kapitel

Særlige bestemmelser om juridiske personer

§ 306.

Der kan pålægges selskaber m.v. (juridiske personer) strafansvar efter reglerne i 5. kapitel for overtrædelse af denne lov.

(2) Conditions of Criminality

34 The prosecutors need to establish and assess the conduct and decide whether it is criminal or not. Therefore they need to determine as well the conditions for criminality, which are stipulated by the Criminal Code of Denmark (*Strafvelloven*). Chapter 3 and 4 ss. 13 et seq. contain the provisions, which are most relevant in this regard, i.e. rules on self-defence, which are not related to fraud offences, as well as insanity, negligence, attempts and forms of participation. Chapter 9 contains provisions that apply in the case that a person is acquitted and they establish other consequences of the crime.

(3) The PIF offences in Denmark

35 The following table summarises the relevant provisions that establish the PIF Acquis sector in Denmark:

Sources and national sections 1: PIF Offences in Denmark

CC fraud & forgery offences	CC corruption + AML offences	Tax and Customs offences
<ul style="list-style-type: none"> • Sections 171 et seq. • Sections 276 (property crimes) • Sections 278 embezzlement • Section 289a (Providing incorrect or misleading information in relation to the payment or repayment of customs duties or charges of the European Communities * must be read as EU today! 	<ul style="list-style-type: none"> • Section 122 CC • Section 290a Money laundering 	<ul style="list-style-type: none"> • Section 289 (Violation of a particularly serious tax, customs, levy or subsidy legislation) • Section 289a • VAT Act Chapter 21 Penal provisions, ss. 81 et seq. • Act on structural measures relating to the fisheries sector Chapter 4 • Tobacco Tax Act, Chapter 4, s. 25

(a) Danish Criminal Code

As summarised above, the Danish Criminal Code ensures the criminalization of various so-called or at least strictly speaking offences, which can be interpreted as classical PIF Acquis offences. One of the main offences is s. 289a, which is still from another time when Denmark at least accepted the first PIF Protocol in former times. **36**

(aa) Advantage or Gift Promising

With Section 122 the Danish Criminal Code criminalises giving a gift or another benefit to a public official in order to influence them to act or refrain from acting in the course of their service duties: **37**

Section 122

Anyone who unjustifiably gives, promises or offers someone who works in a Danish, foreign or international public service or position, a gift or other advantage to induce the person concerned to do or omit something in the service, is punished by a fine or imprisonment up to 6 years.⁵⁴

(bb) Forgery Offences (Sections 171 et seq.)

Forgery offences are important as they are often used to accomplish a fraud offence and the forgers shall mislead the relevant persons acting for the EU budget or collecting duties that add sums to it: **38**

Chapter 19 Crimes relating to means of evidence

Section 171

Whoever uses a false document to deceive in legal matters is punished for document forgery.

PCS. 2. A document is understood to be a written or electronic statement provided with a designation by the issuer, which appears to be intended to serve as evidence.

PCS. 3. A document is false when it does not come from the specified issuer, or it is given content that does not come from this.

Section 172. The penalty for document forgery is a fine or imprisonment for up to 2 years.

PCS. 2. If document falsification is of a particularly serious nature, or if a greater number of conditions have been committed, the penalty may increase to imprisonment for 6 years.

⁵⁴ § 122.

Den, som uberettiget yder, lover eller tilbyder nogen, der virker i dansk, udenlandsk eller international offentlig tjeneste eller hverv, gave eller anden fordel for at formå den pågældende til at gøre eller undlade noget i tjenesten, straffes med bøde eller fængsel indtil 6 år.

Section 173

With a penalty as specified in Section 172, the person who uses a document bearing a genuine signature is considered to be deceiving in legal terms, when the signature has been obtained by mistake on a different document or on a document with different content than by the signatory intentional.

Section 174

Whoever, in legal matters, makes use of a genuine document as relating to a person other than the person to whom it really concerns, or in any other way contrary to the provisions of the document, is punished by a fine or imprisonment for up to 6 months.

Section 175

Whoever, in order to deceive in a legal relationship in a public document or book, in a private document or book, which according to the law or a special obligation is incumbent on the person concerned to draw up or keep, or in a medical, dental, midwife or veterinary certificate makes a false statement about any matter regarding which the statement is to serve as evidence, shall be punished by a fine or imprisonment for up to 3 years.

PCS. 2. In the same way, whoever makes use of such a document or such a book as containing truth in legal matters is punished.

PCS. 3. The provisions in subsection 1 and 2 apply correspondingly when the document or book has been completed or is kept on another readable medium.

Section 176

Anyone who, in order to deceive in trade, makes use of objects which are unjustifiably provided with a public stamp or mark, which must give a guarantee for the object's authenticity, nature, quality or quantity, is punished with a fine or imprisonment of up to 3 years.

PCS. 2. A fine or imprisonment of up to 1 year shall be imposed on anyone who, in the same way, makes use of objects which are unjustifiably provided with a private stamp, brand or other designation that serves to indicate something about the object regarding matters which are of importance to trade.

PCS. 3. The punishment as stated above applies to anyone who, in the same way, makes use of objects on which a legally affixed stamp, mark or designation has been distorted or removed.

Section 177

Anyone who makes use of imitation or forged stamp paper, stamps, other stamps used to correct public taxes and fees and postage stamps is liable to imprisonment for up to 8 years. Anyone who makes use of previously used paper or brands on which the sign of

the previous use has been removed is considered to have a proportionately lesser penalty.

PCS. 2. The rule in section 169 applies correspondingly with regard to stamps, postage stamps and similar means of release.

Section 178

Anyone who, in order to separate someone from his rights, destroys, disposes of or renders completely or partially unusable a means of evidence that is suitable for use as such in a legal relationship is punished with a fine or imprisonment of up to 2 years.

Section 179

Whoever, in order to deceive with regard to the boundaries of real property, land rights or rights with regard to streams or watercourses, places a false landmark or other mark for these or moves, removes, distorts or destroys such a mark, shall be punished by a fine or imprisonment until 3 years.

(cc) Property Crimes (Embezzlement, Fraud – Sections 276 et seq.)

The property crimes are enshrined in the Danish Criminal Code, ss. 276 et seq.:

39

Chapter 28 Property crimes

Section 276

Anyone who, without the consent of the possessor, takes away a third party’s movable thing in order to obtain for himself or others an unjustified gain by acquiring it, is punished for theft. Here and in the following, movable property is equated with a quantity of energy that has been produced, stored or put to use for the production of light, heat, power or movement or for other economic purposes.

Section 276a

Whoever gains unauthorised access to another’s house and without the owner’s consent takes another’s movable thing in order to obtain for himself or others an unjustified gain by acquiring it, is punished for burglary.

Section 277

For illegal handling of lost property, the person is punished who, in order to obtain himself or other unjustified gain through it, appropriates a third party’s movable thing which is not in anyone’s custody, or which has come into the offender’s custody through the owner’s oversight or in a similar accidental way.

Section 278

For embezzlement, the person is punished who, in order to obtain unjustified gain for himself or others through it

- 1) appropriates a third party's movable property that is in his custody, without the relationship falling under section 277,
- 2) waives the receipt of a loan or other loan for property or of a service for which consideration must be paid,
- 3) unlawfully consumes money entrusted to him, even if he was not obliged to keep it separate from his own wealth.

PCS. 2. The provision in subsection 1, no. 1, does not include disposals of purchased items in respect of which a seller has reserved ownership until the purchase price has been paid.

Section 279

Whoever, in order to thereby obtain unjustified gain for himself or others, by unlawfully inducing, reinforcing or exploiting a delusion, determines another to an act or omission, by which this person or someone for whom the act or the omission becomes decisive, a loss of fortune.

Section 279a

For data fraud, whoever unlawfully alters, adds or deletes information or programs for electronic data processing, or otherwise unlawfully seeks to influence the result of such data processing, in order to thereby obtain or other unjustified gain is punished.

Section 280

For fraud of mandate, insofar as the relationship does not fall under Sections 276–279a, the person who, in order to thereby obtain or other unjustified gain, causes another loss of property

- 1) by misuse of an access created for him to act with legal effect for him or
- 2) knows, in a property matter, which it is incumbent on him to take care of for the other, to act against the latter's interests.

Section 281

Extortion is punishable, insofar as the relationship does not fall under Section 288,

- 1) the person who, in order to obtain unjustified gain for himself or others, threatens someone with violence, significant damage to property or deprivation of liberty, with making false accusations of criminal or dishonourable matters or revealing private matters,

2) the person who threatens someone to report or reveal a criminal matter or to make true dishonourable accusations in order to thereby obtain for himself or others a gain that is not adequately justified by the matter that gave rise to the threat.

Section 282

Anyone who takes advantage of another person's significant financial or personal difficulties, lack of insight, recklessness or an existing relationship of dependence to obtain or condition a performance in a contractual relationship that is significantly disproportionate to the consideration, or which is not must be paid for.

Section 283

For fraud on the debtor, the person who thereby obtains unjustified gain for himself or others is punished

- 1) disposes of, pledges or otherwise disposes of property belonging to him over which a third party has acquired a right with which the act is incompatible,
- 2) after his estate has been taken into bankruptcy proceedings, or reconstruction proceedings have been initiated, takes actions to the effect that the assets and claims of the estate do not benefit the claimants,
- 3) by false pretences, embezzlement, pro forma transactions, significant gifts, disproportionate consumption, sale at a lower price, payment of or provision of security for outstanding debts or in any other similar way evades his assets or claims from serving his claimants or any individual of these for fulfilment.

PCS. 2. If actions of the type specified under no. 3 are carried out to benefit a claimant, the latter will only be punished if, at a time when he anticipated that the debtor's bankruptcy or restructuring proceedings were imminent, he determined the debtor to grant him such favour.

Section 284 (Repealed)

Section 285

The crimes mentioned in Sections 276, 276a and 278–283 are punishable by imprisonment for up to 1 year and 6 months. In those in section 283, subsection 2, mentioned case, the penalty for the debtor as well as for the beneficiary claimant can be reduced to a fine.

PCS. 2. Illegal handling of lost property is punishable by a fine or imprisonment of up to 1 year and 6 months.

Section 286

The penalty may increase to imprisonment for up to 6 years, when the crimes mentioned in Sections 276, 276a, 281 and 282 are of a particularly serious nature, particularly because of the method of execution, or because the crime was committed by several people in association or with the participation of weapons or other dangerous tools or means, or because of the significant value of the stolen items or the conditions in which they were found, or because the theft was committed as part of organised burglary, or because it is a systematic or organised extortion or when a larger number of crimes have been committed.

PCS. 2. The penalty may increase to imprisonment for up to 8 years, when the crimes mentioned in Sections 278–280 and 283 are of a particularly serious nature, particularly because of the manner of execution, or because the crime was committed by several people in association, or as a result of the scope of the obtained or intended gain, or when a greater number of crimes have been committed.

Section 287

If any of the crimes mentioned in Sections 276-283 are less punishable because of the circumstances in which the act was committed, the objects used or the loss of property suffered are of little importance or for other reasons, the penalty is a fine. In otherwise extenuating circumstances, the penalty may be waived.

PCS. 2. Attempts to commit a crime covered by subsection 1, is punishable.

Section 288

For robbery, the person who thereby obtains unjustified gain for himself or others by violence or threat of immediate use of violence is punished with imprisonment of up to 6 years

- 1) deprives or extorts someone of another's movable property,
- 2) brings a stolen thing to safety or
- 3) forces someone to do an act or omission that results in a loss of property for the person assaulted or someone for whom the person is acting.

PCS. 2. The penalty may increase to imprisonment for 10 years when a robbery is of a particularly serious nature, in particular because of its particularly dangerous nature, the method of execution or the extent of the obtained or intended profit, or because the perpetrator has entered a private home in order to commit robbery or when a greater number of crimes have been committed.

Section 289

Anyone who, in order to thereby obtain or other unjustified gain, is guilty of a violation of a particularly serious nature of tax, customs, levy or subsidy legislation or of Section 289a is punished with imprisonment of up to 8 years.

PCS. 2. The provision in subsection 1 only applies if in the legislation referred to in 1 is referred to this provision.

PCS. 3. When assessing an additional fine pursuant to section 50, subsection 2, in connection with violation of subsection 1, emphasis must be placed on whether the crime is of a particularly serious nature, particularly because of the way it was carried out, or because the crime was committed by several people in association, or when a larger number of crimes have been committed.

Section 289a

With a fine or imprisonment of up to 1 year and 6 months, whoever, for the purpose of decisions on the payment or repayment of customs duties or charges for or the payment or repayment of subsidies or support from Danish authorities or the institutions of the European Communities or other community bodies, is punished provides incorrect or misleading information or conceals information, including failing to fulfil an obligation to provide information that is important for the decision of the case with the intention of evading or other payment or with the intention of obtaining an unjustified payment to himself or others.

PCS. 2. In the same way, whoever improperly exploits a legally obtained advantage with regard to payments as mentioned in subsection 1, and the person who improperly uses payments as mentioned in subsection 1 for purposes other than those for which they were originally allocated. However, this does not apply to benefits granted for private use.

PCS. 3. The provisions in subsection 1 and 2 only apply where other legislation does not contain a corresponding regulation.

PCS. 4. Violations of subsection 1 or no. 2 of a particularly serious nature is punished according to section 289.

Section 290

For embezzlement, whoever unjustifiably receives or acquires or otherwise shares in profits obtained through a punishable offence, and whoever unjustifiably conceals, stores, transports, assist in the disposal or in a similar way subsequently works to ensure someone else the benefit of a punishable offence, unless the relationship is covered by section 290 a.

PCS. 2. The penalty may increase to imprisonment for 6 years when the fraud is of a particularly serious nature, in particular due to the commercial or professional nature of the crime or as a result of the obtained or intended profit, or when a larger number of crimes have been committed.

PCS. 3. Punishment according to this provision cannot be imposed on the person who receives dividends for usual maintenance from family members or cohabitants, or the

person who receives dividends as normal remuneration for usual consumer goods, utility items or services.

Section 290a

For money laundering, whoever converts or transfers money that is directly or indirectly the proceeds of a punishable offence in order to hide or cover up the illegal origin is punished with a fine or imprisonment of up to 1 year and 6 months.

PCS. 2. The penalty may increase to imprisonment for 8 years when the money laundering is of a particularly serious nature, in particular due to the commercial or professional nature of the crime or as a result of the obtained or intended gain, or when a larger number of crimes have been committed.

Section 290b

Anyone who, as a member of the executive board or board of a systemically important financial institution (SIFI), is guilty of a violation of Section 373, par. 6 or 7 of the Financial Business Act.

PCS. 2. Anyone who, as a member of the executive board or the board of a SIFI, is guilty of an offence covered by section 78, subsection 2 shall be punished with imprisonment of up to 3 years. 2, in the Money Laundering Act.

Section 291

Whoever destroys, damages or disposes of things belonging to another is punished by a fine or imprisonment for up to 1 year and 6 months.

PCS. 2. If vandalism is practiced on a significant scale or of a more systematic or organised nature, or if the perpetrator has previously been found guilty under this section or under section 180, section 181, section 183, subsection 1 and 2, Section 184, subsection 1, Section 193 or Section 194, the penalty may increase to imprisonment for 6 years.

PCS. 3. If the damage is caused under the conditions in subsection 2 circumstances of gross negligence, the penalty is a fine or imprisonment for up to 6 months.

PCS. 4. When determining the penalty according to subsection 1 and 2, it must be included as an aggravating circumstance that the relationship was committed while or in the immediate aftermath of a serious disturbance of peace and order in a public place taking place in the area, or that vandalism was committed against things that serve to prevent or fight crime. It must, when determining the penalty pursuant to subsection 1 and 2 also include as an aggravating circumstance that the offence was committed against things belonging to one of the persons mentioned in section 119, when the offence has a background in the injured party's performance of a public service or duty.

Section 292

Whoever, by destroying, damaging or disposing of his possessions, avoids them from serving his creditors or any individual of these for satisfaction, is punished by a fine or imprisonment for up to 1 year.

Section 296

With a fine or imprisonment of up to 1 year and 6 months, the person who

- 1) disseminates false or misleading information, whereby the price of financial instruments or similar assets can be significantly affected,
- 2) provides false or misleading information about the circumstances of legal entities
 - a) in public announcements about financial matters,
 - b) in statutory accounts,
 - c) in reports, accounts or statements to the general meeting or similar body or the management of the legal entity,
 - d) by notification to a registration authority or
 - e) in tender materials relating to the establishment or capital increase of the legal entity as well as relating to the sale of shares or the issue or sale of convertible bonds,
- 3) grossly violates the legislation applicable to a legal person regarding
 - a) capital injection or
 - b) use of the legal person's funds,
- 4) grossly fails to fulfil requirements in the legislation applicable to a legal person regarding
 - a) keeping negotiation protocols,
 - b) keeping records and disclosure obligations regarding ownership shares or
 - c) trading obligations in the event of ascertained capital loss.

PCS. 2. In particularly aggravating circumstances, the penalty for violation of subsection 1, no. 1, increase to imprisonment for up to 6 years. Particularly aggravating circumstances are considered in particular cases where the crime was committed by several people in association, where significant profit was obtained or intended, or where a larger number of crimes were committed.

PCS. 3. If an act or omission is committed as mentioned in subsection 1 of gross negligence, the penalty is a fine or, in aggravating circumstances, imprisonment for up to 4 months.

Section 297

Anyone who spreads false or misleading information, whereby the price of goods, real estate or similar assets can be significantly affected, is punished with a fine or imprisonment of up to 1 year and 6 months.

PCS. 2. If an act is committed as mentioned in subsection 1 of gross negligence, the penalty is a fine or, in aggravating circumstances, imprisonment for up to 4 months.

Section 298

Whoever, without the conditions for applying Section 279 being present, is punished with a fine or imprisonment of up to 6 months,

- 1) in the case of false pretences regarding the ability to pay, obtains or others a loan or credit with the consequence that a loss of property is thereby incurred,
- 2) in the event of consumption of prepaid remuneration becomes unable to deliver the consideration,
- 3) moves away without paying accommodation, food, transport or other services, for which it has been a known prerequisite that payment be made before the removal,
- 4) without payment of the stipulated payment, access to a performance, exhibition or assembly or to transport by public transport or to the use of other publicly available equipment is denied.

Section 299

A fine or imprisonment of up to 1 year and 6 months shall be imposed on anyone who, without the conditions for applying section 280 being present, in a property matter which it is the duty of the person concerned to take care of for another, by disregarding his duty causes this a significant loss of property which is not compensated before judgment in the first instance.

PCS. 2. A fine or imprisonment of up to 4 years shall be imposed on anyone who, when taking care of someone else's property affairs for themselves or others, illegally receives, demands or allows themselves to be promised a gift or other benefit, as well as anyone who provides, promises or offers a such gift or other benefit.

Section 299a

Whoever, under particularly aggravating circumstances, is guilty of a violation of Section 4 is punished with imprisonment of up to 6 years, cf. Section 18, subsection 1, no. 1–3, in the Act on trade secrets. Especially aggravating circumstances are considered to be cases where the act has caused significant damage or there has been an imminent danger of this.

Section 299b

With imprisonment of up to 6 years, whoever, in order to obtain unjustified gain for himself or others through it, or who otherwise, under particularly aggravating circumstances, is guilty of

- 1) copyright infringements of a particularly serious nature, cf. Section 76(1) of the Copyright Act. 2, or illegal importation of a particularly serious nature, cf. section 77, subsection of the Copyright Act. 2,
- 2) trademark infringements of a particularly serious nature, cf. Section 42, subsection of the Trademark Act. 2,

- 3) design intervention of a particularly serious nature, cf. Section 36, subsection of the Design Act. 2,
- 4) patent interference of a particularly serious nature, cf. Section 57, subsection of the Patent Act. 2,
- 5) utility model interference of a particularly serious nature, cf. Section 54, subsection of the Utility Model Act. 2, or
- 6) violation of a particularly serious nature of section 91, cf. section 94, subsection 2, in the Act on Radio and Television.

Section 299c

Whoever, under particularly aggravating circumstances, contributes to a company or a group of companies entering into a cartel agreement covered by Section 23 of the Competition Act is punished with imprisonment of up to 6 years. 4, 2nd point A particularly aggravating circumstance is considered in particular cases where the violation has had a significant extent or has been capable of causing significant damage.

PCS. 2. Paragraph 1 only applies to natural persons.

Section 299d

Whoever, under particularly aggravating circumstances, is guilty of

- 1) violation of Article 14, letters a and b, or Article 15 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the regulation on market abuse),
- 2) violation of Article 3, subsection 1, letters a or c, or Article 5 of Regulation No. 1227/2011/EU of the European Parliament and of the Council of 25 October 2011 on integrity and transparency in the wholesale energy markets or
- 3) violation of Article 38, subsection 1, article 39, letter b, article 40, cf. article 38, subsection 1, or Article 39, letter b, or Article 41 of Commission Regulation (EU) No. 1031/2010 of 12 November 2010 on the temporal and administrative course of auctions of allowances for greenhouse gas emissions and other aspects in connection with such auctions pursuant of Directive 2003/87/EC of the European Parliament and of the Council on a scheme for trading in allowances for greenhouse gas emissions in the Community.

PCS. 2. As particularly aggravating circumstances, cf. subsection 1, are considered in particular cases where the crime has been committed by several people in association, where significant profit has been achieved or intended, or where a larger number of crimes have been committed.

Section 300. Punishable with a fine or imprisonment of up to 1 year

- 1) the person who, at a time when he realizes or should realize that he is unable to satisfy his creditors, significantly worsens his financial position by incurring new debts or pays or provides security for significant overdue debt items,

2) the person who inflicts considerable loss on his claimants by wasteful living, by gambling, by daring undertakings that are not in proportion to his fortune, by highly disorderly conduct of business or other frivolous conduct,

3) the debtor and fiduciary who, when submitting the declarations required during restructuring proceedings, gives incorrect information or is guilty of gross negligence.

Section 300a

Whoever, without the conditions for applying Section 279 being present, intentionally or grossly negligently causes a person, who is in a delusion, to be determined for this reason in an unlawful way to an act or omission, thereby causing him or someone for whom the act or omission becomes decisive, a significant loss of property.

Section 300b

Whoever, without the conditions for applying Section 282 being present, improperly takes advantage of the other party's financial difficulties or otherwise of his inferior position when entering into an agreement is punished with a fine or imprisonment of up to 6 months.

Section 300c

Whoever assigns a claim arising from another's act of the nature mentioned in Section 282, Section 300a or Section 300b, or who asserts such a claim, is punished with a fine or imprisonment of up to 6 months, if he, in acquiring the claim, was grossly negligent as to its nature. In the same way, the person who otherwise grossly negligently takes undue advantage of another's action of the nature mentioned in Section 282, Section 300 a or Section 300 b is punished.

Section 301

Anyone who manufactures, obtains, possesses or passes on with the intention of unauthorised use is punished with a fine or imprisonment of up to 1 year and 6 months

- 1) information which identifies a means of payment assigned to others, or
- 2) generated payment card numbers.

PCS. 2. Does it happen in subsection 1 mentioned passing on, etc. in a wider circle or under otherwise particularly aggravating circumstances, the penalty is imprisonment for up to 6 years.

PCS. 3. The provision in subsection 1 does not apply to genuine payment cards.

Section 301a (Repealed)

Section 302

With a fine or imprisonment of up to 1 year and 6 months, to the extent that the relationship does not fall under Section 296, anyone who particularly grossly violates the requirements of the legislation to

- 1) bookkeeping, including registration of transactions and preparation of accounting material,
- 2) storage of accounting material, including descriptions of bookkeeping and systems for storing and finding material, including passwords etc. and encryption keys,
- 3) public authorities' access to accounting material in accordance with the legislation in particular applicable to these authorities as well as
- 4) submission of annual accounts or equivalent accounts.

PCS. 2. If an act or omission is committed as mentioned in subsection 1 of gross negligence, the penalty is a fine or imprisonment for up to 4 months.

Section 303

Anyone who shows gross negligence by negotiating or in another similar way receiving things that have been acquired through a crime of enrichment is punished by a fine or imprisonment for up to 1 year.

Section 304

Anyone who, in cases where a decision on a property matter is taken by vote, obtains access for himself or others to take part in it unjustifiably or to cast more votes than is due to him, or causes the vote to be distorted.

PCS. 2. In the same way, whoever, during voting in a bankruptcy or debt waiver estate or during reconstruction proceedings, influences the voting by false pretences or gives, promises or offers, receives, demands or allows himself to be promised a financial advantage in order to vote in a certain direction or to abstain from voting.

Section 304a

Anyone who unjustifiably gives, promises or offers someone who acts as an arbitrator in this country or abroad, a gift or other benefit in order to induce the person concerned to do or omit something in the exercise of this duty, is punished with fine or imprisonment for up to 4 years.

PCS. 2. In the same way, whoever acts as an arbitrator here in the country or abroad, and who, in the exercise of this duty, unjustifiably receives, demands or allows himself to be promised a gift or other benefit.

Section 305

Those in Section 291, subsection 1 and 3, Section 293, subsection 2, Section 298 and Section 299, the offences referred to are prosecuted only at the aggrieved party's request, unless the public interest requires prosecution.

PCS. 2. The offences referred to in section 294 are subject to private prosecution.

(dd) VAT Act Offences

- 40 VAT offences are important as they concern the area of the EU budget. Despite Denmark not being bound by neither the PIF Directive nor the EPPO Regulation, it still has to ensure that it can pay its sums to the EU budget as a contributor. This money stems partly from the VAT sector and can only be provided if the economic operators do not defraud Danish authorities collecting VAT on behalf of the EU without fearing sanctions:

Chapter 21 Penal provisions

Section 81

Anyone who intentionally or grossly negligently is punished with a fine

1) submits incorrect or misleading information or conceals information for use in tax control or the control of payments pursuant to section 45, section 53, subsection 2, and Section 72 and Section 12 of the Act on Collection of Taxes and Duties etc.,

2) violates section 8, subsection 1, 4th point, Section 23, subsection 4, 2nd pt., Section 30, subsection 2, Section 38, subsection 3, 3rd pt., Section 43, subsection 3, no. 1, 4 or 5, section 47, subsection 1, 1st point, subsection 2, 1st or 2nd point, subsection 3, 1st point, subsection 5, 1st, 4th or 5th point, or subsection 6, Section 50, 1st point, Section 50 b, Section 50 c, Section 52 a, subsection 1, 3, 5, 6 or 8, Section 52 b, Section 52 c, subsection 1–5, Section 53, subsection 1, 1st point, or subsection 2, 1st point, Section 56, subsection 3, 2nd pt., Section 57, subsection 1, 1st point, subsection 2, 2nd and 3rd pt., subsection 3, 2nd point, or subsection 4, 2nd pt., Section 62, subsection 9, Section 64, subsection 2, 1st point, Section 65, subsection 1, Section 70, subsection 2, Section 72, subsection 3 or 4, Section 74, subsection 2 or 4, Section 75, subsection 1, 2, 3, 4 or 7 or Section 78, subsection 1,

3) violates the reporting deadline in section 62, subsection 1 or 2,

4) fails to make a notification pursuant to section 65, subsection 2, 1st point, or violates the notification deadline in section 65, subsection 2, 2nd point,

5) fails to comply with an order pursuant to section 29, subsection 2, or Section 38, subsection 3, 1st point,

6) transfers, acquires, appropriates or uses goods or services for which no tax has been paid that should have been paid under this Act, or attempts to do so, or

7) in connection with forced auctions, provides false or misleading information or conceals information about the tax treatment of the forced auction sale.

PCS. 2. In regulations which are issued pursuant to the law, a penalty of fine can be established for anyone who intentionally or grossly negligently violates the provisions of the regulations. A penalty of a fine can also be imposed for anyone who provides false or misleading information, conceals information or fails to carry out the necessary self-check of information about companies' VAT registration numbers and associated names or addresses, as per rules in the Council's implementing regulation (EU) no. 282/2011 of 15 March 2011 on measures to implement Directive 2006/112/EC on the common value added tax system must be notified and checked to determine the status of companies involved in taxable transactions with goods or services within the EU.

PCS. 3. Anyone who commits one of the mentioned violations with the intention of evading tax from the state treasury or to unjustifiably obtain payments pursuant to Section 45, Section 53, subsection 2, and Section 72 as well as Section 12 of the Act on Collection of Taxes and Charges, etc., is punished with a fine or imprisonment of up to 1 year and 6 months, unless a higher penalty is due according to Section 289 of the Criminal Code. With a fine or imprisonment of up to 1 year and 6 months, unless a higher penalty is owed according to section 289 of the Criminal Code, whoever intentionally or grossly negligently runs a business subject to registration, regardless of whether the business has been refused registration according to section 62a, subsection 1, or the company has deregistered from registration pursuant to § 62a, subsection 5.

PCS. 4. Anyone who, as part of a business, intentionally issues an invoice with incorrect content or issues other incorrect documentation for the delivery or purchase of goods or services, is punished by a fine or imprisonment of up to 1 year and 6 months, unless a higher penalty is due under Section 289 of the Criminal Code, if the documentation is suitable to be used as a basis for calculating a tax liability. If the act is committed through gross negligence, the penalty is a fine.

PCS. 5. Anyone who, as part of a business, purchases goods or services on such favourable terms that the person concerned realizes that the supplier or provider will not fulfil his obligation to include the consideration in the tax equivalent or to settle the tax equivalent in a timely manner, is punished with a fine or imprisonment until 1 years and 6 months, unless a higher penalty is due under Section 289 of the Criminal Code. If the act is committed through gross negligence, the penalty is a fine.

PCS. 6. Criminal liability can be imposed on companies etc. (legal persons) according to the rules in Chapter 5 of the Criminal Code.

PCS. 7. Sections 18 and 19 of the Act on Collection of Taxes and Duties etc. apply correspondingly to cases of infringement of this Act.

(ee) Tax Control Act

The Tax Control Act contains provisions, which might only be applicable in national criminal proceedings if an accused shall have damaged the Danish Budget.

(ff) Penal Provisions of the Tobacco Tax Act

- 42 Penal Provisions, which touch the obligation of Denmark to pay VAT sums to the EU budget can be found in the tobacco tax Act:

Penal provisions

Section 25

It is punished with a fine, which is intentional or grossly negligent

- 1) submits false or misleading information or falsifies information for use in the tax audit,
- 2) violates Section 2, Section 3, Section 4, Section 7, subsection 1, Section 9, subsection 2 or no. 5, 3rd pt., Section 10, subsection 1, 2nd point, subsection 2, 2nd point, or subsection 3, 2nd and 3rd pt., Section 10 a, subsection 4, subsection 5, 2nd point, or subsection 6, Section 11, subsection 1 or 2, Section 18, subsection 1–5 or 7–10, section 21, subsection 2, 3 or 4, Section 29, subsection 3, 2nd pt., or Section 30, subsection 1,
- 3) fails to comply with an order issued pursuant to section 15, 1st point, or disregards an order pursuant to section 18, subsection 7, notified terms,
- 4) transfers, acquires, appropriates or uses goods on which duty has not been paid, which should have been paid according to the law, or attempts to do so or
- 5) continues the operation of a taxable company whose authorisation or registration has been revoked pursuant to section 16 and the customs and tax administration has notified the company of this.

PCS. 2. In regulations that are issued pursuant to the law, a penalty of fine can be established for anyone who intentionally or grossly negligently violates provisions in the regulations.

PCS. 3. Anyone who commits one of the aforementioned offences with the intention of evading tax from the state treasury is punished by a fine or imprisonment of up to 1 year and 6 months, unless a higher penalty is owed under Section 289 of the Criminal Code.

PCS. 4. Criminal liability can be imposed on companies etc. (legal persons) according to the rules in Chapter 5 of the Criminal Code.

PCS. 5. When setting a fine for violation of Section 10, subsection 1, 2nd point, a stiffer fine is imposed. The same applies in case of violation of section 18, subsection 1–3, 5 and 7–9, if the violation means that it is not possible to ascertain whether tax has been paid in accordance with the provisions of this Act.

PCS. 6. Has someone committed multiple violations of Section 10, subsection 1, 2. pt., or Section 18, subsection 1–3, 5 and 7–9, or regulations laid down pursuant thereto, and the violations lead to the imposition of a fine, the fine penalty for each violation is added together. Has anyone violated Section 10, subsection 1, 2. pt., or Section 18, subsection 1–3, 5 and 7–9. And tax laws or mortgage legislation.

PCS. 7. The provision in subsection 6 can be waived when special reasons justify this.

Section 25a

In the case of gross or repeated violations covered by section 25, subsection 3, the goods to which the violation relates must be confiscated. However, confiscation can be waived if the amount of tax evaded for the violation in question does not exceed DKK 1,000.
 PCS. 2. If confiscation occurs, the tax liability for the confiscated goods ceases.

Section 26

The rules in Sections 18 and 19 of the Act on Collection of Taxes and Duties etc. apply correspondingly to cases of infringement of this Act.

(gg) Further PIF Acquis Offences

Further PIF Acquis Offences can be found in the Act on structural measures relating to the fisheries sector: 43

Act on structural measures relating to the fisheries sector

Chapter 4 Penalty and entry into force provisions

Section 18

Anyone who, for the purposes of decisions made pursuant to this Act or the rules laid down pursuant to the Act, provides incorrect or misleading information or conceals information of importance to the decision, is punished by a fine, unless a higher penalty is due under other legislation. The same applies to anyone who violates conditions laid down in such a decision.

PCS. 2. Anyone who otherwise fails to provide information that the person concerned is obliged to provide in accordance with this Act or regulations laid down pursuant to the Act shall be punished by a fine, unless a higher penalty is due under other legislation. The same applies to anyone who provides false or misleading information about such matters.

PCS. 3. In rules laid down pursuant to the law, a fine may be imposed for breach of provisions in the rules.

PCS. 4. Criminal liability can be imposed on companies etc. (legal persons) according to the rules in Chapter 5 of the Criminal Code.

PCS. 5. If it is deemed that an infringement will not result in a higher penalty than a fine, the Minister for the Environment and Food can state that the case can be settled without legal prosecution. It is a condition for this that the person who has committed the violation declares himself guilty of the violation and declares himself ready to pay a fine specified in the notification within a specified period, which can be extended upon request.

PCS. 6. As far as the one in para. 5 mentioned notification, the provision on prosecution in Section 895 of the Administrative Procedure Act applies accordingly.

Act on certain rural district-related subsidy schemes etc. /

Lov om visse landdistriktsrelaterede tilskudsordninger m.v.

Chapter 5 Penal provisions

Section 26

Unless a higher penalty is due under the other legislation, the person who

- 1) for the use of decisions made in accordance with the law or the rules laid down pursuant to the law, provides incorrect or misleading information or conceals information of importance for the decision,
- 2) acts in violation of the terms laid down in such a decision,
- 3) otherwise fails to provide information that the person in question is obliged to provide in accordance with the law or regulations laid down pursuant to the law,
- 4) provides false or misleading information about such matters,
- 5) fails to give the control authority access to the agricultural holding or company in accordance with section 20, subsection 2,
- 6) fails to hand over or submit material or to provide the supervisory authority with assistance pursuant to section 20, subsection 3.

PCS. 2. In regulations that are issued pursuant to the law, a penalty of fine may be established for violation of provisions in the regulations or of conditions notified pursuant to the regulations. In addition, the rules may stipulate a penalty of a fine for violation of provisions in rules laid down by the European Community on matters covered by this law.

PCS. 3. Criminal liability can be imposed on companies etc. (legal persons) according to the rules in Chapter 5 of the Criminal Code.

Section 27 If it is deemed that an infringement will not result in a higher penalty than a fine, the Minister for the Environment and Food can state that the case can be settled without legal prosecution. It is a condition for this that the person who has committed the violation declares himself guilty of the violation and declares himself ready to pay a fine specified in the notification within a specified period, which can be extended on request.

PCS. 2. With regard to the one in para. 1, the provisions of the Administration of Justice Act on requirements for the content of an indictment and on the fact that an accused person is not obliged to make a statement apply correspondingly.

PCS. 3. If the fine is paid in due time, or if it is recovered or served after the decision has been made, further prosecution ceases.

dd. Examples and precedents

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

investigators (*see* → Part E, Article 3 External investigations *Fehler! Verweisquelle konnte nicht gefunden werden.*) and national authorities in administrative procedures (especially on the expenditure side, for example in the case of subsidies). The first EPPO crime report therefore correctly distinguishes between:

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

(1) Fraud


(a) 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. From a legal as well as a police point of view, the overview of crime patterns is useful. Especially in Covid-times there has been an increase in characteristics. Assessment can also be based on known cases and the professional groups suspected in these cases. 45

Denmark provides very rare figures on revenue frauds. Still newspapers report about customs and tax frauds.⁵⁵ The Danish Tax Authority provides a legal guide to VAT legislation and frauds.⁵⁶ 46

(b) Expenditure frauds

Case Study 1: Defrauding the EU with cinema tickets?

	Defrauding the EU with cinema tickets?
<p>An example from the past (taken from a newspaper article), which concerned a subsidy fraud case can be presented here. It involved cinemas in Aarhus, Denmark in the early 2000s. The alleged accused paid back the money, which was potentially defrauded from the EU budget to the EU so that the case was ceased:</p> <p>“Kunstbiograf in Aarhus acknowledges fraud with EU support, but the money has been paid back and the cinema remains. The small art cinema “East of Paradise” in Aarhus admits to having defrauded hundreds of thousands of EU kroner, which are supposed to help cinemas keep alive the sales of tickets for narrow European films.</p>	

⁵⁵ See DR, 7 December 1999, Customs fraud for DKK 75 million, <https://www.dr.dk/nyheder/inland/toldsvindel-75-mio>. Accessed 31 December 2024.

⁵⁶ See Skat. Dk, Om Den juridiske vejledning, The legal guidance, <https://skat.dk/data.aspx?oid=1921150>. Accessed 31 December 2024.

The cinema, which also rents out films to others, has already repaid 82,000 euros or 620,000 kroner to the EU. An unconditional prison sentence was planned, but the sentence will probably be considerably lower, according to a hearing in the district court in Aarhus on Thursday. Here, the former director of the cinema Ole Bjørn Christensen stands accused of fraud with EU support for small films. The defendant has admitted that he has inflated the number of tickets sold. And that made the Danish Film Institute raise eyebrows. The institute is responsible for the figures that Statistics Denmark submits to the EU system. From here, small films from EU countries and distributed to other EU countries can receive a subsidy of 0.45, 0.55 and 0.75 per cent per ticket. One of the problems in the Aarhus case is that the cinema has also received support for film screenings, where free tickets have been handed out in a big way. The charge against the cinema has been greatly reduced. Not least because the cinema has voluntarily paid the money back to the EU. Now the indictment only concerns the year 2005 and not, as previously, 2004 as well. The district court in Aarhus is expected to deliver a verdict later Thursday.”⁵⁷

(2) Corruption offences

- 47 Corruption offences are a serious threat to the EU budget and corruption is not unknown to Denmark despite Denmark being a country, which sees very rare several of these offences.⁵⁸

(3) Money laundering with PIF crimes

- 48 Generally speaking the public can report AML offences via a portal to the Danish Prosecution Service and Offices:

<https://anklagemyndigheden.dk/en/money-laundering>.

fiu@politi.dk <fiu@politi.dk>

⁵⁷ Ritzau 2011.

⁵⁸ See Transparency International, <https://transparency.dk/korruption/definition/>. Accessed 31 December 2024.

2. Waiver of the Charges, Prevention of Prosecution, Urgent Measures in the Investigation Stage and the Finalisation of the National Investigation

- | | |
|---|---|
| <ul style="list-style-type: none"> a) Provisions with a precluding effect for the Prosecution Offices..... 101 aa. Statute of limitations for offences and custodial consequences (imprisonment, etc.)..... 101 bb. Amnesty and Pardon .. 105 cc. Opposing legal validity 105 | <ul style="list-style-type: none"> dd. Abatement of action (Dispense with prosecution, Waiver of Charges)..... 105 b) Urgent measures of national authorities for securing an investigation and prosecution 109 |
|---|---|

a) Provisions with a precluding effect for the Prosecution Offices

aa. Statute of limitations for offences and custodial consequences (imprisonment, etc.)

Chapter 11 of the Criminal Procedure Code determines the termination of the proceedings. 1

Chapter 11 Termination of the consequences of the offence

Section 92
 An offence shall not be punished when the statute of limitations pursuant to sections 93–94 has occurred.

Section 93
 The limitation period is

- 1) 2 years when no penalty higher than imprisonment for 1 year is provided for the offence.
- 2) 5 years where no penalty higher than imprisonment for 4 years is provided.
- 3) 10 years where no penalty higher than imprisonment for 10 years is provided.
- 4) 15 years, where no penalty is higher than imprisonment for a fixed period.

Para 2. The limitation period shall in no case be less than 5 years for

- (1) contravention of Sections 296(3), 297(2) and 302(2) of this Act;
- (2) violation of tax, customs, excise or subsidy legislation by which undue gain is or may be obtained.

Para 3. Where someone has committed several offences in respect of which different limitation periods apply in accordance with paras 1 and 2, the longer of those periods shall apply in respect of all the infringements.

Section 93a

When an offence is covered by an international agreement to which Denmark has acceded, according to which criminal liability is irreparable, limitation does not occur.

Section 93b

When an offence is covered by Section 157a of this Act, limitation shall not occur.

Para 2. When an offence covered by Sections 210, 216–224, 225, cf. Sections 216–224, 226 or 227(1) is committed against a person under the age of 18, the limitation period shall not occur.

Section 94

The limitation period shall begin to run on the day on which the criminal activity or omission ceases.

Para 2. However, where the offence depends on or is affected by a consequence or other subsequent event, the period shall begin to run only from the occurrence of that consequence or event.

Para 3. If the offence was committed on a Danish ship outside the Kingdom, the deadline is calculated from the day on which the ship arrived in Danish port. However, according to this provision, the starting point of the period may not be postponed for more than 1 year.

Para 4. However, for infringements of sections 245a, 246, cf. sections 245a, 260(2) and 262a(2), in respect of a person under the age of 18 or of section 232 in respect of a child under the age of 15, the limitation period shall be calculated at the earliest from the day on which the injured party reaches the age of 21. The same applies to violations of sections 244, 245 and 246 in the form of termination of pregnancy, foetal reduction or sterilization without consent against a person under the age of 18. For an infringement of Sections 243, 244(2), 245 and 246, cf. Section 245, against a person under the age of 18, the limitation period shall not begin to run until the date on which the injured party reaches the age of 21 at the earliest, where at the time of the offence the offender belonged to or was closely connected with the victim's household. However, if the offender, by violence, unlawful coercion under section 260 or otherwise by means of a criminal offence, has forced the injured party not to report the offence to the police, the limitation period shall be calculated at the earliest from the time when the coercion has ceased.

Para 5. The limitation period shall be interrupted when the charge is brought to the attention of the person concerned or when the prosecution requests proceedings accusing him of the offence. The limitation period for a legal person's liability may be interrupted against a person who may receive service on behalf of the legal person pursuant to Section 157a of the Code of Civil Procedure.

Para 6. If the prosecution is dropped without the decision to do so being reversed by the superior prosecutor within the ordinary period for reversal, the limitation period shall continue as if the prosecution had not taken place. This also applies when prosecution is stopped indefinitely. However, if the suspension is due to the fact that the accused has evaded prosecution, the duration of the prosecution shall not be taken into account in calculating the limitation period.

Section 95

Nor shall an act be punishable by reason of limitation, nor shall it give rise to legal consequences under Sections 68 to 70, 74a, 164(5) or 236, confiscation or disqualification. However, for confiscation the limitation period is in no case less than 5 years and for confiscation under section 75(1) not less than 10 years.

Section 96

The right to private prosecution and to apply for public reprimand shall cease if the person concerned has not instituted proceedings or made an application within 6 months of becoming aware of such knowledge that he has sufficient grounds for bringing legal proceedings or making an application for prosecution.

Para 2. Where there are several persons entitled to prosecute or several guilty persons, the time limit shall be calculated separately for each of them. However, if the time limit for applying for public prosecution has expired for one of the guilty parties but not for the others, it depends on the decision of the public prosecutor whether an application for prosecution against them should be granted.

Para 3. The right to bring private prosecution or apply for public reprimand lapses when 6 months have elapsed after the victim's death.

Para 4. If a private prosecution does not lead to a decision on the criminal claim, the time limit shall continue to run, excluding the time during which the prosecution has taken place.

Para 5. The provisions of paras 1 to 4 shall also apply with regard to mortification under section 270, except that the limitation period shall be 3 years.

Section 97

Sentences of imprisonment and other custodial consequences shall lapse by limitation in accordance with paras 2 to 6.

Para 2. The limitation period is

- 1) 5 years for imprisonment up to 1 year and for measures under section 74a,
- 2) 10 years for imprisonment for more than 1 year, but not more than 4 years, and for measures under sections 68 and 69,
- 3) 15 years for imprisonment for more than 4 years but not more than 8 years, and for custody under section 70; and
- 4) 20 years for imprisonment of time over 8 years.

Para 3. The limitation period shall begin to run from the date on which the judgment was enforceable in accordance with the general rules of law.

Para 4. The limitation period shall not take into account the period during which

- (1) execution is suspended by a suspended sentence or conditional pardon;
- (2) he or she is serving a different term of imprisonment or is subject to other custodial criminal proceedings; or
- (3) the implementation of enforcement is hindered by the fact that the person concerned evades enforcement.

Para 5. The limitation period shall be interrupted when enforcement commences.

Para 6. Where reinstatement has been ordered after parole or probation or conditional pardon for part of a sentence, the limitation period for the remaining sentence or the remainder of the other proceedings shall be counted from the provision on reinstatement. Without prejudice to para 4(3), if execution is interrupted otherwise than by parole, probation or pardon, the period shall begin to run from the interruption.

Section 97a

If no application for attachment has been submitted in advance, the fine shall lapse after

- 1) 5 years when the fine does not exceed DKK 10,000, and
- 2) 10 years when the fine exceeds DKK 10,000.

Para 2. Commutation of a fine lapses after 3 years, unless its execution has begun beforehand. However, for fines exceeding DKK 10,000, the deadline is 5 years.

Para 3. The limitation periods referred to in para 1 shall begin to run from the date on which the decision was enforceable under the general rules of law. Time limits shall not include the time during which execution is deferred by a suspended sentence or conditional pardon.

Para 4. The limitation period for confiscation claims is 10 years.

bb. Amnesty and Pardon

Section 97b and 97c are presented regarding to amnesty and pardon:

2

Section 97b

Criminal consequences cannot be enforced after the death of the convicted person.

Para 2. The Public Prosecutor's Office may, however, appeal against the maintenance of confiscation to the court which heard the case at first instance. Confiscation may be maintained only in respect of objects or sums recovered as proceeds from the offence or corresponding to such proceeds. The court may amend the confiscation clause so that an amount is confiscated instead of objects. The decision of the court shall be made by order.

Para 3. Decisions under section 164(5) may be enforced after the death of the convicted person.

Section 97c

In the same way as for punishment, pardons can be granted for confiscation.

cc. Opposing legal validity

The rules on judgments and final decisions by Danish justice authorities like the Danish courts are stipulated below within this volume, see → Some rules on Defence laws.

3

dd. Abatement of action (Dispense with prosecution, Waiver of Charges)

This section sets out the circumstances under which the prosecution may be discontinued, charges may be waived, or proceedings may be initiated, and the time limits within which such decisions must be made. The decision on the proceeding of the criminal action is made according to chapter 65, ss. 718 et seq. CPC:

4

Chapter 65 Prosecution

Section 718⁵⁹

Within the area of criminal procedure, the courts shall only act at the request of the public prosecutor or a private prosecutor.

⁵⁹ Kapitel 65 Påtalen

§ 718.

Retterne træder inden for strafferetsplejens område kun i virksomhed efter begæring af anklagemyndigheden eller en privat påtaleberettiget.

Section 718a⁶⁰

A decision to discontinue prosecution, waive charges, or bring charges shall be made within a reasonable time after the time when the police have informed the accused of the charge. If the accused is remanded in custody, or if the accused is under 18 years of age, a decision to drop charges, dismiss charges or indictment must be made as soon as possible.

Subsection 2. If a decision to drop charges, dismiss charges or indictment has not been made, or if a court hearing has not been requested for the purpose of processing the case as a confession case pursuant to section 831 within 1 year and 6 months after the time when the police have informed the accused of the charge, the prosecution shall inform the accused in writing of the basis of the case and when a decision in the case can be expected to be made. If the accused has a defence counsel, a copy of the notification must be sent to the defence counsel. A new notification must be made if, one year after the last notification, a decision has still not been made to drop charges, dismiss charges or indictment or to request a hearing with a view to processing the case as a confession case pursuant to section 831.

Section 718b

If a decision on the dropping of charges, dismissal of charges or indictment has not been made, or if a hearing has not been requested for the purpose of hearing the case as a confession case pursuant to section 831 within 1 year and 6 months of the date on which the police have made the accused aware of the charge, the accused may bring the case to court.

Paragraph 2. If, after an overall assessment of the interests of the accused, the injured party, the nature and circumstances of the case and the social significance of the case, there are particular grounds for requiring the prosecution service to be expedited in its decision on the charge, the court may, exceptionally, set a time limit for doing so. The period shall be at least 3 months and not more than 1 year. Without prejudice to paragraph 3, if the prosecution service does not decide on the charges within the time limit

⁶⁰ § 718a.

Afgørelse om påtaleopgivelse, tiltalefrafald eller tiltalerejsning skal træffes inden rimelig tid efter det tidspunkt, hvor politiet har gjort sigtede bekendt med sigtelsen. Er sigtede varetægtsfængslet, eller er sigtede under 18 år, skal en afgørelse om påtaleopgivelse, tiltalefrafald eller tiltalerejsning træffes hurtigst muligt.

Stk. 2. Er afgørelse om påtaleopgivelse, tiltalefrafald eller tiltalerejsning ikke truffet, eller er der ikke anmodet om retsmøde med henblik på sagens behandling som tilståelsessag i medfør af § 831 inden 1 år og 6 måneder efter det tidspunkt, hvor politiet har gjort sigtede bekendt med sigtelsen, skal anklagemyndigheden skriftligt underrette sigtede om, hvorpå sagen beror, og hvornår afgørelse i sagen kan forventes truffet. Har sigtede en forsvarer, skal genpart af underretningen sendes til denne. Der skal ske underretning på ny, hvis der 1 år efter den seneste underretning fortsat ikke er truffet afgørelse om påtaleopgivelse, tiltalefrafald eller tiltalerejsning eller anmodet om retsmøde med henblik på sagens behandling som tilståelsessag i medfør af § 831.

set by the court, charges against the accused shall be deemed to have been dropped by the prosecution service.

Paragraph 3. The court may, at the request of the public prosecutor's office, extend a time limit laid down in accordance with paragraph 2 by a maximum of 1 year at a time if there are special circumstances. The prosecutor's request must be submitted to the court no later than 2 weeks before the expiry of the deadline previously set by the court. If the court finds no grounds for extending the time limit, the prosecution against the accused is deemed to have been dropped by the prosecution service, unless the latter decides on the charge within 2 months of the court's decision not to extend the time limit.

Paragraph 4. The decision of the court shall be made by order. If the court's decision is that no time limit should be set under paragraph 2, the matter may be referred to the court again, but not earlier than 1 year after the court's decision.

Paragraph 5. The request of the accused under paragraph 1 shall contain an address to which communications may be sent.

Paragraph 6. At the hearing held for the purpose of considering an application under paragraph 1, the accused shall be present, unless the court decides otherwise. The accused may be summoned by letter to the address indicated in accordance with paragraph 5. If the accused fails to appear at a hearing to which he or she has been summoned, the application shall be deemed to have lapsed.

Paragraph 7. The injured party and any legal representative shall be informed of the hearing. However, information to injured parties may be omitted where a large number of persons are injured.

Section 719

Public reprimand shall be vested in the Commissioner of Police, unless otherwise provided for in this Act or rules made pursuant to this Act.

Paragraph 2. The Attorney General appeals to the High Court.

Paragraph 3. The Minister for Justice, or the person authorised to do so by the Minister for Justice, shall also lay down detailed rules for allocating the charges between the Director of Public Prosecutions, the Public Prosecutors and the Chief of Police.

Section 721

Prosecution in a case may be dropped, in whole or in part, in cases where:

- (1) where the charge has been found to be unfounded;
- (2) where further prosecution is not otherwise likely to lead to the accused being found guilty; or
- (3) where the conduct of the proceedings would entail difficulties, costs or processing times disproportionate to the importance of the case and the penalty likely to be imposed.

Paragraph 2. The Minister for Justice, or the person authorised to do so by the Minister for Justice, shall lay down detailed rules on the power to dismiss prosecution.

Section 722

Charges in a case may be waived in whole or in part in cases where:

- (1) where the offence charged is not punishable by law in excess of a fine and the offence is of low criminal dignity;
- (2) where, pursuant to Section 723(1), it is stipulated as a condition that the accused be subject to relief measures under Section 52 of the Social Services Act;
- (3) where the accused was under the age of 18 at the time of the offence and conditions are imposed under section 723(1);
- (4) where Section 10b or Section 89 of the Penal Code is applicable, where it is considered that no or only a negligible sentence would be imposed and that conviction would not otherwise be of significant importance;
- (5) where the conduct of the proceedings would entail difficulties, costs or processing times disproportionate to the importance of the case and the penalty likely to be imposed;
- (6) where the law provides specifically for charges to be dropped; or
- (7) where this follows from regulations laid down by the Minister for Justice or the Director of Public Prosecutions.

Paragraph 2. In other cases, charges may only be dropped if there are special mitigating circumstances or other special circumstances and charges cannot be considered necessary in the public interest.

Paragraph 3. The Minister for Justice or the person authorised to do so by the Minister for Justice shall lay down detailed rules on the competence to drop charges.

Section 723

As conditions for a dismissal of charges may be laid down:

- (1) that the accused agrees to pay a fine or enters into confiscation; and
- (2) the same conditions as in suspended sentences.

Paragraph 2. Conditions may be imposed only if the accused has made an unqualified confession in court, the accuracy of which is confirmed by the other circumstances of the case.

Paragraph 3. The conditions shall be determined by the authority entitled to withdraw the charge. The terms must be approved by the court.

Paragraph 4. If a condition is violated, the case may be reopened.

Section 724

When deciding to drop charges or drop charges, the accused, the injured person or, if the injured party has died, the victim's close relatives shall be informed. The same applies to others who may be presumed to have a reasonable interest. An appeal against a decision to drop charges may be lodged with the superior prosecution service in accordance with the rules laid down in Chapter 10. Under the same rules, the accused may appeal against a decision to dismiss charges.

Paragraph 2. If a decision has been made to drop charges or dismiss charges, criminal proceedings against the person who has been charged may only be continued in accordance with the decision of the superior prosecution service, if notice of this has been served on the person concerned within 2 months from the date of the decision, unless the circumstances of the accused have prevented timely service or the conditions for reopening pursuant to section 975 are met.

Paragraph 3. Notwithstanding subsection (718), if the charge is deemed to have been dropped under subsection (2) or (3), the superior prosecutor's office may order that the prosecution be continued only if the conditions for review in section 2 are met.

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

Urgent measures can be taken by the Danish Police, which takes the first steps to initiate an investigation into conduct, which is either reported or comes to the knowledge of the prosecution. **5**

II. Involvement of Danish authorities in the fight against EU-fraud: Police, Tax and Customs investigating on behalf of the Danish prosecution offices

1. The Danish Police and Prosecutor conducting investigative measures.....	112	a) National privilege and immunity provisions, para 1	125
a) Instructions and assignment of investigative measures for national authorities.....	117	aa. Legal (professional) privilege	125
b) Ensuring compliance with national law	119	bb. Privilege against self-incrimination.....	127
c) Urgent measures in accordance with national law necessary to ensure effective investigations	121	b) Immunity provisions	128
2. Hindrances to effective EU fraud and corruption investigations in Danish national law	125	aa. Parliamentary privilege or immunity	128
		bb. National Legislation ..	129
		cc. Provisions on the lifting of immunities?	129
		c) Immunities and Privileges under union law, para 2	130



The main question, which is the focus of this next section is: How do Danish authorities investigate EU fraud offences without the EPPO and what would change if Article 28 EPPO Regulation applied?

Union law, which would apply if Denmark would be part of the EPPO:

Art. 28 Conducting the investigation

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

2. At any time during the investigations conducted by the EPPO, the competent national authorities shall take urgent measures **in accordance with national law** necessary to ensure effective investigations even where not specifically acting under an instruction given by the handling European Delegated Prosecutor. The national authorities shall

without undue delay inform the handling European Delegated Prosecutor of the urgent measures they have taken.

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

- (a) cannot perform the investigation or prosecution; or
- (b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.

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

- (a) the seriousness of the offence, in particular in view of its possible repercussions at Union level;
- (b) when the investigation concerns officials or other servants of the Union or members of the institutions of the Union;
- (c) in the event of failure of the reallocation mechanism provided for in paragraph 3.

In such exceptional circumstances Member States shall ensure that the European Prosecutor is entitled to order or request investigative measures and other measures and that he/she has all the powers, responsibilities and obligations of a European Delegated Prosecutor in accordance with this Regulation and national law.

The competent national authorities and the European Delegated Prosecutors concerned by the case shall be informed without undue delay of the decision taken under this paragraph.

As part of the introduction to section in this manual, which is relevant to all prosecutors and EDPs of the EPPO investigating a case that concerns Denmark as a non-participating country and also affects the academic and political debate about specialized investigative personnel in Denmark, the following can be said: The conduct of investigations is dependent on instruction relationships, whereby the dependency in classically national systems, in the area of EU anti-fraud investigations is a problem of interference. The investigations on national level and at Union-level must be distinguished. Especially at the Union level, the investigation is different than at the national level. In many cases, investigations will be conducted in Union institutions (EU IBOAs). The EPPO has started to set up working arrangements for this type of investigation. Denmark is not the seat of any EU institution. The main locations of EU Institutions are in Luxemburg, Belgium, Germany, Poland, France, Italy, Czech Republic and Greece.

1

- 2 The EPPO has started to set up working arrangements with non-participating countries. At the moment of writing (01/2023) the EPPO has not concluded a Working Arrangement with Denmark.
- 3 For the different PIF offences, the specific country system provides different investigative bodies acting by virtue of different national codes such as the General Tax Code, the police laws and the customs laws including the customs administration laws. It depends, for the analysis of Art. 28 EPPO Regulation, on whether a centrally governed country of the EU is affected or whether there is a federal system with differentiated competences of the federal units.
- 4 In addition, the lawfulness of the action is particularly important as a generalisation of all instructions from the staff, which are made available to the EPPO and the EDPs from the national resource area.

1. The Danish Police and Prosecutor conducting investigative measures

- 5 The rules on the Danish Prosecutor and its status are enshrined in Chapter 10 of the Danish Administration of Justice Act:

Fourth section The prosecution

Chapter 10 The prosecution

Section 95⁶¹

The public prosecutors are the attorney-general, the state prosecutors, the police directors and the persons who have been hired to assist them in the judicial processing of criminal cases.

Section 96⁶²

The task of the public prosecutors is, in connection with the police, to prosecute crimes according to the rules of this Act.

PCS. 2. The public prosecutors must advance every case with the speed that the nature of the case allows, thereby not only ensuring that the guilty are brought to justice, but also that the prosecution of the innocent does not take place.

⁶¹ Fjerde afsnit. Anklagemyndigheden
Kapitel 10 Anklagemyndigheden

§ 95. De offentlige anklagere er rigsadvokaten, statsadvokaterne, politidirektørerne samt de personer, der er antaget til bistand for disse ved den retlige behandling af straffesager.

⁶² § 96. De offentlige anklageres opgave er i forbindelse med politiet at forfølge forbrydelser efter reglerne i denne lov.

Stk. 2. De offentlige anklagere skal fremme enhver sag med den hurtighed, som sagens beskaffenhed tillader, og derved ikke blot påse, at straffskyldige drages til ansvar, men også at forfølgning af uskyldige ikke finder sted.

Section 97⁶³

Anyone who, according to Chapter 2 of the Public Administration Act, may be considered incompetent in relation to a specific case, may not act as a prosecutor in the case.

Section 98⁶⁴

The Minister of Justice is the superior of the public prosecutors and supervises them.
PCS. 2. The Minister of Justice may lay down provisions on the public prosecutors' performance of their duties.

PCS. 3. The Minister of Justice can give the public prosecutors instructions regarding the handling of specific cases, including whether to start or continue, refrain from or stop prosecution. An order pursuant to this provision to begin or continue, refrain from or stop prosecution must be in writing and accompanied by a reason. Furthermore, the Speaker of the Danish Parliament must be notified in writing of the order. If the considerations mentioned in Section 729c, subsection 1, makes it necessary, notification can be postponed. The order is considered in relation to access to documents in accordance with Sections 729 a–d as material that the police have provided for use in the case.

PCS. 4. The Minister of Justice processes complaints about decisions made by the Attorney General as the first instance, cf. however the provision in Section 1018 e, subsection 4.

Section 99⁶⁵

The Attorney General handles criminal proceedings at the Supreme Court and acts at the Special Complaint.

PCS. 2. The Attorney General is superior to the other public prosecutors and supervises them. The Attorney General can lay down provisions and issue orders according to rules corresponding to section 98, subsection 2 and par. 3, 1st point

⁶³ § 97. Den, der efter kapitel 2 i forvaltningsloven må anses for inhabil i forhold til en bestemt sag, må ikke virke som anklager i sagen.

⁶⁴ § 98. Justitsministeren er de offentlige anklagere overordnet og fører tilsyn med disse.

Stk. 2. Justitsministeren kan fastsætte bestemmelser om de offentlige anklageres udførelse af deres opgaver.

Stk. 3. Justitsministeren kan give de offentlige anklagere pålæg vedrørende behandlingen af konkrete sager, herunder om at begynde eller fortsætte, undlade eller standse forfølgning. Et pålæg i medfør af denne bestemmelse om at begynde eller fortsætte, undlade eller standse forfølgning skal være skriftligt og ledsaget af en begrundelse. Endvidere skal Folketingets formand skriftligt underrettes om pålægget. Hvis de hensyn, der er nævnt i § 729 c, stk. 1, gør det påkrævet, kan underretning udsættes. Pålægget betragtes i relation til aktindsigt i medfør af §§ 729 a–d som materiale, politiet har tilvejebragt til brug for sagen.

Stk. 4. Justitsministeren behandler klager over afgørelser truffet af rigsadvokaten som 1. instans, jf. dog bestemmelsen i § 1018 e, stk. 4.

⁶⁵ § 99. Rigsadvokaten varetager udførelsen af straffesager ved Højesteret og virker ved Den Særlige Klageret.

Stk. 2. Rigsadvokaten er de øvrige offentlige anklagere overordnet og fører tilsyn med disse. Rigsadvokaten kan fastsætte bestemmelser og meddele pålæg efter regler svarende til § 98, stk. 2 og stk. 3, 1. pkt.

Stk. 3. Rigsadvokaten behandler klager over afgørelser truffet af statsadvokaterne som 1. instans. Rigsadvokatens afgørelse i en klagesag kan ikke påklages til justitsministeren.

PCS. 3. The Attorney General handles complaints about decisions made by the state attorneys as the first instance. The Attorney General's decision in an appeal case cannot be appealed to the Minister of Justice.

Section 100⁶⁶

One or more state attorneys are appointed by the Supreme Court to assist the attorney general.

PCS. 2. The Attorney General can also authorise others to act as prosecutors at the Supreme Court or at the Special Appeal.

Section 101⁶⁷

The state prosecutors handle the execution of criminal cases at the district courts. The Attorney General can decide that the state attorneys within a more closely defined case area for the time being also handle the execution of criminal cases at the district courts.

PCS. 2. The public prosecutors oversee the police directors' handling of criminal cases and handle complaints about decisions made by the police directors regarding criminal prosecution. The state prosecutors' decisions in appeals cannot be appealed to the attorney general and the minister of justice. The public prosecutors can lay down provisions and issue orders according to rules corresponding to section 98, subsection 2 and par. 3, 1st point.

Section 102⁶⁸

The deadline for complaints pursuant to Section 98, subsection 4, Section 99, subsection 3, 1st point, and Section 101, subsection 2, 1st point, is 4 weeks after the complainant has been notified of the decision. If the complaint is made after the expiry of this period, it must be dealt with if the exceeding of the period can be considered excusable.

⁶⁶ § 100. Til bistand for rigsadvokaten udnævnes en eller flere statsadvokater ved Højesteret.

Stk. 2. Rigsadvokaten kan bemyndige også andre til at virke som anklager ved Højesteret eller ved Den Særlige Klageret.

⁶⁷ § 101. Statsadvokaterne varetager udførelsen af straffesager ved landsretterne. Rigsadvokaten kan bestemme, at statsadvokaterne inden for et nærmere afgrænset sagsområde indtil videre tillige varetager udførelsen af straffesager ved byretterne.

Stk. 2. Statsadvokaterne fører tilsyn med politidirektørenes behandling af straffesager og behandler klager over afgørelser truffet af politidirektørenes vedrørende strafforfølgning. Statsadvokaternes afgørelser i klagesager kan ikke påklages til rigsadvokaten og justitsministeren. Statsadvokaterne kan fastsætte bestemmelser og meddele pålæg efter regler svarende til § 98, stk. 2 og stk. 3, 1. pkt.

⁶⁸ § 102. Fristen for klager efter § 98, stk. 4, § 99, stk. 3, 1. pkt., og § 101, stk. 2, 1. pkt., er 4 uger efter, at klageren har fået meddelelse om afgørelsen. Fremkommer klagen efter udløbet af denne frist, skal den behandles, såfremt fristoverskridelsen må anses for undskyldelig.

Stk. 2. Bestemmelserne i § 98, stk. 4, § 99, stk. 3, og § 101, stk. 2, finder tilsvarende anvendelse på klager over afgørelser om aktindsigt. Det samme gælder bestemmelsen i stk. 1.

PCS. 2. The provisions in section 98, subsection 4, Section 99, subsection 3, and section 101, subsection 2, applies correspondingly to complaints about decisions on access to documents. The same applies to the provision in subsection 1.

Section 103⁶⁹

The Minister of Justice determines the number of state attorneys and the distribution of business between them.

PCS. 2. The Attorney General appoints the necessary legal assistants for the state attorneys when conducting criminal cases before the High Court and the District Court, cf. section 101, subsection 1, and Section 104, subsection 1, 2. pt.

PCS. 3. The Attorney General can also authorise others to act as prosecutors at the High Court in a single case.

PCS. 4. The Attorney General may instruct a State Attorney to take over the processing of one or more cases that belong to another State Attorney.

Section 104⁷⁰

The directors of police and the public prosecutors employed by them, as well as other employees who are authorised to do so, handle the execution of criminal cases at the city courts, cf. however Section 101, subsection 1, and Section 103, subsection 2. The public prosecutor may in special cases decide that the execution of a criminal case, which is heard at the district court with the assistance of jurors or with the assistance of judges as a result of the defendant's decision pursuant to section 687, must be handled by the public prosecutor.

PCS. 2. The Attorney General can also authorise others to act as prosecutors at the district court in a single case.

PCS. 3. The public prosecutor can instruct a police director to take over the processing of one or more cases that belong to another police director.

⁶⁹ § 103. Justitsministeren fastsætter antallet af statsadvokater og fordelingen af forretningerne mellem disse.

Stk. 2. Rigsadvokaten beskikker de fornødne juridiske medhjælpere for statsadvokaterne ved udførelsen af straffesager for landsretten og ved byretten, jf. § 101, stk. 1, og § 104, stk. 1, 2. pkt.

Stk. 3. Rigsadvokaten kan bemyndige også andre til at virke som anklager ved landsretten i en enkelt sag.

Stk. 4. Rigsadvokaten kan pålægge en statsadvokat at overtage behandlingen af en eller flere sager, som henhører under en anden statsadvokat.

⁷⁰ § 104. Politidirektørerne og de offentlige anklagere, der er ansat hos disse, samt andre ansatte, der bemyndiges hertil, varetager udførelsen af straffesager ved byretterne jf. dog § 101, stk. 1, og § 103, stk. 2. Statsadvokaten kan i særlige tilfælde bestemme, at udførelsen af en straffesag, der behandles ved byretten under medvirken af nævninger eller under medvirken af domsmænd som følge af tiltaltes beslutning efter § 687, skal varetages af statsadvokaten.

Stk. 2. Rigsadvokaten kan bemyndige også andre til at virke som anklager ved byretten i en enkelt sag.

Stk. 3. Statsadvokaten kan pålægge en politidirektør at overtage behandlingen af en eller flere sager, der henhører under en anden politidirektør.

Section 105⁷¹

The Attorney-General, the state attorneys and the persons who are hired to assist them or a director of police in the judicial processing of criminal cases, must have passed the legal master's examination. The Attorney General and State Attorneys must as a rule meet the conditions for being appointed as a lawyer with regard to prior practical activity, cf. Section 119.

PCS. 2. Assistants for a public prosecutor and those who are authorised to act as prosecutors at the Supreme Court, the High Court or the District Court in accordance with the rules in section 100, subsection 2, Section 103, subsection 3, or Section 104, subsection 2, must meet the conditions in subsection 1.

PCS. 3. The Attorney General can appoint the Consumer Ombudsman and employees of the Danish Competition and Consumer Authority to oversee the execution of criminal proceedings before the district court and the high court in cases relating to the Act on Marketing.

PCS. 4. The Attorney General may appoint employees of the Competition and Consumer Agency to handle criminal proceedings before the district courts in cases relating to the Competition Act.

Section 106⁷²

Activity as a lawyer does not exclude from acceptance as an assistant to a public prosecutor or from authorisation to act as a prosecutor in a single case.

Section 107⁷³

Persons who act as prosecutors in a single case, cf. Section 100, subsection 2, Section 103, subsection 3, and section 104, subsection 2, receives remuneration from the public sector for the individual case, unless the execution of the case can be regarded as part of the performance of the person concerned service.

⁷¹ § 105. Rigsadvokaten, statsadvokaterne og de personer, der er antaget til bistand for disse eller for en politidirektør ved den retlige behandling af straffesager, skal have bestået juridisk kandidateksamen. Rigsadvokaten og statsadvokaterne skal i reglen opfylde betingelserne for at blive beskikket som advokat med hensyn til forudgående praktisk virksomhed, jf. § 119.

Stk. 2. Medhjælpere for en statsadvokat og de, der bemyndiges til at virke som anklager ved Højesteret, landsretten eller byretten efter reglerne i § 100, stk. 2, § 103, stk. 3, eller § 104, stk. 2, skal opfylde betingelserne i stk. 1.

Stk. 3. Rigsadvokaten kan beskikke Forbrugerombudsmanden og ansatte i Konkurrence- og Forbrugerstyrelsen til at varetage udførelsen af straffesager for byretten og landsretten i sager vedrørende lov om markedsføring.

Stk. 4. Rigsadvokaten kan beskikke ansatte i Konkurrence- og Forbrugerstyrelsen til at varetage udførelsen af straffesager for byretterne i sager vedrørende konkurrenceloven.

⁷² § 106. Virksomhed som advokat udelukker ikke fra antagelse som medhjælper for en statsadvokat eller fra bemyndigelse til at optræde som anklager i en enkelt sag.

⁷³ § 107. Personer, der virker som anklagere i en enkelt sag, jf. § 100, stk. 2, § 103, stk. 3, og § 104, stk. 2, modtager vederlag af det offentlige for den enkelte sag, medmindre udførelsen af sagen må anses som led i udførelsen af den pågældendes tjeneste.

The main aim of Danish Police is it to conduct, prior to the prosecutor, parallel or instructed investigations and to discover a conduct, which could be or is assessed as criminal relevant conduct. Afterwards the aim is pursued by carrying out the investigation measures, but first the instructions and the assignment of those tasks must be done to secure e.g. evidence and find a suspect.

a) Instructions and assignment of investigative measures for national authorities

The Danish system of cooperation between police & customs & financial authorities and prosecutors as well as the enshrinement of urgent measures in order ensure an effective investigation of e.g. a fraud offence can be detected by reading the following Chapters of the Code of Judicial Procedure, which includes a section that other states call simply the Criminal Procedure Code:

Legal basis:


- Chapter 11, Code of Judicial Procedure
- Chapter 68, s. 745d
- Chapter 69, Code of Judicial Procedure
- s. 755 The police may arrest a person who is reasonably suspected of a criminal offence subject to public prosecution, if arrest may be deemed necessary to prevent further criminal offence, to ensure his provisional presence or to prevent his association with others. [...]
- Chapter 72, 73 (Body intervention, search etc.)

List 1: Instructed and assigned National authorities (list)

6

<i>Instructed and assigned National authorities (list):</i>
Support: Danish Police (<i>Dansk Politi</i>) Danish Tax and Customs Authorities (<i>SKAT</i>) Danish Public Prosecution Service

Police Investigation Authorities 1

	Police Act
<p>Chapter 2 Police tasks</p> <p>Section 2</p> <p>The police have a task</p> <ol style="list-style-type: none"> 1) to prevent criminal offences, disturbance of public peace and order as well as danger to the safety of individuals and the public, 2) to avert danger of disturbance of public peace and order as well as danger to individual and public safety, 3) to bring criminal activities to an end as well as to investigate and prosecute criminal matters, 4) to provide citizens with assistance in other dangerous situations, 5) to carry out control and supervisory tasks in accordance with applicable law, 6) to provide assistance to other authorities under applicable law and 7) to carry out other tasks that follow from applicable law or otherwise have a natural connection to the police’s activities. <p>Further rules on the role of the police are stipulated by the Danish Administration of Justice Act, see Chapter 11, Sections 108 et seq.</p>	
<p>Administration of Justice Act / Retsplejeloven</p>	
<p>Section 719⁷⁴</p> <p>Public prosecution shall be the responsibility of the Commissioner of Police, unless otherwise provided by this Act or rules laid down pursuant to this Act.</p> <p>Paragraph 2. The Public Prosecutor prosecutes appeal cases in the High Court.</p> <p>Paragraph 3. The Minister of Justice or the person authorised by the Minister of Justice to do so shall otherwise lay down further rules on the distribution of prosecution between the Director of Public Prosecutions, the State Prosecutors and the Chief Constables.</p> <p>Section 742</p> <p>Reports⁷⁵ of criminal offences are submitted to the police.</p>	

⁷⁴ § 719.

Offentlig påtale tilkommer politidirektøren, medmindre andet følger af denne lov eller regler fastsat i medfør af denne lov.

Stk. 2. Statsadvokaten påtaler ankesager ved landsret.

Stk. 3. Justitsministeren eller den, som justitsministeren bemyndiger dertil, fastsætter i øvrigt nærmere regler om påtalens fordeling mellem rigsadvokaten, statsadvokaterne og politidirektørerne.

⁷⁵ Kapitel 67 *Almindelige bestemmelser om efterforskning*

§ 742.

Anmeldelser om strafbare forhold indgives til politiet.

Paragraph 2. The police, following a report or on their own initiative, initiate an investigation when there is a reasonable suspicion that a criminal offence pursued by the public authorities has been committed.

b) Ensuring compliance with national law

The compliance with national law is ensured by various decrees of the Minister of Justice and via the following general investigation provisions: 7

Administration of Justice Act

Section 719⁷⁶

Public prosecution shall be the responsibility of the Commissioner of Police, unless otherwise provided by this Act or rules laid down pursuant to this Act.

Subclause 2. The Public Prosecutor prosecutes appeal cases in the High Court.

Subclause 3. The Minister of Justice or the person authorised by the Minister of Justice to do so shall otherwise lay down further rules on the distribution of prosecution between the Director of Public Prosecutions, the State Prosecutors and the Chief Constables.

Section 720⁷⁷

The Minister of Justice may stipulate that public prosecution in specified cases is conditional on the decision of the Minister of Justice or the Director of Public Prosecutions.

Subclause 2. If public prosecution under the legislation is conditional on an application, prosecution may only take place if an application is made by a person entitled under section 725. A notification from the person entitled shall be deemed to be a request for

Stk. 2. Politiet iværksætter efter anmeldelse eller af egen drift efterforskning, når der er rimelig formodning om, at et strafbart forhold, som forfølges af det offentlige, er begået.

⁷⁶ § 719.

Offentlig påtale tilkommer politidirektøren, medmindre andet følger af denne lov eller regler fastsat i medfør af denne lov.

Stk. 2. Statsadvokaten påtaler ankesager ved landsret.

Stk. 3. Justitsministeren eller den, som justitsministeren bemyndiger dertil, fastsætter i øvrigt nærmere regler om påtalens fordeling mellem rigsadvokaten, statsadvokaterne og politidirektørerne.

⁷⁷ § 720.

Justitsministeren kan fastsætte, at offentlig påtale i nærmere angivne sager er betinget af justitsministerens eller rigsadvokatens beslutning.

Stk. 2. Hvis offentlig påtale efter lovgivningen er betinget af en begæring, kan påtale kun ske, såfremt begæring herom fremsættes af en efter § 725 berettiget. En anmeldelse fra den berettigede anses som en begæring om offentlig påtale, medmindre andet fremgår af anmeldelsen. Er privat påtale begyndt, kan offentlig påtale ikke begæres. Påtalemyndigheden kan nægte at efterkomme en begæring om offentlig påtale, der udelukker nogen medskyldig fra forfølgningen. Angår begæringen kun nogle af de skyldige uden at udelukke mulige medskyldige, kan påtalemyndigheden udstrække forfølgningen til disse, medmindre den berettigede efter at have haft lejlighed til at udtale sig herom modsætter sig dette. I så fald finder 4. pkt. anvendelse.

Stk. 3. Statsadvokaten og politidirektøren kan uanset bestemmelserne i stk. 1 og 2 foretage uopsættelige handlinger, når forholdet må antages at være den, der kan beslutte eller begære påtale, ubekendt og omstændighederne gør det antageligt, at påtale vil blive besluttet eller begæret. Tilbagekaldes en begæring efter stk. 2, inden der er afsagt dom, standses forfølgningen, medmindre påtalemyndigheden skønner, at almene hensyn kræver, at forfølgningen fortsættes.

public prosecution, unless the notification states otherwise. Where private prosecution has begun, public prosecution may not be requested. The Public Prosecutor may refuse to comply with a request for a public prosecution which excludes an accomplice from prosecution. If the request concerns only some of the guilty parties, without excluding possible accomplices, the prosecution may extend the prosecution to them, unless the person concerned, after having been given an opportunity to make his views known, objects. In such a case, the fourth sentence shall apply.

Paragraph 3. Notwithstanding the provisions of subsections 1 and 2, the Public Prosecutor and the Commissioner of Police may, notwithstanding the provisions of subsections 1 and 2, take urgent action when the facts must be assumed to be unknown to the person who may decide or request prosecution and the circumstances make it likely that prosecution will be decided or requested. If an application under Paragraph 2 is withdrawn before a judgment has been delivered, the prosecution shall be discontinued unless the prosecution service considers that the public interest requires that the prosecution be continued.

Section 746⁷⁸

The court decides disputes about the legality of the police's investigative steps and about the powers of the accused and the defender, including requests from the defender or the accused about the undertaking of further investigative steps. The decision is made on request by order.

Paragraph 2. In the event of disputes about the legality of the police's decisions pursuant to Section 729a, subsection 3, 1st point, or Section 729b, subsection 2, 1st point, the police must explain the reasons for the decision that has been made. The court can also order the police to present to the court the material to which the dispute relates.

Paragraph 3. If the judge becomes aware that a measure initiated by the police pursuant to this Act and which requires the court's approval has not been submitted to the court before the expiry of the period set for this purpose, he decides, after demanding an explanation from the police, whether the measure should be maintained or revoked.

⁷⁸ § 746.

Retten afgør tvistigheder om lovligheden af politiets efterforskningskridt samt om sigtedes og forsvarerens beføjelser, herunder om begæringer fra forsvareren eller sigtede om foretagelsen af yderligere efterforskningskridt. Afgørelsen træffes på begæring ved kendelse.

Stk. 2. Ved tvistigheder om lovligheden af politiets afgørelser efter § 729 a, stk. 3, 1. pkt., eller § 729 b, stk. 2, 1. pkt., skal politiet redegøre for grundene til den afgørelse, der er truffet. Retten kan endvidere pålægge politiet over for retten at fremlægge det materiale, som tvisten angår.

Stk. 3. Bliver dommeren bekendt med, at en foranstaltning, der er iværksat af politiet i medfør af denne lov, og som kræver rettens godkendelse, ikke er forelagt retten inden udløbet af den herfor fastsatte frist, bestemmer han efter at have afkrævet politiet en redegørelse, om foranstaltningen skal opretholdes eller ophæves.

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

Provisions in relation to the quick gathering of evidence can be found e.g. in the Administration of Justice or Police Act: **8**

Administration of Justice Act

Section 720⁷⁹

[...] Paragraph 3. Notwithstanding the provisions of subsections 1 and 2, the Public Prosecutor and the Commissioner of Police may, notwithstanding the provisions of subsections 1 and 2, take urgent action when the facts must be assumed to be unknown to the person who may decide or request prosecution and the circumstances make it likely that prosecution will be decided or requested. If an application under Paragraph 2 is withdrawn before a judgment has been delivered, the prosecution shall be discontinued unless the prosecution service considers that the public interest requires that the prosecution be continued.

The Police Act

Act on police activities

Chapter 4 Police use of force

General provisions

Section 14

The provisions in this chapter apply to the police's use of force both within and outside the criminal justice system.

Section 15

The police must use force

- 1) with a view to preventing and averting the risk of disruption of public peace and order as well as risk to the safety of individuals or the public,
- 2) for the purpose of checking whether someone possesses or carries a weapon,
- 3) with a view to bringing criminal activity to an end or in connection with the investigation and prosecution of criminal matters,
- 4) as part of assistance to other authorities,
- 5) as part of carrying out control and supervisory tasks as well as

⁷⁹ § 720.

[...] Stk. 3. Statsadvokaten og politidirektøren kan uanset bestemmelserne i stk. 1 og 2 foretage uopsættelige handlinger, når forholdet må antages at være den, der kan beslutte eller begære påtale, ubekendt og omstændighederne gør det antageligt, at påtale vil blive besluttet eller begæret. Tilbagekaldes en begæring efter stk. 2, inden der er afsagt dom, standses forfølgningen, medmindre påtalemyndigheden skønner, at almene hensyn kræver, at forfølgningen fortsættes.

6) in order to assess whether a child or an intoxicated, sick or helpless person is in danger.

Section 16

The police's use of force must be necessary and justifiable and must only be done with means and to an extent that is in reasonable proportion to the interest sought to be protected. Whether the use of force entails a risk that outsiders may be harmed must be included in the assessment of the justification.

PCS. 2. Force must be used as gently as the circumstances permit, and in such a way that any damage is limited to a minimum.

Special provisions on certain means of power

Section 17

Firearms may only be used for the purpose of

- 1) to prevent an initiated or imminent dangerous attack on a person,
- 2) to avert imminent danger otherwise to people's lives or for people to suffer serious health damage,
- 3) to avert an initiated or imminently dangerous attack on socially important institutions, companies or facilities,
- 4) to ensure the apprehension of persons who have or are reasonably suspected of having initiated or carried out a dangerous attack on a person, unless there is deemed to be no risk that the person in question will commit such an attack again,
- 5) to ensure the apprehension of persons who have or are reasonably suspected of having initiated or carried out a dangerous attack on socially important institutions, companies or facilities, or
- 6) to ensure the apprehension of persons who have or are reasonably suspected of having committed serious crimes against the independence and security of the state, against the state constitution or the highest state authorities.

PCS. 2. Before the police fire a shot that entails a risk of injury to a person, the person concerned must, as far as possible, first by shouting a warning and then by firing a warning shot, indicate that the police intend to shoot if the police's orders are not complied with. Furthermore, it must be ensured as far as possible that the person concerned has the opportunity to comply with the order.

PCS. 3. If there is an imminent risk that outsiders may be hit, shooting may only be done in extreme cases of emergency.

PCS. 4. A police officer who is under direct command may only use firearms on orders from a manager, unless there is a situation as mentioned in subsection 1, No. 1 or No. 2.

PCS. 5. If the police's firing has resulted in injury to a person, the person concerned must be immediately examined by a doctor.

Section 18

Staff may only be used with a view to

- 1) to prevent an initiated or imminent attack on a person,
- 2) to avert imminent danger otherwise to the life or health of persons,
- 3) to avert an initiated or imminent attack on socially important institutions, companies or facilities,
- 4) to avert an incipient or imminent attack on property,
- 5) to ensure the implementation of service actions against which there is active resistance, or
- 6) to ensure the implementation of acts of service against which there is passive resistance, if the implementation of the act of service is considered urgent and other and less intrusive use of force is deemed obviously unsuitable.

PCS. 2. Before batons are used for the purpose of clearing streets, buildings, etc. for a large number of people, the person concerned must, as far as possible, be informed that the police intend to use batons if the police's orders are not complied with. Furthermore, it must be ensured as far as possible that the person concerned has the opportunity to comply with the order.

PCS. 3. If the police's use of a baton against a person has resulted in injury, the person in question must be immediately examined by a doctor, unless it is considered obviously safe to omit a medical examination.

Section 19

Dogs may only be used for the purpose of

- 1) to prevent an initiated or imminent attack on a person,
- 2) to avert imminent danger otherwise to the life or health of persons,
- 3) to avert an initiated or imminent attack on socially important institutions, companies or facilities,
- 4) to avert an incipient or imminent attack on property,
- 5) to ensure the apprehension of persons,
- 6) to ensure the implementation of service actions against which there is active resistance, or
- 7) to ensure the implementation of acts of service against which there is passive resistance, if the implementation of the act of service is considered urgent and other and less intrusive use of force is deemed obviously unsuitable.

PCS. 2. Before a dog is used against a person, the person concerned must be notified as far as possible that the police intend to use a dog if the police's order is not complied with. Furthermore, it must be ensured as far as possible that the person concerned has the opportunity to comply with the order.

PCS. 3. If the police's use of a dog against a person has resulted in injury, the person in question must be immediately examined by a doctor, unless it is considered obviously safe to omit a medical examination.

Section 20

Gas may only be used for the purpose of

- 1) to prevent an initiated or imminent attack on a person,
- 2) to avert imminent danger otherwise to the life or health of persons,
- 3) to avert an initiated or imminent attack on socially important institutions, companies or facilities,
- 4) to avert a commenced or imminent attack on property or
- 5) to ensure the implementation of service actions against which there is active or passive resistance.

PCS. 2. Before gas is used against a person, the person concerned must be informed as far as possible that the police intend to use gas if the police's orders are not complied with. Furthermore, it must be ensured as far as possible that the person concerned has the opportunity to comply with the order.

PCS. 3. If the police's use of gas against a person has caused discomfort that is estimated to require medical attention, the person concerned must be immediately examined by a doctor.

Section 20a

Pepper spray may only be used for the purpose of

- 1) to prevent an initiated or imminent attack on a person,
- 2) to avert imminent danger otherwise to the life or health of persons,
- 3) to avert an initiated or imminent attack on socially important institutions, companies or facilities,
- 4) to avert an incipient or imminent attack on property,
- 5) to ensure the implementation of service actions against which there is active resistance, or
- 6) to ensure the implementation of acts of service against which there is passive resistance, if the implementation of the act of service is considered urgent and other and less intrusive use of force is deemed obviously unsuitable.

PCS. 2. Before pepper spray is used against a person, as far as possible the person concerned must be informed that the police intend to use pepper spray if the police's orders are not complied with. Furthermore, it must be ensured as far as possible that the person concerned has the opportunity to comply with the order.

PCS. 3. If the police's use of pepper spray against a person has caused discomfort that is estimated to require medical attention, the person concerned must be immediately examined by a doctor.

Section 21

The Minister of Justice lays down detailed rules on the police's use of firearms, batons, dogs, gas and pepper spray.

PCS. 2. The Minister of Justice can also lay down detailed rules on the use of force by the police.

2. Hindrances to effective EU fraud and corruption investigations in Danish national law

Union law, which would apply if Denmark joined the EPPO Mechanism

Art. 29 Lifting privileges or immunities

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.

This section explores hindrances to EU fraud investigations in Denmark, which are equal to Art. 29 EPPO Regulation. Even if Denmark is not part of the EPPO, it will conduct investigations on behalf of OLAF or with its own national prosecution services. The next section can as well be read as a hypothetical consideration for the situation that Denmark joins the Area of Criminal Justice one day. This depends on the parties, political changes and elections that will take place in the future. **9**

a) National privilege and immunity provisions, para 1

aa. Legal (professional) privilege

In the area of the rules on lawyers, and the statutes of the Danish Bar Association the following Acts apply: **10**

- Statute of the Bar Association – 4 October 2022 (*Vedtægt for Advokatsamfundet – 4. oktober 2022*)
- Executive order on collegial discussion – BEK no. 1423 of 11.12.2007 (*Bekendtgørelse om kollegial samtale – BEK nr. 1423 af 11.12.2007*)

- The Bar Ethics Rules 1 September 2022 (*De Advokatetiske Regler 1 September 2022*)
- DLA Piper has stated that “according to the Code of Conduct for Danish lawyers, the concept of confidentiality is founded in the rule of law.”⁸⁰
- The new rules on the ethics of lawyers in Denmark contain further rules:

Chapter 5 Confidentiality

Article 15

Confidentiality is a condition for the lawyer’s work and a fundamental duty and right, which must be respected not only in the interest of the individual, but also in the interest of the legal community.

Article 16

The duty of confidentiality applies without time limit and also applies after the case for the client is terminated.

PCS. 2. The duty of confidentiality applies to all information that the lawyer has received during his work for the client.

However, a defence counsel can speak to the press in general terms about the progress of the criminal case and similar issues.

PCS. 3. The duty of confidentiality applies regardless of which case the lawyer handles for the client.

Article 17

A lawyer may share confidential information with lawyers and others employed

PCS. 2. The duty of confidentiality applies to all information that the lawyer has received during his work for the client.

However, a defence counsel can speak to the press in general terms about the progress of the criminal case and similar issues.

Article 18

The duty of confidentiality does not prevent the lawyer from passing on information in the following cases:

- 1) The client has, on an informed basis, given consent for specific information to be passed on, unless otherwise stipulated in the legislation or in an order according to the legislation.
- 2) The lawyer is legally obliged to pass on the information.

⁸⁰ See DLA Piper, <https://www.dlapiperintelligence.com/legalprivilege/insight/?c=dk>. Accessed 31 December 2024.

3) Dissemination takes place in legitimate pursuit of obvious public interest or of one's own or that of other's needs.

Article 19

The lawyer must ensure that the lawyer's authorised representatives, partners, cf. section 124 c, subsection of the Administrative Procedure Act. 1, no. 2, staff and others who are otherwise employed by the law firm are made aware that those concerned have the same duty of confidentiality as the lawyer, regardless of whether they are lawyers or not.

Article 20

When lawyers practice law in a community, in a law firm, cf. section 124 of the Administrative Procedure Act, or in a partnership, the rules in Articles 15–19 apply to the partnership, the law firm and the partnership and in the mutual relationship between its participants, including employed lawyers.

PCS. 2. Correspondingly, the rules in Articles 15–19 apply to other collaborations, co-operatives and partnerships between lawyers or law firms, if they appear in relation to third parties as a partnership or law firm.

bb. Privilege against self-incrimination

In Danish criminal law, the prohibition *nemo tenetur se ipsum accusare* is enshrined in Section 752 of the Judicial Procedure Act for the accused.⁸¹ Thus, the provision is included next to the general provisions on investigations in Denmark.

11

Chapter 68 Interrogations and special investigative steps

Section 750

The police can conduct interrogations, but cannot compel anyone to give a statement, and no coercion may be used to get someone to make a statement. However, everyone is obliged to give their name, address and date of birth to the police upon request. Failure to do so is punishable by a fine.

Section 751

The essential content of the explanations given is added to the reports, and particularly important parts of the explanations are reproduced as far as possible in the interrogated person's own words.

PCS. 2. The interrogated must be given the opportunity to become familiar with the reproduction of the explanation. Any corrections and additions that were questioned are included. The person questioned is informed that he is not obliged to sign the report.

⁸¹ See Langsted 1998. Further see Feldtmann 2019.

PCS. 3. Phonetic recording of explanations may only take place when the person questioned has been made aware of this.

Section 752⁸²

Before the police interrogate an accused person, **he must be expressly informed of the charge and that he is not obliged to make a statement.** It must appear from the report that these rules have been observed.

PCS. 2. The Minister of Justice lays down rules in which cases the municipal council must be notified of and have access to witness the questioning of accused persons under the age of 18. For suspected persons under the age of 15, the provision in section 821 d applies.

PCS. 3. Questions to an accused may not be asked in such a way that something that has been denied or not acknowledged is assumed to be confessed. Promises, false pretences or threats must not be used.

PCS. 4. The questioning must not be extended solely to obtain a confession. In the case of interrogations that are not quite short, the times for the beginning and end of the interrogation are stated in the report.

PCS. 5. The accused may not consult with his defence counsel or others regarding the immediate answer to a question.

b) Immunity provisions

aa. Parliamentary privilege or immunity

- 12 First of all, it should be remembered that Members of Parliament have absolute freedom of speech in their parliament as this is granted for its members. This situation in most Member States is comparable. This constitutional mechanism keeps the instruments of **checks and balances** in place.⁸³ Although, it might be unjust for the private individual,

⁸² § 752.

Inden politiet afhører en sigtet, skal han udtrykkeligt gøres bekendt med sigtelsen og med, at han ikke er forpligtet til at udtale sig. Det skal af rapporten fremgå, at disse regler er iagttaget.

Stk. 2. Justitsministeren fastsætter regler om, i hvilke tilfælde kommunalbestyrelsen skal underrettes om og have adgang til at overvære afhøringen af sigtede under 18 år. For mistænkte personer under 15 år gælder bestemmelsen i § 821 d.

Stk. 3. Spørgsmål til en sigtet må ikke stilles således, at noget, der er benægtet eller ikke erkendt, forudsættes tilstået. Løfter, urigtige foregivender eller trusler må ikke anvendes.

Stk. 4. Afhøringen må ikke forlænges alene for at opnå en tilståelse. Ved afhøringer, der ikke er ganske kortvarige, anføres i rapporten tidspunkterne for afhøringens begyndelse og afslutning.

Stk. 5. Sigtede må ikke rådføre sig med sin forsvarer eller andre angående den umiddelbare besvarelse af et stille spørgsmål.

⁸³ Callewaert 2021 questions whether the EPPO is tied to ECtHR case-law, if it would, it could apply in cases regarding Art. 29. Already in 2017 Negri tried to find best practices for the EPPO. Nowadays some are already established, but still a profound EPPO related jurisprudence is missing – despite the recent cases of the ECJ. Staffler 2024 on procedural safeguards that are equally protected in nearly all democratic constitutions, see mn. 50 et seq.

it also guarantees a **level of transparency**. The *telos* and *ratio legis* are to ensure that they also enjoy freedom from arrest for any civil debt and can operate their political activity (without the fear of *fumus persecutionis*⁸⁴ “that is, where proceedings are brought by a political adversary or appear to be motivated primarily by the desire to harm the MEP”⁸⁵).

The Danish Parliament explains that “A member of the Folketing cannot be tried in a criminal case or imprisoned without the consent of the Folketing, unless the member is caught in the act.” **13**

The reasoning behind this immunity is equal to reasonings in other Member States: **14**

“The provision on immunity has been introduced to protect members of the Danish Parliament against arbitrary persecution by the government. When you are no longer a member of the Folketing, you can be prosecuted for things that happened while you sat in the Folketing. Members of Parliament can be awarded smaller fines, e.g. for speeding, without the consent of the Danish Parliament, but only if the person in question voluntarily pays the fine. The constitution also gives the members of the Parliament an extended form of freedom of speech when they speak in the Parliament.”⁸⁶

It is not clear if this immunity extends to other offences, but it can be doubted from the reasoning. **15**

bb. National Legislation

Section 8 of the Ministerial Accountability Act binds the expiration of the criminal liability to ss. 93–95 of the Civil Penal Code: **16**

Ministerial Accountability Act

Section 8⁸⁷
 Ministers’ criminal liability expires according to Sections 93–95 of the Civil Penal Code. However, the limitation period is in no case less than 5 years.

cc. Provisions on the lifting of immunities?

There can e.g. defamation proceedings are not brought against the members for something they have said in the Folketing, unless the Folketing gives permission for it. For further information see the “Handbook on parliamentary work”. **17**

⁸⁴ See Stöger 2015, p. 147. This concept is known in the Member states, see Iovene and Recchia 2017, p. 162.

⁸⁵ For this definition see Bradely 2018, Chapter 14, III. Part E.

⁸⁶ See <https://www.ft.dk/da/leksikon/Immunitet>. Accessed 31 December 2024.

⁸⁷ § 8.

Ministres strafansvar forældes efter borgerlig straffelovs §§ 93–95. Forældelsesfristen er dog i intet tilfælde mindre end 5 år.

c) Immunities and Privileges under union law, para 2

- 18** Cf. → Article 29 EPPO Regulation and the subsequent analysis. Union law differs from national law and is not researched here in-depth. **Union law contains a** protocol, which will apply if the immunity or a privilege of a Union official needs to be lifted. It is enshrined in the consolidated version of the Treaty on the Functioning of the European Union **Protocol (No 7) on the privileges and immunities of the European Union** (OJ C 326, 26.10.2012, p. 266–272)”.

III. Collection of Danish Investigation Measures Equivalent to Art. 30 EPPO Measures

1. The core investigation measures for financial fraud and corruption in Denmark (Equivalence to Article 30 EPPO Regulation)	131	cc. Obtainment of the production of stored computer data, encrypted or decrypted	136
a) Investigation measures ..	132	dd. Obtainment of banking account data and traffic data	139
aa. Search Measures	132	ee. Freezing instrumentalities or proceeds of crime, including assets.....	143
(1) Search any premises or land	132	ff. Interception of electronic communications to and from the suspect or accused person	145
(2) Search any means of transport	133	gg. Tracking & Tracing an Object.....	146
(3) Search any private home	133	hh. Other investigative Steps	146
(4) Search any clothes and any other personal property	133	b) Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation.....	149
(5) Search any computer system	133	2. Summary.....	149
bb. Obtainment of the production of any relevant object or document either in its original form or in some other specified form	134		

1. The core investigation measures for financial fraud and corruption in Denmark (Equivalence to Article 30 EPPO Regulation)

Next, it is important to explore the core investigation measures for financial fraud and corruption in Denmark (Equivalence to Article 30 EPPO Regulation). These measures offer many possibilities to discover EU frauds and include intrusive and effective means of investigative tools. Conducting the investigations, it is important to closely obey the law and follow the details. But what kind of measures apply in Denmark, which has the status of a non-participating country and is therefore not bound by the legal force of Art. 30 EPPO Regulation. The next section portrays the legal landscape of provisions that can be used by the Danish Prosecution to uncover the so-called PIF-*Acquis* offences, which were presented above (see → I.1.cc(2) Conditions of Criminality).

a) Investigation measures

aa. Search Measures

- 2 The overview box summarises the findings in relation to search measures and their application under the Danish Judicial Code:

DK*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.”

Authorisations by competent body: s. 794 and s. 796 para 2, 4 and 5 *Retsplejeloven*: “A decision on a search in other cases is made by a court order, cf. 5 and 6. The ruling states the specific circumstances of the case, on which it is based that the conditions for the intervention have been met. The ruling can be reversed at any time. [... 4, 5:] Before the court makes a decision pursuant to subs. 3, [...]”

- 3 The Danish Judicial Code provides for search measures in Chapter 73. Section 793 and 794 are the most important provisions to determine the scope of this measures.

(1) Search any premises or land

- 4 The Danish Police can conduct searches on domestic premises, which is allowed by s. 793 para 1, first and second variant:

Chapter 73 Search

Section 793⁸⁸

According to the rules in this chapter, the police may search

- 1) dwellings and other domestic premises, documents, papers and the like as well as the contents of locked objects and
- 2) other objects and locations outside the house.

PCS. 2. Investigations of locations or objects which are freely accessible to the police are not covered by the rules in this chapter.

PCS. 3. A search to search for a suspect who must be arrested, or a person who must be apprehended with a view to the execution of a criminal sentence or the commutation

⁸⁸ § 793.

Politiet kan efter reglerne i dette kapitel foretage ransagning af

- 1) boliger og andre husrum, dokumenter, papirer og lignende samt indholdet af aflåste genstande og
- 2) andre genstande samt lokaliteter uden for husrum.

Stk. 2. Undersøgelser af lokaliteter eller genstande, som er frit tilgængelige for politiet, er ikke omfattet af reglerne i dette kapitel.

Stk. 3. Ransagning for at eftersøge en mistænkt, der skal anholdes, eller en person, der skal pågribes med henblik på fuldbyrdelse af en straffedom eller forvandlingsstraffen for bøde, kan tillige finde sted efter §§ 759 og 761. Om undersøgelse af en persons legeme og visitation af det tøj, som den pågældende er iført, gælder reglerne i kapitel 72. Om undersøgelse af breve, telegrammer og lignende under forsendelse gælder reglerne i kapitel 71.

penalty for a fine, can also take place in accordance with Sections 759 and 761. On examination of a person's body and inspection of the clothes the person in question is wearing, the rules in chapter 72 apply. The rules in chapter 71 apply to the examination of letters, telegrams and the like in transit.

(2) Search any means of transport

Section 793 para 2 speaks of “locked objects”. If interpreting this from an objective point-of view and with a lay perspective according to the colloquial language this would also encompass means of transport as they are either locked if the rest or they might even be locked while they are in motion (a train e.g.). 5

(3) Search any private home

To search a private home is possible under s. 793 para 1 first variant, which speaks of dwellings. According to the Oxford Dictionary “dwelling” is a noun that means a house or apartment, thus a private home. 6

(4) Search any clothes and any other personal property

Section 793 does refer to “the content of locked objects”, which could relate to cabinets and cupboards and cloth worn but normally Art. 30 EPPO Regulation, which is analysed here in a hypothetical manner, wants to express the search of a person on the street. Art. 793 para 3 clearly expresses that “On examination of a person's body and inspection of the clothes the person in question is wearing, the rules in chapter 72 apply.” 7

The rules on the so-called body intervention have the following wording: 8

Body intervention

Section 792

As part of the investigation, according to the rules in this chapter, physical intervention may be carried out against the accused and others by

- 1) inspection of the body's exterior, taking photographs, prints and the like of the body's exterior as well as inspection of the clothing the person in question is wearing (body inspection), and
- 2) closer examination of the body, including its cavities, taking saliva or blood samples or other similar samples, X-ray examination and the like (body examination).

PCS. 2. Physical intervention against arrested persons can also be carried out in accordance with section 758, subsection

(5) Search any computer system

Section 793 does not refer to digital systems or any other digital items. A search of a computer or a physical object in a dwelling or on a premise may be done by the police 9

authorities. But not the search of a computer system, its internal information and digital pieces. Section 791b regulates on the interception of a digital information system, which would be a “computer search”.

bb. Obtainment of the production of any relevant object or document either in its original form or in some other specified form

- 10 The obtainment of the production of any relevant object or document either in its original form or in some other specified form relates to the rules on seizure of objects relating to the offence. They are important as they may constitute evidence in a trial.
- 11 The overview box once again summarises the relevant sections, which are then explored below:

DK*=Chapter 74 ss. 801, 802, 802 para 3 (all of the suspect’s property) 803, 803a (an association’s assets), 807 (formalities during a seizure operation), 807a (seizure by everyone), 807b–807f (special rules on seizure e.g. in AML cases) *Retsplejeloven*;

Authorisations by competent body:

s. 802, s. 802 para 3 can only be ordered if s. 806 para 6 is obeyed: “[seizure] can only take place after a court order.”

* Opted out of AFJS.

Chapter 74 Seizure and edition

Section 801

According to the rules in this chapter, seizure can be made

- 1) to secure evidence,
- 2) to secure the public’s claims for legal costs, confiscation and fines,
- 3) to secure the aggrieved party’s claim for restitution or compensation,
- 4) when the defendant has evaded further prosecution of the case, and
- 5) to secure claims that are being recovered by the arrears recovery authority.

PCS. 2. Items which the police takes into custody, which no one has or acknowledges they have access to, and over which no one asserts a right, are not covered by the rules in this chapter.

PCS. 3. The rules in chapter 71 apply to the handing over of letters, telegrams and the like in transit as well as to information about connections between telephones, etc. The provisions in section 758, subsection 75, also apply to confiscation of objects and money in connection with arrest. 1.

Section 802

Objects that a suspect has at his disposal may be seized if

- 1) the person in question is reasonably suspected of an offence subject to public prosecution, and
- 2) there is reason to assume that the object can serve as evidence or should be confiscated, cf. however subsection 2, or the offence has been abandoned by someone who can claim it back.

PCS. 2. Property of which a suspected owner may be seized if

- 1) the person in question is reasonably suspected of an offence subject to public prosecution, and
- 2) seizure is considered necessary to secure
 - a) the public's claim for legal costs, claim for confiscation pursuant to section 75, subsection of the Criminal Code. 1, 1st point, 2nd point, and 2nd point, and subsection 3, Section 76 a, subsection 5, and Section 77 a, 2nd point, fine claim or the aggrieved party's claim for compensation in the case or
 - b) claims that are being recovered by the arrears recovery authority, regardless of whether the debt is related to the case to which the suspicion relates.

PCS. 3. Confiscation of all or part of a suspect's property, including property that the suspect may later acquire, may be carried out if

- 1) charges have been brought for an offence which, according to the law, can lead to imprisonment for 1 year and 6 months or more, and
- 2) the defendant has evaded further prosecution in the case.

PCS. 4. Written communications or the like originating from a person who, according to the rules in section 170, is excluded from giving evidence as a witness in the case, cannot be seized from a suspect. The same applies to material originating from a person covered by section 172, when the material contains information which the person concerned is exempted from giving evidence as a witness in the case according to section 172.

Section 803

Objects that a person who is not a suspect has at their disposal can be seized as part of the investigation of an offence that is subject to public prosecution, if there is reason to assume that the object can serve as evidence, should be confiscated or, as a result of the offence, has been turned away from someone who can claim it back. Other property, including money in the possession of a person who is not a suspect, may be seized as part of the investigation of an indictable offence if there is reason to believe that such property should be confiscated. Section 189 applies accordingly.

PCS. 2. In the case of persons who, according to the rules in section 170, are excluded from giving evidence as a witness in the case, written communications between the suspect and the person in question as well as his notes and the like concerning the suspect are not subject to seizure. In the case of persons who are covered by section 172, material containing information about matters which the person concerned is exempted from giving evidence as a witness in the case, according to section 172, is not subject to seizure.

cc. Obtainment of the production of stored computer data, encrypted or decrypted



Be aware that the Attorney General has published in 2023 a document, which must be consulted in case of the obtainment of the production of stored computer data, encrypted or decrypted.

Krypteret kommunikation fra særlige tjenester, 2023 (Encrypted communications from special services, Version June 28, 2023) [<https://vidensbasen.anklagemyndigheden.dk/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/0578f2e0-154e-4789-adcc-ab9d1e8b8fb8?showExact=true>].

- 12 The obtainment of the production of stored computer data, encrypted or decrypted can be based on s. 791b:

Section 791b

Reading of non-publicly available information in an information system using programs or other equipment (data reading) can be carried out if

- 1) there are certain reasons to assume that the information system is used by a suspect in connection with planned or committed crime as mentioned in no. 3,
- 2) the intervention must be assumed to be of decisive importance for the investigation, and
- 3) the investigation concerns an offence punishable by law with imprisonment for 6 years or more or an intentional violation of Chapter 12 or 13 of the Criminal Code.

PCS. 2. Interventions as mentioned in subsection 1 may not be carried out if, according to the purpose of the intervention, the importance of the case and the infringement and disadvantage that the intervention may be assumed to cause the person or persons affected by it, it would be a disproportionate intervention.

PCS. 3. A decision on data reading is made by the court by order. The order specifies the information system to which the intervention relates. In addition, the rules in section 783, subsection 1, 3 and 4 points, as well as subsection 3 and 4, corresponding application.

PCS. 4. Subsequent notification of an intervention carried out takes place in accordance with the rules in section 788, subsection 1, 3 and 4. The notification is given to the

person who has access to the information system that has been read according to subsection 1. In addition, the rules in section 782, subsection 2, Sections 784, 785, 789 and 791 corresponding application.

Administration of Justice Act

Chapter 74 Seizure and discovery

Section 801⁸⁹

In accordance with the rules in this Chapter, seizure may be made

- 1) to secure evidence,
- 2) to secure public claims for legal costs, confiscation and fines,
- 3) to secure the victim's claim for restitution or compensation; and
- 4) when the accused has evaded further prosecution.

Paragraph 2. Objects taken into custody by the police, which no one has or recognises as being at their disposal, and in respect of which no one claims a right, are not covered by the rules in this chapter.

Paragraph 3. The provisions of Chapter 71 shall apply to the handing over of letters, telegrams and the like in transit and to information on connections between telephones etc. The provisions of section 758(1) also apply to the deprivation of objects and money in connection with arrest.

⁸⁹ **Kapitel 74**

Beslaglæggelse og edition

§ 801.

Efter reglerne i dette kapitel kan der foretages beslaglæggelse

- 1) til sikring af bevismidler,
- 2) til sikring af det offentlige krav på sagsomkostninger, konfiskation og bøde,
- 3) til sikring af forurettedes krav på tilbagelevering eller erstatning, og
- 4) når tiltalte har unddraget sig sagens videre forfølgning.

Stk. 2. Genstande, som politiet tager i bevaring, som ingen har eller vedkender sig rådighed over, og hvorover ingen gør en ret gældende, er ikke omfattet af reglerne i dette kapitel.

Stk. 3. Om udlevering af breve, telegrammer og lignende under forsendelse samt om oplysning om forbindelse mellem telefoner m.v. gælder reglerne i kapitel 71. Om fratagelse af genstande og penge i forbindelse med anholdelse gælder endvidere bestemmelsen i § 758, stk. 1.

Section 802⁹⁰

Objects at the disposal of a suspect may be seized if

- 1) the person concerned is reasonably suspected of an offence subject to public prosecution, and
- 2) there is reason to believe that the object may serve as evidence or should be confiscated, cf. however subsection (2), or the offence has deprived someone who can claim it back.

Paragraph 2. Goods in the possession of a suspect may be seized if

- 1) the person concerned is reasonably suspected of an offence that is subject to public prosecution; and
- 2) seizure is deemed necessary to secure the public's claim for legal costs, claim for confiscation under section 75(1), first sentence, second indent, and second sentence, and subsection (3), section 76a(5) and section 77a(2) of the Danish Criminal Code, claim for a fine or the victim's claim for compensation in the case.

Paragraph 3. Seizure of all or part of a suspect's property, including property that the suspect may later acquire, may be made if

- 1) an indictment has been brought for an offence punishable by law with imprisonment for 1 year and 6 months or more, and
- 2) the accused has evaded further prosecution in the case.

Paragraph 4. Written communications or the like originating from a person who, according to the rules in section 170, is excluded from giving evidence as a witness in the case, may not be seized from a suspect. The same applies to material originating from a person covered by section 172 when the material contains information about which the person in question is exempted under section 172 from giving evidence as a witness in the case.

⁹⁰ § 802.

Genstande, som en mistænkt har rådighed over, kan beslaglægges, såfremt

- 1) den pågældende med rimelig grund er mistænkt for en lovovertrædelse, der er undergivet offentlig påtale, og
- 2) der er grund til at antage, at genstanden kan tjene som bevis eller bør konfiskeres, jf. dog stk. 2, eller ved lovovertrædelsen er fravendt nogen, som kan kræve den tilbage.

Stk. 2. Gods, som en mistænkt ejer, kan beslaglægges, såfremt

- 1) den pågældende med rimelig grund er mistænkt for en lovovertrædelse, der er undergivet offentlig påtale, og
- 2) beslaglæggelse anses for nødvendig for at sikre det offentlige krav på sagsomkostninger, krav på konfiskation efter straffelovens § 75, stk. 1, 1. pkt., 2. led, og 2. pkt., og stk. 3, § 76 a, stk. 5, og § 77 a, 2. pkt., bødekrav eller forurettedes krav på erstatning i sagen.

Stk. 3. Beslaglæggelse af en mistænks hele formue eller en del af denne, herunder formue, som den mistænkte senere måtte erhverve, kan foretages, såfremt

- 1) tiltale er rejst for en lovovertrædelse, der efter loven kan medføre fængsel i 1 år og 6 måneder eller derover, og
- 2) tiltalte har unddraget sig videre forfølgning i sagen.

Stk. 4. Skriftlige meddelelser eller lignende, som hidrører fra en person, der efter reglerne i § 170 er udelukket fra at afgive forklaring som vidne i sagen, kan ikke beslaglægges hos en mistænkt. Det samme gælder materiale, som hidrører fra en person, der er omfattet af § 172, når materialet indeholder oplysninger, som den pågældende efter § 172 er fritaget for at afgive forklaring om som vidne i sagen.

dd. Obtainment of banking account data and traffic data

The Danish Judicial Code contains in Chapter 74 provisions on the rights of the police to control the transfer of money and the data from banking accounts: 13

Administration of Justice Act**Section 786a⁹¹**

As part of an investigation where electronic evidence may be of importance, the police may order providers of telecommunications networks or telecommunications services to urgently secure electronic data, including traffic data.

Paragraph 2. An order for urgent protection pursuant to subsection (1) may only cover electronic data stored at the time the order is issued. The order shall specify the data to be protected and the period of time during which they are to be protected (the protection period). The order must be limited to the data deemed necessary for the investigation and the retention period must be as short as possible and may not exceed 90 days. An order may not be extended.

Paragraph 3. It is incumbent on providers of telecommunications networks or telecommunications services as part of security pursuant to subsection (1) to disclose without undue delay traffic data on other telecommunications network or telecommunications service providers whose networks or services have been used in connection with the electronic communication, which may be of importance to the investigation.

Paragraph 4. Offences against subsections (1) and (3) are punishable by a fine.

Section 804a⁹²

An order for the edition, cf. Section 804, of traffic and location data can only be issued if the investigation concerns an offence punishable by law with imprisonment for 3 years or more, an intentional violation of Chapter 12 or 13 of the Criminal Code, a violation

⁹¹ § 786 a.

Som led i en efterforskning, hvor elektronisk bevismateriale kan være af betydning, kan politiet meddele udbydere af telenet eller teletjenester pålæg om at foretage hastesikring af elektroniske data, herunder trafikdata.

Stk. 2. Et pålæg om hastesikring i medfør af stk. 1 kan alene omfatte elektroniske data, som opbevares på det tidspunkt, hvor pålægget meddeles. I pålægget anføres, hvilke data der skal sikres, og i hvilket tidsrum de skal sikres (sikringsperioden). Pålægget skal afgrænses til alene at omfatte de data, der skønnes nødvendige for efterforskningen, og sikringsperioden skal være så kort som mulig og kan ikke overstige 90 dage. Et pålæg kan ikke forlænges.

Stk. 3. Det påhviler udbydere af telenet eller teletjenester som led i sikring efter stk. 1 uden ugrundet ophold at videregive trafikdata om andre telenet- eller teletjenesteudbydere, hvis net eller tjenester har været anvendt i forbindelse med den elektroniske kommunikation, som kan være af betydning for efterforskningen.

Stk. 4. Overtrædelse af stk. 1 og 3 straffes med bøde.

⁹² § 804 a.

Pålæg om edition, jf. § 804, af trafik- og lokaliseringsdata kan kun meddeles, hvis efterforskningen angår en lovovertrædelse, som efter loven kan straffes med fængsel i 3 år eller derover, en forsætlig overtrædelse af straffelovens kapitel 12 eller 13, en overtrædelse af straffelovens § 124, stk. 2, § 125, § 127, stk. 1, § 235, § 266 eller § 281, en overtrædelse af udlændingelovens § 59, stk. 8, nr. 1-5, en krænkelse eller overtrædelse, som er omfattet af § 781, stk. 2 eller 3, eller en lovovertrædelse omfattet af straffelovens § 81 a.

of Section 124, subsection of the Criminal Code. 2, Section 125, Section 127, subsection 1, Section 235, Section 266 or Section 281, a violation of the Aliens Act Section 59, subsection 8, nos. 1–5, an infringement or violation which is covered by section 781, subsection 2 or 3, or an offence covered by Section 81a of the Criminal Code.

Section 806

A decision on seizure and on an order for publication is made at the request of the police. Requests for seizure to secure compensation claims can also be made by the aggrieved party.

PCS. 2. The decision is made by the court by order, cf. however subsection 10. The order states the specific circumstances of the case, on which it is supported that the conditions for the intervention have been met. The ruling can be overturned at any time.

PCS. 3. Following the police's request, the court can decide in an order for publication that the police can obtain information from companies and persons covered by Section 1 of the Act on Preventive Measures Against Money Laundering and the Financing of Terrorism that the persons concerned have at their disposal, on transactions on an account to which funds have been transferred in a transaction that is covered by the order for edition, or in a transaction that arises from a transaction that is covered by the order for edition. The ruling sets the time period within which information can be obtained. This period must be as short as possible and must not exceed 4 weeks. The period can be extended, but by no more than 4 weeks at a time. The extension takes place by order. The police must as soon as possible after the expiry of that period, within which the collection of information can take place, notify the court of the transactions about which the police have collected information. The notification must contain an indication of the specific reasons for assuming that the transactions stem from a transaction that is covered by the order for publication.

PCS. 4. If the purpose of the intervention would be wasted if a court order had to be awaited, the police can make a decision on seizure and on publication, cf. however subsection 6. If the person against whom the intervention is directed makes a request to this effect, the police must submit the case to the court as soon as possible and within 24 hours at the latest, which decides by order whether the intervention can be approved.

PCS. 5. The police can make a decision on seizure pursuant to Section 803 a. Subsection 4, 2nd point, applies accordingly.

PCS. 6. Confiscation pursuant to section 802, subsection 3, can only be done by court order. The same applies to seizure of printed materials or audio or video programs covered by the Media Liability Act, for the content of which liability must be asserted.

PCS. 7. The police can make decisions about orders for the publication of information about transactions, accounts, depositories, boxes etc. from companies or persons covered by Section 1, subsection 1, nos. 1–13 or 19–24, in the Act on preventive measures against money laundering and the financing of terrorism. The

police can, in the decision on the order for publication according to the 1st point, determine that companies and persons covered by Section 1 of the Act on Preventive Measures Against Money Laundering and Financing of Terrorism may obtain information available to them about transactions on an account to which money has been transferred funds in a transaction that is covered by the decision on edition, or in a transaction that arises from a transaction that is covered by the decision on edition. PCS. 4, 2nd point, applies accordingly.

PCS. 8. Before the court makes a decision according to subsection 4, 2nd point, the person against whom the intervention is directed must be given access to make a statement. Section 748, subsection 5 and 6, apply accordingly.

PCS. 9. Before the court makes a decision on an order for publication pursuant to Section 804, the person who has access to the object must be given access to make a statement. Section 748, subsection 5 and 6, apply accordingly. The provision in the 1st point does not apply if the court's decision is to form the basis of an international court request for edition.

PCS. 10. A decision on seizure is made by the police if the person against whom the intervention is directed gives written consent to the intervention.

Section 806 para 7 ensures the access of the investigation authorities, e.g. the police to banking account data.

14

Customs Act

Section 10c⁹³

Carriers who bring cash equivalent to the value of 10,000 euros or more must, when traveling into or out of the Danish customs territory from or to other parts of the EU's customs territory, declare the cash in question and make them available to the customs and tax administration for the purpose of control.

Paragraph 2. If the customs and tax administration discovers a carrier with liquid funds below the value referred to in subsection 1, and if there are indications that the liquid funds are connected to criminal acts, the customs and tax administration records this

⁹³§ 10c.

Bærere, som medbringer likvide midler, der svarer til værdien af 10.000 euro eller derover, skal, når de rejser nd i eller ud af det danske toldområde fra eller til øvrige dele af EU's toldområde, uopfordret angive de pågældende likvide midler og stille dem til rådighed for told- og skatteforvaltningen med henblik på kontrol.

Stk. 2. Opdager told- og skatteforvaltningen en bærer med likvide midler under den værdi, der er omhandlet i stk. 1, og er der indikationer på, at de likvide midler har forbindelse til kriminelle handlinger, registrerer told- og skatteforvaltningen denne oplysning og så vidt muligt de nærmere oplysninger, der er fastlagt efter stk. 5.

Stk. 3. De oplysninger, der afgives i medfør af stk. 1, indgives skriftligt eller elektronisk under anvendelse af en angivelsesblanket.

Stk. 4. Er forpligtelsen til at angive ledsagede likvide midler efter stk. 1 ikke opfyldt, udarbejder told- og skatteforvaltningen på eget initiativ en skriftlig eller elektronisk angivelse, som så vidt muligt indeholder de påkrævede oplysninger fastlagt efter stk. 5.

Stk. 5. Skatteministeren kan fastsætte bestemmelser for udformning og indhold af den i stk. 3 nævnte blanket.

information and, as far as possible, the detailed information determined pursuant to subsection 5.

Paragraph 3. The information provided pursuant to subsection 1, is submitted in writing or electronically using a declaration form.

Paragraph 4. If the obligation to indicate accompanied liquid assets according to subsection 1 is not fulfilled, the customs and tax administration prepares on its own initiative a written or electronic statement which, as far as possible, contains the required information determined pursuant to subsection 5.

Paragraph 5. The Minister of Taxation may lay down provisions for the design and content of the 3 mentioned forms.

Section 10d⁹⁴

If unaccompanied liquid funds corresponding to the value of 10,000 euros or more pass into or out of the Danish customs territory from or to other parts of the EU's customs territory, the customs and tax administration may demand that the sender or recipient of the unaccompanied liquid funds or a representative of one of these makes a notification to the customs and tax administration within a period of 30 days.

Paragraph 2. The customs and tax administration may withhold the unaccompanied cash until the sender, recipient or a representative of one of these makes a notification, cf. subsection 1.

Paragraph 3. If the customs and tax administration finds that unaccompanied liquid funds below the value referred to in subsection 1, pass into or out of the Danish customs territory from or to other parts of the EU's customs territory, and that there are indications that the unaccompanied liquid funds are connected to criminal acts, the customs and tax administration registers this information and, as far as possible, the detailed information determined pursuant to subsection 6.

⁹⁴ § 10d.

Passerer uledsagede likvide midler, der svarer til værdien af 10.000 euro eller derover, ind i eller ud af det danske toldområde fra eller til øvrige dele af EU's toldområde, kan told- og skatteforvaltningen kræve, at afsenderen eller modtageren af de uledsagede likvide midler eller en repræsentant for en af disse foretager en indberetningsangivelse til told- og skatteforvaltningen inden for en frist på 30 dage.

Stk. 2. Told- og skatteforvaltningen kan tilbageholde de uledsagede likvide midler, indtil afsenderen, modtageren eller en repræsentant for en af disse foretager en indberetningsangivelse, jf. stk. 1.

Stk. 3. Konstaterer told- og skatteforvaltningen, at uledsagede likvide midler under den værdi, der er omhandlet i stk. 1, passerer ind i eller ud af det danske toldområde fra eller til øvrige dele af EU's toldområde, og at der er indikationer på, at de uledsagede likvide midler har forbindelse til kriminelle handlinger, registrerer told- og skatteforvaltningen denne oplysning og så vidt muligt de nærmere oplysninger, der er fastlagt efter stk. 6.

Stk. 4. De oplysninger, der indberettes i medfør af stk. 1, indgives skriftligt eller elektronisk under anvendelse af en indberetningsblanket.

Stk. 5. Er forpligtelsen til at indberette uledsagede likvide midler efter stk. 1 ikke opfyldt, udarbejder told- og skatteforvaltningen på eget initiativ en skriftlig eller elektronisk angivelse, som så vidt muligt indeholder de påkrævede oplysninger, der er fastlagt efter stk. 6.

Stk. 6. Skatteministeren kan fastsætte bestemmelser for udformning og indhold af den i stk. 4 nævnte blanket.

Paragraph 4. The information that is reported pursuant to subsection 1, is submitted in writing or electronically using a reporting form.

Paragraph 5. If the obligation to report unaccompanied cash according to subsection 1 is not fulfilled, the customs and tax administration, on its own initiative, prepares a written or electronic statement which, as far as possible, contains the required information determined pursuant to subsection 6.

Paragraph 6. The Minister of Taxation may lay down provisions for the design and content of the 4 mentioned form.

Section 10e⁹⁵

The Minister of Taxation may lay down further provisions on the storage of the information collected pursuant to Sections 10 c and 10 d and on the passing on of this information to the State Attorney for Special Economic and International Crime.

ee. Freezing instrumentalities or proceeds of crime, including assets

In the area of freezing instrumentalities or proceeds of crime, including assets Law on the Prevention of Measures against Money Laundering and Terrorist Financing (Money Laundering Law) applies. **15**

The Criminal Code contains the main provisions on freezing: **16**

Section 75

The proceeds of a criminal offence or an equivalent amount may be confiscated in whole or in part. If the necessary basis for determining the size of the amount is missing, an amount estimated to correspond to the obtained dividend can be confiscated.

PCS. 2. If it can be considered necessary to prevent further offences, or special circumstances otherwise speak for it, confiscation of

- 1) items that have been used or intended to be used in a criminal offence,
- 2) objects produced by a criminal offence, and
- 3) objects in respect of which a criminal offence has otherwise been committed.

PCS. 3. Instead of confiscation of those in subsection 2 items mentioned may be confiscated in an amount corresponding to their value or a part thereof.

PCS. 4. Instead of confiscation according to subsection 2, provisions can be made on measures relating to the objects for the prevention of further offences.

PCS. 5. When an association is dissolved by judgment, its assets and other assets may be confiscated.

⁹⁵ § 10e.

Skatteministeren kan fastsætte nærmere bestemmelser om opbevaring af de i medfør af §§ 10 c og 10 d indsamlede oplysninger og om videregivelse af disse oplysninger til Statsadvokaten for Særlig Økonomisk og International Kriminalitet.

Section 76

Confiscation pursuant to Section 75 subsection 1, can happen to the person to whom the proceeds accrued immediately from the criminal act.

PCS. 2. Confiscation of those in section 75, subsection 2 and 3, said objects and valuables may be taken from the person who is responsible for the offence and from the person on whose behalf he has acted.

PCS. 3. Specially secured rights over items that are confiscated only lapse after the court determines under conditions corresponding to those in subsection 2 stated.

PCS. 4. Has one of those in subsection 1 and 2 mentioned persons after the criminal offence made disposals of proceeds or objects of the in section 75, subsection 2, the nature or rights thereon, the transferee or its value may be confiscated from the transferee, if the latter was aware of the transferee's connection with the criminal act or has shown gross negligence in this regard, or if the transfer was made as a gift.

PCS. 5. If a person who is responsible for confiscation pursuant to subsection 1–4, dies, his liability ceases. However, this does not apply to confiscation pursuant to section 75, subsection 1.

Section 76a

Full or partial confiscation of assets belonging to a person who is found guilty of a criminal offence may be carried out when

- 1) the act is of such a nature that it can yield significant benefits, and
- 2) it is punishable by law with imprisonment for 6 years or more or is a violation of the legislation on euphoric substances.

PCS. 2. Under conditions as mentioned in subsection 1, full or partial confiscation of assets acquired by the concerned person's spouse or cohabitant may be carried out, unless

- 1) the asset was acquired more than 5 years before the criminal act which forms the basis for confiscation pursuant to subsection 1, or
- 2) the marriage or cohabitation did not exist at the time of the acquisition.

PCS. 3. Under conditions as mentioned in subsection 1, full or partial confiscation of assets transferred to a legal person over which the person concerned alone or together with his close associates has a determining influence may be carried out. The same applies if the person in question receives a significant part of the legal person's income. However, confiscation cannot take place if the asset has been transferred to the legal person more than 5 years before the criminal act which forms the basis for confiscation pursuant to subsection 1.

PCS. 4. Confiscation pursuant to subsection 1–3 cannot happen if the person in question proves that an asset was acquired in a legal manner or for legally acquired funds.

PCS. 5. Instead of confiscation of certain assets pursuant to subsection 1–3, an amount corresponding to their value or part thereof may be confiscated.

Section 77

If there is confiscation pursuant to Section 75, subsection 1, or Section 76 a, and has any claim for compensation in connection with the offence, the confiscated can be used to cover the claim for compensation.

PCS. 2. The same applies to objects and valuables confiscated pursuant to section 75, subsection 2 and 3, if the judgment makes a provision to that effect.

PCS. 3. Has the convicted person in one of the In the cases referred to in 1 and 2, the aggrieved party has paid compensation after the judgment, the confiscation amount is reduced accordingly.

Section 77a

Objects which, due to their nature in connection with other existing circumstances, may be feared to be used in a criminal offence, may be confiscated, insofar as this is deemed necessary to prevent the criminal offence. Under the same conditions, confiscation of other assets, including money, can take place. Section 75, subsection 4, applies accordingly.

ff. Interception of electronic communications to and from the suspect or accused person

The interception of electronic communications to and from the suspect or accused person can be summarised within the next box as follows. The single provisions will be reproduced below the summary box:

17

DK=*opted out of AFSJ= but see the Fourth Book of the Code of Judicial Procedure (*Retsplejeloven*) Chapter 67 and 68 provide for investigative rules and measures; Chapter 71 finally introduces special investigative measures such as telecommunications surveillance. (*Kapitel 71: Indgreb i meddelelshemmeligheden, observation, dataaflæsning, forstyrrelse eller afbrydelse af radio- eller telekommunikation, blokering af hjemmesider og overtagelse af tv-overvågning*)

s. 780 Book Four of the Code of Judicial Procedure allows the interception of telecommunications in certain cases. S. 781 presents certain thresholds for the process of interception and the assignment if these measures.

s. 786 stipulates the responsibility of telecommunication service providers to assist the police.

s. 791c and d provide for very interesting measures. The police may interrupt the radio and telecommunication services in a region/or block a website. Overall these measures seem to be limited to the prevention of offences.

Authorisations by competent body:

s. 783 “Intervention in the secrecy of communications takes place after the court’s order. The order shall state the telephone numbers, locations, addressees or consignments to which the intervention relates, cf. 2. Furthermore, the specific circumstances of the case are stated, on which it is based that the conditions for the intervention have been met. The ruling can be reversed at any time.”

gg. Tracking & Tracing an Object

- 18** Tracking & tracing an object is an effective means for an investigation into economic crime. In Denmark the police is allowed to carry out the following measures:

DK=s. 791a *Retsplejeloven*

Authorisations by competent body:

s. 791a: “The police may carry out photographs or observations using binoculars or other apparatus of persons who are in a place which is not freely accessible (observation), if [...]”

See mainly s. 783: “Intervention in the secrecy of communications takes place after the court’s order. [...]”

hh. Other investigative Steps

- 19** The Danish Judicial Code includes several other investigative steps:

Chapter 75a Other investigative steps

Section 812

Photographs of a suspect may only be shown to persons outside the police if

- 1) the person in question is reasonably suspected of an offence subject to public prosecution, and
 - 2) the intervention must be assumed to be of significant importance for the investigation.
- PCS. 2. Decisions on the presentation of photographs are made by the police.

Section 813

Photographs of a person who is not a suspect may only be shown to persons outside the police in accordance with the rules in Section 814 or Section 815.

Section 814

Showing photographs of injured parties and other witnesses who have not consented, as far as possible in writing, to the showing may only take place if

- 1) the investigation concerns a crime which, according to the law, can result in imprisonment for 1 year and 6 months or more, and
- 2) the intervention must be assumed to be of decisive importance for the investigation.

PCS. 2. Decisions on the presentation of photographs are made by the court by order. The ruling states the specific circumstances of the case, on which it is supported that the conditions for the intervention have been met. The ruling can be overturned at any time.

PCS. 3. If the purpose of the intervention would be lost if a court order had to be awaited, the police can decide to present the photograph. If the person against whom the intervention is directed makes a request to this effect, the police must submit the case to the court as soon as possible and within 24 hours at the latest, which decides by order whether the intervention can be approved. The police must guide the person concerned about the right to bring the matter before the court.

PCS. 4. Before the court makes a decision according to subsection 2 or 3, the person against whom the intervention is directed must be given access to make a statement.

Section 815

The presentation of photographs which are kept by the police for the purpose of later identification, cf. Section 792 f, may, outside of the cases covered by Section 812 or Section 814, only take place if the investigation concerns an offence which, according to the law can result in imprisonment for 1 year and 6 months or more, and the photographed

- 1) within the last 5 years has been found guilty of an offence which, according to the law, can result in imprisonment for 1 year and 6 months or more, or
- 2) within the last 10 years has been found guilty of an offence which, according to the law, can result in imprisonment for 6 years or more.

PCS. 2. Decisions on the presentation of photographs are made by the police.

Section 816

Photographs as mentioned in Sections 812–815 may not be shown if, according to the purpose of the intervention, the importance of the case and the violation and inconvenience that the intervention may be assumed to cause to the person affected by it, it would be a disproportionate intervention.

PCS. 2. The Minister of Justice lays down detailed rules on the procedure for showing photographs.

Section 817

Presentation of a suspect to persons outside the police (direct confrontation) may only be carried out if

- 1) the person in question is reasonably suspected of an offence subject to public prosecution, and
- 2) the intervention must be assumed to be of significant importance for the investigation.

PCS. 2. Presentation of an accused person in a confrontation parade for persons outside the police may, however, only be carried out if the person in question is reasonably

suspected of an offence which, according to the law, can lead to imprisonment for 1 year and 6 months or more.

PCS. 3. Presentation of a suspect in direct confrontation or of an accused in a confrontation parade may take place outside of the cases covered by subsection 1 and 2, if the person concerned gives consent to this. As far as possible, the consent must be in writing.

PCS. 4. Demonstration of a suspect in direct confrontation or of an accused in a confrontational parade must not take place if, according to the purpose of the intervention, the importance of the case and the violation and disadvantage that the intervention can be assumed to cause to the person it affects, it would be a disproportionate intervention.

PCS. 5. Decisions on the presentation of a suspect or accused as mentioned in subsection 1–3 are met by the police.

PCS. 6. The Minister of Justice lays down detailed rules on the procedure for carrying out a confrontation parade.

Section 818

The police may only publish information or other information that is suitable for establishing the identity of a suspected perpetrator, if

- 1) the person in question is reasonably suspected of an offence subject to public prosecution, and
- 2) the publication must be assumed to be of significant importance for the investigation, including for determining the identity of the person in question, or to prevent further offences.

PCS. 2. Publication of a photograph of the suspected perpetrator may only take place if there is a reasonable suspicion that the person in question has committed an offence which, according to the law, can result in imprisonment for 1 year and 6 months or more.

PCS. 3. Publication as mentioned in subsection 1 and 2 may not be carried out, however, if, according to the purpose of the intervention, the importance of the case and the violation and disadvantage that the intervention must be assumed to cause to the person affected by it, it would be a disproportionate intervention.

PCS. 4. Decision on publication as mentioned in subsection 1 and 2 are met by the police.

Section 819

If there is a particularly strong suspicion that a person whose identity is known to the police has committed an offence which, according to the law, can result in imprisonment for 1 year and 6 months or more, the police can search for the person in question through the press, radio, television or by other form of public search, if this can be assumed to be of decisive importance for the completion of the criminal prosecution or to prevent further offences of similar severity.

PCS. 2. In the event of a request as mentioned in subsection 1, information can be given about the intended crime and about the identity of the accused, including name, position and place of residence. During the search, a photograph of the person in question may also be published.

PCS. 3. A search may not be carried out if, according to the purpose of the intervention, the importance of the case and the infringement and disadvantage that the intervention can be assumed to cause to the person affected by it, it would be a disproportionate intervention.

PCS. 4. The decision on a search warrant is made by the police.

Sections 820–821. (Repealed)

b) Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation

*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.***

For special restrictions, see above “Hindrances to effective EU fraud and corruption investigations” **20**

2. Summary

The core investigation measures, which are requested by Art. 30 EPPO Regulation from participating countries, exist in Denmark, too. Denmark has an equal “arsenal” of investigative powers regarding EU frauds – it only investigates them on its own, i.e. with its own national prosecution offices. **21**

IV. On Cross-Border Investigations and the Enforcement of Assigned Measures in relation to Art. 31 and 32 EPPO Regulation

- 1 Article 31 and 32 EPPO Regulation govern the procedures for **cross-border investigative measures** by the EPPO within the EU and are therefore highly important for any EDP as there is (still) a “lack of common rules on evidence”⁹⁶ despite the rules on mutual trust in the admissibility and the “free circulation of evidence”⁹⁷. The wording ensures compliance with national laws, and aims at protecting procedural rights.⁹⁸ Any economic chamber of a national court⁹⁹ dealing with PIF charges, indictments and trials will need to closely focus on the admissibility of evidence as e.g. unlawful evidence cannot provide arguments within a judgment, see e.g. s. 261 German CPC¹⁰⁰. If Denmark decides to join the EPPO, the presented Danish provisions on criminal investigations apply in the context of cross-border investigations.
- 2 Thus, both articles are a cornerstone for effective investigations in cross-border crimes while maintaining cooperation between Member States and upholding fundamental rights (in the area of mutual trust). On December 21, 2023, the CJEU issued its first clarifying ruling on the EPPO in **Case C-281/22**, addressing cross-border investigative measures by the EPPO.¹⁰¹
- 3 In this judgment the court said that when the EPPO conducts cross-border investigative measures, the law of the issuing state (where the investigation originates) applies to the decision authorising the measure.¹⁰² However, the law of the executing state (where the measure is carried out) governs how the measure is implemented, ensuring compliance with national procedural safeguards and fundamental rights in the executing Member State. The impact of the decision was widely discussed by academia and lawyers.¹⁰³

⁹⁶ Allegrezza 2024, p. 291 using this as an example to request the EU to finally adopt or at least make the “approximation of evidence law” a key priority. Already on this point Satzger and Zimmermann 2019, pp. 633 with the explanation of *forum regit actum* principle.

⁹⁷ Ligeti 2024, pp. 483 providing a short in-depth analysis on the theme.

⁹⁸ Claes and Franssen 2022 highlighting why customs procedures are a good example for the EPPO’s potential struggle with procedural safeguards. They call it a clash of enforcement procedures, which is quite fitting the picture; on the EPPO’s possibilities see as well Ligeti 2024, pp. 460 et seq. summarizing its role in general.

⁹⁹ See Niemz 2020, p. 50 explaining the German system of court authority in PIF matters. The situation is not the same in the whole EPPO zone, but most states (cf. compare the other volumes) tend to locate charges on a higher or superior court or a specialized chamber in tax, customs or economic crimes.

¹⁰⁰ The situation is nearly the same in most EU Member States, but in the details the rules on exclusion of evidence are presumably highly divergent, see Ligeti 2024, p. 483, who uses the example of Italy and partly Croatia, where this (unlawfully gathered) piece of evidence must be excluded even from the (investigation or court) file itself.

¹⁰¹ ECJ, Case C-281/22, *Criminal proceedings against G. K. and Others*, Judgment of 21 December 2023, ECLI:EU:C:2023:1018.

¹⁰² *Ibid.*, para 53 et seq., which is legally based on the mutual trust principle.

¹⁰³ Herrnfeld 2024, pp. 370–380 pointing out that efficiency (what remembers of the *effet utile* debate) is very important for the ECJ. And see another critical comment Pfister 2024, p. 1.

From our point-of-view, this case clarified that the assisting Member State can only review procedural aspects of the measures, while substantive legality falls under the handling Member State's jurisdiction. This delineation is important to understand the Court's interpretation of Article 31 of the EPPO Regulation and impacts future EPPO investigations, emphasizing that assisting states have limited judicial review capabilities compared to handling states.¹⁰⁴ 4

Article 32 complements Article 31 by allowing EDPs to **assign** investigative measures across different Member States. These measures include actions like **executing** e.g. search warrants, seizing evidence, or conducting interrogations. Article 32 emphasizes the importance of respecting national legal principles while facilitating cross-border investigations.¹⁰⁵ 5

¹⁰⁴ Pfister 2024, passim.

¹⁰⁵ Cf. the Bulgarian (→ Vol. III) and German volume, which include specific overviews for all Member States. They can be accessed on the Logos Open Access Platform.

V. Securing the Investigation and Trial: From the Perspective of the Prosecution and from the Perspective of the Defence

1. Arrest and Pre-trial Detention in Denmark or how Article 33 EPPO Regulation would be interpreted in Denmark.....	152	prosecutorial actions concerning PIF Crime offences	175
a) General relation to national law: applicable Codes	153	a) General Rules on the Defence.....	175
b) Provisions for arrest and pre-trial detention.....	153	b) Defence in the investigation phase.....	186
aa. Provisions on Arrest...	153	aa. At the police Station (Police Interviews etc.).....	186
bb. Rules on Pre-trial detention.....	156	bb. Access to national case file	188
cc. Cross-border surrender and Extradition (to Denmark/ <i>Udlevering til Danmark</i>): Conditions for extradition from Denmark to Member States of the European Union except Finland and Sweden	168	(1) Danish Administration of Justice Act.....	188
2. Filing an Indictment in case of fraud or corruption or other Actions by Danish Customs and Tax Administration in case of Tax and VAT offences.....	172	(2) Danish Administrative Act	192
3. Some provisions on Defence laws relating to national		cc. Defence in case of arrest and pre-trial detention.....	193
		c) Defence in Indictment phase and the trial phase.....	193
		d) What rules apply in the main hearing at first instance?	197
		e) Rules on the Judgment: Conviction, Dismissal or Acquittal?	197
		f) What may happen in case of Acquittal?	198

1. Arrest and Pre-trial Detention in Denmark or how Article 33 EPPO Regulation would be interpreted in Denmark

Art. 33 Pre-trial arrest and cross-border surrender

1. The handling European Delegated Prosecutor may order or request the arrest or pre-trial detention of the suspect or accused person **in accordance with the national law applicable in similar domestic cases.**
2. Where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall

issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA (3).

a) General relation to national law: applicable Codes

The Danish *Grundloven* and the Danish Act on Judicial Administration apply. **1**

b) Provisions for arrest and pre-trial detention

The provisions on arrest and pre-trial detention encroach the personal freedom and liberty and therefore the Danish *Grundloven* states: **2**

Chapter VIII

Section 71

Paragraph 1. Personal freedom is inviolable. No Danish citizen can, because of his political or religious conviction or one's pedigree is subjected to any form of: Detention.

Paragraph 2. Detention can only take place on the basis of in the law.

Paragraph 3. Anyone arrested must, within 24 hours brought before a judge. If the arrested person cannot be released immediately, the judge shall, by a reasoned order made as soon as possible, make a reasoned order and, at the latest, within three days, decide whether he should be imprisoned and, if he can; released on security, determine its nature and size. This provision in the case of Greenland, derogations may be made by law, provided that the Territorial conditions must be considered necessary.

Paragraph 4. The order made by the judge may: he or she shall immediately be brought separately before a higher court.

Paragraph 5. No person may be subjected to pre-trial detention for a misconduct punishable only by a fine or liability

Paragraph 6. Outside the criminal procedure, the legality of deprivation of liberty not ordered by a judicial authority and which: is not provided for by the legislation relating to aliens, at the request of the deprived of his liberty or to any person acting on his behalf, they shall be presented with ordinary courts or other judicial authority for review. Nearer Rules on this are laid down by law.

Paragraph 7. Treatment of persons referred to in paragraph 6 be subject to supervision elected by the Folketing, to which the persons concerned shall have access to contact.

aa. Provisions on Arrest

The rules on arrest are regulated by Chapter 69 Danish Act on Judicial Administration: **3**

Chapter 69 Arrest

Section 755¹⁰⁶

The police may arrest a person who is reasonably suspected of an offence subject to public prosecution if such arrest is considered necessary to prevent further criminal offences, to ensure his provisional presence or to prevent his contact with others.

Paragraph 2. The same powers shall apply to any person who takes any action in the course of, or in immediate connection with, the commission of an offence which is the subject of public prosecution. The arrested person must be handed over to the police as soon as possible, stating the time and basis for the arrest.

Paragraph 3. If riots involving or threatened violence against persons or property, or fights in which several people have participated, resulted in murder or serious bodily harm, and the culprit or culprits cannot be identified with certainty, the police may arrest anyone present who may be suspected of criminal involvement.

Paragraph 4. Arrest shall not be made if, in view of the nature of the case or the circumstances, deprivation of liberty would otherwise constitute disproportionate interference.

Paragraph 5. At the request of the police, the decision to arrest can be made by the court.

Section 756¹⁰⁷

A person who is reasonably suspected of contravening provisions laid down in a suspended sentence pursuant to Chapter 7 or 8 of the Criminal Code, in a judgment or order pursuant to Sections 68, 69, 70 or 72 of the Criminal Code, by conditional pardon, by parole or by a measure prescribed pursuant to Section 765 may be arrested by the police if it is necessary in this way to ensure his provisional presence.

¹⁰⁶ Kapitel 69 *Anholdelse*

§ 755.

Politiet kan anholde en person, der med rimelig grund mistænkes for et strafbart forhold, der er undergivet offentlig påtale, såfremt anholdelse må anses for påkrævet for at hindre yderligere strafbart forhold, for at sikre hans foreløbige tilstedeværelse eller for at hindre hans samkvem med andre.

Stk. 2. Samme beføjelser har enhver, der træffer nogen under eller i umiddelbar tilknytning til udøvelsen af et strafbart forhold, der er undergivet offentlig påtale. Den anholdte skal snarest muligt overgives til politiet med oplysning om tidspunktet og grundlaget for anholdelsen.

Stk. 3. Finder opløb sted, hvorunder der øves eller trues med vold på person eller gods, eller er slagsmål, hvori flere har deltaget, resulteret i drab eller betydelig legemsbeskadigelse, og den eller de skyldige ikke med sikkerhed kan udpeges, kan politiet anholde enhver, der er til stede, og som kan mistænkes for strafbar deltagelse.

Stk. 4. Anholdelse må ikke foretages, hvis frihedsberøvelse efter sagens art eller omstændighederne i øvrigt ville være et uforholdsmæssigt indgreb.

Stk. 5. Efter politiets begæring kan beslutning om anholdelse træffes af retten.

¹⁰⁷ **§ 756.**

Den, der med rimelig grund mistænkes for overtrædelse af bestemmelser, som er fastsat i en betinget dom i henhold til straffelovens kapitel 7 eller 8, i dom eller kendelse efter straffelovens §§ 68, 69, 70 eller 72, ved betinget benådning, ved prøveløsladelse eller en foranstaltning, der er fastsat i medfør af § 765, kan anholdes af politiet, såfremt det er nødvendigt på den måde at sikre hans foreløbige tilstedeværelse.

Section 757

When an accused person duly summoned to a court hearing fails to appear without being duly informed, the court may order his arrest if the summons or appearance before the court indicates that he must appear in person and, in the event of default, must wait to be arrested.

Section 758

The arrest must be made as gently as circumstances permit. The police may, subject to the provisions of section 792(e), inspect and examine the body and clothing of the detainee with a view to depriving him of objects which may be used for violence or avoidance or which may otherwise endanger the arrested person or others. The police can take such effects, as well as money found with the detainee, into custody. During the arrest, the person concerned shall not be subject to any restriction on his freedom other than that required by the purpose of the arrest and the interests of public order.

Paragraph 2. The police must inform the arrested person of the charge and the time of the arrest as soon as possible. The report shall show that this rule has been observed.

Section 759

Searches of a house, other premises or objects in order to search for a suspect to be arrested may be carried out when there are grounds for believing that the person is there. PCS 2. The provisions of section 795(1), subsection 1, and sections 796 to 800 shall apply *mutatis mutandis*.

Section 760

Anyone arrested must be released as soon as the grounds for arrest no longer apply. The date of release must be stated in the report.

PCS 2. Within 24 hours of arrest, the detainee who has not previously been released must be produced before a judge. The time of arrest and of the presentation in court shall be recorded in the court record.

PCS 3. If an arrest has been made for a criminal offence for which pre-trial detention is excluded, the arrested person shall be released before the end of the hearing.

PCS 4. If an arrest has been made for an offence for which pre-trial detention is not excluded, or under Section 756, and the detainee is found not to be released immediately, the court may, if it considers that due to the inadequacy of the information available or for any other reason it cannot immediately rule on the question of pre-trial detention, order that he shall remain under arrest for the time being. The decision shall specify the circumstances which led to the arrest being maintained. During the maintained arrest, Section 765 applies *mutatis mutandis*. The accused must be given the opportunity to indicate any information which he requires to be provided.

PCS 5. The person over whom the arrest has been maintained shall, if he has not previously been released, be reproduced before a judge who, within 3 x 24 hours of the end of the first hearing, shall decide whether the arrested person shall be released or remanded in custody or subject to measures under section 765.

Section 761

In the case of apprehending a person for the purpose of executing a criminal sentence or commutation of a fine, the rules of sections 758(1) and 759 apply.

bb. Rules on Pre-trial detention

- 4 The rules on pre-trial detention, which might be necessary to carry out lengthy cross-border VAT fraud investigations, or investigations into subsidy fraud reports can be found in Chapter 70:

Chapter 70 Detention

Section 762¹⁰⁸

An accused person may be remanded in custody when there are reasonable grounds for suspecting that he has committed an offence which is subject to public prosecution, if the offence is punishable by law with imprisonment for 1 year and 6 months or more, and

1) there are, according to the information given by the accused person, certain grounds for believing that he will evade prosecution or execution; or

¹⁰⁸ Kapitel 70 *Varetægtsfængsling*

§ 762.

En sigtet kan varetægtsfængsles, når der er begrundet mistanke om, at han har begået en lovovertrædelse, som er undergivet offentlig påtale, såfremt lovovertrædelsen efter loven kan medføre fængsel i 1 år og 6 måneder eller derover, og

(1) der efter det om sigtedes forhold oplyste er bestemte grunde til at antage, at han vil unddrage sig forfølgningen eller fuldbyrdelsen, eller

(2) der efter det om sigtedes forhold oplyste er bestemte grunde til at frygte, at han på fri fod vil begå ny lovovertrædelse af den foran nævnte beskaffenhed, eller

(3) der efter sagens omstændigheder er bestemte grunde til at antage, at sigtede vil vanskeliggøre forfølgningen i sagen, navnlig ved at fjerne spor eller advare eller påvirke andre.

Stk. 2. En sigtet kan endvidere varetægtsfængsles, når der foreligger en særligt bestyrket mistanke om, at han har begået

(1) en lovovertrædelse, som er undergivet offentlig påtale, og som efter loven kan medføre fængsel i 6 år eller derover, og hensynet til retshåndhævelsen efter oplysningerne om forholdets grovhed skønnes at kræve, at sigtede ikke er på fri fod, eller

(2) en overtrædelse af straffelovens § 119, stk. 1, § 123, § 134 a, § 192 a, stk. 2, § 218, § 222, § 225, jf. § 216, stk. 2, § 218 eller § 222, § 235, stk. 1, §§ 243-246, § 250 eller § 252 eller en overtrædelse af straffelovens § 232 over for et barn under 15 år, såfremt lovovertrædelsen efter oplysningerne om forholdets grovhed kan ventes at ville medføre en ubetinget dom på fængsel i mindst 60 dage og hensynet til retshåndhævelsen skønnes at kræve, at sigtede ikke er på fri fod.

Stk. 3. Varetægtsfængsling kan ikke anvendes, hvis lovovertrædelsen kan ventes at ville medføre straf af bøde eller fængsel i højst 30 dage, eller hvis frihedsberøvelsen vil stå i misforhold til den herved forvoldte forstyrrelse af sigtedes forhold, sagens betydning og den retsfølge, som kan ventes, hvis sigtede findes skyldig.

2) there are, according to the information given by the accused person, there are certain grounds for fearing that he will commit at large another offence of the kind referred to above; or

3) there are, in the circumstances of the case, certain grounds for believing that the accused will impede the prosecution of the case, in particular by removing traces or warning or influencing others.

Paragraph 2. An accused person may also be remanded in custody where there is a particularly strong suspicion that he has committed

1) an offence which is subject to public prosecution and which is punishable by law with imprisonment for 6 years or more and the interests of law enforcement, on the basis of the information on the gravity of the offence, are deemed to require that the accused is not at large; or

2) an offence against Sections 119(1), 123, 134a, 192a(2), 218, 222, 225, cf. Sections 216(2), 218 or 222, 235(1), 244 to 246, 250 or 252 of the Criminal Code, or an offence under Section 232 of the Penal Code against a child under the age of 15, if, according to the information on the gravity of the offence, the offence is likely to result in an unconditional sentence of imprisonment for at least 60 days and the interests of law enforcement are deemed to require; that the accused is not at large.

Paragraph 3. Pre-trial detention may not be used if the offence is likely to result in a fine or imprisonment for a maximum period of 30 days, or if the deprivation of liberty would be disproportionate to the disturbance caused by the accused's circumstances, the importance of the case and the legal consequences to be expected if the accused is found guilty.

Section 763¹⁰⁹

If there are reasonable grounds for suspecting that a person has contravened the conditions laid down in a suspended sentence under Chapter 7 or Chapter 8 of the Penal Code, by conditional pardon or by parole, he may be remanded in custody if the court finds that the offence is of such a nature that there is a question of execution of a prison sentence or incarceration in prison. and

¹⁰⁹ § 763.

Er der begrundet mistanke om, at en person har overtrådt vilkår, som er fastsat i en betinget dom i henhold til straffelovens kapitel 7 eller 8, ved betinget benådning eller ved prøveløsladelse, kan han varetægtsfængsles, hvis retten finder, at overtrædelsen er af en sådan beskaffenhed, at der foreligger spørgsmål om fuldbyrdelse af fængselsstraf eller indsættelse i anstalt, og

(1) der efter det om den pågældendes forhold oplyste er bestemte grunde til at antage, at han vil unddrage sig følgerne af vilkårsovertrædelsen, eller

(2) der efter det om hans forhold oplyste er bestemte grunde til at frygte, at han på fri fod fortsat vil overtræde vilkårene, og det under hensyn til overtrædelsernes beskaffenhed skønnes påkrævet, at disse forhindres ved, at han varetægtsfængsles.

Stk. 2. Det samme gælder, hvis der er begrundet mistanke om, at en person har overtrådt bestemmelser, der er fastsat i dom eller kendelse efter straffelovens §§ 68, 69, 70 eller 72.

1) there are, on the basis of the information given in the circumstances of the person concerned, certain grounds for believing that he will evade the consequences of the breach of conditions; or

2) there are, on the basis of the information given in his circumstances, there are certain grounds for fearing that he will continue to violate the conditions at large and it is considered necessary, having regard to the nature of the offences, that they be prevented by his detention.

PCS 2. The same applies if there is reasonable suspicion that a person has violated provisions laid down in a judgment or order pursuant to sections 68, 69, 70 or 72 of the Criminal Code.

Section 764¹¹⁰

At the request of the prosecutor's office, the court decides whether the accused should be remanded in custody. Applications for continued pre-trial detention must be made in writing to the court. The request must state the detention order(s) relied on by the prosecution, the facts on which the request is based and the main investigative steps, etc., which are expected to be taken.

PCS 2. An accused person present in this country is questioned in court about the charge and must be given the opportunity to make a statement before the decision is taken, unless the court finds that the presentation for special reasons must be considered useless or harmful to the accused. If a detention order has been made without the accused having had an opportunity to make a statement in court, he must be produced in court within 24 hours of being brought into this country or the obstacle to his presentation having ceased.

¹¹⁰ § 764.

Efter anmodning fra anklagemyndigheden afgør retten, om sigtede skal varetægtsfængsles. Anmodning om fortsat varetægtsfængsling skal fremsættes skriftligt over for retten. Anmodningen skal angive den eller de fængslingsbestemmelser, som anklagemyndigheden påberåber sig, de faktiske omstændigheder, hvorpå anmodningen støttes, og de væsentligste efterforskningsskridt m.v., som forventes foretaget.

Stk. 2. En sigtet, der er til stede her i landet, afhøres i retten om sigtelsen og skal have lejlighed til at udtale sig, inden afgørelsen træffes, medmindre retten finder, at fremstillingen af særlige grunde må anses for nytteløs eller skadelig for sigtede. Er kendelse om varetægtsfængsling afsagt, uden at sigtede har haft lejlighed til at udtale sig i retten, skal han fremstilles i retten inden 24 timer efter, at han er indbragt her til landet, eller hindringen for hans fremstilling er ophørt.

Stk. 3. I det retsmøde, der afholdes til afgørelse af spørgsmålet om varetægtsfængsling, skal sigtede have adgang til bistand af en forsvarer. Er den sigtede til stede i retsmødet, skal der gives ham lejlighed til en samtale med forsvareren inden afhøringen.

Stk. 4. Rettens afgørelse træffes ved kendelse. Varetægtsfængsles sigtede, anføres i kendelsen de konkrete omstændigheder i sagen, hvorpå det støttes, at betingelserne for varetægtsfængsling er opfyldt. Sker varetægtsfængsling efter § 762, stk. 1, nr. 3, anføres indtil efterforskningens afslutning endvidere de væsentligste efterforskningsskridt m.v., som forventes foretaget inden for fristen for varetægtsfængslingen. Opretholdes varetægtsfængsling ud over de frister, som er nævnt i § 768 a, stk. 1 og 2, anføres i kendelsen de særlige omstændigheder i sagen, hvorpå det støttes, at fortsat varetægtsfængsling er påkrævet. Er den sigtede til stede i retsmødet, skal han straks gøres bekendt med, hvilke bestemmelser om varetægtsfængsling retten har anvendt, og med de i kendelsen anførte grunde for varetægtsfængsling samt med sin adgang til at kære. Udskrift af en kendelse, hvorved nogen varetægtsfængsles, overgives på forlangende snarest muligt til den pågældende.

PCS 3. At the hearing held to decide the question of pre-trial detention, the accused shall have access to the assistance of a defence counsel. If the accused is present at the hearing, he must be given the opportunity to have an interview with the defence counsel before the hearing.

PCS 4. The decision of the court shall be made by order. Where the accused is remanded in custody, the order shall state the specific circumstances of the case on which it is based that the conditions for pre-trial detention are met. If pre-trial detention takes place pursuant to section 762(1)(3), the most important investigative steps, etc., which are expected to be carried out within the time limit for pre-trial detention, shall also be stated until the end of the investigation. If pre-trial detention is maintained beyond the time limits referred to in subsections (768) and (1) of section 2a, the order shall state the particular circumstances of the case on which it is based that continued pre-trial detention is required. If the accused is present at the hearing, he shall be informed without delay of the pre-trial detention provisions applied by the court, of the grounds for detention set out in the order and of his right to appeal. A transcript of an order detaining an individual in custody shall be handed over to the person concerned on request as soon as possible.

Section 765¹¹¹

If the conditions for the use of pre-trial detention are met, but the purpose of pre-trial detention can be achieved by less restrictive measures, the court shall, if the accused person so agrees, order this instead of pre-trial detention.

PCS 2. Thus, the court may order that the accused must:

- 1) submit to supervision ordered by the court;
- 2) comply with special provisions concerning residence, work, use of leisure time and contact with certain persons;
- 3) take up residence in a suitable home or institution,
- 4) undergo psychiatric or rehabilitation treatment for the abuse of alcohol, drugs or the like, if necessary, in a hospital or special institution;
- 5) appear before the police at specified times;
- 6) deposit with the police passports or other identity documents,
- 7) provide a financial guarantee to be determined by the court for his presence at the hearing and at the execution of any judgment.

¹¹¹ § 765.

Er betingelserne for anvendelse af varetægtsfængsling til stede, men kan varetægtsfængslingens øjemed opnås ved mindre indgribende foranstaltninger, træffer retten, hvis sigtede samtykker heri, i stedet for varetægtsfængsling bestemmelse derom.

Stk. 2. Retten kan således bestemme, at sigtede skal

- (1) undergive sig et af retten fastsat tilsyn,
- (2) overholde særlige bestemmelser vedrørende opholdssted, arbejde, anvendelse af fritid og samkvem med bestemte personer,
- (3) tage ophold i egnet hjem eller institution,
- (4) undergive sig psykiatrisk behandling eller afvænningsbehandling for misbrug af alkohol, narkotika eller lignende, om fornødent på hospital eller særlig institution,
- (5) give møde hos politiet på nærmere angivne tidspunkter,
- (6) hos politiet deponere pas eller andre legitimationspapirer,
- (7) stille en af retten fastsat økonomisk sikkerhed for sin tilstedeværelse ved retsmøde og ved fuldbyrdelsen af en eventuel dom.

Stk. 3. Angår sigtelsen grov personfarlig kriminalitet, skal retten bestemme, at sigtede ikke må opholde sig i eget hjem.

Stk. 4. Ved afgørelser i medfør af stk. 1–3 finder bestemmelserne i § 764 tilsvarende anvendelse.

Stk. 5. Hvis sigtede unddrager sig møde i retten eller fuldbyrdelse af dommen, kan retten, efter at der så vidt muligt er givet dem, afgørelsen vedrører, lejlighed til at udtale sig, ved kendelse bestemme, at en sikkerhed, der er stillet i medfør af stk. 2, nr. 7, er forbrudt. En forbrudt sikkerhed tilfalder statskassen, dog således at den forurettedes erstatningskrav kan dækkes af beløbet. Retten kan under særlige omstændigheder i indtil 6 måneder efter kendelsen bestemme, at en forbrudt sikkerhed, der er tilfaldet statskassen, helt eller delvis skal tilbagebetales.

Stk. 6. Justitsministeren kan efter forhandling med social- og indenrigsministeren og sundheds- og ældreministeren fastsætte regler om meddelelse af tilladelse til udgang m.v. til personer, der er anbragt i institution eller hospital m.v. i medfør af stk. 2, nr. 3 eller 4, når der ikke i øvrigt er taget stilling hertil. Justitsministeren kan i den forbindelse fastsætte, at afgørelser, der træffes i medfør af disse regler, ikke kan indbringes for højere administrativ myndighed.

Stk. 7. Justitsministeren kan fastsætte regler om anvendelse af magt og sikringsmidler over for personer, der er anbragt i en institution eller på et hospital m.v. i medfør af stk. 2, nr. 3 eller 4, i forbindelse med transport, der forestås af kriminalforsorgens personale. Justitsministeren kan endvidere fastsætte regler om undersøgelse uden retskendelse af personer, der er anbragt i en institution eller på et hospital m.v. i medfør af stk. 2, nr. 3 eller 4, i forbindelse med transport, der forestås af kriminalforsorgens personale.

PCS 3. For decisions under subsections (1) and (2), the provisions of Section 764 shall apply *mutatis mutandis*.

PCS 4. If the accused fails to appear before the court or to execute the judgment, the court may, after being given as far as possible an opportunity to make known his views on those to whom the decision relates, order that security lodged pursuant to paragraph 2(7) has been breached. A breach of security accrues to the public purse, provided that the injured party's claim for compensation may be covered by the amount. In exceptional circumstances, the court may, for up to 6 months after the order, order the repayment in whole or in part of any security breached which has accrued to the public purse.

PCS 5. The Minister for Justice may, after consultation with the Minister for Social Affairs and Integration and the Minister for Health and Prevention, lay down rules on the granting of permission to leave etc. to persons placed in institutions or hospitals, etc. pursuant to subsection 2, no. 3 or 4, unless otherwise decided. In this connection, the Minister for Justice may provide that decisions taken pursuant to these rules may not be challenged before a higher administrative authority.

Section 766¹¹²

The court may at any time reverse detention orders or measures in their stead.

Section 767

Except in cases where the accused is not present in this country, the order shall fix a time limit for the period of pre-trial detention or detention. The deadline shall be as short as possible and shall not exceed 4 weeks. The deadline may be extended, but by a maximum of 4 weeks at a time. The extension shall be effected by order unless the accused agrees to the extension. The provisions of Section 764 shall apply *mutatis mutandis* to hearings and orders for extension of time until judgment is given in the 1st instance. However, the production of an accused person who is in custody or subject to a detention order may be omitted if he waives it or the court considers that the production would involve disproportionate difficulties.

PCS 2. Where the prosecution has filed an indictment with the court and the court has fixed a time for the main hearing, the court may, on expiry of a period under paragraph 1, order that the pre-trial detention or measure shall continue without further extension until a judgment has been delivered in the case. If the court makes such a decision, the defendant may, not earlier than 3 weeks after the decision, request the court to lift the detention or measure under section 766 or section 768. In this case, the court must make a decision on this within 7 days. If the court does not grant the request, the defendant

¹¹² § 766.

Retten kan til enhver tid omgøre kendelser om varetægtsfængsling eller foranstaltninger, der træder i stedet herfor.

may make a new application no earlier than 3 weeks after the court's decision. After the start of the main proceedings, Section 767(3), paragraphs 4 to 6, shall apply *mutatis mutandis*. The provisions of paragraphs 1 to 5 shall apply *mutatis mutandis* to confession proceedings where the prosecution has requested a hearing for the purpose of hearing the case as a confession case pursuant to Section 831 and the court has fixed the date of the hearing.

PCS 3. Where a time limit set in accordance with paragraph 1 expires after the main proceedings have begun, the pre-trial detention or detention order shall continue without further extension until a judgment has been given in the case. The accused may, after expiry of the period fixed before the main hearing, apply to the court to suspend custody or a measure in lieu thereof pursuant to section 766 or section 768. If, after the expiry of the time limit, the accused applies to the court to lift the pre-trial detention or a measure in its stead, the court must make a decision on this within 7 days. If the court does not grant the request, the defendant may make a new application no earlier than 14 days after the court's decision. If there is a question of pre-trial detention under section 762(2), the decision on possible dismissal shall be made by a judge or chamber who does not participate in the main proceedings, cf. section 60(3), unless one of the conditions in section 60(3), second sentence, is met. The defendant's application may, according to the court's order, be considered on a written basis if the decision is taken by a judge or chamber who does not participate in the main proceedings.

PCS 4. If an appeal is lodged against an order extending the period of detention or other detention order beyond 3 months, the appeal shall, on application, be heard orally. Once an appeal has been heard orally, the superior court decides whether a subsequent application for oral proceedings should be granted. The last sentence of paragraph 1 shall apply *mutatis mutandis*.

Section 768

Pre-trial detention or measures in its lieu shall, if necessary, be lifted by order of the court when proceedings are abandoned or the conditions for initiation no longer apply. If the court finds that the investigation is not being advanced with sufficient speed and that continued pre-trial detention or other measure is not reasonable, the court must quash it.

Section 768a

Unless the court finds that there are special circumstances, pre-trial detention shall not take place for a continuous period exceeding

- 1) 6 months where the charge relates to an offence for which 6 years' imprisonment is not punishable by law; or
- 2) 1 year when charged with an offence punishable by law to imprisonment for 6 years or more.

PCS 2. Unless the court finds exceptional circumstances, pre-trial detention where the detainee is under 18 years of age may not take place for a continuous period exceeding

1) 4 months where the charge relates to an offence for which 6 years' imprisonment is not punishable by law; or

2) 8 months where the charge relates to an offence punishable by law with imprisonment for 6 years or more.

Section 769

A detention order or other measure shall only take effect until the court has decided the case. On application, the court shall, after the decision, decide whether, during any appeal or pending execution, the accused shall be remanded in custody or remain in custody or shall be subject to measures in its stead. In making this provision, the provisions of Sections 762, 764 to 766 and 768 shall apply mutatis mutandis, unless the defendant agrees to remain in custody or subject to some other measure. If, before the decision of the case in court, the person concerned has been detained in custody or subjected to other measures, but the court finds no grounds for continuing to apply them, the court may, at the request of the public prosecutor, order that the detention or measure shall remain in force until the decision on the question of custody has been received from the superior court to which the case or question of custody has been brought.

PCS 2. Furthermore, if a judgment has been handed down in the case imposing an unconditional prison sentence of more than 30 days for an offence which is subject to public prosecution, the accused person may be remanded in custody when the interests of law enforcement are deemed to require that the accused person is not at large, taking into account the fact that the accused person is associated with a group of persons, who are actively involved in an ongoing violent conflict with another group of persons and that within the group to which the convicted person is associated, firearms have either been used or weapons or explosives which, because of their extremely dangerous nature, are likely to cause serious harm, or has been committed arson covered by section 180 of the Penal Code.

PCS 3. Where the decision given in the case is appealed to a higher court and a decision on the application of pre-trial detention or other measures has been taken pursuant to paragraphs 1 or 2 after the decision, the question of its continued application shall be referred as soon as possible to the superior court to which the decision is appealed. In considering the question of remand or other measures, Sections 762, 764(1), (3) and (4), 765 and 766, 767(1), subsections (1) to (4), (2) and (3), 768 and 769(2) shall apply mutatis mutandis. If the court has decided that the appeal shall be decided without the main oral hearing, the court may, on expiry of a period under subsection (2) cf. section 767(1), order that the detention or measure shall continue without further extensions

until judgment has been given in the case. Section 767(2), paragraphs 2 to 4, shall apply mutatis mutandis.

Section 770

A person in custody shall be subject only to such limitations as are necessary to ensure the purpose of his detention or to maintain order and security in custody.

PCS 2. Pre-trial detainees are placed in pre-trial detention (detention centres), as far as possible at the place where the criminal proceedings are being conducted. Placement outside custody may be for health reasons or pursuant to Section 777.

Section 770a

The court may, at the request of the police, order that a person in custody be excluded from fellowship with the other detainees (solitary confinement) if:

- 1) custody has been ordered pursuant to Section 762(1)(3); and
- 2) there are specific grounds for believing that pre-trial detention alone is not sufficient to prevent the detainee from impeding the prosecution of the case, including by influencing co-defendants through other prisoners or by threats or otherwise similarly influencing others.

Section 770b

Isolation may only be initiated or continued if:

- 1) this purpose cannot be achieved by less intrusive measures, including placing the detainee in a detention centre other than certain other inmates or otherwise preventing the detainee from contact with such inmates, or by establishing mail control, visitation control or a ban on visits;
- 2) the intervention, including the special strain which the intervention may cause because of the detainee's young age, physical or mental infirmity or other personal circumstances, is not disproportionate to the importance of the case and the legal consequences to be expected if the arrestee is found guilty; and
- 3) The investigation is advanced with the special speed required for pre-trial detention in solitary confinement, including by making use of the means of preservation of evidence under section 747.

PCS 2. If the detainee is under 18 years of age, solitary confinement may only be initiated or continued in exceptional circumstances which so require.

Section 770c

If the charge relates to an offence for which the law does not provide for imprisonment for 4 years, solitary confinement may not take place for a continuous period of more than 14 days.

PCS 2. If the charge relates to an offence punishable by law with imprisonment for 4 years or more, but not imprisonment for 6 years, solitary confinement shall not take place for a continuous period of more than 4 weeks.

PCS 3. If the charge relates to an offence punishable by law with imprisonment for 6 years or more, solitary confinement may not take place for a continuous period of more than 8 weeks. However, the court may, exceptionally, allow solitary confinement to extend beyond 8 weeks if essential considerations of prosecution require continued solitary confinement, regardless of the time the detainee has previously been isolated, and the offence is likely to result in a sentence of imprisonment for at least 2 years.

PCS 4. Solitary confinement may not take place for a continuous period of more than 6 months, unless the charge relates to an intentional violation of chapters 12 or 13 of the Criminal Code or an offence under sections 191 or 237 of the Criminal Code.

PCS 5. If the detainee is under 18 years of age, solitary confinement may not take place for a continuous period of more than 4 weeks, unless the charge relates to an intentional violation of chapters 12 or 13 of the Penal Code.

Section 770d

The court's decision on solitary confinement is made by separate order. If the court decides on solitary confinement, the court shall state in the order

- 1) the specific difficulty which is likely to arise in the case;
- 2) the basis on which the facts of the case are based on the presumption that the risk referred to in point 1 exists; and
- 3) the specific circumstances in which it is otherwise supported that the conditions of Sections 770a–770c for solitary confinement or continued solitary confinement are met.

PCS 2. In the court's decision on solitary confinement, the provisions of sections 764(2) to (4), 766, 767(1) and 768–769 shall also apply *mutatis mutandis*. However, when isolation is initiated, the initial period for the duration of the intervention shall not exceed 2 weeks. If the detainee is under the age of 18, the period of solitary confinement may be extended by a maximum of 2 weeks at a time.

PCS 3. The police's request for continued solitary confinement must be made in writing to the court. The request shall be substantiated. Before the police make a request for an extension beyond 8 weeks, cf. section 770 c, subsection 3, or beyond 4 weeks, if the arresting person is under 18 years of age, cf. section 770 c, subsection 5, the approval of the Director of Public Prosecutions must be obtained. If the approval of the Director of Public Prosecutions is not available, solitary confinement cannot be extended.

Section 770e

If isolation extends beyond 8 weeks, appeals must be heard orally upon request. If the decision to isolate is upheld, subsequent appeals for continued isolation shall also be heard orally upon request if the isolation is extended beyond 4 weeks from the last oral hearing of loved ones for extension of solitary confinement by the appealed order. In other cases, the appeal body decides whether to grant a request for oral treatment. The last sentence of Section 767(1) shall apply mutatis mutandis.

Section 771

A person in custody may receive visits to the extent that order and security in custody permit. The police may, for the purposes of detention, oppose visits by the person in custody or require that visits take place under supervision. If the police refuse visits, the person in custody must be informed unless the judge decides otherwise in the interests of the investigation. The person in custody may request that the refusal of visits by the police or the request for control be submitted to the court for decision. The detainee always has the right to an uncontrolled visit by his lawyer.

PCS 2. When special circumstances so warrant, the probation service may, with the consent of the police, grant a person in custody leave with an escort for a shorter period.

Section 772

A person in custody has the right to receive and send letters. The police may review the letters before receiving or sending. The police shall deliver or send the letters as soon as possible, unless their content could prejudice the investigation or the maintenance of order and security in custody. If a letter is withheld, the question whether the detention should be maintained must be immediately submitted to the court for decision. If detention is maintained, the consignor shall be informed immediately, unless the judge decides otherwise in the interests of the investigation.

PCS 2. A person in custody has the right to uncontrolled correspondence with the court, the defence counsel, the Minister of Justice, the Director of the Prison Service and the Parliamentary Ombudsman. The Minister for Justice may lay down rules on the right of persons in custody to send closed letters to other public authorities or individuals.

Section 773

If the police decide that, for the purposes of detention, other restrictions should be placed on the rights of a person in custody, the arresting officer may request that the question of the maintenance of the restrictions be referred to the court for decision.

Section 774

Neither the institution's staff nor anyone else may be used to explore pre-trial detainees.

Section 775

Disciplinary action may be imposed on persons in custody in the form of a punishment cell for up to 4 weeks or withdrawal of work allowance. The said disciplinary penalties may be applied jointly.

PCS 2. The provisions of sections 65 and 66 of the Act on the Execution of Sentences, etc. concerning the use of handcuffs and a security cell shall apply mutatis mutandis to persons in custody.

Section 775a

Decisions concerning persons in custody made by an authority within the prison service may not be appealed to a higher administrative authority, subject to section 776, second sentence.

Section 776

The Minister for Justice lays down detailed rules on the treatment of persons in custody. In this connection, the Minister for Justice may lay down rules stipulating that appeals against decisions taken by the prison service areas concerning persons in custody may be lodged with the Directorate of Probation and Probation Services. The Minister for Justice may also lay down rules on the time limit for appeals, the handling of appeals and the suspensive effect of appeals. For detainees who are isolated in accordance with the court's order, the Minister of Justice lays down special rules on increased staff contact, extended access to visits, special access to one-to-one tuition and certain types of work, as well as the offer of regular and long-term interviews with priests, doctors, psychologists or others. The Minister for Justice also lays down rules on the assistance otherwise granted to persons in custody in order to limit the professional, social and personal disadvantages resulting from their detention.

Section 777

A person in custody may be placed in an institution for persons serving a prison sentence or custody, or in hospital, etc., cf. sections 68 and 69 of the Danish Penal Code, if he/she himself, the prosecution service and the prison service area agree to this. Exceptionally, if health considerations or the safety of others so require, the court may authorise such placement without the consent of the arrestee. In the institution, the person voluntarily transferred in custody shall be treated in accordance with the rules applicable to persons placed there pursuant to a judgment, while the forcibly transferred person in custody shall be treated in accordance with the rules on persons in custody, to the extent that the interests of order and security in the institution so permit. However, the detainee may not leave the institution without the approval of the court, except in the cases referred to in section 771(2).

Section 778

Complaints by pre-trial detainees about the conduct of prison staff are submitted to the Department of Correctional Services or to the Directorate of Probation and Probation. If the appeal is unsuccessful or if a final decision has not been taken within 2 weeks of submission, the complaint may be brought before the court.

PCS 2. The court may refuse to initiate an investigation if the complaint is found to be manifestly unfounded, if it concerns matters of minor importance or if it is filed more than 4 weeks after the fact to which the complaint relates has occurred. The court's investigation shall be conducted in accordance with the rules of sections 1019(e), 1019(h)(2), 1019i and 1019j (1), (3), (4) and (6). The judge shall order the examination of the complainant, the respondent and witnesses and the production of expert opinions and other evidence.

PCS 3. At the end of the investigation, the court issues a report which is sent to the complainant, to the complainant and to the Department of Probation and Probation.

cc. Cross-border surrender and Extradition (to Denmark/ *Udlevering til Danmark*): Conditions for extradition from Denmark to Member States of the European Union except Finland and Sweden

Competent authority to receive / execute requests:¹¹³

Issuing authority: The courts

Executing authority: The courts

Central authority:

Rigsadvokaten [Director of Public Prosecutions]

- 5 The Attorney General can issue special Guidelines. In March 2023 he ruled on the Extradition to Denmark (6 March 2023).¹¹⁴

The Extradition Act applies:

Chapter 4 Conditions for extradition from Denmark to Member States of the European Union except Finland and Sweden

Section 13

Extradition for prosecution or execution in a Member State of the European Union for an offence which, under the law of the Member State that has requested extradition, is punishable by imprisonment or other deprivation of liberty for at least 3 years, may take

¹¹³ EJM, Fiches Belges: Denmark, see <https://www.ejm-crimjust.europa.eu/ejm2021/FichesBelgesDetail/EN/C.1/260/-1>. Accessed 31 December 2024.

¹¹⁴ These rules relate to the 2. Police investigation and case management, 2.1. Arrest warrant and issuance of a European arrest warrant, see <https://vidensbasen.anklagemyndigheden.dk/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/217db95e-f7c0-4c20-8241-44c3de54f59f?showExact=true>. Accessed 31 December 2024.

place on the basis of a European Arrest Warrant, even if a similar act is not punishable under Danish law, for the following acts:

- 1) Participation in a criminal organisation.
- 2) Terrorism.
- 3) Human trafficking.
- 4) Sexual exploitation of children and child pornography.
- 5) Illegal trade in narcotics and psychotropic substances.
- 6) Illegal trade in weapons, ammunition and explosives.
- 7) Bribery.**
- 8) Fraud, including fraud that harms the financial interests of the European Communities.**
- 9) Laundering of the proceeds of crime.**
- 10) Counterfeiting, including counterfeiting of the euro.
- 11) Internet crime.
- 12) Environmental crime, including illegal trade in endangered animal species and illegal trade in endangered plant species and tree species.
- 13) Human trafficking.
- 14) Intentional manslaughter and grievous bodily harm.
- 15) Illegal trade in human tissue and organs.
- 16) Abduction, deprivation of liberty and hostage-taking.
- 17) Racism and xenophobia.
- 18) Organised or armed theft.
- 19) Illegal trade in cultural goods, including antiques and works of art.
- 20) Fraud.**
- 21) Collection of protection money and extortion.
- 22) Imitations and manufacture of pirated versions of products.
- 23) Forgery of official documents and illegal trade in fake documents.
- 24) Forgery of means of payment.
- 25) Illegal trade in hormone preparations and other growth-promoting substances.
- 26) Illegal trade in nuclear and radioactive materials.
- 27) Trading in stolen motor vehicles.
- 28) Rape.
- 29) Intentional arson.
- 30) Criminal acts covered by the jurisdiction of the International Criminal Court.
- 31) Ship or plane hijacking.
- 32) Sabotage.

PCS. 2. Extradition for prosecution in a member state of the European Union for actions not covered by subsection 1, can be done on the basis of a European arrest warrant if the criminal act in the Member State in question can result in imprisonment for at least 1 year and a corresponding act is punishable under Danish law.

PCS. 3. Extradition for criminal enforcement in a member state of the European Union for actions not covered by subsection 1, can be carried out on the basis of a European arrest warrant if the person in question has been sentenced to prison or another custodial measure of at least 4 months duration and a corresponding act is punishable under Danish law.

PCS. 4. Extradition for prosecution or execution of punishment for several criminal offences may take place, even if the conditions in subsection 1-3 are only fulfilled with respect to one of the conditions.

Section 14

Extradition for a criminal offence that is covered by the Danish criminal authority can be refused if the criminal liability or the right to execute punishment for the act in question would be time-barred under Danish law.

Section 15

Extradition can be refused if the act in question was carried out outside the territory of the Member State that requested extradition, and a similar act carried out outside Danish territory would not be covered by Danish criminal authority.

Section 16

Extradition with a view to the execution of a judgment handed down without the person concerned having been present during the trial, whereby the person concerned has been sentenced to prison or another measure depriving him of his liberty, cannot take place, unless it appears from the European arrest warrant that the person concerned, in accordance with the rules of the issuing state and in due time

1) has been personally summoned and thereby notified of the fixed time and place of the trial leading to the decision, or has been otherwise officially notified of the fixed time and place of the trial leading to the decision at such in such a way that it is clear that the person was aware of the scheduled trial and was informed that a decision could be made, even if the person was not present during the trial,

2) was aware of the proposed trial and had authorised legal counsel appointed either by the person concerned or by the issuing State to defend themselves at the trial and was actually represented by that counsel at the trial,

3) has been served with the decision and has been expressly informed of the right to a retrial or appeal, in which the person has the right to participate, and which allows the merits of the case, including new evidence, to be taken up again, and which may lead to, that the original decision is changed and the person concerned has subsequently expressly declared that he or she is not contesting the decision, or the person concerned has not requested a retrial or appeal within the applicable time limit, or

4) will be served with the decision in person immediately after surrender to the issuing state and will be expressly informed of the right to review or appeal as mentioned in no. 3 and will be notified of the time limit for requesting a review or appeal.

PCS. 2. The person who is requested to be extradited for the purpose of enforcing a judgment as mentioned in subsection 1, when the person concerned is notified of the content of the arrest warrant, may request to be handed a copy of the judgment before handing it over.

Section 17

Delivery takes place under the following conditions:

1) The extradited person may not be prosecuted or extradited to a third country for any other criminal offence committed before the extradition than the one for which the person concerned was extradited, unless

a) the court allows it according to section 41,

b) the person extradited, regardless of whether the person in question has been able to leave the country to which the extradition took place for 30 days without hindrance, has failed to do so, or

c) the person in question has returned after leaving the country voluntarily.

2) The extradited person may not be subject to criminal prosecution by a special court without the permission of the court.

PCS. 2. However, the person extradited may, without the court's permission, be held responsible for other criminal acts committed before the extradition than the one for whom the extradition took place, if the prosecution or execution of the sentence does not entail that the person extradited must be deprived of his liberty. The person extradited can also be held liable without the court's permission if the person concerned has given consent to this in a court hearing in the Member State to which extradition has taken place.

PCS. 3. The extradited person may be extradited to a third Member State without the permission of the court, if the person concerned, in connection with consent to extradition to the Member State to which the extradition took place, has given consent to be prosecuted and extradited to a third Member State for other criminal offences committed before extradition than the person for whom extradition took place, cf. section 36, 2nd point Extradition can also take place without the court's permission if the person extradited has given consent to extradition in a court hearing in the Member State to which extradition has taken place.

Section 38

Extradition cannot take place until the court's decision is final.

PCS. 2. Extradition must be carried out as soon as possible after the court's decision is final, and as far as possible within the following deadlines:

- 1) 5 days in cases of extradition to a Nordic country.
- 2) 10 days in cases of extradition to Member States of the European Union.**
- 3) 30 days in cases of extradition to states outside the Nordic countries and the European Union.

PCS. 3. In order to ensure the execution of an extradition, the remedies referred to in Chapter 69 of the Administration of Justice Act on arrest and Chapter 70 on custody can be used. Imprisonment, which has taken place in accordance with this provision, must be cancelled if extradition has not taken place before the expiry of the deadline in subsection 2. In special cases, however, the court may extend this deadline.

2. Filing an Indictment in case of fraud or corruption or other Actions by Danish Customs and Tax Administration in case of Tax and VAT offences

- 6 The Danish Prosecution Service will file an indictment if the law allows to do it and if the actual circumstances provide reason to do this:

Chapter 77 Indictment and preparation of the main hearing in the 1st instance Section 833

Indictment and preparation of the main hearing in the 1st instance shall be governed by the provisions of this chapter, unless otherwise provided in Chapter 79 on jury trials or in Chapter 80 on cases in which lay judges are not involved.

Section 834

The prosecution service shall prosecute by means of an indictment, which shall contain:

- 1) the name of the court seized;
- 2) the name and address of the accused and, as far as possible, personal identification numbers or the like; and
- 3) information on the offence charged.

PCS 2. The information referred to in point (1) of paragraph 3 shall include:

- 1) the rule allegedly infringed and the characteristics of the crime as they appear from the rule;
- 2) the name of the crime, if this is specified by law;
- 3) the legal basis for criminal proceedings;
- 4) a brief description of the offence charged, indicating the time, place, subject, manner of execution and other circumstances necessary for a sufficient and conspicuous description; and
- 5) where applicable, the grounds for increase or reduction of the sentence which will be invoked.

PCS 3. Alternatively, including subsidiary, charges are permitted.

PCS 4. The indictment shall not contain a list of the evidence intended to be adduced or a statement of the points of law in the case.

Section 835

The prosecution service submits the indictment to the court. At the time of filing, the criminal proceedings are initiated in court.

PCS 2. The Prosecutor's Office sends a copy of the indictment to the accused immediately after the opening of the proceedings. The court shall, no later than at the same time as service of the summons pursuant to Section 844(2), serve a copy of the indictment on the person concerned.

PCS 3. The prosecution service or the court sends a copy of the indictment to the defence counsel immediately after the opening of the proceedings or as soon as the defence counsel has been appointed for the accused.

Section 836

Before the main hearing, the prosecution service may correct entries in the indictment or extend the charge to offences other than those mentioned in the indictment. Corrections and extensions shall be made by filing and serving additional or new indictments.

PCS 2. During the main hearing, the prosecution service may, with the consent of the court, extend the charge to offences other than the offence mentioned in the indictment, if the defendant consents or if the offence to be involved was committed during the main hearing itself. The extension is made according to the court's order by adding it to the indictment or adding it to the court record. The same applies to corrections made by the prosecution in the indictment during the main hearing.

PCS 3. If the defendant does not agree to the extension of the charge, the prosecution must bring a new case against the defendant.

Section 837

At the same time as the indictment is filed or as soon as possible thereafter, the prosecutor's office must file with the court

- 1) a transcript of the judicial investigative and evidentiary acts carried out in the case;
- 2) other documents and other visible evidence in the case; and
- 3) a record of the evidence which the prosecution wishes to adduce.

PCS 2. Witnesses and assessors must be named and addressed. The list of evidence shall also indicate whether the said witnesses and assessors are intended to be heard at the main hearing or whether statements already given are intended to be used.

PCS 3. Officers who have carried out the measures referred to in Section 754(a) and officers with a special duty function where it is necessary for that special duty function to keep their identity secret may be designated by a name other than their own and without indication of residence.

PCS 4. If experts are to be appointed, an application to this effect must be made to the court.

- 7 If a tax offence is concerned, the **Danish Tax Control Act** stipulates the following:

Section 86

In cases of violation of the provisions of Chapter 9, which are not considered to result in a higher penalty than a fine, the customs and tax administration may inform the accused in a fine proposal that the case can be settled without a trial, if the accused declares himself guilty of the violation and declares himself ready to pay the fine specified in the fine within a specified period, which can be extended on request.

PCS. 2. Section 834 of the Administrative Procedure Act on the content of an indictment applies to the notification pursuant to subsection 1.

PCS. 3. If the accused accepts the fine, further criminal prosecution is waived. The decision has the same effect as a judgment.

PCS. 4. Fines in cases decided administratively are collected by the customs and tax administration.

- 8 The Danish Act on Collection of Taxes and Duties [*Lov om opkrævning af skatter og afgifter m.v. (opkrævningsloven)*], etc. (Collection Act) concerns the VAT offences:

Section 18

If it is deemed that an infringement would not result in a higher penalty than a fine, the customs and tax administration may notify the person concerned that the case can be settled without legal prosecution, if the person concerned pleads guilty to the infringement and declares himself ready within a specified time deadline, which can be extended upon application, to pay a fine specified in the notification. Section 752, subsection 1, in the Act on the care of the court applies accordingly.

PCS. 2. With regard to the declaration mentioned in subsection 1, the provision on prosecution in section 895 of the Administrative Procedure Act applies accordingly.

PCS. 3. If the fine is paid in due time, or if it is recovered or served after the adoption, further prosecution ceases.

PCS. 4. Fines in cases decided administratively are collected by the customs and tax administration.

Section 18a

The customs and tax administration may impose daily fines on the owner of a company or the responsible day-to-day management thereof for non-compliance with orders that may be given pursuant to Section 4a, and Section 11, subsection 11. The daily fines must amount to at least DKK 1,000 per day.

Section 19

Searches in cases of violation of provisions in this Act take place in accordance with the rules in the Court Care Act on searches in cases which, according to the law, may result in a custodial sentence.

3. Some provisions on Defence laws relating to national prosecutorial actions concerning PIF Crime offences

Defence is an essential part of a state that follows the rule of law principle. Thus, the Danish rules defence laws relating to national prosecutorial actions concerning PIF Crime offences shall be explored by their texts and commented, if necessary, additionally. 9

a) General Rules on the Defence

The rules on the Defence and the accused are regulated in Chapters 66, 67 of the Danish Code of Administration of Justice: 10

Chapter 66 Accused and his defence

Section 729¹¹⁵

Under the word “party”, where this is used in this Act in provisions that do not particularly concern civil cases, the accused in a criminal case must also be considered included.

Section 729a¹¹⁶

The accused is entitled to choose a defence counsel, cf. Section 730. A public defender is appointed according to the rules in Sections 731–735.

¹¹⁵ Kapitel 66 Sigtede og hans forsvar

§ 729.

Under ordet “part”, hvor dette i denne lov anvendes i bestemmelser, der ikke særlig angår borgerlige sager, skal også den sigtede i en straffesag anses for indbefattet.

¹¹⁶ § 729 a.

Sigtede er berettiget til at vælge en forsvarer, jf. § 730. Offentlig forsvarer beskikkes efter reglerne i §§ 731–735. Stk. 2. Retten meddeler forsvareren kopi af indførsler i retsbøgerne vedrørende sagen. Forsvareren kan gøre sigtede bekendt med kopierne, medmindre andet følger af §§ 748 og 856. Retten kan pålægge forsvareren ikke at overlevere kopierne til sigtede eller andre, hvis det må befrygtes, at kopierne vil blive benyttet på retsstridig måde. Stk. 3. Forsvareren har adgang til at gøre sig bekendt med det materiale, som politiet har tilvejebragt til brug for den sag, som sigtelsen angår. Forsvareren skal have udleveret kopi af materialet, i det omfang det uden ulempe kan kopieres. Forsvareren må ikke uden politiets samtykke overlevere det modtagne materiale til sigtede eller andre. Politiet giver samtykke, hvis det findes ubetænkeligt. Med hensyn til materiale, der er omfattet af § 871, stk. 1 og stk. 2, nr. 5, kan samtykke dog kun nægtes af de i stk. 4 nævnte grunde.

Stk. 4. Hvis det er nødvendigt af hensyn til fremmede magter, til statens sikkerhed, til sagens opklaring, til tredje- mand, herunder til et vidnes sikkerhed, eller til efterforskningen af en anden verserende sag om en lovovertrædelse, som efter loven kan straffes med fængsel i 6 år eller derover, eller som udgør en forsætlig overtrædelse af straffelovens kapitler 12 eller 13, kan politiet give forsvareren pålæg om ikke at videregive de oplysninger, som forsvareren har modtaget fra politiet. Pålægget kan udstrækkes, indtil tiltalte har afgivet forklaring under hovedforhandlingen.

PCS. 2. The court provides the defender with a copy of entries in the court records relating to the case. The defence counsel may make the accused aware of the copies, unless otherwise follows from Sections 748 and 856. The court can order the defender not to hand over the copies to the accused or others if it is to be feared that the copies will be used in an unlawful manner.

PCS. 3. The defence counsel has access to familiarize himself with the material that the police has provided for use in the case to which the charge relates. The defender must be provided with a copy of the material, to the extent that it can be copied without disadvantage. The defender may not hand over the received material to the accused or others without the consent of the police. The police give consent if it is deemed safe. With regard to material covered by Section 871, subsection 1 and par. 2, no. 5, consent can only be refused by those in subsection 4 mentioned reasons.

PCS. 4. If it is necessary for the sake of foreign powers, for the security of the state, for the investigation of the case, for a third party, including for the safety of a witness, or for the investigation of another pending case of an offence punishable by law with imprisonment for 6 years or above, or which constitutes a deliberate violation of Chapters 12 or 13 of the Criminal Code, the police can instruct the defender not to pass on the information that the defender has received from the police. The order can be extended until the defendant has given a statement during the main hearing.

Section 729b¹¹⁷

An accused person without a defence counsel must, on request, have access to the police to familiarize themselves with entries in the court records relating to the case, unless otherwise follows from Sections 748 and 856. Upon request, the police will hand over a copy of the imports to the accused, unless it is to be feared that the copies will be used in an unlawful manner.

PCS. 2. An accused person without a defence counsel must also, upon request, have access to familiarize themselves with the material that the police has provided for use in the case to which the charge relates. The police can, however, refuse the request of those in Section 729 a, subsection 4, said grounds. A restriction on the accused person's access

¹¹⁷ § 729 b.

En sigtet uden forsvarer skal efter anmodning have adgang til hos politiet at gøre sig bekendt med indførsler i retsbøgerne vedrørende sagen, medmindre andet følger af §§ 748 og 856. Politiet udleverer efter anmodning kopi af indførslerne til sigtede, medmindre det må befrygtes, at kopierne vil blive benyttet på retsstridig måde.

Stk. 2. En sigtet uden forsvarer skal endvidere efter anmodning have adgang til at gøre sig bekendt med det materiale, som politiet har tilvejebragt til brug for den sag, som sigtelsen angår. Politiet kan dog afslå anmodningen af de i § 729 a, stk. 4, nævnte grunde. En begrænsning i sigtedes aktindsigt bortfalder senest inden hovedforhandlingen eller et retsmøde med henblik på sagens behandling i medfør af § 831 eller sagens afslutning ved tiltalefrafald. Politiet udleverer efter anmodning kopi af materialet til sigtede, hvis det findes ubetænkeligt. Med hensyn til materiale, der er omfattet af § 871, stk. 1 og stk. 2, nr. 5, kan udlevering dog kun nægtes af de i § 729 a, stk. 4, nævnte grunde.

to documents expires at the latest before the main hearing or a court hearing with a view to processing the case in accordance with Section 831 or the end of the case when the charges are dropped. Upon request, the police will hand over a copy of the material to the suspect if it is found to be harmless. With regard to material covered by Section 871, subsection 1 and par. 2, no. 5, extradition can only be refused by those in Section 729 a, subsection 4, said reasons.

Section 729c¹¹⁸

The court may, at the request of the police, decide that the rules on the defender's and the accused's right to access documents pursuant to Sections 729 a and 729 b are waived if this is required for reasons of

- 1) foreign powers,
- 2) state security,
- 3) clarification of the case,
- 4) life or health of third parties,
- 5) the investigation of another pending case of an offence punishable by law with imprisonment for 6 years or more, or which constitutes a wilful violation of Chapters 12 or 13 of the Penal Code, or
- 6) protection of confidential information about police investigative methods.

¹¹⁸ § 729 c.

Retten kan efter anmodning fra politiet bestemme, at reglerne om forsvarerens og sigtedes ret til aktindsigt efter §§ 729 a og 729 b fraviges, hvis det er påkrævet af hensyn til

- 1) fremmede magter,
- 2) statens sikkerhed,
- 3) sagens opklaring,
- 4) tredjemands liv eller helbred,
- 5) efterforskning af en anden verserende sag om en lovovertrædelse, som efter loven kan straffes med fængsel i 6 år eller derover, eller som udgør en forsætlig overtrædelse af straffelovens kapitler 12 eller 13, eller
- 6) beskyttelse af fortrolige oplysninger om politiets efterforskningsmetoder.

Stk. 2. Afgørelse efter stk. 1 kan ikke træffes, hvis det giver anledning til væsentlige betænkeligheder for varetagelsen af sigtedes forsvar.

Stk. 3. Gør hensyn som nævnt i stk. 1 sig kun gældende for en del af materialet, skal forsvareren eller sigtede gøres bekendt med det øvrige indhold af materialet.

Stk. 4. Afgørelsen træffes ved kendelse. I kendelsen anføres de konkrete omstændigheder i sagen, der begrundet en fravigelse fra §§ 729 a og 729 b. Træffer retten afgørelse om, at fravigelsen skal gælde indtil videre, skal retten på ny vurdere fravigelsen, før hovedforhandlingen indledes. Træffer retten afgørelse om, at fravigelsen skal gælde i et nærmere fastsat tidsrum, kan afgørelsen forlænges ved senere kendelse. Rettens afgørelse kan kæres.

Stk. 5. I den retten træffer afgørelse, skal der beskikkes en advokat for sigtede, og advokaten skal have lejlighed til at udtale sig. Advokaten beskikkes fra den særlige kreds af advokater, der er nævnt i stk. 6. Advokaten skal underrettes om alle retsmøder, der afholdes med henblik på at opnå rettens kendelse om fravigelse fra §§ 729 a og 729 b, og er berettiget til at overvære disse samt til at gøre sig bekendt med det materiale, som politiet har tilvejebragt til brug for den sag, som sigtelsen angår. § 785, stk. 1, 2.-5. pkt., og stk. 2, finder tilsvarende anvendelse.

Stk. 6. Justitsministeren antager for hver landsrets område et antal advokater, der kan beskikkes efter stk. 5. Justitsministeren fastsætter nærmere regler om de pågældende advokater, herunder om vagtordninger, om vederlag for at stå til rådighed og om sikkerhedsmæssige spørgsmål.

PCS. 2. Decision according to subsection 1 cannot be taken if it gives rise to significant concerns about the defence of the accused.

PCS. 3. Take into account as mentioned in paragraph 1 only applies to part of the material, the defender or the accused must be made aware of the other content of the material.

PCS. 4. The decision is made by order. The ruling states the specific circumstances in the case that justify a deviation from Sections 729 a and 729 b. If the court decides that the derogation shall apply for the time being, the court must reassess the derogation before the main hearing begins. If the court decides that the deviation must apply for a specified period of time, the decision can be extended by a later ruling. The court's decision can be appealed.

PCS. 5. Before the court makes a decision, a lawyer must be appointed for the accused, and the lawyer must have the opportunity to make a statement. The lawyer is appointed from the special circle of lawyers mentioned in subsection 6. The lawyer must be notified of all court hearings that are held with a view to obtaining the court's order for deviation from Sections 729 a and 729 b, and is entitled to attend these as well as to familiarize himself with the material that the police have provided for use for the case to which the charge relates. Section 785, subsection 1, 2.–5. pt., and para. 2, applies accordingly.

PCS. 6. The Minister of Justice assumes for each district court a number of lawyers who can be appointed pursuant to subsection 5. The Minister of Justice lays down detailed rules on the lawyers in question, including on duty arrangements, on remuneration for being available and on security issues.

Section 729d¹¹⁹

When the case has finally been concluded, the person who has been charged can request to be made aware of documents relating to the case, including entries in the court records, in accordance with the rules in this Section.

PCS. 2. The right to access documents does not include internal documents. Considered as internal documents

- 1) documents that have not been handed over to outsiders,
- 2) voting records and other minutes of the court's deliberations and votes and
- 3) correspondence between different units within the police and the prosecution.

PCS. 3. Documents covered by subsection 2, which are given to outsiders, lose their internal character, unless the giving takes place for legal reasons, for research use or for other similar reasons.

PCS. 4. The right to access documents can be limited to that extent

- 1) the applicant, according to the rules in the second and fourth books of this Act, has been prevented from becoming familiar with information in the case,
- 2) it is of decisive importance for the security of the state, unless the applicant's interest in being able to use knowledge of the documents in the case to protect his interests contradicts it,
- 3) confidentiality follows from obligations under EU law or international law,

¹¹⁹ § 729 d.

Når sagen er endeligt afsluttet, kan den, der har været sigtet, forlange at blive gjort bekendt med dokumenter, der vedrører sagen, herunder indførsler i retsbøgerne, efter reglerne i denne paragraf.

Stk. 2. Retten til aktindsigt omfatter ikke interne dokumenter. Som interne dokumenter anses

- 1) dokumenter, der ikke er afgivet til udenforstående,
- 2) voteringsprotokoller og andre referater af rettens rådslagninger og afstemninger og
- 3) brevveksling mellem forskellige enheder inden for politiet og anklagemyndigheden.

Stk. 3. Dokumenter omfattet af stk. 2, der afgives til udenforstående, mister deres interne karakter, medmindre afgivelsen sker af retlige grunde, til forskningsmæssig brug eller af andre lignende grunde.

Stk. 4. Retten til aktindsigt kan begrænses, i det omfang

- 1) ansøgeren efter reglerne i denne lovs anden og fjerde bog har været afskåret fra at gøre sig bekendt med oplysninger i sagen,
- 2) det er af afgørende betydning for statens sikkerhed, medmindre ansøgerens interesse i at kunne benytte kendskab til sagens dokumenter til varetagelse af sit tarv taler imod,
- 3) fortrolighed følger af EU-retlige eller folkeretlige forpligtelser,
- 4) ansøgerens interesse i at kunne benytte kendskab til sagens dokumenter til varetagelse af sit tarv findes at burde vige for afgørende hensyn til forholdet til fremmede magter eller mellemfolkelige institutioner eller
- 5) ansøgerens interesse i at kunne benytte kendskab til sagens dokumenter til varetagelse af sit tarv findes at burde vige for hensynet til forebyggelse, opklaring og forfølgning af lovovertrædelser eller for særlige hensyn til beskyttelse af medsigtede, vidner eller andre.

Stk. 5. Anmodning om aktindsigt indgives til politidirektøren. Politidirektørens afgørelse kan påklages til den overordnede anklagemyndighed efter reglerne i kapitel 10.

Stk. 6. Politidirektøren afgør snarest, om en anmodning om aktindsigt kan imødekommes. En anmodning om aktindsigt skal færdigbehandles inden 7 arbejdsdage efter modtagelsen, medmindre dette på grund af f.eks. sagens omfang eller kompleksitet undtagelsesvis ikke er muligt. Ansøgeren skal i givet fald underrettes om grunden til fristoverskridelsen og om, hvornår anmodningen kan forventes færdigbehandlet.

Stk. 7. Politidirektøren afgør, om aktindsigt skal gives i form af gennemsyn eller udlevering af kopi.

Stk. 8. Personnummer er ikke omfattet af retten til aktindsigt.

4) the applicant's interest in being able to use knowledge of the documents in the case to safeguard his interests is found to have to give way to decisive considerations of the relationship with foreign powers or international institutions, or

5) the applicant's interest in being able to use knowledge of the documents in the case to safeguard his interest is found to have to give way to the prevention, investigation and prosecution of offences or to special considerations for the protection of accomplices, witnesses or others.

PCS. 5. Requests for access to documents are submitted to the Director of Police. The director of police's decision can be appealed to the superior public prosecutor's office according to the rules in chapter 10.

PCS. 6. The director of police decides as soon as possible whether a request for access to documents can be granted. A request for access to documents must be processed within 7 working days of receipt, unless this is due to e.g. the extent or complexity of the case is exceptionally not possible. If necessary, the applicant must be informed of the reason for exceeding the deadline and when the request can be expected to be processed.

PCS. 7. The Director of Police decides whether access to documents must be granted in the form of a review or the provision of a copy.

PCS. 8. Social security number is not covered by the right to access documents.

Section 730¹²⁰

A person charged with a crime is entitled to choose a defence counsel to assist him in accordance with the rules detailed below. If the accused is under 18 years of age, and the person in question is not married, the choice rests with the holder of parental authority, who is entitled to act on behalf of the accused.

PCS. 2. Only the lawyers authorised to appear before the relevant court or the persons specially accepted by the Minister of Justice for appointment as public defenders by the relevant court can be chosen as defenders. However, the court can, when it is considered

¹²⁰ § 730.

Den, der sigtes for en forbrydelse, er berettiget til at vælge en forsvarer til at stå ham bi i overensstemmelse med de nedenfor nærmere givne regler. Er sigtede under 18 år, og har den pågældende ikke indgået ægteskab, tilkommer valget forældremyndighedens indehaver, som er berettiget til at optræde på sigtedes vegne.

Stk. 2. Kun de til møde for vedkommende ret berettigede advokater eller de særlig af justitsministeren til beskikkelse som offentlige forsvarere ved vedkommende ret antagne personer kan vælges til forsvarere. Dog kan retten, når det under hensyn til sagens karakter og øvrige omstændigheder findes forsvarligt, tillade, at der som forsvarer vælges en advokat fra andet nordisk land. Endvidere kan retten undtagelsesvis tilstede, at andre uberygtede personer over 18 år benyttes som forsvarere.

Stk. 3. Retten kan på ethvert tidspunkt under sagen ved kendelse afvise en valgt forsvarer, hvis betingelserne efter § 735, stk. 3, for at nægte at beskikke ham foreligger. Der skal i så fald på begæring beskikkes sigtede en offentlig forsvarer.

Stk. 4. Udelukkede fra at vælges er personer, der er indkaldt til at afhøres som vidner eller skøns mænd, eller som er begæret indkaldt i sådan egenskab, indtil retten har truffet afgørelse herom, eller hvis optræden ifølge § 60, stk. 1, nr. 3, ville medføre inhabilitet hos dommeren.

justifiable in view of the nature of the case and other circumstances, allow a lawyer from another Nordic country to be chosen as a defender. In addition, the court may exceptionally present other unrefuted persons over the age of 18 to be used as defenders.

PCS. 3. The court can at any time during the case by order reject a chosen defender, if the conditions according to Section 735, subsection 3, to refuse to appoint him exists. In that case, a public defender must be appointed to the accused on request.

PCS. 4. Excluded from being elected are persons who have been summoned to be questioned as witnesses or appraisers, or who have requested to be summoned in such a capacity, until the court has made a decision on this, or whose appearance according to Section 60, subsection 1, no. 3, would result in disqualification of the judge.

Section 731¹²¹

The public defender is, insofar as the accused has not himself chosen a defender, or the chosen defender fails to appear, to be appointed,

- a) when the accused is brought before the court with a view to remand or maintaining the arrest,
- b) when, before charges have been brought, witnesses must be questioned, or an inspection must take place or an opinion or estimate must be given for use during the main hearing, however, that the legal proceedings will not be postponed after the presence of the defender, when it must be feared that the evidence would thereby be wasted,
- c) when there are questions about confiscation of an asset or a part of it, cf. Section 802, subsection 3.
- d) when charges have been brought in cases that must be heard with the participation of jurors or judges,
- e) when charges have been brought in cases in which there is a question of a higher penalty than a fine,

¹²¹ § 731.

Offentlig forsvarer bliver, for så vidt sigtede ikke selv har valgt en forsvarer, eller den valgte forsvarer udebliver, at beskikke,

- a) når sigtede fremstilles for retten med henblik på varetægtsfængsling eller opretholdelse af anholdelsen,
 - b) når der, forinden tiltale er rejst, skal afhøres vidner, eller besigtigelse skal ske eller syn eller skøn afgives til brug under hovedforhandling, dog at retshandlingen ej bliver at udsætte efter forsvarers tilstedekomst, når det må befrygtes, at beviset derved ville spildes,
 - c) når der er spørgsmål om beslaglæggelse af en formue eller en del af denne, jf. § 802, stk. 3.
 - d) når tiltale er rejst i sager, der skal behandles under medvirken af nævninger eller domsmænd,
 - e) når tiltale er rejst i sager, i hvilke der bliver spørgsmål om højere straf end bøde,
 - f) når sagen ankes, og anken ikke straks afvises,
 - g) når der i anledning af kære eller begæring om genoptagelse skal finde mundtlig forhandling sted,
 - h) når vidners eller skønsmænds beedigede forklaring begæres til brug under en i udlandet indledet straffesag,
 - i) i alle tilfælde, hvor retten i medfør af § 29, stk. 1, og stk. 3, nr. 3, beslutter, at afhøring af sigtede skal foregå for lukkede døre,
 - j) når sager, hvor der er spørgsmål om fængselsstraf, fremmes i medfør af § 855, stk. 3, nr. 4.
- Stk. 2. I det under litra e nævnte tilfælde og i det i § 831, stk. 4, nævnte tilfælde bliver offentlig forsvarer kun at beskikke, når den sigtede (eller hans værge) begærer det. Herom skal der gives sigtede lejlighed til at udtale sig.

- f) when the case is appealed and the appeal is not immediately dismissed,
- g) when an oral hearing is to take place due to appeals or a request for reinstatement,
- h) when the sworn statement of witnesses or appraisers is requested for use during a criminal proceeding initiated abroad,
- i) in all cases where the court pursuant to Section 29, subsection 1, and subsection 3, no. 3, decides that questioning of the accused must take place behind closed doors,
- j) when cases where there is a question of a prison sentence are brought forward in accordance with Section 855, subsection 3, No. 4.

PCS. 2. In the case mentioned under letter e and in the case in Section 831, subsection 4, in the case mentioned, a public defender can only be appointed when the accused (or his guardian) requests it. The accused must be given the opportunity to comment on this.

Section 731a

Before a video interview pursuant to Section 745e or Section 183, subsection 3, a defence counsel must be appointed for the person who is suspected or may later become a suspect in the case, if the person in question has not chosen a defence counsel himself or the chosen defence counsel fails to appear.

Section 732¹²²

In cases other than those mentioned in Section 731, both before and after charges have been brought, a public defender may be appointed for the accused, when the court deems it desirable based on the nature of the case, the person of the accused or the circumstances in general and the accused has not obtained assistance himself by a defender.

PCS. 2. Requests for the appointment of a public defender can be made by the accused as well as by the police. The Minister of Justice lays down rules on guidance for accused persons on the right to apply for an appointed defence counsel. It must appear from the police report that the accused has received appropriate guidance. The police take care that the matter is brought before the court.

PCS. 3. Decisions according to which a defender must be appointed cannot be appealed to a higher court. Against decisions by which the appointment of a defender is refused, appeals to a higher court can take place.

¹²² § 732.

I andre tilfælde end de i § 731 nævnte kan der, såvel før som efter at tiltale er rejst, beskikkes sigtede offentlig forsvarer, når retten efter sagens beskaffenhed, sigtedes person eller omstændighederne i øvrigt anser det for ønskeligt og sigtede ikke selv har skaffet sig bistand af en forsvarer.

Stk. 2. Begæring om beskikkelse af en offentlig forsvarer kan fremsættes såvel af sigtede som af politiet. Justitsministeren fastsætter regler om vejledning af sigtede om adgangen til at begære en forsvarer beskikket. Det skal af politirapporten fremgå, at den sigtede har modtaget behørig vejledning. Politiet drager omsorg for, at spørgsmålet indbringes for retten.

Stk. 3. Beslutninger, hvorefter forsvarer skal beskikkes, kan ikke påklages for højere ret. Imod beslutninger, hvorved beskikkelse af forsvarer nægtes, kan kære til højere ret finde sted.

Section 733¹²³

To be appointed as public defenders, the Minister of Justice assumes, by agreement, an appropriate number of lawyers authorised to appear before the relevant court or, if necessary, other suitable persons. In urgent cases, however, a lawyer who has not been hired by the Minister of Justice, but is nevertheless entitled to appear before the relevant court, can also be appointed as defence counsel.

PCS. 2. In appeal cases, a lawyer who has been appointed as defence counsel during the proceedings in the previous instance can be appointed to also lead the case before the superior court, if the lawyer is entitled to appear before this court.

PCS. 3. At the accused's request, a lawyer who has not been hired by the Minister of Justice can be appointed as a defence counsel, if the lawyer is entitled to appear before the court in question and is willing to be appointed. If the case is scheduled, or the case is expected to be scheduled in connection with the appointment, the lawyer must inform the court of available meeting times.

Section 734

No one may be appointed public defender who has himself been harmed by the crime or is in such a relationship with the harmed person that would exclude a judge from acting in the case, or who has been called to explain as a witness, appraiser in the case or has acted in who, as a prosecutor or legal representative for the aggrieved party or as a police official or as a judge or magistrate or in another criminal case, has been the defender of an accused whose interest in the case of the accused is in conflict, or whose appointment according to Section 60, subsection 1, no. 3, would result in disqualification of the judge.

PCS. 2. If several persons are accused in the same case, the defence can only be carried out by the same person, when the interests of the accused in the case are not conflicting.

Section 735

The defender is appointed by the president of the court. The cases are distributed as far as possible between the assumed defenders according to round and taking into account

¹²³ § 733.

Til at beskikkes som offentlige forsvarere antager justitsministeren efter overenskomst et passende antal af de til møde for vedkommende domstol berettigede advokater eller, om fornødent, andre dertil egnede personer. I påtrængende tilfælde kan dog også en advokat, der ikke er antaget af justitsministeren, men dog berettiget til møde for vedkommende ret, beskikkes til forsvarer.

Stk. 2. I ankesager kan en advokat, der har været beskikket til forsvarer under behandlingen i den foregående instans, beskikkes til også at føre sagen for den overordnede ret, såfremt advokaten er mødeberettiget for denne ret.

Stk. 3. Efter sigtedes anmodning kan en advokat, der ikke er antaget af justitsministeren, beskikkes til forsvarer, såfremt advokaten er mødeberettiget for den pågældende ret og er villig til at lade sig beskikke. Er sagen berammet, eller forventes sagen berammet i forbindelse med beskikkelsen, skal advokaten oplyse retten om ledige mødetidspunkter.

the available meeting times that the defenders have informed the court, cf. however subsection 2 and 3.

PCS. 2. The accused must have the opportunity to indicate who the accused wants as a defence counsel. The president of the court can set a deadline for this. If the person in question is willing to allow himself to be charged, the accused's wish is granted, unless otherwise follows from subsection 3.

PCS. 3. A person cannot be appointed as a defender if

- 1) there is a demonstrable risk that the person concerned will hinder or oppose the disclosure of the case, or
- 2) the concerned person's participation will significantly delay the processing of the case.

PCS. 4. Upon request, decisions are made pursuant to subsection 3 of the court by order.

Section 736

The order can be revoked when

- 1) the person in question no longer fulfils the conditions according to Sections 733 and 734 in order to be appointed,
- 2) the conditions according to Section 735, subsection 3, in order to refuse appointment of the person in question will be available,
- 3) the accused requests the appointment of a new defender and has not previously had the opportunity to request a specific defender,
- 4) the accused requests the appointment of a new defender and his participation will not delay the processing of the case or
- 5) the accused requests this and has arranged for his own defence at no cost to the public, and without the processing of the case being delayed.

PCS. 2. Upon request, decisions are made pursuant to subsection 1, no. 2, by the court by order.

Section 737

Decision to reject an elected defender pursuant to Section 730, subsection 3, 1st point, on refusing to appoint a person as a defence counsel pursuant to Section 735, subsection 3, or to revoke a designation pursuant to Section 736, subsection 1, no. 2, can be appealed to the Special Complaint within a week after the decision has been announced. The complaint is heard orally if a request is made or the court so decides. In addition, the rules in Sections 968, subsection 1, 969, para. 2, 970–972 and 974 corresponding use.

PCS. 2. The decision of the Special Complaints Court cannot be appealed.

Section 738

The court may allow several elected defenders to appear for the same accused. The court can also exceptionally appoint several public defenders for the accused. The accused is entitled to also take the floor in his defence.

PCS. 2. The public defender, who is appointed to look after the interests of the accused during the main hearing, is authorised to appear also during proceedings before another court. Should such a legal action take place outside the judicial district in which he lives, at his request a special defender can be appointed to appear at the same. However, in urgent cases the legal action should not be postponed thereafter.

PCS. 3. When the defender's duties have ended, he is obliged to hand over to the court the copies and copies of the case files handed over to him.

Section 739

If a lawyer or someone appointed to the defence abuses his position to oppose the disclosure of the case, or if he is guilty of disregarding his duties to properly advance the case, he will be considered in accordance with Chapter 16 of the Criminal Code.

Section 740¹²⁴

Appointing a public defender does not restrict the accused's right to take care of his own defence; but the defender does not need the accused's consent to take the actions that he considers necessary or appropriate for his benefit.

Section 741¹²⁵

The public defender receives remuneration from the state treasury, including reimbursement for travel expenses that he has rightfully incurred in connection with his duties. The provisions in Section 333, subsection 1, 2nd point, and Section 334, subsection 3 and 5, apply accordingly.

¹²⁴ § 740.

Beskikkelse af en offentlig forsvarer indskrænker ikke sigtedes ret til selv at drage omsorg for sit forsvar; men forsvareren behøver ikke sigtedes samtykke til at foretage de handlinger, som han anser for nødvendige eller hensigtsmæssige til dennes tarv.

¹²⁵ § 741.

Der tilkommer den offentlige forsvarer vederlag af statskassen, herunder godtgørelse for rejseudgifter, som han med føje har haft i forbindelse med hvervet. Bestemmelserne i § 333, stk. 1, 2. pkt., og § 334, stk. 3 og 5, finder tilsvarende anvendelse.

Stk. 2. Når der efter sigtedes anmodning beskikkes en ny forsvarer i stedet for en beskikket forsvarer, som sigtede har ønsket, eller hvor sigtede har haft lejlighed til at anmode om en bestemt forsvarer, kan vederlaget til den nye forsvarer ikke overstige, hvad der ville tilkomme den tidligere forsvarer, hvis der ikke var blevet beskikket en ny forsvarer.

Stk. 3. Vederlaget fastsættes af den ret, der har foretaget beskikkelsen. Hvis der er fastsat takster efter stk. 4, fastsættes vederlaget på baggrund af disse. Vederlaget fastsættes ved dommen eller ved særskilt beslutning.

Stk. 4. Justitsministeren kan fastsætte takster for vederlag til offentlige forsvarere.

PCS. 2. When, at the request of the accused, a new defender is appointed instead of an appointed defender, which the accused has requested, or where the accused has had the opportunity to request a specific defender, the remuneration for the new defender cannot exceed what would have accrued to the former defender, if a new defender had not been appointed.

PCS. 3. The remuneration is determined by the court that made the appointment. If tariffs have been set according to subsection 4, the remuneration is determined on the basis of these. The remuneration is determined by the judgment or by separate decision.

PCS. 4. The Minister of Justice can set rates for remuneration to public defenders.

b) Defence in the investigation phase

aa. At the police Station (Police Interviews etc.)

- 11** The defence at the police station, e.g. related to police interviews, photographic presentation or confrontations, is regulated by the CPC as well:

Section 752

Before the police question an accused person, he must be expressly informed of the charge and of the fact that he is not obliged to make a statement. The report shall show that these rules have been complied with.

PCS 2. The Minister for Justice lays down rules on the cases in which the municipal council must be informed of and have access to attend the questioning of accused persons under the age of 18. For suspected persons under the age of 15, the provision of Section 821(d) applies.

PCS 3. Questions to an accused person must not be put in such a way that something that has been denied or not admitted is presumed confessed. Promises, false pretences or threats may not be used.

PCS 4. The questioning may not be prolonged solely to obtain a confession. In the case of interrogations which are not very short, the report shall indicate the times at which the hearing begins and ends.

PCS 5. The accused may not consult his counsel or others regarding the immediate answer to a question posed.

Section 745c

The defence counsel has access to police interviews of the accused and the right to ask further questions. On request, the defence counsel must be informed of the time of the hearings. If the accused is in custody and solitary confinement has been ordered pursuant to section 770a, the accused may not be questioned without the defence counsel being present, unless both the accused and the defence counsel agree.

Section 745d

Where an interview, confrontation, photographic presentation or other investigative step of similar importance is likely to be used as evidence in the main hearing, the police shall notify the defence counsel prior to the hearing so that the defence counsel may be present. The defence counsel shall have the right to make suggestions as to the conduct of the investigative step in question. The defence counsel's observations in this regard must be added to the police report. If the defence counsel is unable to attend or if it is not possible for the police to inform the defence counsel, only investigative steps may be taken which cannot be delayed. If the defence counsel has not been present, the defence counsel must be informed without delay of what has been done.

PCS 2. The rules in subsection (1) may be waived in accordance with the provision of section 729(c).

Section 745e

Police interviews with a person may be recorded on video for the purpose of using the recording as evidence during the main hearing under section 872 (video interview) in the following cases:

- 1) The person is under 13 years of age.
- 2) The person is under 15 years of age and the investigation concerns a violation of
 - a) Section 210 or Chapter 24 of the Criminal Code; or
 - b) Sections 237 or 244–246 of the Criminal Code, where the person or one of his or her close relatives is injured and the suspect is one of the person's closest relatives.
- 3) The person is under 18 years of age and special circumstances justify video interviewing.
- 4) The person is 18 years of age or older and has a serious mental disorder or significant disability, and special circumstances justify video interviewing.

PCS 2. The defence counsel must be present during the video interview.

PCS 3. The suspect shall not be allowed to attend the video hearing. The person concerned must have access to the police together with his defence counsel as soon as possible. An application by the suspect or his defence counsel for the person to be re-examined shall be made as soon as possible thereafter.

PCS 4. If the suspect or defence counsel objects to the video interview being used as evidence during the main hearing, he or she must bring the matter before the court within 4 weeks of the video examination taking place. The court may disregard any delay which must be regarded as excusable.

bb. Access to national case file

(1) Danish Administration of Justice Act

- 12 The access to the national case file is governed by at least for different, special provisions in Chapter 66 of the Danish Code of Judicial Administration:

Section 729a¹²⁶

The accused is entitled to choose counsel pursuant to section 730. Public defenders shall be appointed in accordance with the rules laid down in sections 731–735.

PCS 2. The court shall provide the defence counsel with copies of entries in the court records relating to the case. The defence counsel may acquaint the accused with the copies, unless otherwise provided for in sections 748 and 856. The court may order the defence counsel not to hand over the copies to the accused or others if it is to be feared that the copies will be used in an unlawful manner.

PCS 3. The defence counsel has access to the material obtained by the police for the purpose of the case to which the charge relates. The defence counsel must be provided with a copy of the material to the extent that it can be copied without inconvenience. The defence counsel may not, without the consent of the police, hand over the material received to the accused or others. The police give consent if it is found objectionable. However, with regard to material covered by section 871(1) and subsection (2)(5), consent may only be refused on the grounds referred to in subsection (4).

PCS 4. If it is necessary for the interests of foreign powers, for national security, for the investigation of the case, for third parties or for the investigation of another pending case concerning an offence punishable by law with imprisonment for 6 years or more, or which constitutes an intentional violation of chapters 12 or 13 of the Penal Code, the police may instruct the defence counsel not to disclose the information which the defence counsel has received from the police. The order may be extended until the defendant has testified at the main hearing.

¹²⁶ § 729 a.

Sigtede er berettiget til at vælge en forsvarer, jf. § 730. Offentlig forsvarer beskikkes efter reglerne i §§ 731–735. Stk. 2. Retten meddeler forsvareren kopi af indførsler i retsbøgerne vedrørende sagen. Forsvareren kan gøre sigtede bekendt med kopierne, medmindre andet følger af §§ 748 og 856. Retten kan pålægge forsvareren ikke at overlevere kopierne til sigtede eller andre, hvis det må befrygtes, at kopierne vil blive benyttet på retsstridig måde. Stk. 3. Forsvareren har adgang til at gøre sig bekendt med det materiale, som politiet har tilvejebragt til brug for den sag, som sigtelsen angår. Forsvareren skal have udleveret kopi af materialet, i det omfang det uden ulempe kan kopieres. Forsvareren må ikke uden politiets samtykke overlevere det modtagne materiale til sigtede eller andre. Politiet giver samtykke, hvis det findes ubetænkeligt. Med hensyn til materiale, der er omfattet af § 871, stk. 1 og stk. 2, nr. 5, kan samtykke dog kun nægtes af de i stk. 4 nævnte grunde.

Stk. 4. Hvis det er nødvendigt af hensyn til fremmede magter, til statens sikkerhed, til sagens opklaring, til tredje- mand, herunder til et vidnes sikkerhed, eller til efterforskningen af en anden verserende sag om en lovovertrædelse, som efter loven kan straffes med fængsel i 6 år eller derover, eller som udgør en forsætlig overtrædelse af straffelovens kapitler 12 eller 13, kan politiet give forsvareren pålæg om ikke at videregive de oplysninger, som forsvareren har modtaget fra politiet. Pålægget kan udstrækkes, indtil tiltalte har afgivet forklaring under hovedforhandlingen.

Section 729b¹²⁷

An accused person without a defence counsel shall, on request, have access to the police to acquaint himself with entries in the court records relating to the case, unless otherwise provided for in sections 748 and 856. The police shall, on request, provide copies of the imports to the accused, unless there is reason to fear that the copies will be used unlawfully.

PCS 2. An accused person without a defence counsel must also have access, on request, to acquaint himself with the material obtained by the police for the purpose of the case to which the charge relates. However, the police may refuse the request on the grounds mentioned in section 729a (4). A restriction on the accused's access to the file lapses at the latest before the main hearing or a hearing for the purpose of hearing the case pursuant to section 831 or the conclusion of the case by dropping charges. Upon request, the police will provide copies of the material to the accused if it is found to be objectionable. However, with respect to material covered by Section 871(1) and (2)(5), disclosure may only be refused on the grounds set out in Section 729a(4).

¹²⁷ § 729b.

En sigtet uden forsvarer skal efter anmodning have adgang til hos politiet at gøre sig bekendt med indførsler i retsbøgerne vedrørende sagen, medmindre andet følger af §§ 748 og 856. Politiet udleverer efter anmodning kopi af indførslerne til sigtede, medmindre det må befrygtes, at kopierne vil blive benyttet på retsstridig måde.

Stk. 2. En sigtet uden forsvarer skal endvidere efter anmodning have adgang til at gøre sig bekendt med det materiale, som politiet har tilvejebragt til brug for den sag, som sigtelsen angår. Politiet kan dog afslå anmodningen af de i § 729 a, stk. 4, nævnte grunde. En begrænsning i sigtedes aktindsigt bortfalder senest inden hovedforhandlingen eller et retsmøde med henblik på sagens behandling i medfør af § 831 eller sagens afslutning ved tiltalefrafald. Politiet udleverer efter anmodning kopi af materialet til sigtede, hvis det findes ubetænkeligt. Med hensyn til materiale, der er omfattet af § 871, stk. 1 og stk. 2, nr. 5, kan udlevering dog kun nægtes af de i § 729 a, stk. 4, nævnte grunde.

Section 729c¹²⁸

At the request of the police, the court may order that the rules on the defence counsel's and defendant's right of access to documents pursuant to sections 729a and 729b be waived if this is required for the purposes of:

- 1) foreign powers,
- 2) national security;
- 3) clarification of the case;
- 4) the life or health of a third party;
- 5) the investigation of another pending case concerning an offence punishable by law with imprisonment for 6 years or more, or which constitutes an intentional offence of chapters 12 or 13 of the Criminal Code; or
- 6) protection of confidential information about police investigative methods.

PCS 2. A decision under paragraph 1 may not be taken if it raises serious concerns for the defence of the accused.

PCS 3. If the considerations referred to in paragraph 1 apply to only part of the material, the defence counsel or accused person shall be made aware of the other contents of the material.

PCS 4. The decision shall be taken by order. The order sets out the specific circumstances of the case justifying a derogation from Sections 729a and 729b. If the court decides that the derogation should apply until further notice, the court must reconsider

¹²⁸ § 729 c.

Retten kan efter anmodning fra politiet bestemme, at reglerne om forsvarerens og sigtedes ret til aktindsigt efter §§ 729 a og 729 b fraviges, hvis det er påkrævet af hensyn til

- 1) fremmede magter,
- 2) statens sikkerhed,
- 3) sagens opklaring,
- 4) tredjemands liv eller helbred,
- 5) efterforskning af en anden verserende sag om en lovovertrædelse, som efter loven kan straffes med fængsel i 6 år eller derover, eller som udgør en forsætlig overtrædelse af straffelovens kapitler 12 eller 13, eller
- 6) beskyttelse af fortrolige oplysninger om politiets efterforskningsmetoder.

Stk. 2. Afgørelse efter stk. 1 kan ikke træffes, hvis det giver anledning til væsentlige betænkeligheder for varetagelsen af sigtedes forsvar.

Stk. 3. Gør hensyn som nævnt i stk. 1 sig kun gældende for en del af materialet, skal forsvareren eller sigtede gøres bekendt med det øvrige indhold af materialet.

Stk. 4. Afgørelsen træffes ved kendelse. I kendelsen anføres de konkrete omstændigheder i sagen, der begrundet en fravigelse fra §§ 729 a og 729 b. Træffer retten afgørelse om, at fravigelsen skal gælde indtil videre, skal retten på ny vurdere fravigelsen, før hovedforhandlingen indledes. Træffer retten afgørelse om, at fravigelsen skal gælde i et nærmere fastsat tidsrum, kan afgørelsen forlænges ved senere kendelse. Rettens afgørelse kan kæres.

Stk. 5. I den retten træffer afgørelse, skal der beskikkes en advokat for sigtede, og advokaten skal have lejlighed til at udtale sig. Advokaten beskikkes fra den særlige kreds af advokater, der er nævnt i stk. 6. Advokaten skal underrettes om alle retsmøder, der afholdes med henblik på at opnå rettens kendelse om fravigelse fra §§ 729 a og 729 b, og er berettiget til at overvære disse samt til at gøre sig bekendt med det materiale, som politiet har tilvejebragt til brug for den sag, som sigtelsen angår. § 785, stk. 1, 2.-5. pkt., og stk. 2, finder tilsvarende anvendelse.

Stk. 6. Justitsministeren antager for hver landsrets område et antal advokater, der kan beskikkes efter stk. 5. Justitsministeren fastsætter nærmere regler om de pågældende advokater, herunder om vagtordninger, om vederlag for at stå til rådighed og om sikkerhedsmæssige spørgsmål.

the derogation before the main hearing begins. If the court decides that the derogation shall apply for a specified period, the decision may be extended by subsequent order. The court's decision may be appealed.

PCS 5. Before the court makes its decision, a lawyer must be appointed for the accused and the lawyer must be given the opportunity to make a statement. The lawyer shall be appointed from the special circle of lawyers referred to in paragraph 6. The lawyer must be informed of all hearings held for the purpose of obtaining the court's order derogating from sections 729a and 729b and is entitled to attend them and to acquaint himself with the material obtained by the police for the purpose of the case to which the charge relates. Section 785(1), subsections (2) to (5), and subsection (2) shall apply *mutatis mutandis*.

PCS 6. The Minister for Justice shall appoint for each area of the High Court a number of lawyers who may be appointed in accordance with paragraph 5. The Minister for Justice lays down detailed rules on the lawyers concerned, including on-call arrangements, remuneration for availability and security issues.

Section 729d

When the proceedings have been finally closed, the person charged may request to be made aware of documents relating to the case, including entries in the court records, in accordance with the provisions of this paragraph.

PCS 2. The right of access to documents shall not extend to internal documents. The following shall be considered as internal documents:

- 1) documents not disclosed to third parties;
- 2) minutes of deliberations and other minutes of the Court's deliberations; and
- 3) correspondence between different units of the police and the public prosecutor's office.

PCS 3. Documents covered by paragraph 2 which are made available to third parties shall lose their internal character, except for legal reasons, for research purposes or for other similar reasons.

PCS 4. The right of access to documents may be restricted to the extent that:

- 1) the applicant has been precluded under the provisions of the second and fourth books of this Act from acquainting himself with information relating to the case;
- 2) it is essential for national security, unless the applicant's interest in being able to use knowledge of the documents of the case for the protection of his or her interests militates against it;
- 3) confidentiality derives from obligations under Union or international law;
- 4) the applicant's interest in being able to use knowledge of the documents of the case for the protection of his best interests is considered to override overriding considerations relating to relations with foreign powers or international institutions; or

5) The applicant's interest in being able to use knowledge of the documents in the case for the protection of his best interests should take precedence over the prevention, detection and prosecution of offences or with special considerations relating to the protection of co-accused, witnesses or others.

PCS 5. Applications for access to documents shall be submitted to the Commissioner of Police. An appeal against the decision of the Commissioner of Police may be lodged with the superior prosecution service in accordance with the rules laid down in Chapter 10.

PCS 6. The Commissioner of Police shall decide as soon as possible whether a request for access to documents can be granted. A request for access to documents must be completed within 7 working days of receipt, unless this is exceptionally not possible due to e.g. the size or complexity of the case. Where appropriate, the applicant shall be informed of the reasons for the delay and of the expected date of completion of the application.

PCS 7. The Commissioner of Police shall decide whether access to the file shall be granted in the form of inspection or delivery of a copy.

PCS 8. Personal identification numbers are not covered by the right of access to documents.

(2) Danish Administrative Act

Access to files in criminal cases

Section 18¹²⁹

A party to a criminal case may, once the case has been decided, demand to be made aware of the documents of the case to the extent that this is reasonably justified for the sake of safeguarding the interests of the person in question, and for the sake of preventing, solving and prosecuting offences. or special considerations for the protection of the accused, witnesses or others do not speak against this. The provisions in Sections 12-14 apply accordingly.

PCS. 2. The provision in subsection 1 does not include documents held by the police or the public prosecutor's office.

¹²⁹ Aktindsigt i straffesager **Bekendtgørelse af forvaltningsloven**
§ 18.

En part i en straffesag kan, når sagen er afgjort, forlange at blive gjort bekendt med sagens dokumenter i det omfang, dette er rimeligt begrundet af hensyn til varetagelse af den pågældendes interesser, og hensynet til forebyggelse, opklaring og forfølgning af lovovertrædelser eller særlige hensyn til beskyttelse af sigtede, vidner eller andre ikke taler herimod. Bestemmelserne i §§ 12–14 gælder tilsvarende.

Stk. 2. Bestemmelsen i stk. 1 omfatter ikke dokumenter hos politiet eller anklagemyndigheden.

Stk. 3. Afgørelsen af, om og i hvilken form en begæring om aktindsigt kan imødekommes efter stk. 1, træffes af den myndighed, der har truffet den administrative beslutning i straffesagen. Afgørelsen kan påklages til vedkommende overordnede forvaltningsmyndighed. Justitsministeren fastsætter regler om betaling for afskrifter og kopier.

PCS. 3. The decision as to whether and in what form a request for access to documents can be granted pursuant to subsection 1, is made by the authority that made the administrative decision in the criminal case. The decision can be appealed to the relevant superior administrative authority. The Minister of Justice lays down rules on payment for transcripts and copies.

cc. Defence in case of arrest and pre-trial detention

Rules on the defence in case of arrest and pre-trial detention are enshrined in Chapter 69 and 70 of the Danish Code on Judicial Administration. **13**

c) Defence in Indictment phase and the trial phase

The competence of the courts in the first instance of the criminal proceedings are determined by the *Retsplejeloven* (Act on Administration of Justice): **14**

Chapter 65 The prosecution

Section 718

In the area of criminal justice, the courts only operate at the request of the public prosecutor's office or a private prosecutor.

Chapter 62 Subject matter competence

Section 686¹³⁰

Criminal cases are heard in the first instance at the district courts.

¹³⁰ Saglig kompetence

§ 686.

Straffesager behandles i 1. instans ved byretterne.

Stk. 2. Domsmand medvirker i straffesager, hvor der bliver spørgsmål om højere straf end bøde, eller som i øvrigt skønnes at være af særlig indgribende betydning for tiltalte eller af særlig offentlig interesse, medmindre andet følger af stk. 3 og 4. Domsmand medvirker endvidere, hvis sådan behandling er foreskrevet efter regler i andre love.

Stk. 3. Domsmand medvirker ikke i

- 1) straffesager, som fremmes efter § 831,
- 2) straffesager, som behandles under medvirken af sagkyndige efter § 20 b, stk. 1, og
- 3) de i straffelovens § 60, stk. 1, nr. 3, og § 66, stk. 4, nævnte sager vedrørende betinget dømte, samt de i § 61, stk. 1 og 2, nævnte sager, hvor der alene kan blive spørgsmål om at idømme bøde i forbindelse med den betingede dom for det forhold, der er begået før den betingede dom eller i prøvetiden for den betingede dom.

Stk. 4. Nævninger medvirker i

- 1) straffesager, hvor der bliver spørgsmål om straf af fængsel i 4 år eller derover, for så vidt dette ikke er en følge af, at der bliver spørgsmål om fastsættelse af en fællesstraf efter reglerne i straffelovens § 40, stk. 1, og § 61,
- 2) straffesager, hvor der bliver spørgsmål om dom til anbringelse i institution i medfør af straffelovens § 68 eller dom til forvaring i medfør af straffelovens § 70, og
- 3) straffesager vedrørende politiske lovovertrædelser.

Stk. 5. Nævninger medvirker ikke i

- 1) straffesager vedrørende overtrædelse af straffelovens §§ 172, 173, 191, 191 a, 286, 289 eller 290 eller § 290 a, stk. 2, medmindre sagen omfatter andre lovovertrædelser, der efter stk. 4 skal pådømmes under medvirken af nævninger, og
- 2) de i stk. 4, nr. 1, nævnte straffesager, som fremmes efter § 831.

PCS. 2. Judges participate in criminal cases where there is a question of a higher penalty than a fine, or which is otherwise deemed to be of particularly significant importance for the defendant or of particular public interest, unless otherwise follows from subsection 3 and 4. Judges also participate if such treatment is prescribed according to rules in other laws.

PCS. 3. Judges do not take part in

- 1) criminal proceedings brought under section 831,
- 2) criminal cases which are processed with the assistance of experts in accordance with section 20 b, subsection 1, and
- 3) those in Section 60, subsection of the Criminal Code. 1, no. 3, and Section 66, subsection 4, mentioned cases concerning suspended sentences, as well as those in section 61, subsection 1 and 2, mentioned cases, where there can only be a question of imposing a fine in connection with the conditional sentence for the matter that was committed before the conditional sentence or during the probationary period of the conditional sentence.

PCS. 4. Jurors participate in

- 1) criminal cases where there is a question of punishment of imprisonment for 4 years or more, insofar as this is not a consequence of there being a question of determining a joint punishment according to the rules in Section 40, subsection of the Criminal Code. 1, and Section 61,
- 2) criminal cases where there is a question of a sentence for placement in an institution pursuant to section 68 of the Criminal Code or a sentence for detention pursuant to section 70 of the Criminal Code, and
- 3) criminal proceedings relating to political offences.

PCS. 5. Appointments do not take part in

- 1) criminal proceedings relating to violations of Sections 172, 173, 191, 191a, 286, 289 or 290 or Section 290a, subsection of the Criminal Code. 2, unless the case includes other offences, which according to subsection 4 must be judged with the assistance of jurors, and
- 2) those in para. 4, no. 1, said criminal proceedings which are brought forward under section 831.

Section 689¹³¹

At the high courts, decisions are processed in connection with appeals or appeals from the judgments, rulings and decisions of the district courts in criminal cases.

PCS. 2. Juries take part in criminal cases where the district court's decision has been made with the help of jurors, and where the appeal includes the evaluation of the evidence for the defendant's guilt.

PCS. 3. Judges participate in

1) criminal cases, where the district court's decision has been made with the participation of jurors, and where the appeal does not include the assessment of the evidence for the defendant's guilt,

2) criminal cases where the district court's decision has been made with the help of judges, and

3) criminal cases, where the high court has a question of a higher penalty than a fine, or which is otherwise deemed to be of particularly significant importance for the accused or of particular public interest.

PCS. 4. Judges do not take part in

1) criminal cases which are processed with the assistance of experts in accordance with section 20 b, subsection 2, and

2) those in Section 60, subsection of the Criminal Code. 1, no. 3, and Section 66, subsection 4, mentioned cases concerning suspended sentences and those in section 61, subsection 1 and 2, mentioned cases, where there can only be a question of imposing a fine in connection with the conditional sentence for the matter that was committed before the conditional sentence or during the probationary period of the conditional sentence.

¹³¹ § 689.

Ved landsretterne behandles afgørelser i anledning af anke eller kære af byretternes domme, kendelser og beslutninger i straffesager.

Stk. 2. Nævninger medvirker i straffesager, hvor byrettens afgørelse er truffet under medvirken af nævninger, og hvor anken omfatter bedømmelsen af beviserne for tiltaltes skyld.

Stk. 3. Doms mænd medvirker i

1) straffesager, hvor byrettens afgørelse er truffet under medvirken af nævninger, og hvor anken ikke omfatter bedømmelsen af beviserne for tiltaltes skyld,

2) straffesager, hvor byrettens afgørelse er truffet under medvirken af domsmænd, og

3) straffesager, hvor der for landsretten bliver spørgsmål om højere straf end bøde, eller som i øvrigt skønnes at være af særlig indgribende betydning for tiltalte eller af særlig offentlig interesse.

Stk. 4. Doms mænd medvirker ikke i

1) straffesager, som behandles under medvirken af sagkyndige efter § 20 b, stk. 2, og

2) de i straffelovens § 60, stk. 1, nr. 3, og § 66, stk. 4, nævnte sager vedrørende betinget dømte og de i § 61, stk. 1 og 2, nævnte sager, hvor der alene kan blive spørgsmål om at idømme bøde i forbindelse med den betingede dom for det forhold, der er begået før den betingede dom eller i prøvetiden for den betingede dom.

Section 690¹³²

The Supreme Court hears all decisions in connection with appeals or appeals from the judgments, rulings and decisions of the high courts in criminal cases.

PCS. 2. Juries and judges do not take part in the Supreme Court's processing of criminal cases, cf. Section 3.

- 15 The defence counsel receives information from the prosecution service on the indictment and will be obliged to send other documents to the court if the prosecution requests him to do this:

Section 838

The prosecution service shall without delay send the defence counsel a copy of the list of evidence, without giving addresses, and a transcript of the investigative and evidentiary acts carried out in the case. The prosecution service must also, as far as possible, make the documents and other visible evidence available in an appropriate and reassuring manner and inform the defence counsel accordingly.

PCS 2. The prosecution service may instruct the defence counsel not to disclose information about a witness's residence or name, position and place of residence to the accused if the prosecution intends to request the court to order that this information may not be disclosed to the defendant, cf. section 856(2). The defence counsel may appeal against the order to the court.

Section 839

Before the expiry of the time limit indicated by the prosecution on the indictment, the defence counsel must submit to the court and to the prosecution service

- 1) documents and other visible evidence which the defence counsel intends to use; and
- 2) a record of the evidence which the defence counsel intends to adduce.

PCS 2. The court may, on request, extend the time limit.

PCS 3. The rules in subsections (837) to (2) of section 4 shall apply *mutatis mutandis*.

PCS 4. If the defence counsel wishes to request that evidence entered in the prosecution's list of evidence be obtained by other means, the defence counsel must request the court in writing within the time limit specified in the indictment. The defence counsel must send a copy of the request to the prosecution.

PCS 5. The rule in subsection (4) shall apply *mutatis mutandis* if the defence counsel wishes to request that the case be moved pursuant to sections 702 or 703.

¹³² § 690.

Under Højesteret hører alle afgørelser i anledning af anke eller kære af landsretternes domme, kendelser og beslutninger i straffesager.

Stk. 2. Nævninger og domsmænd medvirker ikke ved Højesterets behandling af straffesager, jf. § 3.

PCS 6. If the defence counsel assumes that the case as it is instituted cannot be heard or that the prosecution has overlooked a circumstance which does not relate to the evidence in the case and which means that the accused cannot be convicted, the defence counsel should immediately draw the prosecution's attention to this.

d) What rules apply in the main hearing at first instance?

In the main hearing Chapter 78 of the Danish Court on Judicial Administration applies. 16
The rules are anchored in ss. 851 et seq.

e) Rules on the Judgment: Conviction, Dismissal or Acquittal?

The rules on the judgment can be found at the end of Chapter 78: 17

Section 882

The main hearing ends with the court's judgment in the case. However, the case is considered pending before the court until the execution of the judgment can begin, or in the event of an appeal until the prosecution service has brought the case before the High Court.

Section 883

The judgment, in so far as it is not dismissal, must either be convicted or dismissed.

PCS 2. Acquittal shall be made where:

- 1) the matter is not subject to public reprimand;
- 2) the prosecution is abandoned;
- 3) the relationship is out of date; or
- 4) the defendant is found not guilty.

PCS 3. The court may not convict of any offence not covered by the indictment.

PCS 4. On the other hand, the court is not precluded from classifying the offence complained of under a penalty provision other than that allegedly applied by the prosecution. The court may also depart from the charge with regard to the incidental circumstances (time and place, etc.). However, this can only happen if the court considers with certainty that the defendant, even subject to such deviation from the charge, has had adequate access to defence. If the court finds that this is not the case, or has doubts in that regard, it shall, before taking its divergent assessment as a basis for sentencing, give the parties the opportunity of being heard and, where appropriate, stay the proceedings for the time necessary for the defence to take place.

Section 884

If the accused is convicted, the court shall indicate in the grounds for the judgment

- 1) the facts on which the conviction is considered to have been proven;
- 2) the rule that has been infringed; and

3) the legal basis for criminal proceedings.

PCS 2. If the accused is acquitted, the court shall state in the statement of reasons

1) the circumstances which are a condition of punishment and which are considered to be missing or not to have been proven; or

2) the punitive circumstances deemed to exist; and

3) the legal provisions applied.

PCS 3. The judgment shall also state the reasons for any minority opinion. The rules laid down in paragraphs 1 and 2 shall apply *mutatis mutandis* to this grounding.

Section 885

There is a duty of confidentiality with regard to information about the court's deliberations and votes, cf. section 152 of the Danish Criminal Code and sections 152c to 152f.

f) What may happen in case of Acquittal?

18 The Criminal Code regulates, what happens if someone is acquitted:

Chapter 9 Other consequences of the crime

Section 68

If an accused is acquitted of the sentence pursuant to Section 16, the court may provide for the application of other measures which it deems appropriate to prevent further criminal offences. If more lenient measures such as supervision, residential or workplace regulations, detoxification treatment, psychiatric treatment, etc. prove to be insufficient, it may be decided that the person concerned must be placed in a mental hospital, in a facility for people with severe intellectual disabilities or under supervision with the possibility of official accommodation or in a suitable home or facility for special care or care. Placement in custody can take place under the conditions specified in Section 70.

19 In relation to economic offences, a person may not be subject of pre-trial detention at this stage again – even if s. 70 allows this, this measure is restricted to crimes of physical harm to the victim.

E. OLAF-Regulation

I. Provisions on External Investigations and On-the-Spot Checks in Denmark

OLAF's task and role as well as its actions are determined primarily by Union law. The history of OLAF can be traced back to the early 2000s and its predecessor UCLAF.¹³³ OLAF has a renewed role within the changed anti-fraud architecture of the Union in the 2020s and is an important actor against fraud within the Multi-annual framework legislation and the Union's policies, which depend on the action of the Member States and the agreements concluded on the political levels. **1**

In addition to that OLAF and its investigators shall follow internal guidelines¹³⁴, manuals on procedures¹³⁵ reports and working arrangements with union partners¹³⁶ as well as Administrative Cooperation Agreements (ACAs) with national partners, EU external actors¹³⁷. OLAF issues compendia, researches itself, organises meetings and conferences and workshops for its national partners. All of these non-binding guides and handbooks might be useful in the course of investigations.¹³⁸ The statistics on latest actions and the past year can be deduced from the OLAF Reports, equal to the new EPPO's annual report and the PIF Report, which is issued by the EU Commission in close cooperation with OLAF, IBOAs and the EPPO as well as the input from ECA and national AFCOS, governments and researchers. **2**

The European Anti-fraud office is well accommodated in the Union anti-fraud architecture these days (see *Hauck 2025b*, Art. 1 PIF Directive) and the academic research is extensive and long lasting since the 2000s.¹³⁹ Last decade's landmark judgment "*Sigma* **3**

¹³³ See *Hauck 2025a*, Ch. 3 and 4 as well as *Hauck in press – b*, Commentary on Art. 1 OLAF Regulation.

¹³⁴ See EU Commission (OLAF) 2016; EU Commission (OLAF) 2021; OLAF 2021.

¹³⁵ *Brüner 2009*, whereby it is unclear if certain Manuals are really still used by investigators and the Office staff.

¹³⁶ OLAF, Working Arrangement between EPPO & OLAF, Point 4: "Exchange of information", 4.5 and 4.6 (cross double check between the databases for a PIF offence action), 5 ("Mutual Reporting and transmission of potential cases"), 5.1, 5.1.1. European Commission – "Agreement establishing the modalities of cooperation between the European Commission and the European Public Prosecutor's Office" 18 June 2021, Art 5 para 1, 4, 5 ("Reporting by the Commission") in combination with Annex I Contact points: "information will be transmitted via the head of OLAF to the head of operation at EPPO/central office", Annex III.A ("Information on the Initiation of an Investigation – template")

¹³⁷ Prosecution Office of Hungary and OLAF. See *State of Play – July 2022 Administrative Cooperation Arrangements (ACAs) with partner authorities in non-EU countries and territories and counterpart administrative investigative services of International Organisations*, online: https://anti-fraud.ec.europa.eu/system/files/2022-07/list_signed_acas_en.pdf. Accessed 31 December 2024.

¹³⁸ See European Commission 2011; EU Commission (OLAF) 2013; EU Commission (OLAF) 2017; EU Commission (DG regional Policy) 2009; EU Commission (DG Policy, U 2) Handbook, *The role of Member States' auditors in fraud prevention and detection for EU Structural and Investment Funds Experience and practice in the Member States*.

¹³⁹ *Brüner 2001*, pp. 17–26; *Brüner 2008*, pp. 859–872; *Brüner 2009*; *Gellert 2009*, pp. 85–88.

Orionis SA v. European Commission”, decided by the European General Court¹⁴⁰, clarified the application of national law and Union law¹⁴¹ in relation to external investigations of OLAF.¹⁴² 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).

- 4 Current debates evolve around the effectiveness of investigations regarding digital evidence by virtue of the Regulation 2185/96, which stems in parts from a more analogue society.¹⁴³ More and more it becomes clear the analogue society, which is still present in law enforcement and the area of criminal justice in many countries at the beginning of the 2020s is a major concern and a real problem if the digital age crashes in and the analogue structures are obstacles to effective investigations. The access to bank accounts and registers is incredibly important for OLAF investigators as well as their national homologues. The relationship to the EPPO, especially the regional centres of the EDPs in the present country should be close. In addition to that the external investigations require a good coordination, which shall be governed by the relevant AFCOS (see below Art. 12a OLAF Regulation), which has been part of the current study and answered a questionnaire or commented and reviewed (for some countries that are very prone to frauds or countries that have recently changed their anti-fraud prevention in order to fulfil the requests for a national anti-fraud prevention strategy) Part B of this volume.
- 5 Another question and debate have ever since existed concerning the Reports of OLAF (cf. Art. 11), which can and shall constitute evidence – even – in national criminal trials. They concern EPPO cases (see Art. 23–28 EPPO Regulation) or cases below the thresholds for which the EDPs could exercise their competence and jurisdiction on behalf of the EPPO. This area has been professionally researched by *Luchtman/Vervaele/Ligeti and others* in OLAF studies from the last decade, which we can refer to.¹⁴⁴

¹⁴⁰ ECJ, Case T-48/16, *Sigma Orionis v. the Commission*, Judgment of 3 May 2018, ECLI:EU:T:2018:245, mn. 70 et seq., 80–81.

¹⁴¹ See de Bellis 2021, pp. 431 et seq.; Herrmfeld 2020, pp. 426 et seq.; recently Wouters 2020, pp. 132 et seq.

¹⁴² de Bellis 2021, pp. 431 et seq.; see OLAF Website, List of rulings of the Court of Justice of the EU concerning OLAF, https://anti-fraud.ec.europa.eu/about-us/legal-background/list-rulings-court-justice-eu-concerning-olaf_en. Accessed 31 December 2024.

¹⁴³ See Carrera et al. 2021.

¹⁴⁴ See Luchtman and Vervaele 2017.

Part F alike to the first Parts B–D on Danish authorities and their investigative powers, gives to uncover EU frauds in Denmark an equal collection of the relevant laws in relation to investigations and investigative powers by OLAF is presented in the following sections. 6

1. Articles 1 and 2 Objectives, tasks and definitions

Articles 1 and 2 OLAF Regulation define key terms and outline the role of OLAF: 7

Article 1 Objectives and tasks

1. In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Union and of the European Atomic Energy Community (hereinafter referred to collectively, when the context so requires, as ‘the Union’), the European Anti-Fraud Office established by Decision 1999/352/EC, ECSC, Euratom (‘the Office’) shall exercise the powers of investigation conferred on the Commission by:

- (a) the relevant Union acts; and
- (b) the relevant cooperation and mutual assistance agreements concluded by the Union with third countries and international organisations.

2. The Office shall provide the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities in order to coordinate their action aimed at protecting the financial interests of the Union against fraud. The Office shall contribute to the design and development of methods of preventing and combating fraud, corruption and any other illegal activity affecting the financial interests of the Union. The Office shall promote and coordinate, with and among the Member States, the sharing of operational experience and best procedural practices in the field of the protection of the financial interests of the Union, and shall support joint anti-fraud actions undertaken by Member States on a voluntary basis.

3. This Regulation shall apply without prejudice to:

- (a) Protocol No 7 on the privileges and immunities of the European Union attached to the Treaty on European Union and to the Treaty on the Functioning of the European Union;
- (b) the Statute for Members of the European Parliament;
- (c) the Staff Regulations;
- (d) Regulation (EU) 2016/679 of the European Parliament and of the Council;
- (e) Regulation (EU) 2018/1725 of the European Parliament and of the Council.

4. Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties (‘institutions, bodies, offices and agencies’), the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end, it shall inves-

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.

8 The legal definitions are provided in Article 2 OLAF Regulation:

Article 2 Definitions

For the purposes of this Regulation:

(1) ‘financial interests of the Union’ shall include revenues, expenditures and assets covered by the budget of the European Union and those covered by the budgets of the institutions, bodies, offices and agencies and the budgets managed and monitored by them;

(2) ‘irregularity’ shall mean ‘irregularity’ as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95;

(3) ‘fraud, corruption and any other illegal activity affecting the financial interests of the Union’ shall have the meaning applied to those words in the relevant Union acts and the notion of ‘any other illegal activity’ shall include irregularity as defined in Article 1(2) of Regulation (EC, Euratom) No. 2988/95;

(4) ‘administrative investigations’ (‘investigations’) shall mean any inspection, check or other measure undertaken by the Office in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation; those investigations shall not affect the powers of the EPPO or of the competent authorities of Member States to initiate and conduct criminal proceedings;

- (5) ‘person concerned’ shall mean any person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the Union and who is therefore subject to investigation by the Office;
- (6) ‘economic operator’ shall have the meaning applied to that term by Regulation (EC, Euratom) No 2988/95 and Regulation (Euratom, EC) No 2185/96;
- (7) ‘administrative arrangements’ shall mean arrangements of a technical and/or operational nature concluded by the Office, which may in particular aim at facilitating the cooperation and the exchange of information between the parties thereto, and which do not create additional legal obligations;
- (8) ‘member of an institution’ means a member of the European Parliament, a member of the European Council, a representative of a Member State at ministerial level in the Council, a member of the Commission, a member of the Court of Justice of the European Union (CJEU), a member of the Governing Council of the European Central Bank or a member of the Court of Auditors, with respect to the obligations imposed by Union law in the context of the duties they perform in that capacity.

2. Article 3 External investigations

<ul style="list-style-type: none"> a) On the spot-checks and inspections – Renouncing the applicable national law – Para 2, 4209 b) Assistance needed, competent authorities and access to information in the Member States, para 5209 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 Operator209 d) The basic principle of conformity to Regulations 2185/96 and 883/2013210 <ul style="list-style-type: none"> aa. Submission: Compliance with Union law210 bb. Resistance: Assistance in conformity with national procedural rules applicable210 e) Competent authorities210 f) National law and “checks and inspections” of OLAF211 <ul style="list-style-type: none"> aa. Administrative procedure in general212 bb. Special administrative powers and provisions in certain areas of revenue and expenditure212 <ul style="list-style-type: none"> (1) Administrative provisions212 <ul style="list-style-type: none"> (a) Administrative provisions in the area of customs duties and value 	<ul style="list-style-type: none"> added tax (VAT) = revenue 212 <ul style="list-style-type: none"> (aa) Principle of investigation..... 219 (bb) External audit (General Tax Code) 219 (cc) Tax and customs investigation (Customs Code/General Tax Code) 220 (dd) Fiscal supervision 220 (b) Administrative provisions in the area of structural funds and internal policies (interne Politiken) = expenditure 220 <ul style="list-style-type: none"> (aa) Structural funds 220 (bb) Internal policies 222 (c) Administrative provisions in the area of the common organisation of the markets = expenditure 222 (2) Investigative powers 225 <ul style="list-style-type: none"> (a) Investigative powers in the area of customs duties and VAT (General Tax Code)..... 226 (b) Investigative powers around structural funds and internal policies .. 231
--	--

(c) Investigative powers in the area of common market organisations	236	bb. Inspections	254
(d) Investigative powers in the area of direct expenditure.....	242	(1) Controls of the Regional and Social Fund	254
(e) Provisions in the area of external aid = expenditure.....	243	(2) Controls and Inspections in the area of the European Regional Fund	255
(3) Protection of information	244	(3) Control and Audits in the area of Grants of the ERF and ESF.....	255
(a) Administrative secrecy or professional secrecy (Administrative laws).....	244	(4) Controls in the General Tax Area.....	255
(b) Official secrecy ...	250	(5) Inspections in the VAT Area.....	258
(4) Investigation reports (Customs Code, General Tax Code)	251	(6) Controls in the Customs Area.....	258
(5) Support to the inspectors (Customs Code, General Tax Code)	252	cc. The seizure of digital forensic evidence including bank account information	258
(6) Preservation of Evidence (Customs Code, General Tax Code)	254	dd. Acquisition of digital evidence and Digital forensic operations within inspections or on-the-spot checks.....	259
g) Single measures in Denmark	254	ee. Investigative missions in third countries	259
aa. The taking of statements from Economic Operators	254	h) Cooperation and mutual assistance agreements.....	259

[...] 2. The Office shall ***carry out on-the-spot checks and inspections in accordance with this Regulation and, to the extent not covered by this Regulation, in accordance with Regulation (Euratom, EC) No 2185/96.***

4. Where, in accordance with paragraph 3 of this Article, the ***economic operator concerned submits*** to an on-the-spot check and inspection authorised pursuant to this Regulation, Article 2(4) of Regulation (EC, Euratom) No 2988/95, the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96 and Article 7(1) of Regulation (Euratom, EC) No 2185/96 ***shall not apply insofar as those provisions require compli-***

ance with national law and are capable of restricting access to information and documentation by the Office to the same conditions as those that apply to national administrative inspectors.

5. At the request of the Office, the **competent authority of the Member State** concerned shall, without undue delay, provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2).

The **Member State concerned shall ensure**, in accordance with Regulation (Euratom, EC) No 2185/96, that the **staff of the Office are allowed access to all information, documents and data relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that the staff are able to assume custody of documents or data to ensure that there is no danger of their disappearance**. Where privately owned devices are used for work purposes, those devices may be subject to inspection by the Office. The Office shall subject such devices to inspection only under the same conditions and to the same extent that national control authorities are allowed to investigate privately owned devices and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

6. Where the staff of the Office find that an **economic operator resists** an on-the-spot check and inspection authorised pursuant to this Regulation, namely where the economic operator refuses to grant the Office the necessary access to its premises or any other areas used for business purposes, conceals information or prevents the conduct of any of the activities that the Office needs to perform in the course of an on-the-spot check and inspection, the **competent authorities, including, where appropriate, law enforcement authorities of the Member State concerned shall afford the staff of the Office the necessary assistance so as to enable the Office to conduct its on-the-spot check and inspection effectively and without undue delay**.

Article 2(4) of Regulation (EC, Euratom) No 2988/95

Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96

~~On the spot checks and inspections shall be carried out on the Commission's authority and responsibility by its officials or other servants, duly empowered, hereinafter called 'Commission inspectors'. Persons placed at the disposal of the Commission by the Member States as national experts on secondment may assist in such checks and inspections.~~

~~Commission inspectors shall exercise their powers on production of a written authorisation showing their identity and position, together with a document indicating the subject matter and purpose of the on the spot check or inspection.~~

Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the Member State concerned.

Article 7(1) of Regulation (Euratom, EC) No 2185/96

Commission inspectors shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned which are required for the proper conduct of the on-the-spot checks and inspections. They may avail themselves of the same inspection facilities as national administrative inspectors and in particular copy relevant documents.

On-the-spot checks and inspections may concern, in particular:

- professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements held by economic operators,
- computer data,
- production, packaging and dispatching systems and methods,
- physical checks as to the nature and quantity of goods or completed operations,
- the taking and checking of samples,
- the progress of works and investments for which financing has been provided, and the use made of completed investments,
- budgetary and accounting documents,
- the financial and technical implementation of subsidized projects.]

When providing assistance in accordance with this paragraph or with paragraph 5, the competent authorities of Member States ***shall act in accordance with national procedural rules applicable to the competent authority concerned. If such assistance requires authorisation from a judicial authority in accordance with national law***, such authorisation shall be applied for.

10. As part of its investigative function, the Office shall carry out the checks and inspections provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9(2) of that Regulation in Member States and, ***in accordance with cooperation and mutual assistance agreements and any other legal instrument in force***, in third countries and on the premises of international organisations.

12. Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an external investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the competent authorities of the Member States concerned and, where necessary, the institutions, bodies, offices and agencies concerned.

Without prejudice to the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No 2988/95, the competent authorities of the Member States concerned shall

ensure that appropriate action is taken, in which the Office may take part, *in accordance with national law*. Upon request, the competent authorities of the Member States concerned shall inform the Office of the action taken and of their findings on the basis of information referred to in the first subparagraph of this paragraph.

- 1 On-the-spot checks have been discussed in the last decade quite thoroughly¹⁴⁵, but not enough for all countries. For Denmark, it is worth taking a closer look at the applicable provisions.
- 2 OLAF has been often compared to the EPPO in the past, but *de facto* it is clear it has longer lasting caution and a clearly defined role as it must focus on administrative investigations creating investigation files feasible for recommendations and internal decisions either in the Member states or the EU institutions. It must hereby ensure that its investigative actions align with the principles of legality, proportionality, and respect for procedural guarantees within the framework established by Regulation (EU) No 883/2013 and 2020/2223; i.e. goals are checked by the Supervisory Committee. This special body (see Art. 15 OLAF Regulation for its history) has repeatedly underlined the importance of maintaining OLAF's independence, particularly in complex or politically sensitive cases. As highlighted recently in Opinion No 4/2024, OLAF's authority to investigate members of EU institutions must be carefully exercised in line with the principles of due process and institutional integrity¹⁴⁶.
- 3 Equally critical is the adherence to procedural safeguards during the investigative process. Opinion No 3/2024 sets out key expectations regarding legality checks, internal reviews, and respect for the rights of persons concerned¹⁴⁷. Investigators are encouraged to refer to these guidelines, especially when planning and executing case actions that might involve interviews, digital forensics, or cooperation with national authorities.
- 4 Collaboration between OLAF and the European Public Prosecutor's Office (EPPO) introduces another layer of operational complexity. Complementary roles require clearly delineated boundaries and proactive coordination. Opinion No 1/2024 provides essential insights into how investigators should structure communication and avoid duplication or jurisdictional conflict¹⁴⁸.
- 5 Past experiences demonstrate that inadequate follow-up to OLAF's recommendations can undermine the Office's impact. The Supervisory Committee's analysis in Opinion No 1/2021 sheds light on systemic gaps in follow-up by national authorities and the need

¹⁴⁵ See Bovend'Eerd 2018.

¹⁴⁶ Supervisory Committee of OLAF 2024e.

¹⁴⁷ Supervisory Committee of OLAF 2024d.

¹⁴⁸ Supervisory Committee of OLAF 2024b.

for stronger legal anchors¹⁴⁹. This is particularly relevant in cross-border cases or when judicial cooperation proves challenging.

Furthermore, efficient working arrangements between OLAF and EPPO remain central to operational success. Opinion No 2/2021 proposes practical structures for shared responsibility, especially in preliminary assessments and evidence handling¹⁵⁰. **6**

Finally, the ability to ensure meaningful oversight of OLAF’s investigations – especially those exceeding 12 months – is essential for maintaining credibility and accountability. Investigators must be aware of the issues raised in Opinion No 3/2021, which stresses the importance of timely and well-documented investigations, as well as internal planning mechanisms¹⁵¹. **7**

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. **8**

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.). **9**

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.¹⁵² 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. **10**

¹⁴⁹ Supervisory Committee of OLAF 2021b.

¹⁵⁰ Supervisory Committee of OLAF 2021c.

¹⁵¹ Supervisory Committee of OLAF 2021d.

¹⁵² See Bovend’Eerd 2024, “3.3.3 The Provision of Assistance When OLAF Encounters Resistance”, here he found a definition for resistance: “I defined resistance as those acts which actually, not potentially, prevent or hinder OLAF from carrying out the tasks specified in the Director-General authorisation (i.e. the entry of premises and the access to information). [and later:] Therefore, whenever it encounters a resisting person concerned, OLAF must call in the assistance of the competent national authorities to help ‘open doors and drawers’ and overcome the resistance posed by the person concerned.” See Böse 2017 explaining the powers of administrative authorities in the PIF acquis area in Germany, pp. 85 et seq.

d) The basic principle of conformity to Regulations 2185/96 and 883/2013**aa. Submission: Compliance with Union law**

- 11** In the case of compliance of an Estonian economic operator Union law applies, thus the Regulation allows OLAF officials to conduct on-the-spot checks without prior information of national authorities.

bb. Resistance: Assistance in conformity with national procedural rules applicable

- 12** Does the participant, the personal or economic operator concerned resist, the Regulation indicates that OLAF must follow national law and inform national authorities that can aid in conformity with national procedural rules applicable.¹⁵³

e) Competent authorities

- 13** 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:
- 14** Who is responsible depends on which area is affected (direct or shared management) and which type of irregularity or fraud is suspected, as well as in which payment (expenditure) or payment (revenue) area.
- 15** *Table 5: Competent authorities in the area of revenue and expenditure*

Translated Term	Original Term	Revenue	Expenditure
Housing and Planning Agency	Bolig- og Planstyrelsen		X
Danish Fisheries Agency	Fiskeristyrelsen		X
Customs and Tax administration/Customs Agency/Tax Agency	Toldstyrelsen ¹⁵⁴	X	
	Skattestyrelsen ¹⁵⁵	X	

¹⁵³ ECJ, Case T-48/16, *Sigma Orionis v. the Commission*, Judgment of 3 May 2018, ECLI:EU:T:2018:245, mn. 112: “Finally, it should be noted that, according to the rules applicable to the actions carried out by OLAF, the requirement to obtain a judicial authorisation, if provided for by national law, only applies in the case of an objection raised by the economic operator and that OLAF must then have recourse to national police forces which, according to the rules applicable to them, must comply with national law.”

¹⁵⁴ See <https://www.toldst.dk/>. Accessed 31 December 2024.

¹⁵⁵ See <https://www.sktst.dk/>. Accessed 31 December 2024.

Danish Agency for Agriculture, National Board of Agriculture	Landbrugsstyrelsen		X
Danish Business Authority	Erhvervsstyrelsen		X
Danish Ministries		X	X
Development and Simplification Agency	Udviklings- og Forenklingsstyrelsen ¹⁵⁶		X

Source: Own Compilation.

f) National law and “checks and inspections” of OLAF

Danish legislation, which relates to “checks and inspections” by OLAF in Denmark can be summarised – not exhaustive, but nearly complete – as follows: **16**

- The Administrative Act [Forvaltningsloven]
- The Tax Administration Act [Skatteforvaltningsloven]
- The Tax Control Act [Skattekontrolloven]
- Customs Act [Toldloven]
- Order on customs processing [Bekendtgørelse om toldbehandling]¹⁵⁷
- The Procurement Act [Udbudsloven]
- Data Protection Act [Databeskyttelsesloven (Lov om supplerende bestemmelser til forordning om beskyttelse af fysiske personer i forbindelse med behandling af personoplysninger og om fri udveksling af sådanne oplysninger)]
- The VAT Act Value Added Tax Act (Momsloven Lov om merværdiafgift)
- The Withholding Tax Act [Kildeskatteloven]
- The Tender Act – Act on solicitation of tenders for certain public and publicly supported contracts [Tilbudsloven Lov om indhentning af tilbud på visse offentlige og offentligt støttede kontrakter]
- The Auditors Act, Act on approved auditors and audit firms [Revisorloven Lov om godkendte revisorer og revisionsvirksomheder]
- The Auditor General’s Act – Act on the audit of the state’s accounts, etc [Rigsrevisorloven Lov om revisionen af statens regnskaber m.m.]
- The Agricultural Act, Agricultural Property Act [Landbrugsloven Lov om landbrugsejendomme]

¹⁵⁶ See <https://www.ufst.dk/>. Accessed 31 December 2024.

¹⁵⁷ See <https://www.retsinformation.dk/eli/lta/2021/1080>. Accessed 31 December 2024.

- Act on State Guarantees for Loans to Young Farmers [lov om statsgaranti for lån til yngre jordbrugere]
- Co2 Taxation Act [CO2-afgiftsloven Lov om kuldioxidafgift af visse energiprodukter]¹⁵⁸
- The Property Value Tax Act [Ejendomsværdiskatteloven]
- Fiskeriloven
- Danish Fisheries Act [Lov om fiskeri og fiskeopdræt]
- Act on structural measures relating to the fisheries sector [Lov om strukturforanstaltninger vedrørende fiskerisektoren]
- The Consumption Tax Act, Act on various consumption taxes [Forbrugsafgiftsloven Lov om forskellige forbrugsafgifter]

aa. Administrative procedure in general

- 17** The administrative procedure is important for the EU spending process. The Danish Act on the Judicial Administration contains rules on the administrative procedure and the court system. A grant or a subsidy might be requested via the competent national authority (e.g. a payment agency designated to carry out this task on behalf of the EU). The grant or the sum will only be transferred to the recipient if it fulfils the requirements. The Danish national administrative authorities shall act on the basis of the Guidelines for the administrative procedure (*Vejledning om administrative forskrifter VEJ nr 9594 af 09/07/2021*), which were amended in 2021.

bb. Special administrative powers and provisions in certain areas of revenue and expenditure

- 18** The special administrative provisions e.g. on the exemption from VAT or other duties in the customs area are regulated by the specific Acts.

(1) Administrative provisions

(a) Administrative provisions in the area of customs duties and value added tax (VAT) = revenue

- 19** The customs area is regulated by the Customs Code.

¹⁵⁸ See → the German volume of the CNP series, which refers to the co-called CO₂-Tax Fraud Cases, which diminished the Union's tax revenue in the last decade. In Germany several companies were accused of having formed a criminal organisation aiming at the false taxation of their CO₂ quota (hereby evading duties).

Chapter 2 of the EU-Customs Codex**Section 2**

Goods that are brought into, transit or taken out of the Danish customs area are processed according to EU legal acts, including the EU Customs Code. Duty is payable in accordance with these legal acts.

PCS. 2. The Minister of Taxation may lay down rules for the application of subsection 1.

The VAT Act exempts a long list of goods and services from the VAT duty, which is partially problematic because fraudsters often claim a good exempted from a duty and de facto the good in question is not exempt. Thus if goods, which are not exempt are transferred claiming they are exempt, an irregularity exists or even a suspicion for fraud. The list has the following wording:

20

Exemptions**Section 13**

The following goods and services are exempt from tax:

- 1) Hospital treatment and medical services, including chiropractic, physiotherapy and other actual health care as well as dental and other dental services.
- 2) Social welfare and assistance, including that provided by children's and youth institutions and institutions in the field of the elderly, as well as the supply of goods and services closely related to this. The exemption does not include services that have been inspected in accordance with Section 83 of the Social Services Act and which are provided by other than municipalities in accordance with the rules for free choice of supplier in home care, where the payment for the service is settled between the supplier and the municipality.
- 3) School education and education at higher education institutions, vocational education, including retraining, and other education that has the character of school or professional education, as well as the supply of goods and services closely related to this. However, the exemption does not cover course activities that are run with profit in mind and that are primarily aimed at companies and institutions etc.
- 4) Associations and organisations' provision of services and goods in close connection with this to their members in their common interest and against a fee. It is a prerequisite that the association etc. does not work with profit in mind, and that the purpose is of a political, trade union, religious, patriotic, philosophical or philanthropic nature or relates to civil rights. It is also a prerequisite that the tax exemption cannot cause distortion of competition.
- 5) Services closely related to the practice of sport or physical training, which are performed by companies that are not run with profit in mind, for the benefit of sportsmen and sportsmen, as well as the collection of entrance fees at sports events. However, the

exemption does not cover events where professional sports and sports athletes participate, football matches only when professionals on both teams participate.

6) Cultural activities, including libraries, museums, zoos and the like, as well as the supply of goods and services closely related to this. However, the exemption does not include radio and television broadcasts, cinema and theatre performances, concerts and the like.

7) Writing and composing activities as well as other artistic activity.

8) Rental and leasing of real estate, including the supply of gas, water, electricity and heat as part of the rental or leasing. However, the exemption does not include renting out rooms in hotels and the like, renting out rooms in companies that let out for a shorter period of time than 1 month, renting out camping, parking and advertising space, as well as renting out storage boxes.

9) Delivery of real estate. However, the exemption does not include:

a) Delivery of a new building or a new building with associated land.

b) Delivery of a building plot, regardless of whether it is ready for construction, and separate delivery of a built-up plot.

10) Insurance and reinsurance business, including services in connection with such business, which are carried out by insurance brokers and intermediaries.

11) The following financial activities:

a) Lending and mediation of loans as well as the lender's management of its own loans.

b) Provision of security and guarantees, including negotiations in this regard, as well as management of credit guarantees by the person who granted the credit.

c) Transactions, including negotiations, relating to the placement of funds, current accounts, payments, transfers, receivables, checks and other commercial documents, but not the collection of receivables.

d) Transactions, including negotiations, relating to currency, banknotes and coins used as legal tender, other than collectibles.

e) Transactions, including negotiations, with the exception of custody and management, in connection with securities, with the exception of goods representatives and documents that grant certain rights, including rights of use, over real estate, as well as shares and shares, when the possession thereof legally or in fact ensures rights as an owner or user over an immovable property or part of an immovable property.

f) Management of investment associations.

12) Lotteries and the like. as well as gambling for money, including gambling on a totalizer or other similar method.

13) Postal services and related goods that are delivered by postal operators who handle the universal postal service in whole or in part. The exemption only applies to services and related goods covered by the universal postal service. The exemption does not cover deliveries where individual terms have been negotiated.

- 14) Stamps delivered at face value, which can be used for franking in this country, stamps and similar value stamps.
- 15) Passenger transport. However, the exemption does not cover commercial passenger transport by bus other than scheduled transport. In connection with transport to or from abroad, the exemption according to the 1st point includes also the passengers' accompanying luggage and means of transport.
- 16) Services directly related to funerals.
- 17) Goods and services provided in connection with the holding of charitable events. Tax exemption is granted after prior application to the customs and tax administration. Charitable events are events of a shorter duration, the profits of which are fully used for charitable or otherwise non-profit purposes. It is a condition for notification of tax exemption that the delivery takes place at the organiser's expense and risk, and that the organiser does not otherwise operate a business with the delivery of similar goods and services. Collection and sale of used goods of little value, which are carried out by charitable associations etc., are also exempt from the tax after prior application to the customs and tax administration. It is a condition for notification of tax exemption that the charitable association etc. does not otherwise operate a business, Section 47, and that the sale is made exclusively to companies that are registered according to Sections 47, 49, 51 or 51a. The Minister of Taxation can lay down detailed rules for the notification of exemption.
- 18) Goods delivered from thrift stores whose profits are fully used for charitable or otherwise non-profit purposes. It is a prerequisite that the shop only sells used goods that have been received free of charge, and that the shop only employs unpaid, voluntary labour.
- 19) Services performed by independent groups of persons who carry out a business that is exempt from tax in accordance with Nos. 1–6, 13 and 15, as regards the transport of sick or injured persons with means of transport specially designed for this purpose, and Nos. 17, 18 and 21, or for which they are not liable for tax, in order to provide their members with the services directly necessary for the performance of their business. It is a prerequisite that the individual member's payment for these services exactly corresponds to the member's share in the joint expenses, and that the tax exemption will not be able to cause distortion of competition.
- 20) Investment gold, cf. Section 73a, including investment gold represented by securities which imply an ownership right or a claim to the gold. The exemption also covers the distribution of investment gold carried out by intermediaries who act in the name and at the expense of others.
- 21) Goods and services provided by charitable or otherwise non-profit associations, etc. in connection with the holding of activities, provided that the exemption will not be able to cause distortion of competition. It is a condition that the profit is fully used for the

association's own purposes, and that the use of the profit can be documented at the request of the customs and tax administration. Delivery of goods and services of a commercial nature is not covered by the exemption.

PCS. 2. Delivery of goods that have only been used in connection with business that is exempt from tax pursuant to subsection 1, or of goods whose acquisition or use has been exempted from the right to deduction according to chapter 9, are exempt from tax.

PCS. 3. The Minister of Taxation may lay down detailed rules on the delimitation of real estate in accordance with subsection 1, No. 9.

- 21 Chapter 8 contains tax exemptions concerning deliveries. Section 34 regulates on the deliveries of goods and services, which are exempt from tax in case of intracommunity transfer of goods.
- 22 Tax authorities must pay attention to the deduction right as well:

Chapter 9 Deduction

Full right of deduction

Section 37

Companies registered under Sections 47, 49, 51 or 51a may, when calculating the tax equivalent as input tax, cf. Section 56, subsection 3, deduct the tax according to this Act for the company's purchases etc. of goods and services that are used exclusively for the company's deliveries, which are not exempt from tax according to § 13, including deliveries made abroad, cf. however subsection 6.

PCS. 2. The deductible tax is

- 1) the tax on goods and services supplied to the company,
- 2) the tax which, according to Section 11, applies to goods acquired from another EU country,
- 3) the tax which, according to section 12, is payable on goods which the company has imported from places outside the EU, cf. however section 69, subsection 2, and
- 4) the tax that must be paid according to Sections 6 and 7.

[...]

No right of deduction

Section 42

Companies cannot deduct tax on purchases, etc., which relate to

- 1) food for the company's owner and staff,
- 2) acquisition and operation of housing for the company's owner and staff,
- 3) remuneration in kind of the company's staff,
- 4) acquisition and operation of nurseries, kindergartens, holiday homes, holiday homes, holiday homes and the like. for the company's staff,
- 5) entertainment, restaurant services, representation and gifts, cf. however subsection 2,

6) acquisition and operation of passenger motor vehicles that are designed to transport no more than 9 people, cf. however subsection 4, 6 and 7.

The economic operators have to follow special obligations regarding the issuing of invoices: 23

Section 52a

Every taxable person must issue an invoice to the recipient (customer) for the supply of goods or services. If all or part of the delivery is required to be paid for before the delivery has been completed, a separate invoice must be issued for this.

Section 52b

Invoice for deliveries of goods to another EU country that is exempt from tax according to Section 34, subsection 1, nos. 1–4, must be issued no later than the 15th of the month following the month in which the delivery took place.

PCS. 2. Invoice for deliveries of services to another EU country, where the recipient of the services is liable to pay the tax on the services, as the place of delivery of the services is determined in accordance with Section 16, subsection 1, must be issued no later than the 15th of the month following the month in which the delivery took place.

Section 52c

Every taxable person must make sure to store

1) copies of invoices issued by the taxable person himself, the taxable person's customer or a third party, and

2) credit notes and invoices that the taxable person has received pursuant to section 52a.

PCS. 2. A taxable person may store issued or received electronic invoices abroad, on the condition that the taxable person notifies the customs and tax administration of the storage location. In addition, electronic invoices can only be stored abroad under the conditions laid down in subsection 3–5.

PCS. 3. If a taxable person carries out electronic storage in this country or abroad of issued and received invoices for deliveries of goods or services and tax on the goods or services must be settled according to the rules in chapter 15, the customs and tax administration has the right, for reasons of control, to get electronic online access and access to download and use these invoices.

PCS. 4. If a taxable person carries out electronic storage in this country or abroad of issued and received invoices for deliveries of goods or services and tax on the goods or services must be settled to the competent authorities in another EU country, the competent authorities in the other EU country for reasons of control the right to obtain electronic online access and access to download and use these invoices.

PCS. 5. Electronic invoices can only be stored in places outside the EU if a legal instrument on mutual assistance with legal effects corresponding to the rules in the EU has been concluded between Denmark and the place outside the EU, or if the customs and tax administration can get electronic online access and access to download and use electronically stored invoices as mentioned in subsection 3.

PCS. 6. The Minister of Taxation lays down the detailed rules for the storage of invoices and system descriptions for electronic invoicing.

Section 53

Companies and private individuals who are registered exclusively for individual sales of new means of transport to a buyer in another EU country must issue an invoice for the sale. The Minister of Taxation can lay down detailed rules on the content of the invoice.

PCS. 2. A copy of the invoice must be submitted to the customs and tax administration no later than 1 month after the end of the calendar month in which the delivery took place. At the same time as submitting a copy of the invoice, documentation for the tax paid when purchasing the means of transport in question must be submitted for the purpose of refunding tax according to this Act. An amount corresponding to the amount of tax that is either included in the original purchase price or was paid on a previous acquisition from another EU country or on importation from places outside the EU is refunded. If the means of transport has lost value since acquisition, the repayment is reduced corresponding to the ratio between the original acquisition price without tax and the resale price.

24 Another example of provisions in this area is the Tobacco Tax Act:

Transport of goods under the tax suspension scheme within the EU

Section 19

Within the territory of the EU, goods can be transported under the tax suspension scheme, including through places outside the EU or through certain areas that are not covered by the EU's tax area. 1st point includes transport from a tax warehouse or from an import point from where the goods have been released for free circulation in the EU's customs area, to

- 1) another tax warehouse,
- 2) a temporarily registered consignee or a registered consignee,
- 3) a place where the taxable goods leave the territory of the EU,
- 4) a recipient who in this country is exempt from tax on goods pursuant to section 29, subsection 1, No. 5 or 6, when the goods are transported from another EU country, or to a recipient who in another EU country is exempt from tax on goods on a similar basis when the goods are transported from this country, or

5) a direct delivery point in an EU country, which an authorised warehouse keeper or a registered consignee in that country has approved and appointed to the country's authorities.

PCS. 2. PCS. 1 also applies to the transport of

1) goods that are tax-exempt or have not been cleared for tax in this country, as the goods are under the tax suspension scheme and have not been transferred to consumption in this country or in another EU country, or

2) goods that are subject to zero-rating in another EU country and which have not been transferred to consumption in this country or in another EU country.

PCS. 3. Transport of goods, cf. subsection 1, begins,

1) when the goods leave the tax warehouse from which they are to be dispatched, or

2) when the goods pass into free circulation from an import point in the EU's customs territory.

PCS. 4. Transport of goods, cf. subsection 1, ceases,

1) when the recipient has received the goods according to subsection 1, no. 1, 2, 4 or 5, or

2) when the goods have left the territory of the EU according to subsection 1, No. 3.

PCS. 5. The Minister of Taxation can lay down the detailed rules for the administrative procedures that companies and individuals must use when transporting goods under the tax suspension scheme within the EU.

(aa) Principle of investigation

In general administrative law the official principle ensures that the authority obtains all the information it needs for a decision (so-called *Officialprincippet*, which is not enshrined expressis verbis in Danish law). **25**

The VAT Tax Act contains control provisions in Chapter 19 and the General Tax Control Act, which concentrates on the general taxation contains control provisions in Chapter 15. Both Acts do not expressis verbis stipulate an ex officio principle, but both Acts grant the right to conduct inspections to the authorities. **26**

(bb) External audit (General Tax Code)

Chapter 19 of the VAT Act allows audits. The provision contains investigative powers, too (see below → E.I.2.bb(2)(a) Investigative powers in the area of customs duties and VAT (General Tax Code). **27**

(cc) Tax and customs investigation (Customs Code/General Tax Code)

Tax Administration Act

Title I Organisation and tasks of the administration

Chapter 1 Customs and Tax Administration

Section 1

The Customs and Tax Administration exercises the administration of legislation on taxes and legislation on the valuation of the country's real estate as well as the Act on the Registration of Vehicles, except for powers conferred on the police by Sections 18(3) and 19 of the Vehicle Registration Act.

(dd) Fiscal supervision

28 The Fiscal supervision is accomplished by the Danish Ministry of Finance.

(b) Administrative provisions in the area of structural funds and internal policies (interne Politiken) = expenditure

(aa) Structural funds

29 The Danish Business Authority is the relevant administrative authority for organising measures against fraud within the area of Regional Funds and Social Funds.

30 The *Håndbog – Samarbejde i det danske svigbekæmpelsesnetværk* summarises the procedure for handling cases of suspected fraud as follows:

“The internal procedure for handling cases of suspected fraud is described in the administrative authority's anti-fraud action plan. In the event that there is an early suspicion of fraud, case handlers and controllers, in consultation with Team DE Quality and LEAN, prepare a memo on the case, for discussion with the team leader from Lean and the program manager. If it is assessed that there is a justified suspicion of fraud, a recommendation is made to the Deputy Director of Decentralized Business Promotion. The Deputy Director makes the final decision on whether to file a police report. An opinion/declaration can be obtained from Team Jura under the executive secretariat before the final decision.

In cases of doubt, the agency can contact SØIK for a telephone or written assessment of the case prior to the agency's possible police report of a specific case. The purpose is to open dialogue with a view to finding a level for when a case should be reported. In addition to a police report, according to LBK no. 160 of 7 February 2019 section 17, claims for repayment can be raised.”¹⁵⁹

¹⁵⁹ Ministry of Finance, Manual of September 2021, Cooperation in the Danish anti-fraud network, p. 9.

For the area of structural funds, the Danish manual foresees the following codes and provisions therein as essential:¹⁶⁰

- Legislative Decree No. 160 of 7 February 2019 on the administration of grants from the European Regional Fund and the European Social Fund / *Lovbekendtgørelse nr. 160 af 7. februar 2019 om administration af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond.*

Chapter 2 The organisation of the administration

Section 3¹⁶¹

The Minister of Business is the highest responsible authority for the administration of the Regional Fund and the Social Fund in Denmark and for the coordination thereof. The Minister of Business and Industry distributes the regional fund and social fund funds allocated under the goal of investment in growth and employment and the goal of European territorial cooperation, as well as the Ministry of Business and Industry's funds for co-financing the funds, in compliance with Community law rules and guidelines.

Paragraph 2. The Minister of Business and Industry can submit payment requests to the Commission, receive payments from the Commission and make decisions on the commitment and payment of grants, including payment in advance, from the Regional Fund and the Social Fund, as well as the Ministry of Business and Industry's funds for co-financing the funds.

Paragraph 3. Advance payment of grants under the Regional Fund and the Social Fund will be possible, subject to the approval of the final project accounts, even if the Danish state has not yet received the amount from the Commission.

Section 4¹⁶²

Grants can be granted as direct grants, global grants or in the form of other financial instruments.

¹⁶⁰ Ibid., p. 7.

¹⁶¹ Kapitel 2 *Administrationens organisering*

§ 3.

Erhvervsministeren er den øverste ansvarlige myndighed for administrationen af Regionalfonden og Socialfonden i Danmark og for koordineringen heraf. Erhvervsministeren fordeler under iagttagelse af fællesskabsretlige regler og retningslinjer de regionalfonds- og socialfondsmidler, der tildeles under målet om investeringer i vækst og beskæftigelse og målet om europæisk territorialt samarbejde, samt Erhvervsministeriets midler til medfinansiering af fondene.

Stk. 2. Erhvervsministeren kan forelægge betalingsanmodninger for Kommissionen, modtage betalinger fra Kommissionen og træffe afgørelse om tilsagn om og udbetaling af tilskud, herunder forskudsvis udbetaling, fra Regionalfonden og Socialfonden samt Erhvervsministeriets midler til medfinansiering af fondene.

Stk. 3. Forskudsvis udbetaling af tilskud under Regionalfonden og Socialfonden vil under forbehold af det endelige projektregnskabs godkendelse kunne ske, selv om den danske stat endnu ikke har modtaget beløbet fra Kommissionen.

¹⁶² § 4.

Tilskud kan ydes som direkte tilskud, globaltilskud eller i form af andre finansielle instrumenter.

Section 5¹⁶³

The state and municipalities can co-finance the projects for which grants can be granted under the Regional Fund and the Social Fund.

Paragraph 2. Regions can co-finance projects within projects on qualified labour under the European Social Fund. Regions can, on the basis of other legislation, co-finance regional fund projects and social fund projects.

Et seq.

32 See also

- Executive order no. 586 of 3 June 2014 on eligibility for support, accounting, audit and control etc. in connection with the payment of grants from the European Regional Fund and the European Social Fund with later amendments. /*Bekendtgørelse nr. 586 af 3. juni 2014 om støtteberettigelse, regnskab, revision og kontrol m.v. i forbindelse med udbetaling af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond med senere ændringer*
- Executive Order No. 1810 of 30 December 2018 on the administration of grants from the European Regional Fund and the European Social Fund./*Bekendtgørelse nr. 1810 af 30. december 2018 om administration af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond.*
- Act on the Marine, Fisheries and Aquaculture Fund ACT no. 2584 of 28/12/2021

(bb) Internal policies

33 As a lot of money is as well spend in the area of excise duties, the various Danish Acts on excise duties might be of importance. The legal guidance of the Danish Tax Authority explains the control provisions e.g. of the Beer and Wine Tax Act.¹⁶⁴

(c) Administrative provisions in the area of the common organisation of the markets = expenditure

34 The following Acts apply with regard to investigations in the area of the common organisation of the markets:

- Act on the Rural District Fund (Act 1360 of 16/12/2014)/*Lov om Landdistriktsfonden (Lov nr 1360 af 16/12/2014)*

¹⁶³ § 5.

Staten og kommuner kan medfinansiere de projekter, hvortil der kan ydes tilskud under Regionalfonden og Socialfonden.

Stk. 2. Regioner kan inden for projekter om kvalificeret arbejdskraft under Den Europæiske Socialfond medfinansiere projekter. Regioner kan med hjemmel i anden lovgivning medfinansiere regionalfondsprojekter og socialfundsprojekter.

¹⁶⁴ See <https://skat.dk/data.aspx?oid=1919759>. Accessed 31 December 2024.

- Agricultural Support Act (LBK 1586 of 14/12/2015)/*Landbrugsstøtteleven*
- Act on the Marine, Fisheries and Aquaculture Fund ACT no. 2584 of 28/12/2021
- Decree on grants for public afforestation BEK no 955 of 27/06/2016
- Order on grants for support measures to improve the conditions for the production and marketing of beekeeping products, BEK no 439 of 15/03/2021:

Chapter 4 Criteria and obligations

[...] **Eligibility criteria**

[...] **Obligations**

[...] **Notification obligation**

Chapter 5 Eligible expenses

[...]

Chapter 10 Authorities and control

Section 23¹⁶⁵

The Danish Agency for Agriculture is in charge of the physical and administrative control, as well as the subsequent accounting control of projects that have received commitments for subsidies.

- Order on subsidies for fruit, vegetables and milk for distribution at schools and day care etc, BEK no 366 of 23/03/2022:

35

Chapter 6 Authorities and control

Section 44¹⁶⁶

The Danish Agency for Agriculture is in charge of the administrative and physical control in connection with the administration of the scheme.

PCS 2. It is the responsibility of eligible applicants to provide the necessary assistance during checks, including making documentation available for checks, and to ensure that institutions, as mentioned in Section 3, participate in checks.

PCS 3. The Danish Agency for Agriculture can implement random weight checks at the participating schools under the scheme for school fruit and vegetables.

¹⁶⁵ Kapitel 10 *Myndigheder og kontrol*

§ 23.

Landbrugsstyrelsen forestår den fysiske og den administrative kontrol, samt den efterfølgende regnskabskontrol af projekter, der har modtaget tilsagn om tilskud.

¹⁶⁶ Kapitel 6 *Myndigheder og kontrol*

§ 44.

Landbrugsstyrelsen forestår den administrative og fysiske kontrol i forbindelse med administrationen af ordningen.

Stk. 2. Det påhviler støtteberettigede ansøgere at yde den nødvendige bistand ved kontrol, herunder at gøre dokumentation tilgængelig for kontrol, samt at sikre, at institutioner som nævnt i § 3, medvirker ved kontrol.

Stk. 3. Landbrugsstyrelsen kan iværksætte stikprøvevis vægtkontrol på de deltagende skoler under ordningen for skolefrugt og -grønt.

- 36 - Executive order on subsidies to promote the production and marketing of organic food, BEK no 1366 of 01/12/2015:

Chapter 3 Administration

Control

Section 5¹⁶⁷

The Danish Business Authority is in charge of the physical and administrative control as well as the subsequent accounting control of projects that have received commitments for grants.

PCS 2. Pursuant to Section 10 of the Act, the Danish Agency for Natural Resources and Enterprise can obtain from other public authorities the information necessary to carry out inspections.

- 37 - Order on subsidies for manure acidification plants within the livestock sector BEK no 1141 of 20/10/2017:

Control

Section 6¹⁶⁸

The Danish Agency for Agriculture is in charge of the physical and administrative control as well as the subsequent accounting control of projects that receive subsidies.

- 38 - Executive order on grants to producer organisations, etc. under the market arrangement for fruit and vegetables 2023 BEK no. 34 of 12/01/2023

¹⁶⁷ Kapitel 3 *Administration*

Kontrol

§ 5.

NaturErhvervstyrelsen forestår den fysiske og den administrative kontrol samt den efterfølgende regnskabskontrol af projekter, der har modtaget tilsagn om tilskud.

Stk. 2. Efter lovens § 10 kan NaturErhvervstyrelsen fra andre offentlige myndigheder indhente de oplysninger, der er nødvendige for at foretage kontrol.

¹⁶⁸ *Kontrol*

§ 6.

Landbrugsstyrelsen forestår den fysiske og den administrative kontrol samt den efterfølgende regnskabskontrol af projekter, der modtager tilskud.

- Executive order on grants for projects in designated rural areas BEK no 2509 of 08/12/2021: 39

Chapter 18 Control

Section 46¹⁶⁹

The Housing and Planning Agency carries out inspections of approved, completed projects, cf. however subsection 3, Section 31 and Section 37.

PCS 2. The Housing and Planning Agency may, for use in the control pursuant to subsection 1 obtain information from other authorities to the extent necessary.

PCS 3. The Danish Agency for Agriculture or others, in agreement with the Danish Housing and Planning Agency, can carry out the inspection referred to in subsection 1.

(2) Investigative powers

The **legal rationale** or *telos* behind OLAF's investigative powers is grounded in Article 325 TFEU, which requests the protection of the EU's budget and obligates Member States to take equivalent measures against EU budget fraud as they would for their own financial interests. The **assimilation principle** plays a crucial role here and in secondary Union law, as OLAF's powers are equated to those of national administrative authorities responsible for fraud investigations in secondary law.¹⁷⁰ *De facto* OLAF's powers depend on the policy area and the investigative context. According to the wording of Art. 3 OLAF **may or can request access** to documents, records, and other relevant materials under the same conditions as national administrative bodies. It can also conduct interviews and **request cooperation** from businesses and individuals. However, it lacks the power to compel access without the **intervention of national authorities**. 40

¹⁶⁹ Kapitel 18 *Kontrol*

§ 46.

Bolig- og Planstyrelsen foretager kontrol af godkendte, afsluttede projekter, jf. dog stk. 3, § 31 og § 37.

Stk. 2. Bolig- og Planstyrelsen kan til brug for kontrollen efter stk. 1 indhente oplysninger fra andre myndigheder i nødvendigt omfang.

Stk. 3. Landbrugsstyrelsen eller andre, kan efter aftale med Bolig- og Planstyrelsen, varetage kontrollen nævnt i stk. 1.

¹⁷⁰ Bovend'Eerd 2024, pp. 142, 297, 308 providing a study on Germany with relation to structural funds and hereby he closely identifies all authorities and applicable laws; further on p. 386 reasoning his conclusions: "But even then there were matters which remained, at least at first sight, ambivalent. For example, is OLAF's power to copy documents, or more specifically its power to conduct digital forensic operations, an EU power, or can OLAF only exercise these powers on the basis of the principle of assimilation? These are difficult questions that are not easily answered. Can we then really expect a person concerned to make such a thorough analysis when OLAF comes knocking on the door unexpectedly?"

(a) Investigative powers in the area of customs duties and VAT (General Tax Code)

- 41 In the area of the customs duties the Customs Code applies. It contains provisions on investigative measures and controls, which are e.g. as well important for the Fishery sector or the international trade to the EU.

Access to control

Section 15

For the purpose of searching and checking goods without a court order, the customs and tax authorities can move unhindered anywhere along coasts, in ports, at airports, at landing sites, in transport centres, on trains, on railway areas and on roads to which there is public access. Searches and checks of goods in any shipment (letters, parcels, etc.) can be carried out at the mentioned locations, regardless of carrier, in warehouses, in containers, in means of transport and in other temporary or permanent places that can be used for storing goods, etc.

PCS. 2. The customs and tax administration **has the right to unimpeded access everywhere along the national border**. If adjacent areas are fenced or cordoned off, the owners must take such measures that the customs and tax administration is guaranteed unhindered passage at all times.

Section 24

The customs and tax administration has the right to pursue and stop persons who evade or are presumed to evade control, and who carry or are presumed to carry goods for which customs duties or charges have not been paid. The customs and tax administration also has the right in such cases to carry out an investigation in houses, means of transport, etc., when this happens in the immediate continuation of the pursuit.

PCS. 2. The provision in subsection 1 applies correspondingly for persons who bring or are assumed to bring cash equivalent to the value of 10,000 euros or more, or who bring or are assumed to bring goods for which safety, health, veterinary, plant pathology, currency or other reasons, a ban on importation, exportation or transit has been established.

Control of information and documents

Section 27

The customs and tax administration can demand information from importers, exporters, producers, other traders and business organisations to fulfil the obligation to provide information to the EU.

PCS. 2. Whoever declares goods for customs processing in accordance with the relevant EU regulations must provide such information and declarations about the nature and nature of the goods, etc., as are necessary for the control of the foreign trade statistics

and the special import, export and transit regulations, such as currency, health, safety, veterinary, plant pathological or other reasons are established for these goods.

Section 28

The customs and tax administration has, if it is deemed necessary, at any time against proper identification without a court order, the right to inspect premises used by persons who have imported or exported or managed the import or export of goods that must be processed by customs in the Danish customs area, as well as in premises of companies applying for customs reimbursement.

PCS. 2. The customs and tax administration can, to the extent that the purpose makes it necessary, carry out inspections of goods and stocks of those in subsection 1 and Section 27, subsection 1, mentioned persons etc. and inspect their business books, other accounting material and correspondence etc

PCS. 3. Those in para. 1 and Section 27, subsection 1, the mentioned persons and companies and the persons employed by them must provide the customs and tax administration with assistance when carrying out inspections.

PCS. 4. In addition, the customs and tax administration always has the right to inspect goods for which customs duties and the taxes settled in connection with the importation have not been paid.

PCS. 5. That in para. The material referred to in 2 must be handed over or submitted to the customs and tax administration at the request of the latter.

PCS. 6. To the extent that information as mentioned in subsection 2 is registered electronically, the customs and tax administration's access to this information also includes electronic access to it.

PCS. 7. The police provide the customs and tax administration with assistance in carrying out the control pursuant to subsection 1. The Minister of Justice can, after negotiation with the Minister of Taxation, lay down detailed rules in this regard.

The VAT Act provides for a detailed provision on the investigative powers in Section 19, which enables the VAT Offices to carry out inspections at the places of economic operators: **42**

Chapter 19 Control provisions

Section 74¹⁷¹

The customs and tax administration has, if deemed necessary, at any time against proper identification without a court order, access to inspect premises used by the companies, and to inspect the companies' inventories, business books, other accounting material and correspondence, etc., regardless of whether these information is stored on paper or on computer media. The customs and tax administration's access to control according to the 1st point also includes access to control at workplaces outside the premises from which the company is operated, as well as in means of transport used for business purposes. Control as mentioned in the 2nd point. cannot, however, be carried out on a property that is only used as a private residence or holiday home.

PCS. 2. The owners and employees of the companies must be helpful to the customs and tax administration during inspections as mentioned in subsection 1.

PCS. 3. The customs and tax administration is entitled to, according to similar rules as laid down in subsection 1 to carry out inspections in connection with taxable acquisitions.

PCS. 4. The material mentioned in paragraph 1 must be handed over or submitted to the customs and tax administration upon request.

PCS. 5. The customs and tax administration can order a company to comply with the rules for access to inspections as well as handing out or submitting material pursuant to subsection 1–4. The customs and tax administration can impose daily fines on the owner or the responsible day-to-day management of the company in accordance with section 77, until the order is complied with. An injunction must refer to the relevant rule(s) and

¹⁷¹ Kontrolbestemmelser

§ 74.

Told- og skatteforvaltningen har, hvis det skønnes nødvendigt, til enhver tid mod behørig legitimation uden retskendelse adgang til at foretage eftersyn i lokaler, der benyttes af virksomhederne, og til at efterse virksomhedernes varebeholdninger, forretningsbøger, øvrige regnskabsmateriale samt korrespondance m.v., uanset om disse oplysninger opbevares på papir eller på edb-medier. Told- og skatteforvaltningens adgang til kontrol efter 1. pkt. omfatter også adgang til kontrol på arbejdssteder uden for de lokaler, hvorfra virksomheden drives, samt i transportmidler, der anvendes erhvervsmæssigt. Kontrol som nævnt i 2. pkt. kan dog ikke gennemføres på en ejendom, der alene tjener til privatbolig eller fritidsbolig.

Stk. 2. Virksomhedernes indehavere og ansatte skal være told- og skatteforvaltningen behjælpelige ved eftersyn som nævnt i stk. 1.

Stk. 3. Told- og skatteforvaltningen er berettiget til efter tilsvarende regler som fastsat i stk. 1 at foretage eftersyn i forbindelse med afgiftspligtige erhvervelser.

Stk. 4. Materialet nævnt i stk. 1 skal efter anmodning udleveres eller indsendes til told- og skatteforvaltningen.

Stk. 5. Told- og skatteforvaltningen kan give en virksomhed påbud om at efterleve reglerne for adgangen til eftersyn samt udlevering eller indsendelse af materiale efter stk. 1-4. Told- og skatteforvaltningen kan pålægge ejeren eller den ansvarlige daglige ledelse af virksomheden daglige bøder efter § 77, indtil påbuddet efterleveres. Et påbud skal henvise til den eller de relevante regler og anvise, hvilke konkrete handlinger eller foranstaltninger virksomheden skal gennemføre for at overholde reglerne. Told- og skatteforvaltningen skal meddele påbuddet skriftligt, og det skal fremgå af den skriftlige meddelelse, at hvis virksomheden ikke efterlever påbuddet inden for en nærmere fastsat frist, kan told- og skatteforvaltningen pålægge ejeren eller den ansvarlige daglige ledelse af virksomheden daglige bøder, indtil påbuddet efterleveres.

indicate which specific actions or measures the company must implement in order to comply with the rules. The customs and tax administration must notify the order in writing, and it must be clear from the written notice that if the company does not comply with the order within a specified period, the customs and tax administration can impose daily fines on the owner or the responsible day-to-day management of the company until the order is fulfilled is complied with.

The Danish Tax Authority provides for a legal guidance, which contains an explanation on VAT controls:



“The Tax Administration is responsible for ensuring that VAT is correctly declared and settled. The Tax Administration therefore has the authority to carry out inspections in businesses. Where deemed necessary, the Tax Administration may conduct inspections on premises used by the business. A court order is not required, but officials of the Tax Administration must present identification.

During an inspection, the Tax Administration may also examine the business’s

- stock, account books, other accounting records and correspondence, etc., whether stored on paper or electronically,
- acquisitions subject to excise duty from other EU countries.


During the inspection, the proprietor and employees of the business must provide assistance, and, if requested by the Tax Administration’s officials, the business is obliged to submit accounting material to the Tax Administration. See VAT Act (ML) § 74.”¹⁷²

We can refer to this manual if it comes to a clear and details, in-depth explanation of the thresholds, definitions and the scope of the provisions in the VAT Act e.g. it is correctly escribed, which is as well settled ECtHR case law, that a VAT officer can only without a warrant access business premises and needs a warrant for private premises. **43**

Besides the normal VAT Act, the Tobacco Tax Act provides control and investigative powers to national partners of OLAF: **44**

¹⁷² Skat.dk, <https://web.archive.org/web/20230531193513/https://skat.dk/data.aspx?oid=1919759>. Accessed 31 December 2024.

Customs Investigations Measures 1: Tobacco Area

	<p style="text-align: center;">Measures in the Tobacco Tax Act of Denmark</p>
<p>In the area of tobacco duties the following investigation and inspection rights are granted to Danish authorities:</p> <p style="text-align: center;">The Tobacco Tax Act</p> <p>Section 21¹⁷³</p> <p>The customs and tax administration has, if deemed necessary, at any time against proper identification without a court order, access to inspect the companies covered by the law, and to inspect the companies' inventories, business books, other accounting material and correspondence, etc.</p> <p>PCS. 2. The owners of the companies and the persons employed in the companies must provide the customs and tax administration with the necessary guidance and assistance when carrying out the tasks in subsection 1 mentioned inspection.</p> <p>PCS. 3. That in para. The material referred to in 1 must be handed over or submitted to the customs and tax administration on request.</p> <p>PCS. 4. Business operators must, on request, provide the customs and tax administration with information about their purchases and any resale of taxable goods.</p> <p>PCS. 5. The customs and tax administration is entitled to carry out an inspection of goods during transport when these goods are commercially sold from abroad or professionally transported to other than authorised companies.</p> <p>PCS. 6. The customs and tax administration has, if it is deemed necessary, at any time against proper identification without a court order, the right to carry out inspections of inventories and accounts etc. of those in subsection 4 and 5 mentioned companies.</p>	

¹⁷³ § 21.

Tobaksafgiftsloven Lov om tobaksafgifter Told- og skatteforvaltningen har, hvis det skønnes nødvendigt, til enhver tid mod behørig legitimation uden retskendelse adgang til at foretage eftersyn i de virksomheder, der omfattes af loven, og til at efterse virksomhedernes varebeholdninger, forretningsbøger, øvrige regnskabsmateriale samt korrespondance m.v.

Stk. 2. Virksomhedernes indehavere og de i virksomhederne beskæftigede personer skal yde told- og skatteforvaltningen fornøden vejledning og hjælp ved foretagelsen af de i stk. 1 nævnte eftersyn.

Stk. 3. Det i stk. 1 nævnte materiale skal på begæring udleveres eller indsendes til told- og skatteforvaltningen.

Stk. 4. Erhvervsdrivende skal på begæring meddele told- og skatteforvaltningen oplysninger om deres indkøb og eventuelle videresalg af afgiftspligtige varer.

Stk. 5. Told- og skatteforvaltningen er berettiget til at foretage eftersyn af varer under transport, når disse varer erhvervsmæssigt sælges fra udlandet eller erhvervsmæssigt transporteres til andre end autoriserede virksomheder.

Stk. 6. Told- og skatteforvaltningen har, hvis det skønnes nødvendigt, til enhver tid mod behørig legitimation uden retskendelse adgang til at foretage eftersyn af varebeholdninger og regnskaber m.v. hos de i stk. 4 og 5 omhandlede virksomheder.

Stk. 7. I det omfang oplysninger som nævnt i stk. 1 og 6 er registreret elektronisk, omfatter forvaltningens adgang til disse oplysninger også en elektronisk adgang hertil.

PCS. 7. To the extent that information as mentioned in subsection 1 and 6 are registered electronically, the administration's access to this information also includes electronic access to it.

Section 23

The Minister of Taxation can also lay down provisions on control measures that are necessary for the implementation of the Act.

(b) Investigative powers around structural funds and internal policies

The Ministry of Business is the competent authority to conduct investigations in the area of structural funds (see above). The Ministry is authorised to conduct inspections of premises and documents as well as accounts and cash. The police can provide assistance if the need should arise (cf. Legislative Decree No. 160 of 7 February 2019). **45**

On-the-spot checks in connection with the payment of grants from the European Regional Fund and the European Social Fund are conducted according to section 34 Executive Order no. 586 (3 June 2014).¹⁷⁴ Officials from the Danish Business Authority are competent to do so.¹⁷⁵ **46**

- Legislative Decree No. 160 of 7 February 2019 on the administration of grants from the European Regional Fund and the European Social Fund./*Lovbekendtgørelse nr. 160 af 7. februar 2019 om administration af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond:*

Chapter 5 Use of registers

Section 15¹⁷⁶

The Minister of Business and Industry may, for use in the administration of grants from the Regional Fund and the Social Fund, create and operate registers that are kept in electronic form.

PCS. 2. For the administration of this Act, the Minister for Business can make information in the income register available, cf. Act on an income register Section 7.

¹⁷⁴ Ministry of Finance, Manual of September 2021, Cooperation in the Danish anti-fraud network, p. 14.

¹⁷⁵ Ibid.

¹⁷⁶ Kapitel 5 Anvendelse af registre

§ 15. Erhvervsministeren kan til brug for administrationen af tilskud fra Regionalfonden og Socialfonden oprette og drive registre, der føres i elektronisk form.

Stk. 2. Erhvervsministeren kan til brug for administrationen af denne lov få stillet oplysninger i indkomstregisteret til rådighed, jf. lov om et indkomstregister § 7.

Stk. 3. Erhvervsministeren kan hos andre offentlige myndigheder indhente de oplysninger, der er nødvendige for at kontrollere overholdelsen af de relevante forordningsbestemmelser og bestemmelserne i denne lov samt de regler, der er udstedt i medfør af denne lov, bl.a. med henblik på registersamkøring og sammenstilling af oplysninger i kontroløjemed.

Stk. 4. Erhvervsministeren fastsætter nærmere regler for anvendelsen af de i stk. 1 nævnte registre, for samkøring til administrative, tilsyns- eller kontrolmæssige formål og for indhentning af oplysninger til brug for registrene.

PCS. 3. The Minister for Business can obtain from other public authorities the information necessary to check compliance with the relevant regulations and the provisions of this Act as well as the rules issued pursuant to this Act, i.e. with a view to register coordination and compilation of information for control purposes.

PCS. 4. The Minister of Business and Industry lays down detailed rules for the application of those in subsection 1 mentioned registers, for coordination for administrative, supervisory or control purposes and for obtaining information for use in the registers.

Chapter 6 Accounts and control etc.

Section 16¹⁷⁷

The Minister for Business is responsible for the control and supervision of projects that receive support from the Regional Fund or the Social Fund, including that accounting, auditing, impact measurement and evaluation take place.

PCS. 2. The Minister for Business has access to familiarize himself with the individual projects' accounts, inventories, etc.

PCS. 3. The Minister for Business and Industry may demand all information and accounts deemed necessary for compliance with the EU requirements from persons and companies to whom funds are provided under this Act. The Minister for Business can carry out accounting and cash audits in connection with each individual project.

PCS. 4. If it is deemed necessary to obtain the information in subsection information mentioned in 2 and 3, the Minister for Business can at any time, without a court order, inspect premises, etc., used by the individual projects, and inspect the project's registrations, regardless of whether the requested information is stored in paper or electronic

¹⁷⁷ Kapitel 6 *Regnskaber og kontrol m.v.*

§ 16. Erhvervsministeren er ansvarlig for, at der gennemføres kontrol og tilsyn med projekter, der får støtte fra Regionalfonden eller Socialfonden, herunder at der sker regnskabsaflæggelse, revision, effektmåling og evaluering.

Stk. 2. Erhvervsministeren har adgang til at gøre sig bekendt med de enkelte projekters regnskaber, beholdninger m.m.

Stk. 3. Erhvervsministeren kan fra personer og virksomheder, der ydes midler til efter denne lov, kræve alle oplysninger og regnskaber, som skønnes nødvendige for efterlevelse af EU-kravene. Erhvervsministeren kan foretage regnskabs- og kasseeftersyn i forbindelse med hvert enkelt projekt.

Stk. 4. Hvis det skønnes nødvendigt for at indhente de i stk. 2 og 3 nævnte oplysninger, kan erhvervsministeren til enhver tid uden retskendelse foretage eftersyn i lokaler m.m., der benyttes af de enkelte projekter, og efterse projektets registreringer, uanset om de ønskede oplysninger opbevares i papirudgave eller i elektronisk form. Materiale af betydning for videre kontrol skal udleveres eller indsendes til erhvervsministeren.

Stk. 5. Den, der er ansvarlig for projektets gennemførelse, og andre personer, der er tilknyttet projektet, skal yde erhvervsministeren den fornødne vejledning og hjælp ved de i stk. 2 og 3 nævnte eftersyn.

Stk. 6. Politiet yder om nødvendigt erhvervsministeren bistand til gennemførelsen af det i stk. 2 og 3 nævnte eftersyn. Erhvervsministeren kan efter forhandling med justitsministeren fastsætte nærmere regler herom.

Stk. 7. Erhvervsministeren fastsætter nærmere regler om kontrol, tilsyn, regnskaber, revision, effektmåling og evaluering samt om budgetter og projektrapporter.

Stk. 8. Stk. 1–7 gælder tillige for projekter, der gennemføres med tilskud fra Erhvervsministeriets midler til medfinansiering af Regionalfondens og Socialfondens aktiviteter.

form. Material of importance for further control must be handed over or submitted to the Minister for Business.

PCS. 5. The person who is responsible for the implementation of the project and other persons associated with the project must provide the Minister of Business and Industry with the necessary guidance and assistance in the matters in subsection 2 and 3 said inspection.

PCS. 6. If necessary, the police provide the Minister of Business and Industry with assistance for the implementation of subsection 2 and 3 said inspection. After negotiation with the Minister of Justice, the Minister for Business can lay down detailed rules in this regard.

PCS. 7. The Minister of Business and Industry lays down detailed rules on control, supervision, accounts, auditing, impact measurement and evaluation as well as on budgets and project reports.

PCS. 8. Paragraphs 1–7 also apply to projects that are carried out with grants from the Ministry of Business and Industry's funds for co-financing the activities of the Regional Fund and the Social Fund.

- Executive order no. 586 of 3 June 2014 on eligibility for support, accounting, audit and control etc. in connection with the payment of grants from the European Regional Fund and the European Social Fund with later amendments. */Bekendtgørelse nr. 586 af 3. juni 2014 om støtteberettigelse, regnskab, revision og kontrol m.v. i forbindelse med udbetaling af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond med senere ændringer.*

47

Chapter 8 Document storage, control and supervision of projects

Section 33¹⁷⁸

For projects in which state aid is not included, all reports and all accounting material, etc., must be kept for five and a half years after the date on which the final settlement for the project has been made on the basis of the final project accounts.

PCS. 2. For projects in which state aid is included, all reports and all accounting material etc. must be kept in accordance with the EU's state aid rules.

¹⁷⁸ Kapitel 8

Bilagsopbevaring, kontrol og tilsyn med projekter

§ 33.

For projekter, hvori der ikke indgår statsstøtte, skal alle rapporter og alt regnskabsmateriale m.v. opbevares i fem et halvt år efter den dato, hvor der er foretaget slutfregning over for projektet på baggrund af det endelige projektregnskab.

Stk. 2. For projekter, hvori der indgår statsstøtte, skal alle rapporter og alt regnskabsmateriale m.v. opbevares i overensstemmelse med EU's statsstøtteregler.

Section 34¹⁷⁹

Representatives from the European Commission, with the participation of representatives from the Danish Business Authority, or whoever the agency authorises to do so, can check on the spot the projects that have obtained grants from the Regional Fund or the Social Fund.

PCS. 2. The Danish Business Authority, or whoever the agency authorises to do so, can check on the spot the projects that have obtained grants from the Regional Fund or the Social Fund.

PCS. 3. In addition to those in subsection 2 control of the projects by the authorities mentioned, representatives from the European Court of Auditors, the National Audit Office, the European Commission or other units in the central administration can control the projects.

PCS. 4. For control purposes, the Danish Business Authority can obtain the necessary information from SKAT and other public authorities.

Section 35¹⁸⁰

The beneficiary, the regional growth forum secretariats, the relevant regional authorities or competent institutions must, upon request, make all relevant reports and all accounting material etc. available for control and audit.

PCS. 2. Inspections can take place as long as the project's reports and accounting material etc. must be kept, cf. Section 33.

- 48 - Executive Order No. 1810 of 30 December 2018 on the administration of grants from the European Regional Fund and the European Social Fund./*Bekendtgørelse nr. 1810 af 30. december 2018 om administration af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond.*

¹⁷⁹ § 34.

Repræsentanter fra Europa-Kommissionen kan med deltagelse af repræsentanter fra Erhvervsstyrelsen, eller den styrelsen bemyndiger dertil, på stedet kontrollere de projekter, der har opnået tilskud fra Regionalfondens eller Socialfondens.

Stk. 2. Erhvervsstyrelsen, eller den styrelsen bemyndiger dertil, kan på stedet kontrollere de projekter, der har opnået tilskud fra Regionalfondens eller Socialfondens.

Stk. 3. Udover de i stk. 2 nævnte myndigheders kontrol af projekterne kan repræsentanter fra Den Europæiske Revisionsret, Rigsrevisionen, Europa-Kommissionen eller andre enheder i centraladministrationen kontrollere projekterne.

Stk. 4. Til brug for kontrol kan Erhvervsstyrelsen indhente de fornødne oplysninger hos SKAT og andre offentlige myndigheder.

¹⁸⁰ § 35.

Støttemodtager, de regionale vækstforumsekretariater, de relevante regionale myndigheder eller kompetente institutioner skal efter anmodning stille alle relevante rapporter og alt regnskabsmateriale m.v. til rådighed for kontrol og revision.

Stk. 2. Kontrol kan finde sted så længe som projektets rapporter og regnskabsmateriale m.v. skal opbevares, jf. § 33.

Chapter 7 Control and audit**Section 24**¹⁸¹

Representatives from the European Commission, the European Court of Auditors, the National Audit Office and the Danish Business Authority, or whoever the agency authorises to do so, can check on-site management and control systems of the public or private legal entities that, in accordance with Section 8, subsection 2, or Section 13 of the Act on the Administration of Grants from the European Regional Fund and the European Social Fund are authorised to carry out administrative and certifying authority tasks or to act as administrative and certifying authority, and whether they comply with the applicable rules.

Paragraph 2. Representatives from the European Commission, the European Court of Auditors, the National Audit Office and the Ministry of Trade or Industry or whoever the ministry authorises to do so can check the Danish Business Authority's management and control systems on site and whether the agency complies with the applicable rules.

Paragraph 3. During the inspection, all relevant documentation, including reports, accounting material and inspection annexes, must be made available.

Et seq.

In the area of structural funds for young farmers the Act on Funds for Farmers applies and it holds provisions for controls and inspections: **49**

Control**Section 20**

The Minister for the Environment and Food can lay down rules on control, supervision, accounting and auditing regarding measures that are supported by law.

PCS. 2. The controlling authority and persons specially authorised to do so have at all times, against proper identification and without a court order, access to agricultural holdings or other businesses run by a natural or legal person who has received a commitment to support under the law. In a similar way, the controlling authority and persons specially

¹⁸¹ Kapitel 7 *Kontrol og revision*

§ 24.

Repræsentanter fra Europa-Kommissionen¹⁵⁾, Den Europæiske Revisionsret, Rigsrevisionen og Erhvervsstyrelsen, eller den styrelsen bemyndiger dertil, kan på stedet kontrollere forvaltnings- og kontrolsystemer hos de offentlige eller private juridiske enheder, der i henhold til § 8, stk. 2, eller § 13 i lov om administration af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond er bemyndiget til at varetage forvaltnings- og attestationsmyndighedsopgaver eller til at fungere som forvaltnings- og attestationsmyndighed, og om de overholder de gældende regler.

Stk. 2. Repræsentanter fra Europa-Kommissionen, Den Europæiske Revisionsret, Rigsrevisionen og Erhvervsministeriet eller den, ministeriet bemyndiger dertil, kan på stedet kontrollere Erhvervsstyrelsens forvaltnings- og kontrolsystemer, og om styrelsen overholder de gældende regler.

Stk. 3. Ved kontrollen skal al relevant dokumentation, herunder rapporter, regnskabsmateriale og kontrolbilag, stilles til rådighed.

authorised to do so have access to the accounts, business books, papers, etc. of the agricultural holdings or companies, including material stored in electronic form, in order to provide information for use in solving tasks in accordance to the law or to rules laid down pursuant to the law.

PCS. 3. Anyone who runs an agricultural business, including a stakeholder if a partnership has been granted a state guarantee for a loan, or other business, cf. subsection 2, must provide the necessary guidance and assistance in carrying out the inspection, and that in subsection The material referred to in 2 must be handed over or submitted to the controlling authorities at their request.

PCS. 4. For the purpose of the control, the control authority can obtain necessary information from the customs and tax administration or other public authorities.

PCS. 5. If necessary, the police provide assistance for the implementation of the 2 mentioned control. The Minister of the Environment and Food can, in agreement with the Minister of Justice, lay down detailed rules in this regard.

Section 20a

The Minister for the Environment and Food or the person authorised by the Minister to do so may obtain from other public authorities the information necessary to check compliance with the relevant regulatory provisions and the law as well as the rules issued pursuant to the law, among other things with a view to register matching and compilation of information for control purposes.

(c) Investigative powers in the area of common market organisations

- 50** The National Board of Agriculture is the responsible authority for the “management of agricultural support and rural district support.¹⁸² They are obliged with the task of reporting irregularities and the detecting and preventing of “fraud with funds under the common agricultural policy within the regulatory framework.”¹⁸³ The National Board of Agriculture is part of the network working with OLAF.¹⁸⁴
- 51** The Danish Agency for Agriculture and the Danish Fisheries Agency take part during the on-site inspections of OLAF.¹⁸⁵ A judicial warrant is not necessary for this kind of inspection. The inspection can be assisted by the police. A seizure of documents is not foreseen in the relevant codes (see below).

¹⁸² Ministry of Finance, Manual of September 2021, Cooperation in the Danish anti-fraud network, p. 8.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid., p. 14.

The Manual by the Ministry of Finance foresees the following codes and provisions as the most relevant concerning investigations in the agricultural area:¹⁸⁶

- Agricultural Support Act (LBK 1586 of 14/12/2015)/*Landbrugsstøtteleven*

Chapter 1 Administration of market arrangements etc [...]

Section 3¹⁸⁷

The Minister for the Environment and Food can order importers, exporters, producers, traders and trade associations to provide the information that is necessary to fulfil the European Community's rules on Member States' reporting obligations in the field of agriculture.

Section 4¹⁸⁸

The Minister for the Environment and Food can lay down rules on control of compliance with the regulations mentioned in Section 1, including with the goods covered by these regulations, and with companies that import, manufacture, trade, store, transport, process or export these goods, or which constitute an earlier or later link in the turnover chain regarding these goods and their components.

¹⁸⁶ Ministry of Finance, Manual of September 2021, Cooperation in the Danish anti-fraud network, p. 7.

¹⁸⁷ § 3.

Miljø- og fødevareministeren kan pålægge importører, eksportører, producenter, handlende og brancheorganisationer at give de oplysninger, der er nødvendige for at opfylde Det Europæiske Fællesskabs regler om medlemsstaternes indberetningspligt på landbrugsområdet.

¹⁸⁸ § 4.

Miljø- og fødevareministeren kan fastsætte regler om kontrol med overholdelsen af de i § 1 nævnte forordninger, herunder med de af disse forordninger omfattede varer, og med virksomheder, som importerer, fremstiller, forhandler, opbevarer, transporterer, bearbejder eller eksporterer disse varer, eller som udgør et tidligere eller senere led i omsætningskæden vedrørende disse varer og deres bestanddele.

Stk. 2. De kontrollerende myndigheder har til enhver tid, såfremt det skønnes nødvendigt, mod behørig legitimation uden retskendelse adgang til ethvert sted, hvor de i stk. 1 nævnte varer i erhvervsmæssigt øjemed befinder sig, samt til enhver af de i stk. 1 nævnte virksomheder. Politiet yder om nødvendigt bistand hertil. Miljø- og fødevareministeren kan efter aftale med justitsministeren fastsætte nærmere regler herom.

Stk. 3. De kontrollerende myndigheder er berettiget til at foretage eftersyn af varerne og uden erstatning udtage prøver af varerne i det omfang, det er nødvendigt for at undersøge deres beskaffenhed. Vedkommende myndighed er endvidere berettiget til at efterse de i stk. 1 nævnte virksomheders varebeholdninger, forretningsbøger, øvrige regnskabsmateriale, ledsagedokumenter, recepter, analysemateriale samt korrespondance m.v., herunder også materiale, der opbevares i elektronisk form. Virksomhedernes indehavere og de i virksomhederne beskæftigede personer skal yde den fornødne vejledning og hjælp ved foretagelse af ovennævnte eftersyn, og ovennævnte materiale skal på de kontrollerende myndigheders begæring udleveres eller indsendes til de kontrollerende myndigheder.

Stk. 4. Rigsrevisionen kan, eventuelt sammen med Den Europæiske Revisionsret, på tilsvarende betingelser som nævnt i stk. 2 efterse de pågældende virksomheders varebeholdninger samt det i stk. 3, 2. pkt., nævnte materiale, som efter de pågældende myndigheders skøn er af betydning for den revisionsmæssige kontrol med administration af de i § 1 nævnte forordninger.

Stk. 5. Miljø- og fødevareministeren kan fastsætte regler om kontrol med de oplysninger, der skal danne grundlag for udbetaling af ydelser eller opkrævning af afgifter i henhold til de i § 1 nævnte forordninger.

Stk. 6. Den, som modtager ydelser, eller som skal betale afgifter i henhold til de i § 1 nævnte forordninger, skal opbevare det i stk. 3, 2. pkt., nævnte materiale i mindst 5 år regnet fra udløbet af det år, hvori ydelse er modtaget eller afgift er betalt.

Stk. 7. Miljø- og fødevareministeren kan fastsætte regler om den regnskabsførelse m.v., der skal følges af virksomheder i forbindelse med udbetaling af ydelser eller opkrævning af afgifter i henhold til de i § 1 nævnte forordninger.

Paragraph 2. The controlling authorities have at any time, if deemed necessary, against proper identification without a court order, access to any place where they in subsection 1 goods for commercial purposes are located, as well as to any of the 1 mentioned companies. The police provide assistance for this if necessary. The Minister of the Environment and Food can, in agreement with the Minister of Justice, lay down detailed rules in this regard.

Paragraph 3. The controlling authorities are entitled to inspect the goods and, without compensation, take samples of the goods to the extent necessary to examine their nature. The relevant authority is also entitled to inspect the inventories, business books, other accounting material, accompanying documents, prescriptions, analysis material and correspondence etc. of the companies mentioned in subsection 1, including material stored in electronic form. The owners of the companies and the persons employed in the companies must provide the necessary guidance and assistance when carrying out the above-mentioned inspection, and the above-mentioned material must be handed over or submitted to the controlling authorities at the request of the controlling authorities.

Paragraph 4. The National Audit Office may, possibly together with the European Court of Auditors, under similar conditions as mentioned in subsection 2 inspect the inventories of the companies in question as well as that in subsection 3, 2nd point, mentioned material which, in the opinion of the relevant authorities, is of importance for the auditing control of the administration of the regulations mentioned in Section 1.

Paragraph 5. The Minister for the Environment and Food can lay down rules on control of the information that must form the basis for the payment of benefits or the collection of taxes in accordance with the regulations mentioned in Section 1.

Paragraph 6. The person who receives benefits, or who must pay taxes in accordance with the regulations mentioned in section 1, must keep the information in subsection 3, 2nd point, said material for at least 5 years, counted from the end of the year in which the service was received or tax was paid.

Paragraph 7. The Minister for the Environment and Food can lay down rules on the accounting etc. that must be followed by companies in connection with the payment of benefits or the collection of taxes in accordance with the regulations mentioned in Section 1.

Chapter 2 Administration of production taxes etc**Section 9¹⁸⁹**

Budgets and accounts for the individual funds must be approved by the Minister for the Environment and Food upon recommendation from the board in question. However, the Minister may, without recommendation, make changes to the budgets for those in section 6, subsection 2 and 3, said funds.

Paragraph 2. The minister lays down the detailed rules for the funds on the preparation of budgets and accounts as well as on administration and auditing. The foundations' accounts must be audited by state-authorized or registered accountants.

Paragraph 3. Each foundation creates an independent website on the Internet. The minister lays down detailed rules on the foundations' publication of budgets and accounts as well as application deadlines, application procedures, etc.

Paragraph 4. The minister lays down detailed rules on the funds' evaluation of the effect of the measures for which subsidies have been granted, cf. section 7.

Paragraph 5. The minister lays down the detailed rules for the funds' provision of compensation in connection with animal or plant diseases.

¹⁸⁹ § 9.

Budgetter og regnskaber for de enkelte fonde skal godkendes af miljø- og fødevareministeren efter indstilling fra den pågældende bestyrelse. Ministeren kan dog uden indstilling foretage ændringer i budgetterne for de i § 6, stk. 2 og 3, nævnte fonde.

Stk. 2. Ministeren fastsætter de nærmere regler for fondene om udarbejdelsen af budgetter og regnskaber samt om administration og revision. Fondenes regnskaber skal revideres af statsautoriserede eller registrerede revisorer.

Stk. 3. Hver fond opretter en selvstændig hjemmeside på internettet. Ministeren fastsætter nærmere regler om fondenes offentliggørelse af budgetter og regnskaber samt ansøgningsfrister, ansøgningsprocedurer m.v.

Stk. 4. Ministeren fastsætter nærmere regler om fondenes evaluering af effekten af de foranstaltninger, der er ydet tilskud til, jf. § 7.

Stk. 5. Ministeren fastsætter de nærmere regler for fondenes ydelse af kompensation i forbindelse med dyre- eller plantesygdomme.

Section 10¹⁹⁰

Anyone must, at the request of the Minister for the Environment and Food, provide the information deemed necessary in connection with the collection and use of the funds mentioned in Section 6.

Paragraph 2. The Minister for the Environment and Food can lay down rules on control of this information.

Paragraph 3. The Minister for the Environment and Food can lay down rules on the accounting etc. that must be followed by companies in connection with the collection and use of the funds mentioned in section 6.

Paragraph 4. The controlling authorities have at any time, if deemed necessary, upon proper identification without a court order, access to any company or organisation that must pay taxes in accordance with Section 6. The police provide assistance in this regard if necessary. The Minister of the Environment and Food can, in agreement with the Minister of Justice, lay down detailed rules in this regard. The controlling authorities are entitled to inspect the inventories, business books, other accounting material, accompanying documents, prescriptions, analysis material and correspondence etc. of the companies or organisations in question, including material stored in electronic form.

- 53 - Act on the Rural District Fund (ACT 1360 of 16/12/2014)/*Lov om Landdistriktsfonden (LOV nr 1360 af 16/12/2014)*:

¹⁹⁰ § 10. Enhver skal efter anmodning fra miljø- og fødevareministeren meddele de oplysninger, der skønnes nødvendige i forbindelse med opkrævning og anvendelse af de i § 6 nævnte midler.

Stk. 2. Miljø- og fødevareministeren kan fastsætte regler om kontrol med disse oplysninger.

Stk. 3. Miljø- og fødevareministeren kan fastsætte regler om den regnskabsførelse m.v., der skal følges af virksomheder i forbindelse med opkrævning og anvendelse af de i § 6 nævnte midler.

Stk. 4. De kontrollerende myndigheder har til enhver tid, såfremt det skønnes nødvendigt, mod behørig legitimation uden retskendelse adgang til enhver virksomhed eller organisation, der skal betale afgifter i henhold til § 6. Politiet yder om nødvendigt bistand hertil. Miljø- og fødevareministeren kan efter aftale med justitsministeren fastsætte nærmere regler herom. De kontrollerende myndigheder er berettiget til at efterse de pågældende virksomheders eller organisationers varebeholdninger, forretningsbøger, øvrigt regnskabsmateriale, ledsagedokumenter, recepter, analysemateriale samt korrespondance m.v., herunder også materiale, der opbevares i elektronisk form. Virksomhedernes indehavere eller organisationerne og de i virksomhederne eller organisationerne beskæftigede personer skal yde den fornødne vejledning og hjælp ved foretagelse af ovennævnte eftersyn, og ovennævnte materiale skal på de kontrollerende myndigheders begæring udleveres eller indsendes til de kontrollerende myndigheder.

Control etc.

Section 9¹⁹¹

The Minister for Food, Agriculture and Fisheries and the Minister for Towns, Housing and Rural Districts each have, within their respective areas, at any time, upon proper identification, without a court order, access to public and private property and premises owned or operated by a physical or legal entity person who is a recipient of aid under this Act, in order to provide information that is necessary for solving tasks in accordance with this Act, rules laid down pursuant to this or rules in the Union's (EU) regulations on matters covered by this. In a similar way, the minister under whose area the support scheme falls has access to accounts, business books, papers, etc., including material that is stored in electronic form, in order to provide information for use in solving tasks in accordance with this Act,

Paragraph 2. The person who is a beneficiary under this Act must, at the request of one of the persons in subsection 1 mentioned ministers, under whose area the support scheme falls, provide all information, including on economic and accounting matters, which are important for the implementation of the control, and provide the relevant minister, free of charge, with the necessary assistance in checking, copying and handing out written material and printouts of information, which is stored in electronic form.

Paragraph 3. If necessary, the police provide assistance for the implementation of the control mentioned in subsection 1. The ministers mentioned in subsection 1 may individually, within their respective areas, in agreement with the Minister of Justice, lay down detailed rules in this regard.

¹⁹¹ *Kontrol m.v.*

§ 9. Ministeren for fødevarer, landbrug og fiskeri og ministeren for by, bolig og landdistrikter har hver for sig inden for deres respektive områder til enhver tid mod behørig legitimation uden retskendelse adgang til offentlig og privat ejendom og lokaliteter, der ejes eller drives af en fysisk eller juridisk person, der er støttemodtager efter denne lov, for at tilvejebringe oplysninger, der er nødvendige til brug for løsning af opgaver i henhold til denne lov, regler fastsat i medfør heraf eller regler i Unionens (EU) forordninger om forhold omfattet heraf. På tilsvarende måde har den minister, under hvis område støtteordningen hører, adgang til regnskaber, forretningsbøger, papirer m.v., herunder også materiale, der opbevares i elektronisk form, for at tilvejebringe oplysninger til brug for løsning af opgaver i henhold til denne lov, regler fastsat i medfør heraf eller regler fastsat af Unionen (EU) om forhold omfattet af denne lov.

Stk. 2. Den, der er støttemodtager efter denne lov, skal efter anmodning fra den af de i stk. 1 nævnte ministre, under hvis område støtteordningen hører, give alle oplysninger, herunder om økonomiske og regnskabsmæssige forhold, som har betydning for kontrollens gennemførelse, og vederlagsfrit yde den pågældende minister den fornødne bistand ved kontrol, kopiering og udlevering af skriftligt materiale og udskrifter af oplysninger, som opbevares i elektronisk form.

Stk. 3. Politiet yder om nødvendigt bistand til gennemførelse af den kontrol, der er nævnt i stk. 1. De i stk. 1 nævnte ministre kan hver for sig inden for deres respektive områder efter aftale med justitsministeren fastsætte nærmere regler herom.

Stk. 4. De i stk. 1 nævnte ministre kan hver for sig inden for deres respektive områder fastsætte nærmere regler om kontrol af de foranstaltninger, hvortil der ydes støtte efter denne lov.

Paragraph 4. Those in subsection the ministers referred to in 1 can individually, within their respective areas, lay down detailed rules on the control of the measures for which support is provided under this Act.

(d) Investigative powers in the area of direct expenditure

- 54 In the area of direct expenditure, the direct management i.e., the control and managing by one main authority (mainly the Commission itself) is the main source of money transfer. If it is the European Commission, its agencies and delegations that manage the EU budget in this area, they are competent to supervision the accounting of projects in this area. The EU Commission runs e.g., the Funding and Tenders Portal (SEDIA) for this specific area. The whole direct expenditure area is not immune to fraud. It can be said that it is prone to procurement, or procurement related fraud (causing damage to the expenditure side of the budget).¹⁹²
- 55 OLAF describes and displays investigations in this area as follows:

“Direct expenditure

Accounting for 14% of the EU budget, this is expenditure allocated and directly managed by EU institutions, bodies, agencies alone (not jointly with national authorities, as with the structural funds). Beneficiaries are located in EU countries.

It includes expenditure in, among others, the following areas:

- research and innovation (e.g. Horizon Europe programme)
- education, training and mobility of young people (e.g. ERASMUS+ programme)
- supporting the competitiveness of industry and in particular of micro, small and medium-sized enterprises (e.g. Single Market programme)
- environment and climate action (LIFE programme)

¹⁹² See OECD 2019, pp. 7, 14: “The implementation stage of the project cycle brings with it numerous fraud and corruption risks due to the number of actors potentially involved in project implementation and the complexity of some of the processes at this stage. For projects with high investment value, such as large-scale infrastructure projects, this stage becomes even more vulnerable to fraud and corruption. Furthermore, tenders put out either directly by the MA or beneficiary are common during the implementation stage, and procurement processes are notoriously prone to fraud and corruption. As shown in the illustrated schemes in the final part of the guide, there are a number of procurement specific risks that occur at this stage. For example, members of an MA or beneficiary may tailor tender specifications or leak commercially sensitive tender information to favour one particular company or individual. Companies or contractors may also take part in collusive bidding schemes to manipulate competitive procedures. Responses from an OECD survey that was distributed to programme authorities show that procurement-related fraud and corruption risks at the level of beneficiaries are sometimes overlooked in risk analysis activities. In addition, some MAs generally base the identification of fraud risks on their own experience, without any additional input from other knowledgeable actors. Outside of the procurement process, perpetrators employ other tactics to siphon off funds and defraud the EU budget. For example, a beneficiary may fabricate fictitious works, services or activities, or inflate labour costs. In attempt to cover up fraudulent or corrupt behaviour or to justify non-eligible expenditure, perpetrators may manipulate documents and submit fictitious invoices. In some cases, perpetrators may even attempt to bribe officials or staff within programme authorities to conceal the scheme.”

- improving the capacity of the EU to face security threats (Internal Security Fund)
- European public administration.

As a rule, national authorities are not involved in investigating fraud affecting direct expenditure.”¹⁹³

In the area of direct expenditure beneficiaries subject themselves often under the regime of civil and administrative anti-fraud clauses, which are usually enshrined in the contract between the recipient and the monitoring payment office. **56**


Example: The EU Commission supports large infrastructure projects.

OLAF has a **special unit**, which is competent to investigate and detect irregularities in the area of direct expenditure: **57**

- **Direct Expenditure – Operations and Investigations (OLAF.A.2)** Rue Joseph II 30 / Josef II-straat 30, 1000, (postal office Box: 1049), Brussel Belgium.¹⁹⁴

(e) Provisions in the area of external aid = expenditure

In the area of indirect management, the budget is implemented by various actors that have to carry out delegated tasks, which the Commission carries out itself in the area of direct management.¹⁹⁵ In France this may be special institutions like intergovernmental organisations that operate from French territory and are subject to French law. **58**

Nota bene: The **EU Aid explorer** can be used to discover beneficiaries and funding schemes.¹⁹⁶ 

- A common fraud scheme in this area is the “manipulation of tender processes”.¹⁹⁷

¹⁹³ OLAF, Information on Investigations related to EU expenditure, https://ec.europa.eu/anti-fraud/investigations/investigations-related-eu-expenditure_hr. Accessed 31 December 2024.

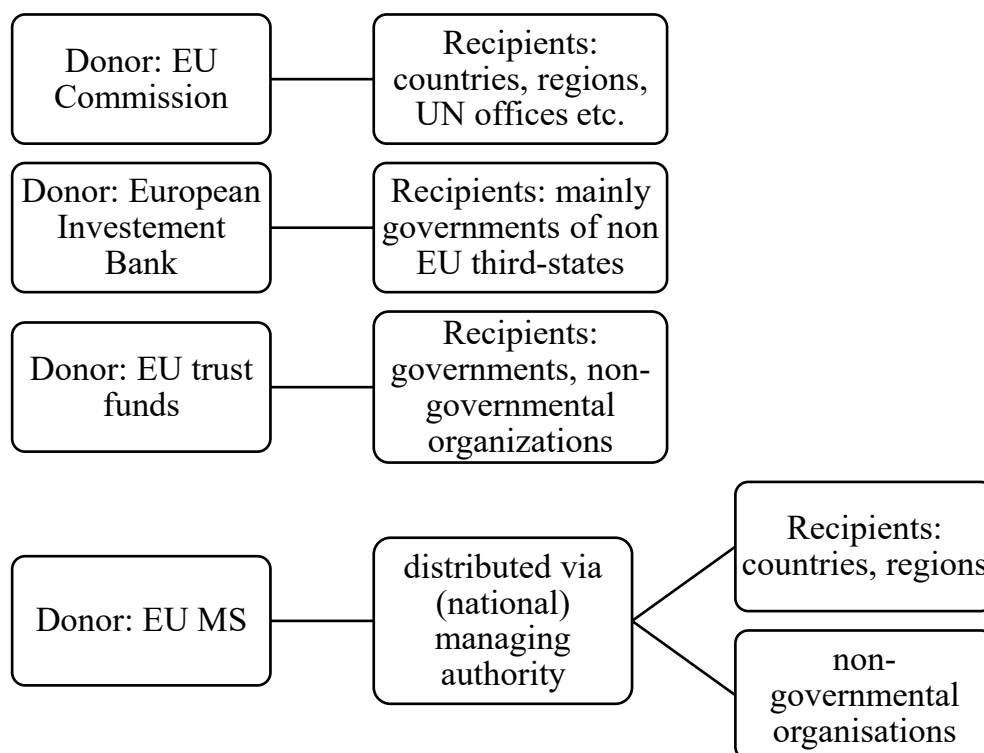
¹⁹⁴ EU, WHOisWHO, https://op.europa.eu/en/web/who-is-who/organisation/-/organisation/OLAF/COM_CRF_230282. Accessed 31 December 2024.

¹⁹⁵ EU Commission, Funding by management mode, https://ec.europa.eu/info/funding-tenders/find-funding/funding-management-mode_en. Accessed 31 December 2024.

¹⁹⁶ EU external aid explorer, https://euaidexplorer.ec.europa.eu/index_en. Accessed 31 December 2024.

¹⁹⁷ OLAF, Success Stories, May 2022, https://ec.europa.eu/anti-fraud/investigations/success-stories_en#external-aid. Accessed 31 December 2024.

Figure 4: EU external aid/expenditure (indirect management) – Art. 3 OLAF Regulation on-the-spot inspections to discover EU external aid expenditure-related frauds



Source: EU Commission.

59 For the investigations in the area of external aid OLAF can make use of ACAs.¹⁹⁸

(3) Protection of information

(a) Administrative secrecy or professional secrecy (Administrative laws)

60 The **general administrative Act** contains a provision with importance for the protection of information.

¹⁹⁸ OLAF, State of Play – June 2021 Administrative Cooperation Arrangements (ACAs) with partner authorities in non-EU countries and territories and counterpart administrative investigative services of International Organisations, https://ec.europa.eu/anti-fraud/system/files/2021-07/list_signed_acas_en_7fd50a9cbe.pdf. Accessed 31 December 2024.

Chapter 8 Confidentiality, etc.**Confidentiality****Section 27¹⁹⁹**

Anyone who works within the public administration has a duty of confidentiality, cf. Sections 152 and Sections 152c–152f of the Criminal Code, with regard to information about

- 1) individuals' private, including financial, conditions and
- 2) technical devices or methods or about operating or business conditions etc., insofar as it is of significant economic importance for the person or company to which the information relates that the information is not passed on.

PCS. 2. Anyone who works within the public administration also has a duty of confidentiality, cf. Section 152 and Sections 152c–152f of the Criminal Code, when it is of significant importance for the security of the state or the defence of the kingdom. The same applies when information is designated as confidential by law or other valid provision, including when confidentiality results from an obligation under EU law or international law, etc.

¹⁹⁹ Kapitel 8 Tavshedspligt m.v.

Tavshedspligt

§ 27. Den, der virker inden for den offentlige forvaltning, har tavshedspligt, jf. straffelovens § 152 og §§ 152c–152f, med hensyn til oplysninger om

- 1) enkeltpersoners private, herunder økonomiske, forhold og
- 2) tekniske indretninger eller fremgangsmåder eller om drifts- eller forretningsforhold el.lign., for så vidt det er af væsentlig økonomisk betydning for den person eller virksomhed, oplysningerne angår, at oplysningerne ikke videregives.

Stk. 2. Den, der virker inden for den offentlige forvaltning, har desuden tavshedspligt, jf. straffelovens § 152 og §§ 152c–152f, når det er af væsentlig betydning for statens sikkerhed eller rigets forsvar. Det samme gælder, når en oplysning ved lov eller anden gyldig bestemmelse er betegnet som fortrolig, herunder når fortrolighed følger af en EU-retlig eller folkeretlig forpligtelse el.lign.

Stk. 3. Den, der virker inden for den offentlige forvaltning, har herudover tavshedspligt, jf. straffelovens § 152 og §§ 152 c–152 f, når det er nødvendigt at hemmeligholde en oplysning til beskyttelse af væsentlige hensyn til rigets udenrigspolitiske interesser, herunder forholdet til andre lande eller internationale organisationer.

Stk. 4. Den, der virker inden for den offentlige forvaltning, har endvidere tavshedspligt, jf. straffelovens § 152 og §§ 152c–152f, med hensyn til oplysninger, som det i øvrigt er nødvendigt at hemmeligholde for at varetage væsentlige hensyn til

- 1) forebyggelse, efterforskning og forfølgning af lovovertrædelser samt straffuldbyrdelse og beskyttelse af sigtede, vidner eller andre i sager om strafferetlig eller disciplinær forfølgning,
- 2) gennemførelse af offentlig kontrol-, regulerings- eller planlægningsvirksomhed eller af påtænkte foranstaltninger i henhold til skatte- og afgiftslovgivningen,
- 3) det offentlige økonomiske interesser, herunder udførelsen af det offentlige forretningsvirksomhed,
- 4) forskeres og kunstneres originale ideer samt foreløbige forskningsresultater og manuskripter eller
- 5) private og offentlige interesser, hvor hemmeligholdelse efter forholdets særlige karakter er påkrævet.

Stk. 5. Inden for den offentlige forvaltning kan der kun pålægges tavshedspligt med hensyn til en oplysning, når det er nødvendigt at hemmeligholde den for at varetage væsentlige hensyn til bestemte offentlige eller private interesser som nævnt i stk. 1–4.

Stk. 6. En forvaltningsmyndighed kan bestemme, at en person uden for den offentlige forvaltning har tavshedspligt med hensyn til fortrolige oplysninger, som myndigheden videregiver til den pågældende uden at være forpligtet hertil.

Stk. 7. Fastsættes der i henhold til § 1, stk. 3, regler om tavshedspligt, eller pålægges der tavshedspligt efter stk. 6, finder straffelovens § 152 og §§ 152c–152f tilsvarende anvendelse på overtrædelse af sådanne regler eller pålæg.

PCS. 3. Anyone who works within the public administration also has a duty of confidentiality, cf. Section 152 and Sections 152c–152f of the Criminal Code, when it is necessary to keep information secret for the protection of essential considerations for the kingdom's foreign policy interests, including the relationship to other countries or international organisations.

PCS. 4. The person who works within the public administration also has a duty of confidentiality, cf. Section 152 and Sections 152c–152f of the Criminal Code, with regard to information which it is otherwise necessary to keep secret in order to take care of essential considerations

- 1) prevention, investigation and prosecution of offences, as well as execution of sentences and protection of the accused, witnesses or others in cases of criminal or disciplinary prosecution,
- 2) implementation of public control, regulation or planning activities or of intended measures in accordance with tax and levy legislation,
- 3) the financial interests of the public sector, including the performance of the public sector's business activities,
- 4) original ideas of researchers and artists as well as preliminary research results and manuscripts or
- 5) private and public interests, where secrecy is required according to the special nature of the relationship.

PCS. 5. Within the public administration, a duty of confidentiality can only be imposed with regard to information when it is necessary to keep it secret in order to take care of important considerations for certain public or private interests as mentioned in subsection 1–4.

PCS. 6. An administrative authority may determine that a person outside the public administration has a duty of confidentiality with regard to confidential information which the authority passes on to the person concerned without being obliged to do so.

PCS. 7. If it is established in accordance with Section 1, subsection 3, rules on confidentiality, or if confidentiality is imposed pursuant to subsection 6, Section 152 and Sections 152c–152f of the Criminal Code apply correspondingly to violations of such rules or orders.

Disclosure of information to another administrative authority**Section 28²⁰⁰**

For the disclosure of information about individuals (personal data) to another administrative authority, the rules in Section 5, subsection 1–3, Sections 6–8, Section 10, Section 11, subsection 1, Section 38 and Section 40 of the Act on the Processing of Personal Data, cf. this Act's Section 1, subsection 3.

PCS. 2. Information of a confidential nature which is not covered by subsection 1, may only be passed on to another administrative authority when

- 1) the person to whom the information relates has expressly given consent,
- 2) it follows from law or regulations established pursuant to law that the information must be disclosed, or
- 3) it must be assumed that the information will be of significant importance for the authority's business or for a decision the authority must make.

PCS. 3. By consent pursuant to subsection 2, no. 1, is understood as any voluntary, specific and informed declaration of intent whereby the person to whom the information relates consents to the information being passed on.

PCS. 4. A consent according to subsection 3 can be revoked.

PCS. 5. Local administrative bodies, which are granted independent competence by law, are considered an independent authority according to subsection 2.

²⁰⁰ Videregivelse af oplysninger til en anden forvaltningsmyndighed

§ 28.

For videregivelse af oplysninger om enkeltpersoner (personoplysninger) til en anden forvaltningsmyndighed gælder reglerne i § 5, stk. 1–3, §§ 6–8, § 10, § 11, stk. 1, § 38 og § 40 i lov om behandling af personoplysninger, jf. denne lovs § 1, stk. 3.

Stk. 2. Oplysninger af fortrolig karakter, som ikke er omfattet af stk. 1, må kun videregives til en anden forvaltningsmyndighed, når

- 1) den, oplysningen angår, udtrykkeligt har givet samtykke,
- 2) det følger af lov eller bestemmelser fastsat i henhold til lov, at oplysningen skal videregives, eller
- 3) det må antages, at oplysningen vil være af væsentlig betydning for myndighedens virksomhed eller for en afgørelse, myndigheden skal træffe.

Stk. 3. Ved samtykke efter stk. 2, nr. 1, forstås enhver frivillig, specifik og informeret viljestilkendegivelse, hvorved den, oplysningen angår, indvilger i, at oplysningen videregives.

Stk. 4. Et samtykke efter stk. 3 kan tilbagekaldes.

Stk. 5. Lokale administrative organer, som ved lov er tillagt en selvstændig kompetence, anses som en selvstændig myndighed efter stk. 2.

Section 29²⁰¹

In cases raised by application, information about the applicant's purely private circumstances may not be obtained from other parts of the administration or from another administrative authority.

PCS. 2. The provision in subsection 1 does not apply if

- 1) the applicant has given consent to this,
- 2) other consequences of law or regulations laid down in accordance with law or
- 3) special considerations for the applicant or a third party clearly exceed the applicant's interest in the information not being obtained.

Section 30

Confidential information that has been obtained solely for the purpose of statistical extracts or as part of a scientific investigation may not be passed on to an administrative authority for other use.

Section 31

To the extent that an administrative authority is entitled to pass on information, the authority must, at the request of another administrative authority, pass on the information if it is of importance to the authority's business or to a decision that the authority must make.

PCS. 2. The provision in subsection 1 does not apply, however, if the disclosure imposes additional work on the authority that significantly exceeds the interest the other authority has in obtaining the information.

Section 32

The person who works within the public administration must not in this connection acquire confidential information which is not of importance for the performance of the duties of the person in question.²⁰²

²⁰¹ § 29.

I sager, der rejses ved ansøgning, må oplysninger om ansøgerens rent private forhold ikke indhentes fra andre dele af forvaltningen eller fra en anden forvaltningsmyndighed.

Stk. 2. Bestemmelsen i stk. 1 gælder ikke, hvis

- 1) ansøgeren har givet samtykke hertil,
- 2) andet følger af lov eller bestemmelser fastsat i henhold til lov eller
- 3) særlige hensyn til ansøgeren eller tredjemand klart overstiger ansøgerens interesse i, at oplysningen ikke indhentes.

²⁰² § 30.

Fortrolige oplysninger, der udelukkende er indhentet med henblik på statistiske uddrag eller som led i en videnskabelig undersøgelse, må ikke videregives til en forvaltningsmyndighed til anden anvendelse.

§ 31.

I det omfang en forvaltningsmyndighed er berettiget til at videregive en oplysning, skal myndigheden på begæring af en anden forvaltningsmyndighed videregive oplysningen, hvis den er af betydning for myndighedens virksomhed eller for en afgørelse, som myndigheden skal træffe.

The **tax administration Act** contains provisions on administrative secrets and professional secrecy obligations:

Confidentiality

Section 17²⁰³

Within the framework of Sections 152, 152a and 152c–152fi of the Criminal Code, the revenue authorities shall maintain unconditional confidentiality vis-à-vis unauthorised persons regarding information on financial, business or commercial matters of a natural person or legal entity Private life matters with which they become familiar during the performance of their duties. The obligation also applies to professional auxiliaries and to any other person who becomes aware of such matters as a result of working under an agreement with a public authority. Where the contract is with a company, the obligation applies to anyone who becomes aware of the above matters in the course of their employment with the company.

PCS. 2. notwithstanding the provision in subsection Pursuant to section 1(1), the Customs and Excise Service may publish the following information about taxpayers under section 1(1) of the Corporation Tax Act. 1 and section 2 subsections a and b as well as section 1 of the Fund Tax Act, unless the persons concerned are exempted from the obligation to provide information pursuant to section 4 subsection 1 of the Tax Control Act. Section 1(1)(3) or (4) or Section 15(1) of the Foundation Tax Act 2 or 3:

Stk. 2. Bestemmelsen i stk. 1 finder dog ikke anvendelse, hvis videregivelsen påfører myndigheden et merarbejde, der væsentligt overstiger den interesse, den anden myndighed har i at få oplysningerne.

§ 32. Den, der virker inden for den offentlige forvaltning, må ikke i den forbindelse skaffe sig fortrolige oplysninger, som ikke er af betydning for udførelsen af den pågældendes opgaver.

²⁰³ Tavshedspligt

§ 17. Skattemyndighederne skal under ansvar efter §§ 152, 152 a og 152 c-152 f i straffeloven iagttage ubetinget tavshed over for uvedkommende med hensyn til oplysninger om en fysisk eller en juridisk persons økonomiske, erhvervsmæssige eller privatlivet tilhørende forhold, som de under varetagelsen af deres arbejde bliver bekendt med. Forpligtelsen gælder tillige for sagkyndige medhjælpere samt i øvrigt enhver, der som følge af et i henhold til aftale med det offentlige påtaget arbejde kommer til kundskab om sådanne forhold. Er aftalen indgået med en virksomhed, gælder forpligtelsen alle, der under deres arbejde i virksomheden får kundskab om forhold som de ovennævnte.

Stk. 2. Uanset bestemmelsen i stk. 1 kan told- og skatteforvaltningen offentliggøre følgende oplysninger om skattepligtige efter selskabsskatteovens § 1, stk. 1, og § 2, stk. 1, litra a og b, og fondsbeskatningslovens § 1, medmindre de pågældende er fritaget for oplysningspligt efter skattekontrollovens § 4, stk. 1, nr. 3 eller 4, eller fondsbeskatningslovens § 15, stk. 2 eller 3:

- 1) Den skattepligtige indkomst efter fradrag af underskud fra tidligere indkomstår.
- 2) Årets anvendte underskud fra tidligere indkomstår.
- 3) Den beregnede skat for indkomståret.
- 4) Hvilken skattepligtsbestemmelse i selskabsskatteoven eller fondsbeskatningsloven selskabet m.v. er omfattet af, og om selskabet m.v. beskattes efter tonnageskatteoven.

Stk. 3. For selskaber m.v. omfattet af kulbrinteskatteoven omfatter stk. 2, nr. 1-3, tillige oplysninger vedrørende selskabets kulbrinteindkomst m.v.

Stk. 4. Indgår selskabet m.v. i en sambeskatning, kan oplysningerne efter stk. 2, nr. 1-3, offentliggøres samlet for de sambeskattede selskaber m.v. med angivelse af, hvilke selskaber m.v. der indgår i sambeskatningen.

Stk. 5. Uanset bestemmelsen i stk. 1 kan told- og skatteforvaltningen videregive oplysninger til et pensionsinstitut om kunder i pensionsinstituttet, der er identificeret i henhold til pensionsbeskatningslovens § 25 B, stk. 2.

- 1) The taxable income after deduction of losses from previous income years.
- 2) The applied annual deficit from previous income years.
- 3) The calculated tax for the income year.
- 4) What tax liability provisions in the Corporation Tax Act or Fund Taxation Act apply to the company etc. and whether the company etc. is taxed under the Tonnage Tax Act. PCS. 3. for companies, etc., covered by the Hydrocarbons Tax Act, subsection 2, nos. 1–3, also information on the hydrocarbons revenue of the company, etc. PCS. 4. where the company, etc., is included in the joint assessment, the information under sub-section (2), nos. 1–3, shall be published together for the companies, etc., included in the joint assessment with an indication of which companies, etc., are included in the joint assessment.
- PCS. 5 Notwithstanding the provision of subsection (1), the Customs and Excise Service may furnish to a pension scheme information relating to clients of the pension scheme determined in accordance with section 25B(1) of the Pension Taxation Act 2.

Section 18²⁰⁴

Spouses and former spouses shall each have the right to obtain information on the contents of the other spouse's information form, cf. section 5 of the Tax Control Act, and on the assessment of income or assets VAT for income years in which they were spouses and lived together in a marital community by contacting the Customs and Tax Administration.

(b) Official secrecy

62 The Public Procurement Act of Denmark contains such an official secrecy obligation:

Confidentiality, access to documents and communication

Section 5²⁰⁵

Except as otherwise provided by this Act or other law, a contracting authority shall not disclose confidential information provided by a candidate or tenderer in connection with a tender process.

²⁰⁴ § 18. Ægtefæller og forhenværende ægtefæller har hver især ret til ved henvendelse til told- og skatteforvaltningen at få oplyst indholdet af den anden ægtefælles oplysningsskema, jf. skattekontrollovens § 5, og ansættelse af indkomst- eller ejendomsværdiskat for indkomstår, hvori de var ægtefæller og samlevende.

²⁰⁵ § 5.

Fortrolighed, aktindsigt og kommunikation Udbudsloven

Medmindre andet følger af denne lov eller lovgivningen i øvrigt, må en ordregiver ikke udlevere fortrolige oplysninger, som en ansøger eller tilbudsgiver i forbindelse med en udbudsprocedure har fremsendt.

Stk. 2. Medmindre andet følger af lovgivningen i øvrigt, kan en ordregiver pålægge ansøgere eller tilbudsgivere fortrolighed med hensyn til oplysninger, som ordregiveren stiller til rådighed i forbindelse med en udbudsprocedure.

Stk. 3. Kommunikation om grundlæggende elementer må ikke være mundtlig. Kommunikation vedrørende ikkegrundlæggende elementer kan foretages mundtligt, såfremt ordregiveren foretager en tilstrækkelig dokumentation af kommunikationen.

PCS. 2. Unless otherwise provided by law, a contracting authority may require candidates or tenderers to maintain confidentiality in relation to information provided by the contracting authority in connection with a tendering procedure.

PCS. 3. Communication on essential elements may not be oral. Communication about non-essential elements may be oral provided that the client provides sufficient documentation of the communication.

(4) Investigation reports (Customs Code, General Tax Code)

- Agricultural Support Act (LBK 1586 of 14/12/2015)/*Landbrugsstøtteleven*

63

Section 4a²⁰⁶

The Minister for the Environment and Food can lay down rules on the publication with names of results as well as the nature and extent of sanctions on the basis of controls carried out in accordance with the law or rules issued pursuant to the law. The minister can also lay down rules that complaints do not have suspensive effect.

PCS. 2. The Minister can lay down rules on the way and in which form companies must make control results pursuant to subsection 1 available to the public, including the conditions under which companies can be exempted from the obligation to make control results available.

PCS. 3. The Minister may lay down rules on the form and scope of publication, including that publication may be made electronically. The Minister can decide that certain results are not to be published.

PCS. 4. The Minister may decide that publication must be made on the basis of a computerised information system set up by the Minister regarding control results. The Minister can at any time, including periodically, pass on individual information as well as mass information from the information system to an indefinite circle of recipients. Anyone has access to information from the information system that has either been published or is to be published. The access includes individual information as well as mass information.

²⁰⁶ § 4a.

Miljø- og fødevarerministeren kan fastsætte regler om offentliggørelse med navns nævnelse af resultater samt art og omfang af sanktioner på grundlag af kontrol, som gennemføres i henhold til loven eller regler udstedt i medfør af loven. Ministeren kan herunder fastsætte regler om, at klage ikke har opsættende virkning.

Stk. 2. Ministeren kan fastsætte regler om, på hvilken måde og i hvilken form virksomheder skal gøre kontrolresultater efter stk. 1 tilgængelige for offentligheden, herunder på hvilke betingelser virksomheder kan fritages for pligten til at gøre kontrolresultater tilgængelige.

Stk. 3. Ministeren kan fastsætte regler om formen for og omfanget af offentliggørelse, herunder at offentliggørelse kan ske elektronisk. Ministeren kan bestemme, at visse resultater ikke skal offentliggøres.

Stk. 4. Ministeren kan bestemme, at offentliggørelse skal ske på grundlag af et af ministeren oprettet edb-informationssystem vedrørende kontrolresultater. Ministeren kan på ethvert tidspunkt, herunder periodisk, videregive såvel enkeltstående oplysninger som masseoplysninger fra informationssystemet til en ubestemt kreds af modtagere. Enhver har adgang til fra informationssystemet at få meddelt oplysninger, som enten har været offentliggjort, eller som skal offentliggøres. Adgangen omfatter såvel enkeltstående oplysninger som masseoplysninger.

- 64 Section 19 of the Tax Administration Act obliges the tax and customs offices, to create an investigation report prior to the final decision.

(5) Support to the inspectors (Customs Code, General Tax Code)

- 65 The Tobacco Tax Act stipulates that the authorities must provide all information for an audit and control or inspection:

Section 22

Public authorities must, on request, provide the customs and tax administration with any information for use in registering and controlling companies covered by the law.

PCS. 2. The police provide the customs and tax administration with assistance in the implementation of the control pursuant to section 21. The Minister of Justice can, after negotiation with the Minister of Taxation, lay down detailed rules in this regard.

- 66 The VAT Act asks the economic operators to interact with inspectors:

Section 75

Suppliers to companies subject to registration must, on request, notify the customs and tax administration of information about their deliveries of goods and services to these companies.

PCS. 2. Business operators must, on request, provide the customs and tax administration with information about their purchases of goods and services for the company.

PCS. 3. Financial institutions as well as lawyers and others who receive funds for management or professionally lend money must, on request, provide the customs and tax administration with any information about their financial balance with named companies subject to registration.

PCS. 4. Insurance companies must, on request, provide the customs and tax administration with information in connection with the control of taxable acquisitions of new pleasure craft, cf. Section 11, subsection 6, No. 2.

PCS. 5. The customs and tax administration can, if it is of significant importance for control of the tax base, with the Tax Council's permission, order providers of payment services to supply information about payments for use in control of

- 1) goods sold by distance selling, and
- 2) electronically delivered services sold to non-taxable persons.

PCS. 6. Those in para. The information referred to in 5 must be anonymised with regard to information relating to buyers of the covered goods and services.

PCS. 7. The customs and tax administration is on similar terms as established pursuant to section 74, subsection 1, entitled to carry out inspections of inventories and accounts etc. at those in subsection 1 and 2 mentioned companies as well as to review contracts etc. with companies that finance registered companies.

PCS. 8. Anyone who has purchased services or goods together with services for an amount that exceeds DKK 8,000 including tax must, on request, notify the customs and tax administration of information about the purchase and payment thereof, including information about electronic payment, cf. Section 10 a of the Collection Act.

PCS. 9. The customs and tax administration can order the reporting party to comply with the rules for the provision of information pursuant to subsection 1–5. The customs and tax administration can impose daily fines on the reporting party pursuant to section 77 until the order is complied with. An order must refer to the relevant rule(s) and indicate which specific actions or measures the person obliged to provide information must carry out in order to comply with the rules. The customs and tax administration must notify the order in writing, and it must be clear from the written notice that if the person obliged to provide information does not comply with the order within a specified period, the customs and tax administration can impose daily fines on the person obliged to provide information until the order is complied with.

During the normal tax control procedure the economic operator is obliged by the Tax Control Act to provide information to the authorities: **67**

Section 58

A trader is obliged, upon request, to provide the Customs and Tax Administration with information regarding the turnover the business has had with, or intermediated on behalf of, other named traders, as well as the work the business has carried out for, or had carried out at, other named traders.

PCS 2. The nature of the turnover or work, the quantities of goods traded, the size of the remuneration, the time of the turnover or performance of the work, and when and how the remuneration was paid must, upon request, be specified.

PCS 3. Production, purchasing and sales associations and similar business organisations are likewise obliged to provide information on the organisation's or association's dealings with its trading members, cf. subsections 1 and 2.

PCS 4. The information referred to in subsections 1–3 must be necessary for the purposes of tax control.

In a customs procedure the economic operators, people who export and import need to report to the authorities certain information. The Customs Code stipulates: **68**

Control of information and documents

Section 27

The Customs and Tax Administration may request information from importers, exporters, manufacturers, other traders and business organisations in order to fulfil the duty to provide information to the EU.

PCS. 2. anyone who declares goods for customs clearance under the relevant EU regulations must provide such information and declarations on the nature and characteristics

of the goods, etc., as are necessary for the examination of foreign trade statistics and special import, export and transit regulations, as there are currency, health, safety, veterinary, plant pathology or other reasons for these goods.

- 69 Last but not least support to the inspectors is requested in addition by Chapter 19, s. 74 para 2 of the VAT Act, which says: “PCS. 2. the owners and employees of the companies must assist the customs and tax administration with the checks referred to in paragraph 1 1.”²⁰⁷ And the provision further requests:

PCS. 3. the Customs and Tax Administration shall be entitled, under the same rules as laid down in paragraph 1, 1 to carry out controls in connection with taxable acquisitions.
PCS. 4. The material referred to in subsection 1 shall be handed over or presented to the Customs and Tax Administration on request.

(6) Preservation of Evidence (Customs Code, General Tax Code)

- 70 The preservation of evidence is a key element of any investigation into irregularities or a fraud scheme.

g) Single measures in Denmark

aa. The taking of statements from Economic Operators

- 71 Single measures from ss. 15 and 16 of the Legislative Decree No. 160 of 7 February 2019 on the administration of grants from the European Regional Fund and the European Social Fund/*Lovbekendtgørelse nr. 160 af 7. februar 2019 om administration af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond* can be viewed above → Investigative powers around structural funds and internal policies, mn. 45.

bb. Inspections

- 72 Rules on inspections can be found in the following laws:

(1) Controls of the Regional and Social Fund

- 73 The controls of the regional and social fund progress e.g. according to s. 16 (para 4–6) Legislative Decree No. 160 of 7 February 2019 on the administration of grants from the European Regional Fund and the European Social Fund / *Lovbekendtgørelse nr. 160 af 7. februar 2019 om administration af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond* (→ Investigative powers around structural funds and internal policies, mn. 45).

²⁰⁷ Stk. 2. Virksomhedernes indehavere og ansatte skal være told- og skatteforvaltningen behjælpelige ved eftersyn som nævnt i stk. 1.

(2) Controls and Inspections in the area of the European Regional Fund

For control and inspections in the area of the European Regional Fund the measures are found in the ss. 33–35 Executive order no. 586 of 3 June 2014 on eligibility for support, accounting, audit and control etc. in connection with the payment of grants from the European Regional Fund and the European Social Fund with later amendments. /*Bekendtgørelse nr. 586 af 3. juni 2014 om støtteberettigelse, regnskab, revision og kontrol m.v. i forbindelse med udbetaling af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond med senere ændringer* (→ Investigative powers around structural funds and internal policies, mn. 46). Here, especially powers regarding on-the-spot checks are given to “representatives from the European Commission, with the participation of representatives from the Danish Business Authority, or whoever the agency authorises to do so” according to s. 34 para. 1, 2. Even representatives of the European Court of Auditors may have such powers (para 3). 74

(3) Control and Audits in the area of Grants of the ERF and ESF

According to s. 24 of the Executive Order No. 1810 of 30 December 2018 on the administration of grants from the European Regional Fund and the European Social Fund. /*Bekendtgørelse nr. 1810 af 30. december 2018 om administration af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond* (→ Investigative powers around structural funds and internal policies, mn. 47) “[r]epresentatives from the European Commission, the European Court of Auditors, the National Audit Office and the Danish Business Authority, or whoever the agency authorises to do so, can check on-site management and control systems of the public or private legal entities [...]” 75

(4) Controls in the General Tax Area

In the area of tax controls the following provisions from the Tax Control Act apply: 76

Chapter 5 Powers of control over the taxable person**Powers of control over traders****Section 53 Tax Control Act**

Traders²⁰⁸ who keep accounts are obliged, upon request from the Customs and Tax Administration, to submit their accounting records with annexes for both previous and current financial years, as well as other documents that may be relevant for the control of

²⁰⁸ Kapitel 5 Kontrolbeføjelser over for den skattepligtige

Kontrolbeføjelser over for erhvervsdrivende

§ 53. Erhvervsdrivende, der fører regnskab, har pligt til efter anmodning fra told- og skatteforvaltningen at indsende deres regnskabsmateriale med bilag såvel for tidligere som for det løbende regnskabsår og andre dokumenter, der kan have betydning for kontrollen af den pågældendes skatteansættelser, herunder for afgørelsen af skattepligt her til landet. Indsendelsespligten omfatter også regnskabsmateriale m.v. vedrørende den skattepligtiges virksomhed i udlandet, på Færøerne eller i Grønland.

the person's tax assessments, including the determination of tax liability in this country. The obligation to submit also extends to accounting material etc. relating to the taxpayer's business activities abroad, in the Faroe Islands or in Greenland.

PCS. 2. If the accounting material etc. is in the possession of a third party, that party shall, even if he or she has a right of retention, hand over the material to the Customs and Tax Administration upon request. The Customs and Tax Administration shall return the material to the respective third party after use.

PCS. 3. If the trader does not comply with a request under subsection 1 within the time limit specified in the request, the Customs and Tax Administration may make a discretionary assessment under section 74.

Section 54²⁰⁹

The Customs and Excise Administration shall, if required, have access at any time against proper identification without a court order to the business premises of the entrepreneur and to workplaces outside the business premises of the entrepreneur, but not to workplaces serving a third party as a private residence or as a holiday home, including means of transport used for business purposes, for the purpose of reviewing accounting records with annexes and other documents that may be relevant for the control of the tax assessment of the person concerned. Insofar as the aforementioned accounting data etc. are recorded electronically, the access of the customs and tax administration also includes electronic access to them. Under the same conditions as mentioned in the 1st and PCS. 2. Does the Customs and Tax Administration have access to an inventory of cash in hand, cash terminals and the like?

Stk. 2. Er regnskabsmaterialet m.v. i tredjemands besiddelse, skal denne, selv om den pågældende har tilbageholdsret herover, efter anmodning udlevere materialet til told- og skatteforvaltningen. Told- og skatteforvaltningen leverer materialet tilbage til den pågældende tredjemand efter benyttelsen.

Stk. 3. Efterkommer den erhvervsdrivende ikke en anmodning efter stk. 1 inden den frist, der er fastsat i anmodningen, kan told- og skatteforvaltningen foretage en skønsmæssig ansættelse efter § 74.

²⁰⁹ § 54. Told- og skatteforvaltningen har, hvis det skønnes nødvendigt, til enhver tid mod behørig legitimation uden retskendelse adgang til den erhvervsdrivendes lokaliteter samt arbejdssteder uden for den erhvervsdrivendes lokaler, dog ikke arbejdssteder, der tjener til tredjemands privatbolig eller fritidsbolig, herunder transportmidler, der anvendes erhvervsmæssigt, for at gennemgå regnskabsmateriale med bilag og andre dokumenter, der kan have betydning for kontrollen af den pågældendes skatteansættelser. I det omfang de nævnte regnskabsoplysninger m.v. er registreret elektronisk, omfatter told- og skatteforvaltningens adgang også en elektronisk adgang hertil. Efter samme betingelser som nævnt i 1. og 2. pkt. har told- og skatteforvaltningen adgang til at foretage opgørelse af kassebeholdninger, kasseterminaler og lign. og foretage opgørelse og vurdering af lagerbeholdninger, besætning, inventar, maskiner og andet driftsmateriel.

Stk. 2. Drives virksomheden fra en ejendom, som også anvendes som bolig, kan told- og skatteforvaltningen gennemføre kontrol på ejendommen efter samme betingelser som i stk. 1.

Stk. 3. Ved kontrollen efter stk. 1 og 2 skal ejeren af virksomheden og dennes ansatte yde told- og skatteforvaltningen fornøden vejledning og hjælp.

Stk. 4. Politiet yder om fornødent told- og skatteforvaltningen bistand til gennemførelse af kontrollen efter stk. 1 og 2.

PCS. 2. if the business is operated from a property that is also used as a residence, may the Customs and Tax Administration conduct an inspection of the property under the same conditions as mentioned in paragraph 1 1.

PCS. 3. In the inspection referred to in paragraphs (1) and (2), the owner of the business and his employees shall give the necessary guidance and assistance to the Customs and Tax Administration.

PCS. 4. If necessary, the police shall assist the customs and tax administration in carrying out the inspection referred to in paragraph 1 1 and 2.

Chapter 6 Cross-auditing powers vis-à-vis third parties

Information on cross-auditing

Section 57²¹⁰

Traders and legal persons who are not traders must, at the request of the Customs and Tax Administration, submit accounting documents with annexes for both the previous and the current financial year and other documents relevant to the tax audit Assessment of other named traders.

PCS. 2. the Customs and Tax Administration shall have access, against proper identification, at any time and without a court order, to an entrepreneur or a legal person other than an entrepreneur for the purpose of conducting an on-site examination of accounting records, annexes and other documents as mentioned in subsection 1. During the examination, the Customs and Tax Administration may obtain the information mentioned in subsection 1.

PCS. 3. if necessary, the police shall assist the Customs and Tax Administration in carrying out the checks referred to in sub-section 1 1 and 2.

PCS. 4. the information, cf. subsection 1 and the intervention, cf. subsection 2, must be necessary for the tax control.

²¹⁰ Kapitel 6 Kontrolbeføjelser over for tredjemand

Oplysninger til krydsrevision

§ 57. Erhvervsdrivende og juridiske personer, som ikke er erhvervsdrivende, skal efter told- og skatteforvaltningens anmodning indsende regnskabsmateriale med bilag såvel for tidligere som for det løbende regnskabsår og andre dokumenter, der har betydning for kontrol af andre navngivne erhvervsdrivendes skatteansættelse.

Stk. 2. Told- og skatteforvaltningen har til enhver tid mod behørig legitimation uden retskendelse adgang til hos en erhvervsdrivende eller en juridisk person, som ikke er erhvervsdrivende, at foretage gennemgang på stedet af regnskabsmateriale, bilag og andre dokumenter som nævnt i stk. 1. Ved gennemgangen kan told- og skatteforvaltningen sikre sig oplysninger som nævnt i 1. pkt.

Stk. 3. Politiet yder om fornødent told- og skatteforvaltningen bistand til gennemførelse af kontrollen efter stk. 1 og 2.

Stk. 4. Oplysningerne, jf. stk. 1, og indgrebet, jf. stk. 2, skal være nødvendige for skattekontrollen.

(5) Inspections in the VAT Area

- 77 Inspections in the area of VAT revenue are regulated in Chapter 19 of the VAT Act, ss. 74 et seq.:

Chapter 19 Control provisions

Section 74²¹¹

The Customs and Tax Administration shall, if necessary, **have access** at any time, against proper identification and without a court order, **to inspect the premises** used by the enterprises and **to inspect the enterprises' stocks, business books, other accounting documents and correspondence, etc.**, irrespective of whether this information is stored on paper or on computer media. Control access by the customs and tax administration as mentioned in 1. point. This also includes **control access at workplaces outside the company's premises as well as in means of transport used for business purposes**. Control as mentioned in 2. point. However, it cannot be carried out on a property that is only used as a private residence or holiday home.

(6) Controls in the Customs Area

- 78 Rules on inspection are as well foreseen by the s. 28 Customs Act (→ Investigative powers in the area of customs duties and VAT (General Tax Code), mn. 40).

cc. The seizure of digital forensic evidence including bank account information

- 79 The seizure of digital forensic evidence including bank account information becomes increasingly important. The recent changes of the OLAF Regulation No 883/2013 (as amended 2020/2223) codified that OLAF shall under the same conditions that apply to national competent authorities have access to bank account information. The relevant national law shall be displayed by the manual on the following pages:
- 80 The VAT Act for example contains in Chapter 19 a provision, which encompasses digital evidence, but does not relate to bank account information:

²¹¹ Kapitel 19 Kontrolbestemmelser

§ 74.

Told- og skatteforvaltningen har, hvis det skønnes nødvendigt, til enhver tid mod behørig legitimation uden retskendelse adgang til at foretage eftersyn i lokaler, der benyttes af virksomhederne, og til at efterse virksomhedernes varebeholdninger, forretningsbøger, øvrige regnskabsmateriale samt korrespondance m.v., uanset om disse oplysninger opbevares på papir eller på edb-medier. Told- og skatteforvaltningens adgang til kontrol efter 1. pkt. omfatter også adgang til kontrol på arbejdssteder uden for de lokaler, hvorfra virksomheden drives, samt i transportmidler, der anvendes erhvervsmæssigt. Kontrol som nævnt i 2. pkt. kan dog ikke gennemføres på en ejendom, der alene tjener til privatbolig eller fritidsbolig.

Chapter 19 Control provisions

Section 74 [*For original legal text see above → Inspections in the VAT Area, mn. 76*]

The Customs and Tax Administration shall, if necessary, have access at any time, against proper identification and without a court order, to inspect the premises used by the enterprises and to inspect the enterprises' stocks, business books, **other accounting documents and correspondence, etc., irrespective of whether this information is stored on paper or on computer media.**

dd. Acquisition of digital evidence and Digital forensic operations within inspections or on-the-spot checks

Digital forensic operations within inspections or on-the-spot checks became increasingly important in the last decade already. **81**

The VAT Act allows to take a look at data carriers and digital storages during inspections: **82**

Chapter 19 Control provisions

Section 74 [...] irrespective of whether this information is stored on **paper or on computer media.**

ee. Investigative missions in third countries

Danish authorities might accompany OLAF on a mission to third countries (especially in the customs sector this is a well-known possibility to trace a fraud route back to its origin). **83**

h) Cooperation and mutual assistance agreements

Within Denmark itself the VAT offices will be provided with information by all other relevant authorities: **84**

Section 76

Other public bodies must provide the Customs and Tax Administration, on request, with all information necessary for the registration of businesses and the verification of the payment or repayment of tax.

PCS. 2. the police shall assist the customs and tax administration in accordance with rules established after negotiations between the Minister of Taxes and the Minister of Justice.

PCS. 3. the Customs and Tax Administration shall be subject to the same conditions as laid down in section 74(1) 1, shall be entitled to inspect the main post offices receiving parcels, etc. from abroad. Likewise, checks may be carried out on companies receiving parcels etc. from abroad for delivery in this country.

3. Article 4 Internal investigations

1. Investigations within the institutions, bodies, offices and agencies in the areas referred to in Article 1 shall be conducted *in accordance with this Regulation and with the decisions adopted by the relevant institution, body, office or agency* ('internal investigations').

8. Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an internal investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the institution, body, office or agency concerned. Upon request, the institution, body, office or agency concerned shall inform the Office of any action taken and of its findings on the basis of such information.

Where necessary, the Office shall also inform the *competent authorities of the Member State concerned*. In this case, the procedural requirements laid down in the second and third subparagraphs of Article 9(4) shall apply. If the competent authorities decide to *take any action on the basis of the information transmitted to them, in accordance with national law*, they shall, upon request, inform the Office thereof.

- 1 Art. 4 refers to investigations conducted within the IBOAs. These investigations aim to detect and combat fraud, corruption, and other illegal activities detrimental to the EU budget as outlined in Article 1 (see above → 1.). Any IBOA has internal rules. They can be accessed.²¹² When OLAF deems it necessary, **national authorities** must be notified.²¹³ The purpose is to enable national action in cases where an OLAF investigation reveals potential criminal conduct that falls under national jurisdiction. These internal investigations of OLAF can lead to repercussions at national level i.e. the level of the authorities that cooperate with OLAF and which e.g. employed the economic operator, managed his funds etc. or who are responsible for disciplinary actions for officials that work at Union level or as a national expert for OLAF (corruption cases). The relationship of national disciplinary, union disciplinary proceedings and national criminal proceedings is incredibly important.²¹⁴

²¹² ECA 2019b pointing at p. 12 at its mandate and that it assesses how effectively OLAF manages the risk of fraud. Do not confuse the ECA task with the task of the Supervisory Committee, which is mainly established to control internal procedures and OLAF's respect to its legal foundation and other legal sources such as guidelines and internal work rules. The ECA pointed out that it does not focus on a control of internal investigations: "Nor did we examine internal investigations against officials or other EU employees, members of institutions or bodies, or heads of offices or agencies."

²¹³ See Bovend'Eerd 2024, 3.2 OLAF's Institutional Partner in the Netherlands, who explains this quite broad and correct. Still we included even other authorities to make the vision even broader and included the AFCOS report information as well as some authorities, which were only mentioned in the managing area.

²¹⁴ See ECJ, Research note, Impact of ongoing criminal proceedings on the conduct of disciplinary proceedings, March 2020, https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-09/ndr_2020_001_neutralisee_en.pdf. Accessed 31 December 2024.

a) References to national law, para 8

Any action in accordance with national law shall mean that the special investigative steps, which only the national authorities can carry out, shall be not done without informing OLAF of the action taken. This might involve the recovery of a sum, a civil claim, a disciplinary action etc. It might as well contain the submission of information. **2**

b) Competent authorities

- Danish Business Authority **3**
- Danish Agency for Agriculture, National Board of Agriculture
- Housing and Planning Agency
- Danish Fisheries Agency
- Customs and Tax administration/Customs Agency/Tax Agency

4. Article 5 Opening of investigations

[...] 5. If the Director-General decides not to open an investigation, he or she may without delay send any relevant information, as appropriate, to the **competent authorities of the Member State concerned** for appropriate **action to be taken in accordance with Union and national law** or to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules applicable to that institution, body, office or agency. The Office shall agree with that institution, body, office or agency, if appropriate, on suitable measures to protect the confidentiality of the source of that information and shall, if necessary, ask to be informed of the action taken.

- 1 When the Director-General of OLAF decides **not to open an investigation**, the office can refer relevant information to the competent national authorities of the Member State concerned or to the relevant EU institution, body, office or agency for further action. This **referral** is intended to ensure that any issues identified are addressed appropriately according to Union and Danish laws or the internal rules of the relevant institution.

a) Competent authorities

- 2 These authorities may be competent to open investigations in the different areas mentioned under Art. 3 (see above):
 - Danish Business Authority
 - Danish Agency for Agriculture, National Board of Agriculture
 - Housing and Planning Agency
 - Danish Fisheries Agency
 - Customs and Tax administration/Customs Agency/Tax Agency

b) National rules

- 3 Amongst other codes, the following are applicable in the context of Art. 5 OLAF regulation:

<p style="text-align: center;">Customs Act</p> <p>Chapter 4 Control and customs processing</p> <p>Collection</p> <p>Section 10</p> <p>The²¹⁵ customs and tax administration collects customs duties and taxes on goods which are not in free circulation in the EU's customs territory and which are imported into the</p>

²¹⁵ Kapitel 4 Kontrol og toldbehandling
Opkrævning

§ 10 Told- og skatteforvaltningen opkræver told og afgifter af varer, som ikke er i fri omsætning i EU's toldområde, og som indføres i det danske toldområde, og fører det fornødne tilsyn og kontrol i forbindelse hermed.

Danish customs territory, and carries out the necessary supervision and control in connection with this.

PCS. 2. The customs and tax administration collects or reimburses customs duties and taxes on goods which are exported from the Danish customs territory with a view to export from the EU customs territory, and carries out the necessary supervision and control in connection with this.

PCS. 3. The Minister of Taxation may lay down rules for control of and customs processing of the items in subsection 1–2 goods in accordance with the relevant EU regulations.

Section 24²¹⁶

The customs and tax administration has the right to pursue and stop persons who evade or are presumed to evade control and who bring or are presumed to bring goods for which no customs duties or taxes have been paid. The customs and tax administration also has the right in such cases to carry out an investigation in houses, means of transport, etc., when this happens in the immediate continuation of the pursuit.

PCS. 2. The provision in subsection 1 applies correspondingly for persons who bring or are assumed to bring cash equivalent to the value of 10,000 euros or more, or who bring or are assumed to bring goods for which safety, health, veterinary, plant pathology, currency or other reasons, a ban on importation, exportation or transit has been established.

Chapter 6 Other provisions

Section 62

In²¹⁷ cases where a state that grants customs preference for goods exported from the Danish customs territory to the territory of the state in question wants to initiate an in-

Stk. 2. Told- og skatteforvaltningen opkræver eller tilbagebetaler told og afgifter af varer, som udføres fra det danske toldområde med henblik på udførsel fra EU's toldområde, og fører det fornødne tilsyn og kontrol i forbindelse hermed.

Stk. 3. Skatteministeren kan fastsætte regler for kontrol med og toldbehandling af de i stk. 1-2 omhandlede varer i overensstemmelse med EU's bestemmelser herom.

²¹⁶ § 24.

Told- og skatteforvaltningen har ret til at forfølge og standse personer, der unddrager sig eller antages at unddrage sig kontrol, og som medfører eller antages at medføre varer, for hvilke der ikke er betalt told eller afgifter. Told- og skatteforvaltningen har endvidere ret til i sådanne tilfælde at foretage undersøgelse i huse, befordringsmidler m.v., når dette sker i umiddelbar fortsættelse af forfølgelsen.

Stk. 2. Bestemmelsen i stk. 1 finder tilsvarende anvendelse for personer, som medfører eller antages at medføre likvide midler, der svarer til værdien af 10.000 euro eller derover, eller som medfører eller antages at medføre varer, for hvilke der af sikkerhedsmæssige, sundhedsmæssige, veterinære, plantepatologiske, valutamæssige eller andre grunde er fastsat forbud mod indførsel, udførsel eller transit.

²¹⁷ § 62.

I tilfælde, hvor en stat, der indrømmer toldpræference for varer, der er udført fra det danske toldområde til den pågældende stats område, ønsker iværksat en undersøgelse af rigtigheden af dokumenter vedrørende oprindelse, toldgodtgørelse og toldmæssig status for sådanne varer, samt i øvrigt i tilfælde, hvor der er fremkommet forhold,

investigation into the correctness of documents relating to the origin, customs reimbursement and customs status of such goods, as well as in otherwise, in cases where circumstances have emerged which give reasonable grounds for launching such an investigation, the customs and tax administration may require a business operator to provide information on matters that are of importance to the investigation. The customs and tax administration can also, to the extent that the circumstances make it necessary, inspect a trader's business premises, accounting material and correspondence, etc. This also applies to companies located in a free port in the Danish customs territory.

Order on customs processing

Customs investigation, etc.

Section 45²¹⁸

When declared for customs clearance or temporary storage, the Tax Administration is entitled to carry out any examination of the goods that is necessary for the exercise of control, and to take samples of the goods without compensation to the extent necessary to examine their nature. The consignee is entitled, upon request, to have the taken samples returned to the extent that the Tax Administration no longer needs them after the end of the investigation.

PCS. 2. When determining customs duties and taxes on the specified goods, the part of the goods that has been sampled by the Tax Administration cannot be deducted from the specified quantity or value.

PCS. 3. If the Tax Administration carries out a random check, the results thereof are applied to all the goods that are listed under the item in question in the declaration. The

som giver rimelig grund til at iværksætte en sådan undersøgelse, kan told- og skatteforvaltningen afkræve en næringsdrivende oplysninger om forhold, der er af betydning for undersøgelsen. Told- og skatteforvaltningen kan ligeledes, i det omfang forholdene nødvendiggør det, efterse en næringsdrivendes forretningslokaler, regnskabsmateriale og korrespondance m.v. Dette gælder også virksomheder, der er beliggende i en frihavn i det danske toldområde.

²¹⁸ *Toldmæssig undersøgelse m.v.*

§ 45.

Ved angivelse til fortoldning eller midlertidig opbevaring er Skatteforvaltningen berettiget til at foretage enhver undersøgelse af varerne, der er nødvendig for udøvelse af kontrol, og til uden erstatning at udtage prøver af varerne i det omfang, det er nødvendigt for at undersøge deres beskaffenhed. Varemodtageren er berettiget til efter undersøgelsens afslutning på begæring at få de udtagne prøver tilbageleveret i det omfang, Skatteforvaltningen ikke længere har brug for dem.

Stk. 2. Ved fastsættelse af told og afgifter på de angivne varer kan den del af varerne, der er udtaget af Skatteforvaltningen som prøve, ikke fradrages i den angivne mængde eller værdi.

Stk. 3. Såfremt Skatteforvaltningen foretager en stikprøvekontrol, anvendes resultaterne heraf på alle de varer, der er anført under den pågældende varepost i angivelsen. Varemodtageren kan dog anmode om en supplerende undersøgelse af varerne, såfremt varemodtageren mener, at stikprøven ikke kan anvendes på resten af de angivne varer.

Stk. 4. Det påhviler varemodtageren eller den, der handler på varemodtagerens vegne, at udføre det for undersøgelsen af varerne nødvendige arbejde (ud- og indpakning, opvejning, opmåling m.v.). Omkostningerne i forbindelse hermed afholdes af varemodtageren.

consignee may, however, request a supplementary examination of the goods if the consignee believes that the sample cannot be used on the rest of the specified goods.

PCS. 4. It is the responsibility of the consignee or the person acting on behalf of the consignee to carry out the work necessary for the examination of the goods (unpacking and packing, weighing, measuring, etc.). The costs in connection with this are borne by the consignee.

Section 46²¹⁹

Goods that cannot be released because the necessary documentation is not available can be taken into custody or the like by the Tax Administration, sold, destroyed or ordered to be re-exported.

PCS. 2. Release to the disposal of the consignee of any waste and residues resulting from the destruction of goods takes place on the basis of taxation which is ascertained or recognized by the Tax Administration at the time of destruction.

[Article 6 Access to information in databases prior to the opening of an investigation]

Not analysed here.

²¹⁹ § 46.

Varer, der ikke kan frigives, fordi den nødvendige dokumentation ikke foreligger, kan af Skatteforvaltningen tages i bevaring eller lignende, sælges, tilintetgøres eller pålægges reeksport.

Stk. 2. Frigivelse til varemottagerens disposition af eventuelt affald og rester hidrørende fra varers tilintetgørelse finder sted på det beskatningsgrundlag, som konstateres eller anerkendes af Skatteforvaltningen på tilintetgørelsestidspunktet.

5. Article 7 Investigations procedure

[...] 3. The competent authorities of Member States shall give the necessary assistance to enable the staff of the Office to fulfil their tasks in accordance with this Regulation effectively and without undue delay. When providing such assistance, the competent authorities of Member States shall ***act in accordance with any national procedural rules applicable to them.***

3a. At the request of the Office, which shall be explained in writing, in relation to matters under investigation, the relevant competent authorities of the Member States shall, ***under the same conditions as those that apply to the national competent authorities,*** provide the Office with the following:

- (a) information available in the centralised automated mechanisms referred to in Article 32a(3) of Directive (EU) 2015/849 of the European Parliament and of the Council (4);
- (b) where strictly necessary for the purposes of the investigation, the record of transactions.

The request of the Office shall include a justification of the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation. Such request shall refer only to information referred to in points (a) and (b) of the first subparagraph.

Member States shall notify to the Commission the relevant competent authorities for the purposes of points (a) and (b) of the first subparagraph.

6. Where investigations show that it might be appropriate to take precautionary administrative measures to protect the financial interests of the Union, the Office shall without delay inform the institution, body, office or agency concerned of the investigation in progress. The information supplied shall include the following:

- (a) the identity of the official, other servant, member of an institution or body, head of office or agency, or staff member concerned and a summary of the facts in question;
- (b) any information that could assist the institution, body, office or agency concerned in deciding on the appropriate precautionary administrative measures to be taken in order to protect the financial interests of the Union;
- (c) any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or, in the case of an external investigation, within the competence of a national authority, ***in accordance with the national rules applicable to investigations.***

The institution, body, office or agency concerned may at any time consult the Office with a view to taking, in close cooperation with the Office, any appropriate precautionary measures, including measures for the safeguarding of evidence. The institution, body, office or agency concerned shall inform the Office without delay about any precautionary measures taken.

7. Where necessary, it shall be for the competent authorities of the Member States, at the Office's request, to take the ***appropriate precautionary measures under their national law***, in particular measures for the safeguarding of evidence.

Focusing on the highlighted references to national law, it should be clear that national authorities cannot provide assistance beyond what is permissible under local laws. For example, if national law restricts certain investigative measures (such as house searches or access to banking information) to judicial authorisation, OLAF's request for such measures must respect these limitations. **1**

The reference to **national procedural rules** ensures that assistance provided to OLAF does not violate fundamental rights (see below → Art. 9), such as the right to a fair trial or data protection laws (see above → Art. 3 enumerates those rights applicable during on-the-spot checks), which might impose constraints on information-sharing. **2**

Article 7 para 6 highlights the need for special confidentiality measures, particularly when OLAF's investigation overlaps with national judicial proceedings. As an OLAF investigator or SNE one should be aware that investigative measures that fall within the exclusive competence of a national judicial authority (such as coercive measures in the customs area) cannot be conducted by OLAF independently and must be coordinated with national authorities. **3**

According to para 7 the authorities (should) have the competence to adopt precautionary measures, such as securing evidence, in accordance with their national law. OLAF itself does not have the authority to take measures such as freezing assets or preventing the destruction of evidence; these actions must comply with the following legal procedures. **4**

a) References to national law

Sources & national sections 1: Relevant provisions relating to Art. 7 OLAF Regulation **5**

Para 3	<p>e.g.: Customs Act Chapter 4 – Control and Customs Processing <i>Access to control</i> Section 15</p> <p>For the purpose of searching and checking goods without a court order, the customs and tax authorities can travel unhindered everywhere along coasts, in ports, in airports, at landing sites, in transport centres, in trains, on railway areas and on roads to which there is public access. Searches and checks of goods in any shipment (letters, parcels, etc.) can be carried out at the mentioned locations, regardless of carrier, in warehouses, in containers, in means of transport and in other temporary or permanent places that can be used for storing goods, etc.</p>
---------------	---

PCS. 2. The customs and tax administration has the right to unhindered access everywhere along the country border. If adjacent areas are fenced or cordoned off, the owners must take such measures that the customs and tax administration is guaranteed unhindered passage at all times.

Section 16

Aircraft and ships in the Danish customs territory and other means of transport in traffic between the Danish customs territory and third countries are subject to the supervision and control of the customs and tax administration. Means of transport that transport goods for which duty or taxes have not been paid are also subject to the control of the customs and tax administration. The customs and tax administration has the right to carry out the investigations necessary for the exercise of control everywhere in these means of transport and without a court order.

PCS. 2. Vehicles that are used commercially in traffic between the Danish customs area and third countries must stop uninvited for inspection when entering and exiting the Danish customs area.

PCS. 3. All vehicles in traffic between the Danish customs area and third countries must stop for inspection when entering and exiting the Danish customs area and in the Danish customs area in general, when the customs and tax administration requests it.

PCS. 4. All vehicles in traffic between the Danish customs area and the EU's customs area and in the Danish customs area in general must stop for inspection when the customs and tax administration demands it.

PCS. 5. Ships must stop at the request of the customs and tax administration.

PCS. 6. The Minister of Taxation may lay down rules on the customs and tax administration's control of and customs processing of the items in subsection 1 mentioned means of transport and may decide where, in what manner and under what conditions the customs processing shall take place.

Section 17

Companies operating traffic with aircraft and ships, or the driver of the means of transport, are obliged to provide and document the information necessary for the exercise of control, including information about the means of transport, crew, passengers and their registered baggage and cargo, as well as to demonstrate and open or uncover all access to cargo, rooms and stores. The customs and tax administration can, without a court order, demand the detection, opening or covering of these accesses.

PCS. 2. The Minister of Taxation may, with the consent of the Minister of Transport, decide that port authorities and aviation authorities must notify the customs and tax administration of the information held by port and aviation authorities in connection with the arrival and departure of ships and aircraft.

PCS. 3. Companies that make facilities available to those in subsection companies mentioned in 1, are obliged to provide all of the 1 mentioned information about the arrival and departure of ships and aircraft as well as about the identity of crew and passengers, which they hold, available to the customs and tax administration according to its instructions.

PCS. 4. The Minister of Taxation may lay down detailed rules on which information is necessary pursuant to subsection 1.

Section 18

Drivers of means of transport must, upon arrival in the Danish customs territory from a third country and before departure from the Danish customs territory to a third country, register with the customs and tax administration. Drivers of ships that arrive at a Danish port from another place in the EU's customs area, or that leave the Danish customs area with a view to sailing to another place in the EU's customs area, must also, if the ship is carrying goods for which payment has not been made customs or charges such as cargo or provisions, report to the customs and tax administration.

PCS. 2. Those in subsection The notifications referred to in 1 can be made by a person authorised to do so.

PCS. 3. The Minister of Taxation may, under specified conditions, exempt drivers of certain categories of means of transport from the obligation to notify pursuant to subsection 1.

Section 19

Aircraft carrying uncorrected goods may only land in and depart from airports approved by the customs and tax administration (customs airports). In special cases, the Minister of Taxation can waive this. Unloading and loading of goods as well as landing and boarding of passengers may only take place at customs airports. The customs and tax administration can, when special circumstances call for it, allow unloading and loading to take place elsewhere.

PCS. 2. Ships in commercial traffic between the Danish customs area and third countries, as well as ships carrying uncorrected goods, may only call and depart from ports approved by the customs and tax administration

(customs ports). Unloading and loading of goods as well as disembarkation and embarkation of passengers may only take place in customs ports. The customs and tax administration can, when special circumstances call for it, allow unloading and loading to take place elsewhere.

PCS. 3. The customs and tax administration determines where in ports and airports disembarkation of passengers to the Danish customs area can take place.

Section 20

The customs and tax administration may, without cost to the customs and tax administration, make special requirements for the construction and furnishing of the places mentioned in Section 19 where goods are unloaded or loaded, or where passengers are disembarked or taken on board. The customs and tax administration may, in addition, demand that suitable facilities be made available at no cost to it for the physical examination of goods that have been unloaded or are to be loaded, and any means of transport that have brought or are to bring goods. The customs and tax administration can similarly demand that, at land-based connections between Denmark and abroad, suitable facilities, including land facilities, be made available for the physical examination of means of transport and persons when entering or exiting the Danish customs territory, at no cost to them.

PCS. 2. When establishing passenger routes between places abroad and places in the Danish customs territory, as well as when approving those in Section 19, subsection 1, mentioned airports, the customs and tax administration may demand that, without cost to them, appropriately equipped premises and facilities are made available for the inspection of passengers, etc.

PCS. 3. The customs and tax administration may require that at places where goods are loaded or unloaded, or where passengers are disembarked or taken on board, to the extent necessary and at no cost to the customs and tax administration, roadblocks are made that may not be passed without customs clearance. and the permission of the tax administration.

PCS. 4. The customs and tax administration may refuse to approve a port or airport in accordance with § 19, if the requirements for facilities etc. mentioned in subsection 1–3, not fulfilled. An approval can be revoked if the conditions for an approval are no longer present.

PCS. 5. It is the duty of ports and airports to notify the customs and tax administration of the changes in the port or airport's operations, facilities or

furnishings which may be of importance to the customs and tax administration's requirements for those in subsection 1 mentioned facilities and equipment.

Section 21

The Minister of Taxation may lay down rules for the customs and tax administration's control of and customs processing of salvaged vessels, aircraft and goods.

Supervision and control of people

Section 22

The Minister of Taxation may lay down rules on the customs and tax administration's control of and customs processing of persons and may also determine where and in what manner the customs processing shall take place.

Section 23

Persons who travel between third countries and the Danish customs territory must, upon entering and exiting the Danish customs territory, stop for control uninvited and must also stop for control when the customs and tax administration demands it.

PCS. 2. Those in subsection The persons mentioned in 1 have a duty to declare to the customs and tax administration all goods brought in accordance with those of the EU and those pursuant to § 10, subsection 3, laid down rules on this. The mentioned persons must also provide the information necessary for the exercise of the control.

PCS. 3. Persons who enter or leave the Danish customs territory and who have been on board ships or aircraft, who are on trains, or who travel on public roads, must, when the customs and tax administration so demand, stop for control. The same applies to people traveling at country borders, along coasts, in ports and airports or at landing sites.

PCS. 4. Those in subsection 1 and 3 and § 10c, subsection 1, mentioned persons and persons on board ships and in aircraft must, when the customs and tax administration requests it, give their name and place of residence. The customs and tax administration may require this information to be documented.

PCS. 5. Those in subsection 1 and 3 and § 10c, subsection 1, the mentioned persons must show all compartments and stores in luggage etc. and their

possible means of transport and, to the extent that the customs and tax administration wants it, unpack luggage etc.

Section 24

The customs and tax administration has the right to pursue and stop persons who evade or are presumed to evade control and who bring or are presumed to bring goods for which no customs duties or taxes have been paid. The customs and tax administration also has the right in such cases to carry out an investigation in houses, means of transport, etc., when this happens in the immediate continuation of the pursuit.

PCS. 2. The provision in subsection 1 applies correspondingly for persons who bring or are assumed to bring cash equivalent to the value of 10,000 euros or more, or who bring or are assumed to bring goods for which safety, health, veterinary, plant pathology, currency or other reasons, a ban on importation, exportation or transit has been established.

Section 25

The customs and tax administration is entitled to inspect persons who, for the purpose of control, are stopped in accordance with the provisions of Sections 10 c, 23 and 24.

PCS. 2. Inspections of persons must be carried out with the greatest possible consideration and must not be more extensive than the control purposes necessitate.

PCS. 3. Inspections, which are not limited to the outer clothing, may only be carried out when there is reasonable reason to believe that the person concerned is illegally carrying goods etc. concealed on his person, and only on the order of the highest representative of the customs and tax administration present. The person to be inspected may demand that the inspection be witnessed by a witness appointed by the person in question. The inspection may only be carried out and witnessed by persons of the same gender as the person to be inspected. However, this does not apply to witnesses appointed by the person concerned.

PCS. 4. Inspection as mentioned in subsection 3 can, with the consent of the person concerned, be carried out using a body scan.

Section 26

The Minister of Taxation may, to the extent prescribed in the international agreements acceded to by Denmark or in provisions laid down by the EU,

or when the control conditions permit, deviate from § 23, subsection 1, 2 and 5, and section 25.

Control of information and documents

Section 27

The customs and tax administration may demand information from importers, exporters, producers, other traders and business organisations to fulfil the obligation to provide information to the EU.

PCS. 2. The person who declares goods for customs processing in accordance with the relevant EU regulations must provide such information and declarations about the nature and nature of the goods, etc., as are necessary for checking the foreign trade statistics and the special import, export and transit regulations, as currency, health, safety, veterinary, plant pathological or other reasons are established for these goods.

Section 28

The customs and tax administration has, if it is deemed necessary, at any time against proper identification without a court order, the right to inspect premises used by persons who have imported or exported or managed the import or export of goods, which must be processed by customs in the Danish customs area, as well as on the premises of companies applying for customs reimbursement.

PCS. 2. The customs and tax administration may, to the extent that the purpose makes it necessary, carry out inspections of goods and stocks of those in subsection 1 and § 27, subsection 1, mentioned persons etc. and inspect their business books, other accounting material and correspondence etc

PCS. 3. Those in subsection 1 and § 27, subsection 1, mentioned persons and companies and the persons employed by them must provide the customs and tax administration with assistance when carrying out inspections.

PCS. 4. In addition, the customs and tax administration always has the right to carry out an inspection of goods for which customs duties and the taxes settled in connection with the importation have not been paid.

Paragraph 5. That in subsection The material referred to in 2 must be handed over or submitted to the customs and tax administration upon request.

PCS. 6. To the extent that information as mentioned in subsection 2 is registered electronically, the customs and tax administration's access to this information also includes electronic access to it.

	<p>PCS. 7. The police provide the customs and tax administration with assistance in carrying out the control pursuant to subsection 1. The Minister of Justice may, after negotiation with the Minister of Taxation, lay down detailed rules in this regard.</p> <p>Section 28a If a request for material pursuant to s. 28 subsection 5 or regulations issued by the EU in the area of customs legislation, the customs and tax administration can order that the material must be submitted within a set deadline, and impose daily compulsory fines from the time limit is exceeded and until the order is complied with or a fine is issued for violation of § 78a, subsection 1 or 2, as a result of the order not being complied with.</p> <p>PCS. 2. Complaint about an order pursuant to subsection 1 does not have suspensory effect. The National Tax Court or the Tax Appeal Administration may, however, add a complaint about an order pursuant to subsection 1 suspensory effect if special circumstances speak for it. The National Tax Court's decision can be taken by a presiding judge.</p> <p style="text-align: center;">Order on customs processing</p> <p>Customs investigation, etc. Sections 45, 46 → see above Article 5 Opening of investigations, National rules. → See also the codes provided under Tax and customs investigation (Customs Code/General Tax Code) and Investigative powers in the area of customs duties and VAT (General Tax Code).</p>
<p>Para 3a (a) (b)</p>	<p>Customs Act and Order on customs processing</p>
<p>Para 6 (c)</p>	<p>Customs Act and Order on customs processing</p>
<p>Para 7</p>	<p>Customs Act: Chapter 4 – Control and Customs Processing <i>Access to control</i> Section 15 For the purpose of <i>searching</i> and checking goods without a court order, the customs and tax authorities can travel unhindered everywhere along coasts, in ports, in airports, at landing sites, in transport centres, in trains, on railway areas and on roads to which there is public access. Searches and checks of goods in any shipment (letters, parcels, etc.) can be carried out at</p>

the mentioned locations, regardless of carrier, in warehouses, in containers, in means of transport and in other temporary or permanent places that can be used for storing goods, etc.

PCS. 2. The customs and tax administration has the right to unhindered access everywhere along the country border. If adjacent areas are fenced or cordoned off, the owners must take such measures that the customs and tax administration is guaranteed unhindered passage at all times.

[...]

Section 83

Goods that are smuggled or attempted to be smuggled or found in connection with investigations pursuant to Section 24, as well as goods for which, contrary to Section 11, subsection 1–3, and Section 11a, subsection 1, has evaded or sought to evade taxes, is taken into custody by the customs and tax administration or by the police on behalf of the customs and tax administration. In addition, smuggled goods or other goods, in respect of which duties or taxes have been evaded or sought to be evaded from the public, may be taken into custody or seized by the aforementioned authorities in compliance with Chapter 74 of the Norwegian Administration of Justice Act on *seizure*.

PCS. 2. cash and cash equivalents that are available in connection with the customs and tax administration's control pursuant to Section 10a, Section 10c, subsection 1 and 2, and Section 10d, subsection 1 and 3, or article 3, 4 or 6 of Regulation 2018/1672/EU of the European Parliament and of the Council of 23 October 2018 on the control of liquid funds brought into or out of the Union, may be detained by this authority. Detention can take place for up to 72 hours if it is to be feared that the liquid funds in question originate from or will be used for a violation of the Criminal Code or other legislation that is subject to public prosecution. When detention is initiated, chapter 74 of the Administration of Justice Act on seizure applies with the changes that follow from the 1st and 2nd sections.

PCS. 3. When due customs, tax and fine amounts and court costs have been paid, goods that have been taken into custody or seized are handed over, subject to the applicable general import regulations, to the person from whom they have been taken into custody or seized, or to someone else, who proves to be entitled to the goods. If the goods are not collected within 2 months after the end of the month in which the case is finally decided, they will be sold by the customs and tax administration at a duly an-

nounced public auction. However, goods which, in the opinion of the customs and tax administration, are outdated or unrealizable can be destroyed under control after the expiry of the deadline. From the amount received at the auction, the public's costs of storage and sale are first covered, and then customs, tax and fine amounts owed and court costs.

PCS. 4. The Customs and Tax Administration may, upon application, extend the period in subsection 3, 2nd point, said deadline, but no more than 1 year.

PCS. 5. With regard to securing and recovery of fine claims and court costs, subsection 3 only use with the restrictions laid down in Section 76 of the Criminal Code regarding confiscation pursuant to Section 75, subsection of the same Act. 2.

Source: Own Research.

b) References to national authorities

- 6
- Danish Business Authority
 - Danish Agency for Agriculture, National Board of Agriculture
 - Housing and Planning Agency
 - Danish Fisheries Agency
 - Customs and Tax administration/Customs Agency/Tax Agency

6. Article 8 Duty to inform the Office

[...] 2. The institutions, bodies, offices and agencies and, unless *prevented by national law*, the *competent authorities of the Member States* shall, at the request of the Office or on their own initiative, transmit without delay to the Office any document or information they hold which relates to an ongoing investigation by the Office. [...]

3. The institutions, bodies, offices and agencies and, unless *prevented by national law*, the *competent authorities of Member States* shall transmit without delay to the Office, at the request of the Office or on their own initiative, any other information, documents or data considered pertinent which they hold, relating to the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

A report obligation can at least be determined from the principle of sincere cooperation with Union bodies, cf. Art. 4 para 3 TEU. This principle applies in all areas of potential irregularities and frauds (for the typology of EU frauds see the EU Fraud Commentary and see above Art. 26 EPPO Regulation, where the material scope of the EPPO is determined). Additionally Art. 12a in combination with Art. 8 para 2 and 3 OLAF Regulation 883/2013 obliges the AFCOS of the present Member State to report to OLAF any of the requested material. The obligations exist throughout the different areas of irregularities (tax revenue related, customs revenue related; tax expenditure related i.e. structural funds area, direct grants etc.) and are therefore enshrined in different national laws. The competent authorities of the Member States are either the same that can conduct external investigations (in cases of resistance, *Sigma Orionis*²²⁰) or those that must be informed by the Director General if he/she decides not open a case according to Art. 5 para 5 OLAF Regulation No 883/2013 as amended 2020/2223. In Denmark the Public Administration Act and the data protection legislation lay down rules on the cases in which information can be passed on between authorities and the tax, customs and general administrative law may apply as well.

²²⁰ See Art. 3 OLAF Regulation above in this volume.

II. Procedural Rules on Investigations of OLAF and the References to National Law

- 1 As OLAF investigations can have elements of both national punitive, **administrative and EU administrative law**, and their findings may lead to criminal proceedings at the national level, fair proceedings that are compliant with procedural guarantees need to be installed and respected.²²¹ Hereby it is ensured that the acceptance of OLAF final reports as evidence in national courts is made stronger. Without adequate safeguards, courts may refuse to admit these reports, leading to inefficiencies and requiring national authorities to repeat investigative steps.²²² *Bovend'Eerd* rightly points at the fact that there is a **two-folded situation** with regard to procedural guarantees: a) the rights established and codified by Art. 9 – *Ligeti* pointed out that these are *de facto* general Europeanised defence rights – must be respected in any OLAF investigation b) during on-the-spot checks OLAF must according to the “**yield-rule**” in Art. 3 para 3 respect as well national procedural rights (“in compliance with the rules and practices of the Member State concerned”).²²³
- 2 Only in the absence of Europeanised defence rights, the national rights will apply and then then need to meet the requirements of the assimilation rule. *Bovend'Eerd*²²⁴ discusses the use of “will-dependent” evidence, such as a witness statement offered to an OLAF investigator as an example of an evidence gathering action of OLAF during on-the-spot checks, which is a good example for the present discussion of the applicable laws, which will now follow:

1. Article 9 Procedural guarantees

[...] 3. As soon as an investigation reveals that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, that official, other servant, member of an institution or body, head of office or agency, or staff member shall be informed to that effect, provided that this does not prejudice the conduct of the investigation or of any investigative proceedings ***falling within the remit of a national judicial authority***.

4. [...] In duly justified cases where necessary to preserve the confidentiality of the investigation or an ongoing or future criminal investigation by the EPPO or a national

²²¹ See in-depth with further references only precisely *Ligeti* 2017, pp. 27 et seq.

²²² *Bovend'Eerd* 2024, pp. 140 et seq.

²²³ *Ibid.*, p. 141.

²²⁴ *Ibid.*, p. 144: “Is this an EU power or can OLAF only exercise these powers on the basis of the principle of assimilation? For the person concerned, even if he has familiarised himself with the ‘yield rule’, this is problematic. He must be able to know what it is that Union law regulates to get a sense of the role left to be played by national law. How can a person know the scope of his private sphere or how interferences therewith may take place if he cannot know whether it is Union or national law that applies in a specific instance?”

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. [...]

The Danish national judicial authorities are the courts within the country. The remit of the courts is determined by the Danish Act on Judicial Administration. The Danish Prosecution Service might be involved if OLAF investigates a conduct that could be criminal in nature. And the other judicial authorities: Director of Public Prosecutions/Attorney of General/*Rigsadvokaten*, The State Attorney for Special Economic and International Crime (SØIK) and the Danish Police. The reference to the EPPO in Art. 9 para 4 OLAF Regulation cannot be applicable in Denmark, as it does not participate in the mechanism. As the police investigates most cases prior to the referral to the Prosecution Service, the police might as well be an authority that should be consulted by OLAF.

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. [...]

The rules on confidentiality and data protection are regulated close to the provisions of control, audit and inspection in the same codes, which applied above for external investigations. **1**

The Danish Data Protection Act applies as well. It contains sections on the Data Protection Regulation. **2**

Restrictions on the rights of the data subject

Section 22

The provisions of the Data Protection Regulation, Article 13, subsection 1–3, Article 14, subsection 1–4, Article 15 and Article 34 shall not apply where it is determined that the data subject's interest in the information is subject to determining considerations of private interest, including consideration of the data subject himself.

PCS. 2. exemption from the provisions of the Data Protection Regulation, Article 13, Subsection 1–3, Article 14, Subsection 1–4, Article 15 and Article 34 may also be implemented if it is determined that the data subject's interest in knowing the information outweighs decisive public interest considerations, including in particular.

- 1) State security,
- 2) defence,

- 3) public security,
- 4) prevention, investigation, detection or prosecution of criminal offences or enforcement of criminal sanctions, including protection against and prevention of threats to public security,
- 5) other important objectives relating to the protection of the general public interests of the European Union or of a Member State, in particular the essential economic or financial interests of the European Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security,
- 6) Protection of the independence of the judiciary and the judicial process,
- 7) Prevention, investigation, disclosure and prosecution in relation to breaches of ethical rules for legally regulated professions,**
- 8) control, supervision or regulatory tasks, including tasks of a temporary nature, connected with the exercise of official authority in the cases referred to in points 1 to 5 and 7,
- 9) protection of the rights and freedoms of the data subject or others; and
- 10) Enforcement of civil claims.

PCS. 3. information processed in the context of an administrative procedure for public administration may be exempted from the right of access pursuant to Article 15(1) of the Data Protection Regulation. 1, to the same extent as under the provisions of sections 19–29 and 35 of the Public Administration Disclosure Act.

PCS. 4. Articles 13–15 of the Data Protection Regulation shall not apply to the processing of personal data before courts when they are acting in their judicial capacity.

PCS. 5. Articles 15, 16, 18 and 21 of the Data Protection Regulation shall not apply where the information is processed solely for scientific or statistical purposes.

PCS. 6. Article 34 of the GDPR does not apply if it can be concretely assumed that the notification of the data subjects makes the clarification of criminal cases more difficult. Application of the first point can only be decided by the police.

3. Article 11 Investigation report

[...] 2. In drawing up the reports and recommendations referred to in paragraph 1, account shall be taken of the relevant provisions of Union law and, in so far as it is applicable, *of the national law of the Member State concerned*.

Reports drawn up on the basis of the first subparagraph, together with all evidence in support and annexed thereto, shall constitute admissible evidence:

(a) *in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States;*

(b) *in criminal proceedings of the Member State* in which their use proves necessary in the *same way and under the same conditions* as administrative reports drawn up by *national administrative inspectors* and shall be subject to the *same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors* and shall have the same evidentiary value as such reports;

(c) in judicial proceedings before the CJEU and in administrative proceedings in the institutions, bodies, offices and agencies.

Member States shall notify to the Office *any rules of national law relevant* for the purposes of point (b) of the second subparagraph.

With regard to point (b) of the second subparagraph, Member States shall, upon request of the Office, send to the Office the *final decision of the national courts* once the *relevant judicial proceedings* have been finally *determined* and the final court decision has become *public*.

The power of the CJEU and national courts and competent bodies *in administrative and criminal proceedings to freely assess the evidential value* of the reports drawn up by the Office shall not be affected by this Regulation. [...]

3. Reports and recommendations drawn up following an external investigation and any relevant related documents shall be sent to the *competent authorities of the Member States* concerned in accordance with the rules relating to external investigations and, if necessary, to the institution, body, office or agency concerned. The competent authorities of the Member State concerned and, if applicable, the institution, body, office or agency shall take such action as the results of the external investigation warrant and shall report thereon to the Office within a time limit laid down in the recommendations accompanying the report and, in addition, at the request of the Office. Member States may notify to the Office the relevant national authorities competent to deal with such reports, recommendations and documents.

- 1 OLAF investigations may lead to an OLAF report suggesting further actions i.e. punitive proceedings, national follow-up, criminal investigation and so on.²²⁵
- 2 *Sources & national sections 2: Provisions relating to Art 11 OLAF Regulation*

Para 2	<p>In relation to drawing up reports, the Danish law, which applies to external investigations applies:</p> <p>The Administrative Act [<i>Forvaltningsloven</i>] The Tax Administration Act [<i>Skatteforvaltningsloven</i>] The Tax Control Act [<i>Skattekontrolloven</i>] Customs Act [<i>Toldloven</i>] The Procurement Act [<i>Udbudsloven</i>] The Tender Act – Act on solicitation of tenders for certain public and publicly supported contracts [<i>Tilbudsloven Lov om indhentning af tilbud på visse offentlige og offentligt støttede kontrakter</i>] The Auditors Act – Act on approved auditors and audit firms [<i>Revisorloven Lov om godkendte revisorer og revisionsvirksomheder</i>] The Property Value Tax Act [<i>Ejendomsværdiskatteloven</i>] Act on structural measures relating to the fisheries sector [<i>Lov om strukturforanstaltninger vedrørende fiskerisektoren</i>]</p>
Para 2 (a)	<p>The Danish Administration of Justice Act does not only rule on general matters or the criminal procedure, but it although contains rules on judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States.</p>
Para 2 (b)	<p>It is questionable whether the “European Convention on Mutual Legal Assistance in Criminal Matters” is applicable in OLAF cases. If an OLAF Investigator, SNE or administrative staff shall appear in front of a Danish court the Danish Administration of Justice Act applies.</p> <p>The general rules on the summoning of witnesses apply.</p> <p>Additionally, the Attorney General of Denmark has issued with the Ministry of Justice a special “Notice of foreign witnesses RM 3-1984” (<i>Meddelelse om udenlandske vidner RM 3-1984</i>)²²⁶.</p> <p>This applies:</p> <p>“According to Article 12.1 of the European Convention on Mutual Legal Assistance in Criminal Matters (Bkg. No. 18 of 17.7.1963, Statutory Gazette C), a witness or an expert who, after being subpoenaed, appears before</p>

²²⁵ See Bovend’Eerd 2024, p. 241 et seq., Chapter 3.5.

²²⁶ See <https://vidensbasen.anklagemyndigheden.dk/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/3b9fdd85-f862-4ed7-85ff-6ed64ff676df?showExact=true>. Accessed 31 December 2024.

the judicial authorities of the requesting state, regardless of his nationality, must not before for the territory of the State in question is prosecuted, imprisoned or subjected to other restrictions on his personal freedom of action or on the basis of criminal convictions from the time before his departure from the territory of the requested State.

In this connection, the Council of Europe's Committee of Ministers adopted the following recommendation on 23 September 1983:

“1. The immunity of the witness under Article 12.1 must be clearly highlighted already when the witness summons is served and repeated in connection with the admonition of the witness in the requesting state. In particular, it must be emphasized that the immunity does not preclude prosecution for offences that a witness may have committed after departure from the requested state, especially those offences that may be related to the testimony.
2. (with the reservation that, among others, Denmark, Sweden and Norway have taken)

When a witness who has complied with a subpoena and appears before the judicial authorities of the requesting state refuses to give a statement in whole or in part, great emphasis must be placed on the voluntary nature of the witness' attendance and, consequently, on the desirability of he is not detained or otherwise prevented from leaving the country, even if the refusal to give evidence under the law of the requesting state constitutes a criminal offence or gives rise to coercive measures.

3. Where a witness who, in connection with his testimony before the judicial authority, is charged with having committed an offence other than that which may consist in refusing to give a statement, may on that occasion be remanded in custody, it should be seriously considered, whether law enforcement considerations can be adequately accommodated by other measures, such as bail, or if possible, by entrusting the prosecution to another state.”

Regarding Nordic witnesses, the special rules in Act No. 182 of 7.5.1975 continue to apply.

Regarding the detailed procedure in connection with summoning foreign witnesses to appear in the requesting state, reference can be made to the article in AÅ 1976.25 ff, section 2.1. on Nordic witnesses and section 3.1.2. on witnesses within the framework of the Council of Europe.

Per Lindegaard”

The rules on national administrative reports can be found in the Tax Acts, the Tax control Act, the Customs Act and the Administrative Act.

	<p>The Administration of Justice Act contains provisions on the process in Chapters 32–38 The procedure. Chapter 18 includes provisions on witnesses in general.</p>
Para 2 (c)	<p>The final decision of national courts are those decisions that cannot be appealed against. This refers to the decisions of the last possible instance of either the administrative area or the ordinary courts, including the criminal courts.</p> <p>Most courts will have to assess whether the OLAF Report is expert evidence or just normal evidence in the format of writings. Danish courts act thus freely if assessing evidence submitted by OLAF.</p>

4. Article 12 Exchange of information between the Office and the competent authorities

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)

Competent authorities

1

- Director of Public Prosecutions/Attorney of General/*Rigsadvokaten*
- The State Attorney for Special Economic and International Crime (SØIK)
- Danish Police
 - National Unit for Special Crimes /*National enhed for Særlig kriminalitet* (NSK) (serious economic crime, money laundering, organised crime, IT crime)
- The Central and West Jutland Police
- The Administrative Centre (PAC)
- *Kriminalregisteret*

Appropriate action acc. to national law

2

- National follow-up acc. to the Public Administration Act (LBK no. 433 of 22/04/2014)
- National follow-up acc. to the special administrative laws e.g. Customs Act

b) Art. 12 para 2 OLAF Regulation (judicial authorities of the Member State concerned)

3 Which are these national authorities?

For all offences:

- Director of Public Prosecutions/Attorney of General/*Rigsadvokaten*
- The State Attorney for Special Economic and International Crime (SØIK)
- Danish Police
- Courts

c) Art. 12 para 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned)

- 4 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.
- 5 The right to withhold information (for a certain time) may result from provisions, which ensure the secrecy of an action under national law.

5. Article 12a Anti-fraud coordination services

1. Each Member State shall, for the purposes of this Regulation, designate a service (the ‘anti-fraud coordination service’) to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, *in accordance with national law*, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation. [...]

a) General remarks

aa. Definition and History

Cooperation, Coordination and Facilitation are buzz words in anti-fraud literature.²²⁷ Anti-fraud coordination services are known worldwide and exist in many international organisations and cooperate with nation states.²²⁸ In the EU the term “AFCOS” has a *very special meaning* as it means the *Anti-fraud coordination services created on behalf of the European Anti-fraud Office* for the facilitation of interactions with the national Member States of the EU (see recitals below).²²⁹ The obligation to designate these services runs and derives from primary Union law. Art. 325 TFEU (ex-Art. 280 TEC) requests the Union *and* the Member States to fight fraud (together). The history of these services, adapted to the financial and budgetary law sector and set-up in the Member States’ internal justice and financial systems dates to the early 2000s.²³⁰ Historically, the coordinating bodies emerged primarily in the new Member States that were awaiting accession. The European Parliament has already in 2010 called for the AFCOS to be set up as independent bodies in the MS. Today one could not be further from this idea than ever, since the AFCOS are mostly subordinated deep in the structure of a Financial or

²²⁷ Kuhl 2019, pp. 160 et seq.; Wells 2014; Spink 2019; Saporta and Maraney 2022; FCPA 2012; ECA 2022; Malan and Bosch Chen 2022, pp. 135–139; focusing on the customs area van der Paal et al. 2019; de Vries 2022, pp. 401–463; House of Lords 2013, pp. 32 et seq.

²²⁸ Bartsiotas and Achamkulangare 2016; see World Customs Organisation, http://www.wcoomd.org/en/about-us/partners/international_organisations.aspx. Accessed 31 December 2024; see UNDOC, <https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html>, focusing on the designation of anti-corruption bodies. Accessed 31 December 2024.

They exist even on national level and are especially common in federal state systems, see Austria, which was special “Betrugsbekämpfungskoordinator:innen”, <https://www.bmf.gv.at/en/topics/combating-fraud/anti-fraud-units/anti-fraud-coordinators.html>: “In each office there is an Anti-Fraud Coordinator (AFC; in German: Betrugsbekämpfungskoordinator, BBKO) for the individual sectors and regional customs units. They are members of the management and communicate in their function at management level and with each other. The AFC is the point of contact for all anti-fraud matters at the local level, within the department for other organisational units, as well as externally for institutions and public authorities. They also act as an information hub to the outside world, for example when it comes to external information exchange or cooperation with external institutions and authorities.” Accessed 31 December 2024.

²²⁹ Kuhl 2019, p. 164.

²³⁰ Quirke 2015, pp. 236 et seq.

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):

- 2 **“Friday 24 April 2009 Protection of the Communities’ financial interests and the fight against fraud – Annual Report 2007 P6_TA(2009)0315 European Parliament resolution of 24 April 2009 on the protection of the Communities’ financial interests and the fight against fraud – Annual Report 2007 (2008/2242(INI)) 2010/C 184 E/14 The European Parliament,”**

68. points out that the Anti-Fraud Coordination Units (AFCOS) set up for OLAF in the Member States that joined the European Union after 2004 are very important sources of information and contact points for OLAF; points out, however, **that the functional added value of these offices (in particular in terms of reporting irregularities to the Commission) is minimal as long as they are not independent from national administrations**; therefore calls on the Commission to submit a proposal to Parliament’s competent committee on how the work of these offices could be made more useful and considers it necessary to improve cooperation with the candidate countries”²³¹

- 3 At least there is legal and technical oversight of the areas of administration in most states and nowadays the AFCOS are implemented at the highest level.²³²
- 4 However, the existing Member States are also aware of weaknesses in the fight against fraud. Only since 2010 and in the last decade has more attention been paid to these coordination points. They have become a *sine qua non* in the EU’s fight against fraud and they are becoming more and more the “eyes and ears” of OLAF in the Member States. They only have their own investigative skills, which would make them an “extended arm” of OLAF in the Member States, if at all, e.g. in Bulgaria or Denmark. On the other hand, in Denmark and France, they are more active in the background and do

²³¹ See OJ, 8 July 2010, CE 184/72; Freitag, 24. April 2009 Schutz der finanziellen Interessen der Gemeinschaften und Betrugsbekämpfung – Jahresbericht 2007 P6_TA(2009)0315 Entschließung des Europäischen Parlaments vom 24. April 2009 zu dem Schutz der finanziellen Interessen der Gemeinschaften und der Betrugsbekämpfung – Jahresbericht 2007 (2008/2242(INI)) 2010/C 184 E/14 Das Europäische Parlament, “68. weist darauf hin, dass die Stellen zur Koordinierung der Betrugsbekämpfung (AFCOS), die für OLAF in den Mitgliedstaaten eingerichtet wurden, die der Europäischen Union nach 2004 beigetreten sind, für OLAF sehr wichtige Informationsquellen und Kontaktpunkte sind; verweist jedoch darauf, dass der funktionale Mehrwert dieser Büros (insbesondere hinsichtlich der Meldung von Unregelmäßigkeiten an die Kommission) minimal ist, solange sie nicht von den nationalen Verwaltungen unabhängig sind; fordert die Kommission daher auf, dem zuständigen Ausschuss des Parlaments einen Vorschlag dahingehend vorzulegen, wie die Arbeit dieser Büros nutzbringender gestaltet werden könnte, und hält es für notwendig, die Zusammenarbeit mit den Kandidatenländern zu verbessern; [...]”

²³² Byrne 2018, p. 13.

not appear too clearly. Activity reports may also have to be requested by the Commission, i.e. the responsible departments of OLAF.

bb. Legislative developments

The Commission has evaluated the impact of the AFCOS in the past decade.²³³ Recent changes at the beginning of the 2020s have enlarged the competences of the AFCOS. These are now even allowed to cooperate with each other and not only with OLAF in Luxembourg alone, which was the case prior to the amendments of the Regulation (EU) 2020/2223.²³⁴ 5

The recent changes describe the role of the AFCOS in the recitals. Thus, by reading them the task and role of these bodies becomes vivid: 6

(23) The Office is able, under Regulation (EU, Euratom) No 883/2013, to enter into administrative arrangements with *competent authorities of Member States*, such as anti-fraud coordination services, and institutions, bodies, offices and agencies, in order to specify the arrangements for their cooperation under that Regulation, in particular *concerning the transmission of information, the conduct of investigations and any follow-up action*.

(30) Due to the large diversity of national institutional frameworks, Member States should, on the basis of the principle of sincere cooperation, *have the possibility to notify to the Office the authorities that are competent to take actions upon recommendations of the Office*, as well as the authorities that need to be informed, such as for financial, statistical or monitoring purposes, for the performance of their relevant duties. Such authorities *may include national anti-fraud coordination services*. In accordance with the settled case-law of the CJEU, the Office recommendations included in its reports have no binding legal effects on such authorities of Member States or on institutions, bodies, offices and agencies.

(37) The anti-fraud coordination services of Member States were introduced by Regulation (EU, Euratom) No 883/2013 to facilitate an effective cooperation and exchange

²³³ Commission Staff Working Document Evaluation of the application of Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 Accompanying the document Commission report to the European Parliament and the Council., pp. 3, 12, 72.

The Commission document was accompanied by a Report (called ICF Report 2017), which resulted from an external study: European Commission, European Anti-Fraud Office, Evaluation of the application of Regulation No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF): final report, Publications Office, 2017, <https://data.europa.eu/doi/10.2784/281658>. Accessed 31 December 2024.

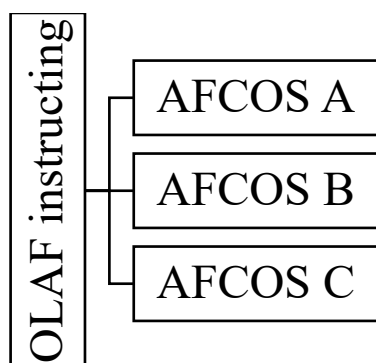
²³⁴ See Art. 12a and Art. 12b of Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations, OJ L 437, 28.12.2020.

of information, including information of an operational nature, between the Office and Member States. The Commission evaluation report concluded that they have contributed positively to the work of the Office. The Commission evaluation report also identified the *need to further clarify the role of those anti-fraud coordination services* in order to ensure that the Office is provided with the necessary assistance to ensure that its investigations are effective, while leaving the organisation and powers of the anti-fraud coordination services to each Member State. In that regard, the anti-fraud coordination services should be able to provide or coordinate the *necessary assistance* to the Office *to carry out its tasks effectively, before, during or at the end of an external or internal investigation*.

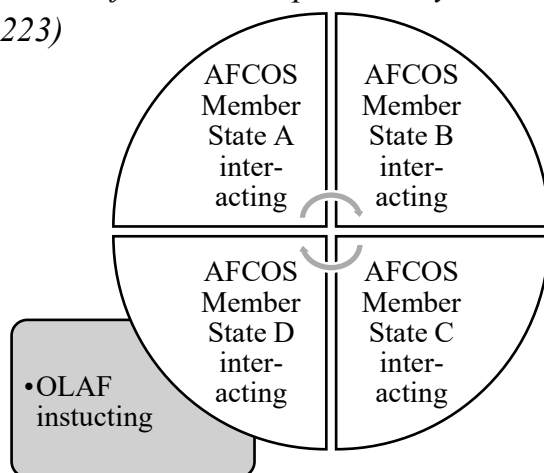
(40) It should be possible for the anti-fraud coordination services in the context of coordination activities to provide assistance to the Office, as well as for the anti-fraud coordination services *to cooperate among themselves*, in order to further reinforce the available mechanisms for cooperation in the fight against fraud.

cc. Visualisation of old (prior to 2020) vs. new (since 2020) cooperation and role of the AFCOS

7 *Figure 5: Visualisation of the old cooperation by virtue of Regulation No. 883/2013*



8 *Figure 6: Visualisation of the new cooperation by virtue of Regulation No. 883/2013 (as amended 2020/2223)*



b) A closer look at the relevant AFCOS in the present Member State

The Ministry of Finance is the contact point between OLAF and the competent authorities. It serves as the Danish AFCOS.²³⁵ Within the Danish Ministry the 7th Division – Environment, food, climate, energy and EU Budget – is the competent department. The Ministry does not take part in the investigations, but connects the authorities and provides assistance in the exchange of information between OLAF and the relevant authorities.²³⁶ **9**

The network of national authorities concerned in OLAF investigations are:²³⁷ **10**

- The Danish Agency for Agriculture
- The Danish Fisheries Agency
- The Danish Business Authority
- The Danish Tax and the Customs Agency
- The State Attorney for Special Economic and International Crime (SØIK)

[Article 12b–12d omitted]

²³⁵ Ministry of Finance, Manual of September 2021, Cooperation in the Danish anti-fraud network, p. 3.

²³⁶ Ibid.

²³⁷ Ibid.

6. Article 12e The Office's support to the EPPO

1. In the course of an investigation by the EPPO, and at the request of the EPPO in accordance with Article 101(3) of Regulation (EU) 2017/1939, the Office shall, in accordance with its mandate, support or complement the EPPO's activity, in particular by:

(a) providing information, analyses (including forensic analyses), expertise and operational support;

(b) facilitating coordination of specific actions of *the competent national administrative authorities* and bodies of the Union; [...]

- 1 The competent national administrative authorities are the
 - Danish Business Authority,
 - Danish Agency for Agriculture, National Board of Agriculture,
 - Danish Fisheries Agency and
 - Danish Customs and Tax Agency.
- 2 The support to the EPPO by OLAF concerning information related to Denmark might be possible via the established network by the Danish AFCOS and the authorities that are national partners of OLAF in Denmark.
- 3 Further support to the EPPO is not possible as Denmark is not a participating member of the EPPO mechanism.

[Article 12f–g omitted]

7. Article 13 Cooperation of the Office with Eurojust and Europol

1. [...] Where this may support and strengthen coordination and cooperation between *national investigating and prosecuting authorities*, or where the Office has forwarded to the competent authorities of the Member States information giving grounds for suspecting the existence of fraud, corruption or any other illegal activity affecting the financial interests of the Union in the form of serious crime, it shall transmit relevant information to Eurojust, within the mandate of Eurojust. [...]

The relevant act for the cooperation of Danish authorities with Eurojust has been explored at the beginning of the volume. The national investigating and prosecuting authorities are the following nevertheless:

- Director of Public Prosecutions/Attorney of General/*Rigsadvokaten*
- The State Attorney for Special Economic and International Crime (SØIK)
- Danish Police

[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.

- 1 Article 17 contains provisions regarding the office's reporting obligations and the safeguarding of procedural guarantees in the course of its investigations. Paras 4 and 7, in particular, – this is the *telos* – underline OLAF's efforts to balance effective investigative action with the protection of fundamental rights.
- 2 The Supervisory Committee noted that OLAF's country mini-profiles provided some information on national laws but were insufficient for compensating occasional expertise issues.²³⁸ They also reviewed **OLAF's legality check procedures**, recognizing the importance of expertise in all EU Member States' legal systems. Good relations between investigators and reviewers were seen to positively impact the quality of checks and reviews. OLAF's legality check ensures compliance with legal rules and addresses any breaches swiftly. The check focuses on procedural aspects and may lead to modifications or abandonment of actions if it fails. The committee emphasized the importance of compliance with rights and procedural rules in promoting the rights of those affected.
- 3 Article 17 para 4 specifies that the OLAF Director-General is required to **report regularly and at least annually**, to major EU IBOA. The reports should cover the findings of OLAF's investigations, the actions taken and any problems encountered during them. Importantly, these reports must respect the confidentiality of investigations and the legitimate rights of individuals involved, including informants. The provision also requires OLAF to consider national laws applicable to judicial proceedings.

²³⁸ Supervisory Committee 2015, Legality check and review in OLAF, pp. 6 et seq.

Next, Article 17 para 7 further emphasizes procedural guarantees and compliance with fundamental rights. It mandates the establishment of an internal advisory and control procedure, including a legality check, which OLAF did in the past. 4

The **legality check** should be carried out by OLAF staff who are experts in law and investigative procedures and focus on the procedural safeguards. This internal control mechanism is relevant for ensuring that national laws are respected. The opinion resulting from this check should then be annexed to the final investigation report, thereby providing transparency and accountability for the decisions made throughout the investigative process. 5

As noted in an article by *Mavromati* and *Riochet* it is recalled that this check was introduced as a new internal advisory and control procedure in the past.²³⁹ This change, unlike its predecessor (Regulation 1073/1999), was designed to **include an internal legality** check that assesses, among other things, the respect for procedural guarantees and the fundamental rights of individuals under investigation. This internal process is vital for ensuring that OLAF's actions remain compliant with both EU and national standards, e.g. for upholding the rule of law and protecting the rights of individuals. Moreover, the importance of these procedural safeguards has been by the ECL C-787/22, which related to the respect for the rights of defence and procedural guarantees during OLAF's investigations were at the centre of the dispute.²⁴⁰ It was reiterated the need for OLAF to operate in a manner that respects fundamental rights, including the right to be heard and the right to avoid self-incrimination. 6

[Article 18–21 omitted]

²³⁹ Mavromati and Riochet 2024, p. 319.

²⁴⁰ ECJ, Case C-787/22 P, *Sistem ecologica production v EU Commission*, Judgment of 30 November 2023, ECLI:EU:C:2023:940.

Bibliography and Further Reading

- Allegrezza S (2024) Chapter 26. Absent Prosecution Witnesses and Active Participating at Trial: The European Court of Justice Shapes European Fairness in Criminal Justice. In: Regan E, Engsig Sørensen K, Lenaerts K and Neergaard U (eds) *Shaping a Genuine Area of Freedom, Security and Justice*. Bloomsbury Publishing, London, pp 289–314.
- Axelsson K (2022), Politiken, Danmark kan blive forbrydernes paradis i EU. online: <https://politiken.dk/udland/art8611880/Danmark-kan-blive-forbrydernes-paradis-i-EU>. Accessed 31 December 2024.
- Bartsiotas G A, Achamkulangare G (2016) *Fraud Prevention, Detection and Response in United Nations System Organisations*, Joint Inspection Unit, Geneva.
- Böse M (2017) *The Investigation and Prosecution of Financial Economic and Financial Crimes-Role and Function of Administrative Authorities in Germany*. In: Bernardi A and Negri D (eds) *Investigating European Fraud in the EU Member States*. Bloomsbury Publishing, pp 85–103.
- Bradely K (2018) Part. III. Institutional Framework. The European Parliament. Chapter 14, III. Part E. In: *Oxford Principles of European Union Law Volume 1: The European Union Legal Order*. OUP, Oxford.
- Byrne D (2018) *Role of Member State auditors in fraud prevention and detection*, Presentation, p 13. online: https://ec.europa.eu/regional_policy/sources/policy/how/improving-investment/training/2024/2.3_Day_2_-_Dermot_Byrne_-_Presentation_4_-_Role_of_Member_State_Aufitors_Feb_2024_FINAL_1.pdf. Accessed 31 December 2024.
- Caianiello M (2020) *Right To Remain Silent and Not to Incriminate Oneself in the European Union System* (December 5, 2020). online: <https://ssrn.com/abstract=3743329> or <http://dx.doi.org/10.2139/ssrn.3743329>. Accessed 31 December 2024.
- Callewaert J (2021) *No Case to Answer for the European Public Prosecutor under the European Convention on Human Rights? Considerations on Convention Liability for Actions of the European Public Prosecutor’s Office*. *Europe of Rights & Liberties/Europe des Droits & Libertés*, pp 20–35.

- Claes A L, Franssen V (2022) When EPPO meets customs: A clash of enforcement strategies and procedural safeguards? Jean Monnet Network on EU Law Enforcement Working Paper Series, No 09/22. online: <https://jmn-eulen.nl/wp-content/uploads/sites/575/2022/05/WP-Series-No.-09-22-When-EPPO-meets-customs-A-clash-of-enforcement-strategies-and-procedural-safeguards-Claes-Franssen.pdf>. Accessed 31 March 2025.
- Claes A L, Horseele M (2022) The privilege against self-incrimination in Customs Proceedings. In: Harding C, Franssen V (eds) *Criminal and Quasi-criminal Enforcement Mechanisms in Europe Origins, Concepts, Future*. Bloomsburg Publishing, Oxford, pp 301–343.
- Danish Ministry of Social Affairs and the Interior (2025) The Electoral System in Denmark: European Parliamentary Elections. online: <https://www.elections.im.dk/ep-elections/the-electoral-system-in-denmark-european-parliamentary-elections>. Accessed 31 December 2024.
- ECA (2022) Cohesion and NextGenerationEU: concord or clash? Journal N°1 2022. online: https://www.eca.europa.eu/Lists/ECADocuments/JOURNAL22_01/JOURNAL22_01.pdf. Accessed 31 December 2024.
- EU Agency for Fundamental Rights (2016) Rights of suspected and accused persons across the EU: translation, interpretation and information. Luxembourg: Publication office of the European Union. online: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-right-to-information-translation_en.pdf. Accessed 31 March 2024.
- Farkas Á, Dannecker G, Jacsó J (2019) *Criminal Law Aspects of the Protection of the Financial Interests of the European Union with particular emphasis on the national legislation on tax fraud, corruption, money laundering and criminal compliance with reference to cybercrime*. Wolters Kluwer, Budapest.
- FCPA (2012) A Resource Guide to the FCPA U.S. Foreign Corrupt Practices Act. online: <https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>. Accessed 31 December 2024.
- Feldtmann B (2019) En analyse af det retlige begreb “selvinkrimineringsforbuddet” i dansk ret, Juridisk institute, Aalborg universitet. online: https://projekter.aau.dk/projekter/files/305901353/Speciale_endeligt.pdf. Accessed 31 December 2024.
- Folker H J, Sejbak L (2022) Danmark åbner døren for Den Europæiske Anklagemyndighed [Denmark opens the door to the European Public Prosecutor’s Office],

- online: <https://kromannreumert.com/nyheder/danmark-aabner-doeren-europaeiske-anklagemyndighed>. Accessed 31 December 2024.
- Garde P (2001) National Report of Denmark. In: Delmas-Marty M, Vervaele J, Implementation of the Corpus Juris, Vol 2, pp 221–250.
- Gellert L (2009) Gerichtliche Verwertbarkeit von Protokollen und Missionsberichten des OLAF. *AW-Prax*, pp 85–88.
- Hansen A L W (2018) netavisen Pio, Nyheder Messerschmidt stemte imod stærkere kamp mod EU-svindel, Dansk Folkeparti stemte i maj måned imod at styrke indsatsen mod svindel i EU. Det undrer flere politikere. online: <https://piopio.dk/messerschmidt-stemte-imod-staerkere-kamp-mod-eu-svindel>. Accessed 31 December 2024.
- Hauck P (2021) Europarechtliche Vorgaben für das nationale Strafverfahren [European legal requirements for national criminal proceedings]. In: Böse M (ed) *Enzyklopädie Europarecht (EnzEuR)*. Vol 11: Europäisches Strafrecht. 2nd edition. Nomos, Baden-Baden, pp 543–632.
- Hauck P (2025a) *Fraud in Europe: From Roman Law to the Implementation of the PIF Directive*. Edward Elgar, Cheltenham.
- Hauck P (2025b) *The PIF Directive. A Commentary on the Directive on the Fight against Fraud Affecting the EU's Financial Interests by Means of Criminal Law*. Edward Elgar, Cheltenham.
- Hauck P (in press – a) *The EPPO Regulation: A Commentary on the Rules on Investigations and Investigation Measures in Relation to the Fight Against Fraud (Art. 26–33)*. Edward Elgar, Cheltenham.
- Hauck P (in press – b) *The OLAF Regulation: A Commentary on the Regulation Concerning Investigations Conducted by the European Anti-Fraud Office (OLAF)*. Edward Elgar, Cheltenham.
- Herrnfeld H H (2024) Yes Indeed, Efficiency Prevails. A Commentary on the Remarkable Judgment of the European Court of Justice in Case C-281/22 G.K. and Others (Parquet européen). *Eucrim*, pp 370–380.
- Herrnfeld H H, Burchard C, Brodowski D (2020) *European Public Prosecutor's Office: Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), Article-by-Article Commentary*. Nomos/Hart/Beck, Baden-Baden.

- Herlin-Karnell E (2013) European Criminal Law as an Exercise in EU ‘Experimental’ Constitutional Law. *Maastricht Journal of European and Comparative Law* 20:442–464. online: <https://doi.org/10.1177/1023263X1302000307>. Accessed 31 December 2024.
- House of Lords (2013) The Fight Against Fraud on the EU’s Finances 12th Report of Session 2012–13 , mn 32 et seq.
- Iovene F, Recchia N (2017) Criminal-Liability of Political Decision Makers in Italy. In: Zimmermann F (ed) *Criminal Liability of Political Decision-Makers. A Comparative Perspective*, pp 141–167.
- Justitsministeriets udvalg om økonomisk kriminalitet og datakriminalitet (2000) Straffelovens § 289 m.v. – berigelseskriminalitet rettet mod offentlige midler Delbetænkning V afgivet af Betænkning nr. 1396 København 2000 [Section 289 etc. of the Danish Criminal Code – Enrichment offences against public funds Partial report V submitted by Ministry of Justice’s committee on economic crime and computer crime Report no. 1396, Copenhagen] .
- KRIM (2025) The criminal process, Free Commentary. online: <https://krim.dk/kommenteret-lovsamling/straffeprocessen/>. Accessed 31 October 2025.
- Kuhl L (2017) Cooperation Between Administrative Authorities in Transnational Multi-agency Investigations in the EU: Still a Long Road Ahead to Mutual Recognition. In: Ligeti K, Franssen V (eds) *Challenges in the Field of Economic and Financial Crime in Europe and the US*. Hart Publishing, Oxford and Portland, Oregon, pp 135–166.
- Langsted L B (1998) Selvinkriminering og oplysningspligter af lektor. *Nordisk Tidsskrift for Kriminalvidenskab*, 85:308–324. online: https://www.researchgate.net/publication/372063984_Selvinkriminering_og_oplysningspligter. Accessed 31 December 2024.
- Łazowski A (2024) Chapter 22. EU criminal law and EU enlargement. In: Mitsilegas V, Bergström M, Quintel T (eds) *Research Handbook on EU Criminal Law*. 2nd edn. Edward Elgar Publishing, Cheltenham, pp 492–515.
- Ligeti K (2024) Chapter 21. The European Public Prosecutor’s Office. In: Mitsilegas V, Bergström M, Quintel T (eds) *Research Handbook on EU Criminal Law*. 2nd edn. Edward Elgar Publishing, Cheltenham, pp 460–491.

- Luchtman M, Vervaele J (2017) Report Investigatory powers and procedural safeguards: Improving OLAF's legislative framework through a comparison with other EU law enforcement authorities (ECN/ESMA/ECB). Utrecht University/RENFORCE, Utrecht.
- Ludwiczak Glassey M (2021) Le Parquet européen: perspectives suisses, *European Papers* 6:391–403.
- Malan J (2022) Patterns of fraud in EU funds under shared management – similarities and differences between Member States. *ECA Journal*, pp 135–139.
- Mavromati N, Riochet D (2024) The Protection of Fundamental Rights and Procedural Guarantees in OLAF Investigations: a 25-Year Journey. *Eucrim*, Preprint Issue. <https://doi.org/10.30709/eucrim-2024-024>. Accessed 15 February 2025.
- Ministry of Finance (2021) Manual of September 2021, Cooperation in the Danish anti-fraud network.
- Mitsilegas V, Bergström M, Quintel T (2024) *Research Handbook on EU Criminal Law*. 2nd edn. Edward Elgar Publishing, Cheltenham.
- Negri D (2017) Best Practices and Operational Models in Financial Economic-Investigations in Europe In View of the EPPO. In: Bernardi A, Negri D (eds) *Investigating European Fraud in the EU Member States*. Bloomsbury Publishing, London, pp 149–169.
- Niemz J (2020) Komplexitätsbewältigung in Großverfahren des Wirtschaftsstrafrechts. *Komplexitätsbewältigung in Großverfahren des Wirtschaftsstrafrechts Schriften zum Prozessrecht (PR)*. Band 258. Duncker & Humblot, Berlin.
- van der Paal J, Nurk A, de Vlioger D, Janne H, de Ramon M, Heeren P, Kissane E (2019) Protection of EU financial interest on customs and VAT: Cooperation of national tax and customs authorities to prevent fraud. PE 636.470. online: [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/636470/IPOL_STU\(2019\)636470_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/636470/IPOL_STU(2019)636470_EN.pdf). Accessed 31 December 2024.
- Pfister A (2024) Gerichtliche Überprüfung grenzüberschreitender Ermittlungsmaßnahmen der Europäischen Staatsanwaltschaft (EUSTA). *jurisPR-StrafR* 5/2024. online: <https://bit.ly/40iOO7t>. Accessed 10 October 2024.

- Quirke B (2015) EU fraud and new member states – a success story. In: Vande Walle G, van Erp J, Huisman W (eds) *The Routledge Handbook of White-Collar and Corporate Crime in Europe*. Taylor & Francis, UK, pp 232–246.
- Regan E, Engsig Sørensen K, Lenaerts K, Neergaard U (2024) *Shaping a Genuine Area of Freedom, Security and Justice*. Bloomsbury Publishing. London.
- Ritzau A (2011) Biograf svindler med billetstøtte fra EU. online: <https://www.sn.dk/danmark/biograf-svindler-med-billetstoette-fra-eu/>. Accessed 31 December 2024.
- Salom Lucas A, Llambés Sánchez M I (2021) Mutual legal assistance on criminal matters: when theory meets practice: a real story. *ERA Forum* 22:337–349. <https://doi.org/10.1007/s12027-021-00661-x>. Accessed 31 December 2024.
- Saporta G, Maraney S (2022) *Practical Fraud Prevention: Fraud and AML Analytics for Fintech and eCommerce, Using SQL and Python*. O’Reiley Media Inc, US.
- Satzger H, Zimmermann F (2019) Challenges of trial procedure reform: Is European Union legislation part of the solution or part of the problem? In: Brown D K, Turner J I, Weisser B (eds) *The Oxford Handbook of Criminal Process*. Oxford University Press, Oxford, pp 633–652.
- Scholten M (2023) *Research Handbook on the Enforcement of EU Law*. Edward Elgar Publishing, Cheltenham.
- Skinns L (2019) *Police Powers and Citizens’ Rights Discretionary Decision-Making in Police Detention*. Routledge, Taylor & Francis, Oxon.
- Spink J W (2019) *Food Fraud Prevention Introduction, Implementation, and Management*. Springer, Berlin/Heidelberg.
- Staffler L (2024) Kommentierung zu Art. 32 BV. In: Schlegel S, Ammann O (eds) *Onlinekommentar zur Bundesverfassung – Version: 19.07.2024*. DOI: <https://doi.org/10.17176/20240804-101851-0>. Accessed 31 December 2024.
- Stöger K (2015) Zwischen nationalem Verfassungsrecht und Unionsverfassungsrecht: Rechtspolitisches zur Immunität im Europäischen Parlament. *JRP*, p 147.
- de Vries A J (2022) Enforcement of Policies against illicit trade in tobacco products in the Netherlands. In: Vervaele J, Tosza S (eds) *Combatting Illicit Trade in Tobacco Products In Search of Optimal Enforcement*. Springer, Heidelberg/Berlin, pp 401–463.

- Wells J T (2014) *Principles of Fraud Examination*. 4th edn. Wiley, Hoboken, New Jersey.
- Zajac K (2025) The Admissibility of Tainted Evidence in Criminal Proceedings as a Rule of Law Issue Under the ECHR. *Criminal Law Forum*. <https://doi.org/10.1007/s10609-024-09496-w>. Accessed 2 February 2025.

General Literature OLAF

- de Bellis M (2021) Multi-level Administration, Inspections and Fundamental Rights: Is Judicial Protection Full and Effective? *German Law Journal* 22:416–440.
- Bovend'Eerdt K (2018) The Applicable Law in OLAF's On-The-Spot Inspections, *European Law Blog*. online: <https://research-portal.uu.nl/en/publications/the-applicable-law-in-olafs-on-the-spot-inspections>. Accessed 31 December 2024.
- Bovend'Eerdt K (2024) *The Protection of Fundamental Rights in OLAF Composite Enforcement Procedures*. Springer, Cham.
- Brüner F H (2008) OLAF-Reform II – Kosmetischer Eingriff oder Großer Wurf? *EuR*, pp 859–872.
- Brüner F H (2009) *OLAF Manual Operational Procedures*. EU Publications Office, Brüssel.
- Brüner F H (2011) Das Europäische Amt für Betrugsbekämpfung (OLAF) und seine Aufgaben bei der Erweiterung der Europäischen Union. In: Henke R (ed) *Erweiterung der europäischen Union: Zusammenarbeit von Wirtschaft und Verwaltung*, Köln, pp 17–26.
- Carrera S, Mitsilegas V, Stefan M (2021) *Criminal Justice, Fundamental Rights and the Rule of Law in the Digital Age*, Centre for European Policy Studies (CEPS) Brussels. online: <https://www.ceps.eu/wp-content/uploads/2021/05/Criminal-Justice-Fundamental-Rights-and-the-Rule-of-law-in-the-Digital-Age.pdf>. Accessed 31 December 2024.
- EU Agency for Fundamental Rights (FRA) (2016) *Rights of suspected and accused persons across the EU: translation, interpretation and information*. Luxembourg Publication office of the European Union. online: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-right-to-information-translation_en.pdf. Accessed 31 December 2024.

- EU Commission (DG Policy, U 2) (2015) Handbook, The role of Member States' auditors in fraud prevention and detection for EU Structural and Investment Funds Experience and practice in the Member States.
- EU Commission (DG regional Policy) (2009) Information Note on Fraud Indicators for ERDF, ESF. online: https://www.tremirs.com/wp-content/uploads/documentos/antifraude/06_Comision_Europea_Information_Note_on_Fraud_Indicators_for_ERDF_ESF_and_CF.pdf. Accessed 31 December 2024.
- EU Commission (OLAF) (2011) Compendium of Anonymised Cases Structural Actions, Brussels. online: https://www.italy-albania-montenegro.eu/sites/default/files/2023-01/05_OLAF_Compndium_of_anonymised_cases_2011.pdf. Accessed 31 December 2024.
- EU Commission (OLAF) (2013) Detection of forged documents in the field of structural actions A practical guide for managing authorities elaborated by a group of Member States' experts coordinated by OLAF's unit D2 – Fraud Prevention. online: <https://sfc.ec.europa.eu/system/files/documents/sfc-files/2013-11-12-final-guide-forged-documents-en.pdf>. Accessed 31 December 2024.
- EU Commission (OLAF) (2016) Guidelines on Digital Forensic Procedures for OLAF Staff, 15 February 2016. online: https://anti-fraud.ec.europa.eu/system/files/2021-07/guidelines_en_bb84583638.pdf. See all Translations: https://anti-fraud.ec.europa.eu/guidelines-investigations-olaf-staff_en. Both accessed 31 December 2024.
- EU Commission (OLAF) (2017) Fraud in Public Procurement A collection of Red Flags and Best Practices, Ref. Ares(2017)6254403. online: <https://www.esfondi.lv/en/regulatory-enactments-and-documents/2014-2020-planning-period/fraud-in-public-procurement-a-collection-of-red-flags-and-best-practices>. Accessed 31 December 2024.
- EU Commission (OLAF) (2018) Digest of rulings of the Court of Justice of the European Union with relevance to OLAF.
- EU Commission (OLAF) (2021) Guidelines on Investigation Procedures for OLAF Staff, 6 October 2021. online: https://anti-fraud.ec.europa.eu/system/files/2021-10/gip_2021_en.pdf. Accessed 31 December 2024.
- EU Commission (OLAF) (2022a) COMMISSION STAFF WORKING DOCUMENT, Measures adopted by the Member States to protect the EU's financial interests in 2021, Implementation of Art. 325 TFEU, Accompanying the document, REPORT FROM THE COMMISSION TO THE COUNCIL, AND THE EUROPEAN,

- PARLIAMENT, 33rd Annual Report on the protection of the European Union's financial interests and, the fight against fraud – 2021, Brussels, 23 September 2022, SWD(2022) 304 final.
- EU Commission (OLAF) (2022b) COMMISSION STAFF WORKING DOCUMENT, Statistical evaluation of irregularities reported for 2021: own resources, agriculture, cohesion and fisheries policies, pre-accession and direct expenditure, Accompanying the document, COMMISSION REPORT TO THE COUNCIL AND THE EUROPEAN PARLIAMENT, 33rd Annual Report on the protection of the European Union's financial interests and the fight against fraud – 2021, Brussels, 23 September 2022, SWD(2022) 307 final.
- EU Commission (OLAF) (2022c) Report From The Commission To The Council And The European Parliament, 33rd Annual Report on the protection of the European Union's financial interests and the fight against fraud – 2021, Brussels, 23 September 2022, COM(2022) 482 final.
- European Court of Auditors (ECA) (2019a) Delivering performance in Cohesion, Briefing Paper, June 2019, EU Publications Office, Luxembourg. online: https://www.eca.europa.eu/Lists/ECADocuments/BRP_Performance_orientation_in_Cohesion/BRP_Performance_orientation_in_Cohesion_EN.pdf.
- European Court of Auditors (ECA) (2019b) online: https://www.eca.europa.eu/lists/ecadocuments/sr19_01/sr_fraud_risks_en.pdf. Accessed 31 December 2024.
- European Parliament (2022) P9_TA(2022)0300 Protection of the European Union's financial interests – combating fraud – annual report 2020, European Parliament resolution of 7 July 2022 on the protection of the European Union's financial interests – combating fraud – annual report 2020 (2021/2234(INI)), Brussels.
- Herrnfeld H H, Burchard C, Brodowski D (2020) European Public Prosecutor's Office: Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), Article-by-Article Commentary, Nomos/Hart/Beck, Baden-Baden.
- Malan J, Bosch Chen I (2022) Possible Solutions for Missing Trader Intra-Community Fraud, Brussels. online: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/731902/IPOL_STU\(2022\)731902_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/731902/IPOL_STU(2022)731902_EN.pdf). Accessed 31 December 2024.
- OECD (2019) Fraud and Corruption in European Structural and Investment Funds. A Spotlight on common schemes and preventive actions, OECD Publishing, Paris.

online: <https://www.oecd.org/gov/ethics/prevention-fraud-corruption-european-funds.pdf>. Accessed 31 December 2024.

OLAF (2021) Guidelines on Data Protection for Investigative Activities, Ref(Ares) 2021, 7266396 – 25 November 2021. online: https://anti-fraud.ec.europa.eu/system/files/2021-12/guidelines_dp_investigative_activities_en.pdf. Accessed 31 December 2024.

OLAF (2022) The OLAF Report 2021. Publications Office of the European Union, Luxembourg.

Salzano L (2022) The Secretiveness over the OLAF Report on Frontex Investigations: Rule of Law Fading into Arbitrariness? *VerfBlog*, 9 September 2022. online: <https://verfassungsblog.de/the-secretiveness-over-the-olaf-report-on-frontex-investigations/>, DOI: 10.17176/20220909-110344-0. Accessed 31 December 2024.

Supervisory Committee of OLAF (2015) Opinion No 2/2015, Legality check and review in OLAF. Luxembourg. online: https://supervisory-committeeolaf.europa.eu/supervisory-committee-olaf/opinions-and-reports_en. Accessed 31 December 2024.

Supervisory Committee of OLAF (2017a) Annual Activity Report 2016, 23 May. online: https://supervisory-committee-olaf.europa.eu/document/download/bff6a4f7-0319-4abd-ac5f-f037d735df5f_en?filename=scaar_2016_-_finalannex.pdf_0_1.pdf. Accessed 31 December 2024.

Supervisory Committee of OLAF (2017b) Opinion No 2/2017 – Accompanying the Commission Evaluation report on the application of Regulation (EU) No 883/2013 (Article 19), 29 September. online: https://supervisory-committee-olaf.europa.eu/document/download/d161134b-fae2-49b0-9eb4-54cb7ddb87de_en?filename=opinion_2_2017.pdf. Accessed 31 December 2024.

Supervisory Committee of OLAF (2018) Annual Activity Report 2017, 1 June. online: https://supervisory-committee-olaf.europa.eu/document/download/31a59701-c97d-477f-aa8e-4332fa7967fa_en?filename=olaf_supervisory_committee_activity_report_2017.pdf. Accessed 31 December 2024.

Supervisory Committee of OLAF (2019) Annual Activity Report 2018, 15 July.

Supervisory Committee of OLAF (2020a) Annual Activity Report 2019, 11 August. online: https://supervisory-committee-olaf.europa.eu/document/download/4948a27d-9ff6-4499-9def-17195f66907c_en?filename=supervisory_committee_of_olaf_-_activity_report_2019_.pdf. Accessed 31 December 2024.

Supervisory Committee of OLAF (2020b) Opinion No 1/2020 – OLAFs dismissed cases concerning Members of EU Institutions, 22 April. online: https://supervisory-committee-olaf.europa.eu/document/download/8ae66f96-a360-4ee4-a52d-6e667c3b40aa_en?filename=opinion_1_2020_-_nc_0.pdf. Accessed 31 December 2024.

Supervisory Committee of OLAF (2021a) Annual Activity Report 2020, 14 June.

Supervisory Committee of OLAF (2021b) Opinion No 1/2021 – OLAF s recommendations not followed by the relevant authorities, 4 February. online: https://supervisory-committee-olaf.europa.eu/document/download/81b4db5b-51e0-4739-ab3f-c67859304f5e_en?filename=opinion_1_2021_-_recommendations_not_followed_-_nc.pdf. Accessed 31 December 2024.

Supervisory Committee of OLAF (2021c) Opinion No 2/2021 – Working arrangements between OLAF and EPPO, 31 May. online: https://supervisory-committee-olaf.europa.eu/document/download/2d90f9ac-6556-41c7-bb55-483ccd192d8d_en?filename=Opinion%202_2021_WA%20EPPO_OLAF.docx_2.pdf. Accessed 31 December 2024.

Supervisory Committee of OLAF (2021d) Opinion No 3/2021 – Supervision of OLAF internal investigations: Strategic conclusions and best practices, 21 October. online: https://supervisory-committee-olaf.europa.eu/document/download/57f5949d-886a-46ab-944c-e73a2da06bb2_en?filename=NC%20OPINION%203_2021-EXTRACT%20%20for%20Institutions.pdf. Accessed 31 December 2024.

Supervisory Committee of OLAF (2021e) Opinion No 5/2021 – Analysis of OLAFs investigations lasting more than 36 months in 2019, 17 December. online: https://supervisory-committee-olaf.europa.eu/document/download/25411b56-2cc1-4ba2-9c5c-b58e1e95c236_en?filename=NCV_Opinion%205_2021.pdf. Accessed 31 December 2024.

Supervisory Committee of OLAF (2022) Annual Activity Report 2021, 11 February.

Supervisory Committee of OLAF (2023) Annual Activity Report 2022, 31 May, online: https://supervisory-committee-olaf.europa.eu/document/download/dac1bebe-3413-4070-8257-8bc0fdc11dda_en?filename=Activity%20report%202022.pdf. Accessed 31 December 2024.

Supervisory Committee of OLAF (2024a) Annual Activity Report 2023, 10 July, online: https://supervisory-committee-olaf.europa.eu/document/download/61f6b4be-9f38-4b4f-a481-16841dca2515_en?filename=SCAR%202023.pdf. Accessed 31 December 2024.

Important Websites

Supervisory Committee of OLAF (2024b) Opinion No 1/2024 – Complementary investigations of OLAF and the EPPO, 16 April.

Supervisory Committee of OLAF (2024c) Opinion No 2/2024 – OLAF s preliminary draft budget for 2025, 15 May.

Supervisory Committee of OLAF (2024d) Opinion No 3/2024 – OLAF s Guidelines on investigation procedures, 12 November.

Supervisory Committee of OLAF (2024e) Opinion No 4/2024 – OLAF s power to conduct internal investigations: the case of Members of EU institutions, 12 November.

Unger B, Ferwerda J, Rossel L (2021) *Combating Fiscal Fraud and Empowering Regulators: Bringing Tax Money Back Into the COFFERS*. OUP, Oxford.

Wouters J, Nowak M, Chane A-L, Hachez N (2020) *The European Union and Human Rights: Law and Policy*. OUP, Oxford.

* For reasons of brevity, the European Commission is abbreviated to EU Commission in the footnotes.

Further Research Suggestions

EPPO Annual Reports Website, <https://www.eppo.europa.eu/en/documents/2023-numbers>. Accessed 31 July 2024.

EPPO Lex (2024) <https://eppo-lex.eu/eppo-atlas-malta/>. Accessed 31 July 2024.

Important Websites

Danish Prosecution Service, <https://anklagemyndigheden.dk/en/about-the-prosecution-service>. Accessed 31 December 2024.

Supervisory Committee of OLAF. Website, https://supervisory-committee-olaf.europa.eu/index_en. Accessed 31 December 2024.

Index

- access to bank account information 258
- AFCOS 9, 14, 23, 47, 199, 200, 261, 278, 288, 289, 290, 291, 292, 293
- analogue society 200
- Annual Report 289
- area of structural funds and internal policies 220
- Art. 30 EPPO Regulation 130
- audits 37, 219, 232
- bribery 64
- buzz words 288
- checks 36, 128, 205, 206, 207, 208, 209, 210, 211, 214, 223, 226, 231, 254, 255, 257, 259, 260, 268, 275, 279, 295
- CJEU Cases
 - Case C-281/22 150
 - Case C-659/18 262
- competence and jurisdiction 74, 200
- conformity with national procedural rules 210
- confrontations 186
- Corpus Juris 45
- corruption 201
- Customs Agency 262, 263, 277, 292
- detention 152, 153, 156, 276
- digital evidence 200, 258, 259
- direct expenditure 242, 243
- Economic Operator 50, 209, 254
- ECtHR 23, 32, 128, 229
- effectiveness of investigations 200
- EU IBOAs 111
- European Chief Prosecutor 23, 75, 125
- European Delegated Prosecutor 10, 23, 31, 75, 110, 111, 152
- fraud offence 80, 81, 110, 117
- immunity provisions 125
- indictment 98, 100, 106, 138, 161, 172, 173, 174, 196, 197
- Internal Rules on Procedure 74
- investigative measures 61, 111, 112, 117, 145, 150, 151, 226, 267, 268
- investigative tools 131
- invoices 33, 41, 207, 217, 218, 242
- legal aid 47, 48, 49, 50, 51, 52, 53, 54
- legal persons
 - criminal liability 78
- material competence 75
- national homologue investigators 200
- notification 66, 67, 68, 69, 70, 89, 94, 97, 98, 106, 113, 119, 136, 140, 142, 174, 215, 281
- OLAF Regulation
 - definitions 202
 - irregularity, term 202
- photographic presentation 186, 187
- PIF offences 13, 33, 59, 80, 112
- PIF Offences in Denmark
 - Advantage or gift promising 81
 - Forgery Offences 81
 - Further PIF Acquis Offences 97
 - Offences of the Tax Control Act 95
 - Offences of the Tobacco Tax Act 96
 - Property Crimes 83
 - VAT Act Offences 94
- police interviews 186
- potential criminal conduct 261
- privilege against self-incrimination 127
- privilege of a Union official 130
- regional offices 74
- resist 210

Index

- revenue 43, 98, 99, 200, 210, 212, 249, 250, 258, 278
- rules on evidence 150
- search measures 132
- Staff Regulations 201
- structural funds 31, 200, 221, 225, 231, 235, 242, 254, 255, 278
- terra incognita* 46
- territorial and personal competences 76
- transfer of information 73, 76
- travaux préparatoires* 48
- types of fraud 98
- Union bodies 73, 278
- VAT fraud 46, 50, 62, 156
- verification of information 74
- Working Agreements 73

This **Danish EPPO/OLAF volume** explores Denmark's crucial role in the fight against EU fraud. It discusses Danish rules on criminal investigations and procedure as well as mutual legal assistance in criminal matters. Analysing the Danish Administration of Justice Act 2022 the publication focuses on the newly introduced section 107a, which addresses the issue that Denmark and Ireland have withdrawn from the European Public Prosecutor's Office (EPPO). It presents the most recent working agreement between the EPPO and the Danish Ministry of Justice (of 31 August 2023). It also examines the impact of OLAF investigations on Danish justice by analysing the role of the national authorities involved in the PIF investigations and their laws.

While written in English, the volume includes footnotes that reproduce the original Danish legislation in the local language. Easily navigable with the help of visual symbols, it is designed as a quick reference tool for academics, students, practitioners and other interested readers.

Logos Verlag Berlin

978-3-8325-6013-3

